

Tab 1	SB 202 by Brandes; (Identical to H 0441) Court Records					
556574	A	S	RCS	GO, Brandes	Delete L.23 - 26:	02/21 02:51 PM
Tab 2	SB 7004 by HP; OGSR/Peer Review Panels/Department of Health					
Tab 3	SPB 7018 by GO; OGSR/Agency Personnel Information					
Tab 4	SPB 7016 by GO; OGSR/Donors or Prospective Donors/Direct-support Organization of the Florida Historic Capitol Museum					

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA
GOVERNMENTAL OVERSIGHT AND ACCOUNTABILITY
Senator Baxley, Chair
Senator Artiles, Vice Chair

MEETING DATE: Tuesday, February 21, 2017

TIME: 12:30—3:00 p.m.

PLACE: James E. "Jim" King, Jr. Committee Room, 401 Senate Office Building

MEMBERS: Senator Baxley, Chair; Senator Artiles, Vice Chair; Senators Galvano, Grimsley, Rader, Rouson, and Stewart

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 202 Brandes (Identical H 441)	Court Records; Providing an exemption from liability for the inadvertent release of certain information by the clerk of court, etc. JU 02/07/2017 Favorable GO 02/21/2017 Fav/CS RC	Fav/CS Yeas 6 Nays 0
2	SB 7004 Health Policy	OGSR/Peer Review Panels/Department of Health; Amending provisions relating to exemptions from public records and public meetings requirements for specified portions of meetings of certain peer review panels appointed by the Department of Health, for specified records generated by such peer review panels, and for research grant applications provided to such peer review panels; removing the scheduled repeal of the exemptions, etc. GO 02/21/2017 Favorable RC	Favorable Yeas 5 Nays 0
Consideration of proposed bill:			
3	SPB 7018	OGSR/Agency Personnel Information; Amending provisions which provides exemptions from public records requirements for certain personal identifying and location information of specified agency personnel, and the spouses and children thereof; providing an exemption from public records requirements for the names of the spouses and children of certified firefighters, current or former justices and judges, and certain magistrates, judges, and hearing officers; removing the scheduled repeal of certain exemptions; providing statements of public necessity, etc.	Submitted as Committee Bill Yeas 5 Nays 0

Consideration of proposed bill:

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability

Tuesday, February 21, 2017, 12:30—3:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SPB 7016	OGSR/Donors or Prospective Donors/Direct-support Organization of the Florida Historic Capitol Museum; Amending a provision which provides a public records exemption for identifying information of certain donors or prospective donors to the direct-support organization of the Florida Historic Capitol Museum; removing the scheduled repeal of the exemption, etc.	Submitted as Committee Bill Yeas 6 Nays 0
5	Presentation by the Agency for State Technology		Presented
Other Related Meeting Documents			

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 Governmental Oversight and Accountability

BILL: CS/SB 202

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Brandes

SUBJECT: Court Records

DATE: February 21, 2017 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Peacock</u>	<u>Ferrin</u>	<u>GO</u>	Fav/CS
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 202 provides immunity from liability to the clerk of court for releasing confidential information from a court record which the filer failed to disclose to the clerk. The liability protections apply to the release of any information made confidential by court rules. This information includes, among other things, records of dependency matters, a victim's address in a domestic violence action, juvenile delinquency records, medical records, adoption records and estate inventories.

Under current law, clerks are immune from liability for the inadvertent release of a few items of confidential information. Specifically, a clerk is not liable for inadvertently releasing social security, bank account, charge, debit, and credit card numbers found in official records or court records filed before January 1, 2012.

The bill provides an effective date of July 1, 2017.

II. Present Situation:

Public Records Law

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 any public body, officer, or

employee of the state, or of persons acting on their behalf.¹ This right to access public records includes records made or received by legislative, executive, and judicial branches of government.²

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act³ guarantees every person's right to inspect and copy any state or local government public record⁴ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁵

Only the Legislature may create an exemption from the requirement that a public record be accessible to the public.⁶ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.⁷ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions⁸ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.⁹

Exemption from Public Records Law for Certain Sensitive Information

Social security numbers held by an agency are confidential and exempt from the public access requirements of the public records law.¹⁰ As justification for the exemption, the Legislature recognized that:

the social security number can be used as a tool to perpetuate fraud against an individual and to acquire sensitive personal, financial, medical, and familial

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Chapter 119, F.S.

⁴ Section 119.011(12), F.S., defines "public records" to mean "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 connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean "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 Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992)).

⁵ Section 119.07(1)(a), F.S.

⁶ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *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); *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, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption.

⁷ FLA. CONST., art. I, s. 24(c).

⁸ The bill may, however, contain multiple exemptions that relate to one subject.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ Section 119.071(5)(a)5., F.S.

information, the release of which could cause great financial or personal harm to an individual.¹¹

Similarly, bank account numbers and debit, charge, and credit card numbers held by an agency are exempt from disclosure requirements under the public records law.¹²

The requirements to maintain and disclose records under the Public Records Act apply to an “agency,”¹³ which includes executive branch agencies and local governments.¹⁴ However, the exemptions for social security numbers¹⁵ and bank, debit, charge, and credit card account numbers¹⁶ also apply to official records and court records kept by the clerk of court.

Official Records

The clerk of the court maintains official records and court records. An official record is recorded by the clerk as part of a general series called “Official Records” and includes such documents as bills of sale, mortgages, deeds, notices of levy, tax warrants, and liens.¹⁷

A person who prepares or files an official record is generally not supposed to include social security, bank account, debit, charge, and credit card numbers in the document.¹⁸ However, if a person’s social security number or financial account number is included in an official record, the person or his or her attorney or legal guardian may request that the information be redacted. If the clerk does not receive a redaction request, the sensitive information may be included in the records available to the public.¹⁹

If the record containing a social security number or financial account number is in an electronic format, the clerk as county recorder²⁰ must use his or her best efforts to keep the information confidential and exempt without a request for redaction.²¹ However, the clerk is immune from liability for an inadvertent release of this sensitive information.²²

¹¹ Section 119.071(5)(a)1.b., F.S.

¹² Section 119.071(5)(b), F.S.

¹³ Section 119.011(2), F.S., defines the term “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.

¹⁴ See, i.e., *Locke v. Hawkes*, 595 So. 2d 32, 37 (1992), in which the Florida Supreme Court held that the definition of an agency in chapter 119, F.S., was intended to apply solely to executive branch agencies and officers and to local governmental entities and their officers.

¹⁵ Section 119.0714(1)(i), F.S.

¹⁶ Section 119.0714(1)(j), F.S.

¹⁷ Section 28.222(2) and (3), F.S.

¹⁸ Section 119.0714(3), F.S.

¹⁹ Section 119.0714(3)(a), F.S.

²⁰ Section 28.22(1), F.S., provides that the clerk is the county recorder. “The clerk of the circuit court shall be the recorder of all instruments that he or she may be required or authorized by law to record in the county where he or she is clerk.”

²¹ Section 119.0714(3)(a)1., F.S.

²² Section 119.0714(3)(e), F.S.

Court Records

For court records filed with the clerk of court on and after January 1, 2012, the clerk must maintain any social security numbers and financial account numbers in those records as confidential and exempt from disclosure under public records law.²³ Clerks are not liable for inadvertently releasing social security, bank account, charge, debit, and credit card numbers found in court records that were filed before January 1, 2012.²⁴ However, a person whose social security number or financial account number is contained in an older record, or his or her attorney or legal guardian, may request that the clerk redact the numbers from the record.²⁵

Rules of Court

Rule 2.420(d)(1)(B) of the Florida Rules of Judicial Administration requires the clerk of the court to designate and maintain the confidentiality of the following records or information, which are exempt from disclosure under existing law and the Florida Rules of Criminal Procedure:

- Chapter 39, F.S., records relating to dependency matters, termination of parental rights, guardians ad litem, child abuse, neglect, and abandonment (Sections 39.0132(3) and (4)(a), F.S.).
- Adoption records (Section 63.162, F.S.).
- Social Security, bank account, charge, debit, and credit card numbers (Section 119.0714(1)(i)-(j) and (2)(a)-(e), F.S.).²⁶
- HIV test results and the identity of any person upon whom an HIV test has been performed (Section 381.004(2)(e), F.S.).
- Records, including test results, held by the Department of Health or its authorized representatives relating to sexually transmissible diseases (Section 384.29, F.S.).
- Birth records and portions of death and fetal death records (Sections 382.008(6) and 382.025(1), F.S.).
- Information that can be used to identify a minor petitioning for a waiver of parental notice when seeking to terminate pregnancy (Section 390.01116, F.S.).
- Clinical records under the Baker Act (Section 394.4615(7), F.S.).
- Records of substance abuse service providers which pertain to the identity, diagnosis, and prognosis of and service provision to individuals (Section 397.501(8), F.S.).
- Clinical records of criminal defendants found incompetent to proceed or acquitted by reason of insanity (Section 916.107(8), F.S.).
- Estate inventories and accountings (Section 733.604(1), F.S.).

²³ Section 119.0714(2)(d) and (2)(e)1., F.S. The Legislature made the public records exemption for social security numbers, bank account, debit, credit and charge card numbers in court records permanent in 2007 (ch. 2007-251, L.O.F.) At that time, the Legislature extended the period of time in which the holder would need to make a redaction request for the number to be removed from the records, from January 1, 2008 to January 1, 2011. In 2010, the Legislature extended the January 1, 2011 date by a year, to give the clerks until January 1, 2012 to have a process in place for redacting the numbers on its own, without the prompting of the holder of the number (Conference Committee Amendment for CS/HB 5401, *Summary of Conference Committee Action* (April 30, 2010)). Chapter 2010-162, L.O.F.

²⁴ Section 119.0714(2)(d), F.S.

²⁵ Section 119.0714(2)(a), F.S.

²⁶ Fla. R. Jud. Admin. 2.420(d)(1)(B)(iii) mirrors the distinction between pre-and-post January 1, 2012, records for purposes of confidentiality of social security number, bank account, charge, debit, and credit card numbers.

- The victim's address in a domestic violence action on petitioner's request (Section 741.30(3)(b), F.S.).
- Protected information regarding victims of child abuse or sexual offenses (Sections 119.071(2)(h) and 119.0714(1)(h), F.S.).
- Gestational surrogacy records (Section 742.16(9), F.S.).
- Guardianship reports, orders appointing court monitors, and orders relating to findings of no probable cause in guardianship cases (Sections 744.1076 and 744.3701, F.S.).
- Grand jury records (Sections 905.17 and 905.28(1), F.S.).
- Records acquired by courts and law enforcement regarding family services for children (Section 984.06(3)-(4), F.S.).
- Juvenile delinquency records (Sections 985.04(1) and 985.045(2), F.S.).
- Records disclosing the identity of persons subject to tuberculosis proceedings and records held by the Department of Health or its authorized representatives relating to known or suspected cases of tuberculosis or exposure to tuberculosis (Sections 392.545 and 392.65, F.S.).
- Complete presentence investigation reports (Fla. R. Crim. P. 3.712).
- Forensic behavioral health evaluations under ch. 916, F.S. (Section 916.1065, F.S.).
- Eligibility screening, substance abuse screening, behavioral health evaluations, and treatment status reports for defendants referred to or considered for referral to a drug court program (Section 397.334(10)(a), F.S.).

Additionally, a person who files a record containing any of the confidential information above must alert the clerk to the existence of the information using a form Notice of Confidential Information within Court Filing.²⁷ Once the form notice is filed, the clerk court must review filings identified as containing confidential information to determine whether the information is facially subject to confidentiality.²⁸

Rule 2.515 of the Florida Rules of Judicial Administration requires that every document of a party represented by an attorney must be signed by at least one attorney of record. The attorney's signature constitutes a certificate by the attorney that, among other things, the document contains no confidential or sensitive information or that any such information has been protected by identifying the confidential or sensitive information in accordance with the requirements of rules 2.420 and 2.425 of the Florida Rules of Judicial Administration.

Florida Rules of Judicial Administration Committee Meeting

At a meeting of the Florida Rules of Judicial Administration Committee, dated May 29, 2015, clerks raised a concern over the issue of attorneys filing documents with the clerk without disclosing the confidential nature of the documents. Specifically, the clerks were concerned that they would be liable for the inadvertent disclosure of confidential information, and they sought indemnification from liability through court rule. Committee members instructed the clerks that

²⁷ Fla. R. Jud. Admin. 2.420(2)(A).

²⁸ Fla. R. Jud. Admin. 2.420 (d)(2)(B).

this matter is appropriately within the province of the Legislature, not the court. As such, the committee advised the clerks to seek statutory immunity.²⁹

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 119.0714(2)(e)1., F.S., and deletes the introductory phrase “[o]n January 1, 2012, and thereafter” in this section. This language is no longer necessary as the clerks were given time to implement a process for ensuring social security numbers, and bank account, debit, charge, and credit card numbers were confidential and exempt.

This section creates s. 119.0714(2)(g), F.S., and provides that the clerk of court is not liable for the release of information that is required by the Florida Rules of Judicial Administration to be identified by the filer as confidential if the filer fails to make the required identification of the confidential information to the clerk of court.

Section 2 of the bill provides an effective date of July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties or municipalities to spend funds, reduce the counties’ or municipalities’ ability to raise revenue or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill precludes an individual who is harmed by the release of his or her social security number, financial account number, or other confidential information from seeking damages from a clerk of court. However, the bill does not preclude the person from seeking damages from the person who filed the confidential information without properly disclosing its existence to the clerk.

