

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.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: SPB 7018
 INTRODUCER: Governmental Oversight and Accountability Committee
 SUBJECT: OGSR/Agency Personnel Information
 DATE: April 24, 2017 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kim</u>	<u>Ferrin</u>	<u>RC</u>	GO Submitted as Committee Bill
	<u>Kim</u>	<u>Phelps</u>		Pre-meeting

I. Summary:

SPB 7018 is a public records exemption for multiple agency personnel that was reviewed pursuant to the Open Government Sunset Review Act. The agency personnel affected are:

- Law enforcement;
- Department of Children and Families personnel with certain duties;
- Department of Health personnel with certain duties;
- Department of Revenue and local government personnel who collect revenue or child support;
- Department of Financial Services personnel with certain duties;
- Firefighters;
- Justices and judges;
- State attorneys and statewide prosecutors and their assistants;
- Magistrates, administrative law judges, judges of compensation claims, child support hearing officers;
- Human resources, labor relations personnel;
- Code enforcement personnel;
- Guardian ad Litem Program personnel;
- Department of Juvenile Justice personnel;
- Public defenders, criminal conflict and civil regional counsel and their assistants;
- Department of Business and Professional Responsibility investigators; and
- County Tax Collectors.

The bill reenacts public records exemptions for governmental personnel and their families that will sunset in 2017. The bill also expands certain public records exemptions for agency personnel and their families. The bill consolidates public records exemptions and removes the sunset dates of public records exemptions that are set to repeal in 2018 and 2019.

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

This bill takes effect 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.¹ 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.²

In addition to the Florida Constitution, the Florida Statutes provides that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ 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.⁵

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.⁶ 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.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may create an exemption to public records requirements.⁹ An exemption must pass by a two-thirds vote of the House and the Senate.¹⁰ In addition, an exemption must

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ 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.

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ 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.”

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

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

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ *Id.*

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.¹¹ A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.¹²

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”¹³ 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.¹⁴

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.¹⁵ 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.¹⁶

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.¹⁷ 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;¹⁸
- 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;¹⁹ or
- It protects trade or business secrets.²⁰

¹¹ *Id.*

¹² *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).

¹³ 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).

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

¹⁵ 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.

¹⁶ Section 119.15(3), F.S.

¹⁷ Section 119.15(6)(b), F.S.

¹⁸ Section 119.15(6)(b)1., F.S.

¹⁹ Section 119.15(6)(b)2., F.S.

²⁰ Section 119.15(6)(b)3., F.S.

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

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²² 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.²³

General Public Records Exemptions for Agency Personnel

There are three general public records exemptions that apply to all agency personnel: social security numbers, medical information, and personal identifying information of dependent children who are insured by an agency group insurance plan.²⁴

Social security numbers of all current and former agency personnel are confidential and exempt when held by the employing agency.²⁵ An employing agency may only release social security numbers for the following reasons: (1) it is required by law, (2) a receiving government agency needs the social security number to perform its duties, and (3) the employee consents to disclosure of his or her social security number.²⁶ In addition, there is a general exemption for social security numbers which applies to the public that makes social security numbers confidential and exempt.²⁷ This exemption applies to any agency that holds anyone's social security number, including agency personnel's social security numbers. This exemption permits the agency to disclose social security numbers of agency personnel for the following reasons: (1) to administer health benefits, and (2) to administer retirement benefits.²⁸

An agency employee's medical information is also exempt from public disclosure if the medical information could identify the employee. This exemption applies to prospective, current and former employees.²⁹

²¹ 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?
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?

²² FLA. CONST. art. I, s. 24(c).

²³ Section 119.15(7), F.S.

²⁴ Section 119.071(4)(a) and (b), F.S.

²⁵ Section 119.071(4)(a)1., F.S.

²⁶ Section 119.071(4)(a)2., F.S.

²⁷ Section 119.071(5)(a)5., F.S.

²⁸ Section 119.071(5)(a)5.f. and g., F.S.

²⁹ Section 119.071(4)(b)1., F.S.

The personal identifying information of a dependent child of an agency employee who is insured by an agency group insurance plan is exempt from public disclosure. This exemption applies to the children of current and former employees and is also retroactively applied.³⁰

Public Records Exemptions for Enumerated Personnel

Provisions in s. 119.071(4)(d), F.S., make exempt from public disclosure the personal identification and location information of enumerated agency personnel, their spouses and their children.

