Ethics, Elections & Open Government Subcommittee

January 29, 2024
3:00 PM – 6:00 PM
Reed Hall (102 HOB)

Meeting Packet

Paul Renner
Speaker

Tom Fabricio
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Ethics, Elections & Open Government Subcommittee

Start Date and Time:	Monday, January 29, 2024 03:00 pm
End Date and Time:	Monday, January 29, 2024 06:00 pm
Location:	Reed Hall (102 HOB)
Duration:	3.00 hrs

Consideration of the following bill(s):

CS/HB 117 Disclosure of Grand Jury Testimony by Criminal Justice Subcommittee, Gossett-Seidman
HB 135 Voter Registration Applications by Gossett-Seidman
HJR 335 Requiring Broader Public Support for Constitutional Amendments or Revisions by Roth
HB 869 Pub. Rec./Appellate Court Clerks by Gottlieb
HB 991 Pub. Rec./Cellular Telephone Numbers and Secure Login Credentials Held by the Department of Financial Services by LaMarca
HB 7023 Pub. Rec. and Meetings/Mental Health and Substance Abuse by Children, Families & Seniors Subcommittee, Maney
HB 7041 Public Records and Meetings Exemptions by Select Committee on Health Innovation, Andrade

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 01/25/2024 4:01PM by Lacher.Tamara

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 117 Disclosure of Grand Jury Testimony
SPONSOR(S): Criminal Justice Subcommittee, Gossett-Seidman and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 234

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	16 Y, 0 N, As CS	Leshko	Hall
2) Ethics, Elections & Open Government Subcommittee		Skinner	Toliver
3) Judiciary Committee			

SUMMARY ANALYSIS

Section 905.24, F.S., requires grand jury proceedings to be kept secret. Section 905.27, F.S., prohibits any person present or appearing during a grand jury proceeding, including a grand juror, state attorney, assistant state attorney, court reporter, stenographer, or interpreter from disclosing the testimony of a witness examined before the grand jury or other evidence received by the grand jury. A court may authorize disclosure of such testimony for the following purposes: ascertaining whether it is consistent with the testimony given by the witness before the court; determining whether the witness is guilty of perjury; or furthering justice.

It is unlawful for any person to knowingly publish, broadcast, disclose, divulge, or communicate to any other person, or knowingly cause or permit to be published, broadcasted, disclosed, divulged, or communicated to any other person, in any manner whatsoever, any testimony of a witness examined before the grand jury, or the content, gist, or import thereof, except when such testimony is or has been disclosed in a criminal or civil proceeding. If the court orders the disclosure of grand jury testimony in a criminal or civil case, the testimony may only be disclosed to specified persons and can only be used in the defense or prosecution of the civil or criminal case and for no other purpose whatsoever. A person who illegally discloses grand jury testimony commits a first-degree misdemeanor and such a violation constitutes criminal contempt of court.

CS/HB 117 amends s. 905.27, F.S., to specify that when a court is considering whether to authorize the disclosure of grand jury testimony for the purpose of furthering justice, it may consider whether such disclosure would further a public interest when the disclosure is requested by the media or an interested person, regardless of whether that purpose is for use in a criminal or civil case, and:

- The subject of the grand jury inquiry is deceased;
- The grand jury inquiry related to criminal or sexual activity between the subject of the grand jury investigation and a person who was a minor at the time of the alleged criminal or sexual activity;
- The testimony was previously disclosed by a court order; and
- The state attorney is provided notice of the request.

The bill specifies that nothing in the new disclosure provisions created by the bill hinders the court's ability to limit the disclosure of grand jury testimony, including, but not limited to, redaction.

Additionally, the bill prohibits the custodian of a grand jury record from disclosing the testimony of a witness examined before the grand jury or other evidence received by the grand jury.

The bill may have an indeterminate negative fiscal impact on clerk's offices as their workload may increase if additional records are ordered to be released, some requiring redactions. However, the records affected by the bill are very limited and, as such, any additional costs will likely be absorbed within existing resources. *See* Fiscal Comments.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Section 905.24, F.S., requires grand jury proceedings to be kept secret. A grand jury's primary role is to determine whether sufficient evidence exists to justify indicting an accused individual.[1] To make such determinations, a grand jury also serves as an investigating body with subpoena powers.[2] In Florida, a grand jury indictment is only required to try a person for a capital offense; i.e., one where the death penalty may be given.[3] For all other offenses, the state attorney may choose to proceed by either filing an information[4] or seeking a grand jury indictment.[5] While an information is routinely used to charge individuals in Florida, grand juries are often utilized for controversial cases such as those involving alleged wrongdoing by public officials.[6]

Who May be Present During Grand Jury Sessions

Section 905.17, F.S., provides that no person shall be present at grand jury sessions except:

- The witness under examination;
- One attorney representing the witness;
- The state attorney, assistant state attorneys, and other designated assistants;
- The court reporter or stenographer; and
- An interpreter.[7]

An attorney representing a witness under examination is permitted to advise and counsel the witness, but may not address the grand jurors, raise objections, make arguments, or otherwise disrupt proceedings before the grand jury. A witness's attorney is subject to the prohibition against disclosing grand jury testimony or other evidence received by the grand jury under s. 905.27, F.S.[8]

Any stenographic records, notes, and transcriptions made by the court reporter or stenographer are filed with the clerk who must keep them in a sealed container not subject to public inspection. Such records, notes, and transcriptions are confidential and exempt from public record requirements under s. 119.071(1), F.S., and s. 24(a), art. I, Fla. Const., and may only be released upon a request from the grand jury for use by the grand jury or by order of the court pursuant to s. 905.27, F.S.[9]

Prohibitions on Grand Jury Testimony Disclosure and Exceptions

Section 905.27, F.S., prohibits any person present or appearing during a grand jury proceeding, including a grand juror, state attorney, assistant state attorney, court reporter, stenographer, or interpreter from disclosing the testimony of a witness examined before the grand jury or other evidence

