

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB GVOPS 15-08 OGSR Child Abuse Death Review Committees

**SPONSOR(S):** Government Operations Subcommittee

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 7032

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee		Harrington	Williamson

### SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

Current law establishes the State Child Abuse Death Review Committee and local child abuse death review committees within the Department of Health. The committees must review the facts and circumstances of all deaths of children from birth through 18 that occurred in the state and are reported to the central abuse hotline of the Department of Children and Families. The state committee must prepare an annual statistical report on the incidence and causes of death resulting from child abuse in the state.

Current law provides a public record exemption for the State Child Abuse Death Review Committee and local child abuse death review committees. The public record exemption protects any information held by the committees that reveals the identity of the surviving siblings, family members, or others living in the home of the deceased child. Information made confidential or exempt that is obtained by the committees must retain its confidential or exempt status. Current law also provides a public meeting exemption for the committees. Specifically, those portions of a meeting of a committee that discuss confidential and exempt information are exempt from the public meeting requirements. The closed meeting must be recorded, and the recording must be maintained by the committee. The recordings of a closed portion of a meeting are exempt from public record requirements.

The bill reenacts the public record and public meeting exemptions for the state and local committees. It expands the current exemptions to protect the name of the deceased child whose death has been reported to the central abuse hotline, but determined not to be the result of abuse or neglect, as well as the identity of the surviving siblings, family members, and others living in the home of the deceased child. The bill narrows the current exemption when the death has occurred as the result of verified abuse or neglect to only protect the identity of the surviving siblings. As a result, the bill extends the repeal date from October 2, 2015, to October 2, 2020. It also provides a public necessity statement as required by the State Constitution.

The bill appears to have a minimal fiscal impact on the state, but does not appear to have a fiscal impact on local governments.

**Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands current public record and public meeting exemptions; thus, it requires a two-thirds vote for final passage.**

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)<sup>1</sup> sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

If, and only if, in reenacting an exemption that will repeal and the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.<sup>2</sup> If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created<sup>3</sup> then a public necessity statement and a two-thirds vote for passage are not required.

##### Child Abuse Death Review Committees

Current law establishes the State Child Abuse Death Review Committee (state committee) and local child abuse death review committees (local committees) within the Department of Health (DOH).<sup>4</sup> The state and local committees must review the facts and circumstances of all deaths of children, from birth through age 18, that occur in Florida and are reported to the central abuse hotline of the Department of Children and Families (DCF).<sup>5</sup> Prior to 2014, the state and local committees reviewed the deaths of children that were the result of verified child abuse or neglect, rather than all child deaths that were reported to the hotline.<sup>6</sup>

The state committee must prepare an annual statistical report on the incidence and causes of death resulting from child abuse in the state during the prior calendar year. The report must include recommendations for state and local action, including specific policy, procedural, regulatory, or statutory changes, and any other recommended preventive action.<sup>7</sup>

The state and local committees have broad access to any information related to the deceased child or the child's family that is necessary to carry out their duties, including:<sup>8</sup>

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<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Section 24(c), Art. I of the State Constitution.

<sup>3</sup> An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.

<sup>4</sup> Section 383.402, F.S.

<sup>5</sup> Section 383.402(1), F.S.

<sup>6</sup> In 2014, the Legislature expanded the jurisdiction of the state and local committees. Rather than solely reviewing deaths that have resulted from verified abuse or neglect, the committees must now review all deaths that have been reported to the child abuse hotline. Chapter 2014-224, L.O.F.

<sup>7</sup> Section 383.402(3)(c), F.S.

<sup>8</sup> Section 383.402(8) & (9), F.S.

- Medical, dental, or mental health treatment records;
- Records in the possession of a state agency or political subdivision; and
- Records of law enforcement that are not part of an active investigation.

Records typically obtained by the state and local committees include, among others: death and birth certificates; medical examiner reports; law enforcement reports; criminal history reports; first responder reports; physician, hospital, or substance abuse and mental health records; and the DCF case file.<sup>9</sup> In order to protect the rights of the child and the child's parents or other persons responsible for the child's welfare, all records held by DCF concerning reports of child abuse are confidential and exempt<sup>10</sup> from public records requirements.<sup>11</sup> However, if the child's death was found to be the result of verified abuse or neglect, the case file is no longer protected in its entirety.<sup>12</sup>

#### Public Record and Public Meeting Exemptions under Review

Current law provides public record and public meeting exemptions for the state and local committees.<sup>13</sup>

Information that reveals the identity of the surviving siblings, family members, or others living in the home of a deceased child who is the subject of review by the state committee or a local committee is confidential and exempt from public records requirements.<sup>14</sup> In addition, confidential and exempt information obtained by the state or a local committee retains its confidential or exempt status.<sup>15</sup>

Portions of meetings of the state or local committees where confidential or exempt information is discussed is exempt from public meetings requirements.<sup>16</sup> The committee must record the closed portion of the meeting and maintain the recording.<sup>17</sup> The recording of the closed portion of the meeting is exempt from public records requirements.<sup>18</sup>

The state and local committees may share with each other any relevant confidential or exempt information regarding case reviews.<sup>19</sup> Any person who knowingly or willfully violates the public record exemption commits a misdemeanor of the first degree.<sup>20</sup>

Pursuant to the Open Government Sunset Review Act, the public record and public meeting exemptions will repeal on October 2, 2015, unless reenacted by the Legislature.<sup>21</sup>

<sup>9</sup> Email from Bryan Wendel, Office of Legislative Planning, Florida Dept. of Health, (August 25, 2014) (on file with the Government Operations Subcommittee).