The employing agency as well as the employee may assert the right to the exemption by submitting a written request to each agency which holds the employee's information.³¹ Finally, all of these exemptions have retroactive application.³²

How the Exemptions Differ

The information exempted by the various provisions of s. 119.071(4)(d)2., F.S. is similar, but not identical. All of the provisions in s. 119.071(4)(d)2., F.S., exempt from public disclosure the home addresses and telephone numbers of the enumerated personnel. Employees' dates of birth and photographs are exempt for some personnel, but not all.

Section 119.071(4)(d)2., F.S., also makes exempt from public disclosure certain types of information about employees' spouses and children. The exemptions for family members include home addresses, telephone numbers, spouses' places of employment, and the locations of children's schools. The exemptions for family members, however, are not uniform. The names, dates of birth, and photographs of families members are exempt from public disclosure, but not for all family members of all personnel.

Some of the exemptions are conditional upon the actions of the employee. For example, certain personnel must make "reasonable efforts to protect" his or her information from being accessible through public means for the exemption to apply.³³

In addition, some of the provisions exempt information from Ch. 119, F.S., but not from Article I, section 24(a), of the Florida Constitution. This means that information would be exempt if held by an executive branch agency, but may not necessarily be exempt if held by the legislative or judicial branches of government.

Finally, certain exemptions have different OGSR sunset dates. Unless otherwise noted, the following chart depicts exemptions sunsetting on October 2, 2017, pursuant to s. 119.071(4)(d)5., F.S.

³⁰ Section 119.071(4)(b)2., F.S.

³¹ Section 119.071(4)(d)3., F.S.

³² Section 119.071(4)(d)4., F.S.

³³ Section 119.071(4)(d)2.e., F.S.

Sunset Dates for Exemptions for Personnel's Identifying Information							
Category	Home Address	Phone #	SSN	Photos	DOB	Places of Employment	Requires Effort to Protect Information
Law Enforcement Personnel*	2017	2017	2017	2017	2017	-	-
DCF Personnel w/ certain duties*	2017	2017	2017	2017	2017	-	-
DOH Personnel w/certain duties*	2017	2017	2017	2017	2017	-	-
DOR Personnel w/certain duties*	2017	2017	2017	2017	2017	-	-
Firefighters	2017	2017	-	2017	2017	-	-
Justices and Judges*	2017	2017	-	-	2017	-	-
State Attorneys and Assistant State Attorneys*	2017	2017	2017	2017	2017	-	-
Statewide Prosecutors & Assistant Statewide Prosecutors*	2017	2017	2017	2017	2017	-	-
Magistrates and child support enforcement hearing	2017	2017	-	-	2017	-	2017
Judges of Compensation Claims & Administrative Law	2017	2017	-	-	2017	-	2017
Human resource, labor relations, employee relations directors, assistant directors, managers, and assistant managers*	2017	2017	-	2017	2017	-	-
Code enforcement officers*	2017	2017	-	2017	2017	-	-
Guardians ad litem*	2017	2017	-	2017	2017	2017	2017
DJJ Personnel w/ certain duties*	2017	2017	-	2017	2017	-	-
Public Defenders and Assistant Public Defenders*	2017	2017	-	2017	2017	-	-
Criminal Conflict and Civil Regional Counsel & Assistants*	2017	2017	-	2017	2017	-	-
DBPR investigators and inspectors*	2017	2017	-	2017	-	-	2017
County tax collectors	2017	2017	-	-	-	-	2017

Sunset Dates for Exemptions for Personnel's Spouse and Children Identifying Information								
Category	Names	Home Address	Phone #	SSN	Photos	DOB	Places of Employment	Schools/ Daycare
Law Enforcement Personnel*	2018	2017	2017	2017	2017	2017	2017	2017
DCF Personnel w/ certain duties*	2018	2017	2017	2017	2017	2017	2017	2017
DOH Personnel w/certain duties*	2018	2017	2017	2017	2017	2017	2017	2017
DOR Personnel w/certain duties*	2018	2017	2017	2017	2017	2017	2017	2017
Firefighters	-	2017	2017	-	2017	2017	2017	2017
Justices and Judges*	-	2017	2017	-	-	2017	2017	2017
State Attorneys and Assistant State Attorneys*	2018	2017	2017	2017	2017	2017	2017	2017
Statewide Prosecutors & Assistant Statewide Prosecutors*	2018	2017	2017	2017	2017	2017	2017	2017
Magistrates & child support enforcement hearing officers	-	2017	2017	-	-	2017	2017	2017
Judges of Compensation Claims & Administrative Law	-	2017	2017	-	-	2017	2017	2017
Human resource, labor relations, employee relations directors, assistant directors, managers, and assistant managers*	2017	2017	2017	-	-	2017	2017	2017
Code enforcement officers*	2017	2017	2017	-	-	2017	2017	2017
Guardians ad litem*	2017	2017	2017	-	-	2017	2017	2017
DJJ Personnel w/ certain duties*	2017	2017	2017	-	-	2017	2017	2017
Public Defenders and Assistant Public Defenders*	2019	2017	2017	-	-	2017	2017	2017
Criminal Conflict and Civil Regional Counsel & Assistants*	2019	2017	2017	-	-	2017	2017	2017
DBPR investigators and inspectors*	2017	2017	2017	-	-	-	2017	2017
County tax collectors	2017	2017	2017	-	-	-	2017	2017

