



Ethics, Elections & Open Government Subcommittee

**January 18, 2024
12:30 PM – 2:30 PM
Reed Hall (102 HOB)**

Meeting Packet

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Ethics, Elections & Open Government Subcommittee

Start Date and Time: Thursday, January 18, 2024 12:30 pm

End Date and Time: Thursday, January 18, 2024 02:30 pm

Location: Reed Hall (102 HOB)

Duration: 2.00 hrs

Consideration of the following bill(s):

CS/HB 285 Public Records by Civil Justice Subcommittee, Hunschofsky, Daniels

HB 319 Pub. Rec./Military Personnel and Their Families by Holcomb, Rudman

CS/HB 715 Pub. Rec./Problem-solving Court Participant Records by Criminal Justice Subcommittee, Maney

HB 919 Artificial Intelligence Use in Political Advertising by Rizo

Consideration of the following proposed committee bill(s):

PCB EEG 24-06 -- OGSR/Department of the Lottery

PCB EEG 24-07 -- OGSR/Utility Owned or Operated by a Unit of Local Government

PCB EEG 24-08 -- OGSR/Agency Personnel Information

To submit an electronic appearance form, and for information about attending or testifying at a committee meeting, please see the "Visiting the House" tab at www.myfloridahouse.gov.

NOTICE FINALIZED on 01/16/2024 3:28PM by Lacher.Tamara

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 285 Pub. Rec./Recording Notification Service
SPONSOR(S): Civil Justice Subcommittee, Hunschofsky, Daniels
TIED BILLS: **IDEN./SIM. BILLS:** SB 1000

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	18 Y, 0 N, As CS	Mawn	Jones
2) Ethics, Elections & Open Government Subcommittee		Rando	Toliver
3) Judiciary Committee			

SUMMARY ANALYSIS

“Real property” is a piece of land and any artificial or natural property permanently attached to it. Under Florida law, a deed is generally required to transfer title to real property from one person (the “grantor”) to another (the “grantee”). No deed is effective unless it is properly recorded in the official records of the clerk of the circuit court where the property lies, and the clerks may not record a deed unless certain statutory requirements are met, including that the grantor signed the deed in the presence of a notary public and two witnesses. Recently, there has been an increase in fraudulent real property conveyances in which a fraudster executes and records a deed purporting to convey title to or an interest in real property to himself or herself or a third party without the property owner’s knowledge or consent (“title fraud”). Such fraudulent deeds may be legally void *ab initio*, meaning they never have legal effect and thus never actually convey title or any property interest away from the true owner. However, because the clerk serves a ministerial role, the clerk may not look beyond the four corners of a deed presented to determine its validity; if it appears on the deed’s face that the statutory requirements are met, the clerk must record the deed.

In 2023, the Legislature passed CS/CS/HB 1419 which, in pertinent part, required the clerks of the circuit court (and authorized the property appraisers) to create a free recording notification service on or before July 1, 2024, to provide property owners registered for the service with early notice, by electronic mail, that a land record, such as a deed, has been filed on their property. Some clerks and property appraisers also offer related services for which a person may register to receive notice of a potentially fraudulent property transfer by an alternative form of communication (“related service”).

CS/HB 285 creates a public record exemption for all electronic mail addresses, telephone numbers, personal or business names, and parcel identification numbers submitted to the clerks or property appraisers by persons who register for a recording notification service or a related service. Under the bill, such information would be confidential and exempt from public inspection except upon court order, and the exemption applies to information held by the clerks or property appraisers before, on, and after the bill’s effective date.

In accordance with the Open Government Sunset Review Act, the bill specifies that the exemption shall stand repealed on October 2, 2029, unless reviewed and saved from repeal through reenactment. The bill also provides a statement of public necessity as required by the Florida Constitution.

The bill does not appear to have a fiscal impact on state government but may have an insignificant fiscal impact on local governments.

The bill provides an effective date of upon becoming a law.

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 exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0285b.EEG

DATE: 1/16/2024

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Real Property Fraud

Real Property Conveyances

“Real property” is a piece of land and any artificial or natural property permanently attached to it, whether above or beneath, such as a house, barn, or other structure, or sub-surface mineral.¹ Under Florida law, a deed is generally required to transfer title to (that is, an ownership interest in) real property from one person (the “grantor”) to another (the “grantee”).² Florida law recognizes several types of deeds, which convey different warranties of title, including a:

- General warranty deed, which provides full warranties to the grantee that the grantor:
 - Holds title to the property and has the right to convey it;
 - Has not contracted to sell the property to another;
 - Promises that there are no encumbrances, such as a lien, on the property, other than those encumbrances previously disclosed;
 - Assures that the grantee and his or her heirs and assigns will enjoy the property without interruption or deprivation of possession;
 - Promises to defend the grantee against anyone who later claims title to the property after its conveyance; and
 - Assures that he or she will take any necessary affirmative steps to further cure any defects and protect the buyer, even from title defects dating back to before the grantor’s ownership of the property to be conveyed.³
- Quitclaim deed, which provides no warranties as to title and conveys only that interest which the grantor has in the property, if any.⁴

The grantor of any deed must sign the instrument in the presence of and have the instrument acknowledged by a notary public or other statutorily-designated officer vested with the authority to acknowledge legal instruments.⁵ The grantor must also sign the deed in the presence of two subscribing witnesses,⁶ who in turn must sign the deed in the presence of and have their signatures proved by a notary or other officer vested with the authority to prove signatures.⁷ No acknowledgment or proof may be taken by any notary or other officer unless such person knows, or has satisfactory proof, that the person:

- Making the acknowledgment is the individual described in, and who executed, the deed; or
- Offering to make proof is one of the subscribing witnesses to the deed.⁸

¹ Legal Information Institute, *Real Estate*, https://www.law.cornell.edu/wex/real_estate (last visited Jan. 11, 2024).

² Real property may also be transferred in probate after the owner’s death.

³ Legal Information Institute, *Deed*, <https://www.law.cornell.edu/wex/deed> (last visited Jan. 11, 2024).

⁴ *Id.*

⁵ For a full list of persons who may legalize or authenticate an instrument conveying real property, see s. 695.03(1)-(3), F.S.

⁶ A subscribing witness is a person who witnesses the grantor sign a document and signs it thereafter to indicate that he or she witnessed the grantor’s signature thereon. Legal Information Institute, *Subscribing Witness*, https://www.law.cornell.edu/wex/subscribing_witness#:~:text=A%20subscribing%20witness%20is%20a,person%20has%20witnessed%20those%20signatures (last visited Jan. 11, 2024).

⁷ Ss. 689.01(1) and 695.03(3), F.S.

⁸ S. 695.09, F.S.

Recording Real Property Conveyances

No conveyance of title to or an interest in real property is effective unless it is properly recorded in the official records of the clerk of the circuit court⁹ where the property lies.¹⁰ The clerk may not generally record any such instrument unless:

- The name of each of the instrument's executors is legibly printed, typewritten, or stamped upon such instrument immediately beneath the executor's signature and such person's post office address is legibly printed, typewritten, or stamped upon such instrument;
- The name and post office address of the person who prepared the instrument are legibly printed, typewritten, or stamped upon such instrument;
- The name of each witness to the instrument is legibly printed, typewritten, or stamped upon such instrument immediately beneath his or her signature and the post office address of each such person is legibly printed, typewritten, and stamped upon such instrument;
- The name of any notary public whose signature appears on the instrument is legibly printed, typewritten, or stamped upon such instrument immediately beneath his or her signature;
- A 3-inch by 3-inch space at the top right-hand corner on the first page and a 1-inch by 3-inch space at the top right-hand corner on each subsequent page are reserved for the clerk's use; and
- In any instrument other than a mortgage conveying or purporting to convey an interest in real property, the name and post office address of each grantee in such instrument are legibly printed, typewritten, or stamped upon such instrument.¹¹

All deeds recorded in the clerk's office are deemed to have been accepted by the clerk, and officially recorded, at the time the clerk or his or her deputy affixed on the deed the official register numbers¹² required under Florida law.¹³

Fraudulent Real Property Conveyances

In recent years, there has been an increase in fraudulent real property attempted conveyances in which a fraudster executes and records a deed purporting to convey title to or an interest in real property to himself or herself¹⁴ or a third party¹⁵ without the property owner's knowledge or consent ("title fraud").¹⁶ Such fraudulent deeds may be legally void *ab initio*, meaning they never have legal effect and thus never actually convey title or any property interest away from the true owner.¹⁷ However, because the clerk serves a ministerial¹⁸ role, the clerk and his or her employees may not look beyond the four corners of a deed presented for recording to determine its validity.¹⁹ Thus, if it appears on the deed's face that the above-mentioned statutory requirements are met, the clerk must record the deed. Upon

⁹ The State Constitution mandates that there be an elected clerk of the circuit court ("clerk") in each of Florida's 67 counties to perform specified functions, including official records recorder. Art. V., s. 16 and art. VIII, s. 1, Fla. Const.

¹⁰ S. 695.01, F.S.

¹¹ These requirements do not apply to documents executed, acknowledged, or proved out of state. S. 695.26, F.S.

¹² The "register numbers" are the filing numbers assigned to and affixed on each instrument filed for record, which numbers the clerk must enter in a register available at each office where official records may be filed. S. 28.222, F.S.

¹³ Ss. 28.222 and 695.11, F.S.

¹⁴ See Mike DeForest, *Florida Man Accused of Using Fake Deeds to Take Ownership of Two Homes*, Click Orlando (Sept. 12, 2022), <https://www.clickorlando.com/news/investigators/2022/09/12/florida-man-used-fake-deeds-to-take-ownership-of-2-homes-court-records-claim-heres-how/> (last visited Jan. 11, 2024).

¹⁵ See Mike DeForest, *'Be Aware:' Identity Thief Uses Fraudulent Deed to Take Orange County Man's Property*, Click Orlando (May 16, 2022), <https://www.clickorlando.com/news/investigators/2022/05/16/be-aware-identity-thief-uses-fraudulent-deed-to-take-orange-county-mans-property/> (last visited Jan. 11, 2024).

¹⁶ Joseph M. Bialek, *Florida Focus: Protect Yourself from Identity Thieves Using Fraudulent Deeds*, Law Alert (Nov. 9, 2022), <https://www.porterwright.com/media/florida-focus-protect-yourself-from-identity-thieves-using-fraudulent-deeds/> (last visited Jan. 11, 2024).

¹⁷ Legal Information Institute, *Ab Initio*, https://www.law.cornell.edu/wex/ab_initio (last visited Jan. 11, 2024).

¹⁸ "Ministerial" means taking actions in a prescribed manner in obedience to the mandate of legal authority, without the exercise of the person's own judgment or discretion as to the propriety of the actions taken. S. 112.312(17), F.S.

¹⁹ See s. 28.222, F.S. (providing that the clerk of the circuit court "shall record the following kinds of instruments presented to him or her for recording, upon payment of the service charges prescribed by law: (a) Deeds..."); art. V, s. 16, Fla. Const.

recording, the deed appears valid, and others may purchase the property from the fraudster or the third party named as grantee in the deed in the belief that such person owns and has the right to sell the property.

To assist property owners in uncovering title fraud, many clerks throughout the state began offering a free recording notification service that alerts a property owner who registers for the service whenever an instrument purporting to convey title to the owner's real property, such as a deed, is recorded in the county's official records.²⁰ This service does not prevent the recording of the deed, but rather puts the true property owner on notice that he or she may need to contact an attorney or law enforcement to report the fraud and take steps necessary to undo the fraudulent conveyance. However, before July 1, 2023, the service was not mandated by or standardized in Florida law.

2023 CS/CS/HB 1419

In 2023, the Legislature passed CS/CS/HB 1419 to address real property fraud in the State.²¹ The bill, in pertinent part, created s. 28.47, F.S., to require the clerks of the circuit court to, on or before July 1, 2024, create, maintain, and operate a free recording notification service, open to all persons wishing to register for the service, to provide property owners with early notice that a land record has been filed on their property. Under the provisions of the bill, a registrant provides a valid electronic mail address to the clerk along with the name and/or property address he or she wishes to monitor; the clerk then notifies the registrant by electronic mail when a land record is filed pertaining to the registrant's monitored name or property.

The bill specified that registration for the recording notification service must be made possible through an electronic registration portal, which portal must:

- Be accessible through a direct link on the home page of the clerk's official public website;
- Allow a registrant to subscribe to receive recording notifications for at least five monitored identities per valid electronic mail address provided;
- Include a method by which a registrant may unsubscribe from the service;
- List a phone number at which the clerk's office may be reached for questions related to the service during normal business hours; and
- Send an automated electronic mail message to a registrant confirming his or her successful registration for or action to unsubscribe from the service, which message must identify each monitored identity for which a subscription was received or canceled.

Further, the bill required that, when a land record is recorded for a monitored identity, a recording notification must be sent within 24 hours of the recording to each registrant who is subscribed to receive recording notifications for that monitored identity. Such notification must contain:

- Information identifying the monitored identity for which the land record was filed;
- The land record's recording date;
- The official records book and page number or instrument number assigned to the land record by the clerk;
- Instructions for electronically searching for and viewing the land record using the assigned official record book and page number or instrument number; and
- A phone number at which the clerk's office may be contacted during normal business hours with questions related to the recording notification.

²⁰ See, *example*, Clerk of the Court & Comptroller, Lee County, Florida, *Property Fraud Alert*, <https://www.leeclerk.org/services/property-fraud> (last visited Jan. 11, 2024).

²¹ Ch. 2023-238, L.O.F.

Finally, the bill provided that:

- There is no right or cause of action against, and no civil liability on the part of, the clerk with respect to the creation, maintenance, or operation of a recording notification service.
- Nothing in s. 28.47, F.S., may be construed to require the clerk to provide or allow access to a record or information which is confidential and exempt²² from s. 119.071, F.S., and s. 24(a), Art. I of the State Constitution or to otherwise violate Florida's public record laws.
- S. 28.47, F.S., applies to county property appraisers that have adopted an electronic land record notification service before the bill's effective date, but where a land record is recorded for a monitored identity, notice through the property appraiser's service must be sent within 24 hours of the instrument being reflected on the county tax roll by the property appraiser.

Some clerks and property appraisers have also begun offering related services for which a person may register to receive notification of a potentially fraudulent property transfer by an alternative form of communication ("related service").²³

Public Records

The Florida Constitution sets forth the state's public policy regarding access to government records, guaranteeing every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.²⁴ The Legislature, however, may provide by general law an exemption²⁵ from public record requirements provided that the exemption passes by a two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption, and is no broader than necessary to meet its public purpose.²⁶

Current law also addresses the public policy regarding access to government records, guaranteeing every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt.²⁷ Furthermore, the Open Government Sunset Review Act²⁸ provides that a public record exemption may be created, revised, or maintained only if it serves an identifiable public purpose and 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."²⁹ An identifiable public purpose is served if the exemption meets 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; or
- Protect trade or business secrets.³⁰

²² 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 Riviera 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).

²³ For example, the Broward County Property Appraiser's Owner Alert Program offers a text message alert for a person who registers for the Program if a change of ownership occurs on a property monitored by such person. Broward County Property Appraiser, *Terms and Conditions*, <https://web.bcpa.net/owneralert/TermsConditions> (last visited Jan. 11, 2024).

²⁴ Art. I, s. 24(a), Fla. Const.

²⁵ A public record exemption means a provision of general law which provides that a specified record, or portion thereof, is not subject to the access requirements of s. 119.07(1), F.S., or s. 24, Art. I of the Florida Constitution. See s. 119.011(8), F.S.

²⁶ Art. I, s. 24(c), Fla. Const.

²⁷ See s. 119.01, F.S.

²⁸ S. 119.15, F.S.

²⁹ S. 119.15(6)(b), F.S.

³⁰ *Id.*

Pursuant to the Open Government Sunset Review Act, a new public record exemption or substantial amendment of an existing public record exemption is repealed on October 2nd of the fifth year following enactment, unless the Legislature reenacts the exemption.³¹

Effect of Proposed Changes

CS/HB 285 creates a public record exemption for all electronic mail addresses, telephone numbers, personal or business names, and parcel identification numbers submitted to the clerks or property appraisers by persons who register for a recording notification service or a related service. Under the bill, such information would be confidential and exempt from public inspection except upon court order, and the exemption applies to information held by the clerks or property appraisers before, on, and after the bill’s effective date.

