

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1921 PCB GO 05-05 Review Under the Open Government Sunset Review Act
SPONSOR(S): Governmental Operations Committee, Kottkamp
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 974

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|--|----------|------------|----------------|
| Orig. Comm.: Governmental Operations Committee | 7 Y, 0 N | Williamson | Everhart |
| 1) State Administration Council | 9 Y, 0 N | Williamson | Bussey |
| 2) _____ | _____ | _____ | _____ |
| 3) _____ | _____ | _____ | _____ |
| 4) _____ | _____ | _____ | _____ |
| 5) _____ | _____ | _____ | _____ |

SUMMARY ANALYSIS

The Open Government Sunset Review Act of 1995 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 If the Legislature does not reenact the exemption, it is automatically repealed on October 2nd of the fifth year after enactment.

The bill reenacts and expands the public records exemption for domestic violence fatality review teams. The exemption is expanded to include information that identifies a victim of domestic violence or the children of the victim that is contained in a record created by a review team. It also reenacts and expands the public meetings exemption. The public meetings exemption is expanded to include discussions of confidential or exempt information. The bill provides for future review and repeal of the exemptions on October 2, 2010, and provides a statement of public necessity.

The bill does not appear to have a fiscal impact on state government. The bill may have a fiscal impact on Miami-Dade County.

The bill requires a two-thirds vote of the members present and voting for passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill decreases public access to records and meetings of domestic violence fatality review teams.

B. EFFECT OF PROPOSED CHANGES:

Background

In 2000, domestic violence fatality review teams (review teams) were created statewide.¹ The purpose of the review teams is to learn how to prevent domestic violence by intervening early and improving the response of an individual and the system to domestic violence.² Due to a lack of funding, only 13 review teams were reported active in 2004.³

Current law provides a public records and public meetings exemption for the review teams. Any confidential or exempt records obtained by or provided to a review team retains its status as confidential or exempt. In addition, any confidential or exempt information contained in a report produced by the domestic violence fatality review team, remains confidential or exempt from public records requirements. The review team proceedings and meetings regarding domestic violence fatalities are exempt from public meetings requirements when the identity of the victim or the children of the victim is discussed.⁴

Pursuant to the Open Government Sunset Review Act of 1995, the exemption will repeal on October 2, 2005, unless reenacted by the Legislature.⁵

Effect of Bill

The bill reenacts and expands the public records exemption. It expands the exemption by making confidential and exempt the identity of a victim of domestic violence and the identity of the children of the victim that is contained in a record created by a review team. The bill removes reference to reports produced by a review team that contain information that is otherwise confidential or exempt because the language is redundant and unnecessary. Any confidential or exempt information that is held by a review team is protected whether the information is obtained by, or contained in, a report or work product created by the review team. As such, if a review team receives a public records request for a report containing confidential or exempt information, then that information would be redacted before releasing the requested report.

The bill reenacts and expands the public meetings exemption. The exemption is expanded to include discussions of confidential or exempt information.

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, and provides a statement of public necessity.

¹ Section 741.3165, F.S.

² Section 741.316(2), F.S.

³ SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT for SB 974 by the Children and Families Committee, March 8, 2005.

⁴ Section 741.3165(1), F.S.

⁵ Section 741.3165(2), F.S.

C. SECTION DIRECTORY:

Section 1 amends s. 741.3165, F.S., relating to public records and public meetings exemptions for domestic violence fatality review teams.

Section 2 provides a statement of public necessity.

Section 3 provides an October 1, 2005, effective date.

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:

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

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 "DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR" section.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Only one review team is funded by local government (Miami-Dade County). The other review teams are made up of volunteers, and are not funded.

The bill may represent a minimal non-recurring fiscal impact on review team expenditures. A bill enacting or amending the public records law causes a non-recurring negative fiscal impact in the year of enactment for training employees who are responsible for replying to public records requests. In the case of bills being reviewed under the Open Government Sunset Review process, the cost of such training will be incurred if the bill does not pass, as employees would have to be informed that formerly exempt records are now open. Because the bill reenacts and expands the public records exemption, costs could be incurred with regards to employee training activities.

D. FISCAL COMMENTS:

None.

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. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not 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:

Open Government Sunset Review Act of 1995

The Open Government Sunset Review Act of 1995,⁶ 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.

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 2nd 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, Florida Constitution. 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 & COMBINED BILL CHANGES

None.

⁶ Section 119.15, F.S.