

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7093    PCB OTA 17-05    OGSR/Agency Personnel Information  
**SPONSOR(S):** Oversight, Transparency & Administration Subcommittee, Daniels  
**TIED BILLS:**            **IDEN./SIM. BILLS:** SB 7018

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Oversight, Transparency & Administration Subcommittee	13 Y, 0 N	Toliver	Harrington
1) Government Accountability Committee	23 Y, 0 N	Toliver	Williamson

### SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment. If, in reenacting an exemption that will repeal, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.

Current law provides public record exemptions for certain identification and location information of specified agency personnel as well as certain information relating to the spouses and children of such personnel. The exemptions for these specified agency employees, as well as exemptions pertaining to the family of those employees, are set to repeal on October 2, 2017, unless the Legislature reenacts the exemptions. The categories of agency personnel with specified exemptions 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 Regulation investigators; and
- County Tax Collectors.

The bill reenacts the public record exemptions for agency personnel and their families. The bill also expands certain public record exemptions for agency personnel and their families in an effort to provide uniformity. The bill provides for repeal of the expanded exemptions on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill may have a minimal fiscal impact on the state and local governments. See Fiscal Comments.

**Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands existing public record exemptions; thus, it requires a two-thirds vote for final passage.**

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h7093a.GAC

DATE: 4/6/2017

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Public Records

The Florida Constitution guarantees every person the right to inspect or copy any public record made or received in connection with the official business of the legislative, executive, or judicial branches of government.<sup>1</sup> The Legislature, however, may provide by general law for the exemption of records from the constitutional requirement.<sup>2</sup> The general law must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the law.<sup>3</sup> A bill enacting an exemption must pass by a two-thirds vote of the members present and voting.<sup>4</sup>

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.

##### Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)<sup>5</sup> sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>6</sup>

The Act 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:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect 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.
- Protect trade or business secrets.<sup>7</sup>

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>8</sup> If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created<sup>9</sup> then a public necessity statement and a two-thirds vote for passage are not required.

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

<sup>2</sup> FLA. CONST., art. I, s. 24(c).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Section 119.15, F.S.

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

<sup>7</sup> Section 119.15(6)(b), F.S.

<sup>8</sup> Section 24(c), Art. I, FLA. CONST.

<sup>9</sup> An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.

### General Public Record Exemptions for Agency Personnel

There are three general public record 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.<sup>10</sup>

Social security numbers of all current and former agency personnel are confidential and exempt when held by the employing agency.<sup>11</sup> An employing agency may only release social security numbers for one of the following reasons: the release is required by law, a receiving government agency needs the social security number to perform its duties, or the employee consents to disclosure of his or her social security number.<sup>12</sup> In addition, there is a general exemption for social security numbers which applies to the public<sup>13</sup> that makes social security numbers confidential and exempt.<sup>14</sup> This exemption applies to any agency that holds anyone's social security number, including the social security numbers of agency personnel.<sup>15</sup>

An agency employee's medical information is also exempt from public disclosure if the medical information could identify the employee.<sup>16</sup> This exemption applies to prospective, current, and former employees.<sup>17</sup>

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.<sup>18</sup> This exemption applies to the children of current and former employees and is also retroactively applied.<sup>19</sup>

### Public Records Exemptions for Specified Agency Personnel

Provisions in s. 119.071(4)(d), F.S., make exempt from public disclosure the personal identification and location information of specified agency personnel, their spouses, and their children. An agency that holds this information and is not the employing agency of the employee must keep the exempt status of that information only if the employee or the employing agency submits a written request for maintenance of the exemption to the custodial agency.<sup>20</sup>

### How the Exemptions Differ

The information exempted by the various provisions of s. 119.071(4)(d)2., F.S., is similar in the categories of information protected, 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.<sup>21</sup>

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

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<sup>10</sup> Section 119.071(4)(a) and (b), F.S.

<sup>11</sup> Section 119.071(4)(a)1., F.S.

<sup>12</sup> Section 119.071(4)(a)2., F.S.

<sup>13</sup> Section 119.071(5)(a)5., F.S.

