

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: CS/SB 2416

SPONSOR: Governmental Oversight & Productivity and Senator Garcia

SUBJECT: Public Records Exemption; Public Employees

DATE: March 11, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rhea	Wilson	GO	Favorable/CS
2.	_____	_____	CM	_____
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill creates an exemption for the home mailing address, physical home address, and home telephone number of a public employee. This information may be provided to a public agency engaged in official business, a bargaining agency defined in s. 447.203, F.S., or an employee organization for official business use.

This bill amends section 119.07(3) of the Florida Statutes.

II. Present Situation:

Public Records Requirements - Florida has a long history of granting public access to governmental records. This tradition began in 1909 with the enactment of a law that guaranteed access to the records of public agencies.¹ Over the following nine decades, a significant body of statutory and judicial law developed that greatly enhanced the original law. The state's Public Records Act, which is contained within ch. 119, F.S., was first enacted in 1967.² The act has been amended numerous times since its enactment.

In November 1992, the public affirmed the tradition of government-in-the-sunshine by enacting a constitutional amendment which guaranteed and expanded the practice. Article I, s. 24(a) of the State Constitution states:

Every person has 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, except with respect to records exempted pursuant to this

¹ Section 1, ch. 5942, 1909; RGS 424; CGL 490.

² Chapter 67-125 (1967 L.O.F.).

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 information that is used to protect or further a business advantage over those who do not

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.

know or use it, the disclosure of which would injure the affected entity in the marketplace. (See s. 119.15(4)(b), F.S.)

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.

III. Effect of Proposed Changes:

The bill creates an exemption for the home mailing address, physical home address, and home telephone number of a public employee. This exempt information may be provided to a public agency engaged in official business, a bargaining agency defined in s. 447.203, F.S.,⁶ or an employee organization for official business use.

The exemption is subject to s. 119.15, F.S., the Open Government Sunset Review Act, and stands repealed October 2, 2007, unless reviewed and saved from repeal.

The statement of public necessity finds that home addresses and home telephone numbers, which are held by a public employer, reveal private information of a sensitive nature. The statement notes that public employers use this information primarily for recordkeeping, administrative purposes, or other purposes unrelated to an employee's public duties or responsibilities. As such, disclosure of that information to third parties does not serve an official public purpose.

Further, the statement of public necessity notes that this information may be used for unwanted marketing purposes; to locate or intimidate public employees or their family members; to create false identities; to attempt to influence public employees in the performance of their public duties and responsibilities; or for other undesired, harmful, or fraudulent purposes.

The statement of public necessity notes that similar information held by a private employer is not subject to public inspection and the privacy interests of public employees and their families should not be subject to a lower standard of protection than those of the private sector. As a result, the Legislature finds that it is a public necessity to provide public employees and their families with the same level of privacy and protection from unwanted intrusion that is provided to employees in the private sector.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁶ Section 447.203(12), F.S., defines "bargaining agent" to mean "... the employee organization which has been certified by the commission as representing the employees in the bargaining unit, as provided in s. 447.307, or its representative."

B. Public Records/Open Meetings Issues:

The statement of public necessity finds that home addresses and home telephone numbers, which are held by a public employer, reveal private information of a sensitive nature. Home addresses, however, are easily obtainable from many sources, such as the Internet, city registers, telephone books, and the county court house. Likewise, telephone numbers are often available through the Internet or a telephone book. As such, home addresses and telephone numbers, unlike health records or credit card numbers, historically have not been considered “sensitive information.”

The statement of public necessity notes that public employers use this information primarily for “. . . recordkeeping, administrative purposes, or other purposes unrelated to an employee’s public duties or responsibilities.” As such, the statement concludes that disclosure of that information to third parties does not serve an “official public purpose.” Public records law, however, does not make this distinction. If a public entity creates or receives that record in the transaction of official business by any agency, the record is public.⁷

The statement of public necessity notes that this information may be used for unwanted marketing purposes. Under current law, many public records are copied by marketers and used for a variety of purposes. For example, driver license information is used for many marketing purposes.

The statement of public necessity states that home mailing addresses, home residence addresses, and home telephone numbers could be used for other undesired, harmful, or fraudulent purposes. What these other purposes are remain unstated.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Data aggregators that utilize public records to create data bases to sell to targeted industries and marketing companies could be negatively impacted by the bill as portions of their data bases could be eliminated by the exemption.

⁷ Section 119.011(1), F.S.; *See also, Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980); *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

C. Government Sector Impact:

Agencies will be required to modify computer databases to redact the information made exempt by the bill. The cost of redaction is unknown. Hard copies containing this information will have to have this information redacted and copied with exempt information blacked out prior to permitting inspection and copying of the information. There will be unknown labor and copying costs associated with the exemption.

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.
