

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1766

SPONSOR: Senator Crist

SUBJECT: Public Records

DATE: April 2, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cooper	Yeatman	CA	Favorable
2.	_____	_____	GO	_____
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill provides exemptions from public records requirements for the social security numbers and photographs of county and municipal code enforcement officers and for information relating to the spouses and children of those officers.

This bill amends section 119.07 of the Florida Statutes.

II. Present Situation:

Constitutional Access to Public Records and Meetings

Florida has a long history of providing public access to the meetings and records of governmental and other public entities. The Florida Legislature enacted the first law affording access to public records in 1909. The Public Records Law, ch. 119, F.S., and the Public Meetings Law, s. 286.011, F.S., specify the conditions under which public access must be provided to governmental records and meetings of the executive branch and other governmental agencies.

In November 1992, the public affirmed its approval of Florida’s tradition of “government in the sunshine” by enacting a constitutional amendment to guarantee the practice. Article I, s. 24 of the State Constitution provides every person with 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 persons acting on their behalf. The section specifically includes the legislative, executive and judicial branches and each agency or department created under them. It also includes counties, municipalities, and districts, as well as constitutional officers, boards, and commissioners or entities created pursuant to law or the State Constitution.

The term public records has been defined by the Legislature in s. 119.011(1), F.S., to include:

. . . all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of the official business by any agency.

This definition of *public records* has been interpreted by the Florida Supreme Court to include all materials made or received by an agency in connection with official business that are used to perpetuate, communicate or formalize knowledge. *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980). Unless these materials have been made exempt by the Legislature, they are open for public inspection, regardless of whether they are in final form. *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

The State Constitution permits exemptions to open government requirements and establishes the means by which these exemptions are to be established. Under Article I, s. 24(c) of the State Constitution, the Legislature may provide by general law for the exemption of records provided that: (1) the law creating the exemption states with specificity the public necessity justifying the exemption; and (2) the exemption is no broader than necessary to accomplish the stated purpose of the law. A law creating an exemption is permitted to contain only exemptions to public records or meetings requirements and must relate to one subject.

The Open Government Sunset Review Act of 1995

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, provides that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes, and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

The act also establishes a review and repeal process for exemptions to public records or meetings requirements. Under s. 119.15(3)(a), F.S., a law that enacts a new exemption or substantially amends an existing exemption must state that the exemption is repealed at the end of 5 years. Further, a law that enacts or substantially amends an exemption must state that the exemption

must be reviewed by the Legislature before the scheduled repeal date. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. An exemption is not substantially amended if the amendment narrows the scope of the exemption.

In the fifth year after enactment of a new exemption or the substantial amendment of an existing exemption, the exemption is repealed on October 2nd of the 5th year, unless the Legislature acts to reenact the exemption.

Personal Identifying Information of Public Employees

Section 119.07(3)(i), F.S., exempts certain personal identifying information associated with various classes of public employees from public disclosure. It provides for the exemption of information that would reveal the home address, telephone number, or photograph of active or former law enforcement personnel, including correctional and correctional probation officers, certain personnel of the Department of Children and Family Services and the Department of Revenue, judges, and state attorneys. Certain identifying information about the spouses and children of these personnel are also exempt. The public records exemption minimizes the possibility that inmates, offenders, or other individuals will be able to threaten, intimidate, harass, or cause physical harm or other injury to these persons or their family members.

Currently, s. 119.07(3)(i)1., F.S., provides that home addresses and home telephone numbers of county and municipal code inspectors and code enforcement officers is confidential and exempt from public disclosure.

III. Effect of Proposed Changes:

Section 1 amends s. 119.07(3)(i)1., F.S., to expand the scope of information concerning code enforcement officers that is exempt from public records requirements of s. 24(a), Art. I of the State Constitution. Currently, home addresses and home telephone numbers of code enforcement inspectors and officers are exempt and confidential. This bill continues to exempt this information and expands the scope of exempt information to include:

- code enforcement officers' social security numbers, and photographs;
- the home addresses, telephone numbers, social security numbers, photographs and places of employment of the code enforcement officers' spouse and children; and
- the names and locations of schools and day care facilities attended by the code enforcement officers' children.

However, this section strikes the provision specifying that code enforcement officers' home addresses and home telephone numbers are "confidential and exempt," which provides a greater degree of protection.

According to the Government-In-The-Sunshine Manual, 2000 Edition, there is a difference between those records the Legislature has determined to be exempt from the mandatory public inspection requirements and those which are exempt and confidential. If the Legislature makes certain information confidential, such information may not be released to anyone other than to the persons or entities designated in the statute. In contrast, if records are not made confidential

by are simply exempt from the mandatory disclosure requirements, the agency is not prohibited from disclosing the documents in all circumstances. The agency may choose to release the information for legitimate purposes. (pp. 112-114)

Section 2 specifies that this new exemption is subject to the Open Government Sunset Review Act of 1995, and will be repealed on October 2, 2006, unless reviewed and re-enacted by the Legislature.

Section 3 provides a statement of public necessity, stating that the exemption is necessary because the current exemption has not completely shielded the identities of code enforcement officers, which has led to threats, acts of violence, and unwarranted risk to the officers and their families.

Section 4 provides that the act will take effect on July 1, 2001.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

This bill creates an exemption from public records requirements of s. 24(a), Art. I of the State Constitution. The bill contains a statement of public necessity. The bill contains a single exemption to the public records law.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Local governments will incur costs associated with keeping the records exempt.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