<sup>14</sup> There is a difference between records the Legislature designates 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 statute. (*See Attorney General Opinion 85-62*, August 1, 1985).

<sup>15</sup> Section 119.071(5)(a)5., F.S.

<sup>16</sup> Section 119.071(4)(b)1., F.S.

<sup>17</sup> *Id.*

<sup>18</sup> Section 119.071(4)(b)2., F.S.

<sup>19</sup> *Id.*

<sup>20</sup> Section 119.071(4)(d)3., F.S.

<sup>21</sup> Section 119.071(4)(d)2., F.S.

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.<sup>22</sup>

In addition, some of the provisions exempt information from ch. 119, F.S., but not from Article I, s. 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.

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

Current law provides a public record exemption for the home address, telephone numbers, social security numbers, date of birth, and photographs of active or former sworn or civilian law enforcement personnel, including:

- 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 who support child abuse investigations; and
- Personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement.

*Legislative History of the Exemption*

In 1979, the Legislature created a public record exemption for the “home address, telephone number and photograph of law enforcement personnel” as well as for their spouses and children.<sup>23</sup> 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.<sup>24</sup>

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.<sup>25</sup> 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>26</sup>

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.<sup>27</sup>

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

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<sup>22</sup> Section 119.071(4)(d)2.e., F.S.

<sup>23</sup> 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. L.O.F.

<sup>24</sup> Chapter 85-301, L.O.F.

<sup>25</sup> Chapter 89-80, L.O.F.

<sup>26</sup> Public necessity statements were required for public records exemptions after 1992, when Article I, s. 24, of the Florida Constitution was adopted.

<sup>27</sup> Chapter 1995-170, L.O.F.

child abuse or neglect.<sup>28</sup> 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 the changes made during the reorganization of the Department of Health and Rehabilitative Services.

In 2012, the Legislature expanded this exemption to include the dates of birth of the enumerated personnel as well as their family members.<sup>29</sup> 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.<sup>30</sup> 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.<sup>31</sup>

#### Firefighters

Current law provides a public record exemption for the home addresses, telephone numbers, dates of birth, and photographs of certified firefighters; the home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such firefighters; and the names and locations of schools and day care facilities attended by the children.

#### *Legislative History of the Exemption*

In 1991, the Legislature created a public record exemption for firefighters and their families, but it did not protect the dates of birth of such personnel. Public record exemptions were not required to include public necessity statements at that time, so the Legislative intent was not expressed in a separate statement.<sup>32</sup>

In 2012, the Legislature expanded this exemption to include the dates of birth of the firefighters as well as their family members.<sup>33</sup> 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.

#### Justices and Judges

Current law provides a public record exemption for the home addresses, dates of birth, and telephone numbers of current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former justices and judges; and the names and locations of schools and day care facilities attended by the children of current or former justices and judges.

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<sup>28</sup> Chapter 98-137, s. 7, L.O.F.

<sup>29</sup> Chapter 2012-149, L.O.F.

<sup>30</sup> *Id.*

<sup>31</sup> Chapter 2013-243, s. 2, L.O.F.

<sup>32</sup> Public necessity statements were required for public record exemptions after 1992, when Article I, s. 24 of the Florida Constitution was adopted.

<sup>33</sup> Chapter 2012-149, L.O.F.

### *Legislative History of the Exemption*

In 1991, the Legislature created a public record exemption for current justices and judges and their families.<sup>34</sup> This public records exemption was created in 1991, so there is no public necessity statement explaining why the exemption was created.

In 2012, the Legislature expanded this exemption to include the dates of birth of the personnel as well as their family members.<sup>35</sup> 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

Current law provides a public record exemption for the home addresses, telephone numbers, social security numbers, dates of birth, and photographs of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; the home addresses telephone numbers, social security numbers, photographs, dates of birth, and places of employment of the spouses and children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; and the names and locations of schools and day care facilities attended by the children.

