



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide limited government** – The bill decreases public access to records and meetings of the Child Abuse Death Review Committee. The bill creates a penalty for releasing confidential and exempt information.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Background**

A portion of the Kayla McKean Child Protection Act<sup>1</sup> established a State Child Abuse Death Review Committee within the Department of Health and, also, established local child abuse death review committees that are responsible for reviewing the facts and circumstances of all deaths of children from birth through 18 years of age that occur as a result of verified child abuse or neglect.<sup>2</sup> The local committees collect data on deaths that are the result of child abuse and submit records and reports to the state committee relating to their review of deaths resulting from child abuse.<sup>3</sup> The state committee prepares an annual statistical report on the incidence and causes of death resulting from child abuse and studies the adequacy of laws, rules, training, and services to determine what changes are needed in order to decrease the number of child abuse deaths.<sup>4</sup>

Former s. 383.410, F.S., provided an exemption from public records and public meetings requirements for:

- Confidential or exempt information obtained by the committees;
- Information in reports or records created by the committees in which specific persons or incidents were discussed; and
- Those portions of meetings and proceedings relating to the discussion of specific persons and incidents associated with child fatalities under review by the committees.

The exemptions, however, were repealed on October 2, 2004, as a result of the Open Government Sunset Review Act of 1995.<sup>5</sup> As a result, the committees have been unable to access necessary information, from the Department of Children and Family Services, as part of their review process of child abuse deaths.

##### **Effect of Bill**

The bill creates a public records exemption for the state and local child abuse death review committees. 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 committee review,

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<sup>1</sup> Chapter 99-168, L.O.F.

<sup>2</sup> Section 383.402(1), F.S.

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

<sup>4</sup> Section 383.402(3), F.S.

<sup>5</sup> The Open Government Sunset Review Act of 1995 sets forth a Legislative review process for newly created or substantially amended public records or public meetings exemptions. It requires an automatic repeal of the exemption on October 2<sup>nd</sup> of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption. Section 119.15, F.S.

is confidential and exempt from public records requirements. In addition, information that is otherwise confidential or exempt, and that is obtained by the state or local committees, will retain its status. The bill authorizes the committees to share such confidential and exempt information with each other for purposes of case reviews. In addition, the bill provides that it is a misdemeanor of the first degree<sup>6</sup> if a person knowingly or willfully makes public confidential and exempt information.

The bill creates an exemption from public meetings requirements for portions of meetings of the state or local committees at which confidential or exempt information is discussed.

The bill provides for future review and repeal of the exemptions on October 2, 2010, pursuant to the Open Government Sunset Review Act of 1995. It also provides a statement of public necessity.

### **Comments by the Future of Florida's Families Committee**

In order for a public records exemption to be granted, Florida law states that a public necessity must be shown. To see part of the established framework for the Legislature to exempt specific public records from the public records law, See *Bevan v. Wanicka*, 505 So.2d 1116, 1118 (Fla. 2d DCA 1987). The Sunshine Amendment permits the Legislature, by two-thirds vote, to enact exemptions for public records, but only after specially defining a public necessity and narrowly tailoring the exemption to that necessity. Art. I, § 24(c), Fla. Const. Accordingly, the Legislature has allowed restrictions on the unlimited access to some public records by enacting specific statutes authorizing certain agencies to obtain copyrights in particular circumstances. See e.g., § 24.105(10), Fla. Stat. (2003) (authorizing the Department of the Lottery to hold copyrights).

The basic premise of the Public Records Act is to have all state, county, and municipal records in Florida open to public inspection, unless specifically exempted by statute. See *Tribune Co. v. Public Records*, 493 So.2d 480 (Fla. 2d DCA 1986). In the absence of a statute exempting a meeting in which privileged materials are to be discussed, s. 286.011, Fla. Stat., the meeting should be construed as containing no exceptions. See Ops. Att'y Gen. Fla. 92-17 (1992). See Drafting Issues and Comments for a more complete analysis.

To show this necessity, the bill states that it is a public necessity that such committees and panels be provided access to records that are otherwise confidential or exempt and that such committees and panels be authorized to maintain the confidential or exempt status of such information. These public records exemptions increase the potential for reduced morbidity or mortality of children and reduce the potential for poor outcomes for children, thereby improving the overall quality of life for children. In the absence of the exemptions, sensitive, personal information concerning children would be disclosed. In addition, the bill requires that it is a public necessity that portions of meetings of the State Child Abuse Death Review Committee or a local child abuse death review committee, or a panel or committee assembled by the state committee or a local committee pursuant to s. 383.402, Florida Statutes, wherein confidential and exempt information is discussed be made exempt from public meetings requirements. Without such exemption, open communication and coordination among the parties involved in child fatality reviews would be hampered. Furthermore, release of confidential and exempt information via a public meeting defeats the purpose of the public records exemption.

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

**Section 1.** Creates s. 383.412, F.S., creating a public records and public meetings exemption for the Child Abuse Death Review Committee.

**Section 2.** Provides a statement of public necessity.

**Section 3.** Provides an effective date of "upon becoming a law."

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<sup>6</sup> A misdemeanor of the first degree is punishable by a term of imprisonment of up to one year (s. 775.082, F.S.), and a fine of \$1000 (s. 775.083, F.S.).

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None. The bill does not create, modify, amend, or eliminate a state revenue source.

#### 2. Expenditures:

See "FISCAL COMMENTS" section.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None. The bill does not create, modify, amend, or eliminate a local revenue source.

#### 2. Expenditures:

See "FISCAL COMMENTS" section.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None. This bill does not affect persons in the private sector.

### D. FISCAL COMMENTS:

The bill could create a fiscal impact on state and local governments, because state and local committee staff would have to be trained with regards to the categories of information that is confidential and exempt from public disclosure versus records that are available for public inspection and copying. The state and local committees could also incur costs associated with redacting confidential and exempt information prior to releasing a record.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

The bill does not: require counties or municipalities to spend funds or to take an action requiring the expenditure of funds; reduce the percentage of a state tax shared with counties or municipalities; or reduce the authority that municipalities have to raise revenue.

#### 2. Other:

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. Thus, this bill requires a two-thirds vote for passage.

### B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

**Public Records and Public Meetings Laws**

Article I, s. 24(a), 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. Article I, s. 24(b), Florida Constitution, sets forth the state's public policy regarding access to government meetings. The section requires all meetings of the executive branch and local government be open and noticed to the public.

The Legislature may, however, provide by general law for the exemption of records and meetings from the requirements of Article I, s. 24, Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

Public policy regarding access to government records and meetings is also addressed in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record, and s. 286.011, F.S., requires that all state, county, or municipal meetings be open and noticed to the public. Furthermore, 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 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.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

On March 30, 2005, the Governmental Operations Committee adopted a strike-all amendment and reported the bill favorably with committee substitute (CS). The CS removes the evidentiary privilege contained in the bill, and conforms the public meetings exemption to the public records exemption.

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