

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 463 Public Records/Unsworn DFS Investigative Personnel

SPONSOR(S): Government Operations Subcommittee; Insurance & Banking Subcommittee; DuBose

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 592

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	11 Y, 1 N, As CS	Peterson	Luczynski
2) Government Operations Subcommittee	11 Y, 0 N, As CS	Toliver	Williamson
3) Regulatory Affairs Committee	18 Y, 0 N	Peterson	Hamon

SUMMARY ANALYSIS

Current law provides public records exemptions for personal identification and location information of certain current or former agency personnel and their spouses and children.

The bill expands the current public records exemptions to include current and former unsworn investigative personnel of the Department of Financial Services whose duties include the investigation of fraud, theft, workers' compensation coverage requirements and compliance, other criminal activities, or state regulatory requirement violations. The exemption covers the home addresses, telephone numbers, dates of birth, and photographs of the personnel; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by their children.

The bill provides for repeal of the exemption on October 2, 2021, unless reviewed and saved from repeal by the Legislature. In addition, the bill provides a statement of public necessity as required by the State Constitution.

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

The bill takes effect upon becoming a law.

Article I, section 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 records or public meetings exemption. The bill expands the current 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

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of the legislative, executive, or judicial branches of government.¹ The Legislature, however, may by general law exempt records from the constitutional requirement.² An exemption must state with specificity the public necessity justifying the exemption and may be no broader than necessary to accomplish the stated purpose of the law.³ A bill enacting an exemption must pass by a two-thirds vote of the members present and voting.⁴

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly-created or substantially-amended public records or open meetings exemptions.⁵ A public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose. An identifiable public purpose is served, if the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a government program, which administration would be significantly impaired without the exemption;
- Protects personal identifying information that, if released, would be defamatory or would jeopardize an individual's safety; or
- Protects trade or business secrets.⁶

The Act directs the Legislature to consider the following as part of the review process:

- What specific records or meetings are affected by the exemption?
- What specific parties does the exemption affect?
- What is the public purpose of the exemption?
- Can the information contained in the records or meetings 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?⁷

Finally, the Act requires the automatic repeal of an exemption on October 2 of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.⁸

Exemptions for Agency Personnel Identification and Location Information

Current law provides public records exemptions for personal identification and location information of certain current or former agency personnel and their spouses and children.⁹ Categories of personnel covered by these exemptions include:

- Law enforcement, including correctional, and specified investigatory personnel;
- Firefighters;

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(c).

³ *Id.*

⁴ *Id.*

⁵ Section 119.15, F.S.

⁶ Section 119.15(6)(b), F.S.

⁷ Section 119.15(6)(a), F.S.

⁸ Section 119.15(3), F.S.

⁹ *See* s. 119.071(4)(d), F.S.

- Justices and judges;
- Local and statewide prosecuting attorneys;
- Magistrates, administrative law judges, and child support hearing officers;
- Local government agency and water management district human resources administrators;
- Code enforcement officers;
- Guardians ad litem;
- Specified Department of Juvenile Justice personnel;
- Public defenders and criminal conflict and civil regional counsel;
- Investigators or inspectors of the Department of Business and Professional Regulation;
- County tax collectors;
- Employees of the Department of Health who make eligibility determinations for social security disability benefits, investigate or prosecute complaints against practitioners, or inspect health care facilities; and
- Impaired practitioner consultants and employees of a consultant who make determinations regarding a health care practitioner's safety and skill to practice.

Although the types of exempt information vary, the following information is exempt¹⁰ from public records requirements for all personnel listed above:

- Home addresses and telephone numbers¹¹ of the named personnel;
- Home addresses, telephone numbers, and places of employment of the spouses and their children; and,
- Names and locations of schools and day care facilities attended by their children.

If exempt information is held by an agency that is not the employer of the protected personnel, he or she must submit a written request to the non-employing agency to maintain the public records exemption.¹²

Currently, personal identification and location information of unsworn investigative personnel of the Department of Financial Services (DFS) and their spouses and children is not exempt from public disclosure, unless subject to another exemption.¹³

Effect of the Bill

The bill expands the current public records exemptions for identification and location information of specified agency personnel to include current and former unsworn investigative personnel of the DFS whose duties include the investigation of fraud, theft, workers' compensation coverage requirements and compliance, other criminal activities, or state regulatory requirement violations. It provides that the home addresses, telephone numbers, dates of birth, and photographs of such personnel; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by their children are exempt from public records requirements.

¹⁰ There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates as *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 (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 2004); and *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, the record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See 85-62 Fla. Op. Att'y Gen. (1985).

¹¹ The term "telephone numbers" includes home, personal cellular, and personal pager telephone numbers, and telephone numbers associated with personal communications devices. See s. 119.071(4)(d)1., F.S.

¹² Section 119.071(4)(d)3., F.S.

