

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

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BILL: CS/SB 1108

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Artilles

SUBJECT: Public Records/Firefighters and their Spouses and Children

DATE: March 29, 2017

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Knudson</u>	<u>BI</u>	<b>Favorable</b>
2.	<u>Kim</u>	<u>Ferrin</u>	<u>GO</u>	<b>Fav/CS</b>
3.	_____	_____	<u>RC</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1108 expands an existing public records exemption in s. 119.071(4)(d)2.b., F.S., for the personal identifying information of current firefighters, their spouses, and children. The expansion will extend the public records exemption to former firefighters and their families. The records exempted are the names of the spouses and children, home addresses, telephone numbers, dates of birth, photographs, places of employment, and the names and locations of schools and day care facilities attended by the children of firefighters.

The public records exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S. The exemption will stand repealed on October 2, 2022, unless the Legislature reviews the exemption and saves it from repeal through reenactment.

This bill requires a two-thirds vote of each chamber because it expands a public records exemption.

The bill becomes effective on October 1, 2017.

## II. Present Situation:

### Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.<sup>1</sup> This applies to the official business of any public body, officer or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.<sup>2</sup>

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.<sup>3</sup> Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.<sup>4</sup> The Public Records Act states that

it is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.<sup>5</sup>

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.<sup>6</sup> The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”<sup>7</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>8</sup>

The Legislature may create an exemption to public records requirements.<sup>9</sup> An exemption must pass by a two-thirds vote of the House and the Senate.<sup>10</sup> In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.<sup>11</sup> A statutory

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<sup>1</sup> FLA. CONST. art. I, s. 24(a).

<sup>2</sup> *Id.*

<sup>3</sup> The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.

<sup>4</sup> Public records laws are found throughout the Florida Statutes.

<sup>5</sup> Section 119.01(1), F.S.

<sup>6</sup> Section 119.011(12), F.S., defines “public record” to mean “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 official business by any agency.” Section 119.011(2), F.S., defines “agency” to mean as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

<sup>7</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

<sup>8</sup> Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

<sup>9</sup> FLA. CONST. art. I, s. 24(c).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.<sup>12</sup>

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”<sup>13</sup> Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as “exempt” are not required to be made available for public inspection, but may be released at the discretion of the records custodian under certain circumstances.<sup>14</sup>

### **Open Government Sunset Review Act**

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.<sup>15</sup> The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.<sup>16</sup>

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.<sup>17</sup> An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;<sup>18</sup>
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;<sup>19</sup> or
- It protects trade or business secrets.<sup>20</sup>

The OGSR also requires specified questions to be considered during the review process.<sup>21</sup> In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

<sup>12</sup> *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). See also *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004).

<sup>13</sup> If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

<sup>14</sup> *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

<sup>15</sup> Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

<sup>16</sup> Section 119.15(3), F.S.

<sup>17</sup> Section 119.15(6)(b), F.S.

<sup>18</sup> Section 119.15(6)(b)1., F.S.

<sup>19</sup> Section 119.15(6)(b)2., F.S.

<sup>20</sup> Section 119.15(6)(b)3., F.S.

<sup>21</sup> Section 119.15(6)(a), F.S. The specified questions are:

1. What specific records or meetings are affected by the exemption?
2. Whom does the exemption uniquely affect, as opposed to the general public?

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>22</sup> If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.<sup>23</sup>

### **Public Records Exemptions for Agency Personnel Information**

Section 119.071, F.S., exempts, or holds confidential and exempt, specified records held by various state entities from the disclosure requirements of s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution. One category of record that is exempt, or confidential and exempt, from public disclosure is specific governmental agency personnel information. The public records exemptions include:<sup>24</sup>

- Social security numbers of all current and former agency employees held by the employing agency is confidential and exempt.
- Medical information pertaining to a prospective, current, or former officer or employee of an agency that would identify that person is exempt.
- Personal identifying information of a dependent child of a current or former officer or employee, if the child is insured by an agency group insurance plan, is exempt.
- Information revealing undercover personnel of any criminal justice agency is exempt.
- The personal identifying information of:<sup>25</sup>
  - Active or former specified law enforcement personnel.
  - Firefighters.
  - Current or former justices of the Florida Supreme Court, district court of appeal judges, circuit court judges, and county court judges.
  - Current or former state attorneys, assistant state attorneys, statewide prosecutors, and assistant statewide prosecutors.
  - General magistrates, special magistrates, judges of compensation claims, administrative law judges, and child support enforcement hearing officers.
  - Current or former human resource, labor relations, or employee relations directors, assistant directors, managers, or assistant managers of any local government agency or water management district who have specified duties.
  - Current or former code enforcement officers.
  - Current or former guardians ad litem.
  - Current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, and other specified, related persons.

