

Government Operations Subcommittee

**Tuesday, February 10, 2015
10:30 AM
Webster Hall (212 Knott)**

**Steve Crisafulli
Speaker**

**Michael Bileca
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Government Operations Subcommittee

Start Date and Time: Tuesday, February 10, 2015 10:30 am
End Date and Time: Tuesday, February 10, 2015 12:30 pm
Location: Webster Hall (212 Knott)
Duration: 2.00 hrs

Consideration of the following bill(s):

HB 7 Pub. Rec./Claim Settlement on Behalf of Minor or Ward by Passidomo
HB 71 Service Animals by Smith

Consideration of the following proposed committee bill(s):

PCB GVOPS 15-01 -- OGSR Public Transit Providers
PCB GVOPS 15-02 -- OGSR Commission for Independent Education

NOTICE FINALIZED on 02/03/2015 16:10 by Love.John

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7 Pub. Rec./Claim Settlement on Behalf of Minor or Ward

SPONSOR(S): Passidomo

TIED BILLS: HB 5 **IDEN./SIM. BILLS:** SB 360

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N	Robinson	Bond
2) Government Operations Subcommittee		Williamson	Williamson
3) Judiciary Committee			

SUMMARY ANALYSIS

Litigation settlement agreements in guardianship cases routinely include a provision that the terms will be held in confidence by all parties. Because an adult may settle a lawsuit without court approval, those confidentiality clauses are effective and enforceable. However, a minor cannot settle a case valued in excess of \$15,000 without court approval. The court approval process requires a petition setting forth the terms of the settlement. An order is eventually entered that may also contain the terms of settlement, or may refer to the petition. The petition and the order are part of a court file, and therefore are a matter of public record and open for inspection under current law.

The bill amends the guardianship law to provide that the petition requesting permission for settlement of a claim, the order on the petition, and any document associated with the settlement, are confidential and exempt from public records requirements. The court may order partial or full disclosure of the confidential and exempt record upon a showing of good cause.

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

The bill provides that the exemption will take effect on the same date as House Bill 5 or similar legislation if such legislation is adopted in the same legislative session, or an extension thereof, and becomes law.

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 or expanded public record or public meeting exemption. The bill expands the current public record exemption for certain information related to guardianship; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records Law - In General

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.¹

Court Records

Florida courts have consistently held that the judiciary is not an "agency" for purposes of Ch. 119, F.S.² However, the Florida Supreme Court found that "both civil and criminal proceedings in Florida are public events" and that the court will "adhere to the well-established common law right of access to court proceedings and records."³ There is a Florida constitutional guarantee of access to judicial records.⁴ The constitutional provision provides for public access to judicial records, except for those records expressly exempted by the State Constitution, Florida law in effect on July 1, 1993, court rules in effect on November 3, 1992, or by future acts of the Legislature in accordance with the State Constitution.⁵

Exempt versus Confidential and Exempt

There is a difference between records the Legislature has determined to be exempt and those which have been determined to be confidential and exempt.⁶ If the Legislature has determined the information to be confidential then the information is not subject to inspection by the public.⁷ Also, if the information is deemed to be confidential it may only be released to those person and entities designated in statute.⁸ However, the agency is not prohibited from disclosing the records in all circumstances where the records are deemed only exempt.⁹

Settlements in Guardianship Cases

Litigation settlement agreements routinely include a provision that the terms will be held in confidence by all parties. Because an adult may settle a lawsuit without court approval, those confidentiality clauses are effective and enforceable. However, a minor cannot settle a case valued in excess of \$15,000 without court approval.¹⁰ The court approval process requires a petition setting forth the terms of the settlement.¹¹ An order is eventually entered that also may contain the terms of settlement, or may refer to the petition.¹² The petition and the order are part of a court file, and therefore, are a matter of public record and open for inspection under current law.

¹ Art I., s. 24(c), Fla. Const.

² See e.g., *Times Publishing Company v. Ake*, 660 So.2d 255 (Fla. 1995).

³ *Barron v. Florida Freedom Newspapers*, 531 So.2d 113, 116 (Fla. 1988).

⁴ Art I., s. 24(a), Fla. Const.

⁵ Art I., ss. 24(c) and (d), Fla. Const.

⁶ *WFTV, Inc. v. School Board of Seminole County*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So.2d 1015 (Fla. 2004).

⁷ *Id.*

⁸ *Id.*

⁹ See *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), *review denied*, 589 So.2d 289 (Fla. 1991).

¹⁰ See s. 744.301(2), F.S.

¹¹ Section 744.387, F.S.

¹² *Id.*

Effect of the Bill

The bill amends s. 744.3701, F.S., to provide that any court record relating to the settlement of a ward's or minor's claim, including a petition for approval of a settlement on behalf of a ward or minor, a report of a guardian ad litem relating to a pending settlement, or an order approving a settlement on behalf of a ward or minor, is confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution and may not be disclosed except as specifically authorized.

Because the record is made confidential and exempt, it may not be disclosed except as provided in law. Current law allows the court, the clerk of court, the guardian and the guardian's attorney to review the guardianship court file. The bill amends s. 744.3701, F.S., to provide that record of a settlement may also be disclosed to the guardian ad litem (if any) related to the settlement, to the ward (the minor) if he or she is 14 years of age or older and has not been declared incompetent, and to the attorney for the ward. The record may also be disclosed as ordered by the court.

The bill includes a public necessity statement.

B. SECTION DIRECTORY:

Section 1 amends s. 744.3701, F.S., regarding confidentiality.

Section 2 provides a public necessity statement.

Section 3 provides for an effective date to coincide with passage of House Bill 5, if adopted in the same legislative session.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

Like any other public records exemption, the bill may lead to a minimal fiscal impact on the affected portions of the government, in this case, the court system and clerks of court. Staff responsible for complying with public record requests could require training related to expansion of the public record

exemption, and court and clerk offices could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the court system and clerks.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

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 or expanded public record or public meeting exemption. The bill expands a public record exemption related to guardianships; 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 a public record exemption related to guardianships; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill expands a public record exemption related to guardianships to include a court record relating to the settlement of a ward's or minor's claim.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for executive branch rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Public Necessity Statement

The bill expands a public record exemption related to guardianships to include court records relating to the settlement of a ward's or minor's claim. However, the introductory sentence to the public necessity statement (section 2) addresses the need to protect information contained in the court record that could be used to identify a minor or ward. As such, it is unclear whether the intent is to protect the entire court record or identifying information contained therein.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

HB7

2015

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 744.3701, F.S.; providing an exemption from public
 4 records requirements for records relating to the
 5 settlement of a claim on behalf of a minor or ward;
 6 authorizing a guardian ad litem, a ward, a minor, and
 7 a minor's attorney to inspect guardianship reports and
 8 court records relating to the settlement of a claim on
 9 behalf of a minor or ward, upon a showing of good
 10 cause; authorizing the court to direct disclosure and
 11 recording of an amendment to a report or court records
 12 relating to the settlement of a claim on behalf of a
 13 minor or ward, in connection with real property or for
 14 other purposes; providing a statement of public
 15 necessity; providing a contingent effective date.

