

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 731 Pub. Rec./Spouses & Children of Law Enforcement Personnel

SPONSOR(S): Criminal Justice Subcommittee; Kerner and others

TIED BILLS: None **IDEN./SIM. BILLS:** SB 376

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Cox	Cunningham
2) Government Operations Subcommittee	12 Y, 0 N	Stramski	Williamson
3) Judiciary Committee	16 Y, 0 N	Cox	Havlicak

SUMMARY ANALYSIS

Current law provides a public records exemption for certain identification and location information of active or former sworn or civilian law enforcement personnel ("law enforcement personnel") and their spouses and children. The following information is exempt from public records requirements:

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

Notably, the *names* of spouses and children of law enforcement personnel are not exempt from public records requirements.

The bill creates a public records exemption for the names of spouses and children of active or former sworn or civilian law enforcement personnel.

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

The bill provides an effective date of October 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 Exemption for Identification and Location Information

Currently, s. 119.071(4)(d)2.a., F.S., provides a public records exemption for certain identification and location information of active or former sworn or civilian law enforcement personnel ("law enforcement personnel")³ and their spouses and children. The following information is exempt from public records requirements:

- Home addresses, telephone numbers,⁴ social security numbers, dates of birth, and photographs of law enforcement personnel;
- Home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of the spouses and children of law enforcement personnel; and
- Names and locations of schools and day care facilities attended by the children of such personnel.

Notably, the *names* of spouses and children of law enforcement personnel are not exempt from public record requirements. This is in contrast to the names of spouses and children of former or current human resource or labor relations agency personnel,⁵ code enforcement officers,⁶ guardians ad litem,⁷ juvenile justice officers,⁸ investigators or inspectors of the Department of Business and Professional Regulation,⁹ and county tax collectors.¹⁰

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

² See s. 119.15, F.S.

³ Section 119.071(4)(d)2.a., F.S., specifies that active or former sworn or civilian law enforcement personnel includes correctional and correctional probation officers; personnel of the Department of Children and Families 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.

⁴ Section 119.071(4)(d)1., F.S., states the term "telephone numbers" includes home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices.

⁵ Section 119.071(4)(d)2.f., F.S.

Effect of the Bill

The bill amends s. 119.071(4)(d)2.a., F.S., to provide that the names of spouses and children of active or former sworn or civilian law enforcement personnel are exempt¹¹ from s. 119.07(1), F.S., and Article I, section 24(a) of the Florida Constitution.

The bill provides for repeal of the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.¹²

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

B. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., relating to general exemptions from inspection or copying of public records.

Section 2 provides a public necessity statement.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

⁶ Section 119.071(4)(d)2.g., F.S.

⁷ Section 119.071(4)(d)2.h., F.S.

⁸ Section 119.071(4)(d)2.i., F.S.

⁹ Section 119.071(4)(d)2.k., F.S.

¹⁰ Section 119.071(4)(d)2.l., F.S.

¹¹ 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).

¹² Article I, Sec. 24(c), FLA. CONST.

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. 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 agency.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor 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 for the names of spouses and children of sworn and civilian law enforcement personnel of specified agencies; 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 for the names of spouses and children of sworn and civilian law enforcement personnel of specified agencies; 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 limited to the names of spouses and children of sworn and civilian law enforcement personnel of specified agencies. 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:

The 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 19, 2013, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment added language to clarify that this public records exemption also applies to the other agency personnel mentioned in s. 119.071(4)(d)2.a., F.S.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.