

**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 268

INTRODUCER: Senator Jones

SUBJECT: Public Records/Public Officers

DATE: February 17, 2025      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	White	McVaney	GO	<b>Pre-meeting</b>
2.			CA	
3.			RC	

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**I. Summary:**

SB 268 exempts from public records copying and inspection requirements certain identifying and location information of elected state and local officers, along with their spouses and children.

The bill exempts from public disclosure the following information:

- The partial home addresses of a current public officer and his or her spouse;
- The telephone numbers of a current public officer's spouse;
- The names, home addresses, telephone numbers, and dates of birth, of a public officer's minor children, if any, as well as the names and locations of the school or day care facility said children attends; and
- The partial home addresses and telephone numbers of a public officer's adult children.

This exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2030, unless saved by the Legislature from repeal.

This bill contains a statement of public necessity as required by the State Constitution. The bill creates a new public records exemption and, therefore, requires a two-thirds vote of the members present and voting for final passage.

This bill is not expected to impact state and local government revenues and expenditures.

This bill takes effect July 1, 2025.

## II. Present Situation:

### Access to Public Records - Generally

The State 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> 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.<sup>2</sup>

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.<sup>3</sup> Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.<sup>4</sup> Lastly, ch. 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.<sup>5</sup>

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

[a]ll 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.

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.”<sup>6</sup>

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

<sup>2</sup> *Id.* See also, *Sarasota Citizens for Responsible Gov’t v. City of Sarasota*, 48 So. 3d 755, 762-763 (Fla. 2010).

<sup>3</sup> See Rule 1.48, *Rules and Manual of the Florida Senate*, (2022-2024) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2022-2024).

<sup>4</sup> *State v. Wooten*, 260 So. 3d 1060 (Fla. 4<sup>th</sup> DCA 2018).

<sup>5</sup> 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.”

<sup>6</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

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.<sup>7</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>8</sup>

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.<sup>9</sup> 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.<sup>10</sup>

General exemptions from the public records requirements are contained in the Public Records Act.<sup>11</sup> Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.<sup>12</sup>

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*.<sup>13</sup> 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.<sup>14</sup> Records designated as "exempt" may be released at the discretion of the records custodian under certain circumstances.<sup>15</sup>

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

Section 119.071(4), F.S., addresses personnel information held by government agencies within the context of public records exemptions. In paragraph (d), "home addresses" is defined as 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. Additionally, "telephone numbers" is

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<sup>7</sup> Section 119.07(1)(a), F.S.

<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> *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).

<sup>11</sup> *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).

<sup>12</sup> *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).

<sup>13</sup> *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

<sup>14</sup> *Id.*

<sup>15</sup> *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

defined to include home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices.

Section 119.071(4)(d)2., F.S., generally exempts from public disclosure the home addresses, dates of birth, photographs, and telephone numbers of specified public employees and their spouses and children. Additionally exempted, typically, are the spouse's place of work as well as the name and location of any schools or day care facilities of the public employee's children, if any. These public employees include, but is not limited to, sworn law enforcement personnel and active or former civilian personnel employed by a law enforcement agency;<sup>16</sup> current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges;<sup>17</sup> current or former state attorneys;<sup>18</sup> current or former public defenders;<sup>19</sup> county tax collectors;<sup>20</sup> and clerks of a circuit court.<sup>21</sup>

Records that include exempt information about the above-specified personnel and their spouses and children (minor or adult) may be held by, among others, their employing agency, clerks of court and comptrollers, county tax collectors and property appraisers, school districts, and law enforcement agencies. County property appraisers<sup>22</sup> and county tax collectors<sup>23</sup> holding exempted information need only remove the name of an individual with exempt status and the instrument number or Official Records book and page number identifying the property with the exemption status from all publicly available records. County property appraisers and county tax collectors may not remove the street address, legal description, or other information identifying real property so long as the name or personal information otherwise exempt is not associated with the property or otherwise displayed in the public records.<sup>24</sup>

The personnel, their spouses or children, or their employing agency claiming an exemption under s. 119.071(4)(d)2., F.S., must affirmatively assert the right to the exemption by submitting a written and notarized request to each non-employer agency that holds the employee's or their spouse or child's information. The individual or entity asserting the exemption must provide, under oath, the statutory basis for the individual's exemption and confirm the individual's status as a party eligible for exempt status.<sup>25</sup>

These exemptions under s. 119.071(4)(d)2., F.S., have retroactive application, applying to information held by an agency before, on, or after the effective date of the exemption.<sup>26</sup> Home

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<sup>16</sup> Section 119.071(4)(d)2.a., F.S. This would presumably include elected law enforcement officers such as sheriffs.