In accordance with the Open Government Sunset Review Act, the bill specifies that the exemption is repealed on October 2, 2029, unless reviewed and saved from repeal through reenactment. The bill also:

- Provides a statement of public necessity as required by the Florida Constitution.
- Directs the Division of Law Revision to replace the phrase “the effective date of this act” wherever it occurs in the bill with the date the bill becomes law.
- Clarifies that s. 28.47, F.S., may not be construed to require the property appraiser to provide or allow access to a record or information which is confidential and exempt under s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution.

The bill provides an effective date of upon becoming a law.

B. SECTION DIRECTORY:

- Section 1:** Amends s. 28.47, F.S., relating to recording notification service.
- Section 2:** Directs the Division of Law Revision to take specified action.
- Section 3:** Provides a statement of public necessity.
- Section 4:** 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:
None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

- 1. Revenues:
None.
- 2. Expenditures:

The bill may have an insignificant negative fiscal impact on clerks of the circuit court and property appraisers as staff responsible for complying with public record requests may require training relating to the newly-created public record exemption. However, any additional costs will likely be absorbed within existing resources.

³¹ S. 119.15(3), F.S.
STORAGE NAME: h0285b.EEG
DATE: 1/16/2024

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive fiscal impact on the private sector to the extent that it prevents a third party from:

- Obtaining specified information submitted by a person who registers for a recording notification service or a related service and using it for fraudulent purposes, which purposes, or the legal remedies that follow, may have a financial component.
- Targeting for a fraudulent property transfer the real property of persons whose property is not being monitored through a recording notification service or a related service.

D. FISCAL COMMENTS:

None.

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 expenditures 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, section 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 exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record exemption. The bill creates a public record exemption; thus, it includes a public necessity statement. The public necessity statement states, in part, that the Legislature finds that it is a public necessity to protect persons who register for a recording notification service to receive notifications of real property transfers, and persons whose personal or business names or parcel identification numbers are submitted for monitoring by such persons, from becoming victims of fraud by virtue of their registration status.

Breadth of Exemption

Article I, section 24(c) of the Florida Constitution requires a newly created or expanded public record exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for specific information related to persons who register for a recording notification service: electronic mail addresses, telephone numbers, personal or business names, and parcel identification numbers. As such, the exemption does not appear broader than necessary to accomplish its purpose.

Retroactivity

The bill specifies that the public record exemption created therein applies to information held by the clerks or property appraisers before the bill's effective date; thus, it would likely have retroactive application. However, Florida courts recognize that persons do not obtain a vested right to inspect or copy public records by virtue of the Public Records Act or the Florida Constitution; rather, the courts have found that such right is a public right which the Legislature may terminate by retroactive application of a statutory exemption.³²

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On December 6, 2023, the Civil Justice Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment modified the types of information made confidential and exempt from the public records of this state and expanded the scope of the exemption to reach information submitted to the clerks or property appraisers by a person who registers for a service related to a recording notification service.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

³² *Campus Communications, Inc. v. Earnhardt*, 821 So. 2d 388 (Fla. 5th DCA 2002).

1 A bill to be entitled
 2 An act relating to public records; amending s. 28.47,
 3 F.S.; providing that certain information submitted to
 4 the clerk or property appraiser by a person who
 5 registers for a recording notification service or a
 6 related service is confidential and exempt from public
 7 records requirements; providing an exception;
 8 providing applicability; providing for future
 9 legislative review and repeal of the exemption;
 10 providing a directive to the Division of Law Revision;
 11 providing a statement of public necessity; providing
 12 an effective date.

13
 14 Be It Enacted by the Legislature of the State of Florida:

15
 16 Section 1. Subsection (5) of section 28.47, Florida
 17 Statutes, is amended to read:

18 28.47 Recording notification service; related services;
 19 public records exemption.—

20 (5) (a) ~~Nothing in~~ This section does not ~~may be construed~~
 21 ~~to~~ require the clerk or property appraiser to provide or allow
 22 access to a record or information which is confidential and
 23 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 24 Constitution or to otherwise violate the public records laws of
 25 this state.

26 (b) All electronic mail addresses, telephone numbers,
27 personal and business names, and parcel identification numbers
28 submitted to the clerk or property appraiser by a person who
29 registers for a recording notification service pursuant to this
30 section, or a related service offered by the clerk or property
31 appraiser designed to notify the person who registers of a real
32 property transfer, are confidential and exempt from s. 119.07(1)
33 and s. 24(a), Art. I of the State Constitution, except upon
34 court order. This paragraph applies to information held by the
35 clerk or property appraiser before, on, or after the effective
36 date of this act. This paragraph is subject to the Open
37 Government Sunset Review Act in accordance with s. 119.15 and
38 shall stand repealed on October 2, 2029, unless reviewed and
39 saved from repeal through reenactment by the Legislature.

40 Section 2. The Division of Law Revision is directed to
41 replace the phrase "the effective date of this act" wherever it
42 occurs in this act with the date this act becomes a law.

43 Section 3. The Legislature finds that it is a public
44 necessity that all electronic mail addresses, telephone numbers,
45 personal and business names, and parcel identification numbers
46 submitted to the clerk or property appraiser by a person who
47 registers for a recording notification service under s. 28.47,
48 Florida Statutes, or a related service offered by the clerk or
49 property appraiser designed to notify the person who registers
50 of a real property transfer, be made exempt from s. 119.07,

51 Florida Statutes, and s. 24(a), Article I of the State
52 Constitution. The recording notification service, created in
53 response to a recent increase in fraudulent real property
54 conveyances, notifies a registrant by electronic mail when a
55 land record associated with the registrant's monitored identity
56 has been recorded in the public records of the county so that
57 the registrant may quickly identify a fraudulent conveyance and
58 take necessary action. Some clerks and property appraisers have
59 also begun offering related services for which a person may
60 register to receive notifications of potentially fraudulent real
61 property transfers by an alternative form of communication, such
62 as by text message. The Legislature finds that it is a public
63 necessity to protect persons who register for a recording
64 notification service or a related service offered by the clerk
65 or property appraiser to receive notifications of real property
66 transfers, and persons whose personal or business names or
67 parcel identification numbers are submitted for monitoring by
68 such persons, from becoming victims of other types of fraud by
69 virtue of their registration or status as a person whose
70 information has been submitted for monitoring. The Legislature
71 also finds that it is a public necessity to protect persons
72 whose personal or business names or parcel identification
73 numbers are not submitted to a recording notification service or
74 a related service for monitoring from becoming the target of a
75 fraudulent real property conveyance by virtue of their lack of

76 | participation in any such service. Thus, the Legislature finds
77 | that this act serves a compelling state interest. The
78 | Legislature further finds that the harm that may result from the
79 | release of the electronic mail addresses, telephone numbers,
80 | personal and business names, and parcel identification numbers
81 | submitted to the clerk or property appraiser by a person who
82 | registers for a recording notification service or a related
83 | service to receive notifications of real property transfers
84 | outweighs any public benefit that may be derived from the
85 | disclosure of such information.

86 | Section 4. This act shall take effect upon becoming a law.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 285 (2024)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)

ADOPTED AS AMENDED _____ (Y/N)

ADOPTED W/O OBJECTION _____ (Y/N)

FAILED TO ADOPT _____ (Y/N)

WITHDRAWN _____ (Y/N)

OTHER

1 Committee/Subcommittee hearing bill: Ethics, Elections & Open
2 Government Subcommittee

3 Representative Hunschofsky offered the following:

4

5 **Amendment**

6 Remove line 50 and insert:

7 of a real property transfer, be made confidential and exempt

8 from s. 119.07,

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 319 Pub. Rec./Military Personnel and Their Families

SPONSOR(S): Holcomb and Rudman

TIED BILLS: **IDEN./SIM. BILLS:** SB 548

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration, Federal Affairs & Special Districts Subcommittee	16 Y, 0 N	Mwakyanjala	Darden
2) Ethics, Elections & Open Government Subcommittee		Skinner	Toliver
3) State Affairs Committee			

SUMMARY ANALYSIS

Current law provides several public record exemptions for certain identification and location information of specified current or former agency employees and their spouses and children. However, no exemption from public record requirements currently exists for U.S. military personnel.

The bill creates a public record exemption for the following identification and location information of current or former military personnel and their spouses and dependents:

- Home addresses, telephone numbers, and dates of birth of current and former military personnel, and the telephone numbers associated with the personal communication devices of such personnel;
- Home addresses, telephone numbers, and dates of birth of the spouses and dependents of current and former military personnel, and the telephone numbers associated with the personal communication devices of such spouses and dependents; and
- Names and locations of schools attended by the spouses of current and former military personnel, and schools or day care facilities attended by dependents of such personnel.

The bill defines “military personnel” to mean persons employed by the U.S. Department of Defense who have been authorized to access information deemed “secret” or “top secret” by the Federal Government, as well as current or former servicemembers of a special operations force.

In order for the exemption to apply, the military personnel member must submit to the custodial agency a written request that the information be exempt and a written statement that reasonable efforts have been made by the military personnel member to protect the identification and location information from being accessible through other means available to the public.

The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2029, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

The bill may have a negative, but likely insignificant, fiscal impact on state and local governments.

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 exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Public Records

The Florida Constitution sets forth the state's public policy regarding access to government records, guaranteeing every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.¹ The Legislature, however, may provide by general law an exemption² from public record requirements provided that the exemption passes by a two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption, and is no broader than necessary to meet its public purpose.³

Current law also addresses the public policy regarding access to government records, guaranteeing every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt.⁴ Furthermore, the Open Government Sunset Review Act⁵ provides that a public record exemption may be created, revised, or maintained only if it serves an identifiable public purpose and 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."⁶ An identifiable public purpose is served if the exemption meets 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; or
- Protect trade or business secrets.⁷

Pursuant to the Open Government Sunset Review Act, a new public record exemption or substantial amendment of an existing public record exemption is repealed on October 2nd of the fifth year following enactment, unless the Legislature reenacts the exemption.⁸

Current Public Record Exemptions for Identification and Location Information

Current law provides several public record exemptions for identification and location information of specified current or former agency employees and their spouses and children.⁹ Identification and location information typically includes the home addresses,¹⁰ telephone numbers,¹¹ dates of birth, and photographs of specified agency employees and their spouses and children. Additionally, the places of

¹ Art. I, s. 24(a), FLA. CONST.

² A public record exemption means a provision of general law which provides that a specified record, or portion thereof, is not subject to the access requirements of s. 119.07(1), F.S., or s. 24, Art. I of the Florida Constitution. See s. 119.011(8), F.S.

³ Art. I, s. 24(c), FLA. CONST.

⁴ See s. 119.01, F.S.

⁵ Section 119.15, F.S.

⁶ Section 119.15(6)(b), F.S.

⁷ *Id.*

⁸ Section 119.15(3), F.S.

⁹ See s. 119.071(4)(d), F.S.

¹⁰ The term "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. S. 119.071(4)(d)1.a., F.S.

¹¹ The term "telephone numbers" includes home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices. S. 119.071(4)(d)1.c., F.S.

employment of the spouses and children of the specified agency employees as well as the names and locations of schools and day care facilities attended by those children are exempt from public record requirements.¹²

Current law also provides a public record exemption for specified identification and location information for certain federal officials, such as United States attorneys, assistant U.S. attorneys, U.S. Courts of Appeal judges, U.S. District Court judges, and U.S. Magistrates, as well as the spouses and children of such officials.¹³ In order for the exemption to apply, the attorney, judge, or magistrate must submit to the custodial agency a written request to exempt the information from public record requirements.¹⁴ In addition, the attorney, judge, or magistrate must submit 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.¹⁵

A similar public record exemption for the identification and location information of current or former members of the U.S. Armed Forces, their reserve components, and the National Guard, who served after September 11, 2001, as well as their spouses and dependents previously existed in statute. However, that exemption sunset on October 2, 2020.¹⁶

Effect of Proposed Changes

The bill creates a public record exemption for the identification and location information of current and former military personnel and their spouses and dependents. The bill defines “military personnel” to mean persons employed by the U.S. Department of Defense who have been authorized to access information deemed “secret” or “top secret” by the Federal Government, as well as current or former servicemembers of a special operations force.¹⁷

Specifically, the public record exemption provides that the following identification and location information is exempt¹⁸ from public record requirements:

- Home addresses, telephone numbers, and dates of birth of current and former military personnel, and the telephone numbers associated with the personal communication devices of such personnel;
- Home addresses, telephone numbers, and dates of birth of the spouses and dependents of current and former military personnel, and the telephone numbers associated with the personal communication devices of such spouses and dependents; and
- Names and locations of schools attended by the spouses of current and former military personnel, and schools or day care facilities attended by dependents of such personnel.

In order for the exemption to apply, the military personnel member must submit to the custodial agency a written request to exempt the information from public record requirements and a written statement

¹² See s. 119.071(4)(d)2., F.S.

¹³ S. 119.071(5)(i), F.S.

¹⁴ S. 119.071(5)(i)2.a., F.S.

¹⁵ S. 119.071(5)(i)2.b., F.S.

¹⁶ Formerly s. 119.071(5)(k), F.S.

¹⁷ The bill defines “special operations force” to mean those active and reserve component forces of the military services designated by the Secretary of Defense and specifically organized, trained, and equipped to conduct and support special operations. The term includes, but is not limited to, servicemembers of the U.S. Army Special Forces and the U.S. Army 75th Ranger Regiment; the U.S. Navy SEALs and Special Warfare Combatant-Craft Crewmen; the U.S. Air Force Combat Control, Pararescue, and Tactical Air Control Party specialists; the U.S. Marine Corps Critical Skills Operators; and any other component of the U.S. Special Operations Command approved by the Criminal Justice Standards and Training Commission. See ss. 943.10(5) and (22), F.S.

¹⁸ 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).

that he or she has made reasonable efforts to protect the identification and location information from being accessible through other means available to the public.

The bill provides the constitutionally required public necessity statement,¹⁹ which provides, in part, that the public record exemption is necessary because disclosure of such records jeopardizes the safety of such military personnel, their spouses, and dependents. Pursuant to the Open Government Sunset Review Act, the bill provides that the exemption will repeal on October 2, 2029, unless reenacted by the Legislature.

B. SECTION DIRECTORY:

Section 1: Amends s. 119.071, F.S., relating to general exemptions from inspecting or copying of records.

Section 2: Provides a public necessity statement as required by the Florida Constitution.

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 negative, but likely insignificant, fiscal impact on state and local agencies as staff for those entities could require training related to the public record exemption. It is unclear whether the staff will experience an increase in workload due to the number of military personnel who may take advantage of the public record exemption. The costs should be absorbed as they are part of the day-to-day responsibilities of the agency.

¹⁹ Art. I, s. 24(c), FLA. CONST., requires each public record exemption to “state with specificity the public necessity justifying the exemption.”

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not 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 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 public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it includes a public necessity statement. The public necessity statement provides, in part, that as terrorist groups have threatened military personnel and their families and have encouraged terrorist sympathizers to harm military personnel and their families within the United States, the Legislature finds that allowing continued public access to the identification and location information of current and former military personnel and their families jeopardizes the safety of these military personnel, their spouses, and their dependents.

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a newly created or expanded 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 and former military personnel, as well as the spouses and dependents of such persons. The exemption is limited to those military personnel who serve or served in a special operations force, or who are or were employed by the U.S. Department of Defense and authorized to access information deemed "secret" or "top secret" by the Federal Government, to prevent potential harm to those persons and their families by terrorists or terrorist sympathizers. As such, it 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 neither provides authority for nor requires rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.

25 (II) Home addresses, telephone numbers, and dates of birth
 26 of the spouses and dependents of current and former military
 27 personnel, and the telephone numbers associated with the
 28 personal communication devices of such spouses and dependents.

29 (III) Names and locations of schools attended by the
 30 spouses of current and former military personnel and schools or
 31 day care facilities attended by dependents of current and former
 32 military personnel.

