

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7123 PCB GAP 10-17 OGSR/Address Confidentiality Program for Victims of Domestic Violence

SPONSOR(S): Governmental Affairs Policy Committee and Mayfield

TIED BILLS: **IDEN./SIM. BILLS:** SB 882

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Governmental Affairs Policy Committee	13 Y, 0 N	Williamson	Williamson
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SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The Address Confidentiality Program for Victims of Domestic Violence (ACP or program) was established in 1998 and is administered by the Office of the Attorney General. Any victim of domestic violence who relocates to an address unknown to her abuser is eligible to participate in the program. Current law provides a public record exemption for the addresses, telephone numbers, and social security numbers of ACP participants held by the Office of the Attorney General, the supervisor of elections, or the Department of State.

The bill reenacts the public record exemptions, which will repeal on October 2, 2010, if this bill does not become law.

The bill does not appear to have a fiscal impact on state or local governments.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects 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.
- Protects trade or business secrets.

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 and a two-thirds vote for passage are required.² 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 created³ then a public necessity statement and a two-thirds vote for passage are not required.

¹ Section 119.15, F.S.

² Section 24(c), Art. I of the State Constitution.

³ An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

Address Confidentiality Program for Victims of Domestic Violence

The Address Confidentiality Program for Victims of Domestic Violence (ACP or program) was established in 1998 and is administered by the Office of the Attorney General.⁴ The purpose of the program is to:

- Enable state and local agencies to respond to requests for public records without disclosing the location of a victim of domestic violence;
- Encourage interagency cooperation with the Attorney General in providing address confidentiality for victims of domestic violence; and
- Allow state and local agencies to accept a program participant's use of an address designated by the Attorney General as a substitute mailing address.⁵

Any victim of domestic violence who relocates to an address unknown to his or her abuser is eligible to participate in the program. Each participant is assigned a substitute address that includes a street address, an ACP identification code, a post office box number, a Florida city, and a zip code. The address has no relation to the participant's actual location. The Division of Victim Services and Criminal Justice Programs serves as legal agent for receipt of mail and service of process, and forwards first-class mail to the participant's actual location.

Current law provides provisions for ACP participants who desire to vote. The law allows a program participant to vote by absentee ballot, but only after providing his or her physical address. The physical address of the participant is necessary in order to determine the specific ballot to be mailed to the participant. The law further prohibits the supervisor of elections from disclosing the participant's name, address, or telephone number in any list of registered voters available to the public.⁶ Thus, the participant can vote in the elections for which she is otherwise qualified, while information that might be used to locate him or her remains protected.

Public Record Exemptions under Review

When the program was created in 1998, the Legislature also enacted a public record exemption for the addresses, telephone numbers, and social security numbers of ACP participants.⁷ The Legislature authorized the release of the information under the following circumstances:

- To a law enforcement agency, for purposes of executing an arrest warrant;
- Pursuant to court order; or
- Upon cancellation of a participant's certification in the program.

In 2003, the public record exemption for the program was reviewed, pursuant to the Open Government Sunset Review Act, and the public record exemption for the addresses, telephone numbers, and social security numbers of ACP participants was reenacted with modification.⁸ Because the bill properly created the exemption for such information held by the supervisor of elections, the exemption was again made subject to the Open Government Sunset Review Act and was scheduled to repeal on October 2, 2008, unless reviewed and reenacted by the Legislature.⁹

In July 2003, the Florida Attorney General issued an opinion in response to the following question:
Is a witness's name and address on the back of an absentee ballot confidential and exempt from disclosure when the voter is a participant in the [ACP]?¹⁰

⁴ Chapter 98-404, L.O.F., codified as ss. 741.401 – 741.409, F.S.

⁵ Section 741.401, F.S.

⁶ Section 741.406, F.S.

⁷ Chapter 98-405, L.O.F., codified as s. 741.465, F.S.

⁸ The separate statutory provision prohibiting the Office of the Attorney General from disclosing such information was repealed and replaced with the specification that the reenacted public record exemption applied to the information held by the Office of the Attorney General. The separate statutory provision prohibiting the supervisor of elections from disclosing the information also was repealed and replaced with a new subsection that explicitly provided that the information was exempt if contained in voter registration records held by the supervisor of elections. (Chapter 2003-185, L.O.F.)

⁹ Section 4 of chapter 2003-185, L.O.F.

¹⁰ Florida Attorney General Advisory Legal Opinion, Number AGO 2003-35, July 31, 2003.

The Attorney General noted that, pursuant to s. 741.465(2), F.S., the names, addresses, and telephone numbers of ACP participants contained in voter registration records and held by the supervisor of elections are exempt from public disclosure. The Attorney General refused, however, to infer that the exemption extended to the signatures and addresses of witnesses on an absentee ballot. The Attorney General acknowledged the possibility that the release of a witness's name or address could lead to the location of a program participant, but insisted that the issue was one for legislative determination.¹¹

In 2005 the Legislature amended the exemptions currently under review, to clarify that the names, addresses, and telephone numbers of ACP participants contained not only in voter registration records, but in *all* voting records, held by either the supervisor of elections or by the Department of State, are exempt¹² from public records requirements.¹³ The legislation provided that the public record exemption, as amended, would be subject to review under the Open Government Sunset Review Act and would stand repealed on October 2, 2010, unless reviewed and saved from repeal through reenactment by the Legislature.

Effect of Bill

The bill removes the repeal date, thereby reenacting the public record exemptions for the Address Confidentiality Program for Victims of Domestic Violence.

B. SECTION DIRECTORY:

Section 1 repeals s. 3 of chapter 2005-279, L.O.F., to reenact the public record exemptions for the Address Confidentiality Program for Victims of Domestic Violence.

Section 2 provides an effective date of October 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

¹¹ *Id.*

¹² There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991) If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (See Attorney General Opinion 85-62, August 1, 1985).

¹³ Chapter 2005-279, L.O.F.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

None.