

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.)

Prepared By: Health Care Committee

BILL: SB 676

SPONSOR: Senator Saunders

SUBJECT: Public Records and Meetings

DATE: April 7, 2005

REVISED: 04/12/05

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Munroe	Wilson	HE	Fav/1 amendment
2.		GO	
3.		RC	
4.			
5.			
6.			

Please see last section for Summary of Amendments

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Technical amendments were recommended

☒

Amendments were recommended

☐

Significant amendments were recommended

I. Summary:

The bill creates public records and public meetings exemptions for the State Child Abuse Death Review Committee and local committees. The bill makes any 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 review by the State Child Abuse Death Review Committee or a local committee, or a panel or committee assembled by the state committee or a local committee, confidential and exempt from the Public Records Law. The bill creates an exemption from the public meeting requirements for portions of meetings or proceedings of the State Child Abuse Death Review Committee or a local committee, or a panel or committee assembled by the state committee or a local committee, which relate solely to a child fatality and in which the identity of any of the surviving siblings, family members, or others living in the home of the deceased child who is the subject of review is discussed.

The bill specifies that information that is otherwise confidential or exempt, and that is obtained by the state or local committees, will retain its confidential and exempt status. The bill authorizes the state committee and a local committee to share information that is otherwise confidential and exempt for purposes of case review involving a child's death. The bill makes it a misdemeanor of the first degree for any person to knowingly or willfully make public the confidential and exempt information.

The bill creates an evidentiary privilege to provide that all information contained in records acquired by the State Child Abuse Death Review Committee or a local committee is not subject to subpoena, discovery, or introduction into evidence in any civil or criminal proceeding.

The bill makes the exemptions subject to Open Government Sunset Review and provides a statement of public necessity justifying the creation of the public records and public meetings exemptions.

This bill creates section 383.411, Florida Statutes, and one undesignated section of law. The bill repeals s. 383.410, F.S.

II. Present Situation:

Public Records

Florida has a long history of providing public access to the records and meetings of governmental and other public entities. The first law affording access to public records was enacted by the Florida Legislature in 1909. In 1992, Floridians voted to adopt an amendment to the Florida Constitution that raised the statutory right of public access to public records to a constitutional level.

The Public Records Law, ch. 119, F.S., specifies the conditions under which public access must be provided to governmental records. Section 286.011, F.S., the Public Meetings Law, specifies the requirements for meetings of public bodies to be open to the public. While the state constitution provides that records and meetings are to be open to the public, it also provides that the Legislature may create exemptions to these requirements by general law if a public need exists and certain procedural requirements are met.

Under s. 24(c), Art. I of the State Constitution, the Legislature may provide by general law for the exemption of records and meetings. A law enacting an exemption:

- Must state with specificity the public necessity justifying the exemption;
- Must be no broader than necessary to accomplish the stated purpose of the law;
- Must relate to one subject;
- Must contain only exemptions to public records or meetings requirements; and
- May contain provisions governing enforcement.

The Open Government Sunset Review Act of 1995, codified in s. 119.15, F.S., provides for the repeal and prior review of any public records or meetings exemptions that are created or substantially amended in 1996 and subsequently. The review cycle began in 2001. The chapter defines the term “substantial amendment” for purposes of triggering a repeal and prior review of an exemption to include an amendment that expands the scope of the exemption to include more records or information or to include meetings as well as records. The law clarifies that an exemption is not substantially amended if an amendment limits or narrows the scope of an existing exemption.

Child Abuse Death Review Committees

In 1999, the Florida Legislature authorized the development of independent, multidisciplinary statewide and local child abuse death review committees within the Department of Health to review child abuse and neglect deaths in which the Florida Abuse Hotline had accepted at least one report of abuse or neglect.¹ The statewide child abuse death review committee (state committee) must develop a system for collecting data on child abuse deaths and, among its duties, must complete an annual statistical report on the incidence and causes of death resulting from child abuse and neglect in Florida during the prior calendar year. The state committee must study the adequacy of laws, rules, training and services to determine what changes are needed to decrease the incidence of child abuse deaths and develop strategies and recruit partners to implement these changes. The state committee provides training and technical assistance to local child abuse death review committees. Local committees assist the state committee in collecting data on deaths that are the result of child abuse, in accordance with the protocol established by the state committee. In 2003, the state committee reviewed 35 deaths.

