

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1027 Pub. Rec./Law Enforcement & Investigatory Personnel & Firefighters

**SPONSOR(S):** Steube and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 766

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	10 Y, 0 N	Williamson	Williamson
2) State Affairs Committee	17 Y, 0 N	Williamson	Hamby

### SUMMARY ANALYSIS

Current law provides a public record exemption for active or former law enforcement personnel, including correctional and correctional probation officers; personnel of the Department of Children and Family Services whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities; personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect; personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement; and firefighters.

The following information of such law enforcement and investigatory personnel and firefighters is exempt from public records requirements:

- Home addresses, telephone numbers, social security numbers, and photographs of law enforcement and investigatory personnel.
- Home addresses, telephone numbers, and photographs of firefighters.
- Home addresses, telephone numbers, social security numbers, photographs, and places of employment of the spouses and children of law enforcement and investigatory personnel.
- Home addresses, telephone numbers, photographs, and places of employment of the spouses and children of firefighters.
- Names and locations of schools and day care facilities attended by the children of law enforcement and investigatory personnel and firefighters.

The bill expands the public record exemption for law enforcement and investigatory personnel to include the names of their spouses and children. It also expands the public record exemption for firefighters to include their social security numbers, and the names and social security numbers of their spouses and children.

The bill provides for repeal of the exemptions on October 2, 2016, 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 expands current public record exemptions; thus, it requires a two-thirds vote for final passage.**

# 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> Public employees covered by these exemptions include, but are not limited to:

- Active or former law enforcement personnel, including correctional and correctional probation officers;
- Personnel of the Department of Children and Family Services whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities;
- Personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect; and
- Personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement.<sup>4</sup>

Those employees are afforded a public record exemption for their home addresses, telephone numbers, social security numbers, and photographs. Their spouses and children are afforded a public record exemption for their home addresses, telephone numbers, social security numbers, photographs, and places of employment. In addition, the name and location of the school and day care facility attend by the children are exempt from public records requirements.<sup>5</sup>

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

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

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

<sup>4</sup> Section 119.071(4)(d)1.a., F.S.

<sup>5</sup> *Id.*

The public record exemption for social security numbers is redundant of two other exemptions found in current law. Social security numbers of all current and former agency<sup>6</sup> employees are confidential and exempt from public records requirements<sup>7</sup> and any other social security number held by an agency is confidential and exempt.<sup>8</sup>

Current law also provides a public record exemption for the home addresses, telephone numbers, and photographs of firefighters. In addition, the following information regarding the spouses and children are exempt from public records requirements:

- Home addresses, telephone numbers, photographs, and places of employment; and
- Names and locations of schools and day care facilities attended by the children.<sup>9</sup>

Law enforcement and investigatory personnel and firefighters also may protect such 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 employee who receives protection under s. 119.071(4)(d)1.i., F.S.

### **Effect of Bill**

The bill expands the public record exemption for law enforcement and investigatory personnel and firefighters. The bill provides that the names of the spouses and children of law enforcement and investigatory personnel are exempt<sup>10</sup> from public records requirements. In addition, it provides that the social security numbers of firefighters, and the names and social security numbers of their spouses and children, are exempt from public records requirements. However, the public record exemption for social security numbers is unnecessary because social security numbers are protected under current law.<sup>11</sup>

The bill also provides that the public record exemption for identification and location of a firefighter pertains to current and former firefighters.

The bill provides for repeal of the exemptions on October 2, 2016, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.<sup>12</sup>

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

Section 1 amends s. 119.071, F.S., to expand the current public record exemptions for certain law enforcement and investigatory personnel and firefighters.

Section 2 provides a public necessity statement.

Section 3 provides an effective date of July 1, 2011.

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<sup>6</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>7</sup> Section 119.071(4)(a), F.S.

<sup>8</sup> Section 119.071(5)(a)5., F.S.

<sup>9</sup> Section 119.071(4)(d)1.b., F.S.

<sup>10</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>11</sup> Current law already provides that social security numbers of all current and former agency employees are confidential and exempt from public records requirements, and any other social security number held by an agency is confidential and exempt.

<sup>12</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:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. 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 expands current public record exemptions; 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 expands current public record exemptions; thus, it includes a public necessity statement.

### B. RULE-MAKING AUTHORITY:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.