

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GAP 10-13 OGSR Board of Funeral, Cemetery, & Consumer Services
SPONSOR(S): Governmental Affairs Policy Committee
TIED BILLS: IDEN./SIM. BILLS: SB 1660

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Orig. Comm.: Governmental Affairs Policy Committee, 13 Y, 0 N, Williamson, Williamson. Rows 2-6 are empty.

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 creates the Board of Funeral, Cemetery, and Consumer Services (board) within the Department of Financial Services (department). The board consists of 10 members appointed for terms of four years. The board enforces the provisions of chapter 497, F.S., relating to funeral, cemetery, and consumer services.

Current law provides multiple exemptions for the board and the department. Pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2010, unless reenacted by the Legislature.

The bill reenacts the public record and public meeting exemptions for the board relating to examination development meetings and probable cause panel meetings. It requires a recording to be made of any closed portion of a meeting, and for the recording to be maintained by the board. The bill expands the current exemptions to protect recordings of closed meetings. As such, the bill extends the repeal date from October 2, 2010, to October 2, 2015. It also provides a public necessity statement.

The bill reenacts the temporary public record exemption for records related to examinations, inspections, and investigations conducted by the department. Finally, it reenacts the public record exemption for trade secrets held by the board or the department.

The bill could create a minimal fiscal impact on the board as it could incur costs associated with recording closed portions of meetings. It does not appear to have a fiscal impact on local governments.

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public record or public meeting exemption. The bill expands the current exemption under review; thus, it requires a two-thirds vote for final passage.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ 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 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, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.² 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 created³ then a public necessity statement and a two-thirds vote for passage are not required.

Board of Funeral, Cemetery, and Consumer Services

Current law creates the Board of Funeral, Cemetery, and Consumer Services (board) within the Department of Financial Services (department).⁴ The board consists of 10 members appointed for

¹ Section 119.15, F.S.

² Section 24(c), Art. I of the State Constitution.

³ An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

⁴ Chapter 2004-31, L.O.F., codified at s. 497.101, F.S.

terms of four years.⁵ The Governor may suspend and the Senate may remove any member for malfeasance or misfeasance, neglect of duty, incompetence, substantial inability to perform official duties, commission of a crime, or other substantial cause as determined by the Governor or Senate.⁶ The board enforces the provisions of chapter 497, F.S., relating to funeral, cemetery, and consumer services.

Exemptions under Review

In 2005, the Legislature created multiple exemptions for the board and the department.⁷ Pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2010, unless reenacted by the Legislature.⁸

Examination Development Meetings

Background

Current law provides a public meeting exemption for those portions of meetings of the board at which licensure examination questions or answers under chapter 497, F.S., are discussed.⁹ The Public Records Act¹⁰ already provides a public record exemption for examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure, certification, or employment.¹¹

Current law does not require a recording of the closed portions of meetings. As such, one could argue the public has no assurance that the board actually discusses licensure examination questions and answers during those closed sessions.

Effect of Bill

The bill reenacts the public meeting exemption. In addition, the closed meeting must be recorded and maintained by the board. No portion of the closed meeting may be off the record.

The bill also creates a public record exemption for those recordings of closed meetings. As such, the bill extends the repeal date for this exemption from October 2, 2010, to October 2, 2015. In addition, it provides a public necessity statement.

Probable Cause Panel Meetings

Background

Current law provides a public meeting exemption for meetings of the probable cause panel of the board.¹² Like examination development meetings, current law does not require a recording of the closed portions of probable cause panel meetings. Current law does provide a temporary public record exemption for records of exempt probable cause panel meetings. Those records are exempt¹³ from public records requirements until 10 days after a determination regarding probable cause is made.¹⁴

⁵ Section 497.101(1) and (3), F.S.

⁶ Section 497.101(4), F.S.

⁷ Chapter 2005-162, L.O.F., codified as s. 497.172, F.S.

⁸ Section 497.172(5), F.S.

⁹ Section 497.172(1), F.S.

¹⁰ Chapter 119, F.S., is referred to as the Public Records Act.

¹¹ Section 119.071(1)(a), F.S.

¹² Section 497.172(2)(a), F.S.

¹³ 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 the statutory exemption. (See Attorney General Opinion 85-62, August 1, 1985).

¹⁴ Section 497.172(2)(b), F.S.

Effect of Bill

The bill reenacts the public meeting exemption. A closed meeting of the probable cause panel of the board must be recorded and no portion of the meeting may be off the record. The recording must be maintained by the board. Because the recording is a record of the closed meeting, it too would be protected from public disclosure until 10 days after a determination regarding probable cause is made.

Examinations, Inspections, and Investigations

Background

Current law provides a public record exemption for information held by the department pursuant to:

- A financial examination under chapter 497, F.S., until the examination is completed or ceases to be active.
- An inspection conducted under chapter 497, F.S., until the inspection is completed or ceases to be active.
- An investigation of a violation of chapter 497, F.S., until the investigation is completed or ceases to be active¹⁵ or until 10 days after a determination regarding probable cause is made.¹⁶

However, such information remains confidential and exempt after the examination, inspection, or investigation is completed or ceases to be active if:

- The department submits the information to any law enforcement agency or other administrative agency for further examination or investigation. The information remains confidential and exempt until that agency's examination or investigation is completed or ceases to be active.
- Disclosure of the information would jeopardize the integrity of another active investigation or examination, reveal the identity of a confidential source, or reveal investigative or examination techniques or procedures.¹⁷

Effect of Bill

The bill reenacts the public record exemptions for the department.

Trade Secrets

Background

Current law provides a public record exemption for trade secrets as defined by the Uniform Trade Secrets Act¹⁸ held by the department or board.

Effect of Bill

The bill reenacts the public record exemption.

B. SECTION DIRECTORY:

Section 1 amends s. 497.172, F.S., to reenact and expand exemptions for the Board of Funeral, Cemetery, and Consumer Services and the Department of Financial Services.

Section 2 provides a public necessity statement.

¹⁵ For purposes of the exemption, an examination, inspection, or investigation is considered active so long as it is proceeding with reasonable dispatch and the department has a reasonable good faith belief that the examination, inspection, or investigation may lead to the filing of an administrative, civil, or criminal proceeding or to the denial or conditional grant of an application for license or other approval required under chapter 497, F.S. (s. 497.172(3)(f), F.S.)

¹⁶ Section 497.172(3)(a), (b), and (c), F.S.

¹⁷ Section 497.172(3)(e), F.S.

¹⁸ Section 688.002(4), F.S., defines "trade secret" to mean information, including a formula, pattern, compilation, program, device, method, technique, or process that:

- Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
- Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Board of Funeral, Cemetery, and Consumer Services within the Department of Financial Services could incur costs associated with recording closed portions of meetings; however, those costs should be minimal.

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:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public record or public meeting exemption. The bill expands the current exemptions under review; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands the current exemptions under review; thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

None.