

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 Governmental Oversight and Accountability

BILL: CS/SB 248

INTRODUCER: Criminal Justice Committee and Senator Hooper and others

SUBJECT: Public Records/Civilian Personnel Employed by a Law Enforcement Agency

DATE: March 5, 2019 **REVISED:** _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------|----------------|-----------|--------------------|
| 1. | <u>Erickson</u> | <u>Jones</u> | <u>CJ</u> | <u>Fav/CS</u> |
| 2. | <u>Hackett</u> | <u>McVaney</u> | <u>GO</u> | <u>Pre-meeting</u> |
| 3. | _____ | _____ | <u>RC</u> | _____ |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 248 amends s. 119.071(4)(d), F.S., which contains several public records exemptions for home addresses and various other information identifying specified agency personnel and their families.

Current law provides an exemption from public disclosure for certain personal and location identification information, including home addresses, for various public employees, such as law enforcement officers, firefighters, judges, state attorneys, public defenders, and various investigators. However, the term “home addresses” is currently undefined and has been interpreted differently by the various custodians of the public records. The bill defines the term “home addresses” to include various location information, including the physical address, the mailing address, the street address, the parcel identification number, the plot identification number, the legal description of the property, GPS coordinates, and other descriptive property information that may reveal the location of the residence. This definition only applies to the exemptions codified in s. 119.091(4)(d), F.S., relating to public employees.

The bill also amends s. 119.071(4)(d)2.a., F.S., to create a new public records exemption for:

- Home addresses, telephone numbers, dates of birth, and photographs of active or former civilian personnel employed by a law enforcement agency;
- Names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and

- Names and locations of schools and day care facilities attended by the children of such personnel.

The bill provides a statement of public necessity as required by the State Constitution.

Current law repeals various exemptions codified in s. 119.071(4)(d), F.S., in 2019 through 2022, and subjects those exemptions to the Open Government Sunset Review Act. The bill eliminates all currently scheduled repeals of those exemptions and repeals all exemptions codified in s. 119.071(4)(d) on October 2, 2024, subject to the Open Government Sunset Review Act.

Because the bill creates a new public records exemption and expands other public records exemptions, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

The bill takes effect July 1, 2019.

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

[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.

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).

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

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

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.”

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.).

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

Public Records Exemptions for Specified Agency Personnel and Their Families
(s. 119.071(4)(d), F.S)

Provisions in s. 119.071(4)(d), F.S., exempt from public disclosure certain personal identification and location information of specified agency personnel and their spouses and children. Personnel covered by these exemptions include:

- Active or former sworn or civilian law enforcement personnel, including correctional and correctional probation officers, certain investigative personnel of the Department of Children and Families and Department of Health, and certain personnel of the Department of Revenue and local governments involved in revenue collection and revenue and child support enforcement;²⁰
- Certain current or former nonsworn investigative personnel of the Department of Financial Services;²¹
- Certain current or former nonsworn investigative personnel of the Office of Financial Regulation's Bureau of Financial Investigations;²²
- Current or former certified firefighters;²³
- Current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges;²⁴
- Current or former state attorneys, assistant state attorneys, statewide prosecutors, and assistant statewide prosecutors;²⁵
- General magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers;²⁶
- Certain current or former human resource, labor relations, or employee relations directors, assistant directors, managers, and assistant managers of any local government agency or water management district;²⁷
- Current or former code enforcement officers;²⁸
- Current or former guardians ad litem;²⁹

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.

²⁰ Section 119.071(4)(d)2.a., F.S.

²¹ Section 119.071(4)(d)2.b., F.S.

²² Section 119.071(4)(d)2.c., F.S.

²³ Section 119.071(4)(d)2.d., F.S.

²⁴ Section 119.071(4)(d)2.e., F.S.

²⁵ Section 119.071(4)(d)2.f., F.S.

²⁶ Section 119.071(4)(d)2.g., F.S.

²⁷ Section 119.071(4)(d)2.h., F.S.

²⁸ Section 119.071(4)(d)2.i., F.S.

²⁹ Section 119.071(4)(d)2.j., F.S.

- Current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, juvenile justice detention officers I and II, juvenile justice detention officer supervisors, juvenile justice residential officers, juvenile justice residential officer supervisors I and II, juvenile justice counselors, juvenile justice counselor supervisors, human services counselor administrators, senior human services counselor administrators, rehabilitation therapists, and social services counselors of the Department of Juvenile Justice;³⁰
- Current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel;³¹
- Current or former investigators or inspectors of the Department of Business and Professional Regulation;³²
- County tax collectors;³³
- Certain current or former personnel of the Department of Health;³⁴
- Certain current or former impaired practitioner consultants who are retained by an agency and certain current or former employees of an impaired practitioner consultant;³⁵
- Current or former certified emergency medical technicians and paramedics;³⁶
- Certain current or former personnel employed in an agency's office of inspector general or internal audit department;³⁷
- Current or former directors, managers, supervisors, nurses, and clinical employees of an addiction treatment facility;³⁸ and
- Current or former directors, managers, supervisors, and clinical employees of certain child advocacy centers.³⁹

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.⁴⁰ Further, all of these exemptions have retroactive application.⁴¹

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, telephone numbers, and dates of birth of the specified personnel. However, exemptions are not uniform for names, photographs, and places of employment.

Section 119.071(4)(d)2., F.S., also exempts 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 names and locations of

³⁰ Section 119.071(4)(d)2.k., F.S.

³¹ Section 119.071(4)(d)2.l., F.S.

³² Section 119.071(4)(d)2.m., F.S.

³³ Section 119.071(4)(d)2.n., F.S.