²⁹ The Florida Bar Rules of Judicial Administration Committee, *Subcommittee Action Report*, pg. 1, 9-10 (May 29, 2015) (Copy on file with the Governmental Oversight and Accountability Committee).

C. Government Sector Impact:

This bill may reduce risk exposure of the clerk of court, by providing immunity from liability for an inadvertent release of any information classified as confidential by the court. According to the clerks:

Clerks receive literally millions of pages of documents filed each year and in spite of the Rules of Judicial Administration, many of those pages contain confidential or sensitive information that has not been identified as required.³⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.0714, 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 Governmental Oversight and Accountability on February 21, 2017:

CS/SB 202 differs from SB 202 in the following ways:

- Deletes the term “inadvertent” in regards to release of information made confidential by the Florida Rules of Judicial Administration if the filer failed to disclose the existence of confidential information to the clerk of the court.
- The clerk of the court is not liable for releasing information required by the Florida Rules of Judicial Administration to be identified by the filer as confidential if the filer fails to make the required identification of confidential information to the clerk of the court.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

³⁰ Clerks of the Court, *Clerks Liability for Redaction Errors* (Copy on file with the Senate Committee on Judiciary).



556574

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/21/2017	.	
	.	
	.	
	.	

The Committee on Governmental Oversight and Accountability
(Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete lines 23 - 26
and insert:
release of information that is required by the Florida Rules of
Judicial Administration to be identified by the filer as
confidential if the filer fails to make the required
identification of the confidential information to the clerk of
the court.



556574

11 ===== T I T L E A M E N D M E N T =====

12 And the title is amended as follows:

13 Delete lines 4 - 5

14 and insert:

15 for the release of certain information by the clerk of
16 court under certain circumstances; deleting obsolete
17 language;

By Senator Brandes

24-00353-17

2017202__

A bill to be entitled

An act relating to court records; amending s.
119.0714, F.S.; providing an exemption from liability
for the inadvertent release of certain information by
the clerk of court; deleting obsolete language;
providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (e) of subsection (2) of section
119.0714, Florida Statutes, is amended, and paragraph (g) is
added to that subsection, to read:

119.0714 Court files; court records; official records.—

(2) COURT RECORDS.—

(e)1. ~~On January 1, 2012, and thereafter,~~ The clerk of the
court must keep social security numbers confidential and exempt
as provided for in s. 119.071(5)(a), and bank account, debit,
charge, and credit card numbers exempt as provided for in s.
119.071(5)(b), without any person having to request redaction.

2. Section 119.071(5)(a)7. and 8. does not apply to the
clerks of the court with respect to court records.

(g) The clerk of the court is not liable for the
inadvertent release of information made confidential by the
Florida Rules of Judicial Administration if the filer fails to
disclose the existence of the confidential information to the
clerk of the court as required by court rule.

Section 2. This act shall take effect July 1, 2017.



The Florida Senate

Committee Agenda Request

To: Senator Denis Baxley, Committee
on Governmental Oversight and
Accountability

Subject: Committee Agenda Request

Date: February 7th, 2017

I respectfully request that **Senate Bill #202**, relating to **Court Records**, be placed on the:

- ☒ committee agenda at your earliest possible convenience.
- ☐ next committee agenda.

A handwritten signature in black ink, appearing to read "Jeff Brandes", is written over a horizontal line.

Senator Jeff Brandes
Florida Senate, District 24

✓

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-21-17

Meeting Date

202

Bill Number (if applicable)

Topic Court Records

Amendment Barcode (if applicable)

Name Jon Costello

Job Title lobbyist

Address 118 S. Monroe

Phone 766-8654

Street

Tallahassee

FL

32301

City

State

Zip

Email jon@rutledge-ccenr.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Courthouse News Service

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/21/2017

Meeting Date

SB 202

Bill Number (if applicable)

Topic Clerks of Court

Amendment Barcode (if applicable)

Name Fred Baggett

Job Title Chairman, Greenberg Traurig Tallahassee

Address 101 E. College Avenue

Phone 850-222-6891

Street

Tallahassee

FL

32301

Email baggett@gtlaw.com

City

State

Zip

Speaking: ☐ For ☐ Against ☒ Information

if needed

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida's Court Clerks and Comptrollers

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

✓

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/21/2017

Meeting Date

202

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Brian Pitts

Job Title Trustee

Address 1119 Newton Ave S

Phone 727/897-9291

Street

St Petersburg

City

FL

State

33705

Zip

Email justice2jesus@yahoo.com

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Justice-2-Jesus

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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 Governmental Oversight and Accountability

BILL: SB 7004

INTRODUCER: Health Policy Committee

SUBJECT: OGSR/Peer Review Panels/Department of Health

DATE: February 20, 2017 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Rossito-Van Winkle	Stovall		HP Submitted as Committee Bill
1.	Kim	Ferrin	GO	Favorable
2.			RC	

I. Summary:

SB 7004 continues existing public records and public meetings exemptions for:

- Biomedical research grant applications provided to a peer review panel for the James and Esther King Biomedical Research Program (King Program) and the William G. “Bill” Bankhead, Jr., and David Coley Cancer Research Program (Bankhead-Coley Program);
- Records generated by a peer review panel relating to the review of a biomedical research grant application; and
- That portion of a meeting of a peer review panel in which biomedical research grant applications are discussed.¹

The bill removes the scheduled repeal and provides an effective date of October 1, 2017.

II. Present Situation:

Public Records and Open Meetings Requirements

The Florida Constitution provides that the public has the right to access government records and meetings. The public may inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.² The public also has a right to be afforded notice and access to meetings of any collegial public body of the executive branch of state government or of any local government.³

¹ Sections 215.56021 and 381.92201, F.S.

² FLA. CONST. art. I, s. 24(a).

³ FLA. CONST. art. I, s. 24(b).

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. The Public Records Act⁴ guarantees every person's right to inspect and copy any state or local government public record.⁵ The Sunshine Law⁶ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken to be noticed and open to the public.⁷

The Legislature may create an exemption to public records or open meetings requirements.⁸ An exemption must specifically state the public necessity justifying the exemption⁹ and must be tailored to accomplish the stated purpose of the law.¹⁰

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the "OGSR") prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹¹ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹²

The OGSR 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.¹³ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the

⁴ Chapter 119, F.S.

⁵ Section 119.011(12), F.S., defines "public record" to mean "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 connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean "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 Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992). The Legislature's records are public pursuant to section 11.0431, F.S.

⁶ Section 286.011, F.S.

⁷ Section 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in the Florida Constitution. Article III, section 4(e) of the Florida Constitution provides that legislative committee meetings must be open and noticed to the public. In addition, prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.

⁸ FLA. CONST. art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential* and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential, such record may not be released, to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

⁹ FLA. CONST. art. I, s. 24(c).

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

¹² Section 119.15(3), F.S.

¹³ Section 119.15(6)(b), F.S.

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 subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁴
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹⁵ or
- It protects trade or business secrets.¹⁶

The OGSR also requires specified questions to be considered during the review process.¹⁷ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.¹⁸ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.¹⁹

Biomedical Research Programs

The Department of Health (department) administers two grant funding programs that fund research on cancer and tobacco-related diseases in the state: the James and Esther King Biomedical Research Program (King Program) and the William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program (Bankhead-Coley Program).

The Legislature created the Florida Biomedical Research Program in 1999 within the department.²⁰ The Florida Biomedical Research Program was renamed the James and Esther King Biomedical Research Program during Special Session B of the 2003 Legislature.²¹ The purpose of the King Program "is to provide an annual and perpetual source of funding in order to support research initiatives that address the health care problems of Floridians in the areas of tobacco-related cancer, cardiovascular disease, stroke, and pulmonary disease."²²

¹⁴ Section 119.15(6)(b)1., F.S.

¹⁵ Section 119.15(6)(b)2., F.S.

¹⁶ Section 119.15(6)(b)3., F.S.

¹⁷ Section 119.15(6)(a), F.S. The specified questions are:

1. What specific records or meetings are affected by the exemption?
2. Whom does the exemption uniquely affect, as opposed to the general public?
3. What is the identifiable public purpose or goal of the exemption?
4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means?
If so, how?
5. Is the record or meeting protected by another exemption?
6. Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

¹⁸ FLA. CONST. art. I, s. 24(c).

¹⁹ Section 119.15(7), F.S.

²⁰ Chapter 99-167, s. 2, Laws of Fla.

²¹ Chapter 2003-414, Laws of Fla..

²² Section 215.5602(1), F.S.

The 2006 Legislature created the Bankhead-Coley Program within the department.²³ The purpose of the program is “to advance progress toward cures for cancer through grants awarded” for cancer research.²⁴

The King Program and the Bankhead-Coley Program offer competitive grants to researchers throughout Florida. Grant applications from any university or established research institute in Florida are considered for biomedical research funding.²⁵ All qualified investigators in the state, regardless of institutional affiliation, have equal access and opportunity to compete for the research funding.²⁶

The department uses a multi-step evaluation process²⁷ for making award determinations for all applications submitted in response to a Funding Opportunity, before making final recommendations to the State Surgeon General. Under the multi-step evaluation process, the department conducts an Administrative Review and Peer Review, and then in conjunction with the Biomedical Research Advisory Council (council) conducts a Programmatic Review to eliminate or manage any conflicts of interests.

The State Surgeon General, after consultation with the council, is authorized to award grants and fellowships on the basis of scientific merit²⁸ within the following three categories:

- Investigator-initiated research grants;
- Institutional research grants; and
- Collaborative research grants, including those that advance the finding of cures through basic or applied research.

Biomedical Research Advisory Council and Peer Review Panel

The purpose of the council²⁹ is to “advise the State Surgeon General as to the direction and scope of the biomedical research program.”³⁰ The council is also required to consult with the State Surgeon General concerning grant awards under the King Program and the Bankhead-Coley Program.³¹

²³ Section 381.922, F.S.; Ch. 2006-182, Laws of Fla.

²⁴ Section 381.922(1), F.S.

²⁵ Sections 381.922(3)(a), and 215.5602(5)(b), F.S.

²⁶ *Id.*

²⁷ See Department of Health, James and Ester King Biomedical Research Program. *Funding Opportunity Announcement FY 2016-2017*, page 28, available at: <http://www.floridahealth.gov/provider-and-partner-resources/research/FINAL%20FY%2016-17%20King%20Program%20FOA.pdf> and Department of Health, Bankhead-Coley Cancer Research Program, *Funding Opportunity Announcement FY 2016-17*, page 27, available at: <http://www.floridahealth.gov/provider-and-partner-resources/research/FINAL%20FY%2016-17%20BC%20Program%20FOA.pdf> (Last visited on February 15, 2017).

²⁸ Section 215.5602(5)(b) and (6), F.S.; s. 381.922(3)(a) and (b), F.S.

²⁹ Section 215.5602(3), F.S.

³⁰ Section 215.5602(4), F.S.

³¹ Section 381.922(3)(a), F.S. However, s. 215.5602(11), F.S., contains an inconsistency with respect to the responsibility of the council concerning awarding grants for cancer research. Section 215.5602(11), F.S., expressly provides that the council must award grants for cancer research through the Bankhead-Coley Program.

In order to ensure that proposals for research funding within the King Program and the Bankhead-Coley Program are appropriate and evaluated fairly on the basis of scientific merit, a peer review panel³² of independent, scientifically qualified individuals is appointed to review the scientific content of each proposal to establish a “scientific”³³ priority score.³⁴ To eliminate conflicts of interest, peer reviewers come from outside the state of Florida. Reviewers are experts in their fields from universities, government agencies, and private industry who are matched according to application topic and area of expertise. The priority scores must be considered by the council in determining which proposals will be recommended for funding to the State Surgeon General.

Public Records and Public Meeting Exemptions for Peer Review Panel Activities

In 2012, the Legislature created exemptions from Florida’s public records and public meetings laws for research grant applications provided by the department to peer reviewers; records generated by the peer review panel (except final recommendations); and portions of meetings of a peer review panel in which applications for biomedical research grants under the King Program and the Bankhead-Coley Program are discussed.³⁵ In accordance with the OGSR, both exemptions sunset on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

The exemptions authorize the information that is held confidential and exempt to be disclosed with the express written consent of the individual, or the individual’s legally authorized representative, to whom the information pertains, or by court order upon showing good cause.

When enacting these exemptions, the Legislature found that the research grant applications under these programs contain information of such a confidential nature, including ideas and processes, that the disclosure of which could injure the affected researcher; and that maintaining confidentiality is paramount to scientific peer review and allows for a candid exchange between reviewers. The Legislature also found it a public necessity to close access to the peer review panel meetings where the grant applications were discussed and close access to the records generated at those meetings, to ensure that decisions were based on merit, without bias or undue influence.³⁶

OGSR of Open Meetings and Public Records Exemption Under Review

During the Interim, Senate and House of Representatives professional staff jointly sent a survey to the department regarding these public records exemptions in compliance with the OGSR Act. The department’s response was both detailed and informative about the grant and fellowship

³² Section 215.5602(6) and (7); s. 381.922(3)(b), F.S.

³³ The King Program requires a *scientific* priority score in s. 215.5602(6), F.S. The Bankhead-Coley Program requires a *priority* score in s. 381.922(3)(b), F.S.

³⁴ A Bridge Grant application is ranked solely by the priority score or percentile assigned to its qualifying federal proposal in an eligible federal review process.