¹³ For example, the exemption related to former law enforcement officers applies to certain DFS employees. Section 119.071(4)(d)2.a.(I) and (II), F.S.

The bill currently affects 206 employees in the Divisions of: Insurance Agent & Agency Services;¹⁴ Accounting & Auditing;¹⁵ Funeral, Cemetery & Consumer Services;¹⁶ Workers Compensation;¹⁷ and Public Assistance Fraud.^{18, 19} While the bill does not define “investigative personnel,” the DFS defines it to include unsworn investigators who have authority to issue enforcement actions and their supervisors.²⁰ Supervisors are included because they review enforcement actions and periodically accompany investigators in the field and the State Attorney’s office.²¹ The term does not include support staff or others who do not carry a badge.²²

These personnel conduct face-to-face interviews, collect evidence, inspect and assess compliance, conduct surveillance, and prepare reports that cause consequences for the target of an investigation. These efforts may result in arrest and prosecution for crimes up to and including first degree felonies; loss of commerce and property; monetary fines; or the suspension or loss of professional licenses.²³

The DFS has provided numerous examples from each of the affected divisions of employees who have been threatened as a result of their duties and who have feared repercussion. Threats range from weapons brandished; verbal threats to harm the person or his or her family; harassment; and intimidation.²⁴ Threats have been made directly and indirectly, including telephone messages left on personal phone lines.²⁵ In at least one instance, the target of the investigation used a public records request to obtain an investigator’s personnel file.²⁶

The bill provides that 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. It also provides a public necessity statement as required by the State Constitution.

B. SECTION DIRECTORY:

Section 1: Amends s. 119.071, F.S., to provide an exemption from public records requirements for the personal identifying and location information of certain unsworn investigative personnel of the DFS.

Section 2: Provides a public necessity statement.

Section 3: Provides an effective date of upon becoming a law.

¹⁴ The Division of Insurance Agent & Agency Services conducts administrative investigations of its licensees, which include insurance agents and agencies; insurance adjusters; bail bond agents and agencies; navigators; title agents, agencies, and escrow accounts; and warranty sales. Disciplinary action, including license revocation and a permanent ban from the insurance industry, may result. Approximately, 10-20 percent of the division’s cases are referred for criminal investigation.

¹⁵ The Office of Fiscal Integrity within the Division of Accounting & Auditing investigates suspicion of theft, attempted theft, or the misappropriation of state funds.

¹⁶ The Division of Funeral, Cemetery & Consumer Services regulates the deathcare industry in Florida. The division investigates complaints from the public regarding conduct of licensees, such as allegations of fraudulent activities or improper handling of human remains. Disciplinary action, including license revocation, may result.

¹⁷ Investigators in the Division of Workers’ Compensation enforce the statutory requirement that employers secure workers’ compensation coverage for their employees. Investigators issue stop-work orders, ceasing all the business operations of the employer if the employer lacks workers’ compensation coverage. Mandatory fines may also be imposed.

¹⁸ The Division of Public Assistance Fraud investigates recipients of Supplemental Nutrition Assistance Program, Medicaid, School Readiness, Social Security Administration disability programs, and Temporary Assistance for Needy Families, and merchants, daycare providers and employees of the Department of Children & Families or Early Learning Coalitions alleged to have committed fraud.

¹⁹ Email from Elizabeth Boyd, Legislative Affairs Director, Florida Department of Financial Services, RE: HB 463 (Nov. 9, 2015) (on file with the House Insurance & Banking Subcommittee).

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ Florida Department of Financial Services, Agency Analysis of 2015 House Bill 463, p.1 (Nov. 10, 2015) (on file with the House Insurance & Banking Subcommittee).

²⁴ *Id.*

²⁵ *Id.*

²⁶ Email from Elizabeth Boyd, Legislative Affairs Director, Florida Department of Financial Services, RE: HB 463 (Nov. 5, 2015) (on file with the House Insurance & Banking Subcommittee).

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 records requests could require training related to creation of the public records 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 State 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 expands current public records 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 records or public meetings exemption. The bill expands current public records 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 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 the identification and location information of investigative

personnel of the DFS whose duties include the investigation of fraud, theft, workers' compensation coverage requirements and compliance, other criminal activities, or state regulatory requirement violations. As such, the exemption does not appear to be in conflict with the constitutional requirement that it be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 18, 2015, the Insurance & Banking Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The amendments revised the scope of the exemption to remove social security numbers, photographs of the spouse and children, and language related to the types of investigations and to add further description of the justification for the exemption.

On January 13, 2016, the Government Operations Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The amendments clarified that the exemption applies only to investigative personnel of the DFS whose duties include the investigation of fraud, theft, workers' compensation coverage requirements and compliance, other criminal activities, or state regulatory requirement violations. The amendments also replaced references to "child care facilities" with "day care facilities" in order to track the language contained in other similar exemptions found in current law.

The staff analysis is drafted to reflect the committee substitute as approved by the Government Operations Subcommittee.