

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GAP 10-16 OGSR Domestic Violence Fatality Review Teams

SPONSOR(S): Governmental Affairs Policy Committee

TIED BILLS: IDEN./SIM. BILLS: SB 884

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Orig. Comm.: Governmental Affairs Policy Committee, 11 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 allows a domestic violence fatality review team (team or teams) to be established at a local, regional, or state level. The purpose of the team is to learn how to prevent domestic violence by intervening early and improving the response of an individual and the system to domestic violence. In accomplishing this purpose, teams may review events leading up to a domestic violence incident, available community resources, current laws and policies, actions taken by the systems and individuals related to the incident and the parties, and any information or action deemed relevant by the team.

Current law provides a public record and public meeting exemption for the teams. Any confidential or exempt information obtained by a team retains its confidential or exempt status. In addition, any information that identifies a victim of domestic violence or the victim's children is confidential and exempt from public records requirements when contained in a record created by a team. Those portions of meetings of a team regarding domestic violence fatalities and their prevention, during which confidential or exempt information is discussed, are exempt from public meetings requirements.

The bill reenacts the public record and public meeting exemptions for the teams. It requires a recording to be made of any closed portion of a team meeting. The recording must be maintained by the team. 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 as required by the State Constitution.

The bill could create a minimal fiscal impact on the teams as a result of costs associated with recording closed portions of meetings.

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 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:

Background

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.

Domestic Violence Fatality Review Teams

Current law allows a domestic violence fatality review team (team or teams)⁴ to be established at a local, regional, or state level. The purpose of the team is to learn how to prevent domestic violence by

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 Section 741.316(1), F.S., defines "domestic violence fatality review team" to mean an organization that includes, but is not limited to, representatives from the following agencies or organizations: law enforcement agencies; the state attorney; the medical examiner;

intervening early and improving the response of an individual and the system to domestic violence. In accomplishing this purpose, teams may review events leading up to a domestic violence incident, available community resources, current laws and policies, actions taken by the systems and individuals related to the incident and the parties, and any information or action deemed relevant by the team.⁵

The structure and activities of teams are determined at the local level. Each team may determine the number and type of incidents it wishes to review. It must make policy and other recommendations as to how incidents of domestic violence may be prevented.⁶

There are 19 active teams in Florida.⁷ In addition, the Department of Children and Family Services in partnership with the Florida Coalition Against Domestic Violence created a statewide team that is funded by a federal grant. The goals of the statewide team are to identify gaps in service delivery to domestic violence victims, promote training, and coordinate activities among agencies involved in domestic violence issues.⁸

Exemptions under Review

Current law provides a public record and public meeting exemption for domestic violence fatality review teams.⁹

Any confidential or exempt¹⁰ information obtained by a team retains its confidential or exempt status.¹¹ In addition, any information that identifies a victim of domestic violence or the victim's children is confidential and exempt from public records requirements when contained in a record created by a team.¹²

Those portions of meetings of a team regarding domestic violence fatalities and their prevention, during which confidential or exempt information is discussed, are exempt from public meetings requirements.¹³ 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 team actually discusses confidential or exempt information during those closed meetings.

Pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2010, unless reenacted by the Legislature.¹⁴

certified domestic violence centers; child protection service providers; the office of court administration; the clerk of the court; victim services programs; child death review teams; members of the business community; county probation or corrections agencies; any other persons who have knowledge regarding domestic violence fatalities, nonlethal incidents of domestic violence, or suicide, including research, policy, law, and other matters connected with fatal incidents; or other representatives as determined by the review team.

⁵ Section 741.316(2), F.S.

⁶ *Id.*

⁷ As of June 19, 2009, there were active teams in the following counties: Alachua, Brevard, Broward, Columbia, Duval, Escambia, Hillsborough, Lee, Manatee, Miami-Dade, Orange, Palm Beach, Pasco, Pinellas, Polk/Highlands, Santa Rosa, Sarasota, Seminole, and St. John's. See Senate Bill Analysis and Fiscal Impact Statement for SB 884 (February 2, 2010) at 3.

⁸ See Senate Bill Analysis and Fiscal Impact Statement for SB 884 (February 2, 2010) at 3.

⁹ Section 741.3165, F.S.

¹⁰ 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).

¹¹ Section 741.3165(1)(a), F.S.

¹² Section 741.3165(1)(b), F.S.

¹³ Section 741.3165(2), F.S.

¹⁴ Section 741.3165(3), F.S.

Effect of Bill

The bill reenacts the public record and public meeting exemptions. In addition, any portion of a closed meeting must be recorded and maintained by the team. No portion of the closed meeting may be off the record.

The bill creates a public record exemption for the recording of a closed portion of a meeting. As such, the bill extends the repeal date for the exemptions from October 2, 2010, to October 2, 2015. It also provides a public necessity statement as required by the State Constitution.¹⁵

B. SECTION DIRECTORY:

Section 1 amends s. 741.3165, F.S., to reenact and expand the public record and public meeting exemptions for domestic violence fatality review teams.

Section 2 provides a public necessity statement.

Section 3 provides an effective date of October 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Domestic violence fatality review teams could incur costs associated with recording closed portions of meetings; however, those costs should be minimal.

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.

¹⁵ Section 24(c), Art. I of the State Constitution.

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 final 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.