

**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.)

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

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BILL: SB 1680

INTRODUCER: Senator Altman

SUBJECT: Public Records and Public Meetings/State Child Abuse Death Review Committee or Local Committee

DATE: April 16, 2013

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Preston</u>	<u>Hendon</u>	<u>CF</u>	<b>Favorable</b>
2.	<u>Naf</u>	<u>McVaney</u>	<u>GO</u>	<b>Favorable</b>
3.	_____	_____	<u>RC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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**I. Summary:**

SB 1680 amends a public record and meeting exemption for certain information held by or discussed by the State Child Abuse Death Review Committee (CADR) or local child abuse death review committees within the Department of Health.

Current law provides a public record exemption for any information that reveals the identity of the surviving siblings, family members, or others living in the home of a deceased child who is the subject of review by and which information is held by the CADR or a local committee. It also provides that portions of meetings of the CADR or a local committee at which confidential or exempt information is discussed are exempt from public meeting requirements.

This bill removes a current requirement that closed portions of meetings of the CADR or local committees be recorded, as well as a requirement that no portion of a closed meeting be off the record. The bill also removes a requirement that the CADR or local committee maintain the recording of the closed portion of the meeting.

This bill substantially amends section 383.412 of the Florida Statutes.

**II. Present Situation:**

**Public Records and Meetings**

State Constitution

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.

Article I, s. 24(b) of the State Constitution sets forth the state's public policy regarding access to government meetings. The section requires that all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, be open and noticed to the public.

The Legislature, however, may provide by general law for the exemption of records and meetings from the requirements of Article I, s. 24(a) and (b) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.<sup>1</sup>

#### Florida Statutes: Public Records Law

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record.

#### Florida Statutes: Public Meetings Law

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., known as the "Government in the Sunshine Law" or "Sunshine Law," further requires that all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, at which official acts are to be taken be open to the public at all times.<sup>2</sup> The board or commission must provide reasonable notice of all public meetings.<sup>3</sup> Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin or economic status or which operates in a manner that unreasonably restricts the public's access to the facility.<sup>4</sup> Minutes of a public meeting must be promptly recorded and be open to public inspection.<sup>5</sup>

#### Open Government Sunset Review Act

The Open Government Sunset Review Act<sup>6</sup> 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.

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<sup>1</sup> Section 24(c), Art. I of the State Constitution

<sup>2</sup> Section 286.011(1), F.S.

<sup>3</sup> *Id.*

<sup>4</sup> Section 286.011(6), F.S.

<sup>5</sup> Section 286.011(2), F.S.

<sup>6</sup> *See* s. 119.15, F.S.

- 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.

### **Child Abuse Death Review Committee**

Current law establishes the State Child Abuse Death Review Committee (CADR) and local child abuse death review committees within the Department of Health (DOH).<sup>7</sup> The purpose of the CADR is prevention of child deaths as a result of abuse or neglect.

The CADR is tasked with reviewing the facts and circumstances of the deaths of children whose deaths have been investigated by the Department of Children and Families and closed with a "verified" finding of child abuse or neglect. The purpose of the child death review is to:<sup>8</sup>

- Develop a community based approach to address child abuse deaths and contributing factors;
- Achieve a greater understanding of the causes and contributing factors of deaths resulting from child abuse or neglect;
- Identify gaps, deficiencies or problems in service delivery to children and families by public and private agencies that may be related to child abuse deaths; and
- Develop and implement data-driven recommendations for reducing child abuse and neglect deaths.

The state committee must prepare an annual statistical report to be presented to the Governor and the Legislature containing recommendations to reduce preventable child deaths.<sup>9</sup> The CADR is composed of 18 members, including experts from the medical, law enforcement, social services, and advocacy professions who convene every other month to examine the circumstances leading to child deaths.<sup>10</sup>

Local child abuse death review committees also conduct reviews of the verified deaths of children in their respective communities to develop prevention campaigns and prepare recommendations for improving local practices in child protection and support services to families. There are 23 local committees that provide coverage for Florida's 67 counties.<sup>11</sup>

### **Public Record and Public Meeting Exemptions for CADR**

Current law provides a public record exemption for any information that reveals the identity of the surviving siblings, family members, or others living in the home of a deceased child who is the subject of review by and which information is held by the CADR or a local committee.<sup>12</sup> It

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<sup>7</sup> Section 383.402(1), F.S.

<sup>8</sup> *Id.*

<sup>9</sup> Section 383.402(3)(c), F.S.

<sup>10</sup> Section 383.402(2)(a) and (b), F.S.

<sup>11</sup> Child Abuse Death Review Committee, Annual Report (Dec. 2012), available at [www.flcadr.org/reports.html](http://www.flcadr.org/reports.html) (last visited April 2, 2013).

<sup>12</sup> Section 383.412(2)(a), F.S.

also provides that portions of meetings of the CADR or a local committee at which confidential or exempt information is discussed are exempt from public meeting requirements.<sup>13</sup>

In 2010, the law was amended to require that the closed portion of a meeting of the CADR or local committee be recorded. In addition, a public record exemption was created to protect the release of such recording. No portion of the meeting may be off the record, and the recording must be maintained by the CADR or local committee.<sup>14</sup>

The CADR has indicated that the recording requirement has had a negative impact on both the state and local committees, because the members need to be able to speak candidly about the individual cases in order to make prevention recommendations.<sup>15</sup> The recording requirement has impacted local committees in some areas due to the reluctance of some law enforcement, state attorney offices and other agencies to openly discuss confidential information that is being recorded.<sup>16</sup>

### **III. Effect of Proposed Changes:**

The bill removes the requirement that closed portions of meetings of the CADR or local committees be recorded, as well as the requirement that no portion of a closed meeting be off the record. The bill also removes the requirement that the CADR or local committee must maintain the recording of the closed portion of the meeting.

### **IV. Constitutional Issues:**

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

None.

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

The bill revises a record requirement related to closed portions of meetings held by the CADR or local child abuse death review committees. It does not expand a public record or meeting exemption.

#### **C. Trust Funds Restrictions:**

None.

### **V. Fiscal Impact Statement:**

#### **A. Tax/Fee Issues:**

None.

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<sup>13</sup> Section 383.412(3)(a), F.S.

<sup>14</sup> Chapter 2010-40, L.O.F.

<sup>15</sup> E-mail from Special Agent Terry Thomas, Chairperson, State Child Abuse Death Review Committee (Apr.3, 2013) (on file with the Committee on Children, Families and Elder Affairs).

<sup>16</sup> *Id.*

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Lines 32-35 of the bill remove the requirement for the CADR or the local committee to record closed portions of meetings and to maintain such recording. If a recording is not being made and maintained, then the public record exemption for such recording on lines 36-38 of the bill would appear to be unnecessary. If the public record exemption is repealed, any recordings in existence prior to the repeal would retain their protection.<sup>17</sup> However, if the CADR or local committee later chose to record its meetings, such recordings would not be protected.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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

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<sup>17</sup> See *Baker v. Eckerd Corporation*, 697 So.2d 970 (Fla. 2d DCA 1997) (an amendment eliminating protection against disclosure of any unfounded reports of child abuse applies prospectively from the date of the amendment) and Attorney General Opinion 95-19 (expanded disclosure provisions for juvenile records apply only to record created after the effective date of the amendment).