### *Legislative History of the Exemption*

In 1994, the Legislature created a public record exemption for state attorneys and their assistants as well as the statewide prosecutor and his or her assistants.<sup>36</sup> 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.”<sup>37</sup>

In 2012, the Legislature expanded this exemption to include the dates of birth of the personnel as well as their family members.<sup>38</sup> 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.<sup>39</sup>

In 2013, the Legislature expanded the exemption to include the names of the spouses and children of state attorneys, assistant state attorneys, statewide prosecutors, and assistant statewide prosecutors.<sup>40</sup> 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.”<sup>41</sup>

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

Current law provides a public record exemption for the home addresses, dates of birth, and telephone numbers of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; the home addresses, telephone numbers, dates of birth, and places of employment of the spouses and

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<sup>34</sup> Chapter 1991-149, L.O.F.

<sup>35</sup> Chapter 2012-149, L.O.F.

<sup>36</sup> Chapter 1994-176, L.O.F.

<sup>37</sup> Chapter 1994-176, s. 2, L.O.F.

<sup>38</sup> Chapter 2012-149, L.O.F.

<sup>39</sup> *Id.* at s. 2.

<sup>40</sup> Chapter 2013-243, L.O.F.

<sup>41</sup> *Id.* at s. 2.

children of such personnel; and the names and locations of schools and day care facilities attended by the children.

#### *Legislative History of the Exemption*

In 2008, the Legislature created a public record exemption for these finders-of-fact and their families.<sup>42</sup> The public record 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 accessibly. The 2008 public necessity statement 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.”<sup>43</sup>

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

Current law provides a public record exemption for the home addresses, telephone numbers, dates of birth, and photographs of 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 whose duties include hiring and firing employees, labor contract negotiation, administration, or other personnel-related duties; the names, home addresses, telephone numbers, dates of birth, places of employment of the spouses and children of such personnel; and the names and location of schools and day care facilities.

#### *Legislative History of the Exemption*

In 2001, the Legislature created a public record exemption for these personnel and their families.<sup>44</sup> The public necessity statement provides that the exemption is warranted because the 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.”<sup>45</sup> The exemption was narrowed and saved from repeal in 2006.<sup>46</sup>

In 2012, the Legislature expanded this exemption to include the dates of birth of the personnel as well as their family members.<sup>47</sup> 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.<sup>48</sup>

#### Code Enforcement Officers

Current law provides a public record exemption for the home address, telephone numbers, dates of birth, and photographs of current or former code enforcement officers; the names, home addresses, telephone numbers, dates of birth, 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.

#### *Legislative History of the Exemption*

In 1994, the Legislature created a public record exemption for county and municipal code inspectors and code enforcement officers.<sup>49</sup> The 1994 public necessity statement 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 provides that the exemption is warranted because “[c]itations

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<sup>42</sup> Chapter 2008-41, L.O.F.

<sup>43</sup> *Id.*

<sup>44</sup> Chapter 2001-249, L.O.F.

<sup>45</sup> *Id.* at s. 2.

<sup>46</sup> Chapter 2006-211, L.O.F. The exemption was narrowed by removing the exemption of social security numbers and the photographs of spouses and children.

<sup>47</sup> Chapter 2012-149, L.O.F.

<sup>48</sup> *Id.*

<sup>49</sup> Chapter 1994-128, L.O.F.

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.”<sup>50</sup>

In 2012, the Legislature expanded this exemption to include the dates of birth of the personnel as well as their family members.<sup>51</sup> 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

Current law provides a public record exemption for the home addresses, telephone numbers, places of employment, dates of birth, and photographs of current or former guardians ad litem; the names, home addresses, telephone numbers, dates of birth, 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.

#### *Legislative History of the Exemption*

In 2005, the Legislature created a public record exemption for guardians ad litem.<sup>52</sup> The exemption for guardians ad litem includes professional staff, contract attorneys, and support staff who work for the Guardian ad Litem Program.<sup>53</sup> Guardians ad litem must provide a written statement that they made reasonable efforts to protect their information from being publically accessible. The 2005 public necessity statement 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.<sup>54</sup> The 2010 public necessity statement 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.”<sup>55</sup>

In 2012, the Legislature expanded this exemption to include the dates of birth of the personnel as well as their family members.<sup>56</sup> 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

Current law provide a public record exemption for the home addresses, telephone numbers, dates of birth, and photographs of current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, juvenile justice officers and counselors, human services counselor administrators, rehabilitation therapists, and social service counselors of the Department of Juvenile Justice; the names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children.

