

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 629 Pub. Rec./Agency Personnel Information/Dates of Birth

**SPONSOR(S):** Hooper

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 916

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Naf	Williamson
2) State Affairs Committee			

### SUMMARY ANALYSIS

Current law provides public record exemptions for identification and location information of certain current and former public employees and their spouses and children. Examples of protected information include:

- Home addresses and telephone numbers of the public employees;
- Home addresses, telephone numbers, and places of employment of spouses and children of the public employees; and
- Names and locations of schools and day care facilities attended by children of the public employees.

The bill expands the public record exemptions for such public employees to include the dates of birth of the public employees and of their spouses and children.

The bill also creates a definition for “telephone numbers” and specifies that the information of sworn and civilian law enforcement personnel and their spouses and children is exempt from public record requirements.

The bill provides for repeal of the exemptions on October 2, 2017, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

**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 current 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 Law

Article I, s. 24(a) of the State 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 the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.<sup>1</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. Furthermore, the Open Government Sunset Review Act<sup>2</sup> 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:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects 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.
- Protects trade or business secrets.

###### Public Record Exemptions for Identification and Location Information

Current law provides public record exemptions for identification and location information of certain current and former public employees and their spouses and children.<sup>3</sup> Public employees covered by these exemptions include:

- Law enforcement, including correctional, and specified investigatory personnel;<sup>4</sup>
- Firefighters;<sup>5</sup>
- Justices and judges;<sup>6</sup>
- Local and statewide prosecuting attorneys;<sup>7</sup>
- Magistrates, administrative law judges, and child support hearing officers;<sup>8</sup>
- Local government agency and water management district human resources administrators;<sup>9</sup>
- Code enforcement officers;<sup>10</sup>
- Guardians ad litem;<sup>11</sup>
- Specified Department of Juvenile Justice Personnel;<sup>12</sup> and

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<sup>1</sup> Section 24(c), Art. I of the State Constitution.

<sup>2</sup> Section 119.15, F.S.

<sup>3</sup> See s. 119.071(4)(d), F.S.

<sup>4</sup> See s. 119.071(4)(d)1.a., F.S.

<sup>5</sup> See s. 119.071(4)(d)1.b., F.S.

<sup>6</sup> See s. 119.071(4)(d)1.c., F.S.

<sup>7</sup> See s. 119.071(4)(d)1.d., F.S.

<sup>8</sup> See s. 119.071(4)(d)1.e., F.S. This exemption applies only if the magistrate, administrative law judge, or child support hearing officer provides a written statement that he or she has made reasonable efforts to protect such information from being accessible through other means available to the public.

<sup>9</sup> See s. 119.071(4)(d)1.f., F.S.

<sup>10</sup> See s. 119.071(4)(d)1.g., F.S.

<sup>11</sup> See s. 119.071(4)(d)1.h., F.S. This exemption applies only if the guardian ad litem provides a written statement that he or she has made reasonable efforts to protect such information from being accessible through other means available to the public.

- Public defenders and criminal conflict and civil regional counsel.<sup>13</sup>

Although the types of exempt information vary, the following information is exempt<sup>14</sup> from public record requirements for all the above-listed public employees:

- Home addresses and telephone numbers<sup>15</sup> of the public employees;
- Home addresses, telephone numbers, and places of employment of the spouses and children of the public employees; and
- Names and locations of schools and day care facilities attended by the children of the public employees.

If exempt information is held by an agency<sup>16</sup> that is not the employer of the public employee, the public employee must submit a written request to that agency to maintain the public record exemption.<sup>17</sup>

## Effect of Bill

The bill expands the public record exemptions for identification and location information of certain public employees to include dates of birth of the public employees and of their spouses and children.

The bill also specifies that the public record exemption for identification and location information of law enforcement personnel applies to sworn and civilian law enforcement personnel.

The bill defines the term “telephone numbers” to include home telephone numbers; personal cellular telephone numbers; personal pager telephone numbers; telephone numbers associated with personal communications devices; and telephone numbers associated with agency cellular telephones, pagers, or other personal communications devices issued or assigned to agency personnel. It specifies that the term does *not* include agency contact telephone numbers that the agency commonly makes available to the general public.

The bill provides for repeal of the exemptions on October 2, 2017, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.<sup>18</sup>

## B. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., relating to public record exemptions for identification and location information of certain public employees.

Section 2 provides a public necessity statement.

Section 3 amends s. 409.2577, F.S., to conform a cross-reference.

Section 4 provides an effective date of October 1, 2012.

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<sup>12</sup> See s. 119.071(4)(d)1.i., F.S.

<sup>13</sup> See s. 119.071(4)(d)1.j., F.S.

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

<sup>15</sup> “Telephone number” is not currently defined in these public record exemptions.

<sup>16</sup> Section 119.011(2), F.S., defines “agency” to mean 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.

<sup>17</sup> Section 119.071(4)(d)2., F.S.

<sup>18</sup> Section 24(c), Art. I of the State Constitution.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

See FISCAL COMMENTS.

### 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 create a minimal fiscal impact on agencies, because staff responsible for complying with public records request could require training related to the changes in the public record exemptions. The costs would be absorbed, however, as they are part of the day-to-day responsibilities of the agency.

## 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 expenditure 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, 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 current 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 current 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 public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill's public necessity statement provides that telephone and pager numbers must be protected to avoid identification and location of the public employees and their spouses and children, but does not explain how an agency telephone or pager number could lead to such identification and location.

#### B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

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

The bill does not state that the expanded public record exemptions apply retroactively. The Supreme Court of Florida ruled that a public record exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied retroactively.<sup>19</sup>

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

Not applicable.

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<sup>19</sup> *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d 373 (Fla. 2001).