

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 383 Pub. Rec./Former Firefighters Personal Identifying Information
SPONSOR(S): Oversight, Transparency & Administration Subcommittee; Willhite and others
TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 1108

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee	12 Y, 0 N, As CS	Toliver	Harrington
2) Government Accountability Committee	22 Y, 0 N	Toliver	Williamson

SUMMARY ANALYSIS

Current law provides that the home addresses, telephone numbers, dates of birth, and photographs of certified firefighters are exempt from public record requirements. In addition, the home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of those firefighters, and the names and locations of schools and day care facilities attended by their children are exempt from public record requirements. While the public record exemption protects specified personal identification and location information for firefighters, it does not appear to protect such information for former firefighters.

The bill expands the public record exemption to include the personal identification and location information of former firefighters and their spouses and children. The bill provides for repeal of the exemption on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature. The bill provides a public necessity statement as required by the State Constitution.

The bill may have a minimal fiscal impact on the state and local governments. See Fiscal Comments.

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 record or public meeting exemption. The bill expands an existing public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

The State Constitution guarantees 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 provide by general law for the exemption of records from the constitutional requirement.² The general law must state with specificity the public necessity justifying the exemption and must 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

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act⁵ provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

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

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October 2 of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.⁷

Firefighters

Chapter 633, F.S., governs state law on fire prevention and control. The Chief Financial Officer is designated as the State Fire Marshal,⁸ operating through the Division of State Fire Marshal (division) within the Department of Financial Services (DFS),⁹ and tasked with regulating "fire service providers." The division is responsible for establishing, by rule, a Minimum Standards Course as the training and educational curriculum of firefighters and volunteers firefighters.¹⁰ In order to serve as a firefighter, the individual must have a current and valid Firefighter Certificate of Compliance (FCOC) or Special Certificate of Compliance issued by the division.¹¹ A FCOC is issued by the division to an individual who:

- Satisfactorily completes the Minimum Standards Course or equivalent training;
- Passes the Minimum Standards Course examination; and

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(3), F.S.

⁸ Section 633.104(1), F.S.

⁹ Section 633.104, F.S.

¹⁰ Section 633.408(1), F.S.

¹¹ Section 633.102(9), F.S.

- Meets certain character and fitness requirements.¹²

Public Record Exemption for Firefighters

Current law provides that the home addresses, telephone numbers,¹³ dates of birth, and photographs of certified firefighters are exempt¹⁴ from public record requirements.¹⁵ In addition, the home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of those firefighters, and the names and locations of schools and day care facilities attended by their children are exempt from public record requirements.¹⁶ While the public record exemption protects specified personal identification and location information for firefighters, it does not appear to protect such information of *former* firefighters.

Effect of the Bill

The bill expands the public record exemption for certain firefighter information to include the home addresses, telephone numbers, dates of birth, and photographs of *former* firefighters. Additionally, the bill expands the public record exemption to include the home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of former firefighters as well as the names and locations of schools and day care facilities attended by their children.

The bill provides a public necessity statement as required by the State Constitution, specifying that it is a public necessity to expand the public record exemption to include former firefighters and their spouses and children because the release of such identifying and location information may place former firefighters and their family members in danger as former firefighters have often responded to serious emergency situations ranging from domestic violence to homicide.

The bill provides for repeal of the exemption on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

B. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., relating to public record exemptions for agency personnel.

Section 2 provides a public necessity statement.

Section 3 provides that the bill will take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have an impact on state government revenues.

¹² Section 633.408(4), F.S.

¹³ 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.

¹⁴ There is a difference between records the Legislature designates as exempt from public record 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).

¹⁵ Section 119.071(4)(d)2.b., F.S.

¹⁶ *Id.*

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have an impact on local government revenues.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill could have a minimal fiscal impact on agencies because agency staff responsible for complying with public record requests may require training related to the expansion of the public record exemption. In addition, agencies could incur costs associated with redacting the exempt information prior to releasing a record. The 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:

Not applicable. 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 record or public meeting exemption. The bill expands an existing public record exemption; 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 record or public meeting exemption. The bill expands an existing public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created or expanded public record exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill expands an existing public record exemption for the identification and location information of firefighters and their spouses and children to include former firefighters and their spouses and children. The expansion of the public record exemption seeks to prevent former firefighters and their families from being the victims of physical or emotional harm.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 8, 2017, the Oversight, Transparency & Administration Subcommittee adopted an amendment and reported the bill favorably with a committee substitute. The amendment clarified that the personal information of the firefighters specified in the exemption is also exempt from s. 24(a), Art. I of the State Constitution.

This analysis is drafted to the committee substitute as approved by the Oversight, Transparency & Administration Subcommittee.