

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

BILL: CS/CS/SB 1390

INTRODUCER: Governmental Oversight and Accountability Committee, Judiciary Committee and Senator Joyner

SUBJECT: Public Records/Victims of Domestic Violence

DATE: February 9, 2012 **REVISED:** _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------|
| 1. | White | Cibula | JU | Fav/CS |
| 2. | Seay | Roberts | GO | Fav/CS |
| 3. | | | | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

Current law requires the Florida Association of Court Clerks and Comptrollers (Association), subject to available funding, to develop an automated process by which a petitioner may request notification of service of the injunction for protection against domestic violence, repeat violence, sexual violence, or dating violence. This process requires the petitioner to provide the clerk of court and possibly law enforcement agencies with personal contact information. In many instances, the petitioner is a victim of a crime, thus, the information he or she provides to the clerk and law enforcement agencies may be exempt from public records requirements. However, a person does not have to be a crime victim in order to petition for a protective injunction. In these instances, the petitioner's information may be public record.

This bill requires the court clerks to apprise the petitioner of his or her right to request in writing that specified information held by the Association and law enforcement agencies be exempt from public records requirements. The bill provides that such information shall be exempt upon the written request by the petitioner, for 5 years after the receipt of the written request. The bill grants access to any state or federal agency that is authorized by law to have access to such documents in furtherance of the agencies' statutory duties. As this bill creates new public records

exemptions, the exemptions are subject to repeal on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

This bill substantially amends sections 741.30 and 784.046 of the Florida Statutes.

II. Present Situation:

Public Records Law

The State of Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.¹ One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.² Article I, s. 24 of the State 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.

In addition to the State Constitution, the Public Records Act,³ which pre-dates public records provision of the State Constitution, specifies conditions under which public access must be provided to records of an agency.⁴ Section 119.07(1)(a), F.S., states:

- (a) 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 records are available for public inspection. The term “public record” is broadly defined to mean:

. . . 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

¹ Section 1390, 1391 F.S. (Rev. 1892).

² Article I, s. 24 of the State Constitution.

³ Chapter 119, F.S.

⁴ The word “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.” The Florida Constitution also establishes a right of access to 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 those records exempted by law or the state constitution.

received pursuant to law or ordinance or in connection with the transaction of official business by any agency.⁵

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.⁶ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.⁷

Only the Legislature is authorized to create exemptions to open government requirements.⁸ 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.⁹ A bill enacting an exemption¹⁰ may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.¹¹

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.¹² If a record is simply made exempt from disclosure requirements then an agency is not prohibited from disclosing the record in all circumstances.¹³

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)¹⁴ provides for the systematic review, through a 5-year cycle ending October 2 of the 5th year following enactment, of an exemption from the Public Records Act or the Public Meetings Law. Each year, by June 1, the Division of Statutory Revision of the Office of Legislative Services 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.¹⁵

The Act states that an exemption may be created or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the

⁵ Section 119.011(11), F.S.

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

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

⁸ Article I, s. 24(c), Fla. Constitution.

⁹ *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).

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

¹¹ Art. I, s. 24(c), Fla. Constitution.

¹² Attorney General Opinion 85-62.

¹³ *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

¹⁴ Section 119.15, F.S.

¹⁵ Section 119.15(5)(a), F.S.

strong public policy of open government and cannot be accomplished without the exemption. An exemption meets the three statutory criteria if it:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, whose administration would be significantly impaired without the exemption;
- Protects information of a sensitive, personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.¹⁶

The Act also requires consideration of the following:

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

Public Record Exemptions for Victims of Violent and Sexual Crimes

The Legislature has previously enacted public record exemptions for victims of crimes.¹⁷ For example, information or records that have been made part of a court file and that may reveal the identity of a person who is a victim of a sexual offense is exempt from the public records requirements.¹⁸ More broadly, the Legislature enacted a blanket exemption from the public records laws for “[a]ny document that reveals the identity, home or employment telephone number, home or employment address, or personal assets of the victim of a crime and identifies that person as the victim of a crime, which document is received by any agency that regularly receives information from or concerning the victims of crime.”¹⁹

Furthermore, an exemption from the public records laws exists for any information, not otherwise held confidential or exempt, which reveals the home or employment telephone number, home or employment address, or personal assets of a person who has been the victim of sexual battery, aggravated child abuse, aggravated stalking, harassment, aggravated battery, or domestic violence.²⁰ To apply for an exemption, the victim files a written request to the appropriate agency, which must include official verification that an applicable crime has occurred.

¹⁶ Section 119.15(4)(b), F.S.

¹⁷ See sections 119.071 and 119.0714, F.S.

¹⁸ Section 119.0714(1)(h), F.S.

¹⁹ Section 119.071(2)(j)1., F.S.

²⁰ *Id.*

Injunctions for Victims of Violence

Sections 741.30 and 784.046, F.S., provide guidelines for the service of injunctions for protection against domestic violence, repeat violence, sexual violence, or dating violence. During the 2011 Legislative Session, these statutes were amended to require the Florida Association of Court Clerks and Comptrollers (Association), subject to available funding, to develop an automated process by which a petitioner may request notification of service of an injunction for protection against domestic violence, repeat violence, sexual violence, or dating violence.²¹ This process necessarily requires the petitioner to provide the Association with personal contact information. In many instances, the petitioner is a victim of a crime, and thus the information he or she provides to the Association may be exempt from public records requirements pursuant to s. 119.07, F.S. However, a person does not have to be a crime victim in order to petition for a protective injunction. In these instances, the petitioner's information may be public record.

III. Effect of Proposed Changes:

Sections 1 and 2 amend s. 741.30, F.S. and s. 784.046, F.S., respectively, providing that the Florida Association of Court Clerks and Comptrollers apprise a petitioner of his or her right to make a public records exemption request; providing that a petitioner may request information which reveals a home or employment telephone number or address, cellular telephone number, electronic mail address, or other electronic means of identification of the petitioner to be exempt from public records requirements; providing that such information would cease to be exempt 5 years after receipt of the petitioner's written request; granting access to state or federal agencies authorized by law to have access to exempt documents in furtherance of the agency's statutory duties; providing for future review and repeal pursuant to the Open Government Sunset Review Act.

Section 3 provides a public necessity statement as required by the State Constitution.

Section 4 provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Section 24(c), art. I of the State Constitution requires a two-thirds vote of each house of the Legislature for passage of a newly-created or expanded public records or public

²¹ Chapter 2011-187, Laws of Fla.

meetings exemption. Because this bill creates a new public records exemption, it requires a two-thirds vote for passage.

Public Necessity Statement

Section 24(c), art. I of the State Constitution requires a public necessity statement for a newly created or expanded public records or public meetings exemption. Because this bill creates a new public records exemption, it includes a public necessity statement.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes: (Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Governmental Oversight and Accountability – February 16, 2012:

The CS requires the court clerk (instead of the Association of Court Clerks and Comptrollers) to apprise the petitioner of his or her right to make the public record exemption request at the same time that the petitioner is making the request to be notified that the injunction was served; and clarifies that upon implementation of the automated process, specified information held by the clerks and law enforcement agencies in conjunction with the automated process is exempt from public records requirements.

CS by Judiciary – January 26, 2012:

The committee substitute requires that a petitioner be notified of his or her right to make the public records exemption request at the same time that the petitioner is making the request to be notified that the injunction was served. The committee substitute expands the exemption to exempt information held by law enforcement agencies, not just the information held by the Florida Association of Court Clerks and Comptrollers. Lastly, the committee substitute makes the public necessity statement conform to the remainder of the bill, by removal of the reference to information being held confidential.

B. Amendments:

None.