

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 243 Pub. Rec./Nonsworn Investigative Personnel of OFR's Bureau of Financial Investigations

SPONSOR(S): Raulerson and others

TIED BILLS: IDEN./SIM. **BILLS:** SB 248

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee	14 Y, 0 N	Moore	Harrington
2) Government Accountability Committee	21 Y, 0 N	Moore	Williamson

SUMMARY ANALYSIS

The Bureau of Financial Investigations (bureau) within the Office of Financial Regulation is authorized to conduct investigations within or outside the state as it deems necessary to aid in the enforcement of laws related to the regulation of Florida's financial services industry. The bureau maintains investigators throughout the state and participates in joint investigations with local, state, and federal law enforcement agencies.

The bill creates a public record exemption for the home addresses, telephone numbers, dates of birth, and photographs of current or former nonsworn investigative employees of the bureau whose duties include the investigation of fraud, theft, other related criminal activities, or state regulatory violations. The bill also exempts from public record requirements the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such employees. In addition, the names and locations of schools and day care facilities attended by the children of such employees are exempt.

The bill provides for repeal of the exemption on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature. The bill provides a public necessity statement as required by the State Constitution.

The bill may have a minimal fiscal impact on the state and local governments. See Fiscal Comments section.

Article I, s. 24(c) of the Florida 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 creates a new 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

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This 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 Art. I, s. 24(a). 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:

- 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.³

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.⁴

Exemptions for Agency Personnel Identification and Location Information

Current law provides public record exemptions for personal identification and location information of certain current or former agency personnel and their spouses and children.⁵ Categories of personnel covered by these exemptions include, but are not limited to, law enforcement officers, justices and judges, code enforcement officers, investigators or inspectors of the Department of Business and Professional Regulation, and county tax collectors.

Although the types of exempt information vary, the following information is exempt⁶ from public record requirements for all personnel listed above:

- Home addresses and telephone numbers⁷ of the named personnel;

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

² See s. 119.15, F.S.

³ Section 119.15(6)(b), F.S.

⁴ Section 119.15(3), F.S.

⁵ See s. 119.071(4)(d), F.S.

⁶ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature designates as *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 (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 2004); and *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, the record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See 85-62 Fla. Op. Att'y Gen. (1985).

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

If exempt information is held by an agency that is not the employer of the protected personnel, he or she must submit a written request to the non-employing agency to maintain the public record exemption.⁸

Office of Financial Regulation: Bureau of Financial Investigations

The Office of Financial Regulation (OFR) has regulatory oversight of state-chartered financial institutions, securities brokers, investment advisers, mortgage loan originators, money services businesses, consumer finance companies, debt collectors, and other financial service entities. Through its Bureau of Financial Investigations (bureau), OFR has the authority to conduct investigations within or outside the state as it deems necessary to aid in the enforcement of laws related to the regulation of these entities.⁹ The bureau maintains investigators throughout the state and participates in joint investigations with local, state, and federal law enforcement agencies.

According to OFR, there have been multiple documented instances in which the agency's investigative personnel and their families have been threatened and exposed to potential harm stemming from their investigative work. Such instances include:

- A person associated with an investigation appearing one evening at an investigator's former residence, where his young children still resided;
- An investigator's name appearing on a credible hit list found by U.S. Marshals during the search of a suspect's home; and
- Investigators finding notes indicating that suspects hired private investigators to collect personal background information about the OFR investigators.¹⁰

Effect of the Bill

The bill amends s. 119.071, F.S., to exempt from public record requirements the home addresses, telephone numbers, dates of birth, and photographs of current or former nonsworn investigative employees of the bureau whose duties include the investigation of fraud, theft, other related criminal activities, or state regulatory violations. The bill also exempts from public record requirements the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such employees. In addition, the names and locations of schools and day care facilities attended by the children of such employees are exempt.

The bill provides a public necessity statement as required by the State Constitution, specifying that it is a public necessity to protect the identifying and location information for these employees and their families because they may become targets for revenge perpetrated by people who have been investigated.

The bill provides for repeal of the exemption on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

B. SECTION DIRECTORY:

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

⁷ The term "telephone numbers" includes home, personal cellular, and personal pager telephone numbers, and telephone numbers associated with personal communications devices. *See* s. 119.071(4)(d)1., F.S.

⁸ Section 119.071(4)(d)3., F.S.

⁹ *Id.*

¹⁰ Information provided by OFR, January 13, 2017 (on file with the Oversight, Transparency & Administration Subcommittee).

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:

The bill does not appear to have an impact on state government revenues.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have an impact on local government revenues.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill could have a minimal fiscal impact on agencies because agency staff responsible for complying with public record requests may require training related to the creation of the public record exemption. In addition, agencies could incur costs associated with redacting the exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of agencies.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor 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 creates a new public record exemption; 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 creates a new public record exemption; 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 creates a public record exemption for the identification and location information of current or former nonsworn investigative employees of the bureau whose duties include the investigation of fraud, theft, other related criminal activities, or state regulatory violations. The identification and location information of such employees' spouses and children is also exempt. The public record exemption protects the information to prevent such employees and their families from becoming targets for revenge perpetrated by people who have been investigated. As such, the exemption does not appear to be in conflict with the constitutional requirement that it be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.