

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 7032

INTRODUCER: Health Policy Committee

SUBJECT: Public Records/Reports of a Deceased Child

DATE: March 16, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Looke</u>	<u>Stovall</u>		HP Submitted as Committee Bill
1.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	Pre-meeting
2.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 7032 continues and amends the current public records and public meetings exemptions for certain identifying information held by the State Child Abuse Death Review Committee or a local child abuse death review committee to reflect changes to the child welfare laws enacted during the 2014 Session. Specifically, the bill extends the exemption to cases reviewed by a committee where the death was determined not to be the result of abuse or neglect and limits the exemption for cases involving verified abuse or neglect. Identifying information related to deaths from verified abuse or neglect, with the exception of surviving siblings, is now posted on the Child Fatality Prevention Website of the Department of Children and Families. As such, confidentiality under s. 383.412, F.S., is no longer warranted for other family members or others living in the home. The bill also authorizes release of confidential information to a governmental agency in furtherance of its duties or a person or entity for research or statistical purposes.

The exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2020, unless reviewed and reenacted by the Legislature.

The bill contains a public necessity statement as required by the Florida Constitution.

Because this bill expands a public records exemption, a two-thirds vote of the members present and voting in each house of the Legislature is required for passage.

II. Present Situation:

Public Records and Open Meetings Requirements

The Florida Constitution provides that the public has the right to access government records and meetings. The public may 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.¹ The public also has a right to be afforded notice and access to meetings of any collegial public body of the executive branch of state government or of any local government.² The Legislature's meetings must also be open and noticed to the public, unless there is an exception provided for by the Constitution.³

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. The Public Records Act⁴ guarantees every person's right to inspect and copy any state or local government public record.⁵ The Sunshine Law⁶ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken to be noticed and open to the public.⁷

The Legislature may create an exemption to public records or open meetings requirements.⁸ An exemption must specifically state the public necessity justifying the exemption⁹ and must be tailored to accomplish the stated purpose of the law.¹⁰

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the "OGSR") prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹¹ The OGSR provides that an exemption automatically repeals on

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(b).

³ FLA. CONST., art. I, s. 24(b).

⁴ Chapter 119, F.S.

⁵ Section 119.011(12), F.S., defines "public record" 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. *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992). The Legislature's records are public pursuant to section 11.0431, F.S.

⁶ Section 286.011, F.S.

⁷ Section 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in the Florida Constitution. Article III, section 4(e) of the Florida Constitution provide that legislative committee meetings must be open and noticed to the public. In addition, prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.

⁸ 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. *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential, such record may not be released, to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ Section 119.15, F.S. Section 119.15(4)(b), F.S. provides that an exemption is considered to be substantially amended if it expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

October 2 of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹²

The OGSR 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.¹³ An exemption serves an identifiable purpose if it meets one of the following criteria:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁴
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹⁵ or
- It protects trade or business secrets.¹⁶

In addition, the Legislature must find that the identifiable public purpose is compelling enough to override Florida's open government public policy and that the purpose of the exemption cannot be accomplished without the exemption.¹⁷

The OGSR also requires specific questions to be considered during the review process.¹⁸ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.¹⁹ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²⁰

Child Abuse Death Review

Current law establishes the State Child Abuse Death Review Committee and local child abuse death review committees within the Department of Health.²¹ The committees must review the facts and circumstances of all deaths of children from birth through age 18 that occurred in Florida and are reported to the central abuse hotline of the Department of Children and

¹² Section 119.15(3), F.S.

¹³ Section 119.15(6)(b), F.S.

¹⁴ Section 119.15(6)(b)1., F.S.

¹⁵ Section 119.15(6)(b)2., F.S.

¹⁶ Section 119.15(6)(b)3., F.S.

¹⁷ Section 119.15(6)(b), F.S.

¹⁸ 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?

¹⁹ FLA. CONST., art. I, s. 24(c).

²⁰ Section 119.15(7), F.S.

²¹ Section 383.402, F.S.