16
 17 Be It Enacted by the Legislature of the State of Florida:

18
 19 Section 1. Section 744.3701, Florida Statutes, is amended
 20 to read:

21 744.3701 Confidentiality ~~Inspection of report.~~

22 (1) Unless otherwise ordered by the court, upon a showing
 23 of good cause, an any initial, annual, or final guardianship
 24 report or amendment thereto, or a court record relating to the
 25 settlement of a claim, is subject to inspection only by the
 26 court, the clerk or the clerk's representative, the guardian and

27 | the guardian's attorney, the guardian ad litem with regard to
 28 | the settlement of the claim, and the ward if he or she is at
 29 | least 14 years of age and has not, unless he or she is a minor
 30 | ~~or has~~ been determined to be totally incapacitated, ~~and the~~
 31 | ward's attorney, the minor if he or she is at least 14 years of
 32 | age, or the attorney representing the minor with regard to the
 33 | minor's claim, or as otherwise provided by this chapter.

34 | (2) The court may direct disclosure and recording of parts
 35 | of an initial, annual, or final report or amendment thereto, or
 36 | a court record relating to the settlement of a claim, including
 37 | a petition for approval of a settlement on behalf of a ward or
 38 | minor, a report of a guardian ad litem relating to a pending
 39 | settlement, or an order approving a settlement on behalf of a
 40 | ward or minor, in connection with a ~~any~~ real property
 41 | transaction or for such other purpose as the court allows, ~~in~~
 42 | its discretion.

43 | (3) A court record relating to the settlement of a ward's
 44 | or minor's claim, including a petition for approval of a
 45 | settlement on behalf of a ward or minor, a report of a guardian
 46 | ad litem relating to a pending settlement, or an order approving
 47 | a settlement on behalf of a ward or minor, is confidential and
 48 | exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I
 49 | of the State Constitution and may not be disclosed except as
 50 | specifically authorized.

51 | Section 2. The Legislature finds that it is a public
 52 | necessity to keep confidential and exempt from public disclosure

53 information contained in a settlement record which could be used
54 to identify a minor or ward. The information contained in these
55 records is of a sensitive, personal nature, and its disclosure
56 could jeopardize the physical safety and financial security of
57 the minor or ward. In order to protect minors, wards, and others
58 who could be at risk upon disclosure of a settlement, it is
59 necessary to ensure that only those interested persons who are
60 involved in settlement proceedings or the administration of the
61 guardianship have access to reports and records. The Legislature
62 finds that the court retaining discretion to direct disclosure
63 of these records is a fair alternative to public access.

64 Section 3. This act shall take effect on the same date
65 that HB 5 or similar legislation takes effect if such
66 legislation is adopted in the same legislative session or an
67 extension thereof and becomes law.



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Government Operations
2 Subcommittee
3 Representatives Passidomo and Rodríguez, J. offered the
4 following:

Amendment

7 Remove lines 51-54 and insert:

8 Section 2. The Legislature finds that it is a public
9 necessity that a court record relating to the settlement of a
10 ward's or minor's claim, including a petition for approval of a
11 settlement on behalf of a ward or minor, a report of a guardian
12 ad litem relating to a pending settlement, or an order approving
13 a settlement on behalf of a ward or minor, be made confidential
14 and exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
15 Art. I of the State Constitution. The information contained in
16 these

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 71 Service Animals
SPONSOR(S): Smith
TIED BILLS: IDEN./SIM. BILLS: SB 414

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Toliver	Williamsor <i>AW</i>
2) Judiciary Committee			
3) State Affairs Committee			

SUMMARY ANALYSIS

Florida law provides that an individual with a disability, defined as a person who is deaf, hard of hearing, blind, visually impaired, or otherwise physically disabled, is entitled to equal access to public accommodations, public employment, and housing accommodations. The individual may be accompanied by a trained service animal in all areas of public accommodations that the public is normally allowed to occupy. Any person who denies or interferes with the right of a person with a disability or a service animal trainer to access a place of public accommodation commits a second degree misdemeanor.

The bill revises the definition of the term "individual with a disability" to add an individual with a physical or mental impairment that substantially limits one or more major life activities. A "physical or mental impairment" is defined, in part, as a physiological disorder or condition that affects at least one bodily function or a mental or psychological disorder as specified by the Diagnostic and Statistical Manual of Mental Disorders. The term "major life activity" is defined as a function such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. The bill expands the definition of the term "public accommodation" to include a timeshare that is a transient public lodging establishment. In addition, the bill clarifies that the term "service animal" as applied to an air carrier covered by the federal Air Carrier Access Act of 1986 has the same meaning as provided in that act and rules promulgated to implement it.

The bill requires a public accommodation to modify its policies to permit the use of a service animal by an individual with a disability. The bill further specifies that a public accommodation may not ask about the nature or extent of an individual's disability in order to determine if an animal is a service animal or pet. However, a public accommodation may ask if the animal is a service animal required because of a disability and what work the animal has been trained to perform. Additionally, the bill requires a service animal to be kept under the control of its handler. The bill authorizes a public accommodation to remove the animal if the animal is not under the handler's control, is not housebroken, or poses a serious threat to others. The criminal penalty for interference with the right of a disabled individual or service animal trainer to use a place of public accommodation is modified to include the requirement that a person also perform 30 hours of community service for an organization that serves individuals with disabilities or for another entity, at the discretion of the court.

Finally, the bill provides that knowingly and willfully misrepresenting oneself as being qualified to use a service animal or being a trainer of a service animal is a second degree misdemeanor. It also requires the person to perform 30 hours of community service.

