

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1435

Public Records

SPONSOR(S): Barreiro

TIED BILLS: HB 215

IDEN./SIM. BILLS: None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Governmental Operations Committee</u>	<u>6 Y, 0 N</u>	<u>Williamson</u>	<u>Everhart</u>
2) <u>Criminal Justice Committee</u>	<u>5 Y, 0 N</u>	<u>Bond</u>	<u>Kramer</u>
3) <u>State Administration Council</u>	<u>7 Y, 0 N</u>	<u>Williamson</u>	<u>Bussey</u>
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The bill creates a public records exemption for the home addresses, telephone numbers, social security numbers, and photographs of an employee in a forensic discipline. It also creates an exemption for the names, home addresses, telephone numbers, social security numbers, photographs, and places of employment of the spouses and children of those employees, and the names and locations of schools and day care facilities attended by the children.

An agency, other than the employing agency, who is the custodian of the exempt identification and location information, must maintain the exempt status of that information only if the employee or the employer submits a written request to the custodial agency.

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

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill decreases public access to records regarding certain employees of a law enforcement agency or medical examiner's office.

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 those employees. There is not, however, a similar exemption for employees in a forensic discipline.

Effect of Bill

The bill creates a public records exemption for the:

- Home addresses, telephone numbers, social security numbers, and photographs of employees of a law enforcement agency or medical examiner's office, in a forensic discipline recognized by the International Association for Identification (association).¹ The employee must be qualified for active membership in the association.
- Names, home addresses, telephone numbers, social security numbers, photographs, and places of employment of the spouses and children of those employees.
- Names and locations of schools and day care facilities attended by children.

Employees in a forensic discipline are defined as those employees whose primary duties or responsibilities include the collection, examination, preservation, documentation, preparation, or analysis of physical evidence or testimony, or the direct supervisor, quality management supervisor, or command officer. The public records exemption does not apply to administrative support personnel.

An agency, other than the employing agency, who is the custodian of the exempt identification and location information, must maintain the exempt status of that information only if the employee or the employer submits a written request to the custodial agency.

Current law provides a general exemption for social security numbers. Thus, the social security number exemption provided in this bill appears duplicative.

The exemption appears overly broad, in that it creates an exemption from public records requirements for the photos of spouses and children of employees in a forensic discipline, and the name and location of the schools and daycare facilities attended by the children; however, it does not appear that the

¹ Forensic disciplines currently recognized by the association are bloodstain pattern identification, crime scene investigation, firearms/tool mark examination, footwear and tire track examination, forensic art, forensic laboratory analysis, forensic photography and electronic digital imaging, innovative and general techniques, latent print/fingerprint identification, polygraph, questioned documents, voice identification/acoustic analysis, forensic odontology, and ten print fingerprint. <http://www.theiai.org/membership>.

employing agency collects such information.² In addition, the bill creates a public records exemption for photographs of employees in a forensic discipline, yet many of those employees wear photo identification badges.

The bill provides for future review and repeal of the exemption on October 2, 2010, pursuant to the Open Government Sunset Review Act of 1995. It also provides a statement of public necessity.

The bill provides a contingent effective date that is linked to the passage of HB 215. HB 215 expands the membership of the Special Risk Class to include employees in a forensic discipline. As such, the contingent effective date does not appear appropriate. If employees in a forensic discipline need the public records exemption for identification and location information because it will ensure their safety, then it is unclear why the passage of this exemption would be made contingent upon the passage of a bill that changes the retirement class of those employees.

C. SECTION DIRECTORY:

Section 1 amends s. 119.07, F.S., creating a public records exemption for certain employees of a law enforcement agency or medical examiner's office.

Section 2 provides a statement of public necessity.

Section 3 provides a contingent effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

See "FISCAL COMMENTS" section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

See "FISCAL COMMENTS" section.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None. This bill does not affect persons in the private sector.

D. FISCAL COMMENTS:

The bill could create a fiscal impact on state and local governments, because state and local government staff would have to be trained with regards to the categories of information that is exempt from public disclosure versus records that are available for public inspection and copying. State and

² The Florida Association of Forensic Professionals are unaware of any instances in which the employing agency collects photos of the spouse or children, or collects the name and location of the child's school or daycare facility. Email from the Florida Association of Forensic Professionals, February 17, 2005.

local governments could also incur costs associated with redacting exempt information prior to releasing a record.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Two-thirds Vote

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

Overly Broad

The 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 of the spouse and children, and the name and location of the schools or daycare facilities attended by the children. In addition, the bill creates a public records exemption for photographs of employees in a forensic discipline, yet many of those employees wear photo ID badges.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments

The bill provides a contingent effective date that is linked to the passage of HB 215. HB 215 expands the membership of the Special Risk Class to include employees in a forensic discipline. As such, the contingent effective date does not appear appropriate. If the safety of the employee is at risk without the public records exemption, then it would appear that an effective date of "upon becoming a law" would be more appropriate.

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 1995³ 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 & COMBINED BILL CHANGES

None.

³ Section 119.15, F.S.