[1] S. 905.16, F.S.
[2] S. 905.185, F.S.
[3] S. 15(a), art. I, Fla. Const.
[4] An "information" is a formal criminal charge made by a prosecutor without a grand-jury indictment. Black's Law Dictionary (3d pocket ed. 2006).
[5] S. 15(a), art. I, Fla. Const.; The Florida Bar, *The Grand Jury*, https://www.floridabar.org/news/resources/rpt-hbk/#1619193085264-69d9d83a-2799 (last visited Jan. 25, 2024).
[6] *Id*.
[7] S. 905.17(1), F.S.; s. 12(a)(5), art. V, Fla. Const., also provides that the Judicial Qualifications Commission may also have access to information from grand juries subject to the rules of the commission.
[8] S. 905.17(2), F.S.
[9] S. 905.17(1), F.S.

received by the grand jury. A court may authorize disclosure of such testimony for the following purposes:

- Ascertaining whether it is consistent with the testimony given by the witness before the court;
- Determining whether the witness is guilty of perjury; or
- Furthering justice.[10]

It is unlawful for any person to knowingly publish, broadcast, disclose, divulge, or communicate to any other person, or knowingly cause or permit to be published, broadcasted, disclosed, divulged, or communicated to any other person, in any manner whatsoever, any testimony of a witness examined before the grand jury, or the content, gist, or import thereof, except when such testimony is or has been disclosed in a criminal or civil proceeding as authorized.[11]

When a court orders the disclosure of grand jury testimony for use in a criminal case, it may be disclosed to the:

- Prosecuting attorney of the court in which such criminal case is pending;
- Prosecuting attorney's assistants, legal associates, and employees;
- Defendant;
- Defendant's attorney; and
- Defendant's attorney's legal associates and employees.[12]

When a court orders the disclosure of grand jury testimony for use in a civil case, it may be disclosed to all parties to the case and to their attorneys and their attorneys' legal associates and employees. However, the grand jury testimony released by court order can only be used in the defense or prosecution of the civil or criminal case and for no other purpose whatsoever.[13]

Any person who illegally discloses grand jury testimony commits a first-degree misdemeanor[14] and such a violation constitutes criminal contempt of court.[15]

Jeffrey Epstein Grand Jury Testimony

In 2006, Palm Beach County police opened an investigation into Jeffrey Epstein regarding allegations of sexual abuse of minors. Following the investigation, Palm Beach County police asked the state attorney to charge Epstein with four felony charges including unlawful sexual activity with a minor and lewd and lascivious molestation. Although the state attorney had the authority to file such charges by an information, Epstein's case was instead sent to a grand jury.[16] The grand jury ultimately only found sufficient evidence to charge Epstein with one count of misdemeanor soliciting a prostitute.[17]

In 2021, the Palm Beach Post sued the state attorney and clerk's office in an attempt to obtain a court-ordered release of the grand jury testimony in Epstein's case, seeking the disclosure for the purpose of furthering justice, however, the presiding judge ruled against the Post and the testimony was not released.[18] The Palm Beach Post subsequently appealed this decision to the Fourth District Court of Appeal (DCA) which ultimately reversed and remanded the case for further proceedings in the trial court. The Fourth DCA ordered that upon remand the trial court conduct an *in camera* inspection[19] of

[10] S. 905.27(1), F.S.
[11] S. 905.27(2), F.S.
[12] *Id.*
[13] *Id*.
[14] A first-degree misdemeanor under this section is punishable as provided in s. 775.083, or by a fine not exceeding $5,000, or both.
[15] S. 905.27(4)-(5), F.S.
[16] Holly Baltz, *Why was Jeffrey Epstein in 2006 charged only with picking up a prostitute? Where we stand*, Palm Beach Daily News, Feb. 10, 2023, https://news.yahoo.com/why-jeffrey-epstein-2006-charged-100257919.html?ref=upstract.com (last visited Jan.25, 2024).
[17] Soliciting another person to commit prostitution is a first-degree misdemeanor for a first violation. S. 796.07(5)(a), F.S.
[18] Terri Parker, *Palm Beach County Clerk of Courts working to unseal Jeffrey Epstein grand jury transcripts*, ABC 25 WPBF News, https://www.wpbf.com/article/palm-beach-county-clerk-courts-working-unseal-jeffrey-epstein-grand-jury-transcripts/38699982 (last visited Jan. 13, 2024).
[19] "*In camera* inspection" means a trial judge's private consideration of evidence. Black's Law Dictionary (3d pocket ed. 2006).

the grand jury testimony and determine whether disclosing such testimony would further justice. The Fourth DCA further held that if the trial court found such disclosure would further justice, that the trial court had the inherent authority to disclose such testimony.[20] The trial court has since ordered transcription of the grand jury testimony to assist in facilitating an effective review of the materials.[21]

Effected of Proposed Changes

CS/HB 117 amends s. 905.27, F.S., to specify that when a court is considering whether to authorize the disclosure of grand jury testimony for the purpose of furthering justice, it may consider whether such disclosure would further a public interest when the disclosure is requested by the media or an interested person, regardless of whether that purpose is for use in a criminal or civil case, and:

- The subject of the grand jury inquiry is deceased;
- The grand jury inquiry related to criminal or sexual activity between the subject of the grand jury investigation and a person who was a minor at the time of the alleged criminal or sexual activity;
- The testimony was previously disclosed by a court order; and
- The state attorney is provided notice of the request.

The bill provides that when grand jury testimony is disclosed for use in a criminal case to the prosecuting attorney or defense attorney, and their assistants, legal associates, and employees, such testimony can only be used in the defense or prosecution of a criminal case and for no other purpose.

The bill specifies that nothing in the new disclosure provisions created by the bill hinders the court's ability to limit the disclosure of grand jury testimony, including, but not limited to, redaction.

