

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GVOPS 16-04 OGSR Local Government Audit and Investigative Reports

SPONSOR(S): Government Operations Subcommittee

TIED BILLS: **IDEN./SIM. BILLS:** SB 7002

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee		Toliver	Williamson

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.

Current law provides a public record exemption for audit or investigative reports prepared for or on behalf of a unit of local government. The exemption also applies to audit workpapers and notes and information received, produced, or derived from an investigation. The exemption expires when the audit or investigation is final or the investigation is no longer active.

The bill reenacts the public record exemption, which will repeal on October 2, 2016, 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 (Act)¹ 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.²

The 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.³

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.⁴ 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 created⁵ then a public necessity statement and a two-thirds vote for passage are not required.

Local Government Auditing

Current law requires local governments to submit to the Department of Financial Services (DFS) an annual financial report covering their operations for the previous fiscal year.⁶ DFS makes available to local governments an electronic filing system that accumulates the financial information reported on the annual financial reports in a database.

Current law provides that if a local government will not be audited by the Auditor General, the local government must provide for an annual financial audit to be completed within nine months after the end of the fiscal year.⁷ The audit must be conducted by an independent certified public accountant retained by the local government and paid for from public funds.⁸

Public Record Exemption under Review

Prior to 2011, the public record exemption under review only provided an exemption for the audit report of an internal auditor prepared for or on behalf of a unit of local government and for the audit workpapers and notes, until such time as the audit report became final.⁹ In 2011, the Legislature expanded the public record exemption to include investigative reports of the inspector general, as well

¹ Section 119.15, F.S.

² Section 119.15(3), F.S.

³ Section 119.15(6)(b), F.S.

⁴ Section 24(c), Art. I, FLA. CONST.

⁵ An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.

⁶ Section 218.32(1), F.S.

⁷ Section 218.39(1), F.S.

⁸ *Id.*

⁹ Section 119.0713(2), F.S. (2010).

as any information received, produced, or derived from an investigation. The public record exemption expires once the investigation is complete or is no longer active.¹⁰

An audit or investigation becomes final when the audit or investigative report is presented to the unit of local government. In addition, an investigation is considered active if it is continuing with a reasonable, good faith anticipation of resolution and with reasonable dispatch.¹¹

The term “unit of local government” is defined to mean a county, municipality, special district, local agency, authority, consolidated city-county government, or any other local governmental body or public body corporate or politic authorized or created by general or special law.¹²

The 2011 public necessity statement for the public record exemption under review finds that the exemption is necessary “because the release of such information could potentially be defamatory to an individual or entity under audit or investigation, causing unwarranted damage to the good name or reputation of an individual or company, or could significantly impair an administrative or criminal investigation.”¹³

Pursuant to the Open Government Sunset Review Act, the public record exemption will repeal on October 2, 2016, unless reenacted by the Legislature.¹⁴

During the 2015 interim, subcommittee staff sent questionnaires to counties and municipalities as part of the Open Government Sunset Review process. The respondents recommended reenactment of the exemption and provided that if the exemption were to expire, incomplete information might be released that could be defamatory to the party being audited or investigated. In addition, entities being investigated might be less likely to be forthcoming with information regarding the audit or investigation.¹⁵

Effect of the Bill

The bill removes the repeal date, thereby reenacting the public record exemption for audit and investigative reports prepared for or on behalf of a unit of local government, until the audit or investigation is final or the investigation is no longer active.

B. SECTION DIRECTORY:

Section 1 amends s. 119.0713, F.S., to save from repeal the public record exemption for audit and investigative reports prepared for or on behalf of a unit of local government.

Section 2 provides an effective date of October 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

¹⁰ Chapter 2011-87, L.O.F.; codified as s. 119.0713(2)(a), F.S.

¹¹ Section 119.0713(2)(a), F.S.

¹² *Id.*

¹³ Section 2, ch. 2011-87, L.O.F.

¹⁴ Section 119.0713(2)(b), F.S.

¹⁵ Open Government Sunset Review of s. 119.0713, F.S., relating to local government audits and investigations, questionnaire by House and Senate staff. Questionnaire responses are on file with the Government Operations Subcommittee.

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 require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.