

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1763 (PCB SA 03-17) Public Records/Domestic Violence Confidentiality Program  
**SPONSOR(S):** State Administration and Mack  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1440

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>State Administration</u>	<u>5 Y, 0 N</u>	<u>Williamson</u>	<u>Everhart</u>
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

The Open Government Sunset Review Act of 1995 (Act) in essence requires the Legislature to review each public records and each public meetings exemption five years after enactment. If the Legislature does not reenact the exemption, it is automatically repealed on October 2nd of the fifth year after enactment.

This bill reenacts with clarifying changes the public records exemption for the Address Confidentiality Program for Victims of Domestic Violence (ACP), which will repeal on October 2, 2003, if this bill does not become law. It clarifies that the Office of the Attorney General is the custodian of the exempt information. This bill also repeals the section of law prohibiting the Office of the Attorney General from disclosing a participant's name, address, or telephone number as it appears this section was not only created without fulfilling the constitutional requirements for creation of the exemption, but it is also duplicative of the previous public records exemption being reenacted.

This bill repeals the section of law prohibiting the supervisor of elections from disclosing such information as it also appears that this section was created without fulfilling the constitutional requirements for creation of the exemption. However, in order to fulfill those constitutional requirements, this bill recreates the public records exemption for the name, address, or telephone number of an ACP participant held by the supervisor of elections. It also provides for retroactive application and future review and repeal, and provides a statement of public necessity.

The bill does not appear to have a fiscal impact on state or local governments.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h1763.sa.doc  
**DATE:** March 26, 2003

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

#### B. EFFECT OF PROPOSED CHANGES:

##### Background

The Address Confidentiality Program for Victims of Domestic Violence (ACP) was established in 1998 and is administered by the Office of the Attorney General. The ACP provides a mail forwarding service for its participants. Upon completion of a program application, an applicant is certified by the Attorney General to participate in the ACP. Participation is limited to four years and can be terminated under certain circumstances. Upon termination, information made confidential and exempt by participation in the ACP is no longer withheld from public disclosure.

Current law provides provisions for ACP participants who desire to vote. The law allows a program participant to vote by absentee ballot, but only after providing his or her physical address. The physical address of the participant is necessary in order to determine the specific ballot to be mailed to the participant. The law further prohibits the supervisor of elections from disclosing the participant's name, address, or telephone number pursuant. However, the supervisor of elections may release such information under the following circumstances: to a law enforcement agency for purposes of assisting in the execution of an arrest warrant and to a person identified in a court order directing disclosure.<sup>1</sup> This appears to be a public records exemption, with exceptions to the exemption, which was not properly created. The Florida Constitution requires a public records exemption to be created in a separate bill and to state with “specificity the public necessity justifying the exemption”.<sup>2</sup>

Current law also requires the Attorney General's Office to withhold from public disclosure the name, address, or telephone number of an ACP participant. However, the Attorney General's Office may release such information under the following circumstances: to a law enforcement agency for purposes of executing an arrest warrant; to a person identified in a court order directing disclosure; or if ACP certification is canceled. If such information is disclosed pursuant to a court order or upon cancellation, the ACP participant must be notified.<sup>3</sup> Once again, this appears to be a public records exemption, with exceptions to the exemption, which was not properly created.

The law also provides a public records exemption for the address, corresponding telephone number, and social security number of a participant in the ACP (which met the constitutional requirements when created). However, the exemption does not specify a custodian of the information. Therefore, the exemption could be construed to apply to all agencies even though the Attorney General's Office administers the program. The law provides exceptions to the exemption that include: a law

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<sup>1</sup> Section 741.406, F.S.

<sup>2</sup> Article I, s. 24(c), Florida Constitution.

<sup>3</sup> Section 741.407, F.S.

enforcement agency for purposes of assisting in the execution of an arrest warrant; to a person identified in a court order directing disclosure; or if ACP certification is cancelled.<sup>4</sup>

Current law provides for future review and repeal of the latter public records exemption. Pursuant to the Open Government Sunset Review Act of 1995 (Act), s. 741.465, F.S., will repeal on October 2, 2003, unless otherwise reenacted by the Legislature. Pursuant to the Act, the Florida House of Representatives Committee on State Administration sent an Open Government Sunset Review Questionnaire to the Office of the Attorney General and had numerous discussions with department staff regarding the public records exemption for the ACP.