The bill includes the custodian of a grand jury record among the individuals who are prohibited from disclosing the testimony of a witness examined before the grand jury or other evidence received by the grand jury. The bill also specifies that persons present or appearing during a grand jury proceeding are prohibited from making such disclosures.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 905.27, F.S., relating to testimony not to be disclosed; exceptions.
Section 2: Reenacts s. 905.17, F.S., relating to who may be present during session of grand jury.
Section 3: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

[20] *CA Florida Holdings, LLC v. Dave Aronberg and Joseph Abruzzo*, 360 So. 3d 1149 (Fla. 4th DCA May 10, 2023).
[21] Order Directing Transcription of the Testimony in the Grand Jury Proceedings, *CA Florida Holdings, LLC v. Dave Aronberg and Joseph Abruzzo*, 50-2019CA-014681 (15th Cir. June 29, 2023).

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 negative fiscal impact on clerk's offices as their workload may increase if additional records are ordered to be released, some requiring redactions. However, the records affected by the bill are very limited and, as such, 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:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 19, 2024, the Criminal Justice Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Clarified that in order to meet the new requirements allowing for disclosure of grand jury testimony, the person who the subject of the grand jury inquiry allegedly had criminal or sexual activity with must have been a minor at the time of the alleged criminal or sexual activity, but does not have to also be a minor at the time of the grand jury inquiry.
- Made technical changes.

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

A bill to be entitled

An act relating to disclosure of grand jury testimony; amending s. 905.27, F.S.; revising the list of persons prohibited from disclosing the testimony of a witness examined before a grand jury or other evidence it receives; creating an exception for a request by the media or an interested person to the prohibited publishing, broadcasting, disclosing, divulging, or communicating of any testimony of a witness examined before the grand jury, or the content, gist, or import thereof; providing criminal penalties; providing construction; making technical changes; reenacting s. 905.17(1) and (2), F.S., relating to who may be present during a session of a grand jury, to incorporate the amendment made to s. 905.27, F.S., in references thereto; providing an effective date.

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

Section 1. Section 905.27, Florida Statutes, is amended to read:

905.27 Testimony not to be disclosed; exceptions.—

(1) Persons present or appearing during a grand jury proceeding, including a grand juror, a state attorney, an assistant state attorney, a reporter, a stenographer, or an

interpreter, as well as the custodian of a grand jury record, may not ~~or any other person appearing before the grand jury shall not~~ disclose the testimony of a witness examined before the grand jury or other evidence received by it except when required by a court to disclose the testimony for the purpose of:

(a) Ascertaining whether it is consistent with the testimony given by the witness before the court;

(b) Determining whether the witness is guilty of perjury; or

(c) Furthering justice, which can encompass furthering a public interest when the disclosure is requested pursuant to paragraph (2)(c).

(2) It is unlawful for any person knowingly to publish, broadcast, disclose, divulge, or communicate to any other person, or knowingly to cause or permit to be published, broadcast, disclosed, divulged, or communicated to any other person, in any manner whatsoever, any testimony of a witness examined before the grand jury, or the content, gist, or import thereof, except when such testimony is or has been disclosed in any of the following circumstances: ~~a court proceeding.~~

(a) When a court orders the disclosure of such testimony pursuant to subsection (1) for use in a criminal case, it may be disclosed to the prosecuting attorney of the court in which such criminal case is pending, and by the prosecuting attorney to his

or her assistants, legal associates, and employees, and to the defendant and the defendant's attorney, and by the latter to his or her legal associates and employees. However, the grand jury testimony afforded such persons by the court can only be used in the defense or prosecution of the criminal case and for no other purpose.

(b) When a court orders the ~~such~~ disclosure of such testimony ~~is ordered by a court~~ pursuant to subsection (1) for use in a civil case, it may be disclosed to all parties to the case and to their attorneys and by the latter to their legal associates and employees. However, the grand jury testimony afforded such persons by the court can only be used in the defense or prosecution of the civil ~~or criminal~~ case and for no other purpose ~~whatsoever~~.

(c) When a court orders the disclosure of such testimony pursuant to subsection (1) in response to a request by the media or an interested person, regardless of whether that purpose is for use in a criminal or civil case, it may be disclosed so long as the subject of the grand jury inquiry is deceased, the grand jury inquiry related to criminal or sexual activity between the subject of the grand jury investigation and a person who was a minor at the time of the alleged criminal or sexual activity, the testimony was previously disclosed by a court order, and the state attorney is provided notice of the request. This paragraph does not limit the court's ability to limit the disclosure of

testimony, including, but not limited to, redaction.

(3) ~~Nothing in~~ This section does not ~~shall~~ affect the attorney-client relationship. A client has ~~shall have~~ the right to communicate to his or her attorney any testimony given by the client to the grand jury, any matters involving the client discussed in the client's presence before the grand jury, and any evidence involving the client received by or proffered to the grand jury in the client's presence.

(4) A person who violates ~~Persons convicted of violating~~ this section commits ~~shall be guilty of~~ a misdemeanor of the first degree, punishable as provided in s. 775.083, or by fine not exceeding $5,000, or both.

(5) A violation of this section constitutes ~~shall constitute~~ criminal contempt of court.

Section 2. For the purpose of incorporating the amendment made by this act to section 905.27, Florida Statutes, in references thereto, subsections (1) and (2) of section 905.17, Florida Statutes, are reenacted to read:

905.17 Who may be present during session of grand jury.—

(1) No person shall be present at the sessions of the grand jury except the witness under examination, one attorney representing the witness for the sole purpose of advising and consulting with the witness, the state attorney and her or his assistant state attorneys, designated assistants as provided for in s. 27.18, the court reporter or stenographer, and the

interpreter. The stenographic records, notes, and transcriptions made by the court reporter or stenographer shall be filed with the clerk who shall keep them in a sealed container not subject to public inspection. The notes, records, and transcriptions are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and shall be released by the clerk only on request by a grand jury for use by the grand jury or on order of the court pursuant to s. 905.27.

