

This bill does not expand the scope of the public-records exemption and therefore does not require a two-thirds vote of each house of the Legislature for passage.

This bill amends section 119.071(4)(d)1.i., Florida Statutes.

II. Present Situation:

Florida's Public-Records Laws

Florida has a long history of providing public access to the records of governmental and other public entities. The Legislature enacted its first law affording access to public records in 1892. In 1992, Florida voters approved an amendment to the State Constitution which raised the statutory right of access to public records to a constitutional level.

Paragraphs (a) and (c) of Section 24, Art. I of the State Constitution provide the following:

(a) Every person has the right to inspect or copy any public records made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

(c) This section shall be self-executing. The Legislature, however, may provide by general law passed by a two-thirds vote of each house for the exemption of records from the requirements of subsection (a) and the exemption of meetings from the requirements of subsection (b); provided that such law shall state with specificity the public necessity justifying the exemption and shall be no broader than necessary to accomplish the state purpose of the law. . . . Laws enacted pursuant to this subsection shall contain only exemptions from the requirements of subsections (a) and (b) and provisions governing the enforcement of this section, and shall relate to one subject.

Florida's public-records law is contained in ch. 119, F.S., and specifies conditions under which the public must be given access to governmental records. Section 119.07(1)(a), F.S., provides that every person who has custody of a public record³ must permit the record to be inspected and examined by any person, at any reasonable time, under reasonable conditions, and under

³ s. 119.011(1), F.S., defines "public record" to include "all documents, papers, letters, maps, books, tapes, photographs, film, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency."

supervision by the custodian of the public record. Unless specifically exempted, all agency⁴ records are to be available for public inspection.

Section 119.011(12), F.S., defines the term “public record” to include all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are “intended to perpetuate, communicate, or formalize knowledge.”⁵ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.⁶

Only the Legislature is authorized to create exemptions to open-government requirements.⁷ Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.⁸ A bill enacting an exemption⁹ may not contain other substantive provisions although it may contain multiple exemptions relating to one subject.¹⁰

There is a difference between records that the Legislature exempts from public inspection and those that the Legislature makes confidential and exempt from public inspection. If a record is made confidential with no provision for its release so that its confidential status will be maintained, such record may not be released by an agency to anyone other than the person or entities designated in the statute.¹¹ If a record is simply exempt from mandatory disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.¹²

Open Government Sunset Review Act

The Open Government Sunset Review Act¹³ provides for the systematic review of an exemption from the Public Records Act in the fifth year after its enactment. The act states that an exemption may be created, revised, or maintained only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves.¹⁴ An identifiable public purpose is served if the exemption meets one of three specified criteria and if the

⁴ s. 119.011(2), F.S., defines “agency” as “...any state, county, district, authority, or municipal officer, department, division, 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.”

⁵ *Shevin v. Byron, Harless, Shafer, Reid, and Assocs., Inc.*, 379 So. 2d 633, 640(Fla. 1980).

⁶ *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979)

⁷ Article I, s. 24(c) of the State Constitution.

⁸ *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So.2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

⁹ s. 119.15, F.S., provides that an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

¹⁰ Article 1, s. 24(c) of the State Constitution.

¹¹ Attorney General Opinion 85-62, August 1, 1985.

¹² *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d. 289 (Fla.1991).

¹³ Section 119.15, F.S.

¹⁴ Section 119.15(6)(b), F.S.

Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption.¹⁵ An exemption meets the statutory criteria if it:

- 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 information of a sensitive personal nature concerning individuals, the release of which ... would be defamatory ... or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which ... would injure the affected entity in the marketplace.¹⁶

The act also requires the Legislature to consider six questions that go to the scope, public purpose, and necessity of the exemption.¹⁷

Current Exemptions in Section 119.071(4)(d), F.S., Pertaining to Agency Personnel

Section 119.071(4)(d), F.S., currently provides public-records exemptions for specified personal identifying and locating information of the following current and former agency personnel, as well as for specified personal identifying and locating information of their spouses and children:

- Law enforcement and specified agency investigative personnel;
- Certified firefighters;
- Justices and judges;
- Local and statewide prosecuting attorneys;
- Magistrates, administrative law judges, and child support hearing officers;
- Local government agency and water management district human resources administrators;
- Code enforcement officers;
- Guardians ad litem;
- Specified Department of Juvenile Justice personnel; and
- Public defenders and criminal conflict and civil regional counsel.

Although there is some inconsistency among the types of information that are exempted, the following information is protected in all of the above-listed exemptions:

- The home addresses and telephone numbers of the agency personnel;
- The home addresses, telephone numbers, and places of employment of the spouses and children of the agency personnel; and
- The names and locations of schools and day care facilities attended by the children of the agency personnel.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Section 119.15(6)(a), F.S.

Exemption Under Review

The public-records exemption under review¹⁸ makes the following information exempt from s. 119.07(1), F.S. and s. 24(a), Art. I of the State Constitution:

- The home addresses, telephone numbers, and photographs of 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.
- The names, home addresses, telephone numbers, and places of employment of spouses and children of such personnel.
- The names and locations of schools and day care facilities attended by the children of such personnel.

Based upon the Open Government Sunset Review of the exemption, professional staff of the Senate Committee on Criminal Justice recommended that the Legislature retain the public-records exemption established in s. 119.071(4)(d)1.i., F.S. This recommendation was made in light of information gathered for the Open Government Sunset Review, which indicates that there is a public necessity to continue to protect personal identifying and locating information of specified DJJ personnel and their families because disclosure would jeopardize their safety.¹⁹

III. Effect of Proposed Changes:

This bill removes the repeal date, thereby reenacting the public-records exemption under review.

It also amends the exemption to update the position titles of protected employees to reflect position title reclassifications by DJJ. The updated position titles are as follows:

- Juvenile probation officers,
- Juvenile probation supervisors,

¹⁸ Section 119.071(4)(d)1.i., F.S.

¹⁹ According to DJJ staff, the exempt records contain information that is of a sensitive, personal nature concerning those DJJ employees who have direct contact and provide care and supervision to juvenile offenders. DJJ staff state that it is paramount to the safety of these employees and their families that their personal information remain exempt. Direct care employees and their families are subject to the same risk of threats and reprisals from juveniles, their families, and gang members as those personnel who work in law enforcement, corrections, and the court system. Additionally, DJJ staff assert that providing easier access to the employee's personal identifying information will interfere with the department's administration of the juvenile justice system by jeopardizing the workplace safety of its employees. Information gathered for this Open Government Sunset Review is on file with the Senate Committee on Criminal Justice.

- Detention superintendents,
- Assistant detention superintendents,
- Juvenile justice detention officers I and II,
- Juvenile justice detention officer supervisors,
- Juvenile justice residential officers,
- Juvenile justice residential officer supervisors I and II,
- Juvenile justice counselors,
- Juvenile justice counselor supervisors,
- Human services counselor administrators,
- Senior human services counselor administrators,
- Rehabilitation therapists, and
- Social services counselors.

The bill specifies an effective date of October 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill reenacts and amends an existing public-records exemption specified in s. 119.071(4)(d)1.i., F.S. The bill does not expand the scope of the exemption and therefore does not require a two-thirds vote of each house of the Legislature for passage.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Proposed Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Proposed Committee Substitute and the prior version of the bill.)

PCS by Governmental Oversight and Accountability on March 23, 2011:

To treat DJJ employees equally with other agency personnel protected by personal identifying and locating information exemptions, the proposed committee substitute removes the requirement that a DJJ employee in a category protected by the exemption must submit a written statement that he or she has made reasonable efforts to protect the exempt information from being accessible through other means available to the public before the exemption applies.

- B. **Amendments:**

None.