

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCB EEG 24-08 OGSR/Agency Personnel Information

**SPONSOR(S):** Ethics, Elections & Open Government Subcommittee

**TIED BILLS:** **IDEN./SIM. BILLS:** SPB 7030

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Ethics, Elections & Open Government Subcommittee		Skinner	Toliver

**SUMMARY ANALYSIS**

The Open Government Sunset Review Act requires the Legislature to review each public record exemption and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2<sup>nd</sup> of the fifth year after enactment.

Current law provides public record exemptions for specified personal identifying and location information — home addresses, telephone numbers, dates of birth, and in many instances, photographs — of certain current or former agency personnel and their spouses and children. Individuals to which the exemptions apply are those whose current or former employment places themselves or their family at risk of harm, such as law enforcement personnel, state attorneys, public defenders, various investigators, code enforcement officers, firefighters, emergency medical technicians, and paramedics.

In 2019, the Legislature expanded the public record exemptions by creating a definition of “home address,” to encompass descriptive property information, including parcel and plot identification numbers, legal property description, neighborhood name and lot number, and GPS coordinates. It was also clarified that the public record exemption for law enforcement personnel applies to civilian personnel employed by a law enforcement agency.

The bill saves from repeal the public record exemptions that protect this specified information of certain current or former agency personnel and their spouses and children, which will repeal on October 2, 2024, if the bill does not become law.

The bill does not appear to have a fiscal impact on state or local governments.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSR Act)<sup>1</sup> sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2<sup>nd</sup> of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>2</sup>

The OGSR Act 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:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect 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.
- Protect trade or business secrets.<sup>3</sup>

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>4</sup> If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created, then a public necessity statement and a two-thirds vote for passage are not required.

##### Agency Personnel Information

Current law requires certain personal identifying and location information of specified individuals—often due to the nature of their employment—held by an agency<sup>5</sup> to be exempt<sup>6</sup> from public record requirements.<sup>7</sup> The exempted information includes home addresses,<sup>8</sup> telephone numbers,<sup>9</sup> dates of

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<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Section 119.15(3), F.S.

<sup>3</sup> Section 119.15(6)(b), F.S.

<sup>4</sup> Article I, s. 24(c), FLA. CONST.

<sup>5</sup> “Agency” means 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 ch. 119, F.S., 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. Section 119.011(2), F.S.

<sup>6</sup> There is a difference between records the Legislature designates *exempt* from public record requirements and those the Legislature designates *confidential and exempt*. A record classified as *exempt* from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So.2d 1015 (Fla. 2004); *State v. Wooten*, 260 So. 3d 1060, 1070 (Fla. 4th DCA 2018); *City of Rivera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 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 statute. See Op. Att’y Gen. Fla. 04- 09 (2004).

<sup>7</sup> See s. 119.071(4)(d)2., F.S. The public record exemptions under review are contained within s. 119.071(4)(d)2.a.-v., F.S., However, sub-subparagraphs e. and v. are not a part of this review. See ss. 119.071(4)(d)2.e. and 119.071(4)(d)2.v., F.S.

<sup>8</sup> “Home addresses” means 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. Section 119.071(4)(d)1.a., F.S.

<sup>9</sup> “Telephone numbers” includes home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices. Section 119.071(4)(d)1.c., F.S.

birth, and in many instances, the employee's photograph.<sup>10</sup> The public record exemptions protect certain information regarding the spouses and children of such employees, including their names,<sup>11</sup> home addresses, telephone numbers, dates of birth, and places of employment, as well as the names and locations of schools and day care facilities attended by the children.<sup>12</sup> Photographs of the spouses and children are also exempted from public record requirements in several instances. The current or former<sup>13</sup> personnel to which this exemption applies include:<sup>14</sup>