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3. What is the identifiable public purpose or goal of the exemption?
  4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means?  
If so, how?
  5. Is the record or meeting protected by another exemption?
  6. Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

<sup>22</sup> FLA. CONST. art. I, s. 24(c).

<sup>23</sup> Section 119.15(7), F.S.

<sup>24</sup> Section 119.171(4), F.S.

<sup>25</sup> These exemptions often include personal identifying information of spouses and children.

- Current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel.
- Current or former investigators or inspectors of the Department of Business and Professional Regulation.
- County tax collectors.
- Current or former specified personnel of the Department of Health.
- Current or former impaired practitioner consultants and their employees retained by an agency to determine a person's skill and safety to practice a profession.
- Current or former emergency medical technicians or certified paramedics.
- Current or former employees of an agency's office of inspector general or internal audit department.

### **Firefighters**

A firefighter certified in compliance with s. 633.408, F.S., has satisfactorily completed the Minimum Standards Course, or equivalent course in another state, and passed the Minimum Standards Course examination within 12 months after completing the required courses.<sup>26</sup> Firefighters must also have high school degrees, meet certain criminal history requirements, have good moral character, and be physically fit.<sup>27</sup>

A public records exemption for firefighters and their families was created in Ch. 1991-149, Laws of Fla., but did not include dates of birth or former firefighters. Public records exemptions were not required to include public necessity statements at that time, so the Legislative intent was not expressed in a separate statement.<sup>28</sup> Chapter 2012-149, Laws of Fla., expanded this exemption to include the dates of birth of the enumerated personnel as well as their family members. The public necessity statement provided that dates of birth can be used to perpetrate fraud and that releasing dates of birth can cause great financial harm to an individual.

This public records exemption applies to current firefighters, but does not extend to firefighters after they change careers.

### **III. Effect of Proposed Changes:**

**Section 1** expands to former firefighters the existing public records exemption in s. 119.071(4)(d)2.b., F.S., for personal identifying information of firefighters, their spouses, and children. The bill makes the following information about current and former firefighters exempt from public disclosure: home addresses, telephone numbers, dates of birth, and photographs. The bill also makes exempt from public disclosure requirements the following information about current or former firefighters' spouses and their children: names, home addresses, telephone numbers, photographs, dates of birth, and places of employment. Finally, the bill exempts the names and locations of schools and day care facilities attended by the children of firefighters.

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<sup>26</sup> Section 633.408(4), F.S.

<sup>27</sup> Section 633.412, F.S.

<sup>28</sup> Public necessity statements were required for public records exemptions after 1992, when Article I, section 24, Florida Constitution was adopted.

The bill also makes the records exempt from the public records requirements of the State Constitution. This would require that the Legislature and the Judiciary to keep the records exempt from public disclosure.

The public records exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S. The exemption will stand repealed on October 2, 2022, unless the Legislature reviews and saves it from repeal through reenactment.

**Section 2** contains legislative findings that the expansion of the public records exemption is a public necessity. The findings note that personal identifying information of other types of former first responders, such as law enforcement, are currently exempt from public disclosure. The bill also states firefighters often respond to emergency situations such as domestic violence and homicide, and the release of their personal identifying and location information may place former firefighters and their families in danger of physical or emotional harm by hostile individuals.

The public necessity statement provides that the names of spouses and children should be exempt because people may seek revenge against firefighters by targeting their spouses or children.

The public necessity statement also provides that it is necessary to at a reference to s. 24(a) Art. I of the Florida Constitution to ensure that a firefighter's records are exempt in all three branches of government.

The public necessity statement appears to justify the need for the public records exemption, and the exemption appears to be no broader than necessary.<sup>29</sup>

**Section 3** provides the bill is effective on October 1, 2017.

#### **IV. Constitutional Issues:**

**A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

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 or expanded public records exemption.

**C. Trust Funds Restrictions:**

None.

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<sup>29</sup> FLA CONST. art I, s. 24(c).

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 119.071 of the Florida Statutes.

**IX. Additional Information:**

## A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Governmental Oversight and Accountability on March 27, 2017:**

- adds the names of spouses and children to the public records exemption;
- adds a public necessity statement for the names of spouses and children;
- adds a public necessity statement for the addition of s. 24(a) Art. I of the Constitution;  
and
- changes the effective date to October 1, 2017.

## B. Amendments:

None.