

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 203 Pub.Rec./Civilian Personnel Employed by Law Enforcement Agency
SPONSOR(S): Oversight, Transparency & Public Management Subcommittee, Zika
TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 248

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	15 Y, 0 N	Padgett	Hall
2) Oversight, Transparency & Public Management Subcommittee	13 Y, 0 N, As CS	Moore	Harrington
3) Judiciary Committee			

SUMMARY ANALYSIS

Current law provides an exemption from public records requirements for certain personal and location identification information, including home address, telephone number, and date of birth, of a variety of public employees, such as active or former sworn or civilian law enforcement personnel, firefighters, judges, state attorneys, public defenders, and tax collectors. The term "home address" is not currently defined. The lack of a statutory definition of the term "home address" has caused some confusion over the breadth of the public records exemption.

The bill defines the term "home address" to include the physical address of a home and other information which may be used to identify the location of a residence, including the parcel and plot identification numbers, legal property description, neighborhood name and lot number, GPS coordinates, and any other descriptive information which may reveal the home address.

The bill clarifies that the public records exemption for certain personal identification and location information that applies to sworn law enforcement personnel also applies to civilian personnel currently employed or formerly employed by a law enforcement agency.

The bill provides for repeal of the exemptions on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature. The bill provides a statement of public necessity as required by the Florida Constitution.

The bill may have a minimal fiscal impact on some clerks of court because it requires additional redactions to public records. Staff responsible for redacting the additional information may require additional training related to the expansion of the existing public records exemption.

The bill provides an effective date of July 1, 2019.

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.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for exemption from public records requirements provided the exemption passes by two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption (public necessity statement), and is no broader than necessary to meet its public purpose.¹

The Florida Statutes also address the public policy regarding access to government records. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt. Furthermore, the Open Government Sunset Review Act² provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose and the "Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."³ In addition, the exemption 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; or
- Protect trade or business secrets.⁴

Pursuant to s. 119.15(3), F.S., a new public records exemption or substantial amendment of an existing public records exemption is repealed on October 2 of the fifth year following enactment, unless the Legislature reenacts the exemption.

Agency Personnel Information

Section 119.071(4)(d)2., F.S., provides exemptions from public records requirements for certain personal identifying and location information of a variety of public employees including, but not limited to, active or former:

- Sworn or civilian law enforcement personnel,
- Correctional officers,
- Firefighters,
- Judges,
- State attorneys and assistant state attorneys,
- Public defenders and assistant public defenders, and
- Tax collectors.

The specific information that is protected for each employee group varies, but generally includes the employees' home addresses, telephone numbers, dates of birth, and photographs. The exemptions also protect certain information related to the employees' spouses and children.

¹ Art. I, s. 24(c), Fla. Const.

² S. 119.15, F.S.

³ S. 119.15(6)(b), F.S.

⁴ *Id.*

The term “telephone number” is defined to include home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communication devices.⁵

However, the term “home address” is not defined. The lack of a definition has caused some confusion over the breadth of the public records exemption. While it is clear the numerical address is exempt from disclosure, additional information which can lead to the location of a property has not been consistently redacted. For example, deeds, mortgages, contractor liens, and other documents are readily available in official records maintained by the clerk of court and searchable online. While the physical address may be redacted from a mortgage document, other information such as the parcel and plot identification numbers and legal property description may remain unredacted. This property information can be cross-referenced with information available from the property appraiser’s office to accurately determine the location of the residence of a person whose home address is exempt under current law.

Under current law, a majority of the public records exemptions for different public employee groups listed in s. 119.071(4)(d)2., F.S., are scheduled to be repealed between 2019 and 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

Effect of Proposed Changes

The bill defines the term “home address” to include the physical address of a home and other information which may be used to identify the location of a residence, including the parcel and plot identification numbers, legal property description, neighborhood name and lot number, GPS coordinates, and any other descriptive information which may reveal the home address.

The bill also clarifies that the public records exemption for certain personal identification and location information that applies to sworn law enforcement personnel also applies to civilian personnel who are currently employed or were formerly employed by a law enforcement agency.

The bill authorizes an individual whose personal identification and location information is exempt to submit a written request to a custodial agency for the release of his or her exempt information. The request must specify the information to be released and the party that is authorized to receive the information. Upon receipt of the written request, the agency is required to release the information to the specified party.

The bill synchronizes the repeal dates for the public records exemptions for all personnel listed in s. 119.071(4)(d)2., F.S., and provides for repeal on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill provides a statement of public necessity as required by the Florida Constitution, stating that the public records exemptions are necessary because the types of personnel and family members included in s. 119.0701(4)(d)2., F.S., are at a heightened risk of physical or emotional harm from disgruntled individuals who have contentious reactions to actions taken by such personnel or whose business or professional practices have come under the scrutiny of such personnel. The statement further provides that the descriptive property information which is not currently exempt may be used to locate home addresses which are otherwise exempt.

In addition, the statement of public necessity specifies that the public records exemption for civilian personnel who are currently employed or were formerly employed by a law enforcement agency is necessary because such personnel often come into close contact with individuals who may be a threat to them, or who might seek revenge against them and their spouses and children.

⁵ S.119.071(4)(d)1., F.S.
STORAGE NAME: h0203c.OTM
DATE: 2/20/2019

B. SECTION DIRECTORY:

Section 1: Amends s. 119.071, F.S., relating to general exemptions from inspection or copying of public records.

Section 2: Provides a public necessity statement.

Section 3: Provides an effective date of July 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

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 clerks of court who are not currently redacting the information captured under the definition of “home address” as provided in the bill. The costs, however, would likely be absorbed in existing resources as they are part of the day-to-day responsibilities of the clerks.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote Requirement

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

Public Necessity Statement

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

Breadth of Exemption

Article I, section 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. The bill expands existing public record exemptions only to the extent necessary to remain consistent with the original intent of the exemptions. As such, the exemptions do not appear to be in conflict with the constitutional requirement that it be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 20, 2019, the Oversight, Transparency & Public Management Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment requires a custodial agency to release an individual's exempt information to a specified party when the individual submits a written request to the agency.

This analysis is drafted to the committee substitute as approved by the Oversight, Transparency & Public Management Subcommittee.