

or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.³

The effect of adopting this amendment was to raise the statutory right of access contained in the Public Records Law to a constitutional level and of extending those provisions beyond the executive branch to the judicial and legislative branches of state government. The amendment “grandfathered” exemptions that were in effect on July 1, 1993, until they are repealed.⁴

The State Constitution, the Public Records Law and case law specify the conditions under which public access must be provided to governmental records. Under these provisions, public records are open for inspection and copying unless they are made exempt by the Legislature according to the process and standards required in the State Constitution.

Article I, s. 24 (c) of the State Constitution authorizes the Legislature to provide exemptions from the public access provisions of the law and constitution by general law. Any law that creates an exemption must state with specificity the public necessity that justifies the exemption. An exemption may be no broader than necessary to comport with the stated public necessity. Further, a law that creates a public record exemption can relate only to exemptions and their enforcement. In other words, a law that creates a public records exemption may not include other substantive issues.

The Open Government Sunset Review Act of 1995⁵ provides for the systematic repeal of exemptions to the Public Records Law and Public Meetings Law five years after the creation of, or substantial modification to, an exemption. The repeal cycle began in 2001. The 1995 act also specifies the conditions under which a public records or public meetings exemption may be created.

By law, an exemption may be created or expanded only if the exemption:

- 1) allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- 2) protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- 3) protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of

³ Article I, s. 24 of the State Constitution.

⁴ Article I, s. 24(d) of the State Constitution.

⁵ Sections 119.15 and 286.0111, F.S.

information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.⁶

Thus, under the statute, an exemption may be created or amended only if the Legislature determines that there is a public necessity justifying the exemption and the exemption is no broader than necessary. Additionally, any law creating or amending an exemption must specifically state why the exemption is a public necessity.

Public Employee Optional Retirement Program – Part II of ch. 121, F.S., contains the Public Employee Optional Retirement Program (the “PEORP”). Section 121.4501(1), F.S., required the Trustees of the State Board of Administration to establish an optional defined contribution retirement program for members of the Florida Retirement System.⁷ The plan is non-contributory, meaning the employer pays the full cost of the retirement benefit.

An eligible employee for PEORP is defined in s.121.4501(2)(d), F.S., to mean

. . . an officer or employee, as defined in s. 121.021(11),⁸ who:

1. Is a member of, or is eligible for membership in, the Florida Retirement System;
2. Participates in, or is eligible to participate in, the Senior Management Service Optional Annuity Program as established under s. 121.055(6); or
3. Is eligible to participate in, but does not participate in, the State University System Optional Retirement Program established under s. 121.35 or the State Community College System Optional Retirement Program established under s. 121.051(2)(c), F.S.⁹

The term “eligible employee” does not include any renewed member of the Florida Retirement System, any member participating in the Deferred Retirement Option Program established under s. 121.09(1), or any employee participating in an optional retirement program established under s. 121.051(2)(c) or s. 121.35, F.S.

Participation in the optional retirement program is in lieu of participation in the defined benefit program of the Florida Retirement System, which is a defined benefit program. In a defined benefit program, all employer retirement contributions for all retirement system participants are

⁶ Section 119.15(4)(b), F.S.

⁷ Section 121.021(3), F.S., defines the “system” for purposes of ch. 121, F.S., to mean “. . . the general retirement system established by this chapter to be known and cited as the ‘Florida Retirement System,’ including, but not limited to, the defined benefit retirement program administered under the provisions of part I of this chapter and the defined contribution retirement program known as the Public Employee Optional Retirement Program and administered under the provisions of part II of this chapter.”

⁸ Section 121.021(11), F.S., defines “officer or employee” to mean “. . . any person receiving salary payments for work performed in a regularly established position and, if employed by a city or special district, employed in a covered group.

⁹ Employees of members of the Florida Community College System or charter technical career centers sponsored by members of the Florida Community College System, as designated in s. 240.3031, who are members of the Regular Class of the Florida Retirement System and who comply with the criteria set forth in this paragraph and in s. 240.3195 may elect, in lieu of participating in the Florida Retirement System, to withdraw from the Florida Retirement System altogether and participate in a lifetime monthly annuity program, to be known as the State Community College System Optional Retirement Program, which may be provided by the employing agency under s. 240.3195.”

placed in a single trust fund. The monies in that trust fund are managed and invested by the State Board of Administration.

In contrast, each participant in PEORP directs the investment of the contributions in his or her own account. A primary distinction between the defined benefit program and the PEORP is that retirement benefits are not fixed for a lifetime. Rather, a participant may elect to receive the benefits in a lump-sum, in a lump-sum that is rolled over to another qualified investment, or in periodic distributions.

Section 121.031(5), F.S., currently exempts the names and addresses of retirees in aggregate, compiled, or list form. This information may be provided:

- < To another agency engaged in official business;
- < To a bargaining agency; or
- < To a retiree organization for official business use.

Any person may view or copy any individual's retirement records at the Department of Management Services, so long as that person only views or copies one record at a time. Any person may obtain information pursuant to a separate written request for a particular person.

III. Effect of Proposed Changes:

The bill makes confidential and exempt from the provisions of Art. I, s. 24(a) of the State Constitution, and s. 119.07, F.S., personal identifying information regarding a participant in the Florida Retirement Optional Retirement Program contained in the Florida Retirement System records held by the State Board of Administration or the Department of Management Services, or their agents employees, or contractors and their account activities. A department or board is authorized to use the information as necessary in any legal or administrative proceeding.

The stated public necessity supporting the exemption is that revealing the identity of individual participants in the FRS would allow investment providers who are not approved Public Employee Optional Retirement Program providers to contact program participants in order to offer unapproved investment products. The offering of unapproved investment products would confuse participants and would prove detrimental to the overall effectiveness and efficiency of the agency's administration of the program.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Article I, s. 24(c) of the State Constitution permits the Legislature to create exemptions from public records requirements provided that the law creating the exemption states with specificity the public necessity justifying the exemption and provided that the exemption

is no broader than necessary to accomplish the purpose of the exemption. As amended, the exemption is more narrowly drawn to the stated purpose of the exemption.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Private entities that might wish to obtain lists of participants in PEORP will be unable to obtain that information under the bill and will be unable to contact such participants for the purpose of selling them various products.

C. Government Sector Impact:

There may be some costs associated with redaction of the information made confidential and exempt.

VI. Technical Deficiencies:

Page 1, line 26 “pubic” should be “public.”

VII. Related Issues:

None.

VIII. Amendments:

None.