³⁴ Section 119.071(4)(d)2.o., F.S.

³⁵ Section 119.071(4)(d)2.p., F.S.

³⁶ Section 119.071(4)(d)2.q., F.S.

³⁷ Section 119.071(4)(d)2.r., F.S.

³⁸ Section 119.071(4)(d)2.s., F.S.

³⁹ Section 119.071(4)(d)2.t., F.S.

⁴⁰ Section 119.071(4)(d)3., F.S.

⁴¹ Section 119.071(4)(d)4., F.S.

children's schools and day care facilities. However, exemptions are not uniform for names, dates of birth, and photographs of family members.

In addition, some of the provisions exempt information from ch. 119, F.S., but not from Article I, s. 24(a), of the State 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 Open Government Sunset Review sunset dates.

Law Enforcement and Other Specified Personnel (s. 119.071(4)(d)2.a., F.S.)

The public record exemption in s. 119.071(4)(d)2.a., F.S., covers current or former personnel from several agencies engaged in law enforcement, corrections, certain crime-related investigations or child abuse or neglect investigations, revenue collection, and revenue and child support enforcement. Specifically, the exemption covers:

- Home addresses, telephone numbers, dates 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 whose duties are to support the investigation of child abuse or neglect, and
 - Personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement;
- Names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and
- Names and locations of schools and day care facilities attended by the children of such personnel.

III. Effect of Proposed Changes:

The bill amends s. 119.071(4)(d), F.S., which contains several public records exemptions for home addresses and various other information identifying specified agency personnel and their families. The term "home addresses" is currently undefined. The bill expands these exemptions by defining the term "home addresses" to include various location information.

The bill defines the term "home addresses" to mean "the dwelling location at which an individual resides and includes the physical address, mailing address, street address, parcel identification number, plot identification number, legal property description, neighborhood name and lot number, GPS coordinates, and any other descriptive property information that may reveal the home address."

The bill also amends s. 119.071(4)(d)2.a., F.S., to create a new public records exemption for:

- Home addresses, telephone numbers, dates of birth, and photographs of active or former civilian personnel employed by a law enforcement agency;

- Names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and
- Names and locations of schools and day care facilities attended by the children of such personnel.

The bill provides a statement of public necessity as required by the State Constitution. Currently, s. 119.071(4)(d), F.S., exempts from public disclosure home addresses of certain agency personnel and their families. The public necessity statement states that the term “home addresses” needs to be defined “so that the safety and privacy of various personnel and their family members are not compromised.” This statement notes

[t]he Legislature has previously recognized that such personnel and their family members are at a heightened risk of physical and emotional harm from disgruntled individuals who have contentious reactions to actions taken by such personnel, or whose business or professional practices have come under scrutiny of such personnel, and, as a result, has enacted various public records exemptions.⁴²

Further, the public necessity statement indicates “the current exemptions do not provide protection for various forms of descriptive property information that may be used on its own, or in conjunction with other information, to reveal the home addresses that otherwise should be protected from public disclosure.”

The public necessity statement also identifies a similar public safety rationale for exempting various identifying information and location information (see discussion, *supra*) regarding civilian personnel of law enforcement agencies and their families:

The civilian personnel of law enforcement agencies perform a variety of important duties that ensure public safety and welfare and encourage safe and secure communities. As a result of such duties, these civilian personnel often come into close contact with individuals who not only may be a threat to those personnel, but who might also seek to take revenge against them by harming their spouses and children.

The bill provides that the exemptions in s. 119.071(4)(d), F.S., are subject to the Open Government Sunset Review Act, and stand repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.⁴³

Because the bill creates a new public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

The bill takes effect on July 1, 2019.

⁴² For example, s. 119.071(4)(d), F.S., exempts from public disclosure telephone numbers of certain agency personnel and their families. In 2012, the Legislature defined “telephone number” to include personal pager numbers because personnel and their families “could potentially be identified, located, and put at risk” if personal pager numbers were subject to public disclosure. Ch. 2012-149, Laws of Fla.

⁴³ The bill also removes current sunset dates relevant to particular exemptions in s. 119.071(4)(d), F.S.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

Not applicable. The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

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. The bill expands several existing exemptions and creates a new exemption. Therefore, 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 that creates or expands 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.

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.

The public necessity statement identifies the public safety rationales for defining "home addresses" for purposes of the exemptions in s. 119.071(4)(d), F.S., and for creating an exemption in this paragraph for various identifying information and location information regarding civilian personnel of law enforcement agencies and their families. (See "Effect of Proposed Changes" section of this analysis.) The exemptions are based upon public safety rationales which have supported previous exemptions relating to information identifying agency personnel and their families. Further, an exemption only occurs upon written request of a covered employee or his or her agency. For these reasons, the exemptions do not appear broader than necessary to accomplish the stated 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:

Any individual or business that currently obtains location information that is covered by the definition of “home addresses” in the bill will not be able to obtain that information from the records custodian if the employee or the employee’s agency requests that the home address information be exempted.

C. Government Sector Impact:

Indeterminate. Agencies or records custodians may incur costs to comply with requests to remove location information covered by the definition of “home addresses” in the bill if that information is currently available to the public on their websites. If a record requested by the public contains information that is subject to public disclosure and home address information that cannot be publicly disclosed, the records custodian may incur costs in redacting the home address information.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.071 of the Florida Statutes.

IX. Additional Information:

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

CS by Criminal Justice on February 11, 2019:

The Committee Substitute:

- Clarifies in the title of the bill that the bill is expanding exemptions from public records requirements for agency personnel information by defining the term “home addresses.”

- Changes the year of the sunset date for the public records exemptions from 2023 to 2024.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
