

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: CS/SB 7034

INTRODUCER: Governmental Oversight and Accountability Committee and Ethics and Elections Committee

SUBJECT: OGSR/Stalking Victims Identifying Information

DATE: March 18, 2015

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------------------|-----------------------------|-----------|---------------------------------------|
| | <u>Fox</u> | <u>Roberts</u> | | EE Submitted as Committee Bill |
| 1. | <u>Kim</u> | <u>McVaney</u> | <u>GO</u> | Fav/CS |
| 2. | <u> </u> | <u> </u> | <u>RC</u> | <u> </u> |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 7034 is the result of an Open Government Sunset Review conducted by the Ethics and Elections Committee. It continues the “voter stalking exemption” that the Legislature adopted in 2010, exempting from public records disclosure the names, addresses, and telephone numbers of voters and voter registrants who participate in the Attorney General’s Address Confidentiality Program for Victims of Domestic Violence.

If not reenacted by the Legislature, the exemption will expire on October 2, 2015, pursuant to the Open Government Sunset Review Act.

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

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(b).

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

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 Sections 119.15 and 119.15(4)(b), F.S., provide that an exemption is considered to be substantially amended if it is 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.

¹² Section 119.15(3), F.S.

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 public 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

Public Records Exemption Under Review: Voter Stalking Exemption

The 2010 Legislature created a public-records exemption for specific personal information of voters and voter registrants who identify themselves as victims of stalking or aggravated stalking (hereinafter, the "voter stalking exemption").²¹ The purpose of the exemption is to allow these individuals to fully participate in the electoral process without fear of their home addresses being made public or their location being narrowed down to a particular voting precinct.²² Specifically,

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 Ch. 2010-115, s. 1, LAWS OF FLA.

²² *Id.* at s. 3.

the Legislature exempted the names, addresses, and phone numbers of victims of stalking or aggravated stalking in the same manner as participants in the Attorney General's Address Confidentiality Program for Victims of Domestic Violence ("the Program").

In order for the exemption to take effect, an individual must file a sworn statement that he or she was victim of stalking with the Office of the Attorney General (OAG).²³ The OAG provides the voter with documentation which permits the voter to register with the Supervisor of Elections without his or her actual name, address and phone number being subject to public disclosure. Voters who are already registered with the Supervisor of Election may request that their information be made exempt from public disclosure.²⁴

According to the OAG, there are only about 50 stalking victims participating in the Program, almost half of which are household members of victims who are eligible to participate.²⁵ But despite its relatively minor scope, the OAG stressed the *critical* importance of the exemption to those individuals and their families who are benefitting from its protection.²⁶ Consequently, the OAG, the Florida Division of Elections, and the Florida State Association of Supervisors of Elections (FSASE) all support maintaining the current exemption.

The voter stalking exemption is due to expire under the Open Government Sunset Review Act on October 2, 2015, if not reenacted by the Legislature.

III. Effect of Proposed Changes:

The bill continues the voter stalking exemption by removing the scheduled repeal of the exemption, and transferring those exemption to s. 741.4651, F.S., to be closer in proximity in the statutes to the public records exemption for the Address Confidentiality Program for Victims of Domestic Violence – a similar program administered by the Department of Legal Affairs.

The bill takes effect October 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

²³ *Id.* at s. 1 (codified at Section 98.0585(3), F.S. (2010)).

²⁴ Florida Department of State Processing Voters Who are Participants in the Address Confidentiality Program Training for Supervisors of Elections PowerPoint slides dated May 2014, on file with the Senate Committee on Governmental Oversight and Accountability.

²⁵ Telephone conversation between Tim Frizzell, Assistant Attorney General, Victim Services, Office of the Attorney General, and Jonathan Fox, Chief Attorney, Senate Ethics and Elections Committee (July 16, 2014).

²⁶ *Id.* The position of the AG's office is that if the exemption protects *just one person* it is worth keeping, because of the gravity of the potential consequences involved. *Id.*

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 97.0585 of the Florida Statutes and renumbers and transfers those provisions to section 741.4651 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Governmental Oversight and Accountability on March 17, 2015:

The CS places the amendment next to s. 741.465, the public records exemption for the Address Confidentiality Program for Victims of Domestic Violence – a similar program administered by the Department of Legal Affairs.

B. Amendments:

None.