

FINAL BILL ANALYSIS

BILL #: HB 7075

FINAL HOUSE FLOOR ACTION:

113 Y's 1 N's

SPONSOR: Rep. Ahern

GOVERNOR'S ACTION: Approved

COMPANION BILLS: CS/SB 600

SUMMARY ANALYSIS

HB 7075 passed the House on April 28, 2011, and subsequently passed the Senate on April 29, 2011. The bill was approved by the Governor on June 21, 2011, chapter 2011-201, Laws of Florida, and takes effect October 1, 2011.

The bill reenacts the public record exemption for identification and location information of certain personnel of the Department of Juvenile Justice (DJJ or department).

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

Current law provides a public record exemption for certain personnel of the department. The following information is exempt from public records requirements:

- Home addresses, telephone numbers, and photographs of certain DJJ personnel;
- Names, home addresses, telephone numbers, and places of employment of the spouses and children of such personnel; and
- Names and locations of schools and day care facilities attended by the children of such personnel.

The exemption applies to 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 bill reenacts the public record exemption, which will repeal on October 2, 2011, if this bill does not become law. It revises the exemption to reflect the accurate job titles of the position classifications. The change in job titles does not include additional personnel. It merely reflects those employees who currently are covered by the public record exemption, but whose job titles have changed.

The bill does not appear to have a fiscal impact on state or local government.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting 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 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.

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.² 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 created³ then a public necessity statement and a two-thirds vote for passage are not required.

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.⁴ 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 Record Exemption under Review

In 2006, the Legislature added certain personnel of the Department of Juvenile Justice (DJJ or department) to the public record exemption.⁵ The following information is exempt⁶ from public records requirements:

¹ Section 119.15, F.S.

² Section 24(c), Art. I of the State Constitution.

³ An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

⁴ See s. 119.071(4)(d), F.S.

⁵ Chapter 2006-180, L.O.F.; codified as s. 119.071(4)(d)1.i., F.S.

⁶ 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

- Home addresses, telephone numbers, and photographs of certain DJJ personnel;
- Names, home addresses, telephone numbers, and places of employment of the spouses and children of such personnel; and
- Names and locations of schools and day care facilities attended by the children of such personnel.

The exemption applies to 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.

DJJ personnel 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 employee who receives protection under s. 119.071(4)(d)1.i., F.S.

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2011, unless reenacted by the Legislature.

According to DJJ, several of the job titles provided in the public record exemption have been revised to more accurately reflect the duties and responsibilities of those staff. As such, the department has requested that the exemption be modified to reflect the correct job titles.⁷

Effect of Proposed Changes

The bill removes the repeal date, thereby reenacting the public record exemption for identification and location information of certain DJJ personnel and their spouses and children. It revises the exemption to reflect the accurate job titles of the position classifications. The change in job titles does not include additional personnel. It merely reflects those employees who currently are covered by the public record exemption, but whose job titles have changed.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

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).

⁷ Open Government Sunset Review of s. 119.071(4)(d)1.i., F.S., relating to identification and location information of certain DJJ personnel, questionnaire by House staff, September 3, 2010, at question 3.b. (on file with the Government Operations Subcommittee).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.