The bill may have an insignificant, fiscal impact on state and local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Americans with Disabilities Act¹

The federal Americans with Disabilities Act (ADA) prohibits discrimination against people with disabilities² in employment,³ the provision of public services,⁴ and in public accommodations.⁵ This prohibition requires entities covered by the law to provide reasonable accommodations to disabled persons. One such accommodation provides that a disabled person is entitled to be accompanied by a service animal⁶ in all areas of a public accommodation or a public entity that is otherwise open to the public.⁷ A public accommodation or a public entity may not ask about the nature of a person's disability, but may ask if an animal is required because of a disability, and may ask what tasks the animal has been trained to perform. A public accommodation or a public entity may remove a service animal if it is out of control and the animal's handler does not take immediate action to remove it, or if the animal is not housebroken.⁸

Air Carrier Access Act of 1986⁹

The federal Air Carrier Access Act of 1986 provides that no air carrier may discriminate in providing air transportation against an otherwise qualified individual who has a physical or mental impairment that substantially limits one or more major life activities, has a record of impairment, or who is regarded as having such an impairment.¹⁰ Federal law further provides that generally a state may not enact or enforce a law related to a price, route, or service of an air carrier covered under applicable law.¹¹

Federal regulations promulgated by the United States Department of Transportation provide for the use of service and emotional support animals on air carriers, and allow the use of service animals for those with psychiatric disabilities on air carriers.¹²

Federal Fair Housing Act¹³

The federal Fair Housing Act (FHA) prohibits any person from discriminating in the sale or rental of a dwelling based on a handicap.^{14, 15} Failure to provide a reasonable accommodation, including permitting

¹ 42 U.S.C. s. 12101, *et seq.*

² Under the ADA, the term "disability" means a physical or mental impairment that substantially limits one or more major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment. 42 U.S.C. s. 12102(1).

³ 42 U.S.C. s. 12112.

⁴ 42 U.S.C. s. 12132.

⁵ 42 U.S.C. s. 12182.

⁶ The term "service animal" is defined in part as "any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability[...]. The work or tasks performed by a service animal must be directly related to the individual's disability... [T]he provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition." 28 C.F.R. s. 35.104.

⁷ 28 C.F.R. ss. 35.136(g) and 36.302(c)(7).

⁸ 28 C.F.R. ss. 35.136(b) and 36.302(c)(2).

⁹ 49 U.S.C. s. 41705.

¹⁰ *Id.*

¹¹ 49 U.S.C. s. 41713.

¹² 14 C.F.R. s. 382.117

¹³ 42 U.S.C. s. 3601, *et seq.*

¹⁴ Under the FHA, the definition of the term "handicap" mirrors the definition of the term "disability" under the ADA. *See* 42 U.S.C. s. 3602(h) and 3604(f). *See supra*, fn 2. Nevertheless, the United States Department of Justice and the United States Department of Housing and Urban Development, who jointly administer the FHA under 42 U.S.C. ss. 3614(a) and 3612(a), contend that ADA's definition of "service animals" should not inform the FHA's broader definition of assistance animals. *See Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities*, 75 Fed. Reg. 56236, 2010 WL 3561890, (Sept 15, 2010); *Pet Ownership for the Elderly and Persons with Disabilities*, 73 Fed. Reg. 63834, 2008 WL 4690497 (Oct. 27, 2008).

¹⁵ 42 U.S.C. s. 3604(f).

the use of an assistance animal, to a disabled person may constitute a violation of the prohibition on discrimination based on a handicap.¹⁶ Accommodation of untrained emotional support animals also may be required under the FHA if such accommodation is reasonably necessary to allow a person with a handicap an equal opportunity to enjoy and use housing.¹⁷

Florida Service Animal Law

Florida law provides that an individual with a disability¹⁸ is entitled to equal privileges of access in public accommodations,¹⁹ public employment,²⁰ and housing accommodations.²¹ An individual with a disability has the right to be accompanied by a trained service animal²² in all areas of public accommodations that the public is normally allowed to occupy.²³ A trainer of a service animal, while engaged in the training of the animal, has the same rights of access and obligations of liability for damage as an individual with a disability who is accompanied by a service animal.²⁴ Public accommodations are not required to modify or provide any vehicle, premises, facility, or service to a higher degree of accommodation than is required for a person not so disabled.²⁵

Documentation that a service animal is trained is not a precondition for providing service to a person accompanied by a service animal.²⁶ A public accommodation may ask an individual with a service animal if the animal is a service animal and what tasks the animal has been trained to perform.²⁷ A public accommodation may remove a service animal if the animal poses a direct threat to the health and safety of others. Allergies and fear of animals are not sufficient for removal.²⁸ While no deposit may be required of a disabled individual as a precondition of allowing that person to be accompanied by a service animal, the individual is responsible for the care of the animal and for damage caused by the animal.²⁹ If a service animal is removed by the public accommodation, it must provide the disabled individual the option of continuing access to the public accommodation without having the service animal on the premises.³⁰

Any person who denies or interferes with the rights of access to public accommodations, or otherwise interferes with the rights, of a person with a disability or a trainer of a service animal while engaged in

¹⁶ See 24 C.F.R. ss. 5.303 and 960.705.

¹⁷ *Janush v. Charities Housing Development Corp.*, 169 F.Supp.2d 1133, 1136 (N.D. Cal. 2000) (denying a motion to dismiss a claim to permit keeping birds and cats as emotional support animals because “plaintiff has adequately plead that she is handicapped, that defendants knew of her handicap, that accommodation of the handicap may be necessary and that defendants refused to make such accommodation...”); *Fair Housing of the Dakotas, Inc. v. Goldmark Property Management, Inc.*, 778 F.Supp.2d 1028, 1036 (the court held that “the FHA encompasses all types of assistance animals regardless of training, including those that ameliorate a physical disability and those that ameliorate a mental disability.”)

¹⁸ The term “individual with a disability” means a person who is deaf, hard of hearing, blind, visually impaired, or otherwise physically disabled. Section 413.08(1)(b), F.S.

¹⁹ Section 413.08(2), F.S. The term “public accommodation” means a common carrier, airplane, motor vehicle, railroad train, motor bus, streetcar, boat, or other public conveyance or mode of transportation; hotel; lodging place; place of public accommodation, amusement, or resort; and other places to which the general public is invited. Section 413.08(1)(c), F.S.

²⁰ Section 413.08(5), F.S.

