

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1075 Public Records
SPONSOR(S): Government Operations Subcommittee, Rangel
TIED BILLS: **IDEN./SIM. BILLS:** SB 1318

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	13 Y, 0 N, As CS	Stramski	Williamson
2) State Affairs Committee	17 Y, 0 N	Stramski	Camechis

SUMMARY ANALYSIS

While state law provides limited exemptions from public record requirements for information relating to complaints alleging misconduct and ensuing investigations carried out by agencies in certain contexts, there is no general exemption for information obtained pursuant to an investigation following a complaint of misconduct filed against a public employee.

This bill creates a public record exemption for a complaint of misconduct filed with an agency against an agency employee, and all information obtained pursuant to the investigation by the agency of the complaint of misconduct. The information is confidential and exempt from public record requirements until the investigation ceases to be active, or until the agency provides written notice to the employee who is the subject of the complaint that the agency concluded the investigation and either will or will not proceed with disciplinary action or file charges.

The bill provides for repeal of the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature. In addition, the bill provides a statement of public necessity as required by the State Constitution.

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

The bill provides an effective date of July 1, 2013.

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 or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS
I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This 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.¹

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 Act² 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

State law provides limited exemptions from public record requirements for information relating to complaints of misconduct and investigations carried out by agencies in certain contexts. For example, a complaint filed against a law enforcement officer, and all information obtained pursuant to the investigation of the complaint by the agency, is confidential and exempt from s. 119.07(1), F.S., until the investigation ceases to be active or until the agency head or designee informs the subject of the complaint that the agency will or will not proceed with disciplinary action or the filing of charges.³ Similarly, a complaint filed against an individual certified by the Department of Education, and all information obtained pursuant to the investigation of the complaint by the agency, is confidential and exempt from s. 119.07(1), F.S., until the conclusion of the preliminary investigation of the complaint, until such time as the preliminary investigation ceases to be active, or until such time as otherwise provided by s. 1012.798(6), F.S.⁴ However, there is no general exemption for information obtained pursuant to an investigation following a complaint of misconduct filed against a public employee.

Effect of the Bill

This bill creates a public record exemption for certain information pertaining to a complaint of misconduct filed against an agency employee. Specifically, the complaint and all information obtained pursuant to the investigation of the complaint by the agency⁵ is confidential and exempt⁶ from public record requirements until the:

¹ Section 24(c), Art. I of the State Constitution.

² See s. 119.15, F.S.

³ Section 112.533(2), F.S.

⁴ Section 1012.796(4), F.S. Section 1012.798(6), F.S. does not provide any additional limit on the duration of the exemption.

⁵ Section 119.011(2), F.S., defines the term "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 chapter 119, F.S., 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.

- Investigation ceases to be active;
- Agency provides written notice to the employee who is the subject of the complaint that the agency concluded the investigation with a finding not to proceed with disciplinary action or file charges; or
- Agency provides written notice to the employee who is the subject of the complaint that the agency concluded the investigation with a finding to proceed with disciplinary action or file charges.

The bill provides for repeal of the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature.

In addition, the bill provides a statement of public necessity as required by the State Constitution.

B. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., creating an exemption from public record requirements for a complaint of misconduct filed with an agency against an agency employee and all information obtained pursuant to the investigation of such a complaint.

Section 2 provides a statement of public necessity.

Section 3 provides an effective date of July 1, 2013.

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 record requests could require training related to expansion of the public record exemption.

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 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).

In addition, those agencies could incur costs associated with redacting the confidential and 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 agencies.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

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 or expanded 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.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption of limited duration for a complaint of misconduct filed with an agency against an agency employee, and all information obtained pursuant to the investigation of the complaint by the agency. The purpose of the exemption is to facilitate the investigation of such complaints, and the exemption does not extend past the duration of such an investigation. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

This bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 18, 2013, the Government Operations Subcommittee adopted a strike-all amendment to House Bill 1075 and reported the bill favorably with committee substitute.

The strike-all amendment:

- Replaces the phrase “state agency or a political subdivision of the state” with the term “agency,” which is defined in chapter 119, F.S., to include state agencies and political subdivisions of the state.
- Provides that the exemption is scheduled to be repealed on October 2, 2018, instead of July 1, 2018.