33 b. "Military personnel" means persons employed by the
 34 United States Department of Defense who are authorized to access
 35 information that is deemed "secret" or "top secret" by the
 36 Federal Government or who are servicemembers of a special
 37 operations force.

38 c. "Special operations force" has the same meaning as
 39 provided in s. 943.10(22).

40 2. Identification and location information held by an
 41 agency is exempt from s. 119.07(1) and s. 24(a), Art. I of the
 42 State Constitution if the current or former military personnel
 43 member submits to an agency that has custody of the
 44 identification and location information:

45 a. A written request to exempt the identification and
 46 location information from public disclosure; and

47 b. A written statement that he or she has made reasonable
 48 efforts to protect the identification and location information

49 from being accessible through other means available to the
50 public.

51 3. This exemption applies to identification and location
52 information held by an agency before, on, or after the effective
53 date of this exemption.

54 4. This paragraph is subject to the Open Government Sunset
55 Review Act in accordance with s. 119.15 and shall stand repealed
56 on October 2, 2029, unless reviewed and saved from repeal
57 through reenactment by the Legislature.

58 Section 2. The Legislature finds that it is a public
59 necessity that identification and location information of
60 current and former military personnel, and their spouses and
61 dependents, that is held by an agency be made exempt from s.
62 119.07(1), Florida Statutes, and s. 24(a), Article I of the
63 State Constitution. Military personnel perform among the most
64 critical, most effective, and most dangerous operations in
65 defense of our nation's freedom. Terrorist groups have
66 threatened military personnel and their families and have
67 encouraged terrorist sympathizers to harm military personnel and
68 their families within the United States. One terrorist group has
69 allegedly gathered the photographs and home addresses of
70 military personnel from public sources to create and publish a
71 list of military personnel in order to make such persons
72 vulnerable to an act of terrorism. The Legislature finds that
73 allowing continued public access to the identification and

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74 | location information of current and former military personnel
75 | and their families jeopardizes the safety of these personnel,
76 | their spouses, and their dependents. The Legislature finds that
77 | protecting the safety and security of current and former
78 | military personnel, and their spouses and dependents, outweighs
79 | any public benefit that may be derived from the public
80 | disclosure of the identification and location information.

81 | Section 3. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 715 Pub. Rec./Problem-solving Court Participant Records
SPONSOR(S): Criminal Justice Subcommittee, Maney
TIED BILLS: **IDEN./SIM. BILLS:** SB 910

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	17 Y, 0 N, As CS	Leshko	Hall
2) Ethics, Elections & Open Government Subcommittee		Robinson	Toliver
3) Judiciary Committee			

SUMMARY ANALYSIS

Problem-solving courts utilize specialized court dockets, multidisciplinary teams, and a non-adversarial approach to address the root causes of a person's involvement with the justice system. Some of the most common types of problem-solving courts include: drug courts; mental health courts; and veterans courts. While screening individuals for placement in such programs and serving program participants, problem-solving courts generate a number of records relating to an individual's health history and treatment plan.

Section 397.334, F.S., makes information relating to a participant or a person considered for participation in a treatment-based drug court program contained in the following records confidential and exempt from public record requirements, with limited exceptions: records created or compiled during screenings for participation in the program; records created or compiled during substance abuse screenings; behavioral health evaluations; and subsequent treatment status reports. However, the same information relating to participants or prospective participants of veterans treatment court and mental health court programs is not currently confidential or exempt from public record requirements.

CS/HB 715 amends ss. 394.47891 and 394.47892, F.S., to make information relating to a participant or a person considered for participation in a veterans treatment court or a mental health court program, respectively, contained in the following records confidential and exempt from public record requirements:

- Records created or compiled during screenings for participation in the program;
- Records created or compiled during substance abuse screenings;
- Behavioral health evaluations; and
- Subsequent treatment status reports.

The bill allows for disclosure of such information: pursuant to a written request of the participant or person considered for participation or his or her legal representative; to another governmental entity in furtherance of its responsibilities associated with the screening of a person considered for participation in or the provision of treatment to a person in a veterans treatment court or mental health court program; and pursuant to ss. 397.501(7) and 394.4615, F.S., regulating the disclosure of substance abuse providers' records and clinical records, respectively.

Pursuant to the Open Government Sunset Review Act, the exemptions created by the bill will be automatically repealed on October 2, 2029, unless reenacted by the Legislature.

The bill provides an effective date of upon becoming a law.

Article I, section 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 exemption. The bill creates a 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

The Florida Constitution sets forth the state's public policy regarding access to government records, guaranteeing every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.¹ The Legislature, however, may provide by general law an exemption² from public record requirements provided that the exemption passes by a two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption, and is no broader than necessary to meet its public purpose.³

Current law also addresses the public policy regarding access to government records, guaranteeing every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt.⁴ Furthermore, the Open Government Sunset Review Act⁵ provides that a public record exemption may be created, revised, or maintained only if it serves an identifiable public purpose and 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."⁶ An identifiable public purpose is served if the exemption meets 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; or
- Protects trade or business secrets.⁷

Pursuant to the Open Government Sunset Review Act, a new public record exemption or substantial amendment of an existing public record exemption is repealed on October 2nd of the fifth year following enactment, unless the Legislature reenacts the exemption.⁸

Problem-Solving Courts

Problem-solving courts are designed to address the root causes of a person's involvement with the justice system.⁹ Such courts do this by utilizing specialized court dockets, multidisciplinary teams, and a non-adversarial approach to ensure a person receives the individualized treatment he or she needs

¹ Art. I, s. 24(a), Fla. Const.

² A public record exemption means a provision of general law which provides that a specified record, or portion thereof, is not subject to the access requirements of s. 119.07(1), F.S., or s. 24, art. I of the Florida Constitution. See s. 119.011(8), F.S.

³ Art. I, s. 24(c), Fla. Const.

⁴ See s. 119.01, F.S.

⁵ S. 119.15, F.S.

⁶ S. 119.15(6)(b), F.S.

⁷ *Id.*

⁸ S. 119.15(3), F.S.

⁹ Office of the State Courts Administrator (OSCA), *Florida Problem-Solving Courts Report*,

<https://www.flcourts.gov/content/download/863926/file/2022%20Florida%20Problem-Solving%20Courts%20Report.pdf>

(last visited Jan. 14, 2024).

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to successfully leave the justice system.¹⁰ As of December 2023, there were at least 180 problem-solving courts in Florida.¹¹ The most common types of problem-solving courts include:

- Adult drug courts;
- Adult mental health courts;
- Early childhood courts;
- Veterans courts;
- Juvenile drug courts;
- Dependency drug courts;
- DUI courts; and
- Juvenile mental health courts.¹²

Treatment-Based Drug Court and Mental Health Court Programs

Sections 397.334 and 394.47892, F.S., authorize each county to fund a treatment-based drug court and mental health court program, respectively, to appropriately address eligible persons in the justice system assessed with a substance abuse problem or mental illness through treatment services tailored to the individual needs of the person.¹³ A treatment-based drug court or mental health court program may be offered as a voluntary pretrial program or as a post-adjudicatory program as a condition of probation or community control.¹⁴

While screening individuals for placement in such programs and serving program participants, problem-solving courts generate a number of records relating to an individual's health history and treatment plan. Additionally, under current law, each treatment-based drug court and mental health court program must collect client-level data¹⁵ and programmatic data¹⁶ for purposes of program evaluation.¹⁷

Veterans Treatment Court Programs

Section 394.47891, F.S., authorizes a court with jurisdiction over criminal cases to create and administer a veterans treatment court (VTC) program.¹⁸ Modeled after treatment-based drug court programs, VTCs divert eligible veterans and servicemembers into treatment programs for service-related conditions or trauma, including:

- Traumatic brain injury;
- Substance use disorder;
- Psychological problems; and
- Military sexual trauma.¹⁹

Diversion to a VTC program may occur at any stage of a criminal proceeding.²⁰ As in treatment-based drug court and mental health court programs, VTC programs generate a number of records relating to a prospective participant's and a participant's health history and treatment plan.

¹⁰ *Id.*
¹¹ OSCA, *Office of Problem-Solving Courts*, <https://www.flcourts.gov/Resources-Services/Office-of-Problem-Solving-Courts> (last visited Jan. 14, 2024).
¹² *Id.*
¹³ Ss. 397.334(1) and 394.47892(1), F.S.
¹⁴ Ss. 397.334(2) and (3) and 394.47892(2)-(4), F.S.
¹⁵ "Client-level data" includes the underlying offenses that resulted in the referral to the treatment-based drug court, treatment compliance, completion status and reasons for failure to complete, any offenses committed during treatment and the sanctions imposed, frequency of court appearances, and units of service. Ss. 397.334(6)(b) and 394.47892(5)(b), F.S.
¹⁶ "Programmatic data" includes referral and screening procedures, eligibility criteria, type and duration of treatment offered, and residential treatment resources. *Id.*
¹⁷ *Id.*
¹⁸ S. 394.47891(3)(a), F.S.
¹⁹ S. 394.47891(8)(a)1., F.S.
²⁰ S. 394.47891(4), F.S.

Confidentiality and Public Record Exemptions

Treatment-Based Drug Court Programs

Currently, s. 397.334, F.S., makes information relating to a participant or a person considered for participation in a treatment-based drug court program contained in the following records confidential and exempt²¹ from public record requirements:

- Records created or compiled during screenings for participation in the program.
- Records created or compiled during substance abuse screenings.
- Behavioral health evaluations.
- Subsequent treatment status reports.²²

Such confidential and exempt information may be disclosed:

- Pursuant to a written request of the participant or person considered for participation, or his or her legal representative.
- To another governmental entity in the furtherance of its responsibilities associated with the screening of a person considered for participation in or the provision of treatment to a person in a treatment-based drug court program.²³

Additionally, s. 397.334, F.S., provides that records of a service provider which pertain to the identity, diagnosis, and prognosis of or provision of service to any person shall be disclosed pursuant to s. 397.501(7), F.S.²⁴

Substance Abuse Providers' Records

Under s. 397.501, F.S., individuals receiving substance abuse services from any service provider are guaranteed the protection of certain rights, including the right to confidentiality concerning their individual records. Pursuant to s. 397.501, F.S., service providers' records which pertain to the identity, diagnosis, and prognosis of and provision of service to any individual are confidential and exempt from public record requirements. Such records may not be disclosed without the written consent of the individual to whom they pertain except that disclosure may be made without such consent:

- To medical personnel in a medical emergency.
- To service provider personnel if such personnel need to know the information in order to carry out duties relating to the provision of services to an individual.
- To the secretary of the Department of Children and Families (DCF) or the secretary's designee, for purposes of scientific research, in accordance with federal confidentiality regulations, but only upon agreement in writing that the individual's name and other identifying information will not be disclosed.
- In the course of review of service provider records by persons who are performing an audit or evaluation on behalf of any federal, state, or local government agency, or third-party payor providing financial assistance or reimbursement to the service provider; however, reports produced as a result of such audit or evaluation may not disclose names or other identifying information and must be in accordance with federal confidentiality requirements.²⁵

²¹ 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).

²² S. 397.334(10)(a), F.S.

²³ S. 397.334(10)(b), F.S.

²⁴ S. 397.334(10)(c), F.S.

²⁵ S. 397.501(7)(a), F.S.

The restrictions on disclosure and use, however, do not apply to:

- Communications from provider personnel to law enforcement officers which are:
 - Directly related to an individual's commission of a crime on the premises of the provider or against provider personnel or to a threat to commit such a crime; and
 - Limited to the circumstances of the incident, including the status of the individual committing or threatening to commit the crime, that individual's name and address, and that individual's last known whereabouts.
- The reporting of incidents of suspected child abuse and neglect to the appropriate state or local authorities as required by law. However, such restrictions continue to apply to the original substance abuse records maintained by the provider, including their disclosure and use for civil and criminal proceedings which may arise out of the report of suspected child abuse and neglect.²⁶

Additionally, a person having a legally recognized interest in the disclosure of such information may apply for a court order authorizing such disclosure.²⁷

Clinical Records

Section 394.4615, F.S., makes clinical records confidential and exempt from public record requirements. A "clinical record" means all parts of the record required to be maintained and includes all medical records, progress notes, charts, and admission and discharge data, and all other information recorded by facility staff which pertains to the patient's hospitalization or treatment.²⁸

A clinical record must be released when:

- The patient or the patient's guardian authorizes the release.
- The patient is represented by counsel and the records are needed by the patient's counsel for adequate representation.
- The court orders such release.
- The patient is committed to, or is to be returned to, the Department of Corrections (DOC) from DCF, and DOC requests such records.²⁹
- A patient makes a specific threat to a service provider to cause serious bodily injury or death to an identified or readily available person, if the service provider reasonably believes, or should reasonably believe according to the standards of his or her profession, that the patient has the apparent intent and ability to imminently or immediately carry out such threat.³⁰
- Requested by the Medicaid Fraud Control Unit of the Department of Legal Affairs.³¹

Additionally, information from a clinical record may be released:

- When the administrator of the facility or secretary of DCF deems release to a qualified researcher, an aftercare treatment provider, or an employee or agent of DCF is necessary for treatment of the patient, maintenance of adequate records, compilation of treatment data, aftercare planning, or evaluation of programs.
- To the state attorney, the patient's legal representation, the court, and to the appropriate mental health professionals, including the service provider, to determine whether a person meets the criteria for involuntary outpatient placement or for preparing the proposed treatment plan.³²
- For statistical and research purposes if the information is abstracted in such a way as to protect the identity of individuals.³³

²⁶ S. 397.501(7)(b-c), F.S.

²⁷ S. 397.501(7)(f-j), F.S.

²⁸ S. 394.455(6), F.S.

²⁹ S. 394.4615(2), F.S.

³⁰ S. 394.4615(4), F.S. Additionally, s. 394.4615(3)(a), F.S., authorizes the administrator of the facility to release sufficient information to provide adequate warning to the person threatened with harm by the patient.

³¹ S. 394.4615(7), F.S.

³² S. 394.4615(3), F.S.

³³ S. 394.4615(5), F.S.

- To the Agency for Health Care Administration, DCF, and the Florida advocacy councils for the purpose of monitoring facility activity and complaints concerning facilities.³⁴

Forensic Behavioral Health Evaluations

Under s. 916.1065, F.S., forensic behavioral health evaluations filed with the court are confidential and exempt from public record requirements. “Forensic behavioral health evaluations” include any records, including supporting documentation, derived from a competency, substance abuse, psychosexual, psychological, psychiatric, psychosocial, cognitive impairment, sanity, or other mental health evaluation of an individual.³⁵

Petitions for Voluntary and Involuntary Admission for Mental Health Treatment

Under s. 394.464, F.S., all petitions for voluntary and involuntary admission for mental health treatment, court orders, and related records that are filed with or by a court are confidential and exempt from public record requirements.

The clerk of court may disclose such petitions, orders, and records to the following persons or entities:

- The petitioner.
- The petitioner’s attorney.
- The respondent, or his or her parent, guardian, legal custodian, or guardian advocate, if applicable.
- The respondent’s attorney.
- The respondent’s treating health care practitioner.
- The respondent’s health care surrogate or proxy.
- DCF.
- DOC, if the respondent is committed or is to be returned to the custody of DOC from DCF.
- A person or entity authorized to view records upon a court order issued for good cause.³⁶

As such, while certain information and records are currently confidential and exempt from public record requirements in problem-solving courts, only treatment-based drug court programs specifically make the following information relating to a participant or a person considered for participation in a treatment-based drug court program confidential and exempt from public record requirements:

- Records created or compiled during screenings for participation in the program.
- Records created or compiled during substance abuse screenings.
- Behavioral health evaluations.
- Subsequent treatment status reports.

The same information relating to participants or prospective participants of other problem-solving court programs, such as veterans treatment court programs and mental health court programs, is not currently confidential or exempt from public records requirements.

Effect of Proposed Changes

CS/HB 715 amends ss. 394.47891 and 394.47892, F.S., to make information relating to a participant or a person considered for participation in a veterans treatment court or a mental health court program, respectively, contained in the following records confidential and exempt from public record requirements:

- Records created or compiled during screenings for participation in the program.
- Records created or compiled during substance abuse screenings.
- Behavioral health evaluations.

³⁴ S. 394.4615(6), F.S.

