

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1440

SPONSOR: Children and Families Committee

SUBJECT: Sunset Review of Public Records Exemption for Address Confidentiality Program

DATE: April 4, 2003

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dowds</u>	<u>Whiddon</u>	<u>CF</u>	<u>Favorable</u>
2.	<u>Rubinas</u>	<u>Rubinas</u>	<u>EE</u>	<u>Favorable</u>
3.	_____	_____	<u>JU</u>	_____
4.	_____	_____	<u>GO</u>	_____
5.	_____	_____	<u>RC</u>	_____
6.	_____	_____	_____	_____

## I. Summary:

Senate Bill 1440 re-enacts the public records exemption for the addresses, telephone numbers, and social security numbers of program participants of the Address Confidentiality Program. The separate statutory provision prohibiting the Office of the Attorney General from disclosing this information is repealed and replaced with the specification that the re-enacted public records exemption applies to the information held by the Office of the Attorney General. The separate statutory provision prohibiting the Supervisor of Elections from disclosing this information is also repealed and replaced with a new subsection that explicitly provides for the public records exemption of this information held by the Supervisor of Elections.

This bill substantially amends section 741.465 of the Florida Statutes. It also repeals section 741.407 and subsection (2) of section 741.406 of the Florida Statutes.

## II. Present Situation:

### Open Government Sunset Review

Currently, section 24(a) of Article I of the Florida Constitution, provides every person with the right of access to inspect or copy public records. The corresponding general law is found in ch. 119, F.S., which requires the custodian of a public record to permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under the supervision of the custodian of the public record or the custodian's designee [s. 119.07(1), F.S.].

Pursuant to s. 24(c) of Article I of the Florida Constitution, exemptions to this right of access to public records may be provided by general law enacted by the Legislature but must be based on

an expressed statement of public necessity justifying the exemption and must be no broader than necessary to accomplish the purpose of the law. Section 119.15, F.S., the Open Government Sunset Review Act of 1995, sets forth the process to create and maintain such exemptions to the public records requirements. Exemptions to the required public records disclosure must serve a public purpose, and this public purpose must be sufficiently compelling to prevail over the public policy of open government and must not be accomplishable without the exemption. Further, the public purpose served by the exemption must meet one of the following purposes as set forth in s. 119.15(4)(b), F.S.:

- “1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
2. Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or
3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.”

In determining whether to exempt or to make public certain records, the Legislature is to consider if damage or loss as specified in the latter two public purposes would occur with making the records public [s. 119.15(4)(c), F.S.].

Exemptions granted pursuant to s. 119.15, F.S., are repealed on October 2nd of the fifth year after enactment of the exemption, unless the Legislature reenacts the exemption. Prior to the scheduled repeal, s. 119.15(4)(a), F.S., requires the Legislature to review the exemption and consider the following questions:

- “1. What specific records or meetings are affected by the exemption?
2. Whom does the exemption uniquely affect, as opposed to the general public?
3. What is the identifiable public purpose or goal of the exemption?
4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?”

An exemption provided pursuant to s. 119.15, F.S., must allow for the greatest public access to the records as is possible while meeting the purpose of the exemption. The language of the exemption must be uniform and clearly specify the section of the Florida Statutes from which it is exempt. Finally, s. 119.15(4)(e), F.S., provides that neither the state or other public bodies can be made a party to a suit or incur liability as a result of the repeal or reenactment of an exemption.

### **Address Confidentiality Program**

The Address Confidentiality Program assists persons who are victims of domestic violence and fear for the safety of themselves or their children, or incapacitated individuals, when there is domestic violence and a fear for their safety by providing them with an alternative address to

prevent the assailants or probable assailants from finding them. Sections 741.401 through 741.465, F.S., set forth the elements of the program, including the responsibility of the Office of the Attorney General to operate the Address Confidentiality Program.

To be eligible for the program, the applicants and their children, or the incapacitated individuals for whom they are guardians must be victims of domestic violence and fear for the safety of themselves, their children, or the incapacitated individuals [s. 741.403(1), F.S.]. Section 741.402(3), F.S., stipulates that, for the purposes of the Address Confidentiality Program, domestic violence includes threats of domestic violence regardless of whether the acts or threats have been reported to law enforcement.