²¹ Section 413.08(6), F.S. The term “housing accommodation” means any real property or portion thereof which is used or occupied, or intended, arranged, or designed to be used or occupied, as the home, residence, or sleeping place of one or more persons, but does not include any single-family residence, the occupants of which rent, lease, or furnish for compensation not more than one room therein. Section 413.08(1)(a), F.S.

²² The term “service animal” means an animal that is trained to perform tasks for an individual with a disability. The tasks may include, but are not limited to, guiding a person who is visually impaired or blind, alerting a person who is deaf or hard of hearing, pulling a wheelchair, assisting with mobility or balance, alerting and protecting a person who is having a seizure, retrieving objects, or performing other special tasks. A service animal is not a pet. Section 413.08(1)(d), F.S.

²³ Section 413.08(3), F.S.

²⁴ Section 413.08(8), F.S.

²⁵ Section 413.08(2), F.S.

²⁶ Section 413.08(3)(a), F.S.

²⁷ *Id.*

²⁸ Section 413.08(3)(e), F.S.

²⁹ Section 413.08(3)(b) and (c), F.S.

³⁰ Section 413.08(3) (e), F.S.

the training of such an animal, commits a second degree misdemeanor,³¹ punishable by imprisonment of up to 60 days or a fine not to exceed \$500.³²

It is the policy of the state that individuals with a disability be employed by the state or its subdivisions, or in other employment funded in whole or in part by public funds. An individual with a disability may not be refused employment on the basis of disability alone, unless it is shown that the particular disability prevents the performance of the work involved.³³ A covered employer who discriminates in employment against a person with a disability commits a second degree misdemeanor, unless it is shown that the particular disability prevents the satisfactory performance of the work involved.³⁴

An individual with a disability is entitled to rent, lease, or purchase any housing accommodations subject to the same conditions that are applicable to all persons.³⁵ An individual with a disability who has a service animal is entitled to full and equal access to all housing accommodations, and may not be required to pay extra compensation for such animal. The individual is liable for any harm to the premises or another person on the premises caused by the animal.³⁶

Effect of the Bill

The bill revises the definition of the term “individual with a disability” to add a person with a physical or mental impairment that substantially limits one or more major life activities. A “physical or mental impairment” is defined, in part, as a physiological disorder that affects one or more bodily functions, or a mental or psychological disorder as specified by the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association. The bill also defines the term “major life activity” as a function such as caring for one’s self, performing manual tasks, walking, hearing, seeing, hearing, speaking, breathing, learning, and working.

The bill specifically includes within the definition of “public accommodation” a timeshare that is a transient public lodging establishment as defined in s. 509.013, F.S.³⁷

The bill expands the definition of “service animal” to add animals trained to work or perform tasks to assist with psychiatric, intellectual, or other mental disabilities. The work or tasks performed for the purpose of the definition must be directly related to the disability,³⁸ and do not include any crime-deterrent effect due to an animal’s presence or the provision of emotional support, well-being, comfort, or companionship. The bill specifies that for subsections (2), (3), and (4) of s. 413.08, F.S., a service animal is limited to a dog or miniature horse. However, the bill clarifies that the term “service animal” as

³¹ Section 413.08(4), F.S.

³² A second degree misdemeanor is punishable by up to 60 days in jail and a \$500 fine. Sections 775.082 and 775.083, F.S.

³³ Section 413.08(5), F.S.

³⁴ Section 413.08(7), F.S.

³⁵ Section 413.08(6), F.S.

³⁶ Section 413.08(6)(b), F.S.

³⁷ The term “transient public lodging establishment” means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for a period of at least 30 days or one calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for a period of at least 30 days or one calendar month. Section 509.013(4)(a)1., F.S.

³⁸ The bill provides that the work or tasks a service animal may perform include, but are not limited to, guiding an individual who is visually impaired or blind, alerting an individual who is deaf or hard of hearing, pulling a wheelchair, assisting with mobility or balance, alerting and protecting an individual who is having a seizure, retrieving objects, alerting an individual to the presence of allergens, providing physical support and assistance with balance and stability to an individual with a mobility disability, helping an individual with a psychiatric or neurological disability by preventing or interrupting impulsive or destructive behaviors, reminding an individual with mental illness to take prescribed medications, calming an individual with posttraumatic stress disorder during an anxiety attack, or doing other specific work or performing other special tasks.

applied to an air carrier covered by the federal Air Carrier Access Act of 1986 has the same meaning as provided in that act and rules promulgated to implement it.³⁹

The bill requires a public accommodation to modify its policies, practices, and procedures to permit use of a service animal by a person with a disability. The bill also provides that a service animal must be kept under the control of its handler. Specifically, the service animal must have a harness, leash, or other tether. The service animal must be under the handler's control by means of voice control, signals, or other effective means if the handler is unable to use a harness, leash, or other tether, because of a disability or because the use of such would interfere with the service animal's safe, effective performance of work or tasks.

A public accommodation may remove the animal if it is not under the handler's control and the handler does not take effective measures to control it, the animal is not housebroken, or the animal's behavior poses a serious threat to others. A public accommodation may not ask about the nature or extent of an individual's disability in order to determine whether an animal is a service animal or pet, but it may ask whether an animal is a service animal required because of a disability and what work the animal has been trained to perform.

The bill modifies current criminal penalty provisions applicable to any person who interferes with the admittance to or enjoyment of a public accommodation or, with regard to a public accommodation, otherwise interferes with the rights of an individual with a disability or the trainer of a service animal while engaged in the training of an animal. It requires the person to also perform 30 hours of community service for an organization that serves individuals with disabilities or for another entity, at the discretion of the court, to be completed in not more than six months.

The bill clarifies that s. 413.08, F.S., which provides that an individual with a disability is entitled to access to housing accommodations on the same conditions applicable to all persons, does not limit the rights or remedies of a housing accommodation or an individual with a disability that are granted by federal law or another law of this state with regard to other assistance animals.

Finally, the bill provides that it is a second degree misdemeanor for a person to knowingly and willfully misrepresent oneself as using a service animal and being qualified to use a service animal, or as a trainer of a service animal, punishable by imprisonment of up to 60 days or a fine not to exceed \$500.⁴⁰ In addition, such person must perform 30 hours of community service for an organization that serves individuals with disabilities or another entity, at the discretion of the court, to be completed in not more than six months.