³⁵ S. 916.1065(1) and (2), F.S.

³⁶ S. 394.464(1), F.S.

- Subsequent treatment status reports.

The bill provides that under both ss. 394.47891 and 394.47892, F.S., such information may be disclosed:

- Pursuant to a written request of the participant or person considered for participation or his or her legal representative.
- To another governmental entity in the furtherance of its responsibilities associated with the screening of a person considered for participation in or the provision of treatment to a person in a veterans treatment court or mental health court program.
- If it is a substance abuse service provider record that pertains to the identity, diagnosis, or prognosis of or provision of services to a participant or prospective participant pursuant to s. 397.501(7), F.S.
- If it is a service provider record pertaining to the mental health of the participant or prospective participant pursuant to s. 394.4615, F.S.

The bill applies to such information collected before, on, or after the effective date of the bill. Additionally, pursuant to the Open Government Sunset Review Act, the exemptions created by the bill will be automatically repealed on October 2, 2029, unless reenacted by the Legislature.

The bill provides an effective date of upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Amends s. 394.47891, F.S., relating to veterans treatment court programs.

Section 2: Amends s. 394.47892, F.S., relating to mental health court programs.

Section 3: Provides a public necessity statement.

Section 4: 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 may have an indeterminate, but likely insignificant, negative fiscal impact on agencies holding records created or compiled during screenings for participation in a veterans treatment court or mental health court program and for substance abuse, behavioral health evaluations, and treatment status

reports related to those persons participating in such programs as staff responsible for complying with public record requests may require training related to the new public record exemption. However, any additional costs will likely be absorbed within existing resources.

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 expenditures 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, section 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 exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it includes a public necessity statement. The public necessity statement provides that the Legislature finds that protection of records created or compiled during screenings for participation in a veterans treatment court or mental health court program and for substance abuse, behavioral health evaluations, and treatment status reports is necessary to protect against the release of information that is sensitive and personal in nature, which may result in unwarranted damage to the reputation of program participants. Additionally, the Legislature finds that public disclosure of such information could result in a decrease in program participation and that the harm that may result from the disclosure of such information significantly outweighs any public benefit that may be derived from such disclosure. The Legislature finds that it is necessary to make such information confidential and exempt in order to promote the effective and efficient administration of veterans treatment court and mental health court programs.

Breadth of Exemption

Article I, section 24(c) of the Florida Constitution requires a newly created or expanded 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 records created or compiled during screenings for participation in a veterans treatment court or mental health court program and for substance abuse, behavioral health evaluations, and treatment status reports related to those persons participating in such programs, which does not appear to be broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 10, 2024, the Criminal Justice Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment made a technical change.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

1 A bill to be entitled
2 An act relating to public records; amending ss.
3 394.47891 and 394.47892, F.S.; providing public
4 records exemptions for specified veterans treatment
5 court program records and mental health court program
6 records, respectively; providing exceptions; providing
7 a statement of public necessity; providing an
8 effective date.

9
10 Be It Enacted by the Legislature of the State of Florida:

11
12 Section 1. Subsection (12) is added to section 394.47891,
13 Florida Statutes, to read:

14 394.47891 Veterans treatment court programs.—

15 (12) PUBLIC RECORDS EXEMPTION.—

16 (a) Information relating to a participant or a person
17 considered for participation in a veterans treatment court
18 program contained in the following records is confidential and
19 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
20 Constitution:

21 1. Records created or compiled during screenings for
22 participation in the program.

23 2. Records created or compiled during substance abuse
24 screenings.

25 3. Behavioral health evaluations.

26 4. Subsequent treatment status reports.

27 (b) Such confidential and exempt information may be
 28 disclosed:

29 1. Pursuant to a written request of the participant or
 30 person considered for participation or his or her legal
 31 representative.

32 2. To another governmental entity in the furtherance of
 33 its responsibilities associated with the screening of a person
 34 considered for participation in or the provision of treatment to
 35 a person in a veterans treatment court program.

36 (c) If such confidential and exempt information is a
 37 substance abuse record of a service provider that pertains to
 38 the identity, diagnosis, or prognosis of or provision of
 39 services to a person, such information may be disclosed pursuant
 40 to s. 397.501(7).

41 (d) If such confidential and exempt information is a
 42 record of a service provider that pertains to mental health,
 43 such information may be disclosed pursuant to s. 394.4615.

44 (e) The public records exemption in this subsection
 45 applies to the information collected before, on, or after the
 46 effective date of this exemption.

47 (f) This subsection is subject to the Open Government
 48 Sunset Review Act in accordance with s. 119.15 and shall stand
 49 repealed on October 2, 2029, unless reviewed and saved from
 50 repeal through reenactment by the Legislature.

51 Section 2. Subsection (8) is added to section 394.47892,
52 Florida Statutes, to read:

53 394.47892 Mental health court programs.—

54 (8)(a) Information relating to a participant or a person
55 considered for participation in a mental health court program
56 contained in the following records is confidential and exempt
57 from s. 119.07(1) and s. 24(a), Art. I of the State
58 Constitution:

59 1. Records created or compiled during screenings for
60 participation in the program.

61 2. Records created or compiled during substance abuse
62 screenings.

63 3. Behavioral health evaluations.

64 4. Subsequent treatment status reports.

65 (b) Such confidential and exempt information may be
66 disclosed:

67 1. Pursuant to a written request of the participant or
68 person considered for participation or his or her legal
69 representative.

70 2. To another governmental entity in the furtherance of
71 the governmental entity's responsibilities associated with the
72 screening of a person considered for participation in or the
73 provision of treatment to a person in a mental health court
74 program.

75 (c) If such confidential and exempt information is a

76 substance abuse record of a service provider that pertains to
 77 the identity, diagnosis, and prognosis of or provision of
 78 services to a person, such information may be disclosed pursuant
 79 to s. 397.501(7).

80 (d) If such confidential and exempt information is a
 81 record of a service provider that pertains to mental health,
 82 such information may be disclosed pursuant to s. 394.4615.

83 (e) The public records exemption in this subsection
 84 applies to the information collected before, on, or after the
 85 effective date of this exemption.

86 (f) This subsection is subject to the Open Government
 87 Sunset Review Act in accordance with s. 119.15 and shall stand
 88 repealed on October 2, 2029, unless reviewed and saved from
 89 repeal through reenactment by the Legislature.

90 Section 3. The Legislature finds that it is a public
 91 necessity that information relating to a participant or person
 92 considered for participation in a veterans treatment court
 93 program or mental health court program under ss. 394.47891 and
 94 394.47892, Florida Statutes, that is contained in certain
 95 records be made confidential and exempt from s. 119.07(1),
 96 Florida Statutes, and s. 24(a), Article I of the State
 97 Constitution. Protecting information contained in records
 98 created or compiled during screenings for participation in a
 99 veterans treatment court program or mental health court program,
 100 records created or compiled during substance abuse screenings,

101 behavioral health evaluations, and subsequent treatment status
102 reports is necessary to protect the privacy rights of
103 participants or individuals considered for participation in a
104 veterans treatment court program or mental health court program.
105 Protecting against the release of information that is sensitive
106 and personal in nature prevents unwarranted damage to the
107 reputation of veterans treatment court program or mental health
108 court program participants. Public disclosure of such
109 information could result in a substantial negative effect on
110 participation in veterans treatment court programs and mental
111 health court programs. The Legislature further finds that the
112 harm that may result from the release of such information
113 significantly outweighs any public benefit that may be derived
114 from the disclosure of such information. Finally, it is a public
115 necessity that this information be made confidential and exempt
116 to protect the privacy rights of program participants, encourage
117 individuals to participate in such programs, and promote the
118 effective and efficient administration of a veterans treatment
119 court program or a mental health court program.

120 Section 4. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 919 Artificial Intelligence Use in Political Advertising

SPONSOR(S): Rizo

TIED BILLS: IDEN./SIM. BILLS: SB 850

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Ethics, Elections & Open Government Subcommittee		Skinner	Toliver
2) Justice Appropriations Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

The Florida Election Code requires certain disclaimers for political advertisements, electioneering communications, miscellaneous advertisements, and voter guides. Such disclaimers generally must disclose who has paid for or sponsored the advertisement or electioneering communication. The Florida Elections Commission (Commission) has jurisdiction to investigate and determine campaign finance violations, as well as other violations of the Florida Election Code.

Recently, concerns have emerged regarding the use of artificial intelligence (AI) in political campaigns and other election-related activities, including the use of artificially manipulated audio or video content in political advertisements, as it can be used to deceive voters or damage political rivals.

The bill requires a political advertisement, electioneering communication, or other miscellaneous advertisement that contains an image, video, audio, text, or other digital content which was created in whole or in part with the use of generative AI and appears to depict a real person performing an action that did not occur in reality to include a certain disclaimer disclosing the use of the generative artificial intelligence. The bill defines “generative artificial intelligence” as a machine-based system that can, for a given set of human-defined objectives, emulate the structure and characteristics of input data in order to generate derived synthetic content including images, videos, audio, text, and other digital content.

The bill permits a complaint to be filed with the Commission if such disclaimer is not included on the advertisement or communication. The bill subjects a person who fails to include the required disclaimer to civil penalties. Lastly, the bill requires the Commission to adopt rules to provide for expedited hearings of such complaints.

The bill may have a positive fiscal impact on state government revenues associated with a possible increase in revenue from the collection of civil penalties. However, the bill may also have a negative, but likely insignificant, fiscal impact on state government expenditures associated with enforcement costs. The bill does not appear to have a fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Campaign Finance – Required Disclaimers

Political Advertisements

A political advertisement is a paid expression in a communications medium¹ that expressly advocates² the election or defeat of a candidate or the approval or rejection of an issue.³

The Florida Election Code⁴ requires political advertisements to have certain disclaimers, such as statements disclosing who is paying for the political advertisement along with the address of such persons, the name of candidate, the candidate's party affiliation, and the office sought.⁵

Electioneering Communications

Electioneering communications⁶ are text messages or communications publicly distributed by a television station, radio station, cable television system, satellite system, newspaper, magazine, direct mail, or telephone that:

- Refer to or depict a clearly identified candidate for office without expressly advocating the election or defeat of a candidate, but that is susceptible of no reasonable interpretation other than an appeal to vote for or against a specific candidate;
- Are made within 30 days before a primary or special general election or for 60 days before any other election for the office sought by the candidate; and
- Are targeted to the relevant electorate in the geographic area the candidate would represent if elected.⁷

Any electioneering communication, other than a text message or a telephone call, must prominently state the following:

“Paid electioneering communication paid for by (*Name and address of person paying for the communication*).”⁸

Miscellaneous Advertisements

Any advertisement — other than a political advertisement, independent expenditure,⁹ or electioneering communication — on billboards, bumper stickers, radio, or television, or in a newspaper, a magazine, or a periodical, that is intended to influence public policy or the vote of a public official, must clearly

¹ “Communications media” means broadcasting stations, newspapers, magazines, outdoor advertising facilities, printers, direct mail, advertising agencies, the Internet, and telephone companies. *See* s. 106.011(4), F.S.

² “Expressly advocates,” while not defined in the Florida Election Code, has been determined by the Division of Elections to mean any communication which uses phrases including, but not limited to: “vote for,” “elect,” “support,” “cast your ballot for,” “Smith for Congress,” “vote against,” “defeat,” “oppose,” and “reject.” *See Div. of Elections Op.* 16-12 (Oct. 5, 2016); *see also Buckley v. Valeo*, 424 U.S. 1 (1976).

³ Section 106.011(15), F.S. Specified types of advertisements are exempted from this definition. *See* s. 106.011(15)(a)-(b), F.S.

⁴ Chapters 97-106, F.S., are known as the Florida Election Code. Section 97.011, F.S.

⁵ *See* s. 106.143, F.S., for which disclaimers are required for certain political advertisements.

⁶ Section 106.011(8)(a), F.S.

⁷ *Id.* Specified types of communications are exempted from this definition. *See* s. 106.011(8)(b), F.S.

⁸ Section 106.1439(1), F.S.

⁹ *See* s. 106.011(12)(a), F.S.

designate the sponsor of such advertisement.¹⁰ In the instance of being broadcast on television, there must also be a verbal statement of sponsorship.¹¹

Voter Guides

Voters guides are direct mail that is either an electioneering communication or a political advertisement sent for the purpose of advocating for or endorsing particular issues or candidates by recommending specific electoral choices to the voter or by indicating issue or candidate selections on an unofficial ballot.¹²

A voter guide circulated before or on the day of an election must display the required disclaimer — a political advertisement disclaimer or an electioneering communication disclaimer as applicable — in bold font with a font size of at least 12 point at the top of the first page.¹³ The voter guide must also be marked “Voter Guide” with such text appearing immediately below the political advertisement or electioneering communication disclaimer.¹⁴

Florida Elections Commission

The Florida Elections Commission (Commission) is an investigatory and quasi-adjudicatory body housed within the Department of Legal Affairs (DLA), but is not subject to the control, supervision, or direction of DLA.¹⁵ The Commission has jurisdiction¹⁶ to investigate and determine campaign finance violations, as well as other violations of the Florida Election Code.¹⁷

Complaints and Investigations

In order for the Commission to investigate a campaign finance violation or other violation of the Florida Election Code, it must first receive either information reported by the Division of Elections (Division)¹⁸ or a sworn complaint based upon information other than hearsay.¹⁹ Complaints of a violation must be filed with the Commission, and the Commission may investigate only the alleged violations in the complaint.²⁰

The Commission must transmit a copy of the complaint to the alleged violator within five days after receiving the complaint.²¹ The respondent then has 14 days after receipt of the complaint to file an initial response,²² and, if the complaint is determined to be legally sufficient, the respondent must be notified of such finding, as well as the alleged violations and factual basis that support such findings. The Commission must then undertake a preliminary investigation to determine if the alleged facts constitute probable cause to believe a violation occurred.²³ Once the investigation report is complete, the respondent must receive the report and be given at least 14 days to file a written response.²⁴ Counsel for the Commission must review the report and make a written recommendation for the

¹⁰ Section 106.1437, F.S.

¹¹ *Id.*

¹² Section 106.1436(1), F.S. Direct mail or publications made by government entities or government officials in their official capacity are not included this definition.

¹³ Section 106.1436(3)(a), F.S.

¹⁴ Section 106.1436(3)(b), F.S.

¹⁵ Section 106.24(1), F.S.

¹⁶ For the purposes of Commission jurisdiction, a violation means the willful performance of an act prohibited by chapter 106 or chapter 104 or the willful failure to perform an act required by such chapters. Willfulness is a determination of fact. Section 106.25(3), F.S.

¹⁷ Section 106.25(2), F.S.

¹⁸ The Division of Elections is an administrative unit of the Department of State. *See* Section 97.021(9), F.S.

¹⁹ Section 106.25(2), F.S.

²⁰ *Id.* Failure of a complainant to allege all violations that arise from facts or allegations in a complaint bars the Commission from investigating a subsequent complaint based on facts or allegations that were raised or could have been raised in the first complaint.

²¹ *Id.*

²² *Id.*

²³ Section 106.25(4), F.S.

²⁴ Section 106.25(4)(a) and (b), F.S.

disposition of the complaint.²⁵ If it is recommended probable cause be found, a copy of the counsel's recommendation, as well as the charges, must be given to the respondent, who then must be given at least 14 days to file a written response.²⁶

The Commission, at a hearing in which all parties and their counsels are permitted to attend, then makes a probable cause determination.²⁷ The respondent must receive notice of the hearing at least 14 days before it occurs.²⁸ The probable cause determination is the conclusion of the preliminary investigation.²⁹

If the Commission finds no probable cause exists, then the Commission dismisses the case.³⁰ If the Commission finds that probable cause exists, the complainant and the alleged violator must be notified in writing.³¹ Thereafter, the Commission's counsel and the alleged violator must attempt to reach a consent agreement.³²

A person alleged by the Commission to have committed a violation may elect, within 30 days after the date of the Commission's allegations, to have a formal administrative hearing conducted by an administrative law judge in the Division of Administrative Hearings (DOAH).³³ If the person does not elect to have a hearing by a DOAH judge and does not elect to resolve the complaint by a consent order, he or she is entitled to a formal or informal hearing before the Commission.³⁴

All sworn complaints that the Commission has jurisdiction over must be filed with the Commission within two years after the alleged violations.³⁵

Fines for Election Law Violations

The Commission or, in cases referred to DOAH, an administrative law judge, may impose fines for such violations.³⁶ Such fines must not exceed \$2,500 per count, and a fine may be multiplied by three, not to exceed \$7,500, after a person commits three counts of the same category of offense.³⁷

Artificial Intelligence

While strictly describing or defining artificial intelligence (AI) can be difficult as the term encompasses a large field of existing and emerging technologies, methodologies, and application areas, the Congressional Research Service has recently stated that AI is "generally thought of as computerized systems that work and react in ways commonly thought to require intelligence."³⁸ The application of AI extends to areas such as "natural language processing, facial recognition, and robotics."³⁹ A subset of AI, called generative AI, a term which refers to "machine learning models developed through training on

²⁵ Section 106.25(4)(c), F.S.