(2) The witness may be represented before the grand jury by one attorney. This provision is permissive only and does not create a right to counsel for the grand jury witness. The attorney for the witness shall not be permitted to address the grand jurors, raise objections, make arguments, or otherwise disrupt proceedings before the grand jury. The attorney for the witness shall be permitted to advise and counsel the witness and shall be subject to the provisions of s. 905.27 in the same manner as all who appear before the grand jury. An attorney or law firm may not represent more than one person or entity in an investigation before the same grand jury or successive grand juries in the same investigation.

Section 3. This act shall take effect July 1, 2024.

HB 135

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 135 Voter Registration Applications
SPONSOR(S): Gossett-Seidman and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1256

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

SUMMARY ANALYSIS

The Florida voter registration application is required to elicit certain information from an applicant, including: name; date of birth; address of legal residence; party affiliation; and whether the application is being used for initial registration, to update a voter registration record, or to request a replacement voter information card.

Under the National Voter Registration Act (NVRA), state motor vehicles authorities are required to allow individuals to register to vote in federal elections when applying for or renewing a driver license. The Florida Department of Highway Safety and Motor Vehicles (DHSMV) implements the NVRA by providing an applicant "the opportunity to register to vote or to update a voter registration record" when the applicant applies for or renews a driver license or an identification card or changes an address on an existing driver license or identification card.

The bill prohibits the party affiliation of an applicant who is updating his or her voter registration record from being changed unless the applicant designates and consents in writing to change his or her party affiliation.

The bill prohibits DHSMV from:

- Using a voter registration application to change the party affiliation of an applicant, unless the applicant designates a change in party affiliation and provides a separate original signature consenting to the party affiliation change.
- Updating a voter's registration record to change party affiliation, unless the individual designates the change and separately consents to such change in writing.

The bill requires DHSMV to — after verifying the voter registration information and receiving the applicant's electronic signature — provide the applicant with a printed receipt that includes the submitted voter registration information and document any change in party affiliation.

The bill requires driver license examiners providing voter registration services to ask certain questions, as well as prohibits certain questions, regarding voter registration and requires DHSMV to record when a person chooses not to disclose his or her voter registration status and forward such information to the Department of State.

Lastly, the bill requires DHSMV to ensure that technology processes and updates do not alter an applicant's party affiliation without the written consent of the applicant and requires DHSMV to be in full compliance with the bill's requirements within three months after the bill becomes law.

The bill has an indeterminate, but likely significant, negative fiscal impact on state government expenditures. The bill does not appear to have a fiscal impact on local governments. *See* Fiscal Analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

National Voter Registration Act of 1993

Congress passed the National Voter Registration Act (NVRA) in 1993[1] "to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office," while also ensuring "that accurate and current voter registration rolls are maintained."[2] The NVRA requires, among other things, that each a state allow a driver's license application, or a renewal application, submitted to a state motor vehicle authority to also serve as a voter registration application with respect to elections for Federal office, unless the applicant fails to sign the voter registration application.[3] The voter registration application portion of a driver's license application is prohibited by the NVRA from requiring any information that duplicates information[4] required in the driver's license portion of the form.[5] The NVRA requires a voter registration application to include the following:

- A statement of each voter eligibility requirement (including citizenship).
- An attestation that the applicant meets each eligibility requirement.
- A signature of the applicant, under penalty of perjury.[6]

An voter registration application submitted to a state motor vehicle authority by a person who has already registered to vote is considered as updating the person's voter registration.[7]

Florida Department of Highway Safety and Voter Registration

The Florida Election Code[8] implements the NVRA by requiring the Department of Highway Safety and Motor Vehicles (DHSMV)[9] to provide an applicant "the opportunity to register to vote or to update a voter registration record" when he or she does any of the following actions:

- Applies for or renews a driver license.
- Applies for or renews an identification card (I.D. card).[10]
- Changes an address on an existing driver license or I.D. card.[11]

DHSMV must notify each applicant, orally or in writing, that:[12]

- Information gathered for a driver license or I.D. card application, renewal, or change of address can be automatically transferred to a voter registration application.
- If he or she submits additional information and provides his or her signature, the voter registration application will be completed and thereafter sent to the proper election authority.

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[1] National Voter Registration Act of 1993, P.L. 103-31.
[2] 52 U.S.C. § 20501.
[3] 52 U.S.C. § 20504(a)(1). This provision of the NVRA has given the act the colloquial designation by which the bill is most commonly known: the "Motor-Voter" law.
[4] Additionally, the NVRA requires that a voter registration application issued in conjunction with an application for a driver's license only contain the minimum amount of information necessary to prevent duplicate voter registration and to enable state election officials to assess applicant eligibility and administer voter registration and other parts of the election process. 52 U.S.C. §20504(c)(2)(B).
[5] 52 U.S.C. §20504(c)(2)(A).
[6] 52 U.S.C. §20504(c)(2)(C).
[7] 52 U.S.C. §20504(a)(2).
[8] Chapters 97-106, F.S., are known as the Florida Election Code. Section 97.011, F.S
[9] DHSMV and certain county tax collectors have entered into statutorily authorized contracts, whereby tax collectors may deliver full or limited driver license services on behalf of the department. *See* s. 322.02, F.S.
[10] *See* s. 322.051, F.S.
[11] Section 97.057(1), F.S.
[12] Section 97.057(2)(a), F.S.

