

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.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/SB 1420

INTRODUCER: Community Affairs Committee and Senator Burgess

SUBJECT: Public Records/County and City Attorneys

DATE: February 3, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bond</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Hackett</u>	<u>Ryon</u>	<u>CA</u>	Fav/CS
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1420 creates a public records exemption for specified personal information of current and former county attorneys, deputy county attorneys, assistant county attorneys, city attorneys, deputy city attorneys, and assistant city attorneys. Personal information relating to their spouses and children is likewise exempt. The specific personal information made exempt from public records disclosure requirements includes:

- Home addresses, telephone numbers, places of employment, and dates of birth;
- Names, home addresses, telephone numbers, places of employment, and dates of birth of the spouses and children; and
- Names and locations of schools and day care facilities attended by the children.

The exemption, however, does not apply to a current or former county attorney, deputy county attorney, assistant county attorney, city attorney, deputy city attorney, or assistant city attorney who qualifies as a candidate for election to public office. A statement of public necessity is included in the bill as required by the State Constitution.

This bill is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2024, unless reviewed and saved from the repeal through reenactment by the Legislature.

Because this bill creates a public records exemption, it will require a two-thirds vote of each house in order to pass.

The bill is effective July 1, 2022.

II. Present Situation:

Position of County Attorney and City Attorney

The term “county attorney” is not defined by statute, but is referenced in eight statutes as a local government employee expected to assist in the enforcement of various laws.¹ Similarly, the term “city attorney” is not defined by statute, but is referenced in four statutes, again as a local government employee expected to assist in the enforcement of various laws.²

The duties of a county attorney or city attorney vary and are set by the governing board of the local government. The duties of an assistant county attorney or assistant city attorney are set by their respective county attorney or city attorney. As an example, one county has defined the duties of its county attorney:

- Employing and managing all personnel of the County Attorney’s Office, establishing the organizational framework of the Office, and supervising the conduct of all employees of the Office of the County Attorney.
- Providing legal advice and counsel to, and legal representation of the Board and County departments, agencies, officers and employees on matters pertaining to the business of the County or in connection with the duties of the Board, department, agency, officer or employee.
- Representing the County in all litigation, administrative hearings, mediation, appeals and judicial proceedings in which the County, the Board, or a County department or agency under the jurisdiction of the Board is a party.
- Providing legal advice and counsel to, and legal representation of, constitutional officers of Sarasota County and its employees on matters pertaining to the respective business and duties of the constitutional officers and employees at the request of constitutional officers.
- Representing any constitutional officer or employee of the officer in any litigation, administrative hearing, mediation, appeal or judicial proceeding upon request of said constitutional officer.
- Advising and providing recommendations to the Board regarding the need for the selection of any special counsel to be retained by the County to provide legal representation in specified matters.
- Supervising, monitoring and coordinating, as appropriate, the representation, services and work of any special counsel.
- At the request of the Board, the County Attorney is hereby authorized to represent the Board or a Board member when the Board or a member is acting as a separate agency or board or in an ex-officio capacity or is otherwise officially representing the county at the direction of the Board.

¹ Sections 60.05, 373.609, 381.0012, 409.2554, 499.002, 499.81, 509.285, and 705.106, F.S.

² Sections 60.05, 409.2554, 705.106, and 849.44, F.S.

- Providing legal advice and counsel to and representation of any other State or local governmental office, unit, or entity as may be required by law or interlocal agreement entered into by the Board.³

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.⁴ The right to inspect or copy 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.⁵

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the Legislature.⁶ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁷ Lastly, chapter 119, F.S., known as the Public Records Act, provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

The Public Records Act provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁸

Section 119.011(12), F.S., defines “public records” to include:

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 connections with the transaction of official business by any agency.

³ Sarasota County ordinance 2-63.

⁴ FLA. CONST. art. I, s. 24(a).

⁵ *Id.*

⁶ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2020-2022) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2020-2022).

⁷ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁸ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” 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.”

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business that are used to “perpetuate, communicate, or formalize knowledge of some type.”⁹

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.¹⁰ A violation of the Public Records Act may result in civil or criminal liability.¹¹

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹² The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹³

General exemptions from the public records requirements are contained in the Public Records Act.¹⁴ Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹⁵

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.¹⁶ Records designated as “confidential and exempt” are not subject to inspection by the public and may only be released under the circumstances defined by statute.¹⁷ Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.¹⁸

⁹ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

¹⁰ Section 119.07(1)(a), F.S.

¹¹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹² FLA. CONST. art. I, s. 24(c).

¹³ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding 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); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹⁴ *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹⁵ *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁶ *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁷ *Id.*

¹⁸ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act¹⁹ (the Act), prescribe a legislative review process for newly created or substantially amended²⁰ public records or open meetings exemptions, with specified exceptions.²¹ The Act requires the repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.²²

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.²³ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²⁴
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however; only personal identifying information is exempt;²⁵ or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²⁶

The Act also requires specified questions to be considered during the review process.²⁷ In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁸ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote

¹⁹ Section 119.15, F.S.