In response to the Committee on State Administration survey, the Office of the Attorney General indicated 199 adults are certified as participants in the ACP. Eighty-four of the adults also applied on behalf of their children, resulting in 152 children also being enrolled. Therefore, a total of 351 persons are currently enrolled in the program. Eleven certifications have been canceled because the participant obtained a name change; 19 certifications have been canceled because mail was returned as undeliverable or service of process documents were returned to the Attorney General; 10 certifications have been voluntary canceled; and one certification has been canceled as a result of an individual's death from natural causes.

### **Effect of Bill**

As a result of the questionnaire response and staff discussions, this bill reenacts the public records exemption for the Address Confidentiality Program for Victims of Domestic Violence (ACP). The bill also provides that the Office of the Attorney General is the custodian of the exempt<sup>5</sup> information.

The bill also recreates the public records exemption for the name, address, or telephone number of an ACP participant held by the supervisor of elections. It provides for retroactive application<sup>6</sup> and future review and repeal of the exemption, and provides a statement of public necessity.

Finally, this bill repeals the section of law prohibiting the supervisor of elections from disclosing a participant's name, address, or telephone number, as it appears this section has been created without fulfilling the constitutional requirements for creation of the exemption. The section of law prohibiting the Office of the Attorney General from disclosing such information is also repealed as it too was created without fulfilling the constitutional requirements for creation of the exemption, and because it is duplicative of the current exemption being reenacted.

### **C. SECTION DIRECTORY:**

Section 1. Repeals s. 741.406(2), F.S., which prohibits the supervisor of elections from disclosing the name, address, or telephone number of a participant in the Address Confidentiality Program (ACP).

Section 2. Repeals s. 741.407, F.S., which prohibits the Attorney General from disclosing the name, address, or telephone number of a participant in the ACP.

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<sup>4</sup> Section 741.465, F.S.

<sup>5</sup> There is a difference between information and records that the Legislature has made *exempt* from public disclosure versus those that have been made *confidential and exempt*. Information and records that are simply made exempt from public disclosure are still permitted to be disclosed under certain circumstances. See *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5thDCA 1991), and *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4thDCA 1994). If the Legislature makes certain information and records confidential and exempt from public disclosure, such information and records may not be released by the records custodian to anyone other than to the persons or entities specifically designated in the statutory exemption. See *Attorney General Opinion 85-62*, August 1, 1985.

<sup>6</sup> On April 26, 2001, the Supreme Court of Florida ruled that a public records exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied retroactively. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001).

Section 3. Amends s. 741.465, F.S., by reenacting with editorial changes the public records exemption for certain information regarding participants in the ACP held by the Office of the Attorney General. Creates a public records exemption for certain information regarding participant in the ACP held by the supervisor of elections.

Section 4. Provides for future review and repeal of the public records exemption for an ACP participant's information held by the supervisor of elections.

Section 5. Provides a statement of public necessity.

Section 6. Provides that the bill shall take effect upon becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

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

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

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

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

### D. FISCAL COMMENTS: None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: Not applicable. This bill does not affect municipal or county government.
2. Other: None.

### B. RULE-MAKING AUTHORITY: None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

#### **Open Government Sunset Review Act of 1995**

The Open Government Sunset Review Act of 1995<sup>7</sup> provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which

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<sup>7</sup> Section 119.15, F.S.

administration would be significantly impaired without the exemption; 2. Protecting 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, 3. Protecting trade or business secrets.

Section 119.15, F.S., also sets forth a Legislative review process that requires newly created or expanded exemptions to include an automatic repeal of the exemption on October 2<sup>nd</sup> of the fifth year after enactment or substantial amendment, unless the Legislature reenacts the exemption.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement is required, as a result of the requirements of art. 1, s. 24, Fla. Const.. 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 (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement is not required.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

None.