HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 605 CS Public Records
SPONSOR(S): Planas
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1320

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Governmental Operations Committee	7 Y, 0 N, w/CS	Williamson	Williamson
2) Juvenile Justice Committee	5 Y, 0 N, w/CS	White	White
3) State Administration Council	7 Y, 0 N	Williamson	Bussey
4)			
5)			

SUMMARY ANALYSIS

The bill creates a public records exemption for certain identification and location information for current or former Department of Juvenile Justice (DJJ) personnel. It also creates a public records exemption for certain identification and location information regarding the spouse and children of DJJ personnel.

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

The bill does not grant rule-making authority to any administrative agency.

The bill could have a minimal fiscal impact on state and local governments.

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

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 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, rehabilitation therapists, and social services counselors of the Department of Juvenile Justice (DJJ personnel). The following information is made exempt[3] from public records requirements:

- Home addresses, telephone numbers, and photographs of DJJ personnel;
- Names, home addresses, telephone numbers, 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.

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.

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.

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[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.

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.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR 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 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 Act[5] 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

Governmental Operations Committee

On March 22, 2006, the Governmental Operations Committee adopted an amendment and reported the bill favorably with committee substitute. The amendment:

- Removed the duplicative exemption for social security numbers.
- Removed the exemption for the photograph of a spouse or child of DJJ personnel, because it was unclear whether the photographs were collected by the employer.
- Conformed the public necessity statement to the exemption.

Juvenile Justice Committee

On April 4, 2006, the Juvenile Justice Committee adopted an amendment and reported the bill favorably with committee substitute. The amendment:

- Added the title of social services supervisor to the list of DJJ personnel subject to the exemption.
- Removed the bill's requirement that, prior to application of the exemption, DJJ personnel have provided written statements indicating they made reasonable efforts to protect their personal information from public access via other sources.

[5] Section 119.15, F.S.