

HOUSE OF REPRESENTATIVES FINAL BILL ANALYSIS

BILL #:	CS/CS/HB 1089 (CS/SB 906)	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	State Affairs Committee; Government Operations Subcommittee; Adkins (Hays)	115 Y's	0 N's
COMPANION BILLS:	CS/SB 906	GOVERNOR'S ACTION:	Pending

SUMMARY ANALYSIS

CS/CS/HB 1089 passed the House on February 23, 2013, and subsequently passed the Senate on March 2, 2012.

The bill creates a public record exemption for identification and location information of county tax collectors and current or former investigators or inspectors of the Department of Business and Professional Regulation, and their spouses and children.

Current law provides public record exemptions for identification and location information of certain current and former public employees and their spouses and children. The bill expands the public record exemptions for such public employees to include county tax collectors and current or former investigators or inspectors of the Department of Business and Professional Regulation (department), and their spouses and children.

Specifically, the following information is exempt from public record requirements if a county tax collector or investigator or inspector has made reasonable efforts to protect the information from being accessible through other means available to the public:

- The home address and telephone number of the county tax collector.
- The home address, telephone number, and photograph of the current or former investigator or inspector of the department.
- The name, home address, telephone number, and place of employment of the spouse and children of such tax collector or investigator or inspector.
- The name and location of schools and day care facilities attended by the children of such tax collector or investigator or inspector.

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.

The bill could create a minimal fiscal impact on state and local governments, 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.

Subject to the Governor's veto powers, the effective date of the bill is upon becoming a law.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF 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.¹

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 Act² 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.³ Examples of public employees covered by these exemptions include law enforcement personnel, firefighters, local government personnel who are responsible for revenue collection and enforcement or child support enforcement, justices and judges, and local and statewide prosecuting attorneys.

Although the types of exempt information vary, the following information is exempt⁴ from public record requirements for all of the above-listed public employees:

- Home addresses and telephone numbers 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.

¹ Section 24(c), Art. I of the State Constitution.

² See s. 119.15, F.S.

³ See s. 119.071(4)(d), F.S.

⁴ 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).

If exempt information is held by an agency⁵ 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.⁶

County Tax Collectors

The State Constitution requires a tax collector to be elected by the electors of a county, for a term of four years, unless otherwise provided by county charter or special law.⁷ The tax collector has the authority and obligation to collect all taxes as shown on the tax roll by the date of delinquency or to collect delinquent taxes, interest, and costs, by sale of tax certificates on real property and by seizure and sale of personal property. The tax collector may perform such duties by use of contracted services or products or by electronic means. The use of contracted services, products, or vendors does not diminish the responsibility or liability of the tax collector to perform his or her duties.⁸

A county tax collector may establish one or more branch offices. The tax collector may hire staff and equip such branch offices to conduct state business, or, if authorized to do so by resolution of the county governing body, conduct county business.⁹

Currently, the home addresses, telephone numbers, social security numbers, and photographs of personnel of the Department of Revenue or local governments, whose responsibilities include revenue collection and enforcement or child support enforcement, are exempt from public record requirements. In addition, the home addresses, telephone numbers, social security numbers, photographs, 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 exempt from public record requirements.¹⁰ It is unclear whether the current exemption includes county tax collectors.

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.¹¹ In addition, department inspectors and investigators are required to complete other routine inspections by the department.¹² In many instances the inspectors and investigators have the authority to immediately issue a citation to the offending party.¹³ 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.¹⁴

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

⁵ 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.

⁶ Section 119.071(4)(d)2., F.S.

⁷ See s. 1, Art. VIII of the State Constitution.

⁸ Section 197.332(1), F.S.

⁹ Section 197.332(2), F.S.

¹⁰ See s. 119.071(4)(d)1.a., F.S.

¹¹ Section 455.225(1)(a), F.S.

¹² See Rule 61G5-30.001, F.A.C.

¹³ See Rule 61G5-30.004, F.A.C.

¹⁴ Section 455.2277, F.S.

and day care facilities attended by the children of such personnel are not exempt from public disclosure.¹⁵ The department's Division of Alcoholic Beverages and Tobacco employs sworn officers (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.

Effect of the Bill

Public Record Exemption: County Tax Collector

The bill expands the current public record exemption for identification and location information of certain public employees to include county tax collectors and their spouses and children. The following information is exempt from public record requirements if such tax collector has made reasonable efforts to protect the information from being accessible through other means available to the public:

- The home address and telephone number of the county tax collector.
- The name, home address, telephone number, and place of employment of the spouse and children of such tax collector.
- The name and location of schools and day care facilities attended by the children of such tax collector.

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

Public Record Exemption: Department of Business and Professional Regulation

The bill further 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 address, telephone number, and photograph of the current or former investigator or inspector of the department.
- The name, home address, telephone number, and place of employment of the spouse and children of such investigator or inspector.
- The name and location of schools and day care facilities attended by the children of such investigator or inspector.

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.

Open Government Sunset Review

The bill provides for repeal of the exemptions on October 2, 2017, unless reviewed and saved from repeal by the Legislature.

Public Necessity Statement

The bill provides a statement of public necessity as required by the State Constitution.¹⁶

¹⁵ 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.

¹⁶ See s. 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 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.