

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1281 Public Records County and Municipal Attorneys
SPONSOR(S): Smith
TIED BILLS: None **IDEN./SIM. BILLS:** SB 2180

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>State Administration</u>	<u>7 Y, 0 N</u>	<u>Williamson</u>	<u>Everhart</u>
2) <u>Judiciary</u>		<u>Thomas</u>	<u>Havlicak</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

This bill creates a public records exemption for the home addresses, telephone numbers, social security numbers, and photographs of certain local government attorneys and their spouses and children. It also creates an exemption for the name of the spouse or child, the place of employment of the spouse or child, and the name and location of the school or day care facility attended by such child.

An agency, other than the employing agency, that is the custodian of such information must maintain the confidential and exempt status of that information only if such attorney or the attorney's employer submits a written request to the custodial agency.

This bill provides for future review and repeal of the exemption and provides a statement of public necessity.

This bill appears to have a minimal fiscal impact on state and local governments. See "FISCAL COMMENTS" section.

This bill requires a two-thirds vote of the members present and voting for passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

Not applicable.

B. EFFECT OF PROPOSED CHANGES:

Background

Current law provides a number of public records exemptions for certain identifying and location information regarding police officers, investigators, firefighters, judges, and attorneys dispersed throughout the Florida Statutes. The exemptions also protect identifying and location information regarding the spouses and children of such employees. There is not, however, such exemption for local government attorneys responsible for prosecuting violations of local codes or ordinances.

Effect of Bill

This bill creates a public records exemption for the:

- Home addresses, telephone numbers, social security numbers, and photographs of current or former county attorneys, assistant county attorneys municipal attorneys, and assistant municipal attorneys responsible for prosecuting violations of local codes or ordinances;
- Names, home addresses, telephone numbers, social security numbers, photographs, and places of employment of the spouses and children of such attorneys; and
- Names and locations of schools and day care facilities attended by children of such attorneys.

An agency, other than the employing agency, that is the custodian of such information must maintain the confidential and exempt status of that information only if such attorney or the attorney's employer submits a written request to the custodial agency.

This bill provides for future review and repeal of the exemption on October 2, 2009, pursuant to the Open Government Sunset Review Act of 1995. It also provides a statement of public necessity.

C. SECTION DIRECTORY:

Section 1 amends s. 119.07(3)(i), F.S., creating a public records exemption for certain identifying information regarding certain county and municipal attorneys and their spouses and children.

Section 2 provides a statement of public necessity.

Section 3 provides an effective date of October 1, 2004.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. This bill does not create, modify, or eliminate a state revenue source.

2. Expenditures:

Unknown and likely minimal. See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. This bill does not create, modify, or eliminate a local revenue source.

2. Expenditures:

Unknown and likely minimal. See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None. This bill does not regulate the conduct of persons in the private sector.

D. FISCAL COMMENTS:

The public records law in general creates a significant, although unquantifiable, increase in government spending. Government employees must locate requested records, and must examine every requested record to determine if a public records exemption prohibits release of the record. There is likely no measurable fiscal impact to a single public records exemption; the location and examination process remains whether or not a particular public records exemption exists.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not require local governments to spend 1.7 million or more dollars.

2. Other:

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the membership of each house of a newly created public records or public meetings exemption. Thus, this bill requires a two-thirds vote for passage.

This exemption could raise constitutional concerns, because the exemption could be considered overly broad in that it is unclear if the employing agency collects the photographs, social security numbers, and places of employment of the spouse and children, and the name and location of the schools of the children, of such attorneys.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill includes a new public records exemption for the places of employment of the spouses and children of current or former county and municipal attorneys. However, the bill does not create an exemption for the places of employment of current or former county or municipal attorneys themselves.

Public Records Law

Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature may, however, provide by general law for the exemption of records from the requirements of Article I, s. 24(a), Florida 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.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act of 1995¹ provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. Protecting 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; or, 3. Protecting trade or business secrets.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.

¹ Section 119.15, F.S.