

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill narrows the public records exemption thereby increasing public access to government information.

B. EFFECT OF PROPOSED CHANGES:

Background

Public Records Exemption for Certain Local Government Managers

Current law provides a public records exemption for certain identification and location information regarding a current or former employee relations director, assistant director, manager, or assistant manager (manager) of a local government agency or water management district.¹ Specifically, the home address, telephone number, social security number, and photograph of the manager are exempt² from public disclosure. In addition, a public records exemption exists for the:

- Name, home address, telephone number, social security number, photograph and place of employment of the spouse of the manager; and
- Name, home address, telephone number, social security number, photograph, place of employment, and the name and location of the school or daycare facility attended by the child of the manager.

Further, an agency, other than the employing agency, must maintain the exempt status of the identification and location information upon receipt of a written request by the affected manager or that manager's employer.³

Pursuant to the Open Government Sunset Review Act,⁴ the exemption will repeal on October 2, 2006, unless reenacted by the Legislature.

Open Government Sunset Review of the Exemption

House staff reviewed the public records exemption pursuant to the Open Government Sunset Review Act and determined that, with modification, the exemption meets the requirements for reenactment.⁵ Staff concluded that certain information currently protected by the public records exemption either is protected by a more general public records exemption or is not maintained by the employing agency. A narrower public records exemption protects the release of social security numbers.⁶ The employing agency does not maintain the photograph of the spouse or child of the manager.

¹ In order to receive the benefit of the exemption, such personnel's duties and responsibilities must include hiring and firing employees, labor contract negotiation, administration, or other personnel-related duties. Section 119.071(4)(d)2., F.S.

² 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).

³ Section 119.071(4)(a)(2), F.S.

⁴ Section 119.15, F.S.

⁵ Staff surveyed and interviewed managers as part of the review process.

⁶ Section 119.071(5)(a), F.S.

Effect of Bill

The bill removes the repeal date, thereby reenacting the public records exemption. It narrows the public records exemption by removing the exemption for the photograph of the spouse or child of a manager. The bill removes the duplicative public records exemption for social security numbers.

C. SECTION DIRECTORY:

Section 1 amends s. 119.071(4)(d), F.S., to reenact and narrow the public records exemption for managers.

Section 2 provides an effective date of October 1, 2006.

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:

None. The bill does not create, modify, amend, or eliminate state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

The bill may represent a minimal non-recurring positive impact on local government expenditures. A bill enacting or amending a public records exemption causes a non-recurring negative fiscal impact in the year of enactment as a result of training employees responsible for replying to public records requests. In the case of bills reviewed under the Open Government Sunset Review process, training costs are incurred if the bill does not pass or if the exemption is amended, as retraining is required. Because the bill eliminates the repeal of the exemption, local governments may recognize a minimal nonrecurring decrease in expenditures because employee-training activities are avoided.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Open Government Sunset Review Act

The Open Government Sunset Review Act sets forth a legislative review process for newly created or substantially amended public records or public meetings exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act 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 purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- 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,
- Protecting trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required because of the requirements of Art. 1, s. 24(c), Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On January 11, 2006, the Governmental Operations Committee adopted an amendment to PCB GO 06-02 and reported the bill favorably. The current public records exemption for information concerning a child of a local government manager was inadvertently removed from the bill. The amendment reinstated the application of that exemption.