

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 391 Pub. Rec./Emergency Medical Technicians or Paramedics

SPONSOR(S): Passidomo

TIED BILLS: **IDEN./SIM. BILLS:** SB 320

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	7 Y, 0 N	Guzzo	O'Callaghan
2) Government Operations Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

HB 391 creates a public records exemption for certain identification and location information of current or former emergency medical technicians (EMTs) or paramedics certified under ch. 401, F.S., and the spouses and children of the EMTs or paramedics. The exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2021, unless reviewed and saved from repeal by the Legislature.

The bill also provides a statement of public necessity as required by the Florida Constitution.

The bill may have an insignificant negative fiscal impact on state and local governments.

The bill provides that the act will take effect upon becoming a law.

Article I, s. 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 records or public meetings exemption. The bill creates a public records exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Public Records Laws

The Florida Constitution provides that the public has the right to access government records. It guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.¹

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records. The Public Records Act² guarantees every person's right to inspect and copy any state or local government public record.³

Only the Legislature may create an exemption from public records requirements.⁴ An exemption must specifically state the public necessity justifying the exemption and must be tailored to accomplish the stated purpose of the law.⁵ A bill enacting an exemption may not contain other substantive provisions⁶ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.⁷

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act) prescribes a legislative review process for newly created or substantially amended public records exemptions.⁸ The Act provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.⁹

The Act provides that a public records exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹⁰ An exemption serves an identifiable purpose if it meets one of the following criteria:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹¹

¹ FLA. CONST., art. I, s. 24(a).

² Chapter 119, F.S.

³ 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." The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992). The Legislature's records are public pursuant to s. 11.0431, F.S.

⁴ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential* and exempt. 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). 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 statute. *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

⁵ FLA. CONST., art. I, s. 24(c).

⁶ The bill, however, may contain multiple exemptions that relate to one subject.

⁷ FLA. CONST., art. I, s. 24(c).

⁸ Section 119.15, F.S. Section 119.15(4)(b), F.S. provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The act does not apply to an exemption that is required by federal law or that applies solely to the legislature or the state court system pursuant to section 119.15(2), F.S.

⁹ Section 119.15(3), F.S.

¹⁰ Section 119.15(6)(b), F.S.

¹¹ Section 119.15(6)(b)1., F.S.

- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, only personal identifying information may be made exempt;¹² or
- It protects trade or business secrets.¹³

In addition, the Legislature must find that the identifiable public purpose is compelling enough to override Florida's open government public policy and that the purpose of the exemption cannot be accomplished without the exemption.¹⁴

Public Records Exemptions

Current law provides public records exemptions for identification and location information of certain current or former public employees and their spouses and children.¹⁵ 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 exempt from public records 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.

If exempt information is held by an agency that is not the employer of the public employee, the public employee must submit a written request to that agency to maintain the public records exemption.¹⁶

Emergency Medical Technicians (EMTs) and Paramedics

EMTs and paramedics take care of sick or injured patients in an emergency medical setting and often work closely with police and firefighters during an emergency situation.¹⁷ 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.¹⁸

EMTs and paramedics are regulated by the Department of Health (DOH), under ch. 401, Part III, F.S. Currently, there are 31,898 certified EMTs and 29,221 certified paramedics in Florida.¹⁹ "Emergency

¹² Section 119.15(6)(b)2., F.S.

¹³ Section 119.15(6)(b)3., F.S.

¹⁴ Section 119.15(6)(b), F.S.

¹⁵ Section 119.071(4)(d), F.S.

¹⁶ Section 119.071(4)(d)3., F.S.

¹⁷ U.S. Bureau of Labor Statistics, EMTs and Paramedics, <http://www.bls.gov/ooh/Healthcare/EMTs-and-paramedics.htm#tab-2> (last visited December 17, 2015).

¹⁸ Id.

Medical Technician” is defined under s. 401.23(11), F.S., to mean a person who is certified by DOH to perform basic life support.²⁰ Section 401.23(17), F.S., defines “Paramedic” as a person who is certified by DOH to perform basic and advanced life support.²¹

Complaint Investigations

The Investigation Unit of the Emergency Medical Services Section of DOH is responsible for investigating complaints against EMTs and paramedics. Section 401.414, F.S., requires DOH to investigate any complaint that is, in writing, signed by the complainant, and legally sufficient.²² Upon beginning an investigation, DOH must notify the person being investigated and inform them of the substance of the complaint. However, DOH may conduct an investigation without notifying the person being investigated if the act under investigation is a crime. Upon completion of an investigation, DOH must prepare an investigative report containing the investigative findings and the recommendations of DOH concerning the existence of probable cause.²³

The complaint and all information obtained in the investigation are considered confidential and exempt from the public records requirements of s. 119.07(1), F.S., until 10 days after DOH has found the existence of probable cause or until the person who is the subject of the investigation waives confidentiality, whichever occurs first.²⁴

Effect of Proposed Changes

The bill creates a public records exemption for identification and location information of current or former EMTs or paramedics certified under ch. 401, F.S.

The bill makes the following information exempt from public records requirements:

- The home addresses, telephone numbers, dates of birth, and photographs of current or former EMTs or paramedics certified under ch. 401, F.S.;
- The names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such EMTs or paramedics; and
- The names and locations of schools and day care facilities attended by the children of such EMTs or paramedics.

The exemption is subject to an existing requirement under s. 119.071(4)(d)3., F.S., which provides that if exempt information is held by an agency that is not the employer of the protected public employee, then the protected public employee must submit to that agency a written request to maintain the public records exemption.

The bill provides for repeal of the exemption on October 2, 2021, unless reviewed and saved from repeal by the Legislature.

The bill provides a public necessity statement, which is required by the Florida Constitution. Specifically, the bill states that the exemption is needed to protect EMTs or paramedics, and the

¹⁹Florida Department of Health, *Emergency Medical Services Section Highlights-July 2015*, available at <http://www.floridahealth.gov/licensing-and-regulation/ems-system/> (last visited December 15, 2015).

²⁰ Section 401.23(7), F.S., defines “basic life support” as, the assessment or treatment through the use of techniques described in the Emergency Medical Technician Basic National Standard Curriculum or the National EMS Education Standards of the U.S. Department of Transportation.

²¹ Section 401.23(1), F.S., defines “advanced life support” as, the assessment or treatment by a qualified person through the use of techniques such as endotracheal intubation, the administration of drugs or intravenous fluids, telemetry, cardiac monitoring, cardiac defibrillation, and other techniques described in the EMT-Paramedic National Standard Curriculum or the National EMS Education Standards.

²² Section 401.414(1), F.S., “a complaint is legally sufficient if it contains ultimate facts that show that a violation of ch. 401, part III, F.S., or of any rule adopted by DOH, has occurred.

²³ Section 401.414(2), F.S.

²⁴ Section 401.414(3), F.S.

spouses and children of both, from the risk of physical and emotional harm by disgruntled individuals who have contentious reactions to actions carried out by the EMTs or paramedics.

The bill takes effect upon becoming a law.

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:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill could create a minimal fiscal impact on agencies because staff responsible for complying with public record requests could require training related to creation of the public record exemption. In addition, agencies could incur costs associated with redacting the exempt identification and location information prior to releasing a record. These 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 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 the bill creates a new public records exemption, it requires a two-thirds vote for passage.

Public Necessity Statement

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. The bill creates a new public records exemption and includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a newly created public records or public meetings exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public records exemption for identification and location information emergency medical technicians or paramedics, and the spouses and children of both. 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 rulemaking is necessary to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES