

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1880

SPONSOR: Health, Aging, and Long-Term Care Committee and Senator Saunders

SUBJECT: Public Records Exemption

DATE: March 29, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Munroe</u>	<u>Wilson</u>	<u>HC</u>	<u>Fav/CS</u>
2.	<u>Rhea</u>	<u>Wilson</u>	<u>GO</u>	<u>Favorable</u>
3.	_____	_____	<u>RC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill exempts from the Public Records Law the home addresses, telephone numbers, social security numbers, and photographs of active or former emergency medical technicians or paramedics; the home addresses, telephone numbers, social security numbers, photographs, and places of employment of the spouses and children of such emergency medical technicians and paramedics; and the names and locations of schools and day care facilities attended by children of such emergency medical technicians and paramedics.

This exemption is being newly-created and is subject to the two-thirds vote of the members present and voting required by Article I, s. 24 of the State Constitution.

The bill provides the required legislative findings of the public necessity for the creation of the public records exemption. The public records exemption applies to personal information held by an agency before, on, or after the effective date of the exemption. The bill makes the exemption subject to a future review and repeal on October 2, 2009, in accordance with the Open Government Sunset Review Act of 1995.

This bill amends s. 119.07, Florida Statutes, and creates two undesignated sections of law.

II. Present Situation:

Constitutional Access to Public Records and Meetings

Article I, s. 24 of the State Constitution, provides every person with the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf. The section specifically

includes the legislative, executive and judicial branches and each agency or department created under them. It also includes counties, municipalities, and districts, as well as constitutional officers, boards, and commissions or entities created pursuant to law or the State Constitution.

The term “public records” has been defined by the Legislature in s. 119.011(1), F.S., to include:

. . . all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

This definition of public records has been interpreted by the Florida Supreme Court to include all materials made or received by an agency in connection with official business, which are used to perpetuate, communicate or formalize knowledge. *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980). Unless these materials have been made exempt by the Legislature, they are open for public inspection, regardless of whether they are in final form. *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

The State Constitution authorizes exemptions to open government requirements and establishes the means by which these exemptions are to be established. Under Article I, s. 24(c) of the State Constitution, the Legislature may provide by general law for the exemption of records. A law enacting an exemption must state with specificity the public necessity justifying the exemption, be no broader than necessary to accomplish the stated purpose of the law, relate to one subject, and contain only exemptions to public records or meetings requirements. The law enacting an exemption may contain provisions governing enforcement.

Exemptions to public records requirements are strictly construed because the general purpose of open records requirements is to allow Florida’s citizens to discover the actions of their government. *Christy v. Palm Beach County Sheriff’s Office*, 698 So.2d 1365, 1366 (Fla. 4th DCA 1997). The Public Records Act is liberally construed in favor of open government, and exemptions from disclosure are to be narrowly construed so they are limited to their stated purpose. *Krischer v. D’Amato*, 674 So.2d 909, 911 (Fla. 4th DCA 1996); *Seminole County v. Wood*, 512 So.2d 1000, 1002 (Fla. 5th DCA 1987), review denied, 520 So.2d 586 (Fla. 1988); *Tribune Company v. Public Records*, 493 So.2d 480, 483 (Fla. 2d DCA 1986), review denied sub nom., *Gillum v. Tribune Company*, 503 So.2d 327 (Fla. 1987).

There is a difference between records that the Legislature has made exempt from public inspection and those that are exempt and confidential. If the Legislature makes certain records confidential, with no provision for its release such that its confidential status will be maintained, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute. Attorney General Opinion 85-625. If a record is not made confidential but is simply exempt from mandatory disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances. *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

Under s. 119.10, F.S., any public officer violating any provision of this chapter is guilty of a noncriminal infraction, punishable by a fine not exceeding \$500. In addition, any person

willfully and knowingly violating any provision of the chapter is guilty of a first degree misdemeanor, punishable by potential imprisonment not exceeding one year and a fine not exceeding \$1,000. Section 119.02, F.S., also provides a first degree misdemeanor penalty for public officers who knowingly violate the provisions of s. 119.07(1), F.S., relating to the right to inspect public records, as well as suspension and removal or impeachment from office.

An exemption from disclosure requirements does not render a record automatically privileged for discovery purposes under the Florida Rules of Civil Procedure. *Department of Professional Regulation v. Spiva*, 478 So.2d 382 (Fla. 1st DCA 1985). For example, the Fourth District Court of Appeal has found that an exemption for active criminal investigative information did not override discovery authorized by the Rules of Juvenile Procedure and permitted a mother who was a party to a dependency proceeding involving her daughter to inspect the criminal investigative records relating to the death of her infant. *B.B. v. Department of Children and Family Services*, 731 So.2d 30 (Fla. 4th DCA 1999). The Second District Court of Appeal also has held that records that are exempt from public inspection may be subject to discovery in a civil action upon a showing of exceptional circumstances and if the trial court takes all precautions to ensure the confidentiality of the records. *Department of Highway Safety and Motor Vehicles v. Krejci Company Inc.*, 570 So.2d 1322 (Fla. 2d DCA 1990).

