

**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 Governmental Oversight and Accountability Committee

BILL: CS/SB 1282

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Fasano

SUBJECT: Public Records/Law Enforcement and Firefighters

DATE: April 6, 2010                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Naf	Wilson	GO	Fav/CS
2.			WPSC	
3.			RC	
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

Current law provides public-records exemptions for specified personal identifying information relating to law enforcement personnel, firefighters, and their respective spouses.<sup>1</sup> This bill expands those exemptions to protect additional types of information pertaining to those personnel and their families.

The exemptions are subject to legislative review and repeal under the Open Government Sunset Review Act<sup>2</sup>. The bill provides a public necessity statement as required by the State Constitution.

Because this bill expands existing public-records exemptions, it requires a two-thirds vote of each house of the Legislature for passage.

This bill substantially amends s. 119.071(4)(d), F.S.

<sup>1</sup> Section 119.071(4)(d)1.a., b., F.S.

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

## II. Present Situation:

### Florida's Public-Records Laws

Florida has a long history of providing public access to the records of governmental and other public entities. The Legislature enacted its first law affording access to public records in 1892. In 1992, Florida voters approved an amendment to the State Constitution which raised the statutory right of access to public records to a constitutional level.

Section 24(a), Art. I, of the State Constitution, provides that:

Every person has the right to inspect or copy any public records made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

The Public Records Law is contained in chapter 119, F.S., and specifies conditions under which the public must be given access to governmental records. Section 119.07(1)(a), F.S., provides that every person who has custody of a public record<sup>3</sup> must permit the record to be inspected and examined by any person, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record. Unless specifically exempted, all agency<sup>4</sup> records are to be available for public inspection.

Section 119.011(12), F.S., defines the term "public record" to include 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. The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are "intended to perpetuate, communicate, or formalize knowledge."<sup>5</sup> All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.<sup>6</sup>

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<sup>3</sup> Section 119.011(12), F.S., defines "public records" to include "all documents, papers, letters, maps, books, tapes, photographs, film, 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."

<sup>4</sup> Section 119.011(2), F.S., defines "agency" as "...any state, county, district, authority, or municipal officer, department, division, 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>5</sup> *Shevin v. Byron, Harless, Shafer, Reid, and Assocs., Inc.*, 379 So. 2d 633, 640(Fla. 1980).

<sup>6</sup> *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

Only the Legislature is authorized to create exemptions to open government requirements.<sup>7</sup> Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.<sup>8</sup> A bill enacting an exemption<sup>9</sup> may not contain other substantive provisions although it may contain multiple exemptions relating to one subject.<sup>10</sup>

There is a difference between records that the Legislature exempts from public inspection and those that the Legislature makes confidential and exempt from public inspection. If a record is made confidential with no provision for its release so that its confidential status will be maintained, such record may not be released by an agency to anyone other than the person or entities designated in the statute.<sup>11</sup> If a record is simply exempt from mandatory disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.<sup>12</sup>

### **Open Government Sunset Review Act**

The Open Government Sunset Review Act<sup>13</sup> provides for the systematic review of an exemption from the Public Records Act in the fifth year after its enactment. The act states that an exemption may be created, revised, or maintained only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves.<sup>14</sup> An identifiable public purpose is served if the exemption meets one of three specified criteria and if 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.<sup>15</sup> An exemption meets the statutory criteria if it:

- 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 information of a sensitive personal nature concerning individuals, the release of which ... would be defamatory ... or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which ... would injure the affected entity in the marketplace.<sup>16</sup>

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<sup>7</sup> Article I, s. 24(c) of the State Constitution.

<sup>8</sup> *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So.2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

<sup>9</sup> Section 119.15(4)(b), F.S., provides that an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

<sup>10</sup> Section 24(c), art. I of the State Constitution

<sup>11</sup> Attorney General Opinion 85-62, August 1, 1985.

<sup>12</sup> *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5<sup>th</sup> DCA), review denied, 589 So.2d. 289 (Fla. 1991).

<sup>13</sup> Section 119.15, F.S.

<sup>14</sup> Section 119.15(6)(b), F.S.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

The act also requires the Legislature to consider six questions that go to the scope, public purpose, and necessity of the exemption.<sup>17</sup>

### **Current Exemptions in Section 119.071(4)(d), Florida Statutes, Pertaining to Agency Personnel**

Section 119.071(4)(d), F.S., currently provides public-records exemptions for specified personal identifying and locating information of the following current and former agency personnel, as well as for specified personal identifying and locating information of their spouses and children:

- Law enforcement personnel;
- Certified firefighters;
- Justices and judges;
- Local and statewide prosecuting attorneys;
- Magistrates, administrative law judges, and child support hearing officers;
- Local government agency and water management district human resources administrators;
- Code enforcement officers;
- Guardians ad litem; and
- Specified Department of Juvenile Justice personnel.