³⁵ Sections 215.56021 and 381.92201, F.S.

³⁶ Chapter 2012-15, s 2., Laws of Fla.

application process for the King Program and Bankhead-Coley Program.³⁷ The department's vendors send the applications to qualified, individual peer reviewers to evaluate the merits of grant and fellowship applications. The vendors then consolidate the peer reviewers' scores and then submit them to the council. The council reviews the vendor's consolidated peer review panel reports and then meet to discuss the merits of the applications and make recommendations to the State Surgeon General.

Researchers have submitted 640 applications or proposals since March 23, 2012. The department has funded 87 of those projects.³⁸

The department recommends that the public records and meetings exemptions not be repealed, however, the department also states that only one section is necessary since they are identical.³⁹

III. Effect of Proposed Changes:

The bill reenacts and removes the scheduled repeal date of October 2, 2017, for the public records and public meeting exemptions in ss. 215.56021 and 381.92201, F.S., relating to the King Program and the Bankhead-Coley Program, respectively.

The public records exemptions apply to biomedical research grant applications provided to the peer review panel and any records generated by the peer review panel in reviewing the grant applications, except final recommendations. These records are confidential and exempt from s. 119.071(1), F.S., and Article I, section 24(a) of the Florida Constitution.

The public meeting exemptions apply to portions of peer review panel meetings when grant applications are discussed and make them exempt from s. 286.011, F.S., and Article I, section 24(b) of the Florida Constitution.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill reenacts existing public records and meeting exemptions pertaining to applications for biomedical research grants and meetings of the peer review panel under the King Program and the Bankhead-Coley. Therefore, a simple majority vote of the members present in each house of the Legislature is required for passage.

³⁷ *House Government Operations Subcommittee Senate Committee on Health Policy Open Government Sunset Review Questionnaire* completed by the Florida Department of Health and returned on August 10, 2016, on file with the Senate Committee on Governmental Oversight and Accountability.

³⁸ *Id.* at 5.

³⁹ *Id.* at 9.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Continued protection of research grant applications and peer review activities will help ensure integrity of the state-funded biomedical research grant program.

C. Government Sector Impact:

Continued protection of research grant applications and peer review activities will help ensure integrity of the state-funded biomedical research grant program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Legislature passed these public records and meetings exemptions as a single, unnumbered section in Ch. 2012-15, Laws of Fla. The statement of public necessity, as well as the first subsection in Ch. 2012-15, Laws of Fla., clearly state that meetings and records exemptions apply to both research grant programs under s. 215.5602, F.S., (the King Program) and s. 381.922, F.S. (the Bankhead-Coley Program). Accordingly, Ch. 2012-15, Laws of Fla., also has only one sunset date.

The exemptions are published twice, however, in the Florida Statutes, and are co-located with each research program. The bill also includes both ss. 215.56021 and 381.9221, F.S., with individual sunset dates.

Section 119.15(6)(a), F.S., requires the Legislature consider the following questions during a sunset review:

- “Is the record or meeting protected by another exemption?” [and]
- “Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?”

Under normal circumstances after an OGSR, one of these exemptions might be repealed since both exemptions protect the same information. It appears as though removing one exemption would not open the peer review records or grant applications to public inspection, nor allow public access to the meetings.

Repealing either s. 215.56021 F.S., or 381.92201, F.S., however, may make it appear as though one grant program did not have a public meetings and records exemption. Subparagraph (1) of each exemption specifically provides that the meetings exemption applies to grants under ss. 215.5602 and 381.922, F.S. Subparagraphs (2) and (3), however, reference the peer review panels in subparagraph (1), but do not specifically state that the exemptions for meetings records and grant applications apply to grants under ss. 215.5602 and 381.922, F.S. If the Legislature repeals one exemption, a court could find that there was Legislative intent to remove application of the exemptions in subparagraphs (2) and (3) to the non-co-located grant program.

In addition, if one public records exemption is repealed, the “orphaned” grant program’s exemption would be codified in a completely different title and chapter of the Florida Statutes.⁴⁰ This may diminish the utility of the exemptions only because the exemptions would be difficult to find.

If the Legislature wishes to repeal or consolidate these exemptions, it may also wish to consider amending the cross-references to clarify that the exemptions apply to both grant programs.

VIII. Statutes Affected:

This bill substantially amends the following sections of Florida Statutes: 215.56021 and 381.92201.

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

⁴⁰ The King Program is codified in Ch. 215, Title XIV, Tax and Finance, and the Bankhead-Coley Program is located in Ch. 381, F.S., in Title XXIX, Public Health.

By the Committee on Health Policy

588-00919-17

20177004__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending ss. 215.56021 and 381.92201, F.S., relating to exemptions from public records and public meetings requirements for specified portions of meetings of certain peer review panels appointed by the Department of Health, for specified records generated by such peer review panels, and for research grant applications provided to such peer review panels; removing the scheduled repeal of the exemptions; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 215.56021, Florida Statutes, is amended to read:

215.56021 Exemptions from public records and public meetings requirements; peer review panels.—

(1) That portion of a meeting of a peer review panel in which applications for biomedical research grants under s. 215.5602 or s. 381.922 are discussed is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

(2) Any records generated by the peer review panel relating to review of applications for biomedical research grants, except final recommendations, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(3) Research grant applications provided to the peer review panel are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(4) Information that ~~which~~ is held confidential and exempt under this section may be disclosed with the express written consent of the individual to whom the information pertains or

588-00919-17

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the individual's legally authorized representative, or by court order upon showing good cause.

~~(5) Subsections (1), (2), (3), and (4) are subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. Section 381.92201, Florida Statutes, is amended to read:

381.92201 Exemptions from public records and public meetings requirements; peer review panels.—

(1) That portion of a meeting of a peer review panel in which applications for biomedical research grants under s. 215.5602 or s. 381.922 are discussed is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

(2) Any records generated by the peer review panel relating to review of applications for biomedical research grants, except final recommendations, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(3) Research grant applications provided to the peer review panel are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(4) Information that ~~which~~ is held confidential and exempt under this section may be disclosed with the express written consent of the individual to whom the information pertains or the individual's legally authorized representative, or by court order upon showing good cause.

~~(5) Subsections (1), (2), (3), and (4) are subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2017, unless reviewed and~~

588-00919-17

20177004__

62 ~~saved from repeal through reenactment by the Legislature.~~

63 Section 3. This act shall take effect October 1, 2017.

✓

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/21/2017

Meeting Date

7004

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Brian Pitts

Job Title Trustee

Address 1119 Newton Ave S.
Street

Phone 727/897-9291

St Petersburg FL 33705
City State Zip

Email justice2jesus@yahoo.com

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Justice-2-Jesus

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

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 Governmental Oversight and Accountability

BILL: SPB 7018

INTRODUCER: Governmental Oversight and Accountability Committee

SUBJECT: OGSR/Agency Personnel Information

DATE: February 21, 2017

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Kim	Ferrin		GO Submitted as Committee Bill

I. Summary:

SPB 7018 is a public records exemption for multiple agency personnel that was reviewed pursuant to the Open Government Sunset Review Act. The agency personnel affected are:

- Law enforcement;
- Department of Children and Families personnel with certain duties;
- Department of Health personnel with certain duties;
- Department of Revenue and local government personnel who collect revenue or child support;
- Department of Financial Services personnel with certain duties;
- Firefighters;
- Justices and judges;
- State attorneys and statewide prosecutors and their assistants;
- Magistrates, administrative law judges, judges of compensation claims, child support hearing officers;
- Human resources, labor relations personnel;
- Code enforcement personnel;
- Guardian ad Litem Program personnel;
- Department of Juvenile Justice personnel;
- Public defenders, criminal conflict and civil regional counsel and their assistants;
- Department of Business and Professional Responsibility investigators; and
- County Tax Collectors.

The bill reenacts public records exemptions for governmental personnel and their families that will sunset in 2017. The bill also expands certain public records exemptions for agency personnel and their families. The bill consolidates public records exemptions and removes the sunset dates of public records exemptions that are set to repeal in 2018 and 2019.

This bill requires a two-thirds vote of each chamber because it expands public records exemptions.

This bill takes effect on October 1, 2017.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This 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.²

In addition to the Florida Constitution, the Florida Statutes provides that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ The Public Records Act states that

it is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁵

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may create an exemption to public records requirements.⁹ An exemption must pass by a two-thirds vote of the House and the Senate.¹⁰ In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ Section 119.011(12), F.S., defines “public record” to mean “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 connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” to mean 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.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ *Id.*

broader than necessary to accomplish the stated purpose of the exemption.¹¹ A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.¹²

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”¹³ Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as “exempt” are not required to be made available for public inspection, but may be released at the discretion of the records custodian under certain circumstances.¹⁴

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁵ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹⁶

The OGSR 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.¹⁷ 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 subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁸
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹⁹ or
- It protects trade or business secrets.²⁰

¹¹ *Id.*

¹² *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). See also *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004).

¹³ If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁴ *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

¹⁵ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

¹⁶ Section 119.15(3), F.S.

¹⁷ Section 119.15(6)(b), F.S.

¹⁸ Section 119.15(6)(b)1., F.S.

¹⁹ Section 119.15(6)(b)2., F.S.

²⁰ Section 119.15(6)(b)3., F.S.

The OGSR also requires specified questions to be considered during the review process.²¹ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²² If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²³

General Public Records Exemptions for Agency Personnel

There are three general public records exemptions that apply to all agency personnel: social security numbers, medical information, and personal identifying information of dependent children who are insured by an agency group insurance plan.²⁴

Social security numbers of all current and former agency personnel are confidential and exempt when held by the employing agency.²⁵ An employing agency may only release social security numbers for the following reasons: (1) it is required by law, (2) a receiving government agency needs the social security number to perform its duties, and (3) the employee consents to disclosure of his or her social security number.²⁶ In addition, there is a general exemption for social security numbers which applies to the public that makes social security numbers confidential and exempt.²⁷ This exemption applies to any agency that holds anyone's social security number, including agency personnel's social security numbers. This exemption permits the agency to disclose social security numbers of agency personnel for the following reasons: (1) to administer health benefits, and (2) to administer retirement benefits.²⁸

An agency employee's medical information is also exempt from public disclosure if the medical information could identify the employee. This exemption applies to prospective, current and former employees.²⁹

²¹ Section 119.15(6)(a), F.S. The specified questions are:

1. What specific records or meetings are affected by the exemption?
2. Whom does the exemption uniquely affect, as opposed to the general public?
3. What is the identifiable public purpose or goal of the exemption?
4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means?
If so, how?
5. Is the record or meeting protected by another exemption?
6. Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²² FLA. CONST. art. I, s. 24(c).

²³ Section 119.15(7), F.S.

²⁴ Section 119.071(4)(a) and (b), F.S.

²⁵ Section 119.071(4)(a)1., F.S.

²⁶ Section 119.071(4)(a)2., F.S.

²⁷ Section 119.071(5)(a)5., F.S.

²⁸ Section 119.071(5)(a)5.f. and g., F.S.

²⁹ Section 119.071(4)(b)1., F.S.

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 children of current and former employees and is also retroactively applied.³⁰

Public Records Exemptions for Enumerated Personnel

Provisions in s. 119.071(4)(d), F.S., make exempt from public disclosure the personal identification and location information of enumerated agency personnel, their spouses and their children.

The employing agency as well as the employee may assert the right to the exemption by submitting a written request to each agency which holds the employee's information.³¹ Finally, all of these exemptions have retroactive application.³²

How the Exemptions Differ

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 and telephone numbers of the enumerated personnel. Employees' dates of birth and photographs are exempt for some personnel, but not all.

Section 119.071(4)(d)2., F.S., also makes exempt 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 the locations of children's schools. The exemptions for family members, however, are not uniform. The names, dates of birth, and photographs of families members are exempt from public disclosure, but not for all family members of all personnel.

Some of the exemptions are conditional upon the actions of the employee. For example, certain personnel must make "reasonable efforts to protect" his or her information from being accessible through public means for the exemption to apply.³³

In addition, some of the provisions exempt information from Ch. 119, F.S., but not from Article I, section 24(a), of the Florida Constitution. This means that information would be exempt if held by an executive branch agency, but may not necessarily be exempt if held by the legislative or judicial branches of government.

Finally, certain exemptions have different OGSR sunset dates. Unless otherwise noted, the following chart depicts exemptions sunsetting on October 2, 2017, pursuant to s. 119.071(4)(d)5., F.S.

³⁰ Section 119.071(4)(b)2., F.S.

³¹ Section 119.071(4)(d)3., F.S.

³² Section 119.071(4)(d)4., F.S.

³³ Section 119.071(4)(d)2.e., F.S.

