

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 454

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Gibson

SUBJECT: Public Records and Public Meetings/Elder Abuse Fatality Review Team

DATE: March 25, 2019 **REVISED:** _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------------|----------------|-----------|---------------------------|
| 1. | <u>Hendon</u> | <u>Hendon</u> | <u>CF</u> | <u>Fav/CS</u> |
| 2. | <u>Hackett</u> | <u>McVaney</u> | <u>GO</u> | <u>Pre-meeting</u> |
| 3. | _____ | _____ | <u>AP</u> | _____ |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 454 exempts from public disclosure requirements any information obtained by an elder abuse fatality review team as created in SB 452 and any information contained in a record created by the review team which reveals the identity of a victim of elder abuse. The bill also exempts from public meetings requirements the portion of a review team meeting during which confidential or exempt information or the identity of a victim of elder abuse is discussed. The bill repeals the exemptions on October 2, 2024, unless reenacted by the Legislature.

The bill provides a statement of public necessity as required by the State Constitution

Because the bill creates a new public records exemption and expands other public records exemptions, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

The bill has no fiscal impact and has an effective date contingent upon passage of SB 452.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.³ The Public Records Act states that

[i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁴

The Public Records Act typically contains general exemptions that apply across agencies. Agency- or program-specific exemptions often are placed in the substantive statutes relating to that particular agency or program.

The Public Records Act does not apply to legislative or judicial records.⁵ Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the legislature.

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Public records laws are found throughout the Florida Statutes.

⁴ Section 119.01(1), F.S.

⁵ *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).

⁶ 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” 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.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

under supervision by the custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

Only the Legislature may create an exemption to public records requirements.¹⁰ An exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹¹ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions¹² and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹³

When creating or expanding a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’¹⁴ Records designated as ‘confidential and exempt’ may be released by the records custodian only under the circumstances defined by the Legislature or pursuant to a court order. Records designated as ‘exempt’ may be released at the discretion of the records custodian under certain circumstances.¹⁵

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions,¹⁶ with specified exceptions.¹⁷ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁸ The Act 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 to meet such public purpose.¹⁹

SB 452 authorizes the creation of elder abuse fatality review teams, which review fatal incidents of elder abuse and make policy and other recommendations. To that end, they will collect data on incidents, victims, and perpetrators of elder abuse.

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ *Id.*

¹² The bill may, however, contain multiple exemptions that relate to one subject.

¹³ FLA. CONST., art. I, s. 24(c)

¹⁴ 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 Sch. Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁵ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁶ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

¹⁷ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁸ Section 119.15(3), F.S.

¹⁹ Section 119.15(6)(b), F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 415.1103, F.S., to exempt from public disclosure requirements any information that is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution obtained by an elder abuse fatality review team when conducting a review retains its confidential or exempt status when held by the review team. The bill also exempts from public disclosure requirements information contained in a record created by an elder abuse fatality review team that reveals the identity of a victim of elder abuse as authorized in SB 452.

This section exempts from public meeting requirements the portion of meetings of a review team where confidential or exempt information or the identity of a victim of elder abuse is discussed is exempt from s. 286.011, F.S., and s. 24(b), Art. I of the State Constitution.

The public records and public meetings exemptions are subject to the OGSR and stand repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill creates new public records and public meetings exemptions and therefore requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

Section 2 provides a statement of public necessity for the both the public records exemptions and the public meetings exemption as required by the Florida Constitution. It states that sensitive personal information concerning victims of elder abuse would be disclosed and open communication and coordination between the parties involved in the elder abuse fatality review would be hampered without the exemption.

Section 3 provides an effective date that is contingent upon, and concurrent with, passage of SB 452, which has an effective date of July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

Voting Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill enacts new exemptions for information revealing the identity of victims of elder abuse as held by elder abuse fatality review teams, any information contained in a record created by the review team which reveals the identity of a victim of elder abuse, and any portion of a review team meeting during which

confidential or exempt information or the identity of a victim of elder abuse is discussed. Thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemptions.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect the identities of victims of fatal or near-fatal incidents of elder abuse. This bill exempts information revealing the identity of victims of elder abuse as held by elder abuse fatality review teams, information that was previously confidential or exempt and obtained by the review team, any information contained in a record created by the review team which reveals the identity of a victim of elder abuse, and any portion of a review team meeting during which confidential or exempt information or the identity of a victim of elder abuse is discussed. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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:

Under the provisions of CS/CS/SB 452, the information received by the elder abuse fatality review teams should be redacted from closed cases. All information received by the teams should already be public record in some other capacity. Thus, there is no need for a public records exemption for information that is comprised of public records.

VIII. Statutes Affected:

This bill substantially amends s. 415.1103 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.)

CS by Children, Families, and Elder Affairs on February 19, 2019:

- The CS adds the bill number SB 452 in two places to reference the substantive bill tied to this public records exemption bill.

B. Amendments:

None.