*Active or former employee; also referred to as "current or former" employee in statute.
 - Indicates no exemption exists in statute.

Law Enforcement, Correctional Officers, Certain Personnel of the Department of Children and Families, the Department of Health, the Department of Revenue, and Local Governments

This exemption covers current or former personnel from several agencies with criminal or quasi-criminal duties:

- law enforcement personnel;
- correctional and correctional probation officers, but not any secretarial, clerical, or professionally trained personnel;³⁴
- personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities;³⁵
- personnel of the Department of Health who support child abuse investigations;³⁶ and
- personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement.

In 1979, the Legislature created a public records exemption for the “home address, telephone number and photograph of law enforcement personnel” as well as for their spouses and children.³⁷ This exemption was part of a larger exemption created for criminal intelligence information.

In 1985, the Legislature expanded the exemption to include “active or former” law enforcement.³⁸

In 1989, the exemption for active or former law enforcement was amended to include personnel of the Department of Health and Rehabilitative Services whose duties included the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, and also expanded to include day care facilities of the personnel’s children.³⁹ 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.⁴⁰

In 1995, Department of Revenue and local government personnel whose responsibilities include revenue collection and enforcement or child-support enforcement were amended into this exemption. The public necessity statement provided that releasing information about such personnel would jeopardize their safety and impede personnel from executing their jobs.⁴¹

In 1998, the exemption was amended to change the name of the Department of Health and Rehabilitative Services to the Department of Children and Family Services. In addition, the exemption was amended to include Department of Health personnel whose duties supported the investigation of child abuse or neglect.⁴² In this case, the absence of a public necessity statement indicates that this was not an expansion of the public records exemption but a revision reflecting

³⁴ Section 112.531(2), F.S.

³⁵ Section 39.301, F.S. Also see <http://www.myflfamilies.com/service-programs/public-benefits-integrity> (last viewed December 7, 2016).

³⁶ Section 39.303, F.S. Also see http://www.floridahealth.gov/alternatesites/cms-kids/families/child_protection_safety/child_protection_teams.html (last viewed December 7, 2016).

³⁷ The exemption included the place of employment of the spouses and children of law enforcement personnel, as well as the names and locations of the schools of the children. Ch. 79-187, Laws of Fla.

³⁸ Ch. 85-301, Laws of Fla.

³⁹ Ch. 89-80, Laws of Fla.

⁴⁰ Public necessity statements were required for public records exemptions after 1992, when Article I, section 24, of the Florida Constitution was adopted.

⁴¹ Ch. 1995-170, Laws of Fla.

⁴² Ch. 98-137, s. 7, Laws of Fla.

the changes made during the reorganization of the Department of Health and Rehabilitative Services.

In 2012, Ch. 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. In addition, a clarification was made to indicate that both sworn and civilian law enforcement personnel were included in the exemption.

In 2013, the Legislature enacted a public records exemption for the names of the spouses and children of the above named personnel; this exemption will sunset on October 2, 2018. The public necessity statement provides:

As a result of their duties, these sworn and civilian law enforcement personnel often come in close contact with individuals who not only may be a threat to these personnel, but who might seek to take revenge against them by harming their spouses and children. Permitting access to the names of the spouses and children of active or former sworn or civilian law enforcement personnel provides a means by which individuals who have been investigated, arrested, interrogated, or incarcerated can identify and cause physical or emotional harm to these spouses and children.⁴³

Firefighters

A firefighter certified in compliance with s. 633.408, F.S., must satisfactorily complete a Minimum Standards Course, or equivalent course in another state, and passed the Minimum Standards Course examination.⁴⁴ Firefighters must also have high school degrees, meet certain criminal history requirements, have good moral character, and be physically fit.⁴⁵

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.⁴⁶

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.

⁴³ Ch. 2013-243, s. 2, Laws of Fla.

⁴⁴ Section 633.408(4), F.S.

⁴⁵ Section 633.412, F.S.

⁴⁶ Public necessity statements were required for public records exemptions after 1992, when Article I, section 24, of the Florida Constitution was adopted.

