

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: Judiciary Committee

BILL: CS/SB 1800

INTRODUCER: Judiciary Committee and Senator Aronberg

SUBJECT: Domestic Violence/State Employees

DATE: April 27, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sanford</u>	<u>Whiddon</u>	<u>CF</u>	Favorable
2.	<u>Gordon</u>	<u>Cooper</u>	<u>CM</u>	Favorable
3.	<u>Luczynski</u>	<u>Maclure</u>	<u>JU</u>	Fav/CS
4.	_____	_____	<u>GO</u>	_____
5.	_____	_____	<u>RC</u>	_____
6.	_____	_____	_____	_____

I. Summary:

This bill is the public records companion to Senate Bill 498. Senate Bill 498 requires the submission of documentation in order for an employee to be granted leave related to incidents of domestic violence. This bill makes confidential and exempt, from s. 119.07(1), F.S., and article I, section 24(a) of the Florida Constitution, personal identifying information that is contained in records documenting an act of domestic violence that are submitted to a public agency by an agency employee as required by the provisions of SB 498.

The bill also makes confidential and exempt, from s. 119.07(1), F.S., and article I, section 24(a) of the Florida Constitution, for a period of one year after the leave is taken both the written request for the leave and the agency time sheet related to the leave.

The bill recognizes these exemptions as subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and provides that these exemptions will stand repealed on October 2, 2011, unless reviewed and saved from repeal through reenactment by the Legislature.

It provides a statement of public necessity for the exemptions.

This bill creates new public records exemptions and, as a result, is subject to the requirement of article I, section 24(a) of the Florida Constitution that two-thirds of the members present and voting in each house pass the bill.

This bill creates subsection 741.313(7), Florida Statutes.¹

¹ Section 741.313, F.S., is created by SB 498.

II. Present Situation:

Employment Records of Public Employees

The employment records of public employees, unless specifically exempted, are public records. These records include requests for leave and time sheets.

Domestic Violence

Nationally, more than 1.5 million adults are victims of domestic violence each year, and more than 85 percent of the victims are women.² After years of steady increases in domestic violence numbers, the total number of reported domestic violence offenses³ reported to law enforcement agencies in Florida declined slightly in 1998, and has continued the same slight decline through 2004, according to the Florida Department of Law Enforcement (FDLE).⁴

Senate Bill 498

Senate Bill 498, to which this bill is linked, requires employers to allow employees to request or take up to three working days of leave with or without pay within a 12-month period if the employee is the victim of domestic violence and the leave is sought to:

- Seek an injunction for protection against domestic violence or an injunction for protection in cases of repeat violence, dating violence, or sexual violence;
- Obtain medical care or mental health counseling, or both, for the employee or a family or household member to address physical or psychological injuries resulting from the act of domestic violence;
- Obtain services from a victim-services organization, including, but not limited to, a domestic violence shelter, program, or a rape crisis center as a result of the act of domestic violence;
- Make the employee's home secure from the perpetrator of the domestic violence or to seek new housing to escape the perpetrator; or
- Seek legal assistance to address issues arising from the act of domestic violence and to attend and prepare for court-related proceedings arising from the act of domestic violence.

Application of the bill is limited to employers with 50 or more employees and to employees who have been employed by the employer for at least 12 months. The employee is required to provide

² Margaret Graham Tebo, *When Home Comes to Work*, ABA Journal, Sept. 2005, at 42 (citing statistics from Legal Momentum, an advocacy and research organization based in New York City).

³ Domestic violence crimes include murder, manslaughter, forcible rape, forcible sodomy, forcible fondling, aggravated assault, aggravated stalking (1996-present), simple assault, simple stalking (1996-present), threat/intimidation, and arson (1992-1995). See Fla. Statistical Analysis Ctr., Fla. Dep't of Law Enforcement, *Crime in Florida, Florida uniform crime report: Total Domestic Violence, 1992 – 2004*, at http://www.fdle.state.fl.us/FSAC/Crime_Trends/domestic_violence/index.asp (last visited Apr. 11, 2006).