#### *Legislative History of the Exemption*

In 2006, the Legislature created a public record exemption for Department of Juvenile Justice (DJJ) specified personnel and their families.<sup>57</sup> The 2006 public necessity statement provides that DJJ

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<sup>50</sup> Chapter 2001-249, s. 3, L.O.F.

<sup>51</sup> Chapter 2012-149, L.O.F.

<sup>52</sup> Chapter 2005-213, L.O.F.

<sup>53</sup> Section 39.820(1), F.S.

<sup>54</sup> Chapter 2010-71, L.O.F.

<sup>55</sup> *Id.*

<sup>56</sup> Chapter 2012-149, L.O.F.

<sup>57</sup> Chapter 2006-180, L.O.F.



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, the public record exemption was revised to match the job titles of DJJ staff as they were currently used.<sup>58</sup>

In 2012, the Legislature expanded this exemption to include the dates of birth of the personnel as well as their family members.<sup>59</sup> 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

Current law provides a public record exemption for the home addresses, telephone numbers, dates of birth, and photographs of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel; the home addresses, telephone numbers, dates of birth, 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.

#### *Legislative History of the Exemption*

In 2010, the Legislature created a public records exemption for public defenders, their assistants, and their families, as well as criminal conflict and civil regional counsel, their assistants and their families.<sup>60</sup> The 2010 public necessity statement provides that the release of identifying information and location information of the 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.”

In 2012, the Legislature expanded this exemption to include the dates of birth of the personnel as well as their family members.<sup>61</sup> 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.<sup>62</sup> The public necessity for the expansion of the exemption was because the personnel come in close contact with people who make seek revenge by harming the personnel’s spouses and children.<sup>63</sup>

#### Department of Business and Professional Regulation Investigators and Inspectors

Current law provides a public record exemption for the home addresses, telephone numbers, and photographs of current or former investigators or inspectors of the Department of Business and Professional Regulation (DBPR); the names, home addresses, telephone numbers, 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.

#### *Legislative History of the Exemption*

In 2012, the Legislature created a public record exemption for DBPR investigators and inspectors, as well as their families.<sup>64</sup> These employees are required to make reasonable efforts to protect their

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<sup>58</sup> Chapter 2011-201, L.O.F.

<sup>59</sup> Chapter 2012-149, L.O.F.

<sup>60</sup> Chapter 2010-171, L.O.F.

<sup>61</sup> Chapter 2012-149, L.O.F.

<sup>62</sup> Chapter 2014-172, L.O.F.

<sup>63</sup> Chapter 2014-172, s. 2, L.O.F.

<sup>64</sup> Chapter 2012-214, L.O.F.

information from being publically accessible. The public necessity statement provides that the release of identifying information and location information of such 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.”<sup>65</sup>

### County Tax Collectors

Current law provides a public record exemption for the home addresses and telephone numbers of county tax collectors; the names, home addresses, telephone numbers, and places of employment of spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children.

### *Legislative History of the Exemption*

In 2012, the Legislature created a public record exemption for county tax collectors and their families.<sup>66</sup> These employees are required to make reasonable efforts to protect their information from being publically accessible. The public necessity statement 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.”<sup>67</sup>

### Department of Health Personnel

Current law provides a public record exemption for the home addresses, telephone numbers, dates of birth, and photographs of current or former personnel of the Department of Health whose duties include, or result in, the determination or adjudication of eligibility for social security disability benefits, the investigation or prosecution of complaints filed against health care practitioners, or the inspection of health care practitioners or health care facilities by the department; the names, home addresses, telephone numbers, dates of birth, 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.

