

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1089 Pub. Rec./Investigators & Inspectors/DBPR

**SPONSOR(S):** Government Operations Subcommittee; Adkins

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 906

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	14 Y, 0 N, As CS	Williamson	Williamson
2) State Affairs Committee		Williamson	Hamby

### 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 current or former investigators or inspectors of the Department of Business and Professional Regulation and of their spouses and children. The bill provides for repeal of the exemption 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 or expanded public record or public meeting exemption. The bill expands a current public record exemption; 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 or 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>

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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.

- Specified Department of Juvenile Justice Personnel;<sup>12</sup> and
- 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 of 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>

#### Department of Business and Professional Regulation

The Department of Business and Professional Regulation (department) is delegated responsibility for both professional regulation and business regulation. The department's division of regulation monitors more than 20 professions and related businesses to ensure that those professions and businesses comply with the rules and standards set by the Legislature, professional boards, and the department. Department inspectors and investigators are required to investigate any complaint that is received in writing, to determine if it is legally sufficient, to review whether it is either signed by the complainant or, if not signed, to determine if it is believed to be true after an initial inquiry by the agency.<sup>18</sup> In addition, department inspectors and investigators are required to complete other routine inspections by the department.<sup>19</sup> In many instances the inspectors and investigators have the authority to immediately issue a citation to the offending party.<sup>20</sup> The department not only conducts and prosecutes violations of offending agency rules and regulations, but the agency also has a duty to notify the proper prosecuting authority when there is a criminal violation of any statute related to the practice of a profession by the department.<sup>21</sup>

Presently, the home addresses, telephone numbers, and photographs of current or former investigators and inspectors of the department; 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 of such personnel are not exempt from public disclosure.<sup>22</sup> The department's Alcoholic Beverages and Tobacco division employs sworn officers

<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 455.225(1)(a), F.S.

<sup>19</sup> See Rule 61G5-30.001, F.A.C.

<sup>20</sup> See Rule 61G5-30.004, F.A.C.

<sup>21</sup> Section 455.2277, F.S.

<sup>22</sup> The Department of Business and Professional Regulation does not routinely collect the names and locations of the schools and day care facilities attended by the children of department investigators and inspectors. However, the department has expressed an interest in having this information part of the exemption in the event that the information has been made part of the personnel file or case file inadvertently. Otherwise, the department is concerned that this information could be available to the public when completing a public record request.

(agents) to conduct investigations for that division. Agents can complete investigations in cooperation with investigators or inspectors or with other agents. However, only the agents who are sworn law enforcement officers are protected under the current exemption for law enforcement personnel in s. 119.017(4)(d)1.a., F.S.

The department's inspectors and investigators have reported incidents of threats and abuse. According to the department, after issuing a citation in an Orlando salon, an investigator received numerous threatening phone calls to her home telephone number. The threats did not cease until the investigator reported the threats to local law enforcement.

In 2006, an Orlando area investigator was verbally abused when a licensee told her that he wished harm upon her before the end of the day.<sup>23</sup> In 2007, and then again in 2008, another Orlando investigator had her state vehicle vandalized while it was parked outside her home at night.<sup>24</sup>

Two Jacksonville investigators received threatening calls to their home numbers after conducting investigations. In 2008, a Jacksonville inspector had to have his personal cell phone number changed after it had been compromised by a private investigator. Both investigators have since had their telephone numbers changed to unlisted. In 2007, an inspector in Ft. Myers arrived home to find a subject of one of her investigations sitting on her front doorstep. Another inspector from the same regional office had a convicted felon call her at home in late 2008.<sup>25</sup>

The department's Miami regional office has reported multiple incidents as well. On one occasion, an investigator noticed one of the subject's of his investigation, an investigation that resulted in the subject's arrest, driving slowly past his house. Another had numerous subjects of investigations knock on their front door after their home address had been posted at the department. Another had several threatening phone calls on her cell phone, and threats to both her family and children.<sup>26</sup>

## Effect of Bill

The bill expands the current public record exemption for identification and location information of certain public employees to include current or former investigators or inspectors of the Department of Business and Professional Regulation (department). The following information is exempt from public record requirements if such investigator or inspector has made reasonable efforts to protect the information from being accessible through other means available to the public:

- The home addresses, telephone numbers, and photographs of current or former investigators or inspectors of the department.
- The names, home addresses, telephone numbers, and places of employment of the spouses and children of such investigators or inspectors.
- The names and locations of schools and day care facilities attended by the children of such investigators or inspectors.

If exempt information is held by an agency that is not the employer of such investigator or inspector, then the investigator or inspector must submit to that agency a written request to maintain the public record exemption.

The bill provides for repeal of the exemption 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>27</sup>

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<sup>23</sup> See Recommended Order in *Dept. Business and Professional Regulation v. Tony's Hair Styling*, DOAH Case No. 05-007711, where the formal hearing found the licensee guilty of interfering with an agency inspection.

<sup>24</sup> The Florida Senate Bill Analysis and Fiscal Impact Statement for SB 906 by the Regulated Industries Committee, January 26, 2012, at 6.

<sup>25</sup> *Id.* at 6.

<sup>26</sup> *Id.* at 6 and 7.

<sup>27</sup> Section 24(c), Art. I of the State Constitution.

**B. SECTION DIRECTORY:**

Section 1 amends s. 119.071, F.S., to expand the public record exemption for identification and location information of certain public employees and their spouses and children.

Section 2 provides a public necessity statement.

Section 3 provides an effective date of upon becoming a law.

**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 record requests 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 or expanded 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.

**B. RULE-MAKING AUTHORITY:**

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

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

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 31, 2012, the Government Operations Subcommittee adopted an amendment and reported the bill favorably with committee substitute. The amendment changes the effective date of the bill to provide that it will take effect upon becoming a law.

The analysis is drafted to the committee substitute as passed by the Government Operations Subcommittee.