- Any information provided by him or her may also be used to update an existing voter registration record.
- If he or she declines to register to vote, such declination will remain confidential and may be used only for voter registration purposes.[13]
- The driver license office in which he or she applies to register to vote or updates a voter registration record will remain confidential and may be used only for voter registration purposes.[14]

During the process of completing a driver license or I.D. card application, renewal, or change of address, each driver license examiner[15] must ask orally, or in writing if the person is hearing impaired, whether he or she wants to register to vote or update their voter registration record.[16] If the person responds in the affirmative, all applicable information used by DHSMV to fill out the application, renewal, or change of address will be transferred to the voter registration application.[17] The voter registration application is required to be the same in content, format, and size as the uniform statewide voter registration application.[18] After the applicable information has been transferred, the person will be asked to provide any additional information necessary for the voter registration application to be complete.[19] The completed voter registration application must be presented to the person for him or her to review and verify.[20] Once the person reviews and verifies the information, he or she must provide an electronic signature affirming the accuracy of the information.[21] DHSMV is required to electronically transmit completed voter registration applications within 24 hours to the statewide voter registration system,[22] which is administered by the Department of State.[23]

If an applicant declines to register to vote, update their voter registration record, or change their address by either orally declining or by failing to sign the completed voter registration application, DHSMV is required to note the declination and forward the information to the statewide voter registration system.[24]

A driver license examiner providing voter registration services is prohibited from:
- Seeking to influence an applicant's political preference or party registration;
- Displaying any political preference or party allegiance;
- Making any statement to an applicant or taking any action the purpose or effect of which is to discourage the person from registering to vote; or
- Disclosing any applicant's voter registration information except as needed for the administration of voter registration.[25]

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[13] The NVRA requires that declinations to register to vote be kept confidential. 52 U.S.C. § 20504(c)(2)(D)(ii); *see also* s. 97.0585(1)(a), F.S., providing a public record exemption for such declinations.
[14] The NVRA requires that the office at which an applicant submits a voter registration application be kept confidential. 52 U.S.C. § 20504(c)(2)(D)(iii); *see also* s. 97.0585(1)(b), F.S., providing a public record exemption for information relating to the place where a person registered to vote or where he or she updated a registration record.
[15] DHSMV is required to designate persons as "driver license examiners," who are tasked with conducting examinations, making factual reports of findings and recommendations as DHSMV may require, and enforcing the following: all driver license laws; suspension, revocation, and cancellation orders; and laws relating to the registration of motor vehicles. Section 322.13, F.S.
[16] Section 97.057(2)(b), F.S.
[17] Section 97.057(2)(b)1., F.S.
[18] Section 97.057(3)(a), F.S.; *see* s. 97.052, F.S.
[19] However, the additional information may not duplicate information already obtained by the driver license examiner. Section 97.057(2)(b)1.b., F.S.
[20] Section 97.057(2)(b)1.c., F.S.
[21] *Id*.
[22] *See* ss. 97.012(11) and 98.035, F.S.
[23] If the voter registration application was completed via a physical paper document, DHSMV must forward the document within five days to the supervisor of elections of the applicable county. Section 97.057(4), F.S.
[24] Section 97.057(2)(b)2., F.S. This voter registration information transmittal is in addition to other types of information required to be submitted weekly by DHSMV to DOS. *See* s. 98.093(8), F.S.
[25] Section 97.057(6), F.S.

The Florida Election Code provides an adjudicatory mechanism for a person who has suffered from an alleged violation of the NVRA.[26] A written complaint that states the alleged violation may be filed with DOS.[27] Once received, the parties to the complaint must be given an opportunity to resolve the issue through an informal dispute resolution process.[28] If the informal dispute resolution process fails to resolve the issue, the complainant may bring an action in the respective circuit court for declaratory or injunctive relief if he or she gave proper written notice to the Secretary of State and an agreement was not reached or the alleged violation was not corrected within 90 days after the notice — or 20 days of the notice if the alleged violation occurred within 120 days before the date of the election.[29]

Statewide Voter Registration Application

DOS is required to create a uniform statewide voter registration application (VR application) by rule.[30] The VR application is required to elicit the following information:

- Name.
- Date of Birth.
- Address of Legal Residence.[31]
- Mailing Address (if different from address of legal residence).
- E-mail address and whether the applicant wishes to receive sample ballots by e-mail.
- County of legal residence.
- Race or ethnicity.
- State or country of birth.
- Sex.
- Party Affiliation.
- Whether the applicant needs assistance in voting.
- Name and address where last registered.
- Last four digits of the applicant's social security number.
- Florida driver license number or the identification number from a Florida I.D. card.
- An indication, if applicable, that the applicant has not been issued a Florida driver license, a Florida I.D. card, or a social security number.
- Telephone number (optional).
- Signature of the applicant under penalty for false swearing.[32]
- Whether the application is being used for initial registration, to update a voter registration record, or to request a replacement voter information card.
- Whether the applicant is a citizen of the United States by asking the question "Are you a citizen of the United States of America?"
- Whether the applicant has been convicted of a felony and if convicted, has had his or her voting rights restored.
- Whether the applicant has been adjudicated mentally incapacitated with respect to voting or, if so adjudicated, has had his or her right to vote restored.[33]

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[26] Section 97.023, F.S.; *see also* r. 1S-2.036, F.A.C.

[27] Section 97.023(1)(a) and (b), F.S.

[28] Section 97.023(2), F.S. If the alleged violation occurred within 30 days before a state or federal election and the alleged violation will affect the registrant's right to vote in such election, the registrant may immediately bring an action in the circuit court in the county where the alleged violation occurred. Section 97.023(3), F.S.

[29] Section 97.023(3), F.S.

[30] Section 97.052(1), F.S.; *see* r. 1S-2.040, F.A.C., incorporating the uniform statewide voter registration application by reference. Uniform Statewide Voter Registration Application, DS-DE 39, *available at* https://www.flrules.org/gateway/readRefFile.asp?refId=3171&filename=Voter%20Reg%20App%20-%20DS-DE%2039%20-%20adoption.doc (last visited Jan. 24, 2024).

[31] "Address of legal residence" means the legal residential address of the elector and includes all information necessary to differentiate one residence from another, including, but not limited to, a distinguishing apartment, suite, lot, room, or dormitory room number or other identifier. Section 97.021(3), F.S.

[32] *See* s. 104.011, F.S., for penalties for false swearing.

[33] Section 97.052(2), F.S.