<sup>10</sup> There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See Attorney General Opinion 85-62 (August 1, 1985).

<sup>11</sup> Section 39.202(1), F.S.

<sup>12</sup> Section 39.202(2)(o), F.S. If the death is the result of verified abuse or neglect, the information identifying the person reporting the abuse, abandonment, or neglect must not be released. In addition, any information otherwise made confidential or exempt by law must not be released.

<sup>13</sup> The public record and public meeting exemptions for the state and local committees were first enacted in 1999. Chapter 1999-210, L.O.F.; codified as s. 383.410, F.S. The exemptions were repealed in 2004 as a result of the automatic repeal provisions in the Act. The exemptions were enacted again in 2005, and renewed in 2010 with changes. Chapters 2005-190 and 2010-40, L.O.F. In 2010, the Legislature amended the provisions to require the committees to record the closed meetings, and created a public record exemption for the recordings of those meetings. *Id.*

<sup>14</sup> Section 383.412(2)(a), F.S.

<sup>15</sup> Section 383.412(2)(b), F.S.

<sup>16</sup> Section 383.412(3)(a), F.S.

<sup>17</sup> *Id.*

<sup>18</sup> Section 383.412(3)(b), F.S.

<sup>19</sup> Section 383.412(4), F.S.

<sup>20</sup> Section 383.412(5), F.S. A misdemeanor of the first degree is punishable by imprisonment not to exceed one year or a fine not to exceed \$1,000.

<sup>21</sup> Section 383.412(6), F.S.

During the 2014 interim, subcommittee staff met multiple times with staff from DOH and DCF as part of the Open Government Sunset Review process. As part of the discussions with DOH and DCF, staff from the departments were asked if they recommended that the Legislature repeal the public record and public meeting exemptions under review, reenact the exemptions, or reenact the exemptions with changes. Both agencies recommended reenacting the exemptions with changes to ensure protection of information identifying a deceased child whose death has been reported to the central abuse hotline but determined not to be the result of abuse or neglect. This recommended change would align the public record exemption for the state and local committees with the public record exemption afforded DCF.

### **Effect of the Bill**

The bill reenacts, with changes, the public record and public meeting exemptions for the state and local committees. The bill:

- Narrows the current public record exemption for identifying information related to cases of verified abuse and neglect to only protect information that identifies the surviving siblings of a deceased child whose death was the result of verified abuse or neglect.
- Expands the public record exemption to include information held by the state and local committees that reveals the identity of a deceased child whose death has been reported to the central abuse hotline but determined not to be the result of abuse or neglect, as well as the identity of the surviving siblings, family members, and others living in the home of the deceased child.
- Expands the public meeting exemption to include those portions of meetings of the state committee or local committee wherein confidential and exempt information is discussed regarding a deceased child whose death is reported to the central abuse hotline but determined not to be the result of abuse or neglect.

The bill authorizes the state and local committees to release the confidential and exempt information to a governmental agency in the furtherance of its official duties and responsibilities, or a person or entity authorized by DOH to use such information for bona fide research or statistical purposes. A person or entity who is authorized to obtain such information for research or statistical purposes must enter into a privacy and security agreement with DOH, comply with all laws and rules governing the use of the information, and treat any identifying information as confidential.

Because the bill expands the current exemptions to protect the name and other specified information relating to a deceased child whose death has been reported to the central abuse hotline but determined not to be the result of abuse or neglect, the bill extends the repeal date from October 2, 2015, to October 2, 2020. It also provides a public necessity statement as required by the State Constitution.

#### **B. SECTION DIRECTORY:**

Section 1 amends s. 383.412, F.S., relating to public record and public meeting exemptions for child abuse death review committees.

Section 2 provides a public necessity statement.

Section 3 provides an effective date of upon becoming a law.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

None.

2. Expenditures:  
See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:  
None.
2. Expenditures:  
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may create a minimal fiscal impact on DOH because staff responsible for complying with the public records requests could require training related to the expansion of the public record exemption. The costs, however, would be absorbed as they are part of the day-to-day responsibilities of the department. In addition, there may be minimal fiscal costs associated with the requirement to record the closed portion of a state committee or local committee meeting during which confidential and exempt information is discussed.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill expands the public record and public meeting exemptions; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands the public record and public meeting exemptions; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates public record exemption to protect information held by state and local committees that identifies the name of a deceased child and other specified information whose death has been reported to the central abuse hotline, but determined not to be the result of verified abuse or neglect. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

Not applicable.