- Sworn law enforcement or civilian personnel employed by a law enforcement agency.
- Correctional and correctional probation officers.
- Department of Children and Families personnel who investigate abuse, neglect, exploitation, fraud, theft, or other criminal activities.
- Department of Health personnel who support the investigation of child abuse or neglect.
- Department of Revenue or local government personnel who enforce and collect revenue or enforce child support.
- Nonsworn investigative personnel of the Department of Financial Services who investigate fraud, theft, workers' compensation coverage requirements and compliance, other related criminal activities, or state regulatory requirement violations.
- Nonsworn investigation personnel of the Office of Financial Regulation's Bureau of Financial Investigations who investigate fraud, theft, other related criminal activities, or state regulatory requirement violations.
- State attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors.
- General magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers.
- Certain human resource, labor relations, or employee relations directors, assistant directors, managers, or assistant managers of any local government agency or water management district.<sup>15</sup>
- Code enforcement officers.
- Guardians ad litem.<sup>16</sup>
- Certain personnel of the Department of Juvenile Justice.<sup>17</sup>
- Public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel.
- Investigators or inspectors of the Department of Business and Professional Regulation.
- County tax collectors.
- Department of Health personnel who determine or adjudicate eligibility of social security disability benefits, the investigation or prosecution of complaints filed against health care practitioners, or the inspection of DOH licensed health care practitioners or health care facilities.

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<sup>10</sup> Section 119.071(4)(d)2.a.-v., F.S. The exemptions for current or former guardians ad litem and current or former staff and domestic violence advocates of domestic violence centers also exempt their places of employment. *See ss.* 119.071(4)(d)2.j. and 119.071(4)(d)2.u., F.S.

<sup>11</sup> The names of the spouses and children of certain addiction treatment personnel are not exempt. *See s.* 119.071(4)(d)2.s., F.S.

<sup>12</sup> Section 119.071(4)(d)2.a.-v., F.S.

<sup>13</sup> The exemptions in most cases apply to current or former personnel, however, in some cases an exemption applies only to currently employed personnel. The following personnel exemptions apply only to currently employed persons: general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings; child support enforcement hearing officers; and county tax collectors. *See ss.* 119.071(4)(d)2.g. and 119.071(4)(d)2.n., F.S.

<sup>14</sup> Section 119.071(4)(d)2., F.S.

<sup>15</sup> Such personnel includes those whose duties include hiring and firing employees, labor contract negotiation, administration, or other personnel-related duties. Section 119.071(4)(d)2.h., F.S.

<sup>16</sup> *See s.* 39.820(1), F.S.

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

- Impaired practitioner consultants retained by an agency as well as certain employees of such persons.<sup>18</sup>
- Certified<sup>19</sup> firefighters, emergency medical technicians, and paramedics.
- Agency inspector general or internal audit department personnel who audit or investigate waste, fraud, abuse, theft, exploitation, or other activities that could lead to criminal prosecution or administrative discipline.
- Certain personnel of addiction treatment facilities.<sup>20</sup>
- Certain personnel of child advocacy centers, as well as Child Protection Team members who support the investigations of child abuse or sexual abuse, child abandonment, child neglect, and child exploitation or provide services a part of a multidisciplinary case review team.<sup>21</sup>
- Domestic violence center staff and domestic violence advocates.<sup>22</sup>

In order for a person within an exempted category to have their information protected from public record requirements by an agency that is not their employer, such personnel must submit, under oath, a written and notarized request for the information to be exempted.<sup>23</sup> The request must confirm that the individual is eligible for the exemption and state the statutory basis for the exemption.<sup>24</sup>

#### Public Record Exemption under Review

In 2019, the Legislature passed CS/CS/CS/SB 248, which expanded the public record exemptions for certain agency personnel by creating a broad definition of “home address.”<sup>25</sup> Home address was defined to mean:

[T]he 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.<sup>26</sup>

The 2019 public necessity statement<sup>27</sup> provided:

[T]he 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 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 disclosures. Therefore, the Legislature find that it is a public necessity to specifically define the term ‘home addresses’ so that the safety and privacy of various personnel and their family members are not compromised.<sup>28</sup>

<sup>18</sup> Employees of current or former impaired practitioners whose duties result in a determination of a person’s skill and safety to practice a licensed profession are captured by the exemption. Section 119.071(4)(d)2.p., F.S.