### *Legislative History of the Exemption*

In 2014, the Legislature created a public record exemption for personnel of the Department of Health with certain duties, as well as the families of such personnel.<sup>68</sup> These employees are required to make reasonable efforts to protect their information from being publicly accessible. The public necessity statement provides that the release of identifying and location information of Department of Health personnel and their family members might place them “in danger of physical and emotional harm from disgruntled individuals who have contentious reactions to actions carried out by such personnel of the Department of Health, or whose business or professional practices have come under the scrutiny of investigators and inspectors of the Department of Health.”<sup>69</sup>

### Impaired Practitioner Consultants

Current law provides a public record exemption for the home addresses, telephone numbers, dates of birth, and photographs of current or former impaired practitioner consultants who are retained by an agency or current or former employees of an impaired practitioner consultant whose duties result in a determination of a person’s skill and safety to practice a licensed profession; the names, home addresses, telephone numbers, dates of birth, 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.

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<sup>65</sup> Chapter 2012-214, s. 2, L.O.F.

<sup>66</sup> Chapter 2012-214, L.O.F.

<sup>67</sup> Chapter 2012-214, s. 2, L.O.F.

<sup>68</sup> Chapter 2014-72, L.O.F.

<sup>69</sup> Chapter 2014-72, s. 2, L.O.F.

### *Legislative History of the Exemption*

In 2015, the Legislature created a public record exemption for impaired practitioner consultants and their families.<sup>70</sup> These consultants are required to make reasonable efforts to protect their information from being publicly accessible. The public necessity statement provides that as a result of certain threats and incidents that occurred between treatment program participants and their impaired practitioner consultants, "identifying and location information could place an impaired practitioner consultant or an employee of a consultant ...or the spouses and children of such consultants or their employees in danger of being physically or emotionally harmed or stalked by a person who has a hostile reaction to a recommendation, report, or conclusion provided by a consultant or an employee of a consultant in the determination of whether the practitioner is impaired."<sup>71</sup>

### Emergency Medical Technicians or Paramedics

Current law provides a public record exemption for the home addresses, telephone numbers, dates of birth, and photographs of current or former emergency medical technicians or paramedics; the names, home addresses, telephone numbers, dates of birth, 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.

### *Legislative History of the Exemption*

In 2016, the Legislature created a public record exemption for emergency medical technicians or paramedics and their families.<sup>72</sup> These emergency medical technicians are required to make reasonable efforts to protect their information from being publicly accessible. The public necessity statement provides that the "release of identifying and location information of emergency medical technicians or paramedics certified under chapter 401, Florida Statutes, or the spouses and children of such emergency medical technicians or paramedics, could place them in danger of being physically or emotionally harmed or stalked by a person who has a hostile reaction to his or her encounter with such emergency medical technicians or paramedics."<sup>73</sup>

### Inspectors and Auditors

Current law provides a public record exemption for the home addresses, telephone numbers, dates of birth, and photographs of current or former personnel employed in an agency's office of inspector general or internal audit department whose duties include auditing or investigating waste, fraud, abuse, theft, exploitation, or other activities that could lead to criminal prosecution or administrative discipline; the names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children.

### *Legislative History of the Exemption*

In 2016, the Legislature created a public record exemption for personnel employed in an agency's office of inspector general or internal audit department and their families.<sup>74</sup> These employees are required to make reasonable efforts to protect their information from being publicly accessible. The public necessity statement provides that "the release of such identifying and location information might place such personnel and their family members in danger of physical and emotional harm from disgruntled individuals who may react inappropriately to investigations, audits, and other actions carried out by such personnel, or to scrutiny of their business or professional practices."<sup>75</sup>

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<sup>70</sup> Chapter 2015-37, L.O.F.

<sup>71</sup> Chapter 2015-37, s. 2, L.O.F.

<sup>72</sup> Chapter 2016-159, L.O.F.

<sup>73</sup> Chapter 2016-159, s. 3, L.O.F.

<sup>74</sup> Chapter 2016-164, L.O.F.

<sup>75</sup> Chapter 2016-164, s. 2, L.O.F.

### Public Record Exemptions under Review

Pursuant to the Open Government Sunset Review Act, many of the exemptions are scheduled to repeal on October 2, 2017, unless reenacted by the Legislature. During the 2016 interim, subcommittee staff sent questionnaires to agencies, water management districts, counties, cities, law enforcement personnel, state attorneys, and public defenders affected by the exemptions. The surveys covered 12 statutory exemptions and approximately 20 professions.