⁴ FDLE reports a total of 131,152 domestic violence crimes in 1995 and 119,772 in 2004. The rate of incidence has fallen from 926.9 to 683.8 per 100,000 of population during the same time period. Fla. Statistical Analysis Ctr., Fla. Dep't of Law Enforcement, *Crime in Florida, Florida uniform crime report: Total Domestic Violence, 1992 – 2004*, at http://www.fdle.state.fl.us/FSAC/Crime_Trends/domestic_violence/index.asp (last visited Apr. 11, 2006).

advance notice of the leave except in cases of imminent danger to the employee or the employee's family. The employer is authorized to require documentation of the act of domestic violence. The employee must use all available annual or vacation leave, personal leave, and sick leave available to the employee prior to using the leave provided for in SB 498, unless this requirement is waived by the employer.

The employer is prohibited from taking any disciplinary action against the employee for exercising rights under SB 498, but the employee is not granted any rights under the bill to continued employment or other benefits not available outside the provisions of the bill.

The bill requires private employers to keep confidential all information relating to an employee's leave granted under this bill. The bill also requires public employers, as encompassed by the term "agency" under s. 119.011, F.S., to keep such information confidential and exempt. However, the public employee's personnel records are a public record unless specifically exempted from Florida's public records law.

Public Records Law

Florida has a long history of providing public access to the records of governmental and other public entities. The Legislature enacted its first law affording access to public records in 1909. In 1992, Floridians adopted an amendment to the state constitution that raised the statutory right of access to public records to a constitutional level. Article I, section (24)(a) of the Florida Constitution provides that:

Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

The Public Records Law⁵ also specifies conditions under which the public must have access to governmental records. Section 119.011(11), F.S., defines the term "public records" to include:

all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition of public records to include all materials made or received by an agency in connection with official business which are used "to

⁵ Chapter 119, F.S.

perpetuate, communicate, or formalize knowledge.”⁶ Unless the Legislature makes these materials exempt, they are open for public inspection, regardless of whether they are in final form.⁷

Under article I, section 24(c) of the Florida Constitution, the Legislature may provide for the exemption of records from the open government requirements provided: (1) the law creating the exemption states with specificity the public necessity justifying the exemption; and (2) the exemption is no broader than necessary to accomplish the stated purpose of the law.

Open Government Sunset Review Act

The Open Government Sunset Review Act, s. 119.15, F.S., provides for the automatic repeal of a new public records exemption on October 2, in the fifth year after enactment, unless the Legislature reenacts the exemption. An exemption may be created or maintained only if it serves an identifiable public purpose, and it may be no broader than necessary to meet that purpose. An identifiable public purpose is served if the exemption meets one of the following purposes and the Legislature finds that the purpose is sufficiently compelling to override the strong policy of open government and cannot be accomplished without the exemption:

- The exemption allows “the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.”
- The exemption 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.”
- The exemption 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.”⁸

III. Effect of Proposed Changes:

This bill creates a public records exemption for personal identifying information that is contained in records documenting an act of domestic violence that are submitted to a public agency by an agency employee as required by the provisions of SB 498. This bill is linked to SB 498, which requires the submission of documentation in order for an employee to be granted leave related to incidents of domestic violence.

The bill also makes confidential and exempt for a period of one year after the leave is taken both the written request for the leave and the agency time sheet related to the leave.

⁶ *Shevin v. Byron, Harless, Schaffer, Reid, and Assocs., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁷ *See Wait v. Florida Power & Light Co.*, 372 So. 2d 420 (Fla. 1979).

⁸ Section 119.15(6)(b), F.S.

The bill recognizes these exemptions as subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and provides that these exemptions will stand repealed on October 2, 2011, unless reviewed and saved from repeal through reenactment by the Legislature.

It provides a statement of public necessity for the exemptions.

The bill contains an effective date contingent on SB 498 or similar legislation taking effect and becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

This bill creates a public records exemption for personal identifying information that is contained in records documenting an act of domestic violence that are submitted to a public agency by an agency employee as required by the provisions of SB 498. Consequently, it is subject to the requirement of article I, section 24(c) of the Florida Constitution that two-thirds of the members present and voting in each house of the Legislature pass the bill.

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:

There may be minimal costs of complying with the confidentiality and exemption requirements; however, these costs are indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

VIII. Summary of Amendments:

None.

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