B. SECTION DIRECTORY:

Section 1 amends s. 413.08, F.S., relating to service animals and the rights and responsibilities of an individual with a disability.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

³⁹ Federal regulations provide that identification cards, written documentation, presence of harnesses, tags, or the credible verbal assurances of a qualified individual with a disability using the animal may all demonstrate that an animal is a service animal. 14 C.F.R. s. 382.117(d).

⁴⁰ Sections 775.082(4)(b) and 775.083(1)(e), F.S.

1. Revenues:

This bill does not appear to have a fiscal impact on state government revenues

2. Expenditures:

See Fiscal Comments section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

See Fiscal Comments section.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

The bill provides that knowingly and willfully misrepresenting oneself to be qualified to use a service animal or to be a trainer of a service animal is a second degree misdemeanor. The fiscal impact associated with the new penalty is likely to be insignificant.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor 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.

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2015

1 A bill to be entitled
 2 An act relating to service animals; amending s.
 3 413.08, F.S.; providing and revising definitions;
 4 requiring a public accommodation to permit use of a
 5 service animal by an individual with a disability
 6 under certain circumstances; providing conditions for
 7 a public accommodation to exclude or remove a service
 8 animal; revising penalties for certain persons or
 9 entities who interfere with use of a service animal in
 10 specified circumstances; providing a penalty for
 11 knowing and willful misrepresentation with respect to
 12 use or training of a service animal; providing an
 13 effective date.

14
 15 Be It Enacted by the Legislature of the State of Florida:

16
 17 Section 1. Section 413.08, Florida Statutes, is amended to
 18 read:

19 413.08 Rights and responsibilities of an individual with a
 20 disability; use of a service animal; prohibited discrimination
 21 in public employment, public accommodations, and ~~or~~ housing
 22 accommodations; penalties.—

23 (1) As used in this section and s. 413.081, the term:

24 (a) "Housing accommodation" means any real property or
 25 portion thereof which is used or occupied, or intended,
 26 arranged, or designed to be used or occupied, as the home,

27 residence, or sleeping place of one or more persons, but does
 28 not include any single-family residence, the occupants of which
 29 rent, lease, or furnish for compensation not more than one room
 30 therein.

31 (b) "Individual with a disability" means a person who has
 32 a physical or mental impairment that substantially limits one or
 33 more major life activities of the individual ~~is deaf, hard of~~
 34 ~~hearing, blind, visually impaired, or otherwise physically~~
 35 ~~disabled~~. As used in this paragraph, the term:

36 1. "Major life activity" means a function such as caring
 37 for one's self, performing manual tasks, walking, seeing,
 38 hearing, speaking, breathing, learning, and working ~~"Hard of~~
 39 ~~hearing" means an individual who has suffered a permanent~~
 40 ~~hearing impairment that is severe enough to necessitate the use~~
 41 ~~of amplification devices to discriminate speech sounds in verbal~~
 42 ~~communication.~~

43 2. "Physical or mental impairment" means:

44 a. A physiological disorder or condition, disfigurement,
 45 or anatomical loss that affects one or more bodily functions; or

46 b. A mental or psychological disorder that meets one of
 47 the diagnostic categories specified in the most recent edition
 48 of the Diagnostic and Statistical Manual of Mental Disorders
 49 published by the American Psychiatric Association, such as an
 50 intellectual or developmental disability, organic brain
 51 syndrome, traumatic brain injury, posttraumatic stress disorder,
 52 or an emotional or mental illness ~~"Physically disabled" means~~

53 ~~any person who has a physical impairment that substantially~~
 54 ~~limits one or more major life activities.~~

55 (c) "Public accommodation" means a common carrier,
 56 airplane, motor vehicle, railroad train, motor bus, streetcar,
 57 boat, or other public conveyance or mode of transportation;
 58 hotel; a timeshare that is a transient public lodging
 59 establishment as defined in s. 509.013; lodging place; place of
 60 public accommodation, amusement, or resort; and other places to
 61 which the general public is invited, subject only to the
 62 conditions and limitations established by law and applicable
 63 alike to all persons.

64 (d) "Service animal" means an animal that is trained to do
 65 work or perform tasks for an individual with a disability,
 66 including a physical, sensory, psychiatric, intellectual, or
 67 other mental disability. The work done or tasks performed must
 68 be directly related to the individual's disability and may
 69 include, but are not limited to, guiding an individual ~~a person~~
 70 who is visually impaired or blind, alerting an individual ~~a~~
 71 ~~person~~ who is deaf or hard of hearing, pulling a wheelchair,
 72 assisting with mobility or balance, alerting and protecting an
 73 individual ~~a person~~ who is having a seizure, retrieving objects,
 74 alerting an individual to the presence of allergens, providing
 75 physical support and assistance with balance and stability to an
 76 individual with a mobility disability, helping an individual
 77 with a psychiatric or neurological disability by preventing or
 78 interrupting impulsive or destructive behaviors, reminding an

79 individual with mental illness to take prescribed medications,
 80 calming an individual with posttraumatic stress disorder during
 81 an anxiety attack, or doing other specific work or performing
 82 other special tasks. A service animal is not a pet. For purposes
 83 of subsections (2), (3), and (4), the term "service animal" is
 84 limited to a dog or miniature horse, except that the term, as
 85 applied to an air carrier covered by the Air Carrier Access Act
 86 of 1986, 49 U.S.C. s. 41705, shall be as provided in the act and
 87 by regulations adopted by the United States Department of
 88 Transportation that implement the act. The crime-deterrent
 89 effect of an animal's presence and the provision of emotional
 90 support, well-being, comfort, or companionship do not constitute
 91 work or tasks for purposes of this definition.

92 (2) An individual with a disability is entitled to full
 93 and equal accommodations, advantages, facilities, and privileges
 94 in all public accommodations. A public accommodation must modify
 95 its policies, practices, and procedures to permit use of a
 96 service animal by an individual with a disability. This section
 97 does not require any person, firm, business, or corporation, or
 98 any agent thereof, to modify or provide any vehicle, premises,
 99 facility, or service to a higher degree of accommodation than is
 100 required for a person not so disabled.

101 (3) An individual with a disability has the right to be
 102 accompanied by a service animal in all areas of a public
 103 accommodation that the public or customers are normally
 104 permitted to occupy.

105 (a) The service animal must be under the control of its
 106 handler and must have a harness, leash, or other tether, unless
 107 either the handler is unable because of a disability to use a
 108 harness, leash, or other tether, or the use of a harness, leash,
 109 or other tether would interfere with the service animal's safe,
 110 effective performance of work or tasks, in which case the
 111 service animal must be otherwise under the handler's control by
 112 means of voice control, signals, or other effective means.

