

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: SB 1108

INTRODUCER: Community Affairs Committee

SUBJECT: OGSR/Children of Agency Officers and Employees/Identifying Information

DATE: February 17, 2014

REVISED: _____

| ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|------------|----------------|-----------|----------------------------------|
| 1. Stearns | Yeatman | | CA SPB 7042 as introduced |

I. Summary:

SB 1108 removes the scheduled repeal of the public records exemption for the personal identifying information of a dependent child of a current or former officer or employee of an agency when that dependent child is insured under an agency group insurance plan. As a result, this information will remain exempt from the disclosure requirements under the public records laws.

II. Present Situation:

Public Access

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.

Paragraph (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 stated 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

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 record¹ must permit the record to be inspected and examined by any person, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record. Unless specifically exempted, all agency² 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."³ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.⁴

Only the Legislature is authorized to create exemptions to open government requirements.⁵ 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.⁶ A bill enacting an exemption⁷ may not contain other substantive provisions although it may contain multiple exemptions relating to one subject.⁸

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

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² Section 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."

³ *Shevin v. Byron, Harless, Shafer, Reid, and Assocs., Inc.*, 379 So.2d 633, 640 (Fla. 1980).

⁴ *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979)

⁵ Article I, s. 24(c) of the State Constitution.

⁶ *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).

⁷ Section 119.15, F.S., provides that an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

⁸ Article 1, s. 24(c) of the State Constitution.

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.⁹ If a record is simply exempt from mandatory disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.¹⁰

Open Government Sunset Review Act

The Open Government Sunset Review Act established in s. 119.15, F.S., provides a review and repeal process for public records exemptions. In the fifth year after enactment of a new exemption or in the fifth year after substantial amendment of an existing exemption, the exemption is repealed on October 2, unless reenacted by the Legislature. Each year, by June 1, the Division of Statutory Revision of the Joint Legislative Management Committee is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

Exemption of Personal Identifying Information of the Dependent Children of Agency Personnel

In 2009, the Legislature amended s. 119.071(4)(b), F.S., to create a public records exemption for the personal identifying information of a dependent child of an agency employee when that child is insured by an agency health insurance plan. The exemption was created in response to a court decision requiring a school board to release the above described information in response to a public records request.¹¹ The exemption is slated to expire on October 2, 2014, pursuant to the Open Government Sunset Review Act.

In the summer of 2013, a survey of Florida agencies conducted by Senate and House committee staff found overwhelming support for the public records exemption with a number of responses indicating that the law provided important protection from identity theft for the family members of agency employees.

III. Effect of Proposed Changes:

Section 1 amends s. 119.071, F.S., to remove the scheduled repeal of the public records exemption for the personal identifying information of a dependent child of an agency employee. As a result, the records will remain exempt from disclosure requirements under the public records laws.

Section 2 provides the bill takes effect on October 1, 2014.

⁹ Attorney General Opinion 85-62, August 1, 1985.

¹⁰ *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d. 289 (Fla.1991).

¹¹ *Chandler v. School Board of Polk County*, Case No. 2008CA-004389 (Fla. 10th Jud. Cir. 2008). The court further noted that the information would not be protected by the Health Insurance Portability and Accountability Act (HIPAA), located at 45 CFR, Part 160.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

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 records exemption. The bill does not create or expand a public records exemption, therefore it does not require a two-thirds vote for final passage.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The continued existence of the public records exemption may protect the family members of agency employees from identity theft.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.071 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
