

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 469 Pub. Rec./Residential Facilities Serving Victims of Sexual Exploitation

SPONSOR(S): Spano and others

TIED BILLS: CS/HB 465 **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N	Aziz	Cunningham
2) Government Operations Subcommittee	12 Y, 0 N	Toliver	Williamson
3) Judiciary Committee			

SUMMARY ANALYSIS

Human trafficking is a form of modern-day slavery, which involves the exploitation of persons for commercial sex or forced labor. Safe homes, safe foster homes, and other residential facilities provide services and residential care to child victims of sexual exploitation. Adult victims of human trafficking involving commercial sexual activity can be served in residential facilities as well.

This bill, which is linked to the passage of HB 465, creates public record exemptions for information about the location of safe houses, safe foster homes, other residential facilities serving child victims of sexual exploitation, and residential facilities serving adult victims of human trafficking involving commercial sexual activity. Specifically, the bill provides that the information regarding the location of these facilities that is held by an agency is confidential and exempt from public record requirements. However, the bill allows this information to be provided to any agency in order to maintain health and safety standards and to address emergency situations.

The bill provides that the public record exemptions are subject to the Open Government Sunset Review Act and stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

The bill may have a minimal fiscal impact on state and 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 exemption. The bill creates public record exemptions; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Public Records

Article I, s. 24(a), of the Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.¹ The Legislature, however, may exempt records from the requirements of Article I, s. 24 of the Florida Constitution, provided the exemption is passed by two-thirds vote of each chamber and:

- States with specificity the public necessity justifying the exemption; and
- Is no broader than necessary to meet that public purpose.²

Florida Statutes also address the public policy regarding access to government records through a variety of statutes in chapter 119, F.S. Section 119.07, F.S., guarantees every person a right to inspect, examine, and copy any state, county, or municipal record, unless the record is exempt.

The Open Government Sunset Review Act³ provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose *and* the "[l]egislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."⁴ However, the exemption may be no broader than is necessary to meet one of the following purposes:⁵

- Allows the state or 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; or
- Protects trade or business secrets.

The Open Government Sunset Review Act requires the automatic repeal of a public record exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.⁶ The Act also requires specified questions to be considered during the review process.⁷

Human Trafficking

Florida law defines human trafficking as "soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that person."⁸ Human trafficking is a form of modern-day slavery, which involves the exploitation of persons for commercial sex or forced labor.⁹ Trafficking subjects victims to force, fraud, or coercion.¹⁰ Individuals experiencing

¹ Article I, s. 24(a), FLA. CONST.

² Article I, s. 24(c), FLA. CONST.

³ Section 119.15, F.S.

⁴ Section 119.15(6)(b), F.S.

⁵ *Id.*

⁶ Section 119.15(3), F.S.

⁷ Section 119.15(6)(a), F.S., states that the specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

⁸ Section 787.06 (2)(d), F.S.

⁹ Section 787.06(1)(a), F.S.

this type of sexual exploitation often become bonded with their exploiters and do not see themselves as victims. These individuals experience trauma and are exposed to danger but are often unable to leave their exploiter to seek help.¹¹

Residential Treatment for Victims of Human Trafficking

Safe Houses

Section 409.1678, F.S., defines the term “sexually exploited child” as a child who has suffered sexual exploitation¹² and is ineligible for relief and benefits under the federal Trafficking Victims Protection Act.¹³ In 2012, Florida passed the Safe Harbor Act,¹⁴ which established “safe houses.” Sexually exploited children older than six who have been adjudicated dependent or delinquent may be placed in a safe house by the Department of Children and Families (DCF) if an assessment indicates such placement is appropriate.¹⁵

Safe houses must provide a living environment that has set aside gender-specific, separate, and distinct living quarters for sexually exploited children and must have staff members who are awake and on duty 24 hours a day.¹⁶ A safe house serving children who have been sexually exploited must have available staff or contract personnel who have the clinical expertise, credentials, and training to provide a variety of services (e.g., security, crisis intervention services, residential care, and transportation).¹⁷

