

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill decreases access to public records.

B. EFFECT OF PROPOSED CHANGES:

Background

Current law provides a number of public records exemptions for certain identifying and location information regarding police officers, child protective service investigators, firefighters, judges, and attorneys.¹ The exemptions also protect identifying and location information regarding the spouses and children of such employees.² There is, however, no such exemption for employees of juvenile detention facilities.

Effect of Bill

The bill creates a public records exemption for current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, senior juvenile detention officers, juvenile detention officer supervisors, juvenile detention officers, house parents I and II, house parent supervisors, group treatment leaders, group treatment leader supervisors, and rehabilitation therapists of the Department of Juvenile Justice (DJJ personnel). The following information is made exempt³ from public records requirements:

- Home addresses, telephone numbers, social security numbers, and photographs of DJJ personnel;
- Names, home addresses, telephone numbers, social security numbers, photographs, and places of employment of the spouse and children of DJJ personnel; and
- Names and locations of schools and day care facilities attended by the children of DJJ personnel.

The exemption only applies if the DJJ personnel provides a written statement that he or she has made reasonable efforts to protect such information from access via other means available to the public.

An agency, other than the employing agency, who is the custodian of such information must maintain the exempt status of that information only if such personnel or his or her employer submits a written request to the custodial agency.

This bill provides for future review and repeal of the exemption on October 2, 2011, pursuant to the Open Government Sunset Review Act.⁴ It also provides a statement of public necessity.

C. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., to create a public records exemption for DJJ personnel.

¹ Section 119.071(4)(d), F.S.

² *Id.*

³ There is a difference between records that are exempt from public records requirements and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such record cannot be released by an agency to anyone other than to the persons or entities designated in the statute. *See* Attorney General Opinion 85-62. If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances. *See Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

⁴ Section 119.15, F.S.

Section 2 reenacts s. 409.2577, F.S., to incorporate the amendment made to s. 119.071, F.S.

Section 3 provides a public necessity statement.

Section 4 provides an October 1, 2006, effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

See "FISCAL COMMENTS."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

See "FISCAL COMMENTS."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill likely could create a fiscal impact on state and local governments, because staff responsible for complying with public records requests will require training related to the newly created public records exemption. In addition, state and local governments could incur costs associated with redacting the exempt DJJ personnel 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. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

Vote Requirement

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

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution, requires a statement of public necessity (public necessity statement) for a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it includes a public necessity statement.

Overly Broad

The bill 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 of DJJ personnel.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues – Social Security Numbers

Current law provides a public records exemption for social security numbers that is applicable to all state and local government agencies.⁵ The bill exempts social security numbers for DJJ personnel and the spouse and children of such personnel. Thus, it appears redundant of current law.

Drafting Issues – Open Government Sunset Review Act

On line 165, the bill references the “Open Government Sunset Review Act of 1995”. In 2005, the Act was amended and is now entitled the “Open Government Sunset Review Act”. An amendment is recommended to correct the title error.

Drafting Issues – Public Necessity Statement

The bill makes the identification and location information “exempt” from public records requirements; however, the bill later refers to the information as confidential and exempt. There is a difference between records that are exempt from public records requirements and those that are confidential and exempt. If the Legislature makes a record confidential and exempt, such record cannot be released by an agency to anyone other than to the persons or entities designated in the statute.⁶ If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.⁷ As such, an amendment is needed to address the language inconsistencies.

Other Comments – Written Statement

The bill requires the DJJ personnel to submit a written statement that he or she has made reasonable efforts to protect the exempt information from public access via other means. For example, such personnel would need to confirm that he or she has protected release of the information through the Internet and the telephone book. Of the categories of employees who are provided this same public records exemption, only one group is required to provide a similar statement.⁸ This exemption would put DJJ personnel in the minority and would create an additional burden on such personnel in order to protect access to his or her identification and location information.

Other Comments – 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, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a), Florida

⁵ Section 119.071(5)(a), F.S.

⁶ See Attorney General Opinion 85-62.

⁷ See *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

⁸ Section 119.071(4)(d)6., F.S., public records exemption for current and former guardian ad litem.

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 further 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 Act⁹ 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

Not applicable.

⁹ Section 119.15, F.S.