²⁶ *Id.*

²⁷ Section 106.25(4)(d), F.S.

²⁸ *Id.*

²⁹ Section 106.25(4)(e), F.S.

³⁰ Section 106.25(4)(g), F.S. A finding of no probable cause is a full adjudication of all such matters; the Commission may not charge a respondent in a subsequent complaint alleging violations based upon the same actions, nonactions, or circumstances wherein the Commission found no probable cause.

³¹ Section 106.25(4)(h), F.S.

³² Section 106.25(4)(i)1., F.S.

³³ Section 106.25(5), F.S.

³⁴ *Id.*

³⁵ Section 106.25(2), F.S.

³⁶ Section 106.265(1), F.S.

³⁷ *Id.*

³⁸ *Artificial Intelligence: Overview, Recent Advances, and Considerations for the 118th Congress*, Congressional Research Service, available at <https://crsreports.congress.gov/product/pdf/R/R47644> (last visited Jan. 14, 2024).

³⁹ *Id.*

large volumes of data” for the purpose of generating new content, has undergone rapid advancement over the past few years.⁴⁰

AI and Elections

Recently, concerns have emerged regarding the use of AI in political campaigns and election-related activities, especially generative AI.⁴¹ Areas of concern include voter misinformation by chatbots and phishing scams on election officials through AI-generated voices.⁴² The use of “deepfakes” in political advertising, which is artificially manipulated audio or video content, has also become a large area of concern, as it can be used to damage political rivals and deceive voters.⁴³

According to the National Conference of State Legislatures, legislation was introduced in several states in 2023 related to the use of AI in political advertisements.⁴⁴ Indiana, Michigan, New York, Washington, and Wisconsin all had some type of legislation that required disclaimers or disclosures on political advertisements or media that were generated by AI or that contained synthetic or doctored media.⁴⁵ Michigan and New Jersey had legislation introduced that prohibited deepfake videos or materially deceptive media from being disseminated a certain number of days before an election, unless there was a disclosure that the media had been manipulated. Other states — Illinois, Minnesota, New York, and Texas — had legislation introduced that prohibited the use of deepfake technology a certain number of days before an election, with no exception.⁴⁶ New Jersey also had legislation introduced that prohibited the use of videos that falsely depict an election or policy debate.⁴⁷

The Federal Elections Commission (FEC) has received petitions requesting that the FEC clarify in rule that AI-generated campaign advertisements are subject to a statutory prohibition against the fraudulent misrepresentation of other candidates or political parties.⁴⁸ The FEC sought public testimony on the petition.⁴⁹ Public comment closed on October 16, 2023, and the FEC has not yet taken further action.⁵⁰

Effect of the Bill

The bill requires that a political advertisement, electioneering communication, or other miscellaneous advertisement that contains an image, video, audio, text, or other digital content which was created, in

⁴⁰ *Id.*; See also *Generative Artificial Intelligence: Overview, Issues, and Questions for Congress*, Congressional Research Service, available at <https://crsreports.congress.gov/product/pdf/IF/IF12426> (last visited Jan. 14, 2024).

⁴¹ See *How 2024 presidential candidates are using AI inside their election campaigns*, CNBC, Dec. 17, 2023, available at <https://www.cnn.com/2023/12/17/how-2024-presidential-candidates-are-using-ai-in-election-campaigns.html> (last visited Jan. 16, 2024); see also *Meta prohibits generative AI tools for political ads*, CNN, Nov. 7, 2023, available at <https://www.cnn.com/2023/11/07/tech/meta-ai-political-ads/index.html> (last visited Jan. 16, 2024).

⁴² *Challenges Ahead for Lawmakers Seeking to Legislate AI in Campaigns*, National Conference of State Legislators, available at https://www.ncsl.org/state-legislatures-news/details/challenges-ahead-for-lawmakers-seeking-to-legislate-ai-in-campaigns?utm_source=national+conference+of+state+legislatures&utm_term=0_-61beaf450-%5blist_email_id%5d&utm_campaign=8bf8e40e8-canvass-jan-4&utm_medium=email (last visited Jan. 14, 2024).

⁴³ *Id.*; see also *Artificial Intelligence (AI) and Campaign Finance Policy: Recent Developments*, Congressional Research Service, available at <https://crsreports.congress.gov/product/pdf/IN/IN12222> (last visited Jan. 14, 2024).

⁴⁴ *Artificial Intelligence (AI) in Elections and Campaigns*, National Conference of State Legislatures, available at <https://www.ncsl.org/elections-and-campaigns/artificial-intelligence-ai-in-elections-and-campaigns> (last visited Jan. 14, 2024).

⁴⁵ *Id.* Michigan and Washington’s legislation requiring disclosures on political advertisements generated by AI or synthetic media became law, as did Michigan’s legislation prohibiting materially deceptive media a certain number of days before an election, unless a disclosure is provided.

⁴⁶ *Id.* Minnesota’s legislation prohibiting the publication of deepfake media a certain number of days before an election became law.

⁴⁷ *Id.*

⁴⁸ *Comments sought on amending regulation to include deliberately deceptive Artificial Intelligence in campaign ads*, Federal Elections Commission, available at <https://www.fec.gov/updates/comments-sought-on-amending-regulation-to-include-deliberately-deceptive-artificial-intelligence-in-campaign-ads/> (last visited Jan. 16, 2024).

⁴⁹ *Id.*

⁵⁰ *Id.*; see also *Artificial Intelligence in Campaign Ads, A Proposed Rule by the Federal Election Commission on 08/16/2023*, Federal Register, available at <https://www.federalregister.gov/documents/2023/08/16/2023-17547/artificial-intelligence-in-campaign-ads> (last visited Jan. 16, 2024).

whole or in part, with the use of generative AI⁵¹ and appears to depict a real person performing an action that did not occur in reality must prominently include the following disclaimer:

“Created in whole or in part with the use of general artificial intelligence.”

The bill permits a complaint to be filed with the Commission if such disclaimer is not included on the advertisement or communication. The bill requires the Commission to adopt rules to provide for an expedited hearing of such complaints or, in cases referred to DOAH, requires the director to assign an administrative law judge to provide an expedited hearing.

The bill subjects a person who fails to include such disclaimer to civil penalties that are permitted to be imposed by the Commission or a DOAH administrative law judge.

B. SECTION DIRECTORY:

Section 1 creates s. 106.145, F.S., relating to use of artificial intelligence.

Section 2 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 creates a new disclaimer for advertisements and electioneering communications that if omitted, may result in increased revenue for the state, as fines may be assessed for violations.

2. Expenditures:

The bill may have a negative, but likely insignificant, fiscal impact on state government expenditures as the Florida Elections Commission may see an increase in complaints caused by the bill. However, such expenditures should be able to be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

⁵¹ The bill defines “generative artificial intelligence” to mean “machine-based system that can, for a given set of human-defined objectives, emulate the structure and characteristics of input data in order to generate derived synthetic content, including images, videos, audio, text, or other digital content.”

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the Commission to adopt rules to provide for an expedited hearing of complaints that allege that a disclaimer required under the bill for political advertisements, electioneering communications, or miscellaneous advertisements has been omitted.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
 2 An act relating to artificial intelligence use in
 3 political advertising; creating s. 106.145, F.S.;
 4 providing a definition; requiring certain political
 5 advertisements, electioneering communications, or
 6 other miscellaneous advertisements to include a
 7 specified disclaimer; subjecting a person who fails to
 8 include the required disclaimer to civil penalties;
 9 authorizing any person to file certain complaints;
 10 providing for expedited hearings; providing an
 11 effective date.

12
 13 Be It Enacted by the Legislature of the State of Florida:

14
 15 Section 1. Section 106.145, Florida Statutes, is created
 16 to read:

17 106.145 Use of artificial intelligence.-

18 (1) As used in this section, the term "generative
 19 artificial intelligence" means a machine-based system that can,
 20 for a given set of human-defined objectives, emulate the
 21 structure and characteristics of input data in order to generate
 22 derived synthetic content including images, videos, audio, text,
 23 and other digital content.

24 (2) A political advertisement, electioneering
 25 communication, or other miscellaneous advertisement that

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26 contains an image, video, audio, text, or other digital content
27 which was created in whole or in part with the use of generative
28 artificial intelligence and which appears to depict a real
29 person performing an action that did not occur in reality must
30 prominently include the following disclaimer: "Created in whole
31 or in part with the use of generative artificial intelligence."

32 (3)(a) A person who fails to include the disclaimer
33 prescribed in this section in a political advertisement,
34 electioneering communication, or other miscellaneous
35 advertisement that is required to contain such disclaimer is
36 subject to the civil penalties prescribed in s. 106.265.

37 (b) Any person may file a complaint with the Florida
38 Elections Commission pursuant to s. 106.25 alleging a violation
39 of this section. The commission shall adopt rules to provide an
40 expedited hearing of complaints filed under this section, or, in
41 cases referred to the Division of Administrative Hearings
42 pursuant to s. 106.25(5), the director shall assign an
43 administrative law judge to provide an expedited hearing.

44 Section 2. This act shall take effect July 1, 2024.

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	_____	(Y/N)
ADOPTED AS AMENDED	_____	(Y/N)
ADOPTED W/O OBJECTION	_____	(Y/N)
FAILED TO ADOPT	_____	(Y/N)
WITHDRAWN	_____	(Y/N)
OTHER		

Committee/Subcommittee hearing bill: Ethics, Elections & Open Government Subcommittee

Representative Rizo offered the following:

Amendment (with title amendment)

Remove lines 24-43 and insert:

(2) If a political advertisement, electioneering communication, or other miscellaneous advertisement contains images, video, audio, text, or other digital content created in whole or in part with the use of generative artificial intelligence, the generated content appears to depict a real person performing an action that did not actually occur, and the generated content was created with intent to injure a candidate or to deceive regarding a ballot issue, the political advertisement, electioneering communication, or other miscellaneous advertisement must prominently state the following

Amendment No.

17 disclaimer: "Created in whole or in part with the use of
18 generative artificial intelligence (AI)."

19 (3) (a) A person responsible for creating the content of a
20 political advertisement, electioneering communication, or
21 miscellaneous advertisement who fails to include the required
22 disclaimer prescribed in this section in such advertisement or
23 communication commits a misdemeanor of the first degree,
24 punishable as provided in s. 775.082 or s. 775.083.

25 (b) Any person may file a complaint with the Florida
26 Elections Commission pursuant to s. 106.25 alleging a violation
27 of this section. The commission shall adopt rules to provide an
28 expedited hearing of complaints filed under this section, or, in
29 cases referred to the Division of Administrative Hearings
30 pursuant to s. 106.25(5), the director shall assign an
31 administrative law judge to provide an expedited hearing.

32 (c) This section does not apply to the following persons
33 or entities that publish or disseminate a political
34 advertisement, electioneering communication, or other
35 miscellaneous advertisement, which is required to include the
36 disclaimer required under subsection (2):

37 1. A radio or television broadcasting station, including a
38 cable or satellite television operator, programmer, or producer,
39 paid to broadcast a political advertisement, electioneering
40 communication, or other miscellaneous advertisement.

Amendment No.

41 2. An internet website, a regularly published newspaper,
42 magazine, or other periodical of general circulation, including
43 an internet or electronic publication, that routinely carries
44 news and commentary of general interest, if such website,
45 newspaper, magazine, or periodical clearly states that the
46 political advertisement, electioneering communication, or other
47 miscellaneous advertisement does not accurately represent a
48 ballot issue or candidate.

49

50 -----

51 **T I T L E A M E N D M E N T**

52 Remove lines 7-10 and insert:

53 specified disclaimer; providing for criminal penalties;
54 authorizing any person to file certain complaints; providing for
55 expedited hearings; providing exceptions in certain
56 circumstances; providing an

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB EEG 24-06 OGSR/Department of the Lottery
SPONSOR(S): Ethics, Elections & Open Government Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Ethics, Elections & Open Government Subcommittee		Poreda	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 2nd of the fifth year after enactment.

The Florida Constitution permits the state to create lotteries, the proceeds from which are required to be deposited in a State Education Lotteries Trust Fund. The Department of the Lottery (department) was established to operate the state lottery with the purpose of maximizing revenues in a manner consonant with the dignity of the state and the welfare of its citizens.

In 2019, the Legislature created public record exemptions for certain information held by the department relating to its operations and processes. Specifically, the following information is protected from disclosure that, if released, could harm the security or integrity of the department:

- Information relating to the security of the department's information technology security.
- Security information or information that would reveal security measures of the department.
- Information about lottery games, tickets, inventory, and promotions for games.
- Information concerning terminals, machines, and devices that issue tickets.

Current law also protects the following department information, regardless of whether the information could harm the security or integrity of the department:

- Information that must be maintained as confidential in order for the department to participate in a multi-state lottery association or game.
- Personal identifying information obtained by the department when processing background investigations of current or potential retailers or vendors.
- Financial information about an entity that is not publicly available and is provided to the department in connection with its review of the financial responsibility of the entity.

In 2022, the Legislature passed CS/HB 7057, which created a general public record exemption — applicable to all agencies — for certain information related to cybersecurity. Pursuant to the OGSR act, the exemption for cybersecurity information will repeal on October 2, 2027, unless reviewed and saved from repeal by the Legislature.

The bill extends the repeal date for the department's information technology security exemption to October 2, 2027, to coincide with the future OGSR repeal date of the general cybersecurity exemption in statute. The bill saves from repeal the remaining public record exemptions under review relating to the department. Each of the exemptions will repeal on October 2, 2024, if this bill does not become law.

The bill does not appear to have a fiscal impact on state government 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)¹ 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 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.²

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.³

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.⁴ 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.

Department of the Lottery

The Florida Constitution initially prohibited “[l]otteries, other than the types of pari-mutuel pools authorized by law.”⁵ However, in 1986, Florida voters approved an amendment to the Florida Constitution that specifically authorizes the state to operate lotteries, the proceeds from which are required to be deposited in a State Education Lotteries Trust Fund.⁶ The Legislature, soon thereafter, passed legislation to implement the constitutional provision⁷ in order to enable “the people of the state to benefit from significant additional moneys for education” and “to play the best lottery games available.”⁸

The Department of the Lottery (department)⁹ was established in 1987 to operate the state lottery with the purpose of maximizing revenues in a manner consonant with the dignity of the state and the welfare of its citizens.¹⁰ It was the Legislature's intent that the department be self-supporting, revenue-producing, and function as much as possible as an entrepreneurial business.¹¹ The department is

¹ Section 119.15, F.S.

² Section 119.15(3), F.S.

³ Section 119.15(6)(b), F.S.

⁴ Article I, s. 24(c), FLA. CONST.

⁵ Article X, s. 7, FLA. CONST.

⁶ Article X, s. 15, FLA. CONST.

⁷ Chapter 24, F.S. and Chapter 87-65, L.O.F

⁸ *Id.*

⁹ Section 24.102, F.S.

¹⁰ Section 24.104, F.S.

