

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #: HB 469

FINAL HOUSE FLOOR ACTION:

SPONSOR(S): Spano and others

114 Y's

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**COMPANION
BILLS:** CS/CS/HB 465, CS/SB 1110

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

HB 469 passed the House on April 16, 2015, and subsequently passed the Senate on April 23, 2015.

This bill creates public record exemptions for information about the location of safe houses, safe foster homes, other residential facilities serving child victims of sexual exploitation, and residential facilities serving adult victims of human trafficking involving commercial sexual activity. Specifically, the bill provides that the information regarding the location of these facilities that is held by an agency before, on, or after the effective date of the bill is confidential and exempt from public record requirements. However, the bill allows this information to be provided to any agency in order to maintain health and safety standards and to address emergency situations. Additionally, the public records exemption does not apply to facilities licensed by the Agency for Health Care Administration.

The bill provides that the public record exemptions are subject to the Open Government Sunset Review Act and stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

The bill may have a minimal fiscal impact on state and local governments.

The bill was approved by the Governor on June 11, 2015, ch. 2015-147, L.O.F., and will become effective on October 1, 2015.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Current Situation

Public Records

Article I, s. 24(a), of the Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.¹ The Legislature, however, may exempt records from the requirements of Article I, s. 24 of the Florida Constitution, provided the exemption is passed by two-thirds vote of each chamber and:

- States with specificity the public necessity justifying the exemption; and
- Is no broader than necessary to meet that public purpose.²

Florida Statutes also address the public policy regarding access to government records through a variety of statutes in chapter 119, F.S. Section 119.07, F.S., guarantees every person a right to inspect, examine, and copy any state, county, or municipal record, unless the record is exempt.

The Open Government Sunset Review Act³ provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose *and* the "[l]egislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."⁴ However, the exemption may be no broader than is necessary to meet one of the following purposes:⁵

- Allows the state or 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; or
- Protects trade or business secrets.

The Open Government Sunset Review Act requires the automatic repeal of a public record exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.⁶ The Act also requires specified questions to be considered during the review process.⁷

Human Trafficking

Florida law defines human trafficking as "transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that person."⁸

Human trafficking is a form of modern-day slavery, which involves the exploitation of persons for commercial sex or forced labor.⁹ Trafficking subjects victims to force, fraud, or coercion.¹⁰ Individuals

¹ Article 1, s. 24(a), FLA. CONST.

² Article 1, s. 24(c), FLA. CONST.

³ s. 119.15, F.S.

⁴ s. 119.15(6)(b), F.S.

⁵ *Id.*

⁶ s. 119.15(3), F.S.

⁷ Section 119.15(6)(a), F.S., states that 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 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?

⁸ s. 787.06(2)(d), F.S.

⁹ s. 787.06(1)(a), F.S.

experiencing this type of sexual exploitation often become bonded with their exploiters and do not see themselves as victims. These individuals experience trauma and are exposed to danger, but are often unable to leave their exploiter to seek help.¹¹

Residential Treatment for Victims of Human Trafficking

Safe Houses

Section 409.1678, F.S., defines the term “sexually exploited child” as a child who has suffered sexual exploitation¹² and is ineligible for relief and benefits under the federal Trafficking Victims Protection Act.¹³ In 2012, Florida passed the Safe Harbor Act,¹⁴ which established “safe houses.” Sexually exploited children older than six who have been adjudicated dependent or delinquent may be placed in a safe house by the Department of Children and Families (DCF) if an assessment indicates such placement is appropriate.¹⁵

Safe houses must provide a living environment that has set aside gender-specific, separate, and distinct living quarters for sexually exploited children and must have staff members who are awake and on duty 24 hours a day.¹⁶ A safe house serving children who have been sexually exploited must have available staff or contract personnel who have the clinical expertise, credentials, and training to provide a variety of services (e.g., security, crisis intervention services, residential care, and transportation).¹⁷

Safe Foster Homes

Legislation passed in 2014 created the term “safe foster home,” and defines the term as “a foster home certified by [DCF] to care for sexually exploited children.”¹⁸ The State requires safe foster homes to provide the same services and meet the same requirements as safe houses, except for the requirement to have staff awake and on duty 24 hours a day.¹⁹

Additional Residential Facilities

Traditional residential facilities serve both children and adults who are victims of sexual exploitation. If these facilities serve adults, they cannot be designated safe houses or safe foster homes.²⁰

If a trafficker learned the location of a safe house, safe foster home, or other residential facility and went to such location, the staff as well as the individuals residing in those locations could be in danger of physical or emotional harm.

Effect of the Bill

The bill creates a public record exemption for information about the location of safe houses, safe foster homes, residential facilities serving victims of sexual exploitation, and residential facilities serving adult victims of human trafficking. Specifically, the bill provides that information regarding the location of

¹⁰ U.S. Department of Health and Human Services, Administration for Children and Families, *About Human Trafficking*, available at <http://www.acf.hhs.gov/trafficking/about/index.html#> (last visited on February 3, 2015).

¹¹ See Adam S. Butkus, *Ending Modern-Day Slavery in Florida: Strengthening Florida's Legislation in Combating Human Trafficking*, 37 STETSON L. REV. 297, 307 (2007).

¹² As defined in s. 39.01(69)(g), F.S.

¹³ 22 U.S.C. ss. 7101 et seq.

¹⁴ Ch. 2012-105, Laws of Fla.

¹⁵ s. 39.524, F.S.

¹⁶ s. 409.1678(2)(c), F.S. Safe houses also must hold a license as a family foster home or residential child-caring agency, be appropriately licensed in this state as a residential child-caring agency as defined in s. 409.175, F.S., and have applied for accreditation within 1 year after being licensed (according to DCF, currently there are no entities that accredit safe houses and safe houses are not sure what type of accreditation is required. No safe houses have applied for accreditation at this time).

¹⁷ s. 409.1678, F.S.

¹⁸ s. 409.1678(1)(a), F.S.

¹⁹ s. 409.1678(2)(c), F.S.

²⁰ s. 409.1678(1)(a) and (b), F.S. The definitions of “safe foster home” and “safe house” are specifically restricted to “sexually exploited children.”

these facilities held by an agency, as defined in s.119.011, F.S.,²¹ is confidential and exempt²² from s. 119.07(1), F.S., and Article I, s. 24(a) of the State Constitution. It also provides for retroactive application of the public records exemptions. However, the confidential and exempt information may be provided to any agency as necessary to maintain health and safety standards and to address emergency situations in the residential facility. Furthermore, the public records exemption does not apply to facilities licensed by the Agency for Health Care Administration.

The bill provides that the public record exemption is subject to the Open Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

²¹ Agency is defined in s. 119.011, F.S., 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 [chapter 119, F.S.], 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.”

²² There is a difference between records the Legislature has determined to be exempt from public record requirements and those that have been determined to be confidential and exempt. If the Legislature has determined the information to be confidential and exempt then the information is not subject to inspection. Also, if the information is deemed to be confidential and exempt it may only be released to those person and entities designated in statute. However, the agency is not prohibited from disclosing the records in all circumstances where the records are only exempt from public record requirements. *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); *see Op. Att’y Gen. Fla. 85-62* (1985).

D. FISCAL COMMENTS:

The bill could create a minimal fiscal impact on state and local agencies because staff responsible for complying with public record requests could require training related to creation of the public record exemptions. In addition, agencies could incur costs associated with redacting the confidential and exempt information prior to releasing a record. These costs, however, would be absorbed, as they are part of the day-to-day responsibilities of agencies.