

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 419 Pub. Rec./Department of Health Personnel

SPONSOR(S): Health Quality Subcommittee; Renuart

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 390

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	13 Y, 0 N, As CS	Guzzo	O'Callaghan
2) Government Operations Subcommittee	11 Y, 0 N	Williamson	Williamson
3) Health & Human Services Committee	16 Y, 0 N	Guzzo	Calamas

SUMMARY ANALYSIS

Current law provides public record exemptions for identification and location information of certain current or former public employees and their spouses and children.

The bill expands the current public record exemption to include the home addresses, telephone numbers, dates of birth, and photographs of current and former Department of Health (DOH) personnel, whose duties include, or result in, the:

- Determination or adjudication of eligibility for social security disability benefits;
- Investigation or prosecution of complaints filed against health care practitioners; or the
- Inspection of health care practitioners or health care facilities licensed by DOH.

In addition to providing a public record exemption for DOH personnel, the bill provides that the following information relating to the families of such personnel is exempt from public record requirements:

- Names, home addresses, telephone numbers, dates of birth, 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 bill provides for repeal of the exemption on October 2, 2019, 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 will have an insignificant negative fiscal impact on DOH.

The bill provides an effective date of upon becoming a law.

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 expands the current 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

Current law provides public record exemptions for identification and location information of certain current or former public employees and their spouses and children.³ Examples of public employees covered by these exemptions include law enforcement personnel, firefighters, local government personnel who are responsible for revenue collection and enforcement or child support enforcement, justices and judges, and local and statewide prosecuting attorneys.

Although the types of exempt information vary, the following information is exempt⁴ from public record requirements for all of the above-listed public employees:

- Home addresses and telephone numbers of the public employees;
- Home addresses, telephone numbers, and places of employment of the spouses and children of such employees; and
- Names and locations of schools and day care facilities attended by the children of such employees.

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

² See s. 119.15, F.S.

³ See s. 119.071(4)(d), F.S.

⁴ 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).

If exempt information is held by an agency⁵ that is not the employer of the public employee, the public employee must submit a written request to that agency to maintain the public record exemption.⁶

Currently, personal information of Department of Health investigative staff and their spouses and children is not exempt from public disclosure.⁷

Department of Health – Complaints and Investigations

Pursuant to s. 20.43, F.S., the Department of Health (DOH) is responsible for the regulation of health care practitioners and certain facilities. DOH requires initial and periodic inspections for:⁸

- Pain Management Clinics;
- Pharmacies;
- Dental Laboratories;
- Massage Establishments;
- Electrolysis Establishments;
- Optical Establishments;
- Dispensing Practitioners; and
- Any place in which drugs and medical supplies are manufactured, packed, packaged, made, stored, sold, offered for sale, exposed for sale, or kept for sale.

Many individuals may be involved in an investigative manner throughout the investigation process. Section 456.073(1), F.S., requires DOH inspectors and investigators to investigate any complaint that is determined to be legally sufficient. After review of a complaint, if the allegations and supporting documentation show that a violation may have occurred, the complaint is considered legally sufficient for investigation. A complaint is legally sufficient if it contains ultimate facts that show there has been a violation of chapter 456, F.S., any of the practice acts relating to the professions regulated by DOH, or of any rule adopted by DOH or a regulatory board.

The Investigative Services Unit (ISU) functions as the investigative arm of DOH as it investigates complaints against health care practitioners and facilities regulated by DOH. ISU includes a staff of professional investigators and senior pharmacists who conduct interviews, collect documents and evidence, prepare investigative reports for the Prosecution Services Unit (PSU), and serve subpoenas and official orders of DOH. Upon completion of collecting information and conducting interviews, the investigator writes an investigative report and the report is forwarded to DOH's attorneys for legal review.⁹

Attorneys within the PSU then review the investigative report to recommend a course of action, which may include:¹⁰

- Emergency orders against licensees who pose an immediate threat to the health, safety, and welfare of individuals;
- Expert reviews for complex cases that require professional health care experts to render an opinion;
- Closing orders if the investigation or the expert review does not support the allegations;¹¹ or
- Administrative complaints when the investigation supports the allegations.

⁵ Section 119.011(2), F.S., defines "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 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.

⁶ Section 119.071(4)(d)3., F.S.

⁷ *But see* s. 119.071(4)(d)2.a., F.S., re: Department of Health investigators of child abuse.

⁸ Sections 456.069 and 465.017, F.S.

⁹ Florida Department of Health, Division of Medical Quality Assurance,

http://www.doh.state.fl.us/mqa/enforcement/enforce_csu.html (last visited February 13, 2014).

¹⁰ *Id.*

¹¹ Cases closed with no finding of probable cause are generally confidential and are not available through a public records request.