¹¹ Section 24.102(2), F.S.

headed by a secretary appointed by the Governor, subject to the confirmation of the Senate.¹² The department is authorized to adopt rules governing the establishment and operation of the state lottery.¹³ Florida began offering lottery games in 1988, with a \$1 weekly drawing.¹⁴ Since then, the Lottery has grown to include approximately 13,500 retailer locations across the state with lottery tickets ranging from \$1 to \$50¹⁵ and total ticket sales of \$9.325 billion.¹⁶

Current Public Record Exemptions related to the Department

The name of a winner of a prize valued at \$250,000 or more is confidential and exempt¹⁷ from public record requirements for 90- days from the date the prize is claimed, unless the winner consents to the release of his or her name.¹⁸ The department is also required to maintain the confidentiality of the street address and telephone number of a game winner, which are confidential and exempt from public record requirements, unless the winner consents to the release of the information.¹⁹

The department must disclose any confidential and exempt information to the Auditor General, to the Office of Program Policy Analysis and Government Accountability, or to the lottery's independent auditor upon his or her request.²⁰ In addition, if the President of the Senate or the Speaker of the House of Representatives certifies that confidential information is necessary for effecting legislative changes, the requested information must be disclosed to him or her, and he or she may disclose such information to members of the Legislature and legislative staff as necessary to affect such purpose.²¹

Current law provides that any person who, with intent to defraud or with intent to provide a financial or other advantage to himself, herself, or another, knowingly and willfully discloses any confidential and exempt information relating to the lottery is guilty of a first-degree felony.²²

¹² Section 20.317(1)(a), F.S.

¹³ Section 24.105(9), F.S.

¹⁴ Florida Lottery, *History*, available at <https://www.flalottery.com/history> (last visited Jan. 15, 2024).

¹⁵ *Id.*

¹⁶ OPPAGA, *Review of the Florida Lottery, 2022*, available at <https://oppaga.fl.gov/Documents/Reports/23-02.pdf> (last visited Jan. 15, 2024). Ticket sales figure based on Fiscal Year 2021-2022.

¹⁷ 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).

¹⁸ Section 24.1051(3)(a), F.S. However, the name of a winner must be provided pursuant to s. 24.115, F.S., regarding persons owing child support and s. 409.2577, F.S., regarding the parent locator service to locate parents that have deserted their children.

¹⁹ Section 24.1051(2), F.S.

²⁰ Section 24.1051(4), F.S.

²¹ Section 24.105(12)(c), F.S.

²² A first-degree felony is punishable by up to thirty years imprisonment and a fine of up to \$10,000. Sections 755.082 and 755.083, F.S.

Cybersecurity Public Record Exemption

In 2022, the Legislature passed CS/HB 7057, which created a general public record exemption — applicable to all agencies²³ — for the certain information related to cybersecurity.²⁴ Specifically, CS/HB 7057, which was codified as s. 119.0725, F.S., protected the following information:

- Information related to critical infrastructure.²⁵
- Network schematics, hardware and software configurations, or encryption information or information that identifies detection, investigation, or response practices for suspected or confirmed cybersecurity incidents, including suspected or confirmed breaches, if the disclosure of such information would facilitate unauthorized access to or unauthorized modification, disclosure, or destruction of:
 - Data or information, whether physical or virtual; or
 - Information technology (I.T.) resources, which include an agency’s existing or proposed I.T. systems.
- Coverage limits and deductible or self-insurance amounts of insurance or other risk mitigation coverages acquired for the protection of IT systems, operational technology (OT) systems, or data of an agency.
- Cybersecurity incident information contained in certain reports.

CS/HB 7057 (2022) also created a public meeting exemption for any portion of a meeting that would reveal the confidential and exempt information; however, any portion of an exempt meeting must be recorded and transcribed.²⁶ The recording and transcript are confidential and exempt from public record requirements.²⁷

Pursuant to the OGSR act, the exemption for cybersecurity information will repeal on October 2, 2027, unless reviewed and saved from repeal by the Legislature.

Public Record Exemptions under Review

In 2019, the Legislature created public record exemptions for certain information held by the department related the department’s cybersecurity, information technology, information about lottery games, personal identifying information of retailers and vendors for the purposes of background investigations, and certain financial information of vendors. The following information is exempt from public record requirements if release could harm the security or integrity of the department:

- Information relating to the security of the department’s technologies, processes, and practices designed to protect networks, computers, data processing software, data, and data systems from attack, damage, or unauthorized access.
- Security information or information that would reveal security measures of the department, whether physical or virtual.
- Information about lottery games, tickets, inventory, and promotions for games, including description, design, production, printing, packaging, shipping, delivery, storage, and validation of such games, promotions, tickets, stock.
- Information concerning terminals, machines, and devices that issue tickets.

Current law also makes the following information exempt, regardless of whether release could harm the security or integrity of the department:

²³ “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.

²⁴ See s. 119.0725, F.S.

²⁵ “Critical infrastructure” means existing and proposed information technology and operation technology systems and assets, whether physical and virtual, the incapacity or destruction of which would negatively affect security, economic security, public health, or public safety. Section 119.0725(1)(b), F.S.

²⁶ Section 119.0725(3), F.S.

²⁷ *Id.*

- Information that must be maintained as confidential in order for the department to participate in a multi-state lottery association or game.
- Personal identifying information obtained by the department when processing background investigations of current or potential retailers or vendors.
- Financial information about an entity that is not publicly available and is provided to the department in connection with its review of the financial responsibility of the entity, provided that the entity marks such information as confidential.²⁸

The protected information must be released to the Auditor General, the Office of Program Policy Analysis and Government Accountability, and to the lottery's independent auditor, upon his or her request.²⁹ The information may be released to other governmental entities as needed in connection with performance of their duties.³⁰

In 2019, the public necessity statements³¹ for the public record exemptions provide the following:³²

I.T. Security Information.

Ensuring the security and integrity of lottery operations safeguards against players gaining an unfair advantage over other players and enables the department to operate in a manner consistent with the dignity of the state lottery. If such security information were made available to the public, the integrity and efficiency of the lottery would be jeopardized and the effective and efficient administration of the lottery would be significantly impaired.

Multistate Game Information

The department is authorized to enter into agreements with other states for the operation and promotion of a multistate lottery and without the exemption, the department would be unable to join certain associations and games, thus causing the state to miss opportunities to generate revenue for education. As a result, the effective and efficient administration of the lottery would be significantly impaired if the confidentiality of these records is not maintained.

Personal Identifying Information relating to Background Investigations

The release of such sensitive personal information could cause great financial harm to an individual and his or her family, cause unwarranted damage to the good name and reputation of such individuals, and increase the risk of identity theft. Without the exemption, current and potential retailers and vendors may be reluctant to participate as a department retailer or vendor, and the effective and efficient administration of the lottery would be significantly impaired.

Confidential Financial Information about Certain Entities

The release of such information could harm the business operations of entities with which the department wishes to contract, injure those entities in the marketplace, and decrease the likelihood that such entities would work with the department. As a result, the effective and efficient administration of the lottery would be significantly impaired without maintaining the confidentiality of such financial information.

²⁸ *Id.*

²⁹ Section 24.1051(4), F.S.

³⁰ Section 24.1051(1)(c), F.S.

³¹ Article I, s. 24(c), FLA. CONST., requires each public record exemption to "state with specificity the public necessity justifying the exemption."

³² Chapter 2019-41, L.O.F.

Pursuant to the OGSR Act, the exemptions will repeal on October 2, 2024, unless reenacted by the Legislature.

During the 2023 interim, House and Senate committee staff met jointly with staff from the Department of the Lottery to discuss the public records exemption under review. The department staff indicated that they had not had any difficulty interpreting or applying the exemptions and were not aware of any litigation concerning the exemptions. Department staff noted the continued necessity for the exemption and recommended that the exemption be reenacted as is. Committee staff inquired as whether any duplicity existed between the cybersecurity protections in the department's exemption concerning certain IT security information and the general cybersecurity exemption in s. 119.0725, F.S., department staff indicated that while there was likely overlap between the two exemptions, the general cybersecurity exemption would not cover the same categories of information.³³

Effect of the Bill

The bill extends the repeal date for the department's I.T. security exemption relating to October 2, 2027, to coincide with the future OGSR repeal date of the general cybersecurity exemption in s. 119.0725, F.S. The bill saves from repeal the remaining public record exemptions under review relating to the department. Each of the exemptions under review will repeal on October 2, 2024, if this bill does not become law.

B. SECTION DIRECTORY:

Section 1 amends s. 24.1051, F.S., relating to 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:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

³³ Memorandum from Reginald D. Dixon, Chief of Staff, Department of the Lottery, September 26, 2023, on file with the Ethics, Elections & Open Government Subcommittee.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not require rulemaking nor confer rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; amending s. 24.1051, F.S., which
 4 provides exemptions from public record requirements
 5 for certain security information held by the
 6 Department of the Lottery, information about lottery
 7 games, personal identifying information of retailers
 8 and vendors for purposes of background checks, and
 9 certain financial information held by the department;
 10 providing for future legislative review and repeal of
 11 an exemption from public record requirements relating
 12 to the security of certain technologies, processes,
 13 and practices; removing the scheduled repeal of
 14 remaining exemptions in that subsection; providing an
 15 effective date.

16
 17 Be It Enacted by the Legislature of the State of Florida:

18
 19 Section 1. Subsection (1) of section 24.1051, Florida
 20 Statutes, is amended to read:

21 24.1051 Exemptions from inspection or copying of public
 22 records.—

23 (1) (a) The following information held by the department is
 24 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 25 of the State Constitution:

26 | 1. Information that, if released, could harm the security
 27 | or integrity of the department, including:

28 | a. Information relating to the security of the
 29 | department's technologies, processes, and practices designed to
 30 | protect networks, computers, data processing software, data, and
 31 | data systems from attack, damage, or unauthorized access. This
 32 | sub-subparagraph is subject to the Open Government Sunset Review
 33 | Act in accordance with s. 119.15 and shall stand repealed on
 34 | October 2, 2027, unless reviewed and saved from repeal through
 35 | reenactment by the Legislature.

36 | b. Security information or information that would reveal
 37 | security measures of the department, whether physical or
 38 | virtual.

39 | c. Information about lottery games, promotions, tickets,
 40 | and ticket stock, including information concerning the
 41 | description, design, production, printing, packaging, shipping,
 42 | delivery, storage, and validation of such games, promotions,
 43 | tickets, and stock.

44 | d. Information concerning terminals, machines, and devices
 45 | that issue tickets.

46 | 2. Information that must be maintained as confidential in
 47 | order for the department to participate in a multistate lottery
 48 | association or game.

49 | 3. Personal identifying information obtained by the
 50 | department when processing background investigations of current

51 or potential retailers or vendors.

52 4. Financial information about an entity which is not
 53 publicly available and is provided to the department in
 54 connection with its review of the financial responsibility of
 55 the entity pursuant to s. 24.111 or s. 24.112, provided that the
 56 entity marks such information as confidential. However,
 57 financial information related to any contract or agreement, or
 58 an addendum thereto, with the department, including the amount
 59 of money paid, any payment structure or plan, expenditures,
 60 incentives, bonuses, fees, and penalties, shall be public
 61 record.

62 (b) This exemption is remedial in nature, and it is the
 63 intent of the Legislature that this exemption apply to
 64 information held by the department before, on, or after May 14,
 65 2019.

66 (c) Information made confidential and exempt under this
 67 subsection may be released to other governmental entities as
 68 needed in connection with the performance of their duties. The
 69 receiving governmental entity shall maintain the confidential
 70 and exempt status of such information.

71 ~~(d) This subsection is subject to the Open Government~~
 72 ~~Sunset Review Act in accordance with s. 119.15 and shall stand~~
 73 ~~repealed on October 2, 2024, unless reviewed and saved from~~
 74 ~~repeal through reenactment by the Legislature.~~

75 Section 2. This act shall take effect October 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB EEG 24-07 OGSR/Utility Owned or Operated by a Unit of Local Government
SPONSOR(S): Ethics, Elections & Open Government Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Ethics, Elections & Open Government Subcommittee		Poreda	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 2nd of the fifth year after enactment.

Municipalities are authorized by general law to provide water and sewer utility services, as well natural gas services and electric and gas utilities. Counties are authorized to provide water and sewer utility services both within their individual boundaries and in adjoining counties.

Current law provides public record exemptions for the following information held by a utility owned or operated by a unit of local government (local government utility):

- Information related to the security of a local government utility's technology, processes, and practices designed to protect the utility's networks, computers, programs, and data from attack, damage, or unauthorized access that, if disclosed, would facilitate the alteration, disclosure, or destruction of such data or information technology (I.T.) resources.
- Information related to the security of a local government utility's existing or proposed I.T. systems or industrial control technology systems that, if disclosed, would facilitate unauthorized access to, and alteration or destruction of, such systems in a manner that would adversely impact the safe and reliable operations of the systems and the utility.
- Customer meter-derived data and billing information in increments of less than one billing cycle held by a local government utility.

Current law also provides a corresponding public meeting exemption for the portions of meetings held by a local government utility that would reveal the information exempt from disclosure by the public records exemptions discussed above. The exemption requires that all closed portions such meeting be recorded and transcribed and that such recordings and transcripts are confidential and exempt from disclosure as public records.

In 2022, the Legislature passed CS/HB 7057, which created a general public record exemption — applicable to all agencies — for certain information related to cybersecurity. Pursuant to the OGSR act, the exemption for cybersecurity information will repeal on October 2, 2027, unless reviewed and saved from repeal by the Legislature.

The bill extends the repeal date for the public record exemptions related to I.T. security and the public meeting exemption to October 2, 2027, to coincide with the future OGSR repeal date of the general cybersecurity exemption in statute. The bill saves from repeal the public record exemption related to customer meter-derived data and billing information. Each of the exemptions will repeal on October 2, 2024, if this bill does not become law.

The bill does not appear to have a fiscal impact on state government 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)¹ 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 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.²

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.³

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. 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 are not required.⁴

Local Government Utilities

The Florida Constitution grants municipalities the governmental, corporate, and proprietary powers necessary to enable them to conduct municipal government, perform municipal functions, and render municipal services, and permits them to exercise any power for municipal purposes, except when expressly prohibited by law.⁵

Counties not operating under a charter have the power of self-government as provided by general or special law, while charter counties have all powers of self-government not inconsistent with general law or with special law approved by the county electors.⁶ Counties are authorized by general law to provide water and sewer utility services both within their individual boundaries and in adjoining counties.⁷ Municipalities are authorized by general law to provide water and sewer utility services⁸ as well natural gas services⁹ and electric and gas utilities¹⁰

¹ Section 119.15, F.S.

² Section 119.15(3), F.S.

³ Section 119.15(6)(b), F.S.

⁴ Article I, s. 24(c), FLA. CONST.

⁵ Article VIII, s. 2(b), FLA. CONST.

⁶ Article VIII, s. 1(f)-(g), FLA. CONST.

⁷ Sections 125.01(1)(k)1., F.S. and 153.03, F.S.

⁸ Pursuant to s. 180.06, F.S., a municipality may “provide water and alternative water supplies;” “provide for the collection and disposal of sewage, including wastewater reuse, and other liquid wastes;” and “construct reservoirs, sewerage systems, trunk sewers, intercepting sewers, pumping stations, wells, siphons, intakes, pipelines, distribution systems, purification works, collection systems, treatment and disposal works” to accomplish these purposes.

⁹ Section 180.06(8), F.S.

¹⁰ Chapter 366, F.S.

Florida Public Service Commission

The Florida Public Service Commission (PSC) ensures Florida’s consumers receive utility services, including electric, natural gas, telephone, water, and wastewater, “in a safe, affordable, and reliable manner.”¹¹ The PSC primarily regulates investor owned utilities but is able to exercise limited authority over publicly owned utilities in the following areas:¹²

- Rate base or economic regulation.
- Competitive market oversight.
- Monitoring of safety, reliability and service.