Individuals certified by the Office of the Attorney General as program participants are provided with a designated address to be used when interacting with state or local governmental agencies. Governmental agencies are to accept this designated address in lieu of a participant's actual address but may request a waiver of this requirement. Conditions under which the Attorney General may waive this requirement and provide the actual address to a governmental agency are set forth in s. 741.405, F.S.

Specific provisions are made for program participants who participate in the election process. Section 741.406, F.S., provides for program participants to vote by absentee ballot. The actual address is necessary to determine the particular ballot to be provided to the participant. However, the statute prohibits the supervisor of elections from making the participant's name, address, and telephone number available to the public, with the exception of law enforcement to execute an arrest warrant and by a court order [s.741.406(2), F.S.].

Individuals are certified as program participants for up to 4 years [s.741.403(3), F.S.] unless such certification is cancelled by the Attorney General, pursuant to s. 741.404, F.S. As of April 2002, there were 199 families certified as program participants in the Address Confidentiality Program, 84 of whom had also applied on behalf of their children for an additional 152 children who are participating as part of the families certified.

An exemption to s. 119.07(1), F.S., of the public records law and s. 24(a), Article I of the State Constitution, is provided for in s. 741.465, F.S., for the addresses, telephone numbers, and social security numbers of the participants in the Address Confidentiality Program. This exemption specifically permits disclosure of this information under the following circumstances: to law enforcement to execute an arrest warrant, if directed by a court order, or if the certification has been cancelled. A repeal of the exemption is scheduled for October 2, 2003 unless reviewed and re-enacted by the Legislature.

This public records exemption does not specify the governmental entity to which the exemption would apply. As written, this provision has the potential to be construed to apply to a broader group of governmental entities when in possession of the identified information of a participant of the Address Confidentiality Program. However, when this provision is read with the sections governing the Address Confidentiality Program (ss. 741.401 through 741.409, F.S.), it appears the statutes contemplate that the exemption applies to the specified information in the program records held by the Attorney General and, possibly, the Supervisor of Elections. In particular, ss. 741.406(2) and 741.407, F.S., specifically prohibit the Supervisor of Elections and Attorney

General, respectively, from disclosing the participant's name, address, and telephone number except under the basic conditions allowed in s. 741.465, F.S. However, neither section was constructed in the manner required for a public records exemption and, therefore, may not provide a valid authorization to either the Attorney General or the Supervisor of Elections to withhold access to this information.

### **Senate Interim Project Report 2003-206**

Staff reviewed the exemption to the public records requirements in s. 741.465, F.S., making the addresses, telephone numbers, and social security numbers of the participants in the Address Confidentiality Program exempt from the Public Records Law. Staff found that the exemption provided for in s. 741.465, F.S., is the foundation of the Address Confidentiality Program. Without this exemption, the location of the victims of domestic violence would be more readily available through the public records of the numerous state agency systems which citizens consistently access. Staff recommends that the exemption to the public records requirements in s. 741.465, F.S., be re-enacted but with some modification.

### **III. Effect of Proposed Changes:**

SB 1440 re-enacts the public records exemption for the addresses, telephone numbers, and social security numbers of program participants of the Address Confidentiality Program. The separate statutory provision prohibiting the Office of the Attorney General from disclosing this information is repealed and replaced with the specification that the re-enacted public records exemption applies to the information held by the Office of the Attorney General. The separate statutory provision prohibiting the Supervisor of Elections from disclosing this information is also repealed and replaced with a new subsection that explicitly provides for the public records exemption of this information held by the Supervisor of Elections.

