

**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 Committee on Governmental Oversight and Accountability

**BILL:** SB 304  
**INTRODUCER:** Criminal Justice Committee  
**SUBJECT:** OGSR/Certain Personal Identifying Information of Domestic & Sexual Violence Victims  
**DATE:** March 13, 2013      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon		<b>cj SPB 7000 as introduced</b>
2.	Naf	McVaney	GO	<b>Pre-meeting</b>
3.			RC	
4.				
5.				
6.				

**I. Summary:**

SB 304 is the result of an Open Government Sunset Review performed by the Committee on Criminal Justice.

Current law<sup>1</sup> provides a public records exemption for certain information documenting an act of domestic violence or sexual violence submitted to an agency by an agency employee. Specifically, personal identifying information that is contained in records documenting an act of domestic or sexual violence and that is submitted to an agency by an agency employee is confidential and exempt from public records requirements. In addition, a written request for leave that is submitted by an agency employee, and any agency timesheet that reflects such a request, are confidential and exempt until one year after the leave has been taken.

The public records exemption is subject to review under the Open Government Sunset Review Act.<sup>2</sup> It will sunset on October 2, 2013, unless saved from repeal through reenactment by the Legislature. This bill reenacts the exemption.

This bill does not expand the scope of the public records exemption and therefore does not require a two-thirds vote of the members present and voting in each house of the Legislature for passage.

This bill amends section 741.313(7) of the Florida Statutes.

<sup>1</sup> Section 741.313(7), F.S.

<sup>2</sup> Section 119.15, F.S.

## II. Present Situation:

### Public Records Laws

The Florida Constitution provides every person 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 of persons acting on their behalf.<sup>3</sup> The records of the legislative, executive, and judicial branches are specifically included.<sup>4</sup>

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act<sup>5</sup> guarantees every person's right to inspect and copy any state or local government public record<sup>6</sup> at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>7</sup>

Only the Legislature may create an exemption to public records requirements.<sup>8</sup> Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.<sup>9</sup> Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions<sup>10</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>11</sup>

### Open Government Sunset Review Act

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.<sup>12</sup> It

<sup>3</sup> FLA. CONST., art. I, s. 24(a).

<sup>4</sup> *Id.*

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

<sup>6</sup> Section 119.011(12), F.S., defines "public records" 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 received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "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 Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

<sup>7</sup> Section 119.07(1)(a), F.S.

<sup>8</sup> FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *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 (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 2004); and *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).

<sup>9</sup> FLA. CONST., art. I, s. 24(c).

<sup>10</sup> The bill may, however, contain multiple exemptions that relate to one subject.

<sup>11</sup> FLA. CONST., art. I, s. 24(c).

<sup>12</sup> Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the

requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>13</sup>

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.<sup>14</sup> An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- It 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; or
- It protects trade or business secrets.<sup>15</sup>

The Act also requires specified questions to be considered during the review process.<sup>16</sup>

When reenacting an exemption that will repeal, a public necessity statement and a two-thirds vote for passage are required if the exemption is expanded.<sup>17</sup> A public necessity statement and a two-thirds vote for passage are not required 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<sup>18</sup> to the exemption is created.<sup>19</sup>

### **Employee Leave for Domestic Violence or Sexual Violence**

Section 741.313, F.S., applies to public and private employers with 50 or more employees and to employees who have been employed by an employer for at least three months.<sup>20</sup> An employee may take up to three days of leave in any 12 month period if the employee or family member is a

Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

<sup>13</sup> Section 119.15(3), F.S.

<sup>14</sup> Section 119.15(6)(b), F.S.

<sup>15</sup> *Id.*

<sup>16</sup> Section 119.15(6)(a), F.S. The specified questions are:

- 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?

<sup>17</sup> An exemption is expanded when it is amended to include more records, information, or meetings or to include meetings as well as records, or records as well as meetings.

<sup>18</sup> An example of an exception to a public records exemption would be allowing an additional agency access to confidential and exempt records.

<sup>19</sup> *See State of Florida v. Ronald Knight*, 661 So.2d 344 (Fla. 4th DCA 1995) (holding that nothing in s. 24, art. I of the Florida Constitution requires exceptions to a public records exemption to contain a public necessity statement).