Sunset Dates for Exemptions for Personnel's Identifying Information							
Category	Home Address	Phone #	SSN	Photos	DOB	Places of Employment	Requires Effort to Protect Information
Law Enforcement Personnel*	2017	2017	2017	2017	2017	-	-
DCF Personnel w/ certain duties*	2017	2017	2017	2017	2017	-	-
DOH Personnel w/certain duties*	2017	2017	2017	2017	2017	-	-
DOR Personnel w/certain duties*	2017	2017	2017	2017	2017	-	-
Firefighters	2017	2017	-	-	2017	-	-
Justices and Judges*	2017	2017	-	-	2017	-	-
State Attorneys and Assistant State Attorneys*	2017	2017	2017	2017	2017	-	-
Statewide Prosecutors & Assistant Statewide Prosecutors*	2017	2017	2017	2017	2017	-	-
Magistrates and child support enforcement hearing	2017	2017	-	-	2017	-	2017
Judges of Compensation Claims & Administrative Law	2017	2017	-	-	2017	-	2017
Human resource, labor relations, employee relations directors, assistant directors, managers, and assistant managers*	2017	2017	-	2017	2017	-	-
Code enforcement officers*	2017	2017	-	2017	2017	-	-
Guardians ad litem*	2017	2017	-	2017	2017	2017	2017
DJJ Personnel w/ certain duties*	2017	2017	-	2017	2017	-	-
Public Defenders and Assistant Public Defenders*	2017	2017	-	2017	2017	-	-
Criminal Conflict and Civil Regional Counsel & Assistants*	2017	2017	-	2017	2017	-	-
DBPR investigators and inspectors*	2017	2017	-	2017	-	-	2017
County tax collectors	2017	2017	-	-	-	-	2017

Sunset Dates for Exemptions for Personnel's Spouse and Children Identifying Information								
Category	Names	Home Address	Phone #	SSN	Photos	DOB	Places of Employment	Schools/ Daycare
Law Enforcement Personnel*	2018	2017	2017	2017	2017	2017	2017	2017
DCF Personnel w/ certain duties*	2018	2017	2017	2017	2017	2017	2017	2017
DOH Personnel w/certain duties*	2018	2017	2017	2017	2017	2017	2017	2017
DOR Personnel w/certain duties*	2018	2017	2017	2017	2017	2017	2017	2017
Firefighters	-	2017	2017	-	2017	2017	2017	2017
Justices and Judges*	-	2017	2017	-	-	2017	2017	2017
State Attorneys and Assistant State Attorneys*	2018	2017	2017	2017	2017	2017	2017	2017
Statewide Prosecutors & Assistant Statewide Prosecutors*	2018	2017	2017	2017	2017	2017	2017	2017
Magistrates & child support enforcement hearing officers	-	2017	2017	-	-	2017	2017	2017
Judges of Compensation Claims & Administrative Law	-	2017	2017	-	-	2017	2017	2017
Human resource, labor relations, employee relations directors, assistant directors, managers, and assistant managers*	2017	2017	2017	-	-	2017	2017	2017
Code enforcement officers*	2017	2017	2017	-	-	2017	2017	2017
Guardians ad litem*	2017	2017	2017	-	-	2017	2017	2017
DJJ Personnel w/ certain duties*	2017	2017	2017	-	-	2017	2017	2017
Public Defenders and Assistant Public Defenders*	2019	2017	2017	-	-	2017	2017	2017
Criminal Conflict and Civil Regional Counsel & Assistants*	2019	2017	2017	-	-	2017	2017	2017
DBPR investigators and inspectors*	2017	2017	2017	-	-	-	2017	2017
County tax collectors	2017	2017	2017	-	-	-	2017	2017

*Active or former employee; also referred to as "current or former" employee in statute.

- Indicates no exemption exists in statute.

Law Enforcement, Correctional Officers, Certain Personnel of the Department of Children and Families, the Department of Health, the Department of Revenue, and Local Governments

This exemption covers current or former personnel from several agencies with criminal or quasi-criminal duties:

- law enforcement personnel;
- correctional and correctional probation officers, but not any secretarial, clerical, or professionally trained personnel;³⁴
- personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities;³⁵
- personnel of the Department of Health who support child abuse investigations;³⁶ and
- personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement.

In 1979, the Legislature created a public records exemption for the “home address, telephone number and photograph of law enforcement personnel” as well as for their spouses and children.³⁷ This exemption was part of a larger exemption created for criminal intelligence information.

In 1985, the Legislature expanded the exemption to include “active or former” law enforcement.³⁸

In 1989, the exemption for active or former law enforcement was amended to include personnel of the Department of Health and Rehabilitative Services whose duties included the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, and also expanded to include day care facilities of the personnel’s children.³⁹ Public records exemptions were not required to include public necessity statements at that time, so the Legislative intent was not expressed in a separate statement.⁴⁰

In 1995, Department of Revenue and local government personnel whose responsibilities include revenue collection and enforcement or child-support enforcement were amended into this exemption. The public necessity statement provided that releasing information about such personnel would jeopardize their safety and impede personnel from executing their jobs.⁴¹

In 1998, the exemption was amended to change the name of the Department of Health and Rehabilitative Services to the Department of Children and Family Services. In addition, the exemption was amended to include Department of Health personnel whose duties supported the investigation of child abuse or neglect.⁴² In this case, the absence of a public necessity statement indicates that this was not an expansion of the public records exemption but a revision reflecting

³⁴ Section 112.531(2), F.S.

³⁵ Section 39.301, F.S. Also see <http://www.myflfamilies.com/service-programs/public-benefits-integrity> (last viewed December 7, 2016).

³⁶ Section 39.303, F.S. Also see http://www.floridahealth.gov/alternatesites/cms-kids/families/child_protection_safety/child_protection_teams.html (last viewed December 7, 2016).

³⁷ The exemption included the place of employment of the spouses and children of law enforcement personnel, as well as the names and locations of the schools of the children. Ch. 79-187, Laws of Fla.

³⁸ Ch. 85-301, Laws of Fla.

³⁹ Ch. 89-80, Laws of Fla.

⁴⁰ Public necessity statements were required for public records exemptions after 1992, when Article I, section 24, of the Florida Constitution was adopted.

⁴¹ Ch. 1995-170, Laws of Fla.

⁴² Ch. 98-137, s. 7, Laws of Fla.

the changes made during the reorganization of the Department of Health and Rehabilitative Services.

In 2012, Ch. 2012-149, Laws of Fla., expanded this exemption to include the dates of birth of the enumerated personnel as well as their family members. The public necessity statement provided that dates of birth can be used to perpetrate fraud and that releasing dates of birth can cause great financial harm to an individual. In addition, a clarification was made to indicate that both sworn and civilian law enforcement personnel were included in the exemption.

In 2013, the Legislature enacted a public records exemption for the names of the spouses and children of the above named personnel; this exemption will sunset on October 2, 2018. The public necessity statement provides:

As a result of their duties, these sworn and civilian law enforcement personnel often come in close contact with individuals who not only may be a threat to these personnel, but who might seek to take revenge against them by harming their spouses and children. Permitting access to the names of the spouses and children of active or former sworn or civilian law enforcement personnel provides a means by which individuals who have been investigated, arrested, interrogated, or incarcerated can identify and cause physical or emotional harm to these spouses and children.⁴³

Firefighters

A firefighter certified in compliance with s. 633.408, F.S., must satisfactorily complete a Minimum Standards Course, or equivalent course in another state, and passed the Minimum Standards Course examination.⁴⁴ Firefighters must also have high school degrees, meet certain criminal history requirements, have good moral character, and be physically fit.⁴⁵

A public records exemption for firefighters and their families was created in Ch. 1991-149, Laws of Fla., but did not include dates of birth or former firefighters. Public records exemptions were not required to include public necessity statements at that time, so the Legislative intent was not expressed in a separate statement.⁴⁶

Chapter 2012-149, Laws of Fla., expanded this exemption to include the dates of birth of the enumerated personnel as well as their family members. The public necessity statement provided that dates of birth can be used to perpetrate fraud and that releasing dates of birth can cause great financial harm to an individual.

⁴³ Ch. 2013-243, s. 2, Laws of Fla.

⁴⁴ Section 633.408(4), F.S.

⁴⁵ Section 633.412, F.S.

⁴⁶ Public necessity statements were required for public records exemptions after 1992, when Article I, section 24, of the Florida Constitution was adopted.

Justices and Judges

Florida's justices preside in the Supreme Court, and judges preside in Florida's five District Courts of Appeal, 20 Circuit Courts and 67 County Courts.⁴⁷ Justices and judges adjudicate legal matters as well as oversee the legal profession.

The Legislature enacted a public records exemption for current justices and judges and their families in Ch. 91-149, Laws of Fla. This public records exemption was created in 1991, so there is no public necessity statement explaining why the exemption was created.

Chapter 2012-149, Laws of Fla., expanded this exemption to include the dates of birth of the enumerated personnel as well as their family members. The public necessity statement provided that dates of birth can be used to perpetrate fraud and that releasing dates of birth can cause great financial harm to an individual. In addition, the Legislature expanded the exemption to include former justices and judges as well as their families. The public necessity statement for this expansion indicated that justices and judges as well as their family members can be targets of revenge and that risk continues after justices and judges complete their public service.

State Attorneys, Assistant State Attorneys, Statewide Prosecutor and Assistant Statewide Prosecutors

A state attorney is the elected prosecuting officer of each judicial circuit. A state attorney must be a resident of the judicial circuit in which he or she is elected. He or she may also appoint assistant state attorneys.⁴⁸

The statewide prosecutor is appointed by the attorney general and works within the Department of Legal Affairs.⁴⁹ The statewide prosecutor may designate one or more assistants.⁵⁰ The statewide prosecutor investigates and prosecutes enumerated crimes which have occurred in two or more judicial circuits or involved the internet.⁵¹

A public records exemption for state attorneys and their assistants as well as the statewide prosecutor and his or her assistants was enacted in Ch. 1994-176, Laws of Fla. The public necessity statement provides that identifying information should be exempt from public disclosure because these personnel and their families "could be harmed by a criminal defendant or a friend or family member of a criminal defendant."⁵²

Chapter 2012-149, Laws of Fla., expanded this exemption to include the dates of birth of the enumerated personnel as well as their family members. The public necessity statement provided that dates of birth can be used to perpetrate fraud and that releasing dates of birth can cause great financial harm to an individual.

⁴⁷ FLA CONST. art V. Also see Florida Courts, <http://www.flcourts.org/florida-courts> (last viewed December 7, 2016).

⁴⁸ FLA CONST. art. V, s. 17.

⁴⁹ Section 16.56(2), F.S.

⁵⁰ *Id.*

⁵¹ Section 16.56(1), F.S.

⁵² Ch. 94-176, s. 2, Laws of Fla.

Chapter 2013-243, Laws of Fla., expanded the exemption to include the names of the spouses and children of state attorneys, assistant state attorneys, statewide prosecutors, and assistant statewide prosecutors. The public necessity statement provides that the enumerated attorneys prosecute dangerous and violent individuals and permitting access to the names of a prosecutor's family members "provides a means by which a criminal defendant or a friend or family member of such defendant could harm or threaten with harm these spouses and children."⁵³

General Magistrates, Special Magistrates, Judges of Compensation Claims, Administrative Law Judges, and Child Support Enforcement Hearing Officers

A court may appoint a general magistrate or a special magistrate to hear cases and perform certain duties in civil court cases. General magistrates must be members of the Florida Bar and must take an oath; special magistrates are not required to be members of the Florida Bar or take an oath.⁵⁴ Magistrates are authorized to hold hearings and write reports on their findings. Judges review the reports and enter orders based on the reports.⁵⁵

Child support enforcement hearing officers are appointed by the chief judge of each judicial circuit to hear cases and write reports regarding how much child support a parent should pay. Child support enforcement hearing officers conduct hearings and write recommended child support orders. Judges review the recommended orders and enter them.⁵⁶

Judges of Compensation Claims are appointed by the governor to hear worker's compensation cases. They report to the chief administrative law judge of the Division of Administrative Hearings.⁵⁷ The Division of Administrative Hearings is also authorized to hire administrative law judges, who primarily hear regulatory cases.⁵⁸

The Legislature created a public records exemption for these finders-of-fact and their families in Ch. 2008-41, Law of Fla. The public records exemption covers the same types of information as the exemption for judges, but requires the finder-of-fact to provide a written statement that they have made reasonable efforts to protect their information from being publically accessible. The public necessity statement in Ch. 2008-41, s. 2, Laws of Fla. provides that "[r]elease of such identifying and location information might place such officials and their family members in danger of physical and emotional harm from disgruntled criminal defendants or litigants."

⁵³ Ch. 2013-243, s. 2, Laws of Fla.

⁵⁴ Fla. R. Civ. P. 1.490.

⁵⁵ Fla. R. Civ. P. 1.490(i), Fla. Fam. L. R. P. 12.490.

⁵⁶ Fla. Fam. L. R. P. 12.491.

⁵⁷ Sections 440.45 and 120.65, F.S.

⁵⁸ Section 120.65(4), F.S.

Human Resource, Labor Relations, or Employee Relations Directors, Assistant Directors, Managers, or Assistant Managers of any Local Government Agency or Water Management District

Human resources managers oversee the recruiting and hiring of staff, and serve as a liaison between management and employees.⁵⁹ Labor relations personnel “interpret and administer labor relations contracts regarding issues such as wages and salaries, healthcare, pensions, and union management practices.”⁶⁰ Similarly, an employee relations “manager” is responsible for managing a range of activities related to employee/labor relations and staffing functions.⁶¹

The public records exemption for these personnel and their families was created in 2001. The public necessity statement found in Ch. 2001-249, s. 2, Laws of Fla., provides that the exemption is warranted because the enumerated personnel or their family members “could be harmed or threatened with harm by a current or former employee or a friend or family member of a current or former employee.” The exemption was narrowed and saved from repeal in 2006.⁶²

Chapter 2012-149, Laws of Fla., expanded this exemption to include the dates of birth of the enumerated personnel as well as their family members. The public necessity statement provided that dates of birth can be used to perpetrate fraud and that releasing dates of birth can cause great financial harm to an individual.