²⁰ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

²¹ Section 119.15(2)(a) and (b), F.S., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

²² Section 119.15(3), F.S.

²³ Section 119.15(6)(b), F.S.

²⁴ Section 119.15(6)(b)1., F.S.

²⁵ Section 119.15(6)(b)2., F.S.

²⁶ Section 119.15(6)(b)3., F.S.

²⁷ Section 119.15(6)(a), F.S. The specified questions are:

- 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?

²⁸ See *generally* s. 119.15, F.S.

for passage are *not* required. If the Legislature allows an exemption to expire, the previously exempt records will remain exempt unless otherwise provided by law.²⁹

General Public Records Exemptions for State and Local Agency Personnel

There are three general public records exemptions that apply to all state and local agency personnel: disclosure of an employee's social security number, medical information, and personal identifying information of dependent children who are insured by an agency group insurance plan.³⁰

Social Security Numbers

Social security numbers of all current and former agency personnel are confidential and exempt when held by the employing agency.³¹ An employing agency may only release social security numbers for the following reasons:

- It is required by federal or state law, or court order.
- A receiving government agency needs the social security number to perform its duties.
- The employee consents to disclose his or her social security number.³²

In addition, there is a general exemption for social security numbers which applies to the public that makes social security numbers confidential and exempt.³³ This exemption applies to any agency that holds anyone's social security number, including those belonging to the personnel of that agency. This exemption, however, permits the agency to disclose social security numbers of agency personnel in order to administer health or retirement benefits.³⁴

Medical Information

A prospective, current, or former agency employee's medical information is also exempt from public disclosure if the medical information could identify the employee. Such information may be disclosed if the person to whom the information pertains or the person's legal representative provides written permission pursuant to a court order.³⁵

Personal Identifying Information

The personal identifying information of a dependent child of an agency employee who is insured by an agency group insurance plan is exempt from public disclosure. This exemption applies to the dependent children of current and former employees and is also retroactively applied.³⁶

²⁹ Section 119.15(7), F.S.

³⁰ Section 119.071(4)(a) and (b), F.S.

³¹ Section 119.071(4)(a)1., F.S.

³² Section 119.071(4)(a), F.S.

³³ Section 119.071(5)(a)5., F.S.

³⁴ Section 119.071(5)(a)6.f. and g., F.S.

³⁵ Section 119.071(4)(b)1., F.S.

³⁶ Section 119.071(4)(b)2., F.S.

Public Records Exemptions for Specified Personnel and Their Families (s. 119.071(4)(d), F.S.)

Provisions in s. 119.071(4)(d), F.S., exempt from public disclosure certain personal identification and location information of specified state and local government agency personnel and their spouses and children. Personnel covered by these exemptions include, in part:

- Active or former sworn or civilian law enforcement personnel employed by a law enforcement agency, including correctional and correctional probation officers, certain investigative personnel of the DCF and the Department of Health, and certain personnel of the Department of Revenue and local governments involved in revenue collection and child support enforcement;³⁷
- Certain current or former nonsworn investigative personnel of the Department of Financial Services;³⁸
- Certain current or former nonsworn investigative personnel of the Office of Financial Regulation's Bureau of Financial Investigations;³⁹
- Current or former certified firefighters;⁴⁰
- Current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges;⁴¹
- Current or former state attorneys, assistant state attorneys, statewide prosecutors, and assistant statewide prosecutors;⁴²
- Current or former code enforcement officers;⁴³
- Current or former guardians ad litem;⁴⁴
- Current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel;⁴⁵
- Current or former investigators or inspectors of the Department of Business and Professional Regulation;⁴⁶
- County tax collectors;⁴⁷
- Current or former certified emergency medical technicians and paramedics;⁴⁸
- Current or former directors, managers, supervisors, nurses, and clinical employees of an addiction treatment facility;⁴⁹
- Current or former directors, managers, supervisors, and clinical employees of certain child advocacy centers;⁵⁰ and

³⁷ Section 119.071(4)(d)2.a., F.S.

³⁸ Section 119.071(4)(d)2.b., F.S.

³⁹ Section 119.071(4)(d)2.c., F.S.

⁴⁰ Section 119.071(4)(d)2.d., F.S.

⁴¹ Section 119.071(4)(d)2.e., F.S.

⁴² Section 119.071(4)(d)2.f., F.S.

⁴³ Section 119.071(4)(d)2.i., F.S.

⁴⁴ Section 119.071(4)(d)2.j., F.S. Guardians ad litem are volunteers who offer their services to the program.

⁴⁵ Section 119.071(4)(d)2.l., F.S.

