

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 69 Pub. Rec./Names of Spouses and Children of Public Defenders and Criminal Conflict and Civil Regional Counsel

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

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 238

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	9 Y, 0 N	Williamson	Williamson
3) Judiciary Committee	15 Y, 0 N	Cox	Havlicak

SUMMARY ANALYSIS

Current law provides a public records exemption for certain identification and location information of current and former public defenders, assistant public defenders, criminal conflict and civil regional counsel, assistant criminal conflict and civil regional counsel ("public defenders"), and for certain identification and location information of the spouses and children of public defenders. Notably, the *names* of spouses and children of public defenders are not exempted.

The bill amends the current public record exemption to add the names of the spouses and children of current and former public defenders. 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.

Article I, Section 24(c) of the Florida 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.

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

Public Record Exemption for Certain Identification and Location Information

Currently, s. 119.071(4)(d)2.j., F.S., provides a public records exemption for certain identification and location information of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel ("public defenders"), and their spouses and children. The following information is exempt³ from public records requirements:

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

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

² See s. 119.15, F.S.

³ 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); *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 85-62 Fla. Op. Att'y Gen. (1985).

If exempt information is held by an agency⁴ that is not the employer of the public defender, the public defender must submit a written request to that agency to maintain the public records exemption.⁵

Notably, the *names* of spouses and children of public defenders are not exempt from public records requirements. In contrast, the names of spouses and children of the following are exempt from public disclosure: former or current sworn or civilian law enforcement personnel, state attorneys, human resource or labor relations agency personnel, code enforcement officers, guardians ad litem, juvenile justice officers, investigators or inspectors of the Department of Business and Professional Regulation, and county tax collectors.⁶

Effect of the Bill

The bill amends s. 119.071(4)(d)2.j., F.S., to expand the current public record exemption for the identification and location information of current and former public defenders. It adds the names of spouses and children of current or former public defenders to the list of exempt information.

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.⁷

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, 2014.

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 government 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:

⁴ 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.

⁵ Section 119.071(4)(d)3., F.S.

⁶ Section 119.071(4)(d)2., F.S.

⁷ Article I, Sec. 24(c), FLA. CONST.

None.

D. FISCAL COMMENTS:

The bill could create a minimal fiscal impact on agencies, because agency staff would be responsible for complying with public records requests and may require training related to the expansion of the public record exemption. In addition, agencies 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 agencies.

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 public record or public meeting exemption. The bill expands the public records 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 expands the public records 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 expands the public record exemption for location and identification information of current and former public defenders and their spouses and children. It affords the spouses and children with similar protections provided to others. As such, 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 5, 2014, the Criminal Justice Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The amendments provide technical clarifications and do not make any substantive changes to the bill.

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