Utility Customer Consumption Data

Traditional, analog utility meters record consumption at a utility customer’s premises. On a regular, periodic basis, the meter is “read” in person by a utility employee to determine how much of the utility’s service — electric, natural gas, or water/wastewater — was used at the premises since the last meter reading. This data is used by the utility for purposes of customer billing. In recent years, utilities have deployed, to varying degrees, newer “smart meter”¹³ technologies that measure a utility customer’s consumption on a more frequent basis (e.g., hourly) and transmit this data automatically and wirelessly to the utility. The utility still uses this data for billing purposes but can also use it to monitor its system and identify and locate problems more quickly.¹⁴

Cybersecurity Public Record Exemption

In 2022, the Legislature passed CS/HB 7057, which created a general public record exemption — applicable to all agencies¹⁵ — for the certain information related to cybersecurity.¹⁶ Specifically, CS/HB 7057, which was codified as s. 119.0725, F.S., protected the following information:

- Information related to critical infrastructure.¹⁷
- Network schematics, hardware and software configurations, or encryption information or information that identifies detection, investigation, or response practices for suspected or confirmed cybersecurity incidents, including suspected or confirmed breaches, if the disclosure of such information would facilitate unauthorized access to or unauthorized modification, disclosure, or destruction of:
 - Data or information, whether physical or virtual; or
 - Information technology (I.T.) resources, which include an agency’s existing or proposed I.T. systems.
- Coverage limits and deductible or self-insurance amounts of insurance or other risk mitigation coverages acquired for the protection of I.T. systems, operational technology systems, or data of an agency.
- Cybersecurity incident information contained in certain reports.

CS/HB 7057 (2022) also created a public meeting exemption for any portion of a meeting that would reveal the confidential and exempt information; however, any portion of an exempt meeting must be

¹¹ Florida Public Service Commission, *About*, available at <https://www.psc.state.fl.us/about> (last visited Jan. 15, 2024).

¹² Florida Public Service Commission, *2022 Annual Report*, available at <https://www.floridapsc.com/pscfiles/website-files/PDF/Publications/Reports/General/AnnualReports/2022.pdf> (last visited January 16, 2024)

¹³ See Florida Public Service Commission, *Smart Meters*, available at <https://www.floridapsc.com/pscfiles/website-files/pdf/Utilities/Electricgas/SmartMeters/SmartMeter.pdf> (last visited January 16, 2024).

¹⁴ *Id.*

¹⁵ “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.

¹⁶ See s. 119.0725, F.S.

¹⁷ “Critical infrastructure” means existing and proposed information technology and operation technology systems and assets, whether physical and virtual, the incapacity or destruction of which would negatively affect security, economic security, public health, or public safety. Section 119.0725(1)(b), F.S.

recorded and transcribed.¹⁸ The recording and transcript are confidential and exempt from public record requirements.¹⁹

Public Record and Public Meeting Exemptions under Review

In 2016, the Legislature created a public record exemption that made the following information held by a utility²⁰ owned or operated by a unit of local government (local government utility) confidential and exempt²¹ from public record requirements:

- Information related to the security of a local government utility's technology, processes, and practices designed to protect the utility's networks, computers, programs, and data from attack, damage, or unauthorized access that, if disclosed, would facilitate the alteration, disclosure, or destruction of such data or I.T. resources.
- Information related to the security of a local government utility's existing or proposed I.T. systems or industrial control technology systems that, if disclosed, would facilitate unauthorized access to, and alteration or destruction of, such systems in a manner that would adversely impact the safe and reliable operations of the systems and the utility.²²

In 2019, the Legislature created a public record exemption that made customer meter-derived data and billing information in increments of less than one billing cycle held by a local government utility confidential and exempt from public record requirements.²³ Additionally, in that same year, the Legislature created a public meeting exemption for any portion of a meeting held by a local government utility that would reveal information made exempt pursuant to the local government utility's public record exemption.²⁴ All closed portions of such a meeting must be recorded and transcribed and such recording or transcription are exempt from public record requirements.²⁵

The 2016 public necessity statement²⁶ for the public record exemptions for certain I.T. security information provided that:

[M]any utilities have adopted technologies, processes, and practices designed to secure data, information technology systems, and industrial control technology systems. Disclosure of sensitive information related to these security measures could result in the identification of vulnerabilities that allow a security breach that damages utility systems and disrupts the safe and reliable operation of such systems, adversely impacting the public health and safety and the economic well-being of the state. Because of the interconnected nature of utility systems, a security breach may also impact national security concerns.²⁷

¹⁸ Section 119.0725(3), F.S.

¹⁹ *Id.*

²⁰ "Utility" means a person or entity that provides electricity, natural gas, telecommunications, water, chilled water, reuse water, or wastewater. Section 119.011(15), F.S.

²¹ 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).

²² Chapter 2016-95, L.O.F., codified as s. 119.0713(5), F.S.

²³ Chapter 2019-38, L.O.F., codified as s. 119.0713(5)(a)3., F.S.

²⁴ Chapter 2019-37, L.O.F., codified as s. 286.0113(3), F.S.

²⁵ Section 286.0113(3)(a), F.S. However, a court of competent jurisdiction, following an in-camera review, may determine that the meeting was not restricted to the discussion of data and information made exempt, and in that event, the portion of the recording or transcript which reveals nonexempt data and information may be disclosed to a third party.

²⁶ Article I, s. 24(c), FLA. CONST., requires each public record exemption to "state with specificity the public necessity justifying the exemption."

²⁷ Chapter 2016-95, L.O.F.

The 2019 public necessity statement for the public record exemption for customer meter-derived data and billing information provided that:

Smart meters, which can record and transmit detailed data on a customer's use of utility services, present unique security concerns. These concerns were addressed in a report released in October 2010 by the United States Department of Energy titled "Data Access and Privacy Issues related to Smart Grid Technologies." The report recommended that customer data be protected from release to third parties. This detailed customer data can be used to specifically identify minute-by-minute usage patterns, including the exact appliance or service being used. This information creates significant security issues for both businesses and homeowners.²⁸

The 2019 public necessity statement for the public meeting exemption provided that:

[A]s utility system infrastructure becomes more connected and integrated through information and communications technology, the exposure to damage from attacks through such technology grows. These attacks may result in the disruption of utility services and damage to utility systems. Maintaining safe and reliable utility systems is vital to protecting the public health and safety and to ensuring the economic well-being of this state.²⁹

Pursuant to the OGSR Act, each of the above exemptions will repeal on October 2, 2024, unless reenacted by the Legislature.

During the 2023 interim, House and Senate committee staff jointly developed a questionnaire and sent the questionnaires to city and county governments. In total, staff received 39 responses from those entities.³⁰ Most respondents indicated that they were unaware of any litigation concerning the exemptions and had not encountered any issues interpreting or applying the exemptions. The vast majority of respondents indicated that the exemptions be reenacted as is and no respondent recommended eliminating the public record or public meeting exemptions. As a part of the questionnaire, respondents were asked to consider whether the local government utility I.T. security exemptions were duplicative of the general cybersecurity exemption in s. 119.0725, F.S. Some respondents noted that there may be some overlap between the exemption.

Effect of the Bill

The bill extends the repeal date for the public record exemptions related to local government utility I.T. security and the public meeting exemption to October 2, 2027, to coincide with the future OGSR repeal date of the general cybersecurity exemption in s. 119.0725, F.S. The bill saves from repeal the public record exemption for customer meter-derived data and billing information in increments of less than one billing cycle held by a local government utility. Each of the exemptions under review will repeal on October 2, 2024, if this bill does not become law

B. SECTION DIRECTORY:

Section 1 amends s. 119.0713, F.S., relating to local government agency exemptions from inspection or copying of public records.

Section 2 amends s. 286.0113, F.S., relating to general exemptions from public meetings.

²⁸ Chapter 2019-38, L.O.F.

²⁹ Chapter 2019-37, L.O.F.

³⁰ Open Government Sunset Review Questionnaire, Public Records and Public Meetings Related to utilities owned or operated by a unit of local government, responses on file with the Ethics, Elections & Open Government Subcommittee.

Section 3 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:

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 rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Not applicable.

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A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 119.0713, F.S., which provides exemptions from public record requirements for information related to the security of certain technology, processes, practices, information technology systems, industrial control technology systems, and customer meter-derived data and billing information of utility owned or operated by a unit of local government; extending the date of scheduled repeal of public record exemptions relating to the security of certain technology, processes, practices, information technology systems, and industrial control technology systems; removing the scheduled repeal of the public record exemption related to customer meter-derived data and billing information; amending s. 286.0113, F.S., which provides an exemption from public meeting requirements for meetings held by a utility owned or operated by a unit of local government that would reveal certain information; extending the date of scheduled repeal of the exemption; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

26 Section 1. Subsection (5) of section 119.0713, Florida
 27 Statutes, is amended to read:

28 119.0713 Local government agency exemptions from
 29 inspection or copying of public records.—

30 (5) (a) The following information held by a utility owned
 31 or operated by a unit of local government is exempt from s.
 32 119.07(1) and s. 24(a), Art. I of the State Constitution:

33 1. Information related to the security of the technology,
 34 processes, or practices of a utility owned or operated by a unit
 35 of local government that are designed to protect the utility's
 36 networks, computers, programs, and data from attack, damage, or
 37 unauthorized access, which information, if disclosed, would
 38 facilitate the alteration, disclosure, or destruction of such
 39 data or information technology resources.

40 2. Information related to the security of existing or
 41 proposed information technology systems or industrial control
 42 technology systems of a utility owned or operated by a unit of
 43 local government, which, if disclosed, would facilitate
 44 unauthorized access to, and alteration or destruction of, such
 45 systems in a manner that would adversely impact the safe and
 46 reliable operation of the systems and the utility.

47 3. Customer meter-derived data and billing information in
 48 increments less than one billing cycle.

49 (b) This exemption applies to such information held by a
 50 utility owned or operated by a unit of local government before,

51 on, or after the effective date of this exemption.

52 (c) Subparagraphs (5)(a)1. and (5)(a)2., are ~~This~~
 53 ~~subsection is~~ subject to the Open Government Sunset Review Act
 54 in accordance with s. 119.15 and shall stand repealed on October
 55 2, 2027 ~~2024~~, unless reviewed and saved from repeal through
 56 reenactment by the Legislature.

57 Section 2. Subsection (3) of section 286.0113, Florida
 58 Statutes, is amended to read:

59 286.0113 General exemptions from public meetings.—

60 (3)(a) That portion of a meeting held by a utility owned
 61 or operated by a unit of local government which would reveal
 62 information that is exempt under s. 119.0713(5) is exempt from
 63 s. 286.011 and s. 24(b), Art. I of the State Constitution. All
 64 exempt portions of such a meeting must be recorded and
 65 transcribed. The recording and transcript of the meeting are
 66 exempt from disclosure under s. 119.07(1) and s. 24(a), Art. I
 67 of the State Constitution unless a court of competent
 68 jurisdiction, following an in camera review, determines that the
 69 meeting was not restricted to the discussion of data and
 70 information made exempt by this section. In the event of such a
 71 judicial determination, only the portion of the recording or
 72 transcript which reveals nonexempt data and information may be
 73 disclosed to a third party.

74 (b) This subsection is subject to the Open Government
 75 Sunset Review Act in accordance with s. 119.15 and shall stand

PCB EEG 24-07

ORIGINAL

2024

76 repealed on October 2, 2027 ~~2024~~, unless reviewed and saved from
77 repeal through reenactment by the Legislature.

78 Section 3. This act shall take effect October 1, 2024.

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 2nd 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)¹ 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 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.²

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.³

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.⁴ 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 agency⁵ to be exempt⁶ from public record

¹ Section 119.15, F.S.

² Section 119.15(3), F.S.

³ Section 119.15(6)(b), F.S.

⁴ Article I, s. 24(c), FLA. CONST.

⁵ “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.

⁶ 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).

requirements.⁷ The exempted information includes home addresses,⁸ telephone numbers,⁹ dates of birth, and in many instances, the employee's photograph.¹⁰ The public record exemptions protect certain information regarding the spouses and children of such employees, including their names,¹¹ 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.¹² Photographs of the spouses and children are also exempted from public record requirements in several instances. The current or former¹³ personnel to which this exemption applies include:¹⁴

- 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.¹⁵
- Code enforcement officers.
- Guardians ad litem.¹⁶
- Certain personnel of the Department of Juvenile Justice.¹⁷

⁷ 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.

⁸ "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.

⁹ "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.

¹⁰ 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.

¹¹ 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.

¹² Section 119.071(4)(d)2.a.-v., F.S.

¹³ 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.

¹⁴ Section 119.071(4)(d)2., F.S.

¹⁵ 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.

¹⁶ See s. 39.820(1), F.S.

¹⁷ 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,

- 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.
- Impaired practitioner consultants retained by an agency as well as certain employees of such persons.¹⁸
- Certified¹⁹ 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.²⁰
- 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.²¹
- Domestic violence center staff and domestic violence advocates.²²

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.²³ The request must confirm that the individual is eligible for the exemption and state the statutory basis for the exemption.²⁴

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.”²⁵ 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.²⁶

human services counselor administrators, senior human services counselor administrators, rehabilitation therapists, and social services counselors. Section 119.071(4)(d)2.k., F.S.

¹⁸ 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.

¹⁹ 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.

²⁰ 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.

²¹ 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.

²² 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.

²³ Section 119.071(4)(d)3., F.S.

²⁴ *Id.*

²⁵ Chapter 2019-12, L.O.F.

²⁶ Section 119.071(4)(d)1.a., F.S.

STORAGE NAME: pcb08.EEG

DATE: 1/16/2024

The 2019 public necessity statement²⁷ 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.²⁸

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.²⁹

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

During the 2023 interim, as part of the review under the OGSR Act, House and Senate committee staff sent questionnaires³¹ 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.³² Regarding the agency personnel exemptions themselves, the vast majority of responses that suggested action recommended the exemption be reenacted as is.³³ 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.

²⁷ Article I, s. 24(c), FLA. CONST., requires each public record exemption to "state with specificity the public necessity justifying the exemption."

²⁸ Chapter 2019-12, L.O.F.

²⁹ *Id.*

³⁰ Section 119.071(4)(d)10., F.S.

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

³² *Id.*

³³ *Id.*

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:

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.

1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; amending s. 119.071, F.S., which
 4 provides an exemption from public record requirements
 5 for certain personal identifying and location
 6 information of specified agency personnel and the
 7 spouses and children thereof; removing the scheduled
 8 repeal of the exemption; providing an effective date.

9
 10 Be It Enacted by the Legislature of the State of Florida:

11
 12 Section 1. Paragraph (d) of subsection (4) of section
 13 119.071, Florida Statutes, is amended to read:

14 119.071 General exemptions from inspection or copying of
 15 public records.—

16 (4) AGENCY PERSONNEL INFORMATION.—

17 (d)1. For purposes of this paragraph, the term:

18 a. "Home addresses" means the dwelling location at which
 19 an individual resides and includes the physical address, mailing
 20 address, street address, parcel identification number, plot
 21 identification number, legal property description, neighborhood
 22 name and lot number, GPS coordinates, and any other descriptive
 23 property information that may reveal the home address.

24 b. "Judicial assistant" means a court employee assigned to
 25 the following class codes: 8140, 8150, 8310, and 8320.

26 c. "Telephone numbers" includes home telephone numbers,
27 personal cellular telephone numbers, personal pager telephone
28 numbers, and telephone numbers associated with personal
29 communications devices.

30 2.a. The home addresses, telephone numbers, dates of
31 birth, and photographs of active or former sworn law enforcement
32 personnel or of active or former civilian personnel employed by
33 a law enforcement agency, including correctional and
34 correctional probation officers, personnel of the Department of
35 Children and Families whose duties include the investigation of
36 abuse, neglect, exploitation, fraud, theft, or other criminal
37 activities, personnel of the Department of Health whose duties
38 are to support the investigation of child abuse or neglect, and
39 personnel of the Department of Revenue or local governments
40 whose responsibilities include revenue collection and
41 enforcement or child support enforcement; the names, home
42 addresses, telephone numbers, photographs, dates of birth, and
43 places of employment of the spouses and children of such
44 personnel; and the names and locations of schools and day care
45 facilities attended by the children of such personnel are exempt
46 from s. 119.07(1) and s. 24(a), Art. I of the State
47 Constitution.

48 b. The home addresses, telephone numbers, dates of birth,
49 and photographs of current or former nonsworn investigative
50 personnel of the Department of Financial Services whose duties

51 include the investigation of fraud, theft, workers' compensation
52 coverage requirements and compliance, other related criminal
53 activities, or state regulatory requirement violations; the
54 names, home addresses, telephone numbers, dates of birth, and
55 places of employment of the spouses and children of such
56 personnel; and the names and locations of schools and day care
57 facilities attended by the children of such personnel are exempt
58 from s. 119.07(1) and s. 24(a), Art. I of the State
59 Constitution.