Code Enforcement Officers

Chapter 162, F.S., governs county or municipal code enforcement. Code enforcement officers are responsible for the administration of a wide range of health, safety, and environmental regulations. The term “code enforcement officer” is defined as “any designated employee or agent of a county or municipality whose duty it is to enforce codes and ordinances enacted by the county or municipality.”⁶³

A county or municipality may designate certain employees or agents as code enforcement officers.⁶⁴ The county or municipality determines the training and qualifications of code enforcement officers.⁶⁵ Section 162.21(2), F.S., provides that the following personnel may be designated as code enforcement officers: code inspectors, law enforcement officers, animal control officers, and firesafety inspectors.

⁵⁹ U.S. Department of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, <http://www.bls.gov/ooh/management/human-resources-managers.htm> (last viewed December 8, 2016).

⁶⁰ U.S. Department of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, <http://www.bls.gov/ooh/business-and-financial/labor-relations-specialists.htm> (last viewed December 8, 2016).

⁶¹ Society for Human Resource Management https://www.shrm.org/resourcesandtools/tools-and-samples/job-descriptions/pages/cms_002277.aspx (last viewed December 8, 2016).

⁶² Ch. 2006-211, Laws of Fla. The exemption was narrowed by removing the exemption of social security numbers and the photographs of spouses and children.

⁶³ Section 162.21(1), F.S.

⁶⁴ Section 162.21(2), F.S.

⁶⁵ *Id.*

The Legislature enacted a public records exemption for county and municipal code inspectors and code enforcement officers in 1994.⁶⁶ The public necessity statement contained in Ch. 1994-128, Laws of Fla., noted that “release of this information would jeopardize the safety and welfare of . . . code enforcement officers and their families.”

In 2001, this exemption was amended to only include current or former code enforcement officers. The public necessity statement contained in Ch. 2001-249, s. 3, Laws of Fla., provides that the exemption is warranted because “[c]itations issued in response to violations that they encounter often lead to retribution by the offenders” and the release of identifying information “has led to threats, acts of violence, and unwarranted risk to the officers and their families.”

Chapter 2012-149, Laws of Fla., expanded this exemption to include the dates of birth of the enumerated personnel as well as their family members. The public necessity statement provided that dates of birth can be used to perpetrate fraud and that releasing dates of birth can cause great financial harm to an individual.

Guardians ad Litem and Guardian ad Litem Program Personnel

A guardian ad litem is someone appointed by the court to appear in a civil or criminal proceeding on behalf of a minor child.⁶⁷ The Guardian ad Litem Program operates in all 20 judicial circuits.⁶⁸ County governments provide office space to support the offices. In some counties, county-funded staff are provided to the Guardian ad Litem Program.⁶⁹ In those cases, county staff are supervised by the Guardian ad Litem Program.⁷⁰

The Legislature enacted a public records exemption for guardians ad litem in 2005.⁷¹ The exemption for guardians ad litem includes professional staff, contract attorneys, and support staff who work for the Guardian ad Litem Program.⁷² Guardians ad litem must provide a written statement that they made reasonable efforts to protect their information from being publically accessible. The public necessity statement contained in Ch. 2005-213, s. 5, Laws of Fla., provides that the release of identifying information and location information of current and former guardians ad litem and their family members could seriously jeopardize the safety and welfare of these enumerated personnel as “[d]ifferent persons may be disgruntled with the testimony, report, or recommendation made by guardians ad litem.”

In 2010, this exemption was amended to include the names and locations of schools and day care facilities attended by the children of current or former guardians ad litem. The public necessity statement contained in Ch. 2010-71, s. 2, Laws of Fla., provides that the exemption is warranted because “the children of guardians ad litem could become a potential target for acts of revenge” and “the safety and welfare of the children . . . could be seriously jeopardized.”

⁶⁶ Ch. 1994-128, Laws of Fla.

⁶⁷ Section 39.820(1), and 39.822, F.S.

⁶⁸ Section 39.8296, F.S.

⁶⁹ Section 39.8297, F.S.

⁷⁰ *Id.*

⁷¹ Ch. 2005-213, Laws of Fla.

⁷² Section 39.820(1), F.S.

Chapter 2012-149, Laws of Fla., expanded this exemption to include the dates of birth of the enumerated personnel as well as their family members. The public necessity statement provided that dates of birth can be used to perpetrate fraud and that releasing dates of birth can cause great financial harm to an individual.

Department of Juvenile Justice Specified Employees

The Department of Juvenile Justice (DJJ) is charged under s. 985.02, F.S., with developing and coordinating comprehensive services and programs statewide for the prevention, early intervention, control, and rehabilitative treatment of delinquent behavior.

The Legislature enacted a public records exemption for DJJ personnel and their families in 2006.⁷³ The public necessity statement contained in Ch. 2006-180, s. 3, Laws of Fla., provides that DJJ personnel and their family members “could be harmed or threatened with harm by a juvenile defendant or by a friend or family member of a juvenile defendant” if their information were public.

In 2011, public records exemption was revised to match the job titles of DJJ staff as they were currently used. The exemption was saved from repeal in Ch. 2011-201, Laws of Fla., by reenactment.

Chapter 2012-149, Laws of Fla., expanded this exemption to include the dates of birth of the enumerated personnel as well as their family members. The public necessity statement provided that dates of birth can be used to perpetrate fraud and that releasing dates of birth can cause great financial harm to an individual.

Public Defenders, Assistant Public Defenders, Criminal Conflict and Civil Regional Counsel and Assistant Criminal Conflict and Civil Regional Counsel

There is an elected public defender for each judicial circuit in the state. A public defender must be a member in good standing of the Florida Bar, be an elector of the state and must reside within the territorial jurisdiction of the judicial circuit in which he or she serves.⁷⁴ The public defender of each judicial circuit is authorized to employ assistant public defenders and other staff.⁷⁵

Criminal conflict and civil regional counsel are appointees of the governor and serve in five regions across the state.⁷⁶ He or she must also be a member of the Florida bar and may also hire assistants.

Public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel are appointed by the courts to represent

⁷³ Ch. 2006-180, Laws of Fla.

⁷⁴ Section 27.50, F.S.

⁷⁵ Section 27.53, F.S.

⁷⁶ Section 27.511, F.S.

defendants in criminal cases.⁷⁷ Criminal conflict and civil regional counsel also represent clients in child abuse and termination of parental rights cases.⁷⁸

The Legislature enacted public records exemptions for public defenders, their assistants, and their families, as well as criminal conflict and civil regional counsel, their assistants and their families in 2010.⁷⁹ The public necessity statement contained in Ch. 2010-171, s. 2, Laws of Fla., provides that the release of identifying information and location information of the enumerated personnel or their family members “would jeopardize the safety of these attorneys and their families” because “individuals may become disgruntled by the proceedings or the outcome of a criminal or civil case, which could result in these attorneys and their families becoming targets for acts of violence.”

Chapter 2012-149, Laws of Fla., expanded this exemption to include the dates of birth of the enumerated personnel as well as their family members. The public necessity statement provided that dates of birth can be used to perpetrate fraud and that releasing dates of birth can cause great financial harm to an individual.

In 2014, the names of the spouses and children of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel were added to the exemption in Ch. 2014-172, Laws of Fla. The public necessity for the expansion of the exemption was because the enumerated personnel come in close contact with people who make seek revenge by harming the personnel’s spouses and children.⁸⁰

Department of Business and Professional Regulation Investigators and Inspectors

The Department of Business and Professional Regulation (DBPR) is delegated responsibility for both professional regulation and business regulation. The DBPR’s Division of Regulation monitors more than 20 professions and related businesses to ensure that those professions and businesses comply with the rules and standards set by the Legislature, professional boards, and the DBPR. In many instances the inspectors and investigators have the authority to immediately issue a citation to the offending party.⁸¹ The DBPR not only conducts and prosecutes violations of offending agency rules and regulations, but the agency also has a duty to notify the proper prosecuting authority when there is a criminal violation of any statute related to the practice of a profession.⁸²

The Legislature enacted an exemption for DBPR investigators and inspectors, as well as their families in 2012.⁸³ These employees are required to make reasonable efforts to protect their information from being publically accessible. The public necessity statement contained in Ch. 2012-214, s. 2, Laws of Fla., provides that the release of identifying information and location

⁷⁷ See s. 27.51, F.S., and s. 27.511, F.S.

⁷⁸ See s. 27.511(6)(a), F.S.

⁷⁹ Ch. 2010-171, Laws of Fla.

⁸⁰ Ch. 2014-172, s. 2, Laws of Fla.

⁸¹ Section 455.224, F.S.

⁸² Section 455.2277, F.S.

⁸³ Ch. 2012-214, Laws of Fla.

information of enumerated personnel or their family members might place them “in danger of physical or emotional harm from disgruntled individuals . . . whose business or professional practices have come under the scrutiny of the Department of Business and Professional Regulation.”

County Tax Collectors

The State Constitution requires a tax collector to be elected by the electors of a county, for a term of four years, unless otherwise provided by county charter or special law.⁸⁴ The tax collector has the authority and obligation to collect all taxes as shown on the tax roll by the date of delinquency or to collect delinquent taxes, interest, and costs, by sale of tax certificates on real property and by seizure and sale of personal property.

The Legislature enacted an exemption for county tax collectors, as well as their families in in 2012.⁸⁵ These employees are required to make reasonable efforts to protect their information from being publically accessible. The public necessity statement contained in Ch. 2012-214, s. 2, Laws of Fla., provides that the release of identifying information and location information of county tax collectors or their family members might place them “in danger of physical or emotional harm from disgruntled individuals who have contentious reactions to revenue collection or . . . child support enforcement actions.”

OGSR Survey Findings and Recommendations

During the 2016-2017 Interim, the Governmental Oversight and Accountability Committee professional staff conducted an Open Government Sunset Review (OGSR) pursuant to s. 119.15, F.S., and sent surveys to agencies, water management districts, counties, cities and law enforcement agencies affected by the exemptions scheduled to sunset on October 2, 2017. The surveys covered 12 statutory exemptions and approximately 20 professions.

In all, 178 entities responded.⁸⁶ All but two of the entities that tracked such information reported that they had received public records requests for personnel information. The majority of the surveyed entities recommended that all of the exemptions be reenacted as they are.⁸⁷ Personnel safety was the most common reason cited for reenacting the exemptions.

Several of the entities stated that they had problems applying the exemptions. They suggested that all of the exemptions be made uniform so that it would be easier to redact information.

⁸⁴ FLA. CONST. art. VIII, s. 1.

⁸⁵ Ch. 2012-214, Laws of Fla.

⁸⁶ This number reflects 27 agencies, 75 cities, five water management districts, 24 counties, 20 sheriff's offices, two police departments, the Florida Police Chief's Association, 11 state attorney offices and 12 public defender offices. The survey responses are on file with the Senate Committee on Governmental Oversight and Accountability.

⁸⁷ Several entities left blanks in response to the questions of whether any of the exemptions should be permitted to sunset. Some stated that they had no opinion or no recommendation. Some entities, such as small cities or unaffected agencies, reported that they did not employ any of the professions in the survey.

Employing entities gathered large amounts of information about each of their employees, much more than is covered by the existing exemptions. Employers made several recommendations about what other types of information should be exempt. This included:

- all family members who resided with the exempt personnel (such as parents and step-children);
- vehicle information;
- people who share custody of children but are not spouses;
- personal email addresses; and
- professional or recreational licenses and permits.

Based on the results of the surveys, Committee staff recommends that the Legislature reenact the exemptions with some changes.

III. Effect of Proposed Changes:

Social Security Numbers

Currently agency personnel public records exemptions in s. 119.071(4)(d)2., F.S., state that social security numbers of certain personnel and their families are exempt from public disclosure. The bill removes the public records exemptions for social security numbers because there is a general exemption for the social security numbers of all current and former agency personnel in s. 119.071(4)(a), F.S. There is also an exemption for social security numbers in s. 119.071(5)(a)5., F.S., which is a general public records exemption for everyone. Sections 119.071(4)(a), F.S., and 119.071(5)(a)5., F.S., make social security numbers confidential and exempt from Ch. 119, F.S., as well as the State Constitution.

By removing social security numbers from the personnel exemptions in s. 119.071(4)(d)2., F.S., the conflict between public records exemptions for social security number is eliminated. In addition, the discretion of the records custodian to release social security numbers will be restricted to those conditions outlined in statute.

The Florida Constitution

It has been the practice of the Legislature to make records exempt from both s. 119.07(1), F.S., and s. 24(a), Article I of the Florida Constitution. An exemption from the Florida Constitution ensures that an exemption applies to a record when it is held by each branch of government. This bill expands exemptions to include the Florida Constitution if they do not currently do so. The bill incorporates the State Constitution into the public records exemptions for the following personnel:

- Law enforcement;
- DCF, DOH, and DOR personnel with certain duties;
- Firefighters; and
- Justices and judges.

Names of Children and Spouses of Personnel

Existing public records exemptions for agency personnel make exempt from public disclosure the names of the personnel's children and spouses with the following exceptions:

- Justices and judges;
- Magistrates, judges of compensation claims, DOAH administrative law judges;
- Child support enforcement hearing officers; and
- Firefighters.

The bill exempts from public disclosure the names of the children and spouses of these personnel.

Information Set to Sunset in 2018 and 2019

The following information is not currently set to sunset in 2017, but is closely related to exemptions which are sunsetting this year.