In *B.B.*, *infra*, at 34, the Court noted with regard to criminal discovery the following:

In the context of a criminal proceeding, the first district has indicated that “the provisions of Section 119.07, Florida Statutes, are not intended to limit the effect of Rule 3.220, the discovery provisions of the Florida Rules of Criminal Procedure,” so that a public records exemption cannot limit a criminal defendant’s access to discovery. *Ivester v. State*, 398 So.2d 926, 931 (Fla. 1st DCA 1981). Moreover, as the Supreme Court just reiterated in *Henderson v. State*, No. 92,885, 745 So.2d ---, 1999 WL 90142 (Fla. Feb. 18, 1999), “we do not equate the acquisition of public documents under chapter 119 with the rights of discovery afforded a litigant by judicially created rules of procedure.” Slip op. at 6, --- So.2d --- (quoting *Wait v. Florida Power & Light Co.*, 372 So.2d 420, 425 (Fla.1979)).

In a footnote, (*B.B.*, *infra*, at 34 n. 4) the Court also noted:

We note that section 119.07(8), Florida Statutes (1997), provides that section 119.07 is “not intended to expand or limit the provisions of Rule 3.220, Florida Rules of Criminal Procedure, regarding the right and extent of discovery by the state or by a defendant in a criminal prosecution....”

The Open Government Sunset Review Act of 1995

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, establishes a review and repeal process for exemptions to public records or meetings requirements. Under s. 119.15(3)(a), F.S., a law that enacts a new exemption or substantially amends an existing exemption must state that the exemption is repealed at the end of 5 years. Further, a law that enacts or substantially amends an exemption must state that the exemption must be reviewed by the Legislature before the scheduled repeal date. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to

include meetings as well as records. An exemption is not substantially amended if the amendment narrows the scope of the exemption.

In the fifth year after enactment of a new exemption or the substantial amendment of an existing exemption, the exemption is repealed on October 2nd, unless the Legislature acts to reenact the exemption.

Under the requirements of the Open Government Sunset Review Act, an exemption is to be maintained only if:

- The exempted record or meeting is of a sensitive, personal nature concerning individuals;
- The exemption is necessary for the effective and efficient administration of a governmental program; or
- The exemption affects confidential information concerning an entity.

As part of the review process, s. 119.15(4)(a), F.S., requires the consideration of the following specific questions:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?

Further, under the Open Government Sunset Review Act, an exemption may be created or maintained only if it serves an identifiable public purpose. An identifiable public purpose is served if the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, the administration of which would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

The exemption must be no broader than is necessary to meet the public purpose it serves. The Legislature must find that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption.

Personal Identifying Information of Public Employees

Section 119.07(3)(i), F.S., exempts certain personal identifying information associated with various classes of public employees from public disclosure. The section exempts from the Public Records Law the home addresses, telephone numbers, social security numbers, or photographs of: active or former law enforcement personnel, including correctional and correctional probation officers; certain personnel of the Department of Children and Family Services, the Department of Health, the Department of Revenue, and local governments; firefighters; judges; human resource directors; code enforcement officers; and state attorneys. Certain identifying information about the spouses and children of these personnel are also exempt. The public records exemption minimizes the possibility that inmates, offenders, or other individuals will be able to threaten, intimidate, harass, or cause physical harm or other injury to these persons or their family members.

III. Effect of Proposed Changes:

The bill exempts from the Public Records Law the home addresses, telephone numbers, social security numbers, and photographs of active or former emergency medical technicians or paramedics; the home addresses, telephone numbers, social security numbers, photographs, and places of employment of the spouses and children of such emergency medical technicians and paramedics; and the names and locations of schools and day care facilities attended by children of such emergency medical technicians and paramedics.

The bill provides the required legislative findings of the public necessity for the creation of the public records exemption. The exemption is justified because if such information were not confidential, an emergency medical technician or paramedic or a member or members of his or her family could be harmed or threatened with harm by an individual, or a family member of such individual, who was provided emergency medical care which resulted in a negative outcome. The public records exemption applies to personal information held by an agency before, on, or after the effective date of the exemption.

The bill makes the exemption subject to a future review and repeal on October 2, 2009, in accordance with the Open Government Sunset Review Act of 1995.

The bill provides an effective date upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The bill creates a new exemption and is, therefore, subject to a two-thirds vote of the members present and voting as required by Article I, s. 24 of the State Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Creation of this exemption could result in an increase in government spending, though the amount is unquantifiable. When an employee who is covered by the exemption contained in s. 119.07(3)(i), F.S., makes a request of another governmental entity besides his or her employer to maintain the exempt status of his or her name or address or other exempt information, pursuant to the authority provided in the section, that governmental entity must take extra steps to ensure that this information is protected and ensure that the information is not released. These additional measures impact employee productivity because they take time to implement. Further, manual or electronic redaction of exempt information may result in incurred costs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill exempts, among other information, the home addresses and telephone numbers of active or former emergency medical technicians or paramedics and their spouses and children. Exempting this information without personal diligence on the part of emergency medical technicians or paramedics will not significantly increase their security as this information is very often available in telephone books and on the Internet unless an unlisted telephone number is obtained and Internet websites are notified to remove home addresses, maps to the home, and telephone numbers.

VIII. Amendments:

None.