

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1015 Public Records/Law Enforcement Personnel, State Attorneys, & Statewide Prosecutors

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

TIED BILLS: None **IDEN./SIM. BILLS:** SB 1324

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Cox	Cunningham
2) Government Operations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Both the Florida Constitution and Florida Statutes guarantee every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. Currently, s. 119.071(4)(d)2., F.S., provides a public records exemption for certain identification and location information of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors ("state attorneys"), current and former public defenders, assistant public defenders, criminal conflict and civil regional counsel, assistant criminal conflict and civil regional counsel ("public defenders"), and active or former sworn or civilian law enforcement personnel ("law enforcement personnel") and their spouses and children. Notably, residential addresses other than home addresses, and certain personal and financial information associated with state attorneys, public defenders, and law enforcement personnel are not currently exempt from public records laws.

The bill creates a public records exemption for residential addresses other than home addresses of state attorneys, public defenders, and law enforcement personnel, including former residences and residences in which such personnel frequently reside. The bill creates a public records exemption for the following personal and financial information of state attorneys, public defenders, and law enforcement personnel:

- Email addresses;
- Driver license and license plate numbers; and
- Banking and financial information.

The bill also creates a public records exemption for the home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of the parents, siblings, and cohabitants of current and former state attorneys and public defenders.

The bill repeals the exemption on October 2, 2020, 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, 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.

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

The bill provides an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Public Records Laws

Florida Constitution

Article I, section 24(a) of the Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.¹

The Legislature, however, may exempt records from the requirements of article I, section 24 of the Florida Constitution, provided the exemption is passed by two-thirds vote of each chamber and:

- States with specificity the public necessity justifying the exemption (public necessity statement); and
- Is no broader than necessary to meet that public purpose.²

Florida Statutes

Florida Statutes also address the public policy regarding access to government records through a variety of statutes in ch. 119, F.S. Currently, s. 119.07, F.S., guarantees every person a right to inspect, examine, and copy any state, county, or municipal record, unless the record is exempt.

The Open Government Sunset Review Act³ provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose *and* the "[l]egislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."⁴ However, the exemption 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; or
- Protects trade or business secrets.⁵

The Open Government Sunset Review Act requires the automatic repeal of a public record exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.⁶

Public Record Exemption for Certain Identification and Location Information

Section 119.071(4)(d)2.a., d. and j., F.S., provides a public records exemption for certain identification and location information of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors ("state attorneys"), current and former public defenders, assistant public defenders, criminal conflict and civil regional counsel, assistant criminal conflict and civil regional counsel ("public defenders"), and active or former sworn or civilian law enforcement personnel ("law enforcement personnel")⁷ and their spouses and children. Currently, residential

¹ FLA. CONST. art. I, s. 24(a).

² FLA. CONST. art. I, s. 24(c).

³ s. 119.15, F.S.

⁴ *Id.*

⁵ *Id.*

⁶ s. 119.15(3), F.S.

⁷ 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

addresses other than home addresses, and certain personal and financial information associated with state attorneys, public defenders, and law enforcement personnel are not currently exempt from public records laws.

Additionally, certain personal information of the parents, siblings, and cohabitants of these entities is also not exempt from public records laws.

Effect of the Bill

The bill amends s. 119.071(4)(d)2.a., d., and j., F.S., to provide that the residential addresses other than home addresses of state attorneys, public defenders, and law enforcement personnel, including former residences and residences in which such personnel frequently reside, are exempt⁸ from public records laws. The bill exempts the following personal and financial information of state attorneys, public defenders, and law enforcement personnel from public records laws:

- Email addresses;
- Driver license and license plate numbers; and
- Banking and financial information.

The bill also amends s. 119.071(4)(d)2.a. and j., F.S., creating a public records exemption for the home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of the parents, siblings, and cohabitants of current and former state attorneys and public defenders.

The bill repeals the exemptions on October 2, 2020, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.⁹

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 July 1, 2015.

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:

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

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.

⁸ 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 85-62 Fla. Op. Att’y Gen. (August 1, 1985).

⁹ FLA. CONST. art. I, s. 24(c).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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, 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 a public record exemption; therefore, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands a public record exemption; therefore, it includes a public necessity statement.

Breadth of Exemption

Article I, section 24(c) of the Florida 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's expanded public records exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

Requirements for Legislative Review

Section 119.15(3), F.S., requires that any public records exemption must be repealed five years after the enactment or substantial amendment of the exemption unless reviewed and saved from repeal by the Legislature. When reviewing an exemption, s. 119.15(6)(a), F.S., requires the Legislature to consider the following matters:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

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 16, 2015, the Criminal Justice Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The amendments:

- Removed language exempting information identifying former places of employment for current or former state attorneys and active or former sworn law enforcement personnel; and
- Creates a public records exemption for current or former public defenders ensuring that that the same information exempted for state attorneys and law enforcement agencies is exempted for these parties.

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