Although there is some inconsistency among the types of information that are exempted, the following information is protected in all of the above-listed exemptions:

- The home addresses and telephone numbers of the agency personnel;
- The home addresses, telephone numbers, and places of employment of the spouses and children of the agency personnel; and
- The names and locations of schools and day care facilities attended by the children of the agency personnel.

The following information relating to active or former law enforcement personnel, including correctional and correctional probation officers, personnel of the Department of Children and Family Services 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 is currently exempt from public-records requirements:

- Home addresses;
- Telephone numbers;
- Social security numbers; and
- Photographs.<sup>18</sup>

The following information relating to the families of the above-listed law enforcement personnel is currently exempt from public-records requirements:

- Home addresses, telephone numbers, social security numbers, photographs, and places of employment of such personnel's spouses and children; and

<sup>17</sup> Section 119.15(6)(a), F.S.

<sup>18</sup> Section 119.071(4)(d)1.a., F.S.

- Names and locations of schools and day care facilities attended by such personnel's children.<sup>19</sup>

The following information relating to firefighters certified in compliance with s. 633.35, F.S.<sup>20</sup> is currently exempt from public-records requirements:

- Home addresses;
- Telephone numbers; and
- Photographs.<sup>21</sup>

The following information relating to the families of firefighters certified in compliance with s. 633.35, F.S. is currently exempt from public-records requirements:

- Home addresses, telephone numbers, photographs, and places of employment of such firefighters' spouses and children; and
- Names and locations of schools and day care facilities attended by such firefighters' children.<sup>22</sup>

The public necessity statements for the agency personnel public-records exemptions suggest that the persons engaged in the specified occupations are at risk of becoming objects of public ire. The specified occupations require decisions, actions, or information-sharing that could elicit significant emotional reactions from the public. In extreme instances, those emotional reactions could lead to acts of violence against the agency personnel and their families.

### III. Effect of Proposed Changes:

**Section 1** expands an existing public-records exemption for specified personal identifying information of law enforcement personnel and their families to make the following information exempt from the public-records requirements of s. 119.07(1), F.S. and s. 24(a), art. I of the State Constitution:

- Names of the spouses and children of law enforcement personnel.

The bill also expands an existing public-records exemption for specified personal identifying information of firefighters certified in compliance with s. 633.35, F.S. and their families to make the following information exempt from the public-records requirements of s. 119.07(1), F.S. and s. 24(a), art. I of the State Constitution:

- All specified personal identifying information of *former* firefighters;
- Social security numbers of firefighters;
- Names of spouses and children of firefighters; and
- Social security numbers of spouses and children of firefighters.

The bill subjects the exemptions to legislative review and repeal under the Open Government Sunset Review Act. The exemptions will sunset on October 2, 2015, unless reenacted by the Legislature.

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<sup>19</sup> *Id.*

<sup>20</sup> Section 633.35, F.S., provides firefighter training and certification requirements.

<sup>21</sup> Section 119.071(4)(d)1.b., F.S.

<sup>22</sup> *Id.*

**Section 2** provides a statement of public necessity for the exemptions. It justifies the exemptions by explaining that in the course of their occupational duties, law enforcement personnel and firefighters become involved in highly-emotionally-charged situations which may result in members of the public targeting such law enforcement personnel, firefighters, and their families for acts of violence. The statement concludes that disclosure of the personal information exempted by the bill would jeopardize the safety of such law enforcement personnel, firefighters, and their families.

**Section 3** specifies an effective date of July 1, 2010.

**Other Potential Implications:**

The expansion of these exemptions will subject the entire exemptions to review in five years under the Open Government Sunset Review Act.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Because this bill expands public-records exemptions that were enacted prior to 1993, this expansion subjects both exemptions to the requirements of s. 24, art. I of the State Constitution.

**Vote Requirement**

Section 24(c), art. I of the State Constitution requires a two-thirds vote of each house of the Legislature for passage of a newly-created or expanded public-records or public-meetings exemption. Because this bill expands existing public-records exemptions, it requires a two-thirds vote for passage.

**Subject Requirement**

Section 24(c), art. I of the State Constitution requires the Legislature to create or expand public-records or public-meetings exemptions in legislation separate from substantive law changes. This bill complies with that requirement.

**Public Necessity Statement**

Section 24(c), art. I of the State Constitution requires a public necessity statement for a newly-created or expanded public-records or public-meetings exemption. Because this bill expands existing public-records exemptions, it includes a public necessity statement.

C. Trust Funds Restrictions:

None.

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

Current law provides a general public-records exemption for social security numbers held by an agency;<sup>23</sup> therefore, including social security numbers in the information protected by the law enforcement personnel and firefighters exemptions is unnecessary.

VIII. **Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Governmental Oversight and Accountability on April 6, 2010:**

The committee substitute:

- Expands existing public-records exemptions for law enforcement personnel, firefighters, and their families;
- Subjects the expanded exemptions to legislative review and repeal under the Open Government Sunset Review Act; and,
- Provides a statement of public necessity.

B. Amendments:

None.

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

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<sup>23</sup> Section 119.071(5), F.S.