When an administrative complaint is filed, the subject has the right to choose a hearing, consent/stipulation agreement, or voluntarily relinquish his or her license. In all of these instances, the case is then presented to the professional board or DOH for final agency action. If the subject appeals the final decision, the PSU attorney defends the final order before the appropriate appellate court.

According to DOH, investigators have recently had to be involved in more investigations that include criminal elements.¹² Investigators who inspect massage establishments are identifying and reporting to law enforcement possible human trafficking activities. Further, investigators have forged strong relationships with law enforcement in an effort to combat the health care concerns caused by illegal “pill mills” and controlled substance abuse in Florida. As DOH investigators are increasingly exposed to potentially dangerous criminal situations, they have become concerned about the release of personal information that may be used by criminals, or individuals under investigation by DOH, to target investigative staff and their families.

Disability Determinations

The Division of Disability Determinations (DDD) within DOH¹³ is responsible for making the determination of medical eligibility for disability benefits under the federal Social Security Administration (SSA) disability programs (Social Security Disability-Title II and Supplemental Security Income-Title XVI). It also is responsible for the continuing disability review of all SSA disability beneficiaries to determine if they continue to meet medical eligibility criteria.¹⁴

Applications for Social Security disability benefits are filed at the claimant’s local SSA field office or online. The application is forwarded to the DDD for development, assessment, and determination of medical eligibility in accordance with Social Security regulations. All relevant medical evidence is procured from the claimant’s medical sources. If the medical evidence is insufficient for a determination, the DDD will arrange for a consultative examination targeted to the claimant’s alleged disability. The claimant also is contacted for detailed information on activities of daily living, clarification of symptoms, work history, and other pertinent information. After the claim file is documented and a determination of medical eligibility is made, DDD prepares and releases notification of denial to the claimant, or the claim file is returned to the SSA for a final determination of technical (non-medical) eligibility and processing for any benefits due the claimant.¹⁵

According to DOH, in the past three years, DDD has received 100 credible and significant threats against their employees, usually stemming from the denial of disability benefits.¹⁶

Effect of Proposed Changes

The bill expands the current public record exemption for identification and location information of public employees to include the home addresses, telephone numbers, dates of birth, and photographs of current and former DOH personnel, whose duties include, or result in, the:

- Determination or adjudication of eligibility for social security disability benefits;
- Investigation or prosecution of complaints filed against health care practitioners; or the
- Inspection of health care practitioners or health care facilities licensed by DOH.

In addition, the bill provides a public record exemption for certain identification and location information for the spouses and children of such DOH personnel. Specifically, the bill provides that the following information relating to the families of such personnel is exempt from public record requirements:

¹² HB 419 Agency Legislative Bill Analysis, Department of Health, at page 2, December 19, 2013 (on file with the Health Quality Subcommittee).

¹³ Section 20.43(3)(h), F.S.

¹⁴ Florida Department of Health, Disability Determinations, <http://www.floridahealth.gov/healthy-people-and-families/people-with-disabilities/disability-determinations/index.html> (last visited February 13, 2014).

¹⁵ *Id.*

¹⁶ HB 419 Agency Legislative Bill Analysis, Department of Health, at page 2, December 19, 2013 (on file with the Health Quality Subcommittee).

- Names, home addresses, telephone numbers, dates of birth, 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 public record exemption only applies if such DOH personnel have made reasonable efforts to protect the information from being accessible through other means available to the public.

The bill provides for repeal of the exemption on October 2, 2019, unless reviewed and saved from repeal by the Legislature.

The bill provides a statement of public necessity as required by the State Constitution.¹⁷ The public necessity statement declares the public record exemption is necessary as the release of such identifying and location information might place these current or former personnel of DOH and their families in danger of physical and emotional harm from disgruntled individuals who have contentious reactions to actions carried out by such personnel. Further, the harm that may result from the release of such personal identifying information outweighs any public benefit derived from disclosure of the information.

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 upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill could create a minimal fiscal impact on DOH, because DOH staff would be responsible for complying with public record requests and may require training related to the expansion of the public record exemption. In addition, DOH could incur costs associated with redacting the exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of DOH.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

¹⁷ See s. 24(c), Art. I of the State Constitution.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. 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 expands current public record exemptions; 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 expands current public record exemptions; 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 for information relating to the identification and location of certain personnel of the Department of Health. The exemption does not appear to be in conflict with the constitutional requirement that the exemption must be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

No additional rule-making authority is necessary to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 18, 2014, the Health Quality Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Adds “dates of birth” to the personal identification information included in the public record exemptions for certain DOH personnel and their families; and
- Clarifies the specific DOH personnel to whom the public record exemptions apply.

This analysis is drafted to the committee substitute as passed by the Health Quality Subcommittee.