Justices and Judges

Florida's justices preside in the Supreme Court, and judges preside in Florida's five District Courts of Appeal, 20 Circuit Courts and 67 County Courts.⁴⁷ Justices and judges adjudicate legal matters as well as oversee the legal profession.

The Legislature enacted a public records exemption for current justices and judges and their families in Ch. 91-149, Laws of Fla. This public records exemption was created in 1991, so there is no public necessity statement explaining why the exemption was created.

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. In addition, the Legislature expanded the exemption to include former justices and judges as well as their families. The public necessity statement for this expansion indicated that justices and judges as well as their family members can be targets of revenge and that risk continues after justices and judges complete their public service.

State Attorneys, Assistant State Attorneys, Statewide Prosecutor and Assistant Statewide Prosecutors

A state attorney is the elected prosecuting officer of each judicial circuit. A state attorney must be a resident of the judicial circuit in which he or she is elected. He or she may also appoint assistant state attorneys.⁴⁸

The statewide prosecutor is appointed by the attorney general and works within the Department of Legal Affairs.⁴⁹ The statewide prosecutor may designate one or more assistants.⁵⁰ The statewide prosecutor investigates and prosecutes enumerated crimes which have occurred in two or more judicial circuits or involved the internet.⁵¹

A public records exemption for state attorneys and their assistants as well as the statewide prosecutor and his or her assistants was enacted in Ch. 1994-176, Laws of Fla. The public necessity statement provides that identifying information should be exempt from public disclosure because these personnel and their families "could be harmed by a criminal defendant or a friend or family member of a criminal defendant."⁵²

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.

⁴⁷ FLA CONST. art V. Also see Florida Courts, <http://www.flcourts.org/florida-courts> (last viewed December 7, 2016).

⁴⁸ FLA CONST. art. V, s. 17.

⁴⁹ Section 16.56(2), F.S.

⁵⁰ *Id.*

⁵¹ Section 16.56(1), F.S.

⁵² Ch. 94-176, s. 2, Laws of Fla.

Chapter 2013-243, Laws of Fla., expanded the exemption to include the names of the spouses and children of state attorneys, assistant state attorneys, statewide prosecutors, and assistant statewide prosecutors. The public necessity statement provides that the enumerated attorneys prosecute dangerous and violent individuals and permitting access to the names of a prosecutor's family members "provides a means by which a criminal defendant or a friend or family member of such defendant could harm or threaten with harm these spouses and children."⁵³

General Magistrates, Special Magistrates, Judges of Compensation Claims, Administrative Law Judges, and Child Support Enforcement Hearing Officers

A court may appoint a general magistrate or a special magistrate to hear cases and perform certain duties in civil court cases. General magistrates must be members of the Florida Bar and must take an oath; special magistrates are not required to be members of the Florida Bar or take an oath.⁵⁴ Magistrates are authorized to hold hearings and write reports on their findings. Judges review the reports and enter orders based on the reports.⁵⁵

Child support enforcement hearing officers are appointed by the chief judge of each judicial circuit to hear cases and write reports regarding how much child support a parent should pay. Child support enforcement hearing officers conduct hearings and write recommended child support orders. Judges review the recommended orders and enter them.⁵⁶

Judges of Compensation Claims are appointed by the governor to hear worker's compensation cases. They report to the chief administrative law judge of the Division of Administrative Hearings.⁵⁷ The Division of Administrative Hearings is also authorized to hire administrative law judges, who primarily hear regulatory cases.⁵⁸

The Legislature created a public records exemption for these finders-of-fact and their families in Ch. 2008-41, Law of Fla. The public records exemption covers the same types of information as the exemption for judges, but requires the finder-of-fact to provide a written statement that they have made reasonable efforts to protect their information from being publically accessible. The public necessity statement in Ch. 2008-41, s. 2, Laws of Fla. provides that "[r]elease of such identifying and location information might place such officials and their family members in danger of physical and emotional harm from disgruntled criminal defendants or litigants."

⁵³ Ch. 2013-243, s. 2, Laws of Fla.

⁵⁴ Fla. R. Civ. P. 1.490.

⁵⁵ Fla. R. Civ. P. 1.490(i), Fla. Fam. L. R. P. 12.490.

⁵⁶ Fla. Fam. L. R. P. 12.491.

⁵⁷ Sections 440.45 and 120.65, F.S.

⁵⁸ Section 120.65(4), F.S.

