

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 Criminal Justice

BILL: CS/SB 1796

INTRODUCER: Criminal Justice Committee and Senator Perry

SUBJECT: Public Records/Commissioners and Commission Investigators/School Administrators

DATE: March 25, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Jones	CJ	Fav/CS
2.			GO	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1796 creates two new exemptions from public records requirements in s. 119.071(4)(d)2., F.S.

The first exemption makes exempt the personal and location information related to current and former commissioners and investigators of the Florida Commission on Offender Review (FCOR). The exemption is based upon a public necessity statement that explains the nature of the FCOR's work and the possibility that because of the effect of decisions made and actions taken by commissioners and investigators, harm may come to them or their families. The exemption does not appear to be broader than necessary to accomplish the purpose of the law because the information exempted is limited in type and scope.

The second exemption created by the bill makes exempt the personal and location information related to school administrators. This exemption appears to be no broader than necessary to accomplish its purpose because the information exempted is limited and only relates to school administrators, their spouses, and children. The exemption is based on a statement of public necessity that explains the nature of the authority, decisions, and actions the job of a school administrator entails, and the potential that harm might come to the administrator or his or her spouse and children because of the contentious action of a disgruntled student, parent, or school employee.

The bill provides a statement of public necessity as required.

The bill requires a two-thirds vote of the members present and voting for final passage.

The bill stands repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill is effective upon becoming a law.

II. Present Situation:

Public Records Law

The State 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

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.³ The Public Records Act states that

[i]t 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.⁴

The Public Records Act typically contains general exemptions that apply across agencies. Agency- or program-specific exemptions often are placed in the substantive statutes relating to that particular agency or program.

The Public Records Act does not apply to legislative or judicial records.⁵ Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the legislature.

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

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Public records laws are found throughout the Florida Statutes.

⁴ Section 119.01(1), F.S.

⁵ *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).

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” 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.”

“any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

Only the Legislature may create an exemption to public records requirements.¹⁰ An exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹¹ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions¹² and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹³

When creating or expanding a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’¹⁴ Records designated as ‘confidential and exempt’ may be released by the records custodian only under the circumstances defined by the Legislature or pursuant to a court order. Records designated as ‘exempt’ may be released at the discretion of the records custodian under certain circumstances.¹⁵

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions,¹⁶ with specified exceptions.¹⁷ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁸ The Act 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 to meet such public purpose.¹⁹

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

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ *Id.*

¹² The bill may, however, contain multiple exemptions that relate to one subject.

¹³ FLA. CONST., art. I, s. 24(c).

¹⁴ 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 Sch. Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁵ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁶ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

¹⁷ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁸ Section 119.15(3), F.S.

¹⁹ Section 119.15(6)(b), F.S.

Current Law

Agency and Government Personnel Exemptions

Section 119.071(4)(d)2.a.-t., F.S., contains public records exemptions related to agency and government personnel, both current and former. These exemptions include, but are not limited to:

- Home addresses;
- Telephone numbers;
- Dates of birth; and
- Photographs.²⁰

The exemptions generally include the same information related to the spouse and children, including the names and locations of schools and day care facilities attended by the children and the spouse's place of employment.²¹

Florida Commission on Offender Review

The Florida Commission on Offender Review (FCOR) is authorized by Article IV, section 8(c), State Constitution of 1968²² and s. 20.32, F.S.²³ It was formerly known as the Parole Commission.²⁴

The duties of the FCOR are the administration of parole, conditional release, conditional medical release, control release, and addiction recovery supervision.²⁵ As such, the commissioners have authority affecting the placement or retention of inmates in certain programs or opportunities for release from prison that may be available to the inmate. These consist of the following programs:

- *Parole* is a discretionary prison release, which allows an inmate who has been granted parole to serve the remainder of his or her prison sentence outside of the confines of the prison. Once released, the parolee is subject to strict conditions of supervision set by the FCOR. If a parolee is found to have violated the terms and conditions of his or her supervision, the FCOR may return the parolee to prison. As of June 30, 2018, there were 4,275 inmates who

²⁰ Section 119.071(4)(d)2.a.-t., F.S.

²¹ See for example, s. 119.071(4)(d)2.k., F.S., which makes exempt from public records requirements the home addresses, telephone numbers, places of employment, dates of birth, and photographs of current or former guardians ad litem, as defined in s. 39.820, F.S.; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such persons; and the names and locations of schools and day care facilities attended by the children of such persons.

²² There may be created by law a parole and probation commission with power to supervise persons on probation and to grant paroles or conditional releases to persons under sentences for crime. The qualifications, method of selection and terms, not to exceed six years, of members of the commission shall be prescribed by law. FLA. CONST., art. IV, s. 8(c) (1968).

²³ The commission retains its powers, duties, and functions with respect to the granting and revoking of parole and shall exercise powers, duties, and functions relating to investigations of applications for clemency as directed by the Governor and Cabinet. Section 20.32(1), F.S.

