

**The Florida Senate**  
**PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: Commerce Committee

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BILL: CS/SB 186

INTRODUCER: Children, Families and Elder Affairs Committee and Senator Aronberg

SUBJECT: Domestic Violence Public Records Exemption

DATE: March 9, 2007

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Jameson</u>	<u>Jameson</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>Gordon</u>	<u>Cooper</u>	<u>CM</u>	<u>Favorable</u>
3.	_____	_____	<u>GO</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

This Committee Substitute (CS) is the public records companion to CS/SB 188, which requires the submission of documentation in order for an employee to be granted leave related to incidents of domestic violence. This CS makes confidential and exempt, from s. 119.07(1), F.S., and article I, s. 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.

This CS 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.

This CS specifies 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the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and provides that these exemptions will stand repealed on October 2, 2012, unless reviewed and saved from repeal through reenactment by the Legislature.

This CS provides a statement of public necessity for the exemptions.

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

This CS creates subsection (7) of s. 741.313 of the Florida Statutes.<sup>1</sup>

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<sup>1</sup> Section 741.313, F.S., would be created by CS/SB 188.

## 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

Recently, it was estimated that more than 1.5 million adults in the United States are victims of domestic violence each year, and more than 85 percent of the victims are women.<sup>2</sup> After years of steady increases in domestic violence numbers, the total number of domestic violence offenses<sup>3</sup> 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).<sup>4</sup>

### CS/SB 188

Committee Substitute for SB 188, to which this CS 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 CS is limited to employers with 50 or more employees and to employees who have been employed by the employer for at least 3 months. The employee is required to provide advance notice of the leave except in cases of imminent danger to the employee or the

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<sup>2</sup> 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).

<sup>3</sup> 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](http://www.fdle.state.fl.us/FSAC/Crime_Trends/domestic_violence/index.asp) (last visited March 3, 2007).

<sup>4</sup> 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](http://www.fdle.state.fl.us/FSAC/Crime_Trends/domestic_violence/index.asp) (last visited March 3, 2007).

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 CS/SB 188, unless this requirement is waived by the employer.

The employer is prohibited from taking any disciplinary action against the employee for exercising rights under CS/SB 188, but the employee is not granted any rights under the CS to continued employment or other benefits not available outside the provisions of the CS.

The CS requires employers to keep confidential all information relating to an employee's leave granted under this CS. 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 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. Article I, s. 24(a), of the State Constitution provides:

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 there under; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the Florida Constitution, the Public Records Law<sup>5</sup> specifies conditions under which public access must be provided to governmental records of the executive branch and other governmental agencies. Section 119.07(1) (a), F.S., states:

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.

Unless specifically exempted, all agency<sup>6</sup> records are available for public inspection. The term "public records" is defined in s. 119.011(11), F.S., to include:

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<sup>5</sup>Chapter 119, F.S.

<sup>6</sup>The term "agency" is defined in s. 119.011(2), F.S., to mean "...any state, county district, authority, or municipal officer, department, division, board, bureau, commission or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of

. . . 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 the official business by any agency.

This definition of “public records” has been interpreted by the Florida Supreme Court to include all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge.<sup>7</sup> Unless these materials have been made exempt by the Legislature, they are open for public inspection, regardless of whether they are in final form.<sup>8</sup>

The State Constitution permits exemptions to open government requirements and establishes the means by which these exemptions are to be established. Under Article I, s. 24(c), of the State Constitution, the Legislature may provide by general law for the exemption of records provided that: (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. A law creating an exemption is permitted to contain only exemptions to public records or meetings requirements and must relate to one subject.

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.<sup>9</sup> If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.<sup>10</sup>

### **Open Government Sunset Review Act**

The Open Government Sunset Review Act of 1995, s. 119.15, F.S., establishes a review and repeal process for exemptions to public records or meetings requirements. In the fifth year after enactment of a new exemption or the substantial amendment of an existing exemption, the exemption is repealed on October 2, unless the Legislature re-enacts the exemption. Section 119.15(4)(a), F.S., requires a law that enacts a new exemption, or substantially amends an existing exemption, to state that the exemption is repealed at the end of five years and that the exemption must be reviewed by the Legislature before the scheduled repeal date. Paragraph (b) provides that an exemption is substantially amended if:

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Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

<sup>7</sup> *Shevin v. Byron, Harless, Schaffer, Reid, and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

<sup>8</sup> *Wait v. Florida Power & Light Co.*, 372 So. 2d 420 (Fla. 1979).

<sup>9</sup> Attorney General Opinion 85-62.

<sup>10</sup> *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5<sup>th</sup> DCA), review denied, 589 So.2d 289 (Fla. 1991).

“the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. An exemption is not substantially amended if the amendment narrows the scope of the exemption.”

Section 119.15(6)(a),F.S., requires, as part of the review process, the consideration of the following specific questions:

1. What specific records or meetings are affected by the exemption?
2. Whom does the exemption uniquely affect, as opposed to the general public?
3. What is the identifiable public purpose or goal of the exemption?
4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
5. Is the record or meeting protected by another exemption?
6. Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

Section 119.15(6)(b),F.S., provides that an exemption may be created, revised, or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. 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 public policy of open government and cannot be accomplished without the exemption:

1. 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;
2. 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 jeopardize the safety of such individuals. However, in exemptions under this provision, only information that would identify the individuals may be exempted; or
3. 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.

While the standards in the Open Government Sunset Review Act of 1995 may appear to limit the Legislature in the exemption review process, those aspects of the act that are only statutory as opposed to constitutional, do not limit the Legislature because one session of the Legislature cannot bind another.<sup>11</sup> The Legislature is only limited in its review process by constitutional requirements.

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<sup>11</sup> *Straughn v. Camp*, 293 So.2d 689, 694 (Fla. 1974).

### III. Effect of Proposed Changes:

**Section 1** creates s. 741.313(7), F.S., to provide a public records exemption for personal identifying information that is contained in records documenting an act of domestic violence which is submitted to a public agency by an agency employee as required by the provisions of CS/SB 188. This CS is linked to CS/SB 188, which requires the submission of documentation in order for an employee to be granted leave related to incidents of domestic violence.

This section 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.

These exemptions are subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and are repealed on October 2, 2012, unless reviewed and saved from repeal through reenactment by the Legislature.

**Section 2** provides a statement of public necessity for the exemptions.

**Section 3** contains an effective date contingent on CS/SB 188 taking effect and becoming law.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

This CS creates a public records exemption for personal identifying information that is contained in records documenting an act of domestic violence which is submitted to a public agency by an agency employee as required by the provisions of CS/SB 188. The CS 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. Consequently, it is subject article I, s. 24(c) of the Florida Constitution which requires that two-thirds of the members present and voting in each house of the Legislature pass the CS.

#### C. Trust Funds Restrictions:

None.

#### D. Other Constitutional Issues:

### 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.





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## **VIII. Summary of Amendments:**

None.

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This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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