Human Resource, Labor Relations, or Employee Relations Directors, Assistant Directors, Managers, or Assistant Managers of any Local Government Agency or Water Management District

Human resources managers oversee the recruiting and hiring of staff, and serve as a liaison between management and employees.⁵⁹ Labor relations personnel “interpret and administer labor relations contracts regarding issues such as wages and salaries, healthcare, pensions, and union management practices.”⁶⁰ Similarly, an employee relations “manager” is responsible for managing a range of activities related to employee/labor relations and staffing functions.⁶¹

The public records exemption for these personnel and their families was created in 2001. The public necessity statement found in Ch. 2001-249, s. 2, Laws of Fla., provides that the exemption is warranted because the enumerated personnel or their family members “could be harmed or threatened with harm by a current or former employee or a friend or family member of a current or former employee.” The exemption was narrowed and saved from repeal in 2006.⁶²

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.

Code Enforcement Officers

Chapter 162, F.S., governs county or municipal code enforcement. Code enforcement officers are responsible for the administration of a wide range of health, safety, and environmental regulations. The term “code enforcement officer” is defined as “any designated employee or agent of a county or municipality whose duty it is to enforce codes and ordinances enacted by the county or municipality.”⁶³

A county or municipality may designate certain employees or agents as code enforcement officers.⁶⁴ The county or municipality determines the training and qualifications of code enforcement officers.⁶⁵ Section 162.21(2), F.S., provides that the following personnel may be designated as code enforcement officers: code inspectors, law enforcement officers, animal control officers, and firesafety inspectors.

⁵⁹ U.S. Department of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, <http://www.bls.gov/ooh/management/human-resources-managers.htm> (last viewed December 8, 2016).

⁶⁰ U.S. Department of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, <http://www.bls.gov/ooh/business-and-financial/labor-relations-specialists.htm> (last viewed December 8, 2016).

⁶¹ Society for Human Resource Management https://www.shrm.org/resourcesandtools/tools-and-samples/job-descriptions/pages/cms_002277.aspx (last viewed December 8, 2016).

⁶² Ch. 2006-211, Laws of Fla. The exemption was narrowed by removing the exemption of social security numbers and the photographs of spouses and children.

⁶³ Section 162.21(1), F.S.

⁶⁴ Section 162.21(2), F.S.

⁶⁵ *Id.*

The Legislature enacted a public records exemption for county and municipal code inspectors and code enforcement officers in 1994.⁶⁶ The public necessity statement contained in Ch. 1994-128, Laws of Fla., noted that “release of this information would jeopardize the safety and welfare of . . . code enforcement officers and their families.”

In 2001, this exemption was amended to only include current or former code enforcement officers. The public necessity statement contained in Ch. 2001-249, s. 3, Laws of Fla., provides that the exemption is warranted because “[c]itations issued in response to violations that they encounter often lead to retribution by the offenders” and the release of identifying information “has led to threats, acts of violence, and unwarranted risk to the officers and their families.”

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.

Guardians ad Litem and Guardian ad Litem Program Personnel

A guardian ad litem is someone appointed by the court to appear in a civil or criminal proceeding on behalf of a minor child.⁶⁷ The Guardian ad Litem Program operates in all 20 judicial circuits.⁶⁸ County governments provide office space to support the offices. In some counties, county-funded staff are provided to the Guardian ad Litem Program.⁶⁹ In those cases, county staff are supervised by the Guardian ad Litem Program.⁷⁰

The Legislature enacted a public records exemption for guardians ad litem in 2005.⁷¹ The exemption for guardians ad litem includes professional staff, contract attorneys, and support staff who work for the Guardian ad Litem Program.⁷² Guardians ad litem must provide a written statement that they made reasonable efforts to protect their information from being publically accessible. The public necessity statement contained in Ch. 2005-213, s. 5, Laws of Fla., provides that the release of identifying information and location information of current and former guardians ad litem and their family members could seriously jeopardize the safety and welfare of these enumerated personnel as “[d]ifferent persons may be disgruntled with the testimony, report, or recommendation made by guardians ad litem.”

In 2010, this exemption was amended to include the names and locations of schools and day care facilities attended by the children of current or former guardians ad litem. The public necessity statement contained in Ch. 2010-71, s. 2, Laws of Fla., provides that the exemption is warranted because “the children of guardians ad litem could become a potential target for acts of revenge” and “the safety and welfare of the children . . . could be seriously jeopardized.”

⁶⁶ Ch. 1994-128, Laws of Fla.

⁶⁷ Section 39.820(1), and 39.822, F.S.

⁶⁸ Section 39.8296, F.S.

⁶⁹ Section 39.8297, F.S.

⁷⁰ *Id.*

⁷¹ Ch. 2005-213, Laws of Fla.