Safe Foster Homes

Legislation passed in 2014 created the term “safe foster home,” and defines the term as “a foster home certified by [DCF] to care for sexually exploited children.”¹⁸ The State requires safe foster homes to provide the same services and meet the same requirements as safe houses, except for the requirement to have staff awake and on duty 24 hours a day.¹⁹

Additional Residential Facilities

Traditional residential facilities serve both children and adults who are victims of sexual exploitation. If these facilities serve adults, they cannot be designated safe houses or safe foster homes.²⁰

If a trafficker learned the location of a safe house, safe foster home, or other residential facility and went to such location, the staff as well as the individuals residing in those locations could be in danger of physical or emotional harm.

Effect of the Bill

The bill creates a public record exemption for information about the location of safe houses, safe foster homes, residential facilities serving victims of sexual exploitation, and residential facilities serving adult victims of human trafficking. Specifically, the bill provides that information regarding the location of these facilities held by an agency, as defined in s.119.011, F.S.,²¹ is confidential and exempt²² from s.

¹⁰ U.S. Department of Health and Human Services, Administration for Children and Families, *About Human Trafficking*, available at <http://www.acf.hhs.gov/trafficking/about/index.html#> (last visited on February 3, 2015).

¹¹ See Adam S. Butkus, *Ending Modern-Day Slavery in Florida: Strengthening Florida's Legislation in Combating Human Trafficking*, 37 STETSON L. REV. 297, 307 (2007).

¹² As defined in s. 39.01(69)(g), F.S.

¹³ 22 U.S.C. ss. 7101 et seq.

¹⁴ Chapter 2012-105, L.O.F.

¹⁵ Section 39.524, F.S.

¹⁶ Section 409.1678 (2)(c), F.S. Safe houses also must hold a license as a family foster home or residential child-caring agency, be appropriately licensed in this state as a residential child-caring agency as defined in s. 409.175, F.S., and have applied for accreditation within 1 year after being licensed (according to DCF, currently there are no entities that accredit safe houses and safe houses are not sure what type of accreditation is required. No safe houses have applied for accreditation at this time).

¹⁷ Section 409.1671, F.S.

¹⁸ Section 409.1678(1) (a), F.S.

¹⁹ Section 409.1678(2)(c), F.S.

²⁰ Section 409.1678(1)(a) and (b), F.S. The definitions of “safe foster home” and “safe house” are specifically restricted to “sexually exploited children.”

²¹ Agency is defined in s. 119.011, F.S., as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of [chapter 119,

119.07(1), F.S., and Article I, s. 24(a) of the State Constitution. However, the confidential and exempt information may be provided to any agency as necessary to maintain health and safety standards and to address emergency situations in the residential facility.

The bill provides that the public record exemption is subject to the Open Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

B. SECTION DIRECTORY:

Section 1. Amends s. 409.1678, F.S., relating to specialized residential options for children who are victims of sexual exploitation.

Section 2. Amends s. 787.06, F.S., relating to human trafficking.

Section 3. Provides a public necessity statement.

Section 4. Provides an effective date to be the same as that of HB 465 or similar legislation, if such legislation is passed during the same session and becomes law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state government revenues.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill could create a minimal fiscal impact on agencies because staff responsible for complying with public record requests could require training related to creation of the public record exemptions. In addition, agencies could incur costs associated with redacting the confidential and exempt information

F.S.], the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

²² There is a difference between records the Legislature has determined to be exempt from public record requirements and those that have been determined to be confidential and exempt. If the Legislature has determined the information to be confidential and exempt then the information is not subject to inspection. Also, if the information is deemed to be confidential and exempt it may only be released to those person and entities designated in statute. However, the agency is not prohibited from disclosing the records in all circumstances where the records are only exempt from public record requirements. 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); see Op. Att’y Gen. Fla. 85-62 (1985).

prior to releasing a record. These costs, however, would be absorbed, as they are part of the day-to-day responsibilities of agencies.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

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 or expanded public records exemption. The bill creates public record 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 creates public record 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 exemptions for information relating to the identification and location of safe houses. The exemption does not appear to be in conflict with the constitutional requirement that the exemption must be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.