The VR application must also contain the following constitutionally required oath:[34]

> I do solemnly swear (or affirm) that I will protect and defend the Constitution of the United States and the Constitution of the State of Florida, and that I am qualified to register as an elector under the Constitution and laws of the State of Florida.[35]

Voter Registration and Party Affiliation

If a person fails to designate a party when he or she initially registers to vote, the supervisor of elections (supervisor) must designate that person as registered without party affiliation, also known as No Party Affiliated (NPA).[36] The supervisor must notify the voter of such designation and how he or she may change party affiliation.[37] Once registered, a voter's currently recorded political party affiliation may not be changed unless the voter indicates otherwise.[38] If a voter does wish to update the party affiliation on his or her voter registration record, he or she must notify the supervisor by submitting a VR application indicating such.[39] After a voter's party affiliation is changed, the supervisor will issue that person a new voter information card.[40]

Effect of the Bill

The bill requires the VR application to allow an applicant that is completing an application for the purpose of updating a voter registration record without changing their party affiliation to indicate that he or she is choosing not to disclose his or her party affiliation.

The bill prohibits the party affiliation of an applicant who is updating his or her voter registration record from being changed unless the applicant designates and consents in writing to change his or her party affiliation.

The bill prohibits DHSMV from:

- Using a voter registration application to change the party affiliation of an applicant, unless the applicant designates a change in party affiliation and provides a separate original signature consenting to the party affiliation change.
- Updating a voter's registration record to change party affiliation, unless the individual designates the change and separately consent to such change in writing.

DHSMV must, after verifying the voter registration information and receiving the applicant's electronic signature, provide the applicant with a printed receipt that includes the submitted voter registration information and document any change in party affiliation.

The bill requires driver license examiners providing voter registration services to ask the following new questions:

- Whether the applicant is registered to vote;
- Whether the applicant is not registered to vote;
- Whether the applicant does not know if he or she is registered to vote; or

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[34] Section 97.052(3)(a), F.S.
[35] Article VI, s. 3, FLA. CONST.; *see also* s. 97.051, F.S.
[36] Section 97.053(5)(b), F.S.
[37] *Id*; See s. 97.1031(2), F.S., to see how a voter's party affiliation may be changed.
[38] Rule 1S-2.039(6)(b), F.A.C.
[39] Section 97.1031(2), F.S.
[40] Section 97.1031(3), F.S. Supervisors must provide registered voters with a voter information card, which constitutes notice of approval of registration. The card must contain the voter's registration number, date of registration, full name, party affiliation, date of birth, address of legal residence, precinct number, polling place address, name and contact information of the supervisor, and other information deemed necessary by the supervisor. Voters may request a replacement card in writing and supervisors must issue a new card if the voter's name, address of legal residence, polling place address, or party affiliation changes. Section 97.071, F.S.

- Whether the applicant does not wish to disclose whether he or she is registered to vote.

If the applicant is not registered to vote or does not know whether he or she is registered to vote, the bill requires the driver license examiner to ask whether the applicant wishes to register to vote and, if the applicant is registered to vote, whether he or she wishes to update a voter registration record.

The bill provides that DHSMV must also record when a person chooses to not disclose his or her voter registration status and forward such information to DOS.

The bill prohibits driver license examiners from making any change to applicant's party affiliation, unless the applicant provides a separate original signature consenting to the party affiliation change or discussing an applicant's political preference or party registration.

The bill requires DHSMV to ensure that information technology processes and updates do not alter an applicant's party affiliation without the written consent of the applicant. Lastly, DHSMV must be in full compliance with the bill within three months after the bill becomes law.

B. SECTION DIRECTORY:

Section 1 amends s. 97.052, F.S., relating to the uniform statewide voter registration application.

Section 2 amends s. 97.053, F.S., relating to the acceptance of voter registration applications.

Section 3 amends s. 97.057, F.S., relating to voter registration by the Department of Highway Safety and Motor Vehicles.

Section 4 provides an unnumbered section of law requiring the Department of Highway Safety and Motor Vehicles to be in compliance with the bill.

Section 5 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:

   The bill may have an indeterminate, but likely substantial, fiscal impact on state expenditures as DHSMV will have to make changes to the program used to register voters. DHSMV has estimated that reprogramming the program could cost $9,675.[41] Additionally, if the bill is interpreted as requiring a separate "wet" (i.e. physical signature on paper) then DHSMV will have to alter their largely electronic processes to account for the signature and may no longer be able offer driver license renewal or replacement transactions online.[42] Lastly, DHSMV might incur costs related to the production of the registration receipt required under the bill, as well as training staff on the new requirements in the bill.

[41] DHSMV Agency Bill Analysis of HB 135, on file with the Ethics, Elections & Open Government Subcommittee.
[42] *Id.*

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. 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:

None.

B. RULE-MAKING AUTHORITY:

The bill might require DHSMV to alter rules, however DHSMV likely has sufficient existing rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to voter registration applications; amending s. 97.052, F.S.; revising the information that the uniform statewide voter registration application must be designed to elicit; amending s. 97.053, F.S.; providing an exception to a requirement that certain voter registration applicants must be registered without party affiliation; amending s. 97.057, F.S.; requiring the Department of Highway Safety and Motor Vehicles to notify certain individuals of certain information; requiring a driver license examiner to make specified inquiries; prohibiting the department from changing the party affiliation of an applicant except in certain circumstances; requiring the department to provide an applicant with a certain receipt; revising the methods by which an applicant may decline to register to vote or update certain voter registration information; prohibiting a person providing voter registration services for a driver license office from taking certain actions; requiring the department to ensure that information technology processes and updates do not alter certain information without written consent; requiring the department to be in full compliance with this act within a certain period; providing an

effective date.

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

Section 1. Paragraph (j) of subsection (2) of section 97.052, Florida Statutes, is amended to read:

97.052 Uniform statewide voter registration application.—

(2) The uniform statewide voter registration application must be designed to elicit the following information from the applicant:

(j) Party affiliation or, for an applicant who is completing the application to update a voter registration record without changing his or her party affiliation, an indication that the applicant is choosing not to disclose his or her party affiliation.

