

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7051      PCB GVOPS 15-04      OGSR/Board of Funeral, Cemetery, & Consumer Services

**SPONSOR(S):** Government Operations Subcommittee, Santiago

**TIED BILLS:**                      **IDEN./SIM. BILLS:** SB 7008

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	12 Y, 0 N	Harrington	Williamson
1) State Affairs Committee	16 Y, 0 N	Harrington	Camechis

### SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The Board of Funeral, Cemetery, and Consumer Services (board) within the Department of Financial Services is responsible for the administration and enforcement of the Florida Funeral, Cemetery, and Consumer Services Act. A person desiring to be licensed in funeral services must apply for a license with the board, and must pass an examination as well as meet other license specific requirements. The board has broad authority over the content and conduct of licensure examinations, and may reject any question from an examination that does not reliably measure the required competency.

Current law provides a public meeting exemption for those portions of a board meeting where questions or answers to examination questions are discussed. The closed meeting must be recorded and maintained by the board. The recording of the closed portion of a board meeting is exempt from public record requirements.

The bill reenacts the public record and public meeting exemptions, which will repeal on October 2, 2015, if this bill does not become law.

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

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Open Government Sunset Review Act

The Open Government Sunset Review Act<sup>1</sup> (Act) sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Open Government Sunset Review Act 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.

If, and only if, in reenacting an exemption that will repeal and the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.<sup>2</sup> If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created<sup>3</sup> then a public necessity statement and a two-thirds vote for passage are not required.

##### Board of Funeral, Cemetery, and Consumer Services

Funeral and cemetery services are regulated under chapter 497, F.S., which is the Florida Funeral, Cemetery, and Consumer Services Act (act).<sup>4</sup> The Board of Funeral, Cemetery, and Consumer Services (board) within the Department of Financial Services (department) is responsible for the administration and enforcement of the act. The department, with approval of the board, must provide, contract, or approve services related to examinations.<sup>5</sup>

The board oversees the licensure and regulation of various licenses related to funeral services. For example, the board oversees the licensure of funeral directors,<sup>6</sup> embalmers,<sup>7</sup> and combination licenses that permit a licensee to practice both funeral directing and embalming.<sup>8</sup> In order to be licensed, an applicant must pass an examination as well as meet the other requirements for the specific license type.<sup>9</sup> The board has broad authority over the content and conduct of licensure examinations,<sup>10</sup> and may reject any question from an examination that does not reliably measure the required competency.<sup>11</sup>

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<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Section 24(c), Art. I of the State Constitution.

<sup>3</sup> An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.

<sup>4</sup> Section 497.001, F.S.

<sup>5</sup> Section 497.144(1), F.S.

<sup>6</sup> Section 497.372, F.S.

<sup>7</sup> Section 497.368, F.S.

<sup>8</sup> Section 497.376, F.S.

<sup>9</sup> For example, an applicant for an embalmer license must take courses in mortuary sciences and communicable diseases, complete a one-year internship, and pass an examination. Section 497.368, F.S.

<sup>10</sup> Section 497.103(1)(a)-(g), F.S.

<sup>11</sup> Section 497.144(2), F.S.

## Public Record and Public Meeting Exemptions under Review

In 2005, the Legislature created a public meeting exemption for the board for those portions of the board meeting at which licensure questions or answers are discussed.<sup>12</sup>

In 2010, the Legislature amended the public meeting exemption to require a recording to be made of the closed portion of the board meeting and to require the board to maintain the recording.<sup>13</sup> In addition, the Legislature created a public record exemption to make exempt<sup>14</sup> the recording of the closed portion of the board meeting.<sup>15</sup>

Pursuant to the Open Government Sunset Review Act, the public record and public meeting exemptions will repeal on October 2, 2015, unless reenacted by the Legislature.<sup>16</sup>

During the 2014 interim, subcommittee staff sent a questionnaire to the board as part of the Open Government Sunset Review process. As part of its questionnaire response, the board recommended reenactment of the public record and public meeting exemptions under review.<sup>17</sup>

### **Effect of the Bill**

The bill removes the repeal date, thereby reenacting the public record and public meeting exemptions for the board.

#### **B. SECTION DIRECTORY:**

Section 1 amends s. 497.172, F.S., to save from repeal the public record and public meeting exemptions for the Board of Funeral, Cemetery, and Consumer Services.

Section 2 provides an effective date of October 1, 2015.

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<sup>12</sup> Chapter 2005-162, L.O.F.; codified as s. 497.172(1), F.S. The 2005 public necessity statement provides in pertinent part that “[w]ithout the exemption, board members might not propose new questions and answers and engage in full and free discussion concerning existing and proposed questions and answers. If questions and answers for licensure examinations are disclosed to the public, the usefulness of those licensure examinations in ensuring that applicants have studied and learned the entire body of knowledge necessary for the safe and competent practice of their intended profession or occupation under chapter 497, Florida Statutes, would be severely undermined or eliminated. Therefore, without this exemption, the effective and efficient administration of the licensure process would be jeopardized.”

<sup>13</sup> Chapter 2010-76, L.O.F.; codified as s. 497.172(1)(a), F.S.

<sup>14</sup> There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *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). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *See Attorney General Opinion 85-62* (August 1, 1985).

<sup>15</sup> Chapter 2010-76, L.O.F.; codified as s. 497.172(1)(b), F.S. The 2010 public necessity statement provides in pertinent part that the “release of such recordings would compromise those discussions of the board which took place during a closed meeting and would negate the public meeting exemption. Further, current law already provides a public record exemption for licensure examination questions and answers. As such, release of the recording generated during those closed portions of meetings would compromise the current protections already afforded such questions and answers. Thus, the effective and efficient administration of the licensure examination process would be compromised without this exemption.”

<sup>16</sup> Section 497.172(1)(c), F.S.

<sup>17</sup> The board’s response is on file with the Government Operations Subcommittee.

## 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 appear to affect county or municipal governments.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.