

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

This bill creates a new public records exemption.

B. EFFECT OF PROPOSED CHANGES:

Background

The federal court system in Florida consists of 3 districts, to which a total of 36 district court judges¹ are assigned. Federal magistrates² are additional judges assigned to the districts; they typically hear preliminary matters, misdemeanor trials, and some civil trials. Bankruptcy judges³ are additional judges assigned to the districts to hear bankruptcy matters. Appeals from district court decisions are heard by the Eleventh Circuit, which is headquartered in Atlanta. The federal circuit judges of the Eleventh Circuit reside throughout the circuit.⁴ Each district also has an appointed U.S. Attorney.⁵ A U.S. Attorney is the chief legal official representing the United States in a judicial district, acting through Assistant U.S. Attorneys to prosecute criminal actions and also to represent the United States in civil matters. It is a federal crime to impede, intimidate, interfere, or retaliate against such persons related to their official duties.⁶

Section 119.07(3)(i), F.S., in part, exempts the “home addresses, telephone numbers, social security numbers, and photographs” of justices and judges of the state courts, and state attorneys and assistant state attorneys, together with the “home addresses, telephone numbers, social security numbers, photographs, 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.” These exemptions protect the personal information of state judges and prosecutors; there is no exemption applicable to such information regarding federal judges and prosecutors.

Effect of Bill

This bill creates subparagraphs 3 and 4 of s. 119.07(3)(i) F.S., to provide a public records exemption for personal information held by state and local governments for the benefit of current and former federal judges and prosecutors. The exemption is the same as that afforded a number of other persons, specifically the “home addresses, telephone numbers, social security numbers, and

¹ A district court judge is an Article III judge, nominated by the President. Upon confirmation by the Senate, a district judge is appointed to the bench for life.

² Federal magistrates are appointed by the conference of the district court judges to an 8 year term.

³ A bankruptcy judge is appointed by the judges of the Eleventh Circuit to a 14 year term.

⁴ The Eleventh Circuit consists of Florida, Georgia and Alabama. There are 17 active and senior judges currently appointed to the Eleventh Circuit, several of whom reside in Florida.

⁵ A U.S. Attorney is nominated by the President. Upon confirmation by the Senate, a U.S. Attorney is appointed to serve at the pleasure of the President.

⁶ 18 U.S.C. § 115.

photographs” of such persons, together with the “home addresses, telephone numbers, social security numbers, photographs, 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.” The exemption is not automatic, affected persons must identify the state or local government custodian of the public record and request that the record be withheld from the public.

In compliance with Open Government Sunset Act, these exemptions are subject to review in the 2009 legislative session, and stand repealed October 2, 2009, unless reenacted.

This bill provides a statement of public necessity for these exemptions. See CONSTITUTIONAL ISSUES herein regarding concerns about that statement.

C. SECTION DIRECTORY:

Section 1 amends s. 119.07, F.S., to create exemptions from the public records laws.

Section 2 provides a statement of public necessity.

Section 3 provides an effective date of October 1, 2004.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. This bill does not create, modify, or eliminate a state government revenue source.

2. Expenditures:

This bill may perhaps have a minimal negative fiscal impact on expenditures. See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. This bill does not create, modify, or eliminate a local government revenue source.

2. Expenditures:

This bill may perhaps have a minimal negative fiscal impact on expenditures. See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None. This bill does not regulate the conduct of persons in the private sector.

D. FISCAL COMMENTS:

The public records law in general creates a significant, although unquantifiable, increase in government spending. Government employees must locate requested documents and information, and must examine every requested document or piece of information to determine if a public records exemption prohibits release of the document or information. Passage of any new public records exemption will result in a minimal negative non-recurring fiscal impact, because governments will be required to communicate the new exemption to employees responsible for complying with public records requests. Every public records exemption also represents an unknown negative recurring expense to governments, as each exemption slightly increases the number and complexity of the training and

management materials required to be maintained by governments, further complicates the process of complying with public records requests, and increases the chances that a government will be involved in litigation. There is no known reliable method for determining the marginal fiscal impact attributable to a single public records exemption.

Because there are similar exemptions in current law, state and local governments should already have processes in place to comply with the law; thus minimizing the cost.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

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 public records or public meetings exemption.

Article I, s. 24, Fla.Const., requires that any general law enacting a public records exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish its purpose. The public necessity statement contained within this bill does not appear to meet the specificity required by the Florida Constitution. Without an adequate public necessity statement, it cannot be determined whether this bill is no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Public Records Law -- In General

Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature may, however, provide by general law for the exemption of records from the requirements of Article I, s. 24(a), Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act of 1995⁷ provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or, 3. Protecting trade or business secrets.

⁷ Section 119.15, F.S.

Comments Specific to this Bill

Although a bankruptcy court judge is technically a magistrate, they are not referred to by title in the bill and thus the bill is not clear as to whether the personal information of bankruptcy judges is exempt under this bill.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Not applicable.