Section 2. Paragraph (b) of subsection (5) of section 97.053, Florida Statutes, is amended to read:

97.053 Acceptance of voter registration applications.—

(5)

(b) An applicant who fails to designate party affiliation must be registered without party affiliation, except that the party affiliation of an applicant who is updating a voter registration record may not be changed unless the applicant designates and consents in writing to a change in party affiliation. The supervisor must notify the voter by mail that

the voter has been registered without party affiliation and that the voter may change party affiliation as provided in s. 97.1031.

Section 3. Subsection (2) and paragraph (a) of subsection (6) of section 97.057, Florida Statutes, are amended, and subsection (14) is added to that section, to read:

97.057 Voter registration by the Department of Highway Safety and Motor Vehicles.—

(2) The Department of Highway Safety and Motor Vehicles shall:

(a) Notify each individual, orally or in writing, that:

1. Information gathered for the completion of a driver license or identification card application, renewal, or change of address can be automatically transferred to a voter registration application;

2. If additional information and a signature are provided, the voter registration application will be completed and sent to the proper election authority;

3. Information provided can also be used to update a voter registration record, except that party affiliation will not be changed unless the individual designates a change in party affiliation and separately consents to such change in writing;

4. All declinations will remain confidential and may be used only for voter registration purposes; and

5. The particular driver license office in which the

person applies to register to vote or updates a voter registration record will remain confidential and may be used only for voter registration purposes.

(b) Require a driver license examiner to inquire orally or, if the applicant is hearing impaired, inquire in writing whether the applicant is registered to vote, is not registered to vote, does not know if he or she is registered to vote, or does not wish to disclose whether he or she is registered to vote. If the applicant is not or does not know whether he or she is registered to vote, the driver license examiner shall inquire whether the applicant wishes to register to vote and, if the applicant is registered to vote, the driver license examiner shall inquire whether the applicant wishes to ~~register to vote or~~ update a voter registration record during the completion of a driver license or identification card application, renewal, or change of address.

1. If the applicant chooses to register to vote or to update a voter registration record:

a. All applicable information received by the Department of Highway Safety and Motor Vehicles in the course of filling out the forms necessary under subsection (1) must be transferred to a voter registration application.

b. The additional necessary information must be obtained by the driver license examiner and must not duplicate any information already obtained while completing the forms required

under subsection (1).

c. A voter registration application with all of the applicant's voter registration information required to establish the applicant's eligibility pursuant to s. 97.041 must be presented to the applicant to review and verify the voter registration information received and provide an electronic signature affirming the accuracy of the information provided.

d. The voter registration application may not be used to change the party affiliation of the applicant unless the applicant designates a change in party affiliation and provides a separate original signature consenting to the party affiliation change.

e. After verifying the voter registration information and providing his or her electronic signature, the applicant must be provided with a printed receipt that includes such information and documents any change in party affiliation.

2. If the applicant declines to register to vote, update the applicant's voter registration record, or change the applicant's address by either orally declining or choosing not to disclose the applicant's voter registration status or by failing to sign the voter registration application, the Department of Highway Safety and Motor Vehicles must note such declination on its records and shall forward the declination to the statewide voter registration system.

(6) A person providing voter registration services for a

driver license office may not:

(a) Make any change to an applicant's party affiliation unless the applicant provides a separate original signature consenting to the party affiliation change or discuss or seek to influence an applicant's political preference or party registration;

(14) The Department of Highway Safety and Motor Vehicles shall ensure that information technology processes and updates do not alter an applicant's party affiliation without the written consent of the applicant.

Section 4. The Department of Highway Safety and Motor Vehicles must be in full compliance with this act within 3 months after this act becomes a law.

Section 5. This act shall take effect upon becoming a law.

HJR 335

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 335 Requiring Broader Public Support for Constitutional Amendments or Revisions
SPONSOR(S): Roth
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

Florida electors can amend the Florida Constitution by approving an amendment or a revision originating from one of five sources: the Legislature, the Constitution Revision Commission, the Taxation and Budget Reform Commission, a citizen initiative, or a constitutional convention. For an amendment or revision to take effect, at least 60 percent of the electors voting on the measure must approve it. An approved amendment or revision takes effect on the first Tuesday after the first Monday in January following the election, unless otherwise specified.

The joint resolution changes the threshold required to approve an amendment or revision from 60 percent of the electors voting on the measure to 66.67 percent of such electors.

The joint resolution has a nonrecurring fiscal impact on the Department of State for the publication of the proposed constitutional amendment in newspapers of general circulation in each county and for publication of booklets or posters with the amendment language for use in polling places. Such requirements would have to be met if the joint resolution passes both houses of the Legislature.

The joint resolution, if passed by the Legislature, would be considered by the electorate at the next general election on November 5, 2024. If adopted at this election, the joint resolution would take effect January 7, 2025.

A joint resolution proposing an amendment or revision to the Florida Constitution requires a three-fifths vote of the membership of each house of the Legislature to appear on the next general election ballot. If the HJR is subsequently placed on the ballot, the Constitution requires approval by 60 percent of the electors voting on the measure for passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Florida Constitution is the charter of the liberties of Floridians.[1] It may be amended only if the electors approve an amendment or a revision originating from the Legislature, the Constitution Revision Commission (CRC), the Taxation and Budget Reform Commission (TBRC), a citizen initiative, or a constitutional convention.[2] A citizen initiative must embrace only one subject, except for those which limit the power of government to raise revenue,[3] but proposals that originate from the other sources are not so limited.[4]

After the Legislature, CRC, TBRC, citizen initiative, or constitutional convention successfully proposes an amendment or a revision, the measure is placed on the ballot at the next general election,[5] which occurs every even-numbered year on the first Tuesday after the first Monday in November.[6] The proposed amendment or revision must be published[7] twice in newspapers of general circulation in each county in which a newspaper is published, once in the tenth week preceding the election and once in the sixth week, to notify the electors of the measure.[8]

If at least 60 percent of the electors[9] voting on the measure approve it, the measure passes and becomes part of the Florida Constitution.[10] An approved amendment or revision takes effect on the first Tuesday after the first Monday in January following the election, unless otherwise specified.[11]

Effect of the Joint Resolution

The joint resolution changes the threshold required for approving a constitutional amendment or revision from 60 percent of the electors voting on the measure to 66.67 percent of such electors.