This bill, while re-enacting the public records exemption in s. 741.465, F.S., for specified information of the participants of the Address Confidentiality Program, clarifies that this exemption applies specifically to the information that is held by the Office of the Attorney General. Section 741.407, F.S., which prohibits the disclosure of this information by the Office of the Attorney General, is repealed since it is duplicative of this public records exemption. One difference between the two provisions is that the name of the participant is included in the prohibition to disclosure in s. 741.407, F.S., but not in s. 741.465, F.S. A second difference is that s. 741.407, F.S., required the Attorney General to notify the program participants if information was released as a result of a court order or cancellation of the certification. Such notification is an administrative function and does not need to be included in the public records exemption and may not always be possible given the directives of the court order. The circumstances under which the information may be disclosed by the Attorney General continues the exceptions of the original provision which are to law enforcement to assist in executing a valid arrest warrant, if directed by the court, or if the certification has been cancelled. The definition of "address" is continued by the bill and, for the purposes of this section, includes a residential street address, school address, or work address as contained in the participant's application for the program. The bill provides for the exemption to apply to the information held by the Attorney General either before, on, or after the effective date of the exemption. This

provision will protect from disclosure the information formally covered by s. 741.407, F.S., with the exception of the name of the participant.

Subsection (2) of s. 741.406, F.S., which prohibits the Supervisor of Elections from making the participant's name, address, or telephone number available to the public, is repealed and replaced with a newly created subsection (2) of s. 741.465, F.S. This new subsection prohibits the disclosure of the same information but through a formal public records exemption for participants of the Address Confidentiality Program. The same circumstances under which the information may be disclosed by the Office of the Attorney General is set forth for the Supervisors of Elections. The bill also applies this exemption to information held by the Supervisor of Election either before, on, or after the effective date of the exemption. As with the exemption for the Office of the Attorney General, this provision will protect from disclosure the information formally covered by s. 741.406(2), F.S.

Since a new formal exemption to the public records law is created for the Supervisor of Elections, this exemption is subject to the Open Government Sunset Review of 1995. As a result, the bill repeals the public records exemption in subsection (2) of s. 741.465, F.S., on October 2, 2008, unless reviewed and re-enacted by the Legislature. In addition, a statement of public necessity is set forth. The public necessity presented is the risk to the physical safety and security of the participants in the Address Confidentiality Program. This provision articulates that the name, address and telephone number is needed by the Supervisor of Elections in order to place the participant in the proper voting district and provide participants with the opportunity to vote. However, access to this information can either narrow the location of the participant to their voting area or provide the specific location and contact information which again defeats the purpose of the Address Confidentiality Program.

The effective date of the bill is October 1, 2003.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The Office of Attorney General reports that there is no fiscal impact with this bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

After reviewing the Address Confidentiality Program and its current public records exemption, the questions that must be considered pursuant to s. 119.15(4)(a), F.S., can be answered as follows:

1. What specific records or meetings are affected by the exemption? --- The actual addresses, telephone numbers and social security numbers of the participants in the Address Confidentiality Program are the specific information items that are currently exempt pursuant to the public records exemption in s. 741.465, F.S.
2. Whom does the exemption uniquely affect, as opposed to the general public? --- The exemption affects only individuals who are program participants in the Address Confidentiality Program. Participants of this program must be victims of domestic violence as defined by s. 741.28, F.S., including those who have been victims of threats of acts of domestic violence, regardless of whether these acts have been reported to law enforcement. Participants must also submit an application and be certified by the Attorney General as a program participant.
3. What is the identifiable public purpose or goal of the exemption? --- This exemption protects information of a sensitive and personal nature, specifically the new location of a victim of domestic violence, to prevent the assailant from finding the victim. The release of this information would jeopardize the safety of the victim, since, if the actual address is part of a public record, it is accessible to the public, including the assailant.
4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how? --- It appears that the only way the information made exempt from the public records law can be made available through alternative means is if the program participants provide the information to a governmental entity. The program participants are advised of the importance of not disclosing the information to an agency. This public records exemption does not apply to private companies, such as telephone companies, power companies, and insurance agents, and as a result, they are not required to accept the Address Confidentiality Program address. The program participants are advised to explore other options with the private agencies when they will not accept the Address Confidentiality Program substitute address.

**VIII. Amendments:**

None.

---

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

---