Notwithstanding any other law, the chairperson of the state committee or local committee, must be provided with access to any information or records that pertain to a child whose death is being reviewed by the committee to carry out its duties, including information or records that pertain to the child's family. Such records include patient records in the possession of a public or private provider of medical, dental, or mental health care; and information or records of any state agency or political subdivision which might assist a committee in reviewing a child's death, including but not limited to, information or records of the Department of Children and Family Services, the Department of Health, the Department of Education, or the Department of Juvenile Justice. Child abuse death review committees must have access to all information of a law enforcement agency which is not the subject of an active investigation and which pertains to the death of a child.

The chairperson of the state committee may require the production of records by requesting a subpoena, through the Department of Legal Affairs, in any county in Florida. A person who has attended a meeting of a child abuse death review committee or who has otherwise participated in authorized activities of a committee may not be permitted or required to testify in any civil, criminal, or administrative proceeding as to any records or information produced or presented to a committee during meetings or authorized activities.

Section 383.410, F.S., made information that would reveal the name, address, or telephone number of, or information that would identify any of the deceased child's surviving siblings, family members, or others living in the home, which is contained in reports or records created by the state or local committees, or a panel of the state committee or local committees, which relates solely to child fatalities and in which specific persons or incidents were discussed confidential and exempt from the Public Records Law. All information that was confidential or exempt from public records requirements by operation of law and that was obtained by the committees or panels, or that was obtained by a hospital or a health care practitioner from a committee or panel, retained that status.

¹ See s. 383.402, F.S.

Section 383.410, F.S., made portions of meetings relating solely to child fatalities in which specific persons or incidents were discussed exempt from the Public Meetings Law. All information and records acquired by the state or local committee were confidential and not subject to subpoena, discovery, or introduction into evidence in any civil or criminal proceedings, except that information, documents, and records otherwise available from other sources were not immune from subpoena, discovery or introduction into evidence from those sources solely because they were presented to or reviewed by a committee. Any person who violates s. 383.410, F.S., commits a first degree misdemeanor punishable by up to one year in jail and a fine of up to \$1,000.

The exemptions contained in s. 383.410, F.S., were repealed on October 2, 2004, in accordance with the Open Government Sunset Review Act of 1995.

III. Effect of Proposed Changes:

The bill creates a public records exemption to make any 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 review and that is contained in a record relating solely to the child's death which is created by the State Child Abuse Death Review Committee or a local committee, or a panel or committee assembled by the state committee or a local committee, confidential and exempt from disclosure under the Public Records Law. The bill specifies that information that is otherwise confidential or exempt, and that is obtained by a state or local committees, will retain its confidential and exempt status. The bill authorizes the state committee and a local committee to share information that is otherwise confidential and exempt for purposes of case review involving a child's death.

The bill creates an exemption from the public meetings requirements for portions of meetings or proceedings of the State Child Abuse Death Review Committee or a local committee, or a panel or committee assembled by the state committee or a local committee, which relate solely to a child fatality and in which the identity of any of the surviving siblings, family members, or others living in the home of the deceased child who is the subject of review is discussed.

The bill creates an evidentiary privilege to provide that all information contained in records acquired by the State Child Abuse Death Review Committee or a local committee is not subject to subpoena, discovery, or introduction into evidence in any civil or criminal proceeding. Such information, documents, and records otherwise available from other sources are not immune from subpoena, discovery, or introduction into evidence solely because such information, documents, or records were presented to or reviewed by the committee.

The bill makes it a misdemeanor of the first degree for any person to knowingly or willfully make public or disclose to any unauthorized person any information made confidential and exempt under this bill. The bill also makes the exemptions subject to repeal on October 2, 2010, under the Open Government Sunset Review Act of 1995.

The bill provides a statement of public necessity setting forth a justification for the public records and public meetings exemptions created in the bill.

The bill repeals s. 383.410, F.S., which provides public records and meetings exemptions comparable to this bill, but which was not reenacted in 2004, after an Open Government Sunset Review.

The bill provides an effective date of October 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

Section 24, Article I of the State Constitution requires legislation that creates an exemption to the public records requirements to be created in a bill that only relates to that subject. The bill appears to raise constitutional concerns because it contains an evidentiary privilege in addition to exemptions to the public records and meeting requirements.

Section 24, Article I of the State Constitution requires a two-thirds vote of each house of the Legislature for any legislation creating a public records or meeting exemption.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

VIII. Summary of Amendments:

Barcode 443230 by Health Care:

The amendment deletes everything after the enacting clause, removes the evidentiary privilege contained in the bill, limits the scope of the public meetings exemption to portions of meetings of the State Child Abuse Death Review Committee or a local committee, or a panel or committee, at which information made confidential and exempt under the bill is discussed, and revises the statement of public necessity supporting the creation of the public records and meetings exemptions created in the bill. (WITH TITLE AMENDMENT)

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