

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 Children, Families, and Elder Affairs

BILL: SB 370

INTRODUCER: Senator Altman

SUBJECT: Public Records and Public Meetings Exemptions

DATE: February 3, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sanford	Hendon	CF	Pre-meeting
2.			GO	
3.			RC	

I. Summary:

SB 370 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.

Death review committees are established at the state and local level to review the facts and circumstances of all deaths of children from birth through age 18 which occur in Florida as the result of verified child abuse or neglect.

The purpose of the committees is to reduce the number of deaths resulting from child abuse and neglect. The membership of both the state and local committees is outlined in statute and consists of representatives of state agencies, law enforcement bodies, medical practitioners, educational experts, and others with knowledge of child abuse. The local committees meet on a regular basis to examine records of child fatalities and to discuss those records.

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. These portions of the meetings are referred to as "closed."

In order to facilitate the open discussion of the causes of child fatalities, this bill removes a 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.

The bill has no fiscal impact and would be effective July 1, 2014.

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 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 the exemption 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

¹ FLA. CONST. art. I, s. 24(c)

² Section 286.011(1), F.S.

³ *Id.*

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.
- 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 the reduction 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: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 local teams are comprised of representatives from the Department of Health, the Department of Legal Affairs, the Department of Children and Families (DCF), the Department of Law Enforcement, Department of Education, Florida Prosecuting Attorneys Association, and the Florida Medical Examiners Commission. In addition, the State Surgeon General must appoint the following members to the state committee: a board-certified pediatrician, a public health nurse, a mental health professional who treats children or adolescents, an employee of DCF who

⁴ Section 286.011(6), F.S.

⁵ Section 286.011(2), F.S.

⁶ See s. 119.15, F.S.

⁷ Section 383.402(1), F.S.

⁸ *Id.*

supervises family services counselors and who has at least five years of experience in protective investigations, the medical director of a child protection team, a member of a child advocacy organization, a social worker who has experience in working with victims and perpetrators of child abuse, a person trained as a paraprofessional in patient resources who is employed in a child prevention program, a law enforcement officer who has at least five years of experience in children's issues, a representative of the Florida Coalition Against Domestic Violence, and a representative from a private provider of programs preventing child abuse and neglect.⁹

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.¹⁰ 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.¹¹

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 24 local committees that provide coverage for Florida's 67 counties.¹²

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.¹³ 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.¹⁴

In 2010, as part of the regular Sunset Review of the law, it 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.¹⁵

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.¹⁶ The recording requirement has impacted local committees in some areas due to the reluctance of some law enforcement, state

⁹ Section 383.402(2), F.S.

¹⁰ Section 383.402(3)(c), F.S.

¹¹ Section 383.402(2)(a) and (b), F.S.

¹² Florida Child Abuse Death Review, *Local Team Directory*, available at <http://www.floridahealth.gov/alternatesites/flcadr/attach/localCADRdir.pdf> (last visited Jan. 22, 2014).

¹³ Section 383.412(2)(a), F.S.

¹⁴ Section 383.412(3)(a), F.S.

¹⁵ Chapter 2010-40, Laws of Fla.

¹⁶ 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).

attorney offices and other agencies to openly discuss confidential information that is being recorded.¹⁷

HB 725 (SB 1680), which contained substantially the same provisions as SB 370, was passed by the Legislature in the 2013 session but was vetoed by the Governor. In the veto message, dated June 12, 2013, the Governor stated “The matters addressed in these closed meetings are of a very serious and sensitive nature, and it is important to strike a careful balance between openness and reasonable confidentiality. With Florida’s strong commitment to Government-in-the-Sunshine in mind, this balance is best struck by maintaining the current recording requirements.”

III. Effect of Proposed Changes:

Section 1 amends s. 383.412, F.S., to remove 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.

Section 2 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill does not expand the existing public records exemption found in s. 383.412, F.S.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

¹⁷ *Id.*

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 383.412 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.