<sup>17</sup> Section 119.071(4)(d)2.e., F.S.

<sup>18</sup> Section 119.071(4)(d)2.f., F.S.

<sup>19</sup> Section 119.071(4)(d)2.l., F.S.

<sup>20</sup> Section 119.071(4)(d)2.n., F.S.

<sup>21</sup> Section 119.071(4)(d)2.y., F.S. Circuit court clerks' exemption from public records under this statute is set to repeal on October 2, 2029, unless saved by the Legislature.

<sup>22</sup> See s. 192.001(3), F.S.

<sup>23</sup> See s. 192.001(4), F.S.

<sup>24</sup> Section 119.071(4)(d)4., F.S.

<sup>25</sup> Section 119.071(4)(d)3., F.S.

<sup>26</sup> Section 119.071(4)(d)6., F.S.

addresses, however, are no longer exempt in the Official Records if the protected party no longer resides at the dwelling<sup>27</sup> or upon his or her death.<sup>28</sup>

### **Open Government Sunset Review Act**

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act<sup>29</sup> (the Act), prescribe a legislative review process for newly created or substantially amended<sup>30</sup> public records or open meetings exemptions, with specified exceptions.<sup>31</sup> The Act requires the repeal of such exemption on October 2 of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>32</sup>

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.<sup>33</sup> An exemption serves an identifiable purpose if the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption, and it meets one of the following purposes:

- 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;<sup>34</sup>
- 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;<sup>35</sup> or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.<sup>36</sup>

The Act also requires specified questions to be considered during the review process.<sup>37</sup> In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

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<sup>27</sup> The protected individual must submit a notarized, written request to release the removed information. Section 119.071(4)(d)8., F.S.

<sup>28</sup> A certified copy of a death certificate or court order must be presented with a notarized request to release the information to remove the exemption. Section 119.071(4)(d)9., F.S. Note, the Clerk is also called the "county recorder." *See* s. 28.222(2), F.S.

<sup>29</sup> Section 119.15, F.S.

<sup>30</sup> 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.

<sup>31</sup> 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.

<sup>32</sup> Section 119.15(3), F.S.

<sup>33</sup> Section 119.15(6)(b), F.S.

<sup>34</sup> Section 119.15(6)(b)1., F.S.

<sup>35</sup> Section 119.15(6)(b)2., F.S.

<sup>36</sup> Section 119.15(6)(b)3., F.S.

<sup>37</sup> 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?

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are again required.<sup>38</sup> 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 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.<sup>39</sup>

### III. Effect of Proposed Changes:

**Section 1** exempts from public records disclosure requirements certain personal identifying information of elected state and local public officers and their spouses and children.

The following information will be exempt from public disclosure:

- The partial home addresses of a current public officer and his or her spouse;
- The telephone numbers of a current public officer's spouse;
- The names, home addresses, telephone numbers, and dates of birth of a public officer's minor children, if any, and the names and locations of the schools or day care facilities the children attend; and
- The partial home addresses and phone numbers of any other children of a public officer.

The bill defines various terms for purposes of this exemption. The definition of "partial home addresses" is very similar to the current law definition of "home addresses" used in other public record disclosure exemptions, except that "partial home address," for purposes of this new exemption, does not include the city and zip code information of the dwelling's location.

"Public officer" means a person *elected* to state or local office. This definition applies to the governor, lieutenant governor, cabinet members, state legislators, judges, sheriffs, clerks of the court, tax collectors, property appraisers, supervisors of election, elected school superintendents, school board members, county commissioners, city commissioners, elected mayors, and any other elected local government officers. The term does not include federal officers, nor any officer appointed, rather than elected, at any governmental level.