<sup>19</sup> The exemption applies to firefighters certified in compliance with s. 633.408, F.S., and emergency medical technicians and paramedics certified under ch. 401, F.S.; see ss. 119.071(4)(d)2.d. and 119.071(4)(d)2.q., F.S.

<sup>20</sup> Such personnel includes directors, managers, supervisors, nurses, and clinical employees of an addiction treatment facility.

“Addiction treatment facility” means a county government, or agency thereof, that is licensed pursuant to s. 397.401 and provides substance abuse prevention, intervention, or clinical treatment, including any licensed service component described in s. 397.311(26), F.S. Section 119.071(4)(d)2.s., F.S.

<sup>21</sup> Such personnel includes directors, managers, supervisors, and clinical employees of a child advocacy center that meets the standards of s. 39.3035(2), F.S., and fulfills the screening requirements of s. 39.3035(3), F.S. Section 119.071(4)(d)2.t., F.S.

<sup>22</sup> For the exemption to apply to those persons, the domestic violence center in question must be certified by DCF under ch. 39, F.S. Section 119.071(4)(d)2.u., F.S.

<sup>23</sup> Section 119.071(4)(d)3., F.S.

<sup>24</sup> *Id.*

<sup>25</sup> Chapter 2019-12, L.O.F.

<sup>26</sup> Section 119.071(4)(d)1.a., F.S.

<sup>27</sup> Article I, s. 24(c), FLA. CONST., requires each public record exemption to “state with specificity the public necessity justifying the exemption.”

<sup>28</sup> Chapter 2019-12, L.O.F.

CS/CS/CS/SB 248 (2019) also clarified that the public record exemption for law enforcement personnel applies to civilian personnel employed by a law enforcement agency.<sup>29</sup>

Pursuant to the OGSR Act, the exemptions will repeal on October 2, 2024, unless reenacted by the Legislature.<sup>30</sup>

During the 2023 interim, as part of the review under the OGSR Act, House and Senate committee staff sent questionnaires<sup>31</sup> to the various entities with authority over the categories of employees listed in the public record exemption under review. Questionnaires were sent to the following entities:

- State agencies.
- City and county governments.
- County property appraisers' offices.
- County tax collectors' offices.
- School districts.
- State universities.
- Sheriffs' offices.
- Police departments.
- Clerks of the Circuit Court offices.
- State attorneys' offices.
- Public defenders' offices.
- Criminal Conflict and Civil Regional Counsel regions.
- Statewide Guardian Ad Litem Office.

Regarding the new definition of "home address," the vast majority of responses indicated that there had not been any issues interpreting or applying the definition, nor had there been any questions or concerns.<sup>32</sup> Regarding the agency personnel exemptions themselves, the vast majority of responses that suggested action recommended the exemption be reenacted as is.<sup>33</sup> Many of the responses cited employee safety as the basis for this recommendation.

### **Effect of the Bill**

The bill removes the scheduled repeal of the public record exemptions, thereby maintaining the exemptions for the specified agency personnel and their spouses and children.

#### **B. SECTION DIRECTORY:**

Section 1 amends s. 119.071, F.S., relating to general exemptions from inspection or copying of public records.

Section 2 provides an effective date of October 1, 2024.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

None.

##### **2. Expenditures:**

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<sup>29</sup> *Id.*

<sup>30</sup> Section 119.071(4)(d)10., F.S.

<sup>31</sup> Open Government Sunset Review Questionnaire, Certain Agency Personnel and their Spouses and Children, responses on file with the Ethics, Elections & Open Government Subcommittee.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. The 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 and municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties and municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill does not require rulemaking nor confer or alter an agency's rulemaking authority.

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

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

Not applicable.