²⁴ *Id.*

²⁵ Sections 947.16, 947.1405, 947.149, 947.146, and 944.7431, F.S.

were eligible for parole and 448 releasees on parole supervision. In FY 2017-18, the FCOR made 1,499 parole determinations and granted parole to 14 inmates.²⁶

- *Conditional Release* is a non-discretionary release program and requires mandatory post-prison supervision for inmates who are sentenced for certain violent crimes and who have served a prior felony commitment at a state or federal correctional institution, or who are sentenced as habitual offenders, violent habitual offenders, violent career criminals, or designated sexual predators. The FCOR conducts revocation hearings when alleged violations are reported. If a conditional releasee is found to have violated the conditions of supervision, the FCOR may return the offender to prison. As of June 30, 2018, there were 2,936 releasees on conditional release supervision.²⁷
- *Conditional Medical Release* is discretionary release of an inmate recommended by the Department of Corrections, and accepted for supervision by the FCOR. Conditional medical release is available for inmates who are permanently incapacitated or terminally ill. This supervision can be revoked, and the offender returned to prison if the FCOR determines that a violation of the terms of supervision has occurred. Also, the FCOR may return the offender to custody if his or her medical or physical condition improves.²⁸
- *Control Release* was created by the Legislature in 1989 as a prison over-population management tool. The program is not currently operational, however the FCOR reports that it is supervising a small number of control releasees. As with the other supervision programs under the FCOR's authority, violations of supervision can result in an offender's return to prison.²⁹
- *Addiction Recovery Supervision* requires mandatory post-prison supervision for offenders released from a state correctional facility who are convicted of a crime committed on or after July 1, 2001, and have a history of substance abuse or addiction or have participated in any drug treatment, and have not been convicted of a disqualifying offense. If an offender is found to have violated the terms of supervision, the FCOR may return he or she to prison. During FY 2017-18, 1,046 offenders were placed in the program. As of June 30, 2018, there were 245 offenders on addiction recovery supervision.³⁰

The FCOR also acts as the investigative arm of the Governor and Cabinet, sitting as the Board of Executive Clemency (Clemency Board), in clemency matters.³¹ The forms of clemency include:

²⁶ Florida Commission on Offender Review, *2018 Annual Report*, available at <https://www.fcor.state.fl.us/docs/reports/Annual%20Report%202018%20WEB.pdf> (last viewed March 20, 2019). Section 947.16, F.S.

²⁷ Florida Commission on Offender Review, *2018 Annual Report*, available at <https://www.fcor.state.fl.us/docs/reports/Annual%20Report%202018%20WEB.pdf> (last viewed March 20, 2019). Section 947.1405, F.S.

²⁸ Florida Commission on Offender Review, *2018 Annual Report*, available at <https://www.fcor.state.fl.us/docs/reports/Annual%20Report%202018%20WEB.pdf> (last viewed March 20, 2019). Section 947.149, F.S.

²⁹ Florida Commission on Offender Review, *2018 Annual Report*, available at <https://www.fcor.state.fl.us/docs/reports/Annual%20Report%202018%20WEB.pdf> (last viewed March 20, 2019). Section 947.146, F.S.

³⁰ Florida Commission on Offender Review, *2018 Annual Report*, available at <https://www.fcor.state.fl.us/docs/reports/Annual%20Report%202018%20WEB.pdf> (last viewed March 20, 2019). Section 944.7431, F.S.

³¹ Section 947.13(e), F.S. Under the Rules of Executive Clemency, the FCOR may be tasked with reviewing or investigating clemency applications, and the FCOR may hold hearings in certain cases and make recommendations to the Clemency Board

full pardon; pardon without firearm authority; pardon for misdemeanor; commutation of sentence; remission of fines and forfeitures; specific authority to own, possess, or use firearms; restoration of civil rights; restoration of alien status under Florida law; and capital case (death penalty) reviews.³²

Every application which meets the requirements of the Rules of Executive Clemency may be referred to the FCOR for an investigation, report, and recommendation.³³ In commutation of sentence cases where a person is granted a Request for Review by the Governor and at least one member of the Clemency Board, the Clemency Coordinator may refer the case to the FCOR for a full investigation.³⁴

In FY 2017-18 the FCOR received 5,381 applications from offenders seeking clemency and 5,639 clemency cases were completed.³⁵ The FCOR reports that as of June 30, 2018 there were 22,746 pending applications.³⁶

School Administrators

School administrators have responsibility for and authority over school personnel and students associated with the administrator's school. The administrators' decisions, particularly those related to personnel standards issues and student discipline, can have a negative effect on personnel, students, or parents.

School administrators are defined as:

- School principals or school directors who are staff members performing the assigned activities as the administrative head of a school and to whom have been delegated responsibility for the coordination and administrative direction of the instructional and noninstructional activities of the school. This classification also includes career center directors.
- Assistant principals who are staff members assisting the administrative head of the school. This classification also includes assistant principals for curriculum and administration.³⁷

The school principal or director, and assistant principal as his or her duties are assigned, are responsible for supervising personnel, providing instructional leadership, and school administration and budgeting.³⁸

to consider in making its clemency decisions. Rules of Executive Clemency available at https://www.fcor.state.fl.us/docs/clemency/clemency_rules.pdf (last viewed March 19, 2019).