Personnel whose exemption is sunsetting in 2017	Information NOT sunsetting in 2017	Year information is sunsetting
Law enforcement, DCF, DOH, DOR	Names of spouses and children	2018
State attorneys and assistants	Names of spouses and children	2018
Statewide prosecutors and assistants	Names of spouses and children	2018
Public defenders and assistants	Names of spouses and children	2019
Criminal conflict and civil regional council and assistants	Names of spouses and children	2019

The bill incorporates the names of spouses and children into the current exemptions and deletes the 2018 and 2019 sunset dates. This means that these exemptions would not have a full five-year review under the OGSR. Given that all identification and location information for the spouses and children of the named personnel are already exempt, and because this year's survey incorporated questions about information about the spouses and children, it would to be redundant to redo the review for the names of spouses and children in one or two years. Also the statutes governing the OGSR process provide some discretion on how the Legislature approaches sunset reviews.⁸⁸

Dates of Birth of DBPR Personnel and County Tax Collectors

Most of the public records exemptions for personnel also protect the dates of birth of the personnel and their families. Inspectors and investigators of DBPR, and county tax collectors,

⁸⁸ Section 119.15(8), F.S.

however, do not have this protection. This bill expands the public records exemptions for DBPR personnel, county tax collectors, and their families by adding dates of birth to their exemptions.⁸⁹

The Requirement to Prove Protection of Ones' Information

This bill removes the requirement that certain personnel must prove that they have made reasonable efforts to protect their information from being accessible to the public.

The bill removes this requirement for the following personnel:

- Magistrates, judges of compensation claims, DOAH administrative law judges;
- Child support enforcement hearing officers;
- Guardians ad litem;
- DBPR investigators; and
- County tax collectors.

This language was removed for two reasons: to ease the administrative burden on personnel and their employers to weigh how much proof was needed to extend the exemption to the personnel, and because most other personnel did not have to prove in order to be eligible for the exemption. Agencies noted that the differences in each exemption made them difficult to implement.

Public Necessity Statement

Public necessity statements for public records exemptions are required by the State Constitution. This would apply to an expansion of an existing public records exemption. This bill includes public necessity statements for each of the expansions in this bill.

The public necessity statements provide two basic reasons for the public necessity of these exemptions. First, the expansions were necessary for the safety of the personnel and their families. The public necessity statements also reflect and supplement the public necessity statements that currently exist in the Laws of Florida. Second, the expansions were necessary to increase harmonization between the exemptions and thereby increase accuracy and efficiency when redactions are required.

This bill takes effect on October 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁸⁹ The public records exemptions for DBPR investigators and tax collectors passed in the same bill, HB 1089, which became Ch. 2012-214, Laws of Fla. Dates of birth were missing from both of these exemptions. During the same session, Ch. 2012-149, Laws of Fla., added a public records exemption for dates of birth to all of the other personnel public records exemptions.

B. Public Records/Open Meetings Issues:

This bill requires a two-thirds majority vote in each chamber in order to pass, pursuant to Article I, section 24(c) of the Florida Constitution because it expands public records exemptions.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

Indeterminate. Some government contractors will have to adjust their public records redactions procedures to accommodate the changes proposed in this bill. Companies that purchase public records for datamining could be adversely affected by having access to less information.

C. Government Sector Impact:

Indeterminate. Governmental entities will have to adjust their public records redactions procedures to accommodate the changes proposed in this bill. Presumably, creating greater uniformity between the exemptions will reduce costs associated with redacting exempt information.

VI. Technical Deficiencies:

This bill does not include a five year open government sunset review although includes several public records expansions. The OGSR Act requires the Legislature to set a five year review of an expanded public records exemption, but also provides that failure to comply strictly with all the requirements of the OGSR Act does not invalidate a reenactment.⁹⁰

VII. Related Issues:

The exemption for guardians' ad litem states guardians ad litem are defined by s. 39.820, F.S. The definition of guardian ad litem in s. 39.820(1), F.S., provides:

“Guardian ad litem” as referred to in any civil or criminal proceeding includes the following: a certified guardian ad litem program, a duly certified volunteer, *a staff attorney, contract attorney*, or certified pro bono attorney *working on behalf of a guardian ad litem or the program; staff members of a program office*; a court-appointed attorney; or a responsible adult who is appointed by the court to

⁹⁰ Section 119.15(8), F.S.

represent the best interests of a child in a proceeding as provided for by law, including, but not limited to, this chapter, who is a party to any judicial proceeding as a representative of the child, and who serves until discharged by the court. (emphasis added)

Current law exempts the place of employment of current and former staff attorneys, contract attorneys, court appointed attorneys, pro bono attorneys as well staff members of the Guardian Ad Litem Program office. This is unusual because the place of employment of governmental personnel is usually public record. It is unclear why the place of employment of staff attorneys and program staff are exempt from public disclosure.

VIII. Statutes Affected:

This bill substantially amends section 119.071(4) 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.

FOR CONSIDERATION By the Committee on Governmental Oversight and Accountability

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A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 119.071, F.S., which provides exemptions from public records requirements for certain personal identifying and location information of specified agency personnel, and the spouses and children thereof; revising and reorganizing the exemptions; removing redundant exemptions regarding social security numbers; providing an exemption from public records requirements for the names of the spouses and children of certified firefighters, current or former justices and judges, and certain magistrates, judges, and hearing officers; removing the requirement that specified agency personnel make reasonable efforts to protect access to personal identifying and location information in order be subject to an exemption; providing an exemption from public records requirements for the dates of birth for current or former investigators or inspectors for the Department of Business and Professional Regulation and county tax collectors, and the spouses and children thereof; removing the scheduled repeal of certain exemptions; providing for retroactive application; providing statements of public necessity; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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Section 1. Paragraph (d) of subsection (4) of section 119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of public records.—

(4) AGENCY PERSONNEL INFORMATION.—

(d)1. For purposes of this paragraph, the term "telephone numbers" includes home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices.

2.a.~~(I)~~ The home addresses, telephone numbers, ~~social security numbers~~, dates of birth, and photographs of active or former sworn or civilian law enforcement personnel, including correctional and correctional probation officers, personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect, and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement; the names, home addresses, telephone numbers, ~~social security numbers~~, photographs, 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 the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

~~(II) The names of the spouses and children of active or former sworn or civilian law enforcement personnel and the other~~

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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specified agency personnel identified in sub-sub-subparagraph (I) are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

~~(III) Sub-sub-subparagraph (II) is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.~~

~~b. (IV)~~ The home addresses, telephone numbers, dates of birth, and photographs of current or former nonsworn investigative personnel of the Department of Financial Services whose duties include the investigation of fraud, theft, workers' compensation coverage requirements and compliance, other related criminal activities, or state regulatory requirement violations; 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 the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph ~~sub-sub-subparagraph~~ is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

~~c. b.~~ The home addresses, telephone numbers, dates of birth, and photographs of firefighters certified in compliance with s. 633.408; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such firefighters; and the names and locations of schools and day care facilities attended by the

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children of such firefighters are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

~~d. e.~~ The home addresses, dates of birth, and telephone numbers of current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former justices and judges; and the names and locations of schools and day care facilities attended by the children of current or former justices and judges are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

~~e. d. (f)~~ The home addresses, telephone numbers, ~~social security numbers~~, dates of birth, and photographs of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; the names, home addresses, telephone numbers, ~~social security numbers~~, photographs, dates of birth, and places of employment of the spouses and children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; and the names and locations of schools and day care facilities attended by the children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

~~(II) The names of the spouses and children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.~~

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~~(III) Sub-sub-subparagraph (II) is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.~~

~~f.e.~~ The home addresses, dates of birth, and telephone numbers of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; and the names and locations of schools and day care facilities attended by the children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution ~~if the general magistrate, special magistrate, judge of compensation claims, administrative law judge of the Division of Administrative Hearings, or child support hearing officer provides a written statement that the general magistrate, special magistrate, judge of compensation claims, administrative law judge of the Division of Administrative Hearings, or child support hearing officer has made reasonable efforts to protect such information from being accessible through other means available to the public.~~

g.f. The home addresses, telephone numbers, dates of birth,

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and photographs of current or former human resource, labor relations, or employee relations directors, assistant directors, managers, or assistant managers of any local government agency or water management district whose duties include hiring and firing employees, labor contract negotiation, administration, or other personnel-related duties; 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 the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

~~h.g.~~ The home addresses, telephone numbers, dates of birth, and photographs of current or former code enforcement officers; 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 the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

~~i.h.~~ The home addresses, telephone numbers, places of employment, dates of birth, and photographs of current or former guardians ad litem, as defined in s. 39.820; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such persons; and the names and locations of schools and day care facilities attended by the children of such persons are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, ~~if the guardian ad litem provides a written statement that the guardian ad litem has made reasonable efforts to protect such information from~~

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being accessible through other means available to the public.

~~j.i.~~ The home addresses, telephone numbers, dates of birth, and photographs of current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, juvenile justice detention officers I and II, juvenile justice detention officer supervisors, juvenile justice residential officers, juvenile justice residential officer supervisors I and II, juvenile justice counselors, juvenile justice counselor supervisors, human services counselor administrators, senior human services counselor administrators, rehabilitation therapists, and social services counselors of the Department of Juvenile Justice; the names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

~~k.j.(I)~~ The home addresses, telephone numbers, dates of birth, and photographs of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such defenders or counsel; and the names and locations of schools and day care facilities attended by the children of such defenders or counsel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

~~(II) The names of the spouses and children of the specified~~

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agency personnel identified in sub-sub-subparagraph (I) are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and ~~shall stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.~~

~~l.k.~~ The home addresses, telephone numbers, dates of birth, and photographs of current or former investigators or inspectors of the Department of Business and Professional Regulation; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such current or former investigators and inspectors; and the names and locations of schools and day care facilities attended by the children of such current or former investigators and inspectors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution ~~if the investigator or inspector has made reasonable efforts to protect such information from being accessible through other means available to the public. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.~~

~~m.l.~~ The home addresses, ~~and~~ telephone numbers, and dates of birth of county tax collectors; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such tax collectors; and the names and locations of schools and day care facilities attended by the children of such tax collectors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution ~~if the county tax~~

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~~collector has made reasonable efforts to protect such information from being accessible through other means available to the public. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.~~

n.m. The home addresses, telephone numbers, dates of birth, and photographs of current or former personnel of the Department of Health whose duties include, or result in, the determination or adjudication of eligibility for social security disability benefits, the investigation or prosecution of complaints filed against health care practitioners, or the inspection of health care practitioners or health care facilities licensed by the Department of Health; 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 the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the personnel have made reasonable efforts to protect such information from being accessible through other means available to the public. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

o.a. The home addresses, telephone numbers, dates of birth, and photographs of current or former impaired practitioner consultants who are retained by an agency or current or former employees of an impaired practitioner consultant whose duties

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result in a determination of a person's skill and safety to practice a licensed profession; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such consultants or their employees; and the names and locations of schools and day care facilities attended by the children of such consultants or employees are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if a consultant or employee has made reasonable efforts to protect such information from being accessible through other means available to the public. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

p.e. The home addresses, telephone numbers, dates of birth, and photographs of current or former emergency medical technicians or paramedics certified under chapter 401; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such emergency medical technicians or paramedics; and the names and locations of schools and day care facilities attended by the children of such emergency medical technicians or paramedics are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the emergency medical technicians or paramedics have made reasonable efforts to protect such information from being accessible through other means available to the public. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal

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through reenactment by the Legislature.

~~G.P.~~ The home addresses, telephone numbers, dates of birth, and photographs of current or former personnel employed in an agency's office of inspector general or internal audit department whose duties include auditing or investigating waste, fraud, abuse, theft, exploitation, or other activities that could lead to criminal prosecution or administrative discipline; the names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if the personnel have made reasonable efforts to protect such information from being accessible through other means available to the public. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

3. An agency that is the custodian of the information specified in subparagraph 2. and that is not the employer of the officer, employee, justice, judge, or other person specified in subparagraph 2. shall maintain the exempt status of that information only if the officer, employee, justice, judge, other person, or employing agency of the designated employee submits a written request for maintenance of the exemption to the custodial agency.

4. The exemptions in this paragraph apply to information held by an agency before, on, or after the effective date of the exemption.

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~~5. Except as otherwise expressly provided in this paragraph, this paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. (1)(a) The Legislature finds that it is a public necessity that the following information be exempt from s. 24(a), Article I of the State Constitution:

1. The home addresses, telephone numbers, dates of birth, and photographs of active or former sworn or civilian law enforcement personnel, including correctional and correctional probation officers, personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect, and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement; the home addresses, telephone numbers, photographs, 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 the children of such personnel;

2. The home addresses, telephone numbers, dates of birth, and photographs of firefighters certified in compliance with s. 633.408, Florida Statutes; the home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such firefighters; and the names and locations of schools and day care facilities attended by the

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children of such firefighters; and

3. The home addresses, dates of birth, and telephone numbers of current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former justices and judges; and the names and locations of schools and day care facilities attended by the children of current or former justices and judges.

(b) The Legislature finds that it is a public necessity to exempt this information from s. 24(a), Article I of the State Constitution in order to prevent disclosure of information that can be used to identify or locate these governmental personnel and their spouses and children. These governmental personnel perform duties that can adversely affect the rights of members of public. Members of the public can face criminal and civil liability resulting in the loss of liberty, child custody, licensure, money, and access to entitlements because of the actions taken by these governmental personnel. Adversely affected people, their families, or their friends may place blame on these governmental personnel for arrests, investigations, or judicial intervention. Governmental personnel may also be threatened or harmed by victims who believe governmental personnel did not adequately perform their duties. Such governmental personnel are subject to threats and violence on and off duty, and these threats persist after they leave their jobs. The threat of danger and revenge extend to the spouses and children of these governmental personnel.

