

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7085      PCB GVOPS 13-03      PCB GVOPS 13-03      Review Under Open  
Government Sunset Review Act

**SPONSOR(S):** Government Operations Subcommittee, Raulerson

**TIED BILLS:**                    **IDEN./SIM. BILLS:** SB 452

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	11 Y, 0 N	Williamson	Williamson
1) State Affairs Committee	14 Y, 0 N	Williamson	Camechis

### 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.

Current law establishes the Joshua Abbott Organ and Tissue Registry (donor registry), which is an interactive web-based organ and tissue donor registry that allows for online organ donor registration. Donate Life Florida runs the donor registry and maintains donor records on behalf of the state.

Current law provides a public record exemption for certain information held in the donor registry. Specifically, information that identifies a donor is confidential and exempt from public record requirements. Such information may be disclosed to procurement organizations that have been certified by the agency for purposes of ascertaining or effectuating the existence of a gift, and to persons engaged in bona fide research who agree to certain requirements.

The bill reenacts this public record exemption, which will repeal on October 2, 2013, if this bill does not become law.

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

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Open Government Sunset Review Act

The Open Government Sunset Review Act<sup>1</sup> 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.<sup>2</sup> 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 created<sup>3</sup> then a public necessity statement and a two-thirds vote for passage are not required.

##### Organ Donations

Organ recovery and allocation is regulated by the Centers for Medicare and Medicaid Services, a division of the United States Department of Health and Human Services. Florida has four federally designated, non-profit organ procurement organizations that are exclusively responsible for facilitating the process.<sup>4</sup> Each organization serves a different region of the state.<sup>5</sup> In addition to federal certification by the United States Centers for Medicare and Medicaid Services, the Agency for Health Care Administration also certifies the organizations.<sup>6</sup>

##### Joshua Abbott Organ and Tissue Registry<sup>7</sup>

In 2008, the Legislature found that there was a shortage of organ and tissue donors in Florida, and found that there was a need to encourage the various minority populations of Florida to donate organs and tissue. As such, the Legislature directed the Agency for Health Care Administration (agency) and the Department of Highway Safety and Motor Vehicles (department) to competitively procure and jointly contract for the operation of a donor registry and education program.<sup>8</sup> The agency and department selected Donate Life Florida to run the donor registry and maintain donor records. Donate Life Florida

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<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Section 24(c), Art. I of the State Constitution

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

<sup>4</sup> FAQs About Donation, Donate Life Florida, available at: [http://www.donateliflorida.org/content/about/facts/faq/#faq\\_47](http://www.donateliflorida.org/content/about/facts/faq/#faq_47) (last visited March 3, 2013).

<sup>5</sup> LifeLink of Florida serves west Florida, LifeQuest Organ Recovery Services serves north Florida, TransLife Organ and Tissue Donation Services serves east Florida, and LifeAlliance Organ Recovery Services serves south Florida. Available at: <http://organdonor.gov/materialsresources/materialsopolist.html> (last visited March 3, 2013).

<sup>6</sup> See s. 765.541, F.S.

<sup>7</sup> Section 765.5155(5), F.S., designates the donor registry as the Joshua Abbott Organ and Tissue Registry.

<sup>8</sup> Section 765.5155(2), F.S.

is responsible, in part, for maintaining an interactive web-based organ and tissue donor registry that allows for online organ donor registration.<sup>9</sup>

#### Public Record Exemption under Review

In 2008, the Legislature created a public record exemption for certain information held in the donor registry.<sup>10</sup> Specifically, information that identifies a donor is confidential and exempt<sup>11</sup> from public record requirements.<sup>12</sup> Such information may be disclosed to procurement organizations that have been certified by the agency for purposes of ascertaining or effectuating the existence of a gift, and to persons engaged in bona fide research who agree to certain requirements<sup>13, 14</sup>.

Pursuant to the Open Government Sunset Review Act, the public record exemption will repeal on October 2, 2013, unless reenacted by the Legislature.

During the 2012 interim, subcommittee staff sent questionnaires to the agency, department, and four organ and tissue procurement agencies as part of the Open Government Sunset Review process. Those responding to the questionnaire recommended reenactment of the public record exemption under review.

#### **Effect of the Bill**

The bill removes the repeal date, thereby reenacting the public record exemption for information that identifies a donor and that is held in the donor registry.

#### **B. SECTION DIRECTORY:**

Section 1 amends s. 765.51551, F.S., to save from repeal the public record exemption for certain information held in the donor registry.

Section 2 provides an effective date of October 1, 2013.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

None.

##### **2. Expenditures:**

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<sup>9</sup> Section 765.5155(3), F.S.

<sup>10</sup> Chapter 2008-222, L.O.F.; codified as s. 765.51551, F.S.

<sup>11</sup> 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).

<sup>12</sup> Section 765.51551(1), F.S.

<sup>13</sup> Persons engaged in bona fide research must agree to:

- Submit a research plan to the agency that specifies the exact nature of the information requested and the intended use of the information;
- Maintain the confidentiality of the records or information if personal identifying information is made available to the researcher;
- Destroy any confidential records or information obtained after the research is concluded; and
- Not directly or indirectly contact any donor or done.

<sup>14</sup> Section 765.51551(2), F.S.

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal government.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.