In all, 178 entities responded.<sup>76</sup> All but two of the entities that tracked such information reported that they had received public record requests for personnel information. The majority of the surveyed entities recommended that all of the exemptions be reenacted as they are.<sup>77</sup> 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.

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.

### **Effect of the Bill**

The bill reenacts the public record exemptions for identification and location information of certain agency personnel with changes to create consistency in the law.

### Social Security Numbers

Currently agency personnel public record 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 record 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 record 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 record exemptions for social security numbers 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 a public record exemption applies to a record when it is held by each branch of government. This bill

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<sup>76</sup> 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 Oversight, Transparency & Administration Subcommittee.

<sup>77</sup> Several entities left blanks in response to the questions of whether any of the exemptions should be permitted to repeal. 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.

expands exemptions to include the Florida Constitution if they do not currently do so. The bill incorporates the State Constitution into the public record exemptions for the following personnel:

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

Making these exemptions subject to s. 24(a), Article I of the Florida Constitution is an expansion of the current exemptions. As such, the bill provides for the future repeal of the exemptions that are expanded, unless reviewed and saved from repeal by reenactment by the Legislature.

#### Dates of Birth of DBPR Personnel and County Tax Collectors

Most of the public record exemptions for personnel also protect the dates of birth of the personnel and their families. Inspectors and investigators of DBPR and county tax collectors, however, do not have this protection. This bill expands the public record exemptions for DBPR personnel, county tax collectors, and their families by adding dates of birth to their exemptions.<sup>78</sup> The addition of date of birth for these two categories of employees constitutes an expansion of the current exemption. As such, the bill provides for the future repeal of the exemptions that are expanded, unless reviewed and saved from repeal by reenactment by the Legislature.

#### Names of Children and Spouses of Personnel

Existing public record 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. Adding the names of spouses and children to the exemptions is an expansion of the current exemptions. As such, the bill provides for the future repeal of the exemptions that are expanded, unless reviewed and saved from repeal by reenactment by the Legislature.

#### The Requirement to Make Reasonable Efforts to Protect 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, and child support enforcement hearing officers;
- Guardians ad litem;
- DBPR investigators;
- County tax collectors;
- DOH personnel with certain duties;
- Impaired practitioner consultants;
- Emergency medical technicians or paramedics; and
- Personnel employed in an agency's office of inspector general or internal audit department.

This language was removed because such identifying and location information could expose the personnel or their family members to danger from physical or emotional harm and the exemption should be applied without requiring the personnel to prove that they have not made their information public. Removing this requirement also eases the administrative burden on personnel and their

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<sup>78</sup> The public records exemptions for DBPR investigators and tax collectors passed in the same bill, HB 1089, which became ch. 2012-214, L.O.F., a public records exemption for dates of birth to all of the other personnel public records exemptions.

employers because most other personnel did not have to prove something in order to be eligible for the exemption. Agencies noted that the differences in each exemption made them difficult to implement.

Removing this requirement constitutes an expansion of the exemption. As such, the bill provides for the future repeal of the exemptions that are expanded, unless reviewed and saved from repeal by reenactment by the Legislature.

#### Public Necessity Statement

Public necessity statements for public records exemptions are required by the State Constitution. 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.

#### B. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., relating to general exemptions from the inspection of copying of public records.

Section 2 provides a public necessity statement.

Section 3 provides an effective date of October 1, 2017.

### **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

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

##### 2. Expenditures:

See Fiscal Comments.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

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

##### 2. Expenditures:

See Fiscal Comments.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

#### D. FISCAL COMMENTS:

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

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

##### 2. Other:

###### Vote Requirement

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 record or public meeting exemption. The bill expands existing public record exemptions; thus, it requires a two-thirds vote for final passage.

###### Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands existing public record exemptions; thus, it includes a public necessity statement.

###### Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created or expanded public record exemption to be no broader than necessary to accomplish the stated purpose of the law.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.