(c) Furthermore, the combination of personal identification

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and location information can be used as a tool to perpetuate fraud against these governmental personnel and to acquire sensitive personal, financial, medical, and familial information, the release of which could cause great financial harm to these individuals and their families. Identity theft can also harm these governmental personnel and their families' reputations. It is in the public interest to protect fully these governmental employees and their families and to ensure that their identifying and location information is exempt from public disclosure when it is held by an entity in the executive, legislative, or judicial branch of government.

(2)(a) The Legislature finds that it is a public necessity to exempt the names of the children and spouses of the following governmental personnel from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution:

1. Firefighters certified in compliance with s. 633.408, Florida Statutes;

2. Current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; and

3. General magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers.

(b) Such personnel are often required to interact with members of the public while they are in difficult circumstances. These personnel and their families are subject to threats by members of the public who may seek revenge against them. Allowing public access to the names of children and spouses will

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make the families of these personnel easy to find and expose them to threats or acts of revenge. Threats or acts of revenge against the children and spouses of such personnel could compromise the governmental personnel's ability to perform their duties without fear of retaliation.

(3)(a) The Legislature finds that it is a public necessity to make the following information exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution, regardless of whether such individuals made reasonable efforts to protect such information from being public:

1. The home addresses, dates of birth, and telephone numbers of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; and the names and locations of schools and day care facilities attended by the children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers;

2. The home addresses, telephone numbers, dates of birth, and photographs of current or former guardians ad litem, as defined in s. 39.820, Florida Statutes; the names, home addresses, telephone numbers, dates of birth, and places of

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employment of the spouses and children of such persons; and the names and locations of schools and day care facilities attended by the children of such persons;

3. The home addresses, telephone numbers, dates of birth, and photographs of current or former investigators or inspectors of the Department of Business and Professional Regulation; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such current or former investigators and inspectors; and the names and locations of schools and day care facilities attended by the children of such current or former investigators and inspectors; and

4. The home addresses, telephone numbers, and dates of birth of county tax collectors; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such tax collectors; and the names and locations of schools and day care facilities attended by the children of such tax collectors.

(b) The Legislature finds that exempting identifying and location information from public disclosure requirements protects governmental personnel, guardians ad litem, and their family members from danger of physical and emotional harm from disgruntled criminal defendants, litigants, licensees, taxpayers, and other members of the public. These individuals may be subject to threats or acts of revenge because of the duties they perform. Their family members are also endangered by people who may seek to intimidate or harm such personnel or guardians ad litem. In addition, criminals could use identification and location information for identity theft that

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can cause financial harm to these governmental personnel, guardians ad litem, and their families. The harm that might result from the release of exempt information outweighs any public benefit that could be derived from disclosure. For these reasons, the exemptions should be applied without requiring such governmental personnel or guardians ad litem prove that they have not made their information public.

(c) In addition, requiring these governmental personnel or guardians ad litem prove that they made reasonable efforts to protect their identification and location information is an added burden on these individuals as well as on agencies receiving a public records request. The extent to which these individuals must protect their information from public accessibility is unclear. It is also unclear how much proof an agency needs in order to grant the exemption. The burden on an agency to verify whether these individuals have protected from public disclosure their identifying and location information adversely impacts the effective and efficient administration of government in establishing who is eligible for an exemption. Relatively few public records exemptions require an individual to prove that he or she made reasonable efforts to protect his or her information from being available to the public. Such inconsistencies among public records exemptions reduce accuracy and efficiency when redacting exempt information when a public records request for agency personnel information is made. It is not in the public interest for the public to receive inaccurately redacted information.

(4) (a) The Legislature finds that it is a public necessity that the dates of birth of the following people be exempt from

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s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution:

1. Current or former investigators or inspectors of the Department of Business and Professional Regulation and their spouses and children; and

2. County tax collectors and their spouses and children.

(b) Dates of birth can be used as a tool to perpetuate fraud against an individual and to acquire sensitive personal, financial, medical, and familial information, the release of which could cause great financial harm to an individual and his or her family. Identity theft can also be used to harm their reputations and good name.

(5) The Legislature finds that the amendments to s. 119.071(4) (d), Florida Statutes, made by this act are necessary to bring greater uniformity among public records exemptions for agency personnel information because exempted information currently varies from exemption to exemption. Inconsistencies between public records exemptions for agency personnel information result in increased inaccuracy and inefficiency when information must be redacted in response to a public records request. Unnecessary complexity increases the likelihood that public records custodians may inaccurately redact information in a record. As a result, the public could receive information that improperly redacts information that is not exempt or have access to exempt information that should have been redacted. It is not in the interest of the public to receive inaccurately redacted information, or to unnecessarily pay fees for staff time associated with redacting extraneous information. In addition, the accidental release of personal identifying and location

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523 information can endanger personnel or otherwise negate the
 524 purpose of the exemption.

525 Section 3. This act shall take effect October 1, 2017.

✓

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/21/2017

Meeting Date

7018

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Brian Pitts

Job Title Trustee

Address 1119 Newton Ave S
Street

Phone 727/897-9291

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City

FL
State

33705
Zip

Email justice2jesus@yahoo.com

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Justice-2-Jesus

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

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 Governmental Oversight and Accountability

BILL: SPB 7016

INTRODUCER: Governmental Oversight and Accountability Committee

SUBJECT: Florida Historic Capitol Museum DSO Public Records Exemption

DATE: February 21, 2017

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Peacock	Ferrin		GO Submitted as Committee Bill

I. Summary:

SPB 7016 continues the existing public records exemption for the identity of a donor or prospective donor to the Florida Historic Capitol Museum's direct support organization by removing the October 2, 2017, repeal date.

The bill provides an effective date of October 1, 2017.

II. Present Situation:

Direct-Support Organizations

In General

Direct-support organizations (DSOs) are private entities statutorily created to assist or support governmental entities in carrying out their duties. DSOs are generally established as Florida corporations not for profit, which are incorporated under ch. 617, F.S., and approved by the Department of State.

Direct-Support Organization for the Florida Historic Capitol Museum

The current Florida Historic Capitol (Historic Capitol) was built in 1845, and several additions have been made since that time. In 1981, the Legislature provided for the restoration of the Historic Capitol to its 1902 appearance and made provisions for its use as a museum.¹ The mission of the Florida Historic Capitol Museum (Capitol Museum), as it is known today, is:

to illuminate the past, present, and future connection between the people of Florida and their political institutions through programs of civic education, historic interpretation, and preservation.²

¹ Ch. 81-232, s. 1, Laws of Fla.

² Florida Historic Capitol Museum, <http://www.flhistoriccapitol.gov/about.cfm#mission> (last visited Feb. 13, 2015).

In 2015, legislation created the Florida Historic Capitol Museum Council (Council).³ The Council works with the Capitol Museum's staff to create a strategic plan to guide the Council's mission, ensure that the Capitol Museum preserves legislative history and operates according to best practices, meets with the board of directors of the Capitol Museum's direct support organization, and assists the staff in planning legislative reunions.⁴

Section 272.136, F.S., authorizes the Council and the Director to establish a DSO in order to provide assistance and promotional support through fundraising for the Capitol Museum, including but not limited to, their education programs and initiatives.

The DSO established must be:

- A Florida corporation;
- Not for profit;
- Incorporated under ch. 617, F.S.; and
- Approved by the Department of State.⁵

The DSO is governed by a board of directors dedicated to preserving the Historic Capitol and advancing the mission of the Capitol Museum.⁶ The DSO, Florida Historic Capitol Foundation Corporation, received its not-for-profit status in October 2010 and has been receiving contributions.

Funds from the sale of specialty license plates⁷ are directed to the DSO.⁸ These funds are to be used to reimburse per diem and travel expenses of the DSO's board members.⁹

If the DSO is no longer authorized, fails to comply with the requirements of s. 272.136, F.S., fails to maintain its tax-exempt status, or ceases to exist, then all funds obtained through grants, gifts, and donations in the DSO's account revert to the state and are deposited into an account designated by the Legislature.¹⁰

³ Section 272.131(1), F.S., provides that the Florida Historic Capitol Museum Council is composed of the following 13 members: the Secretary of the Senate, the Clerk of the House of Representatives, the Sergeants at Arms of both chambers, three members appointed by the President of the Senate and three members appointed by the Speaker of the House. Of those appointed by each presiding officer, one member must be a current member of the Legislature, and two members must be former legislators or officers of the Legislature. The board of directors of the Foundation must appoint three of its members to the Council. Council members act as advocates for the Capitol Museum and serve without compensation.

⁴ Section 272.131, F.S.

⁵ Section 272.136(2), F.S.

⁶ Section 272.136(1), F.S., provides that the initial appointments to the 9-member board are made by the President of the Senate and the Speaker of the House at the recommendation of the Council and Director. After July 1, 2015, the board may add up to 12 additional members.

⁷ For retired congressional and state legislative members.

⁸ Section 320.0807(6)(c), F.S.

⁹ Section 272.136(1)(d), F.S.

¹⁰ Section 272.136(6), F.S.

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹¹ This 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.¹²

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.¹³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.¹⁴ The Public Records Act states that

It is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.¹⁵

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.¹⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”¹⁷ A violation of the Public Records Act may result in civil or criminal liability.¹⁸

The Legislature may create an exemption to public records requirements.¹⁹ An exemption must pass by a two-thirds vote of the House and the Senate.²⁰ In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.²¹ A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.²²

¹¹ FLA. CONST., art. I, s. 24(a).

¹² *Id.*

¹³ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also, see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.

¹⁴ Public records laws are found throughout the Florida Statutes.

¹⁵ Section 119.01(1), F.S.

¹⁶ Section 119.011(12), F.S., defines “public record” to mean “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 connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” to mean 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.”

¹⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

¹⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁹ FLA. CONST., art. I, s. 24(c).

²⁰ *Id.*

²¹ *Id.*

²² *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So.2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”²³ Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as “exempt” are not required to be made available for public inspection, but may be released at the discretion of the records custodian under certain circumstances.²⁴

Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.²⁵ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.²⁶ Each year, by June 1, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.²⁷

The OGSR 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 necessary.²⁸ An exemption serves an identifiable purpose if it meets one of the following purposes and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;²⁹
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;³⁰ or
- It protects trade or business secrets.³¹

In addition, the Legislature must find that the purpose of the exemption overrides the Florida’s public policy strongly favoring open government.

important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

²³ If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

²⁴ *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

²⁵ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

²⁶ Section 119.15(3), F.S.

²⁷ Section 119.15(5)(a), F.S.

²⁸ Section 119.15(6)(b), F.S.

²⁹ Section 119.15(6)(b)1., F.S.

³⁰ Section 119.15(6)(b)2., F.S.

³¹ Section 119.15(6)(b)3., F.S.

The OGSR also requires specified questions to be considered during the review process.³² In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.³³ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.³⁴

Current Exemption from Public Records Requirements in s. 272.136, F.S.

Section 272.136(7)(a), F.S., provides that the identity of a donor or prospective donor to the DSO of the Florida Historic Capitol Museum who desires to remain anonymous is confidential and exempt from disclosure. This exemption includes all information identifying a donor or prospective donor. It is subject to the OGSR and stands repealed on October 2, 2017, unless reviewed and saved from repeal by the Legislature.

Review Findings and Recommendations

In June 2016, the Senate Governmental Oversight and Accountability Committee and the House Government Oversight Subcommittee sent an Open Government Sunset Review Questionnaire to the Florida Historic Capitol Museum's DSO regarding the need to keep the information identifying donors or prospective donors who wish to remain anonymous exempt from public disclosure under s. 272.136(7)(a), F.S. The Florida Historic Capitol Museum DSO indicated that it supported continuing the exemption. Additionally, maintaining the confidentiality of the identity of donors and prospective donors aligns with best practices of similar organizations.³⁵

III. Effect of Proposed Changes:

Section 1 of the bill removes the scheduled repeal date of October 2, 2017, in the public records exemption.

³² 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?

³³ FLA. CONST., art. I, s. 24(c).

³⁴ Section 119.15(7), F.S.

³⁵ See "Donor Bill of Rights" produced by the Association of Fundraising Professionals located at <http://www.afpnet.org/Ethics/EnforcementDetail.cfm?ItemNumber=3359> (last visited on February 16, 2017) and "General Principles" of the American Alliance of Museums located at <http://www.aam-us.org/resources/ethics-standards-and-best-practices/financial-stability> (last visited on February 16, 2017).

Section 2 of the bill provides an effective date of October 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties or municipalities to spend funds, reduce the counties' or municipalities' ability to raise revenue or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

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 exemption. The bill does not create or expand a public records exemption, therefore it does not require a two-thirds vote for final passage.

The bill retains the existing public records exemption for the identity of a donor or prospective donor of the Capitol Museum DSO. The bill complies with the requirements of article I, s. 24 of the State Constitution that public records exemptions may only be addressed in legislation separate from substantive changes to law.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 272.136(7) 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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

FOR CONSIDERATION By the Committee on Governmental Oversight and Accountability

585-00077-17

20177016pb

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 272.136, F.S., which provides a public records exemption for identifying information of certain donors or prospective donors to the direct-support organization of the Florida Historic Capitol Museum; removing the scheduled repeal of the exemption; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (7) of section 272.136, Florida Statutes, is amended to read:

272.136 Direct-support organization.—The Florida Historic Capitol Museum Council and the Florida Historic Capitol Museum Director may establish a direct-support organization to provide assistance and promotional support through fundraising for the Florida Historic Capitol Museum, including, but not limited to, its educational programs and initiatives.

