

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/CS/HB 463	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Government Operations Subcommittee; Insurance & Banking Subcommittee; DuBose; Passidomo	113 Y's	0 N's
COMPANION BILLS:	CS/SB 592	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

CS/CS/HB 463 passed the House on March 8, 2016, as CS/SB 592.

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

The bill expands the current public records exemptions to include current and former nonsworn investigative personnel of the Department of Financial Services (DFS) whose duties include the investigation of fraud, theft, workers' compensation coverage requirements and compliance, other related criminal activities, or state regulatory requirement violations and for current or former emergency medical technicians or paramedics. 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 exemptions 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 was approved by the Governor on March 30, 2016, ch. 2016 -159, L.O.F., and became effective on that date.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF 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

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.

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;
- 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

Effect of the Bill

DFS Nonsworn Investigative Personnel

The bill expands the current public records exemptions for identification and location information of specified agency personnel to include current and former nonsworn investigative personnel of the DFS whose duties include the investigation of fraud, theft, workers' compensation coverage requirements and compliance, other related criminal activities, or state regulatory requirement violations. It provides that the home addresses, telephone numbers, dates of birth, and photographs of such personnel; the

⁹ See s. 119.071(4)(d), F.S.

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.

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.

The bill currently affects 206 employees in the Divisions of: Insurance Agent & Agency Services;¹³ Accounting & Auditing;¹⁴ Funeral, Cemetery & Consumer Services;¹⁵ Workers Compensation;¹⁶ and Public Assistance Fraud.^{17, 18} While the bill does not define “investigative personnel,” the DFS defines it to include nonsworn investigators who have authority to issue enforcement actions and their supervisors.¹⁹ Supervisors are included because they review enforcement actions and periodically accompany investigators into the field and State Attorney’s office.²⁰ The term does not include support staff or others who do not carry a badge.²¹

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.²²

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.²³ Threats have been made directly and indirectly, including telephone messages left on personal phone lines.²⁴ In at least one instance, the target of the investigation used a public records request to obtain an investigator’s personnel file.²⁵

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.

EMTs and Paramedics

The bill expands the current public records exemptions for identification and location information of specified public employees to include current and former EMTs and paramedics certified under ch. 401, F.S. 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

¹³ 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.

¹⁴ The Office of Fiscal Integrity within the Division of Accounting & Auditing investigates suspicion of theft, attempted theft, or the misappropriation of state funds.

¹⁵ 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.

¹⁶ 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.

¹⁷ 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.

¹⁸ Email from Elizabeth Boyd, Legislative Affairs Director, Florida Department of Financial Services, RE: HB 463 (Nov. 9, 2015).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² Florida Department of Financial Services, Agency Analysis of 2015 House Bill 463, p.1 (Nov. 10, 2015).

²³ *Id.*

²⁴ *Id.*

²⁵ Email from Elizabeth Boyd, Legislative Affairs Director, Florida Department of Financial Services, RE: HB 463 (Nov. 5, 2015).

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.

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.²⁶ 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.²⁷

EMTs and paramedics are regulated by the DOH, under part III, ch. 401, F.S. Currently, there are 31,898 certified EMTs and 29,221 certified paramedics in Florida.²⁸

EMTs and paramedics are often first responders to the scene of an emergency which may put them in contact with people who are distraught or mentally unstable. 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 a patient obtained the paramedic's personal cell phone number through a public records request. The boyfriend of a woman who did not survive an accident made threatening phone calls to an EMT in Polk County and was observed stalking the station.²⁹

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.

²⁶ U.S. BUREAU OF LABOR STATISTICS, *EMTs and Paramedics*, <http://www.bls.gov/ooh/healthcare/emts-and-paramedics.htm> (last visited Mar. 8, 2016).

²⁷ U.S. BUREAU OF LABOR STATISTICS, *What EMTs and Paramedics Do*, (last visited Mar. 8, 2016).

²⁸ Fla. Dept. of Health, *Emergency Medical Services Section Highlights-July 2015*, at 1, available at <http://www.bls.gov/ooh/healthcare/emts-and-paramedics.htm#tab-2> (last visited Mar. 8, 2016).

²⁹ A series of emails from Walter Kopka, Chief of Collier County Emergency Medical Services, RE: EMS Public Records Exemption. (forwarded to the House Insurance & Banking Subcommittee, March 8, 2016).

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.