Families.²² The state committee must prepare an annual statistical report on the incidence and causes of death resulting from reported child abuse in the state. The report must include recommendations for:

- State and local action, including specific policy, procedural, regulatory, or statutory changes; and
- Any other recommended preventive action.²³

The law provides the committees with broad access to any information related to the deceased child, or his or her family, that is necessary to carry out its duties, including:

- Medical, dental, or mental health treatment records;
- Records in the possession of a state agency or political subdivision; and
- Records of law enforcement which are not part of an active investigation.²⁴

Records typically obtained by the committees include, among others: death and birth certificates; medical examiner report; law enforcement report; criminal history reports; first responder reports; physician, hospital, and/or substance abuse and mental health records; and the Department of Children and Families case file.²⁵

Exemptions Under Review

Current law provides a public records and a public meetings exemption for the State Child Abuse Death Review Committee and local child abuse death review committees.²⁶

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 the state committee or a local committee is confidential and exempt from public records requirements.²⁷ In addition, confidential or exempt information obtained by the state committee or a local committee retains its confidential or exempt status.²⁸ The state and local committees may share with each other any relevant confidential or exempt information regarding case reviews.²⁹ Any person who knowingly or willfully violates the public records exemption commits a misdemeanor of the first degree.^{30,31}

Portions of meetings of the State Child Abuse Death Review Committee or a local committee at which confidential and exempt information is discussed are exempt from public meetings

²² Section 383.402(1), F.S.

²³ Section 383.402(3)(c), F.S.

²⁴ Section 383.412(8) & (9), F.S.

²⁵ Email from Bryan Wendel, Office of Legislative Planning, Florida Dept. of Health, (August 25, 2014) (on file with the Senate Committee on Health Policy).

²⁶ Section 383.412, F.S.

²⁷ Section 383.412(2)(a), F.S.

²⁸ Section 383.412(2)(b), F.S.

²⁹ Section 383.412(4), F.S.

³⁰ Section 383.412(5), F.S.

³¹ A misdemeanor of the first degree is punishable by a term of imprisonment not to exceed one year and a fine not to exceed \$1,000. *See* 775.082(4)(a) and 775.083(1)(d), F.S.

requirements.³² Any portion of a closed meeting must be recorded and the recordings maintained by the state committee or local committee. No portion of the closed meeting may be off the record. The recording of a closed meeting is exempt from public records requirements.³³

Pursuant to the Open Government Sunset Review Act, these exemptions will repeal on October 2, 2015, unless reenacted by the Legislature.³⁴

The public records exemption was initially enacted by the Legislature in 1999 and amended and reenacted, thereafter in 2005 and 2010.^{35,36} The stated purpose for the exemption was “to increase the potential for reduced morbidity or mortality of children and reduce the potential for poor outcomes for children, thereby improving the overall quality of life for children.”³⁷ The Legislature found that the release of sensitive, personal information could hamper open communication and coordination among parties during the death review and that the harm resulting from the release of such information substantially outweighed any public benefit.³⁸

Senate Review of s. 383.412, F.S.

In the course of conducting the Open Government Sunset Review of s. 383.412, F.S., Senate Health Policy Committee Staff met with representatives from the Department of Health and the Department of Children and Families and requested written input from the Florida Sheriffs Association.

Staff also reviewed ch. 2014-224, Laws of Florida (SB 1666), which contains substantial reforms to Florida’s child welfare laws, to determine its effect on the exemption. Since 2004, the statewide and local child abuse death review committees have reviewed only cases reported to the central abuse hotline that were determined to be the result of abuse or neglect.³⁹ Thus, the public records exemption related only to identifying information of the surviving siblings, family members, or others living in the home of a child who died as a result of verified abuse or neglect. SB 1666 expanded the scope of cases reviewed by the committees to include all deaths reported to the child abuse hotline, whether or not the result of verified abuse or neglect.⁴⁰

SB 1666 also directed the Department of Children and Families to post certain information on its website when a child death is reported to the central abuse hotline. Data required to be posted includes the following de-identified demographic data: the date and alleged or verified cause of death; county of residence; existence of prior reports of abuse; whether the child was under 5

³² Section 383.412(3), F.S.

³³ Section 383.412(3)(b), F.S.

³⁴ Section 383.412(6), F.S.

³⁵ See Chs. 99-210, 2005-190, and 2010-40, Laws of Florida

³⁶ The initial act sunset in 2004 when legislation to reenact the exemption failed to pass both chambers of the Legislature. See Florida Senate, *Website Archive*, Senate 0462: Relating to Child Fatalities/Pub. Rec./OGSR http://archive.flsenate.gov/session/index.cfm?BI_Mode=ViewBillInfo&Mode=Bills&ElementID=JumpToBox&SubMenu=1&Year=2004&billnum=462 (last visited Feb. 13, 2015).

³⁷ Ch. 99-210, s. 2, Laws of Fla.

³⁸ *Id.*

³⁹ Ch. 2004-350, s. 14, Laws of Fla.