(7) ~~(a)~~ The identity of a donor or prospective donor to the direct-support organization who desires to remain anonymous, and all information identifying such donor or prospective donor, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Such anonymity shall be maintained in any auditor's report created pursuant to the annual financial audit required under subsection (5).

~~(b) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2017, unless reviewed and saved from~~

Page 1 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

585-00077-17

20177016pb

~~repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2017.

Page 2 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/21/2017

Meeting Date

7016

Bill Number (if applicable)

Topic OGSR / Donors or Prospective Donors / DSO Capitol Museum

Name Tiffany Baker

Amendment Barcode (if applicable)

Job Title Museum Director, Florida Historic Capitol Museum

Address 400 S. Monroe St. B-06

Street

Phone 850-717-0284

Tallahassee

City

FL

State

32399-1100

Zip

Email baker.tiffany@flhistoriccapitol.gov

Speaking: ☐ For ☐ Against ☒ Information if Needed

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FL Historic Capitol Museum

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

✓

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/21/2017
Meeting Date

7016
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Brian Pitts

Job Title Trustee

Address 1119 Newton Ave S
Street

Phone 727/897-9291

St Petersburg FL 33705
City State Zip

Email justice2jesus@yahoo.com

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Justice-2-Jesus

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)



Governmental Oversight and Accountability
The Florida Senate
February 21, 2017

AST'S GUIDING PRINCIPLES

Strategic
Enterprise-
focused
Reliable
Value-add
Innovative
Collaborative
Efficient



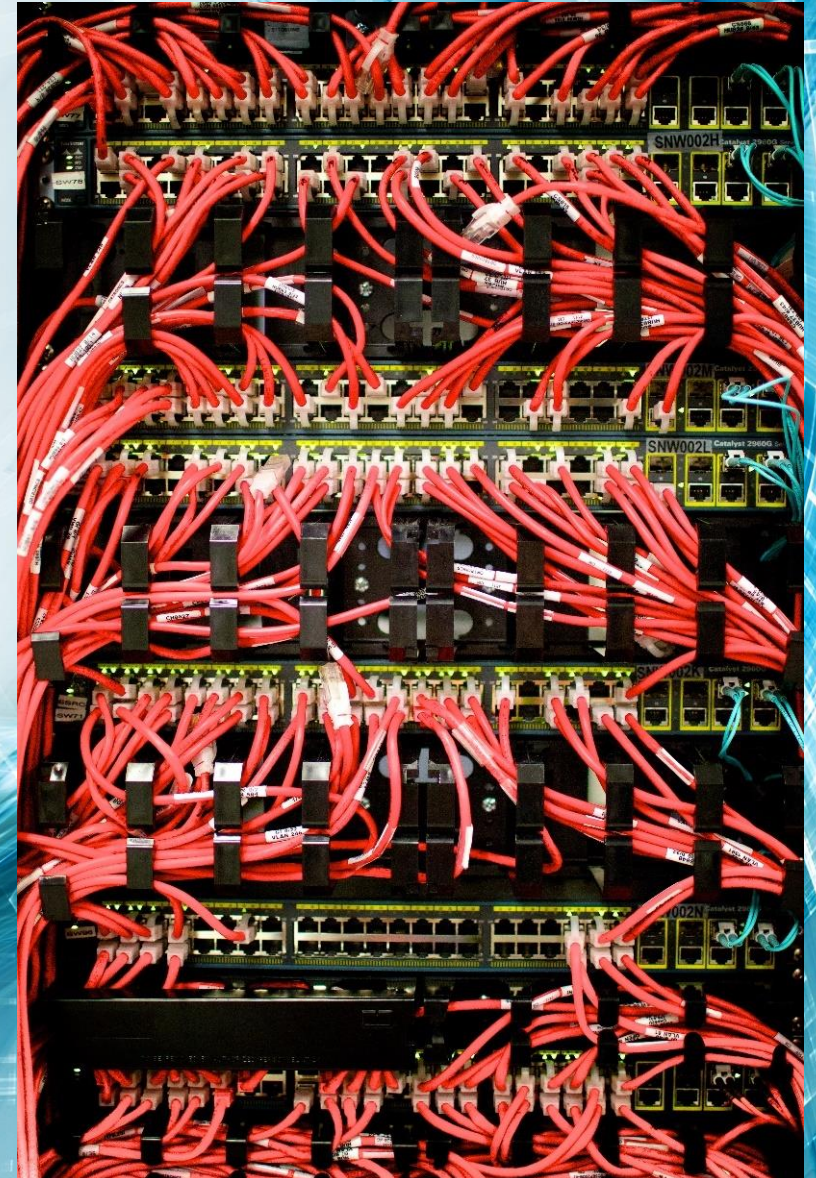
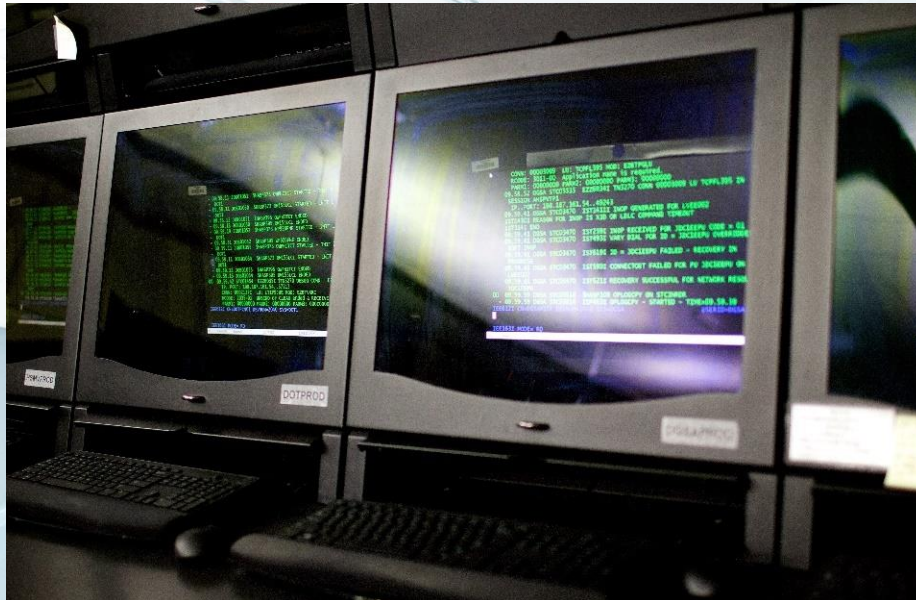
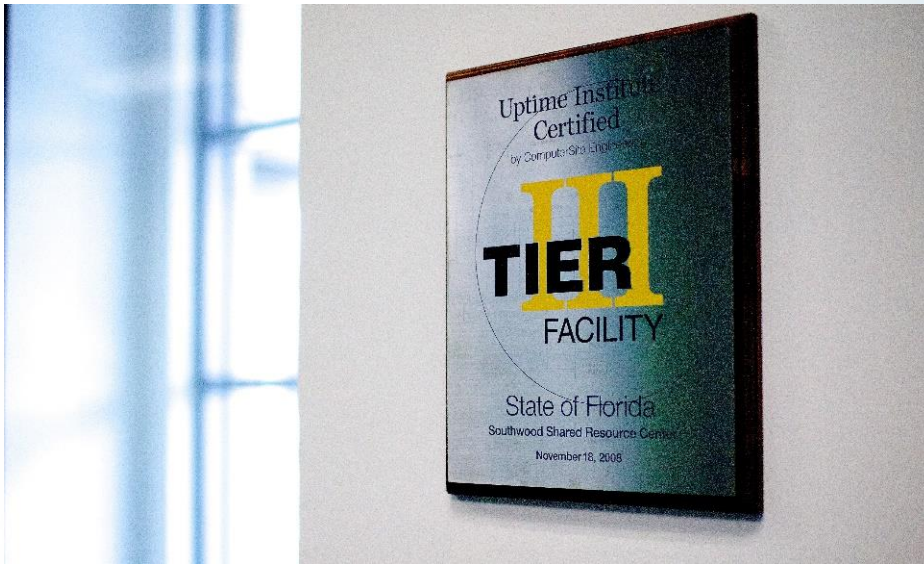


Agency Overview

- State Data Center
- IT Project Management & Oversight
 - Strategic Planning
 - Project Assurance
- IT Procurement
- IT Security



State Data Center





IT Project Management & Oversight

- Strategic Planning
- Project Assurance

IT Procurement

- Collaboration with DMS
 - Best practices in IT procurement
 - IT-related State Term Contracts
 - Review of all IT procurements over \$250,000

IT Security





The Future of IT in Florida

- Chief Data Officer/Geographic Information Office
- Disaster Recovery
- IT Security

QUESTIONS?



Agency For State Technology
4050 Esplanade Way, Suite 115
Tallahassee, FL 32399
850.412.6050

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/21/17
Meeting Date

Bill Number (if applicable)

Topic Information Technology

Amendment Barcode (if applicable)

Name Eric Larsen

Job Title Interim Exec Director of State CIO

Address 4050 Esplanade way
Street
Tallahassee FL 32399
City State Zip

Phone (850) 412-8100

Email eric.larsen@ost.myflorida.com

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Agency for State Technology

Appearing at request of Chair: ☒ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

OK

COMMITTEES:
Appropriations Subcommittee on Higher
Education, *Chair*
Appropriations
Education
Governmental Oversight and Accountability
Rules

JOINT COMMITTEE:
Joint Legislative Budget Commission

SENATOR BILL GALVANO
21st District

February 21, 2017

Senator Dennis Baxley
Committee on Governmental Oversight and Accountability
525 Knott Building
Tallahassee, FL 32399

Dear Chairman Baxley:

I am writing to request approval to be excused from the Committee on Governmental Oversight and Accountability meeting scheduled for today, February 21, 2017.

I appreciate your consideration in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill", written in dark ink.

Bill Galvano

cc: Jay Ferrin
Tamra Redig

REPLY TO:

- ☐ 1023 Manatee Avenue West, Suite 201, Bradenton, Florida 34205 (941) 741-3401
- ☐ 420 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5021

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

CourtSmart Tag Report

Room: SB 401
Caption: Senate Governmental Oversight and Accountability Committee

Type:
Judge:

Started: 2/21/2017 12:32:51 PM
Ends: 2/21/2017 1:30:24 PM **Length:** 00:57:34

12:32:50 PM Meeting called to order- Roll Call
12:33:03 PM Quorum
12:33:12 PM Chairman Baxley
12:33:24 PM Tab 2 Senate Bill 7004 by Health Policy; OGSR/Peer Review Panels/Department of Health
12:33:56 PM Ms.Tari Rossitto-Van Winkle, Health Policy Committee
12:35:20 PM Senator Rader
12:37:30 PM Senator Stewart
12:38:41 PM Tari Rossitto-Van Winkle
12:39:15 PM Brian Pitts, Justice-2-Jesus Recognized
12:44:41 PM Roll Call
12:44:52 PM Senate Bill 7004 favorable
12:44:58 PM Tab 3 Senate Proposed Bill 7018 by Governmental Oversight and Accountability; OGSR/Agency
Personnel Information
12:45:12 PM Grace Kim, Governmental Oversight and Accountability Staff Attorney
12:46:09 PM Senator Rader
12:47:12 PM Brian Pitts, Justice-2-Jesus Recognized
12:52:42 PM Senator Rader
12:53:05 PM Roll Call
12:54:11 PM Senate Proposed Bill 7018 Favorable reported as a Committee Bill
12:54:21 PM Tab 4 Senate Proposed Bill 7016 by Governmental Oversight and Accountability; OGSR/Donors or
Prospective Donors/Direct-Support Organization of the Florida Historic Capitol Museum
12:54:25 PM Ashley Peacock, Governmental Oversight and Accountability Staff Attorney
12:56:05 PM Senator Rader
12:56:41 PM Ashley Peacock, Governmental Oversight and Accountability Staff Attorney
12:57:36 PM Brian Pitts, Justice-2-Jesus Recognized
12:59:57 PM Roll Call
1:00:24 PM Senate Proposed Bill 7016 favorable as a Committee Bill
1:01:14 PM Tab 5 Presentation by the Agency for State Technology
1:02:16 PM Eric Larson, Agency for State Technology
1:09:35 PM Senator Rader
1:10:37 PM Chair Baxley
1:14:03 PM Tab 1 Senate Bill 202 by Brandes; Court Records
1:15:02 PM Senator Brandes
1:15:41 PM Amendment Barcode 556574
1:16:33 PM Amendment Adopted
1:16:45 PM Senator Rader
1:17:23 PM Jon Costello, Courthouse News Service waives in support
1:17:52 PM Fred Baggett, Florida's Court Clerks and Comptrollers Recognized
1:19:35 PM Senator Rader
1:19:54 PM Fred Baggett
1:20:46 PM Senator Rader
1:22:14 PM Brian Pitts, Justice-2-Jesus Recognized
1:26:55 PM Senator Rouson
1:28:42 PM Roll Call
1:29:51 PM Senate Bill 202 Favorable as a Committee Substitute
1:29:57 PM Closing Remarks
1:30:10 PM Meeting Adjourned