113 (b)~~(a)~~ Documentation that the service animal is trained is
 114 not a precondition for providing service to an individual
 115 accompanied by a service animal. A public accommodation may not
 116 ask about the nature or extent of an individual's disability. To
 117 determine the difference between a service animal and a pet, a
 118 public accommodation may ask if an animal is a service animal
 119 required because of a disability and what work or what tasks the
 120 animal has been trained to perform ~~in order to determine the~~
 121 ~~difference between a service animal and a pet.~~

122 (c)~~(b)~~ A public accommodation may not impose a deposit or
 123 surcharge on an individual with a disability as a precondition
 124 to permitting a service animal to accompany the individual with
 125 a disability, even if a deposit is routinely required for pets.

126 (d)~~(e)~~ An individual with a disability is liable for
 127 damage caused by a service animal if it is the regular policy
 128 and practice of the public accommodation to charge nondisabled
 129 persons for damages caused by their pets.

130 ~~(e)(d)~~ The care or supervision of a service animal is the
 131 responsibility of the individual owner. A public accommodation
 132 is not required to provide care or food or a special location
 133 for the service animal or assistance with removing animal
 134 excrement.

135 ~~(f)(e)~~ A public accommodation may exclude or remove any
 136 animal from the premises, including a service animal, if the
 137 animal is out of control and the animal's handler does not take
 138 effective action to control it, the animal is not housebroken,
 139 or the animal's behavior poses a direct threat to the health and
 140 safety of others. Allergies and fear of animals are not valid
 141 reasons for denying access or refusing service to an individual
 142 with a service animal. If a service animal is excluded or
 143 removed for being a direct threat to others, the public
 144 accommodation must provide the individual with a disability the
 145 option of continuing access to the public accommodation without
 146 having the service animal on the premises.

147 (4) Any person, firm, or corporation, or the agent of any
 148 person, firm, or corporation, who denies or interferes with
 149 admittance to, or enjoyment of, a public accommodation or, with
 150 regard to a public accommodation, otherwise interferes with the
 151 rights of an individual with a disability or the trainer of a
 152 service animal while engaged in the training of such an animal
 153 pursuant to subsection (8), commits a misdemeanor of the second
 154 degree, punishable as provided in s. 775.082 or s. 775.083 and
 155 must perform 30 hours of community service for an organization

156 that serves individuals with disabilities, or for another entity
 157 or organization at the discretion of the court, to be completed
 158 in not more than 6 months.

159 (5) It is the policy of this state that an individual with
 160 a disability be employed in the service of the state or
 161 political subdivisions of the state, in the public schools, and
 162 in all other employment supported in whole or in part by public
 163 funds, and an employer may not refuse employment to such a
 164 person on the basis of the disability alone, unless it is shown
 165 that the particular disability prevents the satisfactory
 166 performance of the work involved.

167 (6) An individual with a disability is entitled to rent,
 168 lease, or purchase, as other members of the general public, any
 169 housing accommodations offered for rent, lease, or other
 170 compensation in this state, subject to the conditions and
 171 limitations established by law and applicable alike to all
 172 persons.

173 (a) This section does not require any person renting,
 174 leasing, or otherwise providing real property for compensation
 175 to modify her or his property in any way or provide a higher
 176 degree of care for an individual with a disability than for a
 177 person who is not disabled.

178 (b) An individual with a disability who has a service
 179 animal or who obtains a service animal is entitled to full and
 180 equal access to all housing accommodations provided for in this
 181 section, and such a person may not be required to pay extra

182 compensation for such ~~the service~~ animal. However, such a person
 183 is liable for any damage done to the premises or to another
 184 person on the premises by the ~~such an~~ animal. A housing
 185 accommodation may request proof of compliance with vaccination
 186 requirements.

187 (c) This subsection does not limit the rights or remedies
 188 of a housing accommodation or an individual with a disability
 189 that are granted by federal law or another law of this state
 190 with regard to other assistance animals.

191 (7) An employer covered under subsection (5) who
 192 discriminates against an individual with a disability in
 193 employment, unless it is shown that the particular disability
 194 prevents the satisfactory performance of the work involved, or
 195 any person, firm, or corporation, or the agent of any person,
 196 firm, or corporation, providing housing accommodations as
 197 provided in subsection (6) who discriminates against an
 198 individual with a disability, commits a misdemeanor of the
 199 second degree, punishable as provided in s. 775.082 or s.
 200 775.083.

201 (8) Any trainer of a service animal, while engaged in the
 202 training of such an animal, has the same rights and privileges
 203 with respect to access to public facilities and the same
 204 liability for damage as is provided for those persons described
 205 in subsection (3) accompanied by service animals.

206 (9) A person who knowingly and willfully misrepresents
 207 herself or himself, through conduct or verbal or written notice,

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208 | as using a service animal and being qualified to use a service
209 | animal or as a trainer of a service animal commits a misdemeanor
210 | of the second degree, punishable as provided in s. 775.082 or s.
211 | 775.083 and must perform 30 hours of community service for an
212 | organization that serves individuals with disabilities, or for
213 | another entity or organization at the discretion of the court,
214 | to be completed in not more than 6 months.

215 | Section 2. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GVOPS 15-01 OGSR Public Transit Providers
SPONSOR(S): Government Operations Subcommittee
TIED BILLS: IDEN./SIM. BILLS: SB 7000

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee		Williamson <i>RAW</i>	Williamson <i>RAW</i>

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 Florida Public Transit Act provides, in part, that the Department of Transportation (department) must develop a statewide plan that provides for public transit and intercity bus service needs. The plan must incorporate plans adopted by local and regional planning agencies that are consistent, to the maximum extent feasible, with adopted strategic policy plans and approved local government comprehensive plans for the region and units of local government covered by the plan. In addition, the department must coordinate activities between public and private entities on matters relating to public transit and intercity bus services. Public transit systems may be governmentally owned or privately owned.

Current law provides a public record exemption for certain information held by a public transit provider. Specifically, personal identifying information held by a public transit provider for the purpose of facilitating the prepayment of transit fares or the acquisition of a prepaid transit fare card is exempt from public record requirements.

The bill reenacts the public record exemption, which will repeal on October 2, 2015, if this bill does not become law. It also transfers the public record exemption to the Florida Public Transit Act.