60 c. The home addresses, telephone numbers, dates of birth,
61 and photographs of current or former nonsworn investigative
62 personnel of the Office of Financial Regulation's Bureau of
63 Financial Investigations whose duties include the investigation
64 of fraud, theft, other related criminal activities, or state
65 regulatory requirement violations; the names, home addresses,
66 telephone numbers, dates of birth, and places of employment of
67 the spouses and children of such personnel; and the names and
68 locations of schools and day care facilities attended by the
69 children of such personnel are exempt from s. 119.07(1) and s.
70 24(a), Art. I of the State Constitution.

71 d. The home addresses, telephone numbers, dates of birth,
72 and photographs of current or former firefighters certified in
73 compliance with s. 633.408; the names, home addresses, telephone
74 numbers, photographs, dates of birth, and places of employment
75 of the spouses and children of such firefighters; and the names

76 and locations of schools and day care facilities attended by the
 77 children of such firefighters are exempt from s. 119.07(1) and
 78 s. 24(a), Art. I of the State Constitution.

79 e. The home addresses, dates of birth, and telephone
 80 numbers of current or former justices of the Supreme Court,
 81 district court of appeal judges, circuit court judges, and
 82 county court judges, and of current judicial assistants; the
 83 names, home addresses, telephone numbers, dates of birth, and
 84 places of employment of the spouses and children of current or
 85 former justices and judges and of current judicial assistants;
 86 and the names and locations of schools and day care facilities
 87 attended by the children of current or former justices and
 88 judges and of current judicial assistants are exempt from s.
 89 119.07(1) and s. 24(a), Art. I of the State Constitution. This
 90 sub-subparagraph is subject to the Open Government Sunset Review
 91 Act in accordance with s. 119.15 and shall stand repealed on
 92 October 2, 2028, unless reviewed and saved from repeal through
 93 reenactment by the Legislature.

94 f. The home addresses, telephone numbers, dates of birth,
 95 and photographs of current or former state attorneys, assistant
 96 state attorneys, statewide prosecutors, or assistant statewide
 97 prosecutors; the names, home addresses, telephone numbers,
 98 photographs, dates of birth, and places of employment of the
 99 spouses and children of current or former state attorneys,
 100 assistant state attorneys, statewide prosecutors, or assistant

101 statewide prosecutors; and the names and locations of schools
 102 and day care facilities attended by the children of current or
 103 former state attorneys, assistant state attorneys, statewide
 104 prosecutors, or assistant statewide prosecutors are exempt from
 105 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

106 g. The home addresses, dates of birth, and telephone
 107 numbers of general magistrates, special magistrates, judges of
 108 compensation claims, administrative law judges of the Division
 109 of Administrative Hearings, and child support enforcement
 110 hearing officers; the names, home addresses, telephone numbers,
 111 dates of birth, and places of employment of the spouses and
 112 children of general magistrates, special magistrates, judges of
 113 compensation claims, administrative law judges of the Division
 114 of Administrative Hearings, and child support enforcement
 115 hearing officers; and the names and locations of schools and day
 116 care facilities attended by the children of general magistrates,
 117 special magistrates, judges of compensation claims,
 118 administrative law judges of the Division of Administrative
 119 Hearings, and child support enforcement hearing officers are
 120 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 121 Constitution.

122 h. The home addresses, telephone numbers, dates of birth,
 123 and photographs of current or former human resource, labor
 124 relations, or employee relations directors, assistant directors,
 125 managers, or assistant managers of any local government agency

126 or water management district whose duties include hiring and
 127 firing employees, labor contract negotiation, administration, or
 128 other personnel-related duties; the names, home addresses,
 129 telephone numbers, dates of birth, and places of employment of
 130 the spouses and children of such personnel; and the names and
 131 locations of schools and day care facilities attended by the
 132 children of such personnel are exempt from s. 119.07(1) and s.
 133 24(a), Art. I of the State Constitution.

134 i. The home addresses, telephone numbers, dates of birth,
 135 and photographs of current or former code enforcement officers;
 136 the names, home addresses, telephone numbers, dates of birth,
 137 and places of employment of the spouses and children of such
 138 personnel; and the names and locations of schools and day care
 139 facilities attended by the children of such personnel are exempt
 140 from s. 119.07(1) and s. 24(a), Art. I of the State
 141 Constitution.

142 j. The home addresses, telephone numbers, places of
 143 employment, dates of birth, and photographs of current or former
 144 guardians ad litem, as defined in s. 39.820; the names, home
 145 addresses, telephone numbers, dates of birth, and places of
 146 employment of the spouses and children of such persons; and the
 147 names and locations of schools and day care facilities attended
 148 by the children of such persons are exempt from s. 119.07(1) and
 149 s. 24(a), Art. I of the State Constitution.

150 k. The home addresses, telephone numbers, dates of birth,

151 and photographs of current or former juvenile probation
 152 officers, juvenile probation supervisors, detention
 153 superintendents, assistant detention superintendents, juvenile
 154 justice detention officers I and II, juvenile justice detention
 155 officer supervisors, juvenile justice residential officers,
 156 juvenile justice residential officer supervisors I and II,
 157 juvenile justice counselors, juvenile justice counselor
 158 supervisors, human services counselor administrators, senior
 159 human services counselor administrators, rehabilitation
 160 therapists, and social services counselors of the Department of
 161 Juvenile Justice; the names, home addresses, telephone numbers,
 162 dates of birth, and places of employment of spouses and children
 163 of such personnel; and the names and locations of schools and
 164 day care facilities attended by the children of such personnel
 165 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 166 Constitution.

167 1. The home addresses, telephone numbers, dates of birth,
 168 and photographs of current or former public defenders, assistant
 169 public defenders, criminal conflict and civil regional counsel,
 170 and assistant criminal conflict and civil regional counsel; the
 171 names, home addresses, telephone numbers, dates of birth, and
 172 places of employment of the spouses and children of current or
 173 former public defenders, assistant public defenders, criminal
 174 conflict and civil regional counsel, and assistant criminal
 175 conflict and civil regional counsel; and the names and locations

176 of schools and day care facilities attended by the children of
 177 current or former public defenders, assistant public defenders,
 178 criminal conflict and civil regional counsel, and assistant
 179 criminal conflict and civil regional counsel are exempt from s.
 180 119.07(1) and s. 24(a), Art. I of the State Constitution.

181 m. The home addresses, telephone numbers, dates of birth,
 182 and photographs of current or former investigators or inspectors
 183 of the Department of Business and Professional Regulation; the
 184 names, home addresses, telephone numbers, dates of birth, and
 185 places of employment of the spouses and children of such current
 186 or former investigators and inspectors; and the names and
 187 locations of schools and day care facilities attended by the
 188 children of such current or former investigators and inspectors
 189 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 190 Constitution.

191 n. The home addresses, telephone numbers, and dates of
 192 birth of county tax collectors; the names, home addresses,
 193 telephone numbers, dates of birth, and places of employment of
 194 the spouses and children of such tax collectors; and the names
 195 and locations of schools and day care facilities attended by the
 196 children of such tax collectors are exempt from s. 119.07(1) and
 197 s. 24(a), Art. I of the State Constitution.

198 o. The home addresses, telephone numbers, dates of birth,
 199 and photographs of current or former personnel of the Department
 200 of Health whose duties include, or result in, the determination

201 or adjudication of eligibility for social security disability
202 benefits, the investigation or prosecution of complaints filed
203 against health care practitioners, or the inspection of health
204 care practitioners or health care facilities licensed by the
205 Department of Health; the names, home addresses, telephone
206 numbers, dates of birth, and places of employment of the spouses
207 and children of such personnel; and the names and locations of
208 schools and day care facilities attended by the children of such
209 personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of
210 the State Constitution.

211 p. The home addresses, telephone numbers, dates of birth,
212 and photographs of current or former impaired practitioner
213 consultants who are retained by an agency or current or former
214 employees of an impaired practitioner consultant whose duties
215 result in a determination of a person's skill and safety to
216 practice a licensed profession; the names, home addresses,
217 telephone numbers, dates of birth, and places of employment of
218 the spouses and children of such consultants or their employees;
219 and the names and locations of schools and day care facilities
220 attended by the children of such consultants or employees are
221 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
222 Constitution.

223 q. The home addresses, telephone numbers, dates of birth,
224 and photographs of current or former emergency medical
225 technicians or paramedics certified under chapter 401; the

226 names, home addresses, telephone numbers, dates of birth, and
227 places of employment of the spouses and children of such
228 emergency medical technicians or paramedics; and the names and
229 locations of schools and day care facilities attended by the
230 children of such emergency medical technicians or paramedics are
231 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
232 Constitution.

233 r. The home addresses, telephone numbers, dates of birth,
234 and photographs of current or former personnel employed in an
235 agency's office of inspector general or internal audit
236 department whose duties include auditing or investigating waste,
237 fraud, abuse, theft, exploitation, or other activities that
238 could lead to criminal prosecution or administrative discipline;
239 the names, home addresses, telephone numbers, dates of birth,
240 and places of employment of spouses and children of such
241 personnel; and the names and locations of schools and day care
242 facilities attended by the children of such personnel are exempt
243 from s. 119.07(1) and s. 24(a), Art. I of the State
244 Constitution.

245 s. The home addresses, telephone numbers, dates of birth,
246 and photographs of current or former directors, managers,
247 supervisors, nurses, and clinical employees of an addiction
248 treatment facility; the home addresses, telephone numbers,
249 photographs, dates of birth, and places of employment of the
250 spouses and children of such personnel; and the names and

251 | locations of schools and day care facilities attended by the
252 | children of such personnel are exempt from s. 119.07(1) and s.
253 | 24(a), Art. I of the State Constitution. For purposes of this
254 | sub-subparagraph, the term "addiction treatment facility" means
255 | a county government, or agency thereof, that is licensed
256 | pursuant to s. 397.401 and provides substance abuse prevention,
257 | intervention, or clinical treatment, including any licensed
258 | service component described in s. 397.311(26).

259 | t. The home addresses, telephone numbers, dates of birth,
260 | and photographs of current or former directors, managers,
261 | supervisors, and clinical employees of a child advocacy center
262 | that meets the standards of s. 39.3035(2) and fulfills the
263 | screening requirement of s. 39.3035(3), and the members of a
264 | Child Protection Team as described in s. 39.303 whose duties
265 | include supporting the investigation of child abuse or sexual
266 | abuse, child abandonment, child neglect, and child exploitation
267 | or to provide services as part of a multidisciplinary case
268 | review team; the names, home addresses, telephone numbers,
269 | photographs, dates of birth, and places of employment of the
270 | spouses and children of such personnel and members; and the
271 | names and locations of schools and day care facilities attended
272 | by the children of such personnel and members are exempt from s.
273 | 119.07(1) and s. 24(a), Art. I of the State Constitution.

274 | u. The home addresses, telephone numbers, places of
275 | employment, dates of birth, and photographs of current or former

276 staff and domestic violence advocates, as defined in s.
 277 90.5036(1)(b), of domestic violence centers certified by the
 278 Department of Children and Families under chapter 39; the names,
 279 home addresses, telephone numbers, places of employment, dates
 280 of birth, and photographs of the spouses and children of such
 281 personnel; and the names and locations of schools and day care
 282 facilities attended by the children of such personnel are exempt
 283 from s. 119.07(1) and s. 24(a), Art. I of the State
 284 Constitution.

285 v. The home addresses, telephone numbers, dates of birth,
 286 and photographs of current or former inspectors or investigators
 287 of the Department of Agriculture and Consumer Services; the
 288 names, home addresses, telephone numbers, dates of birth, and
 289 places of employment of the spouses and children of current or
 290 former inspectors or investigators; and the names and locations
 291 of schools and day care facilities attended by the children of
 292 current or former inspectors or investigators are exempt from s.
 293 119.07(1) and s. 24(a), Art. I of the State Constitution. This
 294 sub-subparagraph is subject to the Open Government Sunset Review
 295 Act in accordance with s. 119.15 and shall stand repealed on
 296 October 2, 2028, unless reviewed and saved from repeal through
 297 reenactment by the Legislature.

298 3. An agency that is the custodian of the information
 299 specified in subparagraph 2. and that is not the employer of the
 300 officer, employee, justice, judge, or other person specified in

301 subparagraph 2. must maintain the exempt status of that
302 information only if the officer, employee, justice, judge, other
303 person, or employing agency of the designated employee submits a
304 written and notarized request for maintenance of the exemption
305 to the custodial agency. The request must state under oath the
306 statutory basis for the individual's exemption request and
307 confirm the individual's status as a party eligible for exempt
308 status.

309 4.a. A county property appraiser, as defined in s.
310 192.001(3), or a county tax collector, as defined in s.
311 192.001(4), who receives a written and notarized request for
312 maintenance of the exemption pursuant to subparagraph 3. must
313 comply by removing the name of the individual with exempt status
314 and the instrument number or Official Records book and page
315 number identifying the property with the exempt status from all
316 publicly available records maintained by the property appraiser
317 or tax collector. For written requests received on or before
318 July 1, 2021, a county property appraiser or county tax
319 collector must comply with this sub-subparagraph by October 1,
320 2021. A county property appraiser or county tax collector may
321 not remove the street address, legal description, or other
322 information identifying real property within the agency's
323 records so long as a name or personal information otherwise
324 exempt from inspection and copying pursuant to this section is
325 not associated with the property or otherwise displayed in the

326 public records of the agency.

327 b. Any information restricted from public display,
328 inspection, or copying under sub-subparagraph a. must be
329 provided to the individual whose information was removed.

330 5. An officer, an employee, a justice, a judge, or other
331 person specified in subparagraph 2. may submit a written request
332 for the release of his or her exempt information to the
333 custodial agency. The written request must be notarized and must
334 specify the information to be released and the party authorized
335 to receive the information. Upon receipt of the written request,
336 the custodial agency must release the specified information to
337 the party authorized to receive such information.

338 6. The exemptions in this paragraph apply to information
339 held by an agency before, on, or after the effective date of the
340 exemption.

341 7. Information made exempt under this paragraph may be
342 disclosed pursuant to s. 28.2221 to a title insurer authorized
343 pursuant to s. 624.401 and its affiliates as defined in s.
344 624.10; a title insurance agent or title insurance agency as
345 defined in s. 626.841(1) or (2), respectively; or an attorney
346 duly admitted to practice law in this state and in good standing
347 with The Florida Bar.

348 8. The exempt status of a home address contained in the
349 Official Records is maintained only during the period when a
350 protected party resides at the dwelling location. Upon

351 conveyance of real property after October 1, 2021, and when such
352 real property no longer constitutes a protected party's home
353 address as defined in sub-subparagraph 1.a., the protected party
354 must submit a written request to release the removed information
355 to the county recorder. The written request to release the
356 removed information must be notarized, must confirm that a
357 protected party's request for release is pursuant to a
358 conveyance of his or her dwelling location, and must specify the
359 Official Records book and page, instrument number, or clerk's
360 file number for each document containing the information to be
361 released.

362 9. Upon the death of a protected party as verified by a
363 certified copy of a death certificate or court order, any party
364 can request the county recorder to release a protected
365 decedent's removed information unless there is a related request
366 on file with the county recorder for continued removal of the
367 decedent's information or unless such removal is otherwise
368 prohibited by statute or by court order. The written request to
369 release the removed information upon the death of a protected
370 party must attach the certified copy of a death certificate or
371 court order and must be notarized, must confirm the request for
372 release is due to the death of a protected party, and must
373 specify the Official Records book and page number, instrument
374 number, or clerk's file number for each document containing the
375 information to be released. A fee may not be charged for the

376 | release of any document pursuant to such request.

377 | ~~10. Except as otherwise expressly provided in this~~
 378 | ~~paragraph, this paragraph is subject to the Open Government~~
 379 | ~~Sunset Review Act in accordance with s. 119.15 and shall stand~~
 380 | ~~repealed on October 2, 2024, unless reviewed and saved from~~
 381 | ~~repeal through reenactment by the Legislature.~~

382 | Section 2. This act shall take effect October 1, 2024.