

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 485 Pub. Rec./Public Defenders/Regional Counsel

SPONSOR(S): Governmental Affairs Policy Committee, Drake and others

TIED BILLS: IDEN./SIM. BILLS: CS/SB 312

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Governmental Affairs Policy Committee	14 Y, 0 N, As CS	Williamson	Williamson
2)	Public Safety & Domestic Security Policy Committee		Billmeier	Cunningham
3)	Economic Development & Community Affairs Policy Council			
4)				
5)				

SUMMARY ANALYSIS

Current law provides several public record exemptions for identification and location information of certain public employees and their spouses and children. Examples of protected information include home addresses, telephone numbers, and photographs of law enforcement personnel, firefighters, investigators for the Department of Children and Family Services, state attorneys, and code enforcement officers. Similar information concerning the spouses and children of such employees also is protected. Public defenders and criminal conflict and civil regional counsel currently do not enjoy the protections afforded other agency personnel.

The bill creates a public record exemption for identification and location information of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel. The following information is exempt from public records requirements:

- Home addresses, telephone numbers, and photographs of such defenders or counsel;
- Home addresses, telephone numbers, and places of employment of the spouses and children of such defenders or counsel; and
- Names and locations of schools and day care facilities attended by the children of such defenders or counsel.

Such defenders or counsel also may protect identification and location information held by any other agency if he or she provides written notification to that custodial agency that he or she is a public defender or criminal conflict and civil regional counsel who receives an exemption under the Public Records Act.

The bill provides for repeal of the exemption on October 2, 2015, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

**Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a new exemption; thus, it requires a two-thirds vote for final passage.**

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Public Records Law

Article I, s. 24(a) of the State 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) of the State 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.<sup>1</sup>

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>2</sup> provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

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

##### Public Record Exemptions for Identification and Location Information

Current law provides several public record exemptions for identification and location information of certain public employees and their spouses and children.<sup>3</sup> Examples of protected information include home addresses, telephone numbers, and photographs of law enforcement personnel, firefighters, investigators for the Department of Children and Family Services, state attorneys, and code

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<sup>1</sup> Article I, s. 24(c) of the State Constitution.

<sup>2</sup> Section 119.15, F.S.

<sup>3</sup> See s. 119.071(4)(d), F.S.

enforcement officers. Similar information concerning the spouses and children of such employees also is protected.

### Public Defenders and Criminal Conflict and Civil Regional Counsel

Public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel are appointed by the courts to represent defendants in criminal cases. Criminal conflict and civil regional counsel also represent clients in matters before the courts involving alleged child abuse, alleged child neglect, and potential termination of parental rights.

Clients of public defenders and criminal conflict and civil regional counsel have a great deal at stake in the outcome of their legal matters, which can lead to violent outbursts. According to the Office of the Public Defender, such outbursts have included battery and threats of physical harm.

### **Effect of Bill**

The bill creates a public record exemption for identification and location information of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel. The following information is exempt<sup>4</sup> from public records requirements:

- Home addresses, telephone numbers, and photographs of such defenders or counsel;
- Home addresses, telephone numbers, and places of employment of the spouses and children of such defenders or counsel; and
- Names and locations of schools and day care facilities attended by the children of such defenders or counsel.

Such defenders or counsel also may protect identification and location information held by any other agency<sup>5</sup> if he or she provides written notification to that custodial agency that he or she is a public defender or criminal conflict and civil regional counsel who receives an exemption under the Public Records Act.<sup>6</sup>

The bill provides for repeal of the exemption on October 2, 2015, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.<sup>7</sup>

### **B. SECTION DIRECTORY:**

Section 1 amends s. 119.071, F.S., to create a public record exemption for identification and location information of public defenders and criminal conflict and civil regional counsel, and their spouses and children.

Section 2 provides a public necessity statement.

Section 3 provides an effective date of July 1, 2010.

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<sup>4</sup> There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (*See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991) If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (*See Attorney General Opinion 85-62*, August 1, 1985).

<sup>5</sup> Section 119.011(2), F.S., defines “agency” to mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

<sup>6</sup> Chapter 119, F.S., is referred to as the Public Records Act.

<sup>7</sup> Section 24(c), Art. I of the State Constitution.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

The bill likely could create a minimal fiscal impact on agencies, because staff responsible for complying with public records requests could require training related to creation of the public record exemption. In addition, those agencies could incur costs associated with redacting the exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the agency.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it includes a public necessity statement.

### B. RULE-MAKING AUTHORITY:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

On March 10, 2010, the Governmental Affairs Policy Committee reported HB 485 favorably as a committee substitute. The committee substitute removed from the bill the public record exemption for the names, social security numbers, and photographs of spouses and children of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel. The exemption for social security numbers was duplicative of a general protection provided in the Public Records Act. In addition, it was found that employers of such defenders and counsel do not collect photographs of the spouses and children of their employees. Finally, the public record exemption for the names of spouses and children was removed because such protection is not afforded other employees such as judges and state attorneys.