⁷² Section 39.820(1), F.S.

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.

Department of Juvenile Justice Specified Employees

The Department of Juvenile Justice (DJJ) is charged under s. 985.02, F.S., with developing and coordinating comprehensive services and programs statewide for the prevention, early intervention, control, and rehabilitative treatment of delinquent behavior.

The Legislature enacted a public records exemption for DJJ personnel and their families in 2006.⁷³ The public necessity statement contained in Ch. 2006-180, s. 3, Laws of Fla., provides that DJJ personnel and their family members “could be harmed or threatened with harm by a juvenile defendant or by a friend or family member of a juvenile defendant” if their information were public.

In 2011, public records exemption was revised to match the job titles of DJJ staff as they were currently used. The exemption was saved from repeal in Ch. 2011-201, Laws of Fla., by reenactment.

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.

Public Defenders, Assistant Public Defenders, Criminal Conflict and Civil Regional Counsel and Assistant Criminal Conflict and Civil Regional Counsel

There is an elected public defender for each judicial circuit in the state. A public defender must be a member in good standing of the Florida Bar, be an elector of the state and must reside within the territorial jurisdiction of the judicial circuit in which he or she serves.⁷⁴ The public defender of each judicial circuit is authorized to employ assistant public defenders and other staff.⁷⁵

Criminal conflict and civil regional counsel are appointees of the governor and serve in five regions across the state.⁷⁶ He or she must also be a member of the Florida bar and may also hire assistants.

Public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel are appointed by the courts to represent

⁷³ Ch. 2006-180, Laws of Fla.

⁷⁴ Section 27.50, F.S.

⁷⁵ Section 27.53, F.S.

⁷⁶ Section 27.511, F.S.

defendants in criminal cases.⁷⁷ Criminal conflict and civil regional counsel also represent clients in child abuse and termination of parental rights cases.⁷⁸

The Legislature enacted public records exemptions for public defenders, their assistants, and their families, as well as criminal conflict and civil regional counsel, their assistants and their families in 2010.⁷⁹ The public necessity statement contained in Ch. 2010-171, s. 2, Laws of Fla., provides that the release of identifying information and location information of the enumerated personnel or their family members “would jeopardize the safety of these attorneys and their families” because “individuals may become disgruntled by the proceedings or the outcome of a criminal or civil case, which could result in these attorneys and their families becoming targets for acts of violence.”

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.

In 2014, the names of the spouses and children of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel were added to the exemption in Ch. 2014-172, Laws of Fla. The public necessity for the expansion of the exemption was because the enumerated personnel come in close contact with people who make seek revenge by harming the personnel’s spouses and children.⁸⁰

Department of Business and Professional Regulation Investigators and Inspectors

The Department of Business and Professional Regulation (DBPR) is delegated responsibility for both professional regulation and business regulation. The DBPR’s Division of Regulation monitors more than 20 professions and related businesses to ensure that those professions and businesses comply with the rules and standards set by the Legislature, professional boards, and the DBPR. In many instances the inspectors and investigators have the authority to immediately issue a citation to the offending party.⁸¹ The DBPR not only conducts and prosecutes violations of offending agency rules and regulations, but the agency also has a duty to notify the proper prosecuting authority when there is a criminal violation of any statute related to the practice of a profession.⁸²

The Legislature enacted an exemption for DBPR investigators and inspectors, as well as their families in 2012.⁸³ These employees are required to make reasonable efforts to protect their information from being publically accessible. The public necessity statement contained in Ch. 2012-214, s. 2, Laws of Fla., provides that the release of identifying information and location

⁷⁷ See s. 27.51, F.S., and s. 27.511, F.S.

⁷⁸ See s. 27.511(6)(a), F.S.

⁷⁹ Ch. 2010-171, Laws of Fla.

⁸⁰ Ch. 2014-172, s. 2, Laws of Fla.

⁸¹ Section 455.224, F.S.

⁸² Section 455.2277, F.S.

⁸³ Ch. 2012-214, Laws of Fla.

information of enumerated personnel or their family members might place them “in danger of physical or emotional harm from disgruntled individuals . . . whose business or professional practices have come under the scrutiny of the Department of Business and Professional Regulation.”

County Tax Collectors

The State Constitution requires a tax collector to be elected by the electors of a county, for a term of four years, unless otherwise provided by county charter or special law.⁸⁴ The tax collector has the authority and obligation to collect all taxes as shown on the tax roll by the date of delinquency or to collect delinquent taxes, interest, and costs, by sale of tax certificates on real property and by seizure and sale of personal property.