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 Act¹ (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 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.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.

Public Transit

The Florida Public Transit Act⁴ provides, in part, that the Department of Transportation (department) must develop a statewide plan that provides for public transit and intercity bus service needs at least five years in advance.⁵ The plan must incorporate plans adopted by local and regional planning agencies that are consistent, to the maximum extent feasible, with adopted strategic policy plans and approved local government comprehensive plans for the region and units of local government covered by the plan.⁶ In addition, the department must coordinate activities between public and private entities on matters relating to public transit and intercity bus services.⁷

Section 341.031(6), F.S., defines the term "public transit" to mean

[T]he transporting of people by conveyances, or systems of conveyances, traveling on land or water, local or regional in nature, and available for use by the public. Public transit systems may be either governmentally owned or privately

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 and exempt records.

⁴ Sections 341.011 – 341.061, F.S.

⁵ Section 341.041(1), F.S.

⁶ *Id.*

⁷ Section 341.041(6), F.S.

owned. Public transit specifically includes those forms of transportation commonly known as “paratransit.”⁸

Public Record Exemption under Review

In 2010, the Legislature created a public record exemption for certain information held by a public transit provider.⁹ Specifically, personal identifying information held by a public transit provider for the purpose of facilitating the prepayment of transit fares or the acquisition of a prepaid transit fare card is exempt¹⁰ from public record requirements. A public transit provider is a public agency providing public transit service, including rail authorities created in chapter 343, F.S.¹¹

Chapter 2010-196, L.O.F., provides that the personal identifying information is made exempt from public record requirements in order to put individuals choosing a prepayment option for transit fares on equal footing with public transit users paying fares in cash.¹² The 2010 public necessity statement provides that “[a]llowing individuals to use a prepaid transit fare card is a more efficient and effective system for collecting transit fares, and not only saves individuals time in accessing the transit system in comparison with individuals who pay cash, but also costs significantly less to administer.”¹³ In addition, the public necessity statement finds that without the public record exemption the effective and efficient administration of the prepayment option for public transit programs would be hindered because individuals would be less inclined to prepay for public transit services if their personal information was made publicly available.¹⁴

Pursuant to the Open Government Sunset Review Act, the public record exemption will repeal on October 2, 2015, unless reenacted by the Legislature.¹⁵

During the 2014 interim, subcommittee staff sent questionnaires to public transit providers as part of the Open Government Sunset Review process.¹⁶ Public transit providers were asked if their agency recommended that the Legislature repeal the public record exemption under review, reenact the public record exemption, or reenact it with changes. Of those responding, some public transit providers did not answer the question, others indicated they currently do not offer prepaid transit services and therefore have no recommendation, while the remaining respondents recommended reenacting the public record exemption.¹⁷

Effect of the Bill

The bill removes the repeal date, thereby reenacting the public record exemption for personal identifying information held by a public transit provider for the purpose of facilitating the prepayment of

⁸ Section 341.041(5), F.S., defines the term “paratransit” to mean “those elements of public transit which provide service between specific origins and destinations selected by the individual user with such service being provided at a time that is agreed upon by the user and the provider of the service. Paratransit service is provided by taxis, limousines, ‘dial-a-ride’ buses, and other demand-responsive operations that are characterized by their nonscheduled, nonfixed route nature.”

⁹ Chapter 2010-196, L.O.F.; codified as s. 341.3026, 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 341.031(1), F.S.

¹² *See* s. 2, chapter 2010-196, L.O.F., providing the public necessity statement.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Section 341.3026(2), F.S.

¹⁶ Staff sent questionnaires to 32 public transit providers. Sixteen provided responses, while one questionnaire was returned as undeliverable. Responses are on file with the Government Operations Subcommittee.

¹⁷ *Id.* at question 7.

transit fares or the acquisition of a prepaid transit fare card. The bill transfers s. 341.3026, F.S., and renumbers it as s. 341.0521, F.S., in order to include the public record exemption in the Florida Public Transit Act.¹⁸ By relocating the public record exemption to the Florida Public Transit Act, the cross-reference to the definition of “public transit provider” is no longer necessary because the definition in the act will now apply to the public record exemption.¹⁹

B. SECTION DIRECTORY:

Section 1 transfers, renumbers, and amends s. 341.3026, F.S., to save from repeal the public record exemption for certain personal identifying information held by a public transit provider.

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

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 require counties or municipalities to spend funds or take an 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.

¹⁸ Sections 341.011 – 341.061, F.S.

¹⁹ Section 341.031, F.S., provides definitions for the Florida Public Transit Act, which definitions are limited to ss. 341.011 – 341.061, F.S.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

PCB GVOPS 15-01

ORIGINAL

2015

1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; transferring, renumbering, and
 4 amending s. 341.3026, F.S., relating to an exemption
 5 from public record requirements for certain
 6 information held by a public transit provider;
 7 removing superfluous language; removing the scheduled
 8 repeal of the exemption; providing an effective date.

9
 10 Be It Enacted by the Legislature of the State of Florida:

11
 12 Section 1. Section 341.3026, Florida Statutes, is
 13 transferred and renumbered as section 341.0521, Florida
 14 Statutes, and amended to read:

15 341.0521 ~~341.3026~~ Public records exemption.—

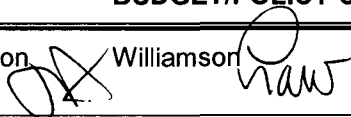
16 ~~(1)~~ Personal identifying information held by a public
 17 transit provider, ~~as defined in s. 341.031,~~ for the purpose of
 18 facilitating the prepayment of transit fares or the acquisition
 19 of a prepaid transit fare card or similar device is exempt from
 20 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

21 ~~(2) This section is subject to the Open Government Sunset~~
 22 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~
 23 ~~on October 2, 2015, unless reviewed and saved from repeal~~
 24 ~~through reenactment by the Legislature.~~

25 Section 2. This act shall take effect October 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GVOPS 15-02 OGSR Commission for Independent Education
SPONSOR(S): Government Operations Subcommittee
TIED BILLS: IDEN./SIM. BILLS: SB 7004

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

The Commission for Independent Education (commission) is created within the Department of Education. It approves applications submitted by independent postsecondary education institutions for licensure to operate in the state and to award diplomas and degrees. The commission is authorized to deny, revoke, or place on probation any license that it has granted and to investigate and initiate disciplinary proceedings against licensed institutions suspected of violating chapter 1005, F.S., or commission rules. The results of an investigation are reported to a probable cause panel.

