



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government - This bill decreases access to public records.

#### B. EFFECT OF PROPOSED CHANGES:

##### House Bill 55

HB 55 requires employers with 50 or more employees to allow employees who have been employed for at least 3 months 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;
- obtain medical care or mental health counseling;
- obtain services from a victim-services organization;
- make the employee's home secure or to seek new housing; or
- to 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.

The bill authorizes employers to require documentation of the act of domestic violence, requires employers to keep all information relating to the employee's leave confidential, and prohibits employers from taking any disciplinary action against the employee for exercising rights under the bill.

##### Public Records

Florida has a long history of providing public access to government records. The Legislature enacted the first public records law in 1892. The Florida Supreme Court has noted that ch. 119, F.S., the Public Records Act, was enacted "to promote public awareness and knowledge of government actions in order to ensure that governmental officials and agencies remain accountable to the people."<sup>1</sup>

In 1992, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.<sup>2</sup> Article I, s. 24 of the State Constitution, provides that:

(a) Every person<sup>3</sup> 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...

Unless specifically exempted, all agency<sup>4</sup> records are available for public inspection. The term "public record" is broadly defined to mean:

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<sup>1</sup> *Forsberg v. Housing Authority of the City of Miami Beach*, 455 So.2d 373, 378 (Fla. 1984).

<sup>2</sup> Article I, s. 24 of the State Constitution.

<sup>3</sup> Section 1.01(3), F.S., defines "person" to include individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

<sup>4</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 Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

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.<sup>5</sup>

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate or formalize knowledge.<sup>6</sup> All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.<sup>7</sup>

Only the Legislature is authorized to create exemptions to open government requirements.<sup>8</sup> Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.<sup>9</sup> A bill enacting an exemption<sup>10</sup> may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.<sup>11</sup> A bill creating an exemption must be passed by a two-thirds vote of both houses.<sup>12</sup>

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt.<sup>13</sup> 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>14</sup> If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.<sup>15</sup>

#### The Open Government Sunset Review Act

The Open Government Sunset Review Act<sup>16</sup> provides for the systematic review of an exemption five years after its enactment. Each year, by June 1, the Division of Statutory Revision of the Joint Legislative Management Committee is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

#### 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.

#### Effect of proposed changes

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<sup>5</sup> s. 119.011(11), F.S.

<sup>6</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

<sup>7</sup> *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

<sup>8</sup> Article I, s. 24(c) of the State Constitution.

<sup>9</sup> *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So.2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

<sup>10</sup> Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

<sup>11</sup> Art. I, s. 24(c) of the State Constitution.

<sup>12</sup> *Id.*

<sup>13</sup> *WFTV, Inc., v. The School Bd of Seminole*, 874 So.2d 48 (5th DCA), rev. denied 892 So.2d 1015 (Fla. 2004).

<sup>14</sup> *Id.* at 53; see also, Attorney General Opinion 85-62.

<sup>15</sup> *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

<sup>16</sup> s. 119.15, F.S.

This bill is tied to HB 55, which requires the submission of documentation in order for an employee to be granted leave related to incidents of domestic violence.

This bill creates a public records exemption for personal identifying information contained in records documenting an act of domestic violence, which are submitted to a public agency by an agency employee as required by the provisions of HB 55. The bill also creates a public records exemption for written requests for leave submitted by an agency employee who is a victim of domestic violence and any agency time sheet that reflects such requests. The exemption for the written request and the timesheet expires one year after the leave has been taken.

The bill provides a statement of public necessity. It also provides for future review and repeal of the exemptions pursuant to the Open Government Sunset Review Act in accordance with s. 119.15, F.S. (provides that these exemptions will stand repealed on October 2, 2012, unless reviewed and saved from repeal through reenactment by the Legislature).

C. SECTION DIRECTORY:

**Section 1.** Amends s. 741.313, F.S., creating a public records exemption for certain records relating to domestic violence.

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

**Section 3.** Provides a contingent effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

D. FISCAL COMMENTS:

Any impact is indeterminate but expected to be insignificant.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

Vote Requirement

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

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution, requires a statement of public necessity (public necessity statement) for a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

NA

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**