The Legislature enacted an exemption for county tax collectors, as well as their families in in 2012.⁸⁵ These employees are required to make reasonable efforts to protect their information from being publically accessible. The public necessity statement contained in Ch. 2012-214, s. 2, Laws of Fla., provides that the release of identifying information and location information of county tax collectors or their family members might place them “in danger of physical or emotional harm from disgruntled individuals who have contentious reactions to revenue collection or . . . child support enforcement actions.”

OGSR Survey Findings and Recommendations

During the 2016-2017 Interim, the Governmental Oversight and Accountability Committee professional staff conducted an Open Government Sunset Review (OGSR) pursuant to s. 119.15, F.S., and sent surveys to agencies, water management districts, counties, cities and law enforcement agencies affected by the exemptions scheduled to sunset on October 2, 2017. The surveys covered 12 statutory exemptions and approximately 20 professions.

In all, 178 entities responded.⁸⁶ All but two of the entities that tracked such information reported that they had received public records requests for personnel information. The majority of the surveyed entities recommended that all of the exemptions be reenacted as they are.⁸⁷ Personnel safety was the most common reason cited for reenacting the exemptions.

Several of the entities stated that they had problems applying the exemptions. They suggested that all of the exemptions be made uniform so that it would be easier to redact information.

⁸⁴ FLA. CONST. art. VIII, s. 1.

⁸⁵ Ch. 2012-214, Laws of Fla.

⁸⁶ This number reflects 27 agencies, 75 cities, five water management districts, 24 counties, 20 sheriff's offices, two police departments, the Florida Police Chief's Association, 11 state attorney offices and 12 public defender offices. The survey responses are on file with the Senate Committee on Governmental Oversight and Accountability.

⁸⁷ Several entities left blanks in response to the questions of whether any of the exemptions should be permitted to sunset. Some stated that they had no opinion or no recommendation. Some entities, such as small cities or unaffected agencies, reported that they did not employ any of the professions in the survey.

Employing entities gathered large amounts of information about each of their employees, much more than is covered by the existing exemptions. Employers made several recommendations about what other types of information should be exempt. This included:

- all family members who resided with the exempt personnel (such as parents and step-children);
- vehicle information;
- people who share custody of children but are not spouses;
- personal email addresses; and
- professional or recreational licenses and permits.

Based on the results of the surveys, Committee staff recommends that the Legislature reenact the exemptions with some changes.

III. Effect of Proposed Changes:

Social Security Numbers

Currently agency personnel public records exemptions in s. 119.071(4)(d)2., F.S., state that social security numbers of certain personnel and their families are exempt from public disclosure. The bill removes the public records exemptions for social security numbers because there is a general exemption for the social security numbers of all current and former agency personnel in s. 119.071(4)(a), F.S. There is also an exemption for social security numbers in s. 119.071(5)(a)5., F.S., which is a general public records exemption for everyone. Sections 119.071(4)(a), F.S., and 119.071(5)(a)5., F.S., make social security numbers confidential and exempt from Ch. 119, F.S., as well as the State Constitution.

By removing social security numbers from the personnel exemptions in s. 119.071(4)(d)2., F.S., the conflict between public records exemptions for social security number is eliminated. In addition, the discretion of the records custodian to release social security numbers will be restricted to those conditions outlined in statute.

The Florida Constitution

It has been the practice of the Legislature to make records exempt from both s. 119.07(1), F.S., and s. 24(a), Article I of the Florida Constitution. An exemption from the Florida Constitution ensures that an exemption applies to a record when it is held by each branch of government. This bill expands exemptions to include the Florida Constitution if they do not currently do so. The bill incorporates the State Constitution into the public records exemptions for the following personnel:

- Law enforcement;
- DCF, DOH, and DOR personnel with certain duties;
- Firefighters; and
- Justices and judges.

Names of Children and Spouses of Personnel

Existing public records exemptions for agency personnel make exempt from public disclosure the names of the personnel’s children and spouses with the following exceptions:

- Justices and judges;
- Magistrates, judges of compensation claims, DOAH administrative law judges;
- Child support enforcement hearing officers; and
- Firefighters.

The bill exempts from public disclosure the names of the children and spouses of these personnel.

Information Set to Sunset in 2018 and 2019

The following information is not currently set to sunset in 2017, but is closely related to exemptions which are sunsetting this year.

