

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/HB 731	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Criminal Justice Subcommittee; Kerner; Campbell and others	107 Y's	4 N's
COMPANION BILLS:	(CS/SB 376)	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

CS/HB 731 passed the House on April 12, 2013, and subsequently passed the Senate on April 24, 2013.

Current law provides a public records exemption for certain identification and location information of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors ("state attorneys"), and active or former sworn or civilian law enforcement personnel ("law enforcement personnel") and their spouses and children. Notably, the *names* of spouses and children of state attorneys and law enforcement personnel are not exempt from public records requirements.

The bill creates a public records exemption for the names of spouses and children of state attorneys and law enforcement personnel. The bill repeals the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

State and local governmental agencies may incur costs associated with training employees on the bill's requirements and redacting additional records.

The bill was approved by the Governor on June 28, 2013, ch. 2013-243, L.O.F., and will become effective on October 1, 2013.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Public Records

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State 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.¹

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act² provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- 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 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.
- Protects trade or business secrets.

The Open Government Sunset Review Act requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.³ The Act also requires specified questions to be considered during the review process.⁴

Public Record Exemption for Identification and Location Information

Currently, s. 119.071(4)(d)2.a., F.S., provides a public records exemption for certain identification and location information of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors ("state attorneys"), and active or former sworn or civilian law enforcement personnel ("law enforcement personnel"),⁵ and their spouses and children.

The following information is exempt from public records requirements:

- Home addresses, telephone numbers, social security numbers, dates of birth, and photographs of state attorneys and law enforcement personnel;

¹ Section 24(c), Art. I of the State Constitution.

² See s. 119.15, F.S.

³ Section 119.15(3), F.S.

⁴ Section 119.15(6)(a), F.S., states that 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?

⁵ Section 119.071(4)(d)2.a., F.S, specifies that active or former sworn or civilian law enforcement personnel includes 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.

- Home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of the spouses and children of state attorneys and law enforcement personnel; and
- Names and locations of schools and day care facilities attended by the children of state attorneys and law enforcement personnel.

Notably, the *names* of spouses and children of state attorneys and law enforcement personnel are not exempt from public record requirements. This is in contrast to the names of spouses and children of former or current human resource or labor relations agency personnel,⁶ code enforcement officers,⁷ guardians ad litem,⁸ juvenile justice officers,⁹ investigators or inspectors of the Department of Business and Professional Regulation,¹⁰ and county tax collectors.¹¹

Effect of the Bill

The bill amends s. 119.071(4)(d)2., F.S., to provide that the names of spouses and children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors and active or former sworn or civilian law enforcement personnel are exempt¹² from s. 119.07(1), F.S., and Article I, section 24(a) of the Florida Constitution.

The bill repeals the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.¹³

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

⁶ Section 119.071(4)(d)2.f., F.S.

⁷ Section 119.071(4)(d)2.g., F.S.

⁸ Section 119.071(4)(d)2.h., F.S.

⁹ Section 119.071(4)(d)2.i., F.S.

¹⁰ Section 119.071(4)(d)2.k., F.S.

¹¹ Section 119.071(4)(d)2.l., F.S.

¹² There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems 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, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *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. See Attorney General Opinion 85-62 (August 1, 1985).

¹³ Article I, Sec. 24(c), FLA. CONST.

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill likely could create a minimal fiscal impact on state and local governmental agencies, because staff responsible for complying with public record requests could require training related to expansion of the public record exemption. In addition, those agencies could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the agency.