Current law provides a public record exemption for certain commission investigatory records. Specifically, investigatory records held by the commission in conjunction with an investigation are exempt from public record requirements for a period not to exceed 10 days after the panel makes a determination regarding probable cause. Those portions of a meeting of a probable cause panel at which exempt investigatory records are discussed are exempt from the public meeting requirements. In addition, the recording of a closed portion of a meeting and the minutes and findings of such meeting are exempt from public record requirements for a period not to exceed 10 days after the panel makes a determination of probable cause.

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 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 and 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.

Commission for Independent Education

The Commission for Independent Education (commission) is created within the Department of Education (department).⁴ The department serves as the administrative agent for the commission, but the commission otherwise exercises independently all powers, duties, and functions prescribed by law.⁵ The commission functions in matters concerning independent postsecondary educational institutions in consumer protection, program improvement, and licensure for institutions under its purview.⁶ The commission consists of seven members who are residents of this state. Commission members are appointed by the Governor and subject to confirmation by the Senate.⁷ The members serve 3-year terms.⁸ The commission must meet at least four times per fiscal year.⁹

The commission approves applications submitted by independent postsecondary education institutions for licensure to operate in the state and to award diplomas and degrees.¹⁰ An institution under the jurisdiction of the commission may not operate a program unless specific authority is granted in its

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 and exempt records.

⁴ Section 1005.21(1), F.S.

⁵ *Id.*

⁶ Section 1005.21(2), F.S.

⁷ *Id.*

⁸ Section 1005.21(3), F.S.

⁹ Section 1005.21(4), F.S.

¹⁰ Sections 1005.21(1) and 1005.31 F.S.

license.¹¹ According to the commission's annual report, 436 degree-granting institutions are under the jurisdiction of the commission, and 582 licensed institutions only offer non-degree programs.¹²

The commission is authorized to deny, revoke, or place on probation any license that it has granted and to investigate and initiate disciplinary proceedings against licensed institutions suspected of violating chapter 1005, F.S., or commission rules.¹³ The results of an investigation are reported to a probable cause panel. The determination for probable cause must be made by a majority vote of the probable cause panel.¹⁴ After the panel makes a finding of probable cause, the commission may issue an administrative complaint and prosecute such complaint under chapter 120, F.S.¹⁵

Public Record and Public Meeting Exemptions under Review

In 2005, the Legislature created a public record and public meeting exemption for the commission.¹⁶ Investigatory records held by the commission in conjunction with an investigation are exempt¹⁷ from public record requirements for a period not to exceed 10 days after the panel makes a determination regarding probable cause. That portion of a meeting of a probable cause panel at which exempt records are discussed is exempt from public meeting requirements.

In 2010, the Legislature amended the public meeting exemption to require a recording to be made of the closed portion of the probable cause panel meeting and to require the commission to maintain the recording.¹⁸ In addition, the Legislature expanded the public record exemption to include the recording of the closed portion of the meeting, and the minutes and findings of such meeting, for a period not to exceed 10 days after the panel makes a determination regarding probable cause.

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.¹⁹

During the 2014 interim, subcommittee staff sent a questionnaire to the commission as part of the Open Government Sunset Review process. As part of its questionnaire response, the commission recommended reenactment of the public record and public meeting exemptions under review.²⁰

Effect of the Bill

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

B. SECTION DIRECTORY:

Section 1 amends s. 1005.38, F.S., to save from repeal the public record and public meeting exemptions of the Commission for Independent Education.

¹¹ Section 1005.31(8), F.S.

¹² A copy of the 2013-2014 annual report can be found online at: <http://www.fldoe.org/policy/cie> (last visited January 30, 2015).

¹³ Sections 1005.31(6) and 1005.38, F.S.

¹⁴ Section 1005.38(6)(d), F.S.

¹⁵ *Id.*

¹⁶ Chapter 2005-203, L.O.F.; codified as s. 1005.38(6)(b), F.S.

¹⁷ 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).

¹⁸ Chapter 2010-77, L.O.F.; codified as s. 1005.38(6)(b)1. and 2., F.S.

¹⁹ Section 1005.38(6)(b)3., F.S.

²⁰ The commission questionnaire response is on file with the Government Operations Subcommittee.

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

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

Not applicable.

1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; amending s. 1005.38, F.S., relating
 4 to exemptions from public record and public meeting
 5 requirements for investigatory records held by and
 6 portions of meetings conducted by the Commission for
 7 Independent Education in disciplinary proceedings;
 8 removing the scheduled repeal of the exemptions;
 9 providing an effective date.

10
 11 Be It Enacted by the Legislature of the State of Florida:

12
 13 Section 1. Paragraph (b) of subsection (6) of section
 14 1005.38, Florida Statutes, is amended to read:

15 1005.38 Actions against a licensee and other penalties.—

16 (6) The commission may conduct disciplinary proceedings
 17 through an investigation of any suspected violation of this
 18 chapter or any rule of the commission, including a finding of
 19 probable cause and making reports to any law enforcement agency
 20 or regulatory agency.

21 (b)1. All investigatory records held by the commission in
 22 conjunction with an investigation conducted pursuant to this
 23 subsection are exempt from s. 119.07(1) and s. 24(a), Art. I of
 24 the State Constitution for a period not to exceed 10 days after
 25 the panel makes a determination regarding probable cause.

26 2.a. Those portions of meetings of the probable cause

27 | panel at which records made exempt pursuant to subparagraph 1.
 28 | are discussed are exempt from s. 286.011 and s. 24(b), Art. I of
 29 | the State Constitution. The closed portion of a meeting must be
 30 | recorded and no portion of the closed meeting may be off the
 31 | record. The recording shall be maintained by the commission.

32 | b. The recording of a closed portion of a meeting and the
 33 | minutes and findings of such meeting are exempt from s.
 34 | 119.07(1) and s. 24(a), Art. I of the State Constitution for a
 35 | period not to exceed 10 days after the panel makes a
 36 | determination regarding probable cause.

37 | ~~3. This paragraph is subject to the Open Government Sunset~~
 38 | ~~Review Act in accordance with s. 119.15 and shall stand repealed~~
 39 | ~~on October 2, 2015, unless reviewed and saved from repeal~~
 40 | ~~through reenactment by the Legislature.~~

41 | Section 2. This act shall take effect October 1, 2015.