Personnel whose exemption is sunsetting in 2017	Information NOT sunsetting in 2017	Year information is sunsetting
Law enforcement, DCF, DOH, DOR	Names of spouses and children	2018
State attorneys and assistants	Names of spouses and children	2018
Statewide prosecutors and assistants	Names of spouses and children	2018
Public defenders and assistants	Names of spouses and children	2019
Criminal conflict and civil regional council and assistants	Names of spouses and children	2019

The bill incorporates the names of spouses and children into the current exemptions and deletes the 2018 and 2019 sunset dates. This means that these exemptions would not have a full five-year review under the OGSR. Given that all identification and location information for the spouses and children of the named personnel are already exempt, and because this year’s survey incorporated questions about information about the spouses and children, it would to be redundant to redo the review for the names of spouses and children in one or two years. Also the statutes governing the OGSR process provide some discretion on how the Legislature approaches sunset reviews.⁸⁸

Dates of Birth of DBPR Personnel and County Tax Collectors

Most of the public records exemptions for personnel also protect the dates of birth of the personnel and their families. Inspectors and investigators of DBPR, and county tax collectors,

⁸⁸ Section 119.15(8), F.S.

however, do not have this protection. This bill expands the public records exemptions for DBPR personnel, county tax collectors, and their families by adding dates of birth to their exemptions.⁸⁹

The Requirement to Prove Protection of Ones' Information

This bill removes the requirement that certain personnel must prove that they have made reasonable efforts to protect their information from being accessible to the public.

The bill removes this requirement for the following personnel:

- Magistrates, judges of compensation claims, DOAH administrative law judges;
- Child support enforcement hearing officers;
- Guardians ad litem;
- DBPR investigators; and
- County tax collectors.

This language was removed for two reasons: to ease the administrative burden on personnel and their employers to weigh how much proof was needed to extend the exemption to the personnel, and because most other personnel did not have to prove in order to be eligible for the exemption. Agencies noted that the differences in each exemption made them difficult to implement.

Public Necessity Statement

Public necessity statements for public records exemptions are required by the State Constitution. This would apply to an expansion of an existing public records exemption. This bill includes public necessity statements for each of the expansions in this bill.

The public necessity statements provide two basic reasons for the public necessity of these exemptions. First, the expansions were necessary for the safety of the personnel and their families. The public necessity statements also reflect and supplement the public necessity statements that currently exist in the Laws of Florida. Second, the expansions were necessary to increase harmonization between the exemptions and thereby increase accuracy and efficiency when redactions are required.

This bill takes effect on October 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁸⁹ The public records exemptions for DBPR investigators and tax collectors passed in the same bill, HB 1089, which became Ch. 2012-214, Laws of Fla. Dates of birth were missing from both of these exemptions. During the same session, Ch. 2012-149, Laws of Fla., added a public records exemption for dates of birth to all of the other personnel public records exemptions.

B. Public Records/Open Meetings Issues:

This bill requires a two-thirds majority vote in each chamber in order to pass, pursuant to Article I, section 24(c) of the Florida Constitution because it expands public records exemptions.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Indeterminate. Some government contractors will have to adjust their public records redactions procedures to accommodate the changes proposed in this bill. Companies that purchase public records for datamining could be adversely affected by having access to less information.

C. Government Sector Impact:

Indeterminate. Governmental entities will have to adjust their public records redactions procedures to accommodate the changes proposed in this bill. Presumably, creating greater uniformity between the exemptions will reduce costs associated with redacting exempt information.

VI. Technical Deficiencies:

This bill does not include a five year open government sunset review although includes several public records expansions. The OGSR Act requires the Legislature to set a five year review of an expanded public records exemption, but also provides that failure to comply strictly with all the requirements of the OGSR Act does not invalidate a reenactment.⁹⁰

VII. Related Issues:

The exemption for guardians' ad litem states guardians ad litem are defined by s. 39.820, F.S. The definition of guardian ad litem in s. 39.820(1), F.S., provides:

“Guardian ad litem” as referred to in any civil or criminal proceeding includes the following: a certified guardian ad litem program, a duly certified volunteer, *a staff attorney, contract attorney*, or certified pro bono attorney *working on behalf of a guardian ad litem or the program; staff members of a program office; a court-appointed attorney; or a responsible adult who is appointed by the court to*

⁹⁰ Section 119.15(8), F.S.

represent the best interests of a child in a proceeding as provided for by law, including, but not limited to, this chapter, who is a party to any judicial proceeding as a representative of the child, and who serves until discharged by the court. (emphasis added)

Current law exempts the place of employment of current and former staff attorneys, contract attorneys, court appointed attorneys, pro bono attorneys as well staff members of the Guardian Ad Litem Program office. This is unusual because the place of employment of governmental personnel is usually public record. It is unclear why the place of employment of staff attorneys and program staff are exempt from public disclosure.

VIII. Statutes Affected:

This bill substantially amends section 119.071(4) of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.