⁴⁶ Section 119.071(4)(d)2.m., F.S.

⁴⁷ Section 119.071(4)(d)2.n., F.S.

⁴⁸ Section 119.071(4)(d)2.q., F.S.

⁴⁹ Section 119.071(4)(d)2.s., F.S.

⁵⁰ Section 119.071(4)(d)2.t., F.S.

- Current or former staff of domestic violence centers, including domestic violence advocates.⁵¹

The employing agency as well as the employee may assert the right to the exemption by submitting a written request to each agency that holds the employee's information.⁵² Further, all of these exemptions have retroactive application.⁵³

The information exempted by the various provisions of s. 119.071(4)(d)2., F.S., is similar but not identical. All of the provisions in s. 119.071(4)(d)2., F.S., exempt from public disclosure the home addresses,⁵⁴ telephone numbers,⁵⁵ and dates of birth of the specified personnel. However, exemptions are not uniform for names, photographs, and places of employment.

Section 119.071(4)(d)2., F.S., also exempts from public disclosure certain types of information about employees' spouses and children. The exemptions for family members include home addresses, telephone numbers, spouses' places of employment, and names and locations of children's schools and day care facilities. However, exemptions are not uniform for names, dates of birth, and photographs of family members.

III. Effect of Proposed Changes:

CS/SB 1420 creates a public records exemption from public records disclosure for specified personal information of current and former county attorneys, deputy county attorneys, assistant county attorneys, city attorneys, deputy city attorneys, and assistant city attorneys. Personal information relating to their spouses and children is likewise exempt. The specific personal information made exempt from public records disclosure requirements includes:

- Home addresses, telephone numbers, places of employment, and dates of birth;
- Names, home addresses, telephone numbers, places of employment, and dates of birth of the spouses and children; and
- Names and locations of schools and day care facilities attended by the children.

The exemption does not apply to a current or former county attorney, deputy county attorney, assistant county attorney, city attorney, deputy city attorney, or assistant city attorney who qualifies as a candidate for election to public office.

The bill provides a public necessity statement as required by Article I, s. 24(c) of the State Constitution. The public necessity statement provides that:

⁵¹ Section 119.071(4)(d)2.u., F.S.

⁵² Section 119.071(4)(d)3. and 4., F.S.

⁵³ Section 119.071(4)(d)5., F.S.

⁵⁴ Section 119.071(4)(d)1.a., F.S., defines "home addresses" to mean "the dwelling location at which an individual resides and includes the physical address, mailing address, street address, parcel identification number, plot identification number, legal property description, neighborhood name and lot number, GPS coordinates, and any other descriptive property information that may reveal the home address."

⁵⁵ Section 119.071(4)(d)1.b., F.S., defines "telephone numbers" to include "home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices."

The Legislature finds that it is a public necessity that the home addresses, telephone numbers, dates of birth, and photographs of current or former county attorneys, assistant county attorneys, city attorneys, and assistant city attorneys be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The Legislature further finds that it is a public necessity that the names, home addresses, telephone numbers, dates of birth, photographs, and places of employment of the spouses and children of current or former county attorneys, assistant county attorneys, city attorneys, and assistant city attorneys, and the names and locations of schools and day care facilities attended by the children of such attorneys, be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The responsibilities of county attorneys, assistant county attorneys, city attorneys, and assistant city attorneys regularly involve legal enforcement proceedings in areas of neglect and abuse related to violations of codes and ordinances. Legal enforcement proceedings have led to retribution and threats by defendants and other persons on numerous occasions. Such attorneys have received death threats and e-mails from disgruntled persons advocating the murder of other attorneys. Other incidents have included the stalking of such attorneys and their spouses and children. The Legislature finds that the release of such personal identifying and location information could place such persons in danger of being physically or emotionally harmed or stalked by a defendant or another person. The Legislature finds that the harm that may result from the release of such personal identifying and location information outweighs any public benefit that may be derived from the disclosure of the information

The bill is subject to the Open Government Sunset Review Act and is repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature

The bill is effective on July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

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 bill creating or expanding an exemption to the public records requirements. This bill enacts a new exemption for the personal identifying and location information of current and former county attorneys, assistant county attorneys, city attorneys, and assistant city attorneys, thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 2. of the bill contains a statement of public necessity for the exemption.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The stated purpose of the law is to protect the attorneys and their families from the danger of becoming a victim of stalking, emotional abuse, and physical violence. This bill exempts only certain personal identifying information from the public records requirements, consistent with 21 similar exemptions. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

CS/SB 1420 does not appear to have a fiscal impact on state or local governments.

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.)

CS by Community Affairs on February 2, 2022:

The CS removes photographs of specified state employees from the public records exemption, and adds deputy county and city attorneys in addition to assistant county and city attorneys.

B. Amendments:

None.