<sup>20</sup> Section 741.313(3), F.S.

victim of domestic or sexual violence. The leave may be with or without pay, at the discretion of the employer.<sup>21</sup> An employee may use the leave from work to do any of the following:

- Seek a protective injunction against domestic, sexual, dating, or repeat violence;
- Obtain medical care or mental health counseling related to the act of domestic or sexual violence;
- Obtain services from a victim services organization as a result of the act of domestic or sexual violence;
- Seek safe housing; or
- Seek legal assistance in addressing issues relating to the domestic or sexual violence, including attending or preparing for court proceedings.<sup>22</sup>

An employee is required to provide sufficient documentation of the act of domestic or sexual violence as well as advance notice of the leave, except in cases of imminent danger to the employee or the employee's family. Additionally, he or she must use all available annual or vacation leave, personal leave, and sick leave, unless this requirement is waived by the employer.<sup>23</sup>

### **Current Exemption Under Review**

In 2007, the Legislature created a public records exemption for certain information documenting an act of domestic violence that is submitted to an agency<sup>24</sup> by an agency employee.<sup>25</sup> In 2008, the Legislature extended the same protection to victims of sexual violence.<sup>26</sup> Specifically, s. 741.313(7), F.S., protects from public disclosure personal identifying information contained in records documenting an act of domestic or sexual violence that is submitted to an agency by an agency employee. In addition, a written request for leave submitted by an agency employee for absences related to domestic or sexual violence, and any agency time sheet that reflects such a request, is confidential and exempt from public record requirements until one year after the leave has been taken.<sup>27</sup>

This public records exemption stands repealed on October 2, 2013, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act.<sup>28</sup>

Based upon the Open Government Sunset Review of the exemption, professional staff of the Senate Criminal Justice Committee recommends that the Legislature retain the public records exemption established in s. 741.313(7), F.S. This recommendation is made in light of information gathered for the Open Government Sunset Review, indicating that there is a public

<sup>21</sup> Section 741.313(2)(a), F.S.

<sup>22</sup> Section 741.313(2)(b), F.S.

<sup>23</sup> Section 741.313(4), F.S.

<sup>24</sup> For purposes of the public records exemption, "agency" means an agency as defined in s. 119.011(2), F.S. (*see* footnote 6 for definition).

<sup>25</sup> Chapter 2007-108, s. 1, Laws of Fla.

<sup>26</sup> Chapter 2008-254, s. 1, Laws of Fla.

<sup>27</sup> *Id.* The public necessity statement in the original legislation creating the exemption states that the leave request is temporary and available one year after the leave has been taken so as to provide continued public oversight of public moneys.

<sup>28</sup> Section 741.313(7)(c), F.S.

necessity to continue to protect personal identifying information contained in records documenting an act of domestic or sexual violence that is submitted to an agency by an agency employee because disclosure would jeopardize their safety and cause emotional distress.<sup>29</sup>

### III. Effect of Proposed Changes:

This bill removes the repeal date in s. 741.313(7), F.S., thereby reenacting the public records exemption for certain personal identifying information contained in records documenting an act of domestic or sexual violence that is submitted to an agency by an agency employee, including a written request for leave submitted by an agency employee for absences related to domestic or sexual violence, and any agency time sheet that reflects such a request until one year after the leave has been taken.

The bill's effective date is October 1, 2013.

### IV. Constitutional Issues:

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

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenues in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

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

This bill reenacts an existing public records exemption. The bill does not expand the scope of the exemption; therefore, a two-thirds vote of the members present and voting in each house of the Legislature is not required.

#### C. Trust Funds Restrictions:

None.

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<sup>29</sup> According to a majority of survey responses (48 out of 65) from 23 state agencies and 41 city and county governmental entities, and input from the Florida Coalition Against Domestic Violence and the Florida Council Against Sexual Violence, this exemption should be reenacted because it protects information that is personal and highly sensitive, the release of which could subject the employee to embarrassment, emotional distress, escalation of violence, and could deter the employee from seeking assistance from the agency or availing themselves of the benefits of the statute. Twenty-seven respondents recommended reenactment with no other changes. Eight respondents thought law enforcement should have access to the information. Nine respondents suggested reenactment as well as deleting the one-year time limitation. (*But see* note 22 *supra* indicating that the original public necessity statement regarding the time limitation was to provide continued public oversight of public moneys.) Three respondents recommended repealing the exemption, while 14 had no opinion either way. Survey respondents also indicated receiving ten leave requests since January 2008. The First Amendment Foundation stated that it would not oppose reenacting the exemption because the exemption is sufficiently narrow. Survey responses from this Open Government Sunset Review are on file with the Senate Criminal Justice Committee in Tallahassee, Florida.

**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.)

None.

## B. Amendments:

None.