

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 725 Public Records and Public Meetings Exemptions

SPONSOR(S): Harrell

TIED BILLS: **IDEN./SIM. BILLS:** SB 1680

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Healthy Families Subcommittee	8 Y, 4 N	Guzzo	Schoolfield
2) Government Operations Subcommittee	12 Y, 0 N	Williamson	Williamson
3) Health & Human Services Committee			

SUMMARY ANALYSIS

Current law establishes the State Child Abuse Death Review Committee (CADR) and local child abuse death review committees within the Department of Health. 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.

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. The closed portion of a meeting must be recorded, and no portion of a closed meeting may be off the record. The recording, which is exempt from public record requirements, must be maintained by the CADR or local committee.

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 maintain the recording of the closed portion of the meeting.

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

The bill provides an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records and Open 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.¹

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.² The board or commission must provide reasonable notice of all public meetings.³ 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.⁴ Minutes of a public meeting must be promptly recorded and be open to public inspection.⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act⁶ 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.

¹ Section 24(c), Art. I of the State Constitution.

² Section 286.011(1), F.S.

³ *Id.*

⁴ Section 286.011(6), F.S.

⁵ Section 286.011(2), F.S.

⁶ *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).⁷ The purpose of the CADR is prevention.

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:⁸

- 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.⁹ 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.¹⁰

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.¹¹

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.¹² 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.¹³

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.¹⁴

The CADR has indicated that the recording requirement is hindering its ability to effectively accomplish its purpose, which necessitates the members being able to speak candidly about the individual cases in order to make prevention recommendations.¹⁵ The recording requirement has impacted local

⁷ Section 383.402(1), F.S.

⁸ *Id.*

⁹ Section 383.402(3)(c), F.S.

¹⁰ Section 383.402(2)(a) and (b), F.S.

¹¹ Child Abuse Death Review Committee, Annual Report December 2012, available at: www.flcadr.org/reports.html (last viewed March 6, 2013).

¹² Section 383.412(2)(a), F.S.

¹³ Section 383.412(3)(a), F.S.

¹⁴ Chapter 2010-40, L.O.F.

¹⁵ E-mail from Special Agent Terry Thomas, Chairperson, State Child Abuse Death Review Committee (March 6, 2013) (On file with subcommittee staff).

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.¹⁶

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.

B. SECTION DIRECTORY:

Section 1: Amends s. 383.412, F.S., relating to public record and public meeting exemptions.

Section 2: Provides an effective date of July 1, 2013.

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.

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

2. Other:

¹⁶ *Id.*

None.

B. RULE-MAKING AUTHORITY:

No additional rule-making authority is necessary to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill removes the requirement for the CADR or the local committee to record closed portions of meetings and to maintain such recording. As such, it is unclear why the public record exemption for the recording of a closed portion of a meeting is necessary. If a recording is not being made and maintained then the public record exemption for such recording is superfluous.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.