

**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.)

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Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

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BILL: SB 320

INTRODUCER: Senator Richter

SUBJECT: Public Records/Medical Technicians or Paramedics Personal Identifying Information

DATE: November 16, 2015      REVISED: \_\_\_\_\_

|    | ANALYST      | STAFF DIRECTOR | REFERENCE | ACTION             |
|----|--------------|----------------|-----------|--------------------|
| 1. | <u>Looke</u> | <u>Stovall</u> | <u>HP</u> | <b>Favorable</b>   |
| 2. | <u>Kim</u>   | <u>McVaney</u> | <u>GO</u> | <b>Pre-meeting</b> |
| 3. | _____        | _____          | <u>RC</u> | _____              |

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**I. Summary:**

SB 320 amends s. 119.071, F.S., to exempt certain personal identifying information of any current or former emergency medical technician (EMT) or paramedic certified under ch. 401, F.S., and of his or her spouse and children. The bill requires that the EMT or paramedic must make a reasonable effort to protect such information from being accessible through other public means for such information to qualify for the exemption.

The bill states that it is a public necessity to protect such information as EMTs and paramedics are public safety officers who often deal with violent, angry, or mentally unstable individuals and the release of the exempted information could place an EMT or paramedic in danger of being physically or emotionally harmed or stalked by a person who has a hostile reaction to his or her encounter with the EMT or paramedic.

The provisions of the bill are subject to the Open Government Sunset Review Act and will be automatically repealed on October 2, 2021, unless reenacted by the Legislature.

A two-thirds vote of each house is required for the passage of the bill.

**II. Present Situation:**

**Public Records Law**

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.<sup>1</sup> This applies to the official business of any public body, officer or employee of the state, including all three branches of state government, local governmental entities and any person acting on behalf of the government.<sup>2</sup>

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<sup>1</sup> FLA. CONST., art. I, s. 24(a).

<sup>2</sup> FLA. CONST., art. I, s. 24(a).

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.<sup>3</sup> Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.<sup>4</sup> The Public Records Act states that

It is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.<sup>5</sup>

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.<sup>6</sup> The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”<sup>7</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>8</sup>

The Legislature may create an exemption to public records requirements.<sup>9</sup> An exemption must pass by a two-thirds vote of the House and the Senate.<sup>10</sup> In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.<sup>11</sup> A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.<sup>12</sup>

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<sup>3</sup> The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.

<sup>4</sup> Public records laws are found throughout the Florida Statutes.

<sup>5</sup> Section 119.01(1), F.S.

<sup>6</sup> Section 119.011(12), F.S., defines “public record” to mean “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.” Section 119.011(2), F.S., defines “agency” to mean as “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.”

<sup>7</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

<sup>8</sup> Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

<sup>9</sup> FLA. CONST., art. I, s. 24(c).

<sup>10</sup> FLA. CONST., art. I, s. 24(c).

<sup>11</sup> FLA. CONST., art. I, s. 24(c).

<sup>12</sup> *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So.2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’<sup>13</sup> Records designated as ‘confidential and exempt’ may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as ‘exempt’ may be released at the discretion of the records custodian.<sup>14</sup>

### **EMTs and Paramedics**

According to the United States Department of Labor Bureau of Labor Statistics, EMTs and paramedics take care of sick or injured patients in an emergency medical setting.<sup>15</sup> EMTs and paramedics often work closely with police and firefighters during an emergency situation. The typical duties of an EMT or paramedic include:

- Responding to 911 calls for emergency medical assistance;
- Assessing a patient’s condition and determining a course of treatment;
- Following guidelines learned in training or received from physicians who oversee their work;
- Using backboards and restraints to keep patients still and safe in an ambulance during transport;
- Helping transfer patients to the emergency department of a healthcare facility and report their observations and treatment to the staff;
- Creating a patient care report, documenting the medical care given to the patient; and
- Replacing used supplies and checking or cleaning equipment after use.<sup>16</sup>

In Florida EMTs and paramedics are certified by the Department of Health (DOH).<sup>17</sup>

### **Threats to EMTs and Paramedics**

In their line of work, EMTs and paramedics are often first responders to the scenes of an emergency which may put them in contact with people who are distraught or mentally unstable. Also, although EMTs and paramedics often save patients’ lives, they cannot always guarantee a good outcome for the patient. Bad outcomes can lead to anger and blame being directed toward the EMT or paramedic who treated the patient. For example, a paramedic in Naples was threatened by an anonymous caller after the family of such a patient obtained the paramedic’s personal cell phone number through a public records request.<sup>18</sup> Additionally, EMTs and paramedics may be subject to threats which are not related to an emergency situation. For example, an emergency medical services instructor at Daytona State College received threats

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<sup>13</sup> If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

<sup>14</sup> A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

<sup>15</sup> U.S. Bureau of Labor Statistics, EMTs and Paramedics, <http://www.bls.gov/ooh/Healthcare/EMTs-and-paramedics.htm#tab-2> (last visited November 6, 2015).

<sup>16</sup> *Id.*

<sup>17</sup> EMT and Paramedic certification criteria are established in ch. 401, F.S.

<sup>18</sup> Email conversation with Walter Kopka, Chief of Collier County Emergency Medical Services. On file with the Senate Committee on Health Policy.

from students on multiple occasions which referenced her home address that was obtained from the DOH's Medical Quality Assurance license verification website.<sup>19</sup>

### III. Effect of Proposed Changes:

SB 320 amends s. 119.071, F.S., to exempt the home address, telephone number, and date of birth of any current or former emergency medical technician (EMT) or paramedic certified under ch. 401, F.S., and of his or her spouse and children. The bill also exempts the EMT's or paramedic's photograph, his or her spouse's and children's places of employment, and the names and locations of any schools or day care facilities attended by his or her children. The bill requires that the EMT or paramedic must have made a reasonable effort to protect such information from being accessible through other public means for such information to qualify for the exemption.

The bill states that it is a public necessity to protect such information as EMTs and paramedics are public safety officers who often deal with violent, angry, or mentally unstable individuals and the release of the exempted information could place an EMT or paramedic in danger of being physically or emotionally harmed or stalked by a person who has a hostile reaction to his or her encounter with the EMT or paramedic.

The provisions of the bill are subject to the Open Government Sunset Review Act and will be automatically repealed on October 2, 2021, unless reenacted by the Legislature.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of a state tax shares with counties and municipalities.

#### B. Public Records/Open Meetings Issues:

##### **Vote Requirement**

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting in each house of the Legislature for passage of a newly-created or expanded public records or public meetings exemption. Because this bill creates a new public records exemption, it requires a two-thirds vote for passage.

##### **Public Necessity Statement**

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<sup>19</sup> Email conversation with Patricia Maher, Associate Professor and Assistant Chair of EMS with Daytona State College. On file with the Senate Committee on Health Policy.

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly-created or expanded public records or public meetings exemption. This bill creates a new public records exemption; therefore, it includes a public necessity statement.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Indeterminate. Governmental entities will have to redact identifying information if an EMT or paramedic asserts this exemption. The costs associated with these redactions will be absorbed by the respective governmental entities.

**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.