⁴⁰ Ch. 2014-224, s. 21, Laws of Fla.

years of age; and the involved community-based care lead agency, if applicable.⁴¹ SB 1666 provides that posted data are supplemental to records that may be available to the public pursuant to a public records request.⁴²

Section 39.202(1), F.S., makes all records held by the Department of Children and Families concerning reports of child abandonment, abuse, or neglect confidential and exempt from disclosure under the public records law. However, those files become publicly-available once the cause of death is determined to be the result of abuse, abandonment, or neglect, subject to the following exceptions:

- Information that identifies the person who reported the abuse, abandonment, or neglect;
- Information that is otherwise confidential and exempt;⁴³
- Information that would identify siblings of a deceased child.⁴⁴

Before SB 1666 was passed, the Department of Children and Families released the records of reported deaths resulting from verified abuse on a case-by-case basis, in response to individual public records requests. After SB 1666 was passed, the Department of Children and Families implemented its transparency requirements by launching the Child Fatality Prevention Website. Data and features on the website exceed the requirements of SB 1666.⁴⁵

Among the expanded data elements are child fatality case summaries that reflect summary information contained in a deceased child's case file, including:

- Circumstances surrounding the death;
- Other children in the family; and
- Summary of prior agency involvement with the family.

Posted summary reports about child deaths resulting from verified abandonment, abuse, or neglect have been redacted to remove only sibling names. The names of others living in the household are published. Posted summary reports about deaths that are determined not to be the result of abandonment, abuse, or neglect report case files have been redacted to remove all identifiers.⁴⁶ Currently, identifying information that has been publicly-available from the case file, but was infrequently accessed, is now broadly accessible on demand from a public website.

⁴¹ *Id.* at s. 7.

⁴² *Id.*

⁴³ Section 39.202(2)(o), F.S.

⁴⁴ The Department of Children and Families interprets ss. 39.202(1) and 39.202(2)(o), F.S., as prohibiting release of information that would identify siblings of a deceased child. When a sibling is named in a report about a deceased child, the Department views information related to the sibling as a new report of abuse, abandonment, or neglect that is protected under s. 39.202(1), F.S.. See Email from Tim Parson, Office of Legislative Affairs, Florida Dept. of Children and Families (June 25, 2014) (on file with the Senate Health Policy Committee).

⁴⁵ Department of Children and Families, *DCF Launches Child Fatality Prevention Website Solidifying Commitment to Transparency* (June 25, 2014) <http://www.myflfamilies.com/press-release/dcf-launches-child-fatality-prevention-website-solidifying-commitment-transparency> (last visited Feb. 13, 2015).

⁴⁶ See e.g., Total Miami-Dade County Child Fatalities 2014: 31, Accidental Death Occurring 1/20/2014 as compared with Death From Verified Abuse Occurring 4/24/2014, available at <http://www.dcf.state.fl.us/childfatality/localresults.shtml?county=Miami-Dade&minage=0&maxage=18&year=2014&cause=&prior12=&verified=> (last visited Jan. 24, 2015).

III. Effect of Proposed Changes:

The bill substantially amends the current the public records and public meetings exemptions provided by s. 383.412, F.S., and aligns them with the transparency of data involving child deaths reported to the central abuse hotline that are posted on the Child Fatality Prevention Website. Specifically, the bill narrows the exemption for identifying information related to cases of verified abuse and neglect to information that identifies the deceased child's siblings. The bill also expressly expands the exemption to include information held by the committees which reveals the identity of a deceased child whose death is not the result of verified abuse or neglect as well as the identity of the surviving siblings, family members, or others living in the home.

The bill also authorizes release of confidential information to a governmental agency in furtherance of its duties or a person or entity for research or statistical purposes. The person or entity must enter into a privacy agreement with the Department of Health and comply with all laws and rules governing the use of the information and may not disclose identifying information.

The bill provides a public necessity statement as required by the State Constitution. The public necessity statement explains that the scope of cases which the committees will review was enlarged pursuant to the change in law in 2014. This expansion in the types of cases that committees reviewed necessitated an expansion of the public records exemption. The exemption serves to protect the families of a deceased child from emotional or reputational harm and limits the invasion of the privacy of the deceased child and his or her family. This public necessity statement provides that committees must be able to review confidential and exempt information in order to perform thorough child death reviews.

The bill extends the repeal date for the exemptions from October 2, 2015, to October 2, 2020.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting in each house of the Legislature for passage of a newly-created or expanded public records or public meetings exemption. Because this bill expands a public records exemption, it requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly-created or expanded public records or public meetings exemption. This bill expands a public records exemption and includes the required public necessity statement.

C. Trust Funds Restrictions:

None.

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. 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.