To assert the exemption, the public officer, their spouse or children, or their employing agency must submit a written and notarized request to each custodial agency that does not employ the public officer for the office forming the basis for the exemption. The individual or entity asserting the exemption must provide, under oath, the statutory basis for the individual's exemption and confirm the individual's status as a party eligible for exempt status.<sup>40</sup> Pursuant to s. 119.071(4)(d)6., F.S., the new exemption applies to information held by an agency before, on, or after July 1, 2025 (the effective date of the exemption).<sup>41</sup>

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- 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?

<sup>38</sup> See generally s. 119.15, F.S.

<sup>39</sup> Section 119.15(7), F.S.

<sup>40</sup> Section 119.071(4)(d)3., F.S.

<sup>41</sup> See s. 119.071(4)(d)6., F.S.

The information otherwise exempt from public records disclosure requirements may be disclosed to another agency or governmental entity if the information disclosed is necessary for the receiving entity to perform its duties and responsibilities.

Consistent with s. 119.15, F.S., the new exemptions will expire on October 2, 2030, unless reviewed and saved from repeal by the Legislature.

**Section 2** provides the constitutionally required public necessity statement. The public necessity statement identifies potential retribution against officers (and their families) for making necessary and impactful policy decisions as on justification for the bill. It also cites threats, harassment, and intimidation as potentially discouraging residents from seeking elective office.

**Section 3** provides that the bill takes effect on July 1, 2025.

#### **IV. Constitutional Issues:**

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

Not applicable. 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 state tax shared with counties and municipalities.

##### **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 disclosure requirements. This bill enacts a new exemption for certain addresses, phone numbers, and other details of elected officials and their spouses and children and, 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 disclosure 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 which provides that public officers and their families may receive threats as a result of themselves or a family member carrying out their official duties. The threat of such harm may discourage residents from seeking elected office in order to protect themselves or their family.

###### **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 purpose of the proposed law is to protect elected officials and their spouses and children from threats, harassment, and intimidation that may result from their necessary and impactful policy decisions. This bill exempts elected officials and their spouses and children from the public records disclosure requirements. The records exempted, to a large degree, mirror (and are even more limited than) existing exemptions for other sensitive state officers and employees in s. 119.071(4)(d), F.S. Thus, the exemption does not appear to be broader than necessary to accomplish the purpose of the law. Moreover, certain individual public officers, as defined by this bill, already enjoy broader public record disclosure exemptions than the proposed language provides.

C. Trust Funds Restrictions:

None identified.

D. State Tax or Fee Increases:

None identified.

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None identified.

B. Private Sector Impact:

The private sector will be subject to the cost associated with an agency's review and redactions of exempt records in response to a public records request.

C. Government Sector Impact:

This bill may cause a minimal increase in workload on agencies holding records that contain personal identifying information of public officers as well as their spouses and children because staff responsible for complying with public record requests may require training related to the new public record exemption. Additionally, agencies may incur costs associated with redacting the exempt information prior to releasing a record. However, the workload will likely be absorbed within current resources.

**VI. Technical Deficiencies:**

**“Partial Home Address”**

The definition of partial home address, provided in lines 355-361, may be inconsistent. The definition of a “partial home address” specifically excludes the city and zip code from information such as the physical address, mailing address, or street address. However, the



definition includes “any other descriptive property information that may reveal the home address.” This last clause could be interpreted to protect from disclosure the city and zip code.

To solve this inconsistency, the Legislature may wish to amend the last clause of the proposed definition of partial home address, found on lines 360-361, to read “any other descriptive information that may reveal the partial home address, except for the city or zip code.”

#### **“Current” Public Officers**

It appears that the exemption is intended to apply to current public officers but not former public officers. However, the portion of the exemptions relating to the children’s information does not refer to “current public officer.” To clarify that the exemption applies only to children of current public officers, the term “public officer” should be amended to read “current public officer” on lines 370, 375, and 468.

#### **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.