³² Florida Commission on Offender Review, *2018 Annual Report*, available at <https://www.fcor.state.fl.us/docs/reports/Annual%20Report%202018%20WEB.pdf> (last viewed March 20, 2019); Rules of Executive Clemency, available at https://www.fcor.state.fl.us/docs/clemency/clemency_rules.pdf (last viewed March 20, 2019).

³³ Rule 7, Rules of Executive Clemency, available at https://www.fcor.state.fl.us/docs/clemency/clemency_rules.pdf (last viewed March 20, 2019).

³⁴ Rule 8. B., Rules of Executive Clemency, available at https://www.fcor.state.fl.us/docs/clemency/clemency_rules.pdf (last viewed March 20, 2019).

³⁵ Florida Commission on Offender Review, *2018 Annual Report*, available at <https://www.fcor.state.fl.us/docs/reports/Annual%20Report%202018%20WEB.pdf> (last viewed March 20, 2019).

³⁶ *Id.*

³⁷ Section 1012.01(3)(c), F.S.

³⁸ Section 1012.28, F.S.

Although the school district superintendent may transfer instructional personnel throughout the district, school principals or directors have statutory authority to refuse to accept the placement or transfer of instructional personnel.³⁹

The school principal or director is generally in charge of discipline at his or her assigned school. The principal approves and prepares guidelines for the use of corporal punishment, according to school board policy.⁴⁰

Additionally, the principal may place a student who has been removed from the classroom by a teacher for disciplinary reasons in another appropriate classroom, in in-school suspension, or in a dropout prevention and academic intervention program or the principal may recommend the student for out-of-school suspension or expulsion, as appropriate. The student may be prohibited from attending or participating in school-sponsored or school-related activities as well.⁴¹

III. Effect of Proposed Changes:

Florida Commission on Offender Review

The bill amends s. 119.071(4)(d)2., F.S., to make exempt from public records requirements the home addresses, telephone numbers, dates of birth, and photographs of current or former commissioners or investigators of the FCOR, and their spouses and children. Spouses and children's names and places of employment, and children's schools and day care facilities are also made exempt by the bill.

A statement of public necessity related to this exemption appears in Section 2 of the bill. It states, in part, that the Legislature finds that the release of the personal and location information made exempt by the bill might place the current or former commissioners or investigators of the FCOR, their spouses and children in danger of physical and emotional harm from disgruntled persons who react contentiously to actions taken by FCOR personnel.

School Administrators

The bill amends s. 119.071(4)(d)2., F.S., to make exempt from public records requirements the home addresses, telephone numbers, and dates of birth, of school administrators as described in s. 1012.01(3)(c), F.S. Also made exempt are the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of school administrators and their children's schools and day care facilities.

Section 2 of the bill contains a statement of public necessity related to this exemption. It lists the many ways the efforts of school administrators may affect students, parents, and personnel in adverse ways. Therefore, the Legislature finds that the release of the personal identifying information and location information made exempt by the bill might place these school

³⁹ A principal may refuse to accept the placement or transfer of instructional personnel by the district school superintendent to his or her school unless the instructional personnel has a performance rating of effective or highly effective under s. 1012.34, F.S. Section 1012.28(6), F.S.

⁴⁰ Section 1003.32, F.S.

⁴¹ *Id.*

administrators and their families in danger of harm from disgruntled persons who react contentiously to actions taken by school administrators.

The exemptions from public records requirements provided in the bill are repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill is effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

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 bill creating or expanding an exemption to the public records requirements. This bill enacts a new exemption for the home addresses, telephone numbers, dates of birth, and photographs of current or former commissioners or investigators of the FCOR, and their spouses and children. Spouse's and children's names and places of employment, and children's schools and day care facilities are also made exempt by the bill.

Additionally, the bill enacts a new exemption for the home addresses, telephone numbers, and dates of birth, of school administrators as described in s. 1012.01(3)(c), F.S. Also made exempt are the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of school administrators and their children's schools and day care facilities.

Thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemptions created by the bill.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. One purpose of the law is to protect current and former commissioners and investigators of the FCOR, their spouses, and children from potential harm by disgruntled persons who react contentiously to actions taken by FCOR personnel. This bill exempts only the home addresses, telephone numbers, dates of birth, and photographs of current or former

commissioners or investigators of the FCOR, and their spouses and children. Additionally, their spouse's and children's names and places of employment, and children's schools and day care facilities are exempted from the public records requirements. This exemption does not appear to be broader than necessary to accomplish the purpose of the law.

The other purpose of the law is to protect school administrators and their families from danger of harm from disgruntled persons who react contentiously to actions taken by school administrators. This bill exempts only the home addresses, telephone numbers, and dates of birth, of school administrators as described in s. 1012.01(3)(c), F.S. Also made exempt are the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of school administrators and their children's schools and day care facilities. This exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None reported.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.071 of the Florida Statutes.

IX. Additional Information:

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

CS by Criminal Justice on March 25, 2019

The committee substitute changes the term Commission on Offender Review to *Florida* Commission on Offender Review to be consistent with the title of the commission in current law.

- B. **Amendments:**

None.