A joint resolution proposing a constitutional amendment or revision requires a three-fifths vote of the membership of each house of the Legislature to appear on the next general election ballot.[12] The joint resolution, if passed by the Legislature, would be considered by the electorate at the next general election on November 5, 2024, where 60 percent of the electors voting on the measure must approve it for passage. If approved, the amendment will take effect January 7, 2025.

B. SECTION DIRECTORY:

Not applicable.

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[1] *Browning v. Florida Hometown Democracy, Inc.*, *PAC*, 29 So. 3d 1053, 1064 (Fla. 2010) (internal citations omitted).
[2] Article XI, ss. 1, 2, 3, 4, and 6, FLA. CONST.
[3] Article XI, s. 3, FLA. CONST.
[4] Article XI, ss. 1, 2, 4, and 6, FLA. CONST.
[5] Article XI, s. 5(a), FLA. CONST. ; *see also* s. 97.021(17), F.S.
[6] Article VI, s. 5(a), FLA. CONST.
[7] Such publication must also include notice of the date of the general election in which the proposed amendment or revision will be submitted to the electors. *See* Article XI, s, 5(d), FLA. CONST.
[8] Article XI, s. 5(d), FLA. CONST.
[9] In 2005, the Legislature passed HJR 1723, which proposed a constitutional amendment raising the vote threshold for the approval of a constitutional amendment from a majority of voters voting on an amendment to 60 percent of voters voting on an amendment. The amendment was placed on the ballot in the 2006 general election and passed with 57.8 percent of the vote. *See* 2006 General Election Official Results Constitutional Amendment, Florida Department of State Division of Elections, *available a*t https://results.elections.myflorida.com/Index.asp?ElectionDate=11/7/2006&DATAMODE (last visited Jan. 23, 2024).
[10] Article XI, s. 5(e), FLA. CONST.
[11] *Id*.
[12] Article XI, s. 1, FLA. CONST.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Article XI, s. 5(d) of the Florida Constitution requires publication of a proposed amendment in a newspaper of general circulation in each county. The Division of Elections (Division) within the Department of State must advertise the full text of the amendment twice in a newspaper of general circulation in each county where the amendment will appear on the ballot. The Division must also provide each supervisor of elections with either booklets or posters displaying the full text of each proposed amendment.[13] Such requirements would have to be met if the joint resolution passes both houses of the Legislature.

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 mandates provision applies only to a general law, not to a joint resolution to amend the Constitution.

2. Other:

A joint resolution proposing a constitutional amendment or revision requires a three-fifths vote of the membership of each house of the Legislature to appear on the next general election ballot.[14]

B. RULE-MAKING AUTHORITY:

Not applicable.

[13] Section 101.171, F.S.
[14] Article XI, s. 1, FLA. CONST.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Not applicable.

House Joint Resolution

A joint resolution proposing an amendment to Section 5 of Article XI of the State Constitution to increase the percentage of elector votes required to approve an amendment to or a revision of the State Constitution from 60 percent to 66.67 percent.

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

That the following amendment to Section 5 of Article XI of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE XI

AMENDMENTS

SECTION 5. Amendment or revision election.—

(a) A proposed amendment to or revision of this constitution, or any part of it, shall be submitted to the electors at the next general election held more than ninety days after the joint resolution or report of revision commission, constitutional convention or taxation and budget reform commission proposing it is filed with the custodian of state records, unless, pursuant to law enacted by the affirmative vote of three-fourths of the membership of each house of the

legislature and limited to a single amendment or revision, it is submitted at an earlier special election held more than ninety days after such filing.

(b) A proposed amendment or revision of this constitution, or any part of it, by initiative shall be submitted to the electors at the general election provided the initiative petition is filed with the custodian of state records no later than February 1 of the year in which the general election is held.

(c) The legislature shall provide by general law, prior to the holding of an election pursuant to this section, for the provision of a statement to the public regarding the probable financial impact of any amendment proposed by initiative pursuant to section 3.

(d) Once in the tenth week, and once in the sixth week immediately preceding the week in which the election is held, the proposed amendment or revision, with notice of the date of election at which it will be submitted to the electors, shall be published in one newspaper of general circulation in each county in which a newspaper is published.

(e) Unless otherwise specifically provided for elsewhere in this constitution, if the proposed amendment or revision is approved by vote of at least <u>sixty-six and sixty-seven hundredths</u> ~~sixty~~ percent of the electors voting on the measure, it shall be effective as an amendment to or revision of the

constitution of the state on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment or revision.

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE XI, SECTION 5

REQUIRING BROADER PUBLIC SUPPORT FOR CONSTITUTIONAL AMENDMENTS OR REVISIONS.—Proposing an amendment to the State Constitution to increase the percentage of elector votes required to approve an amendment to or a revision of the State Constitution from 60 percent to 66.67 percent.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 869 Pub. Rec./Appellate Court Clerks
SPONSOR(S): Gottlieb and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 906

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

SUMMARY ANALYSIS

Appellate court clerks provide essential administrative and clerical support functions to the Florida Supreme Court and the Florida district courts of appeal, including tracking and reviewing cases, recommending action on pending matters, and issuing orders as directed by the court. Additionally, appellate court clerks respond to inquiries and help resolve procedural issues for attorneys and litigants. As appellate court clerks regularly interact with attorneys, litigants, self-represented parties, and family members of parties, appellate court clerks may incur the ill will of such individuals and become the target of acts of revenge by disgruntled litigants and their associates and family members.

Currently, neither the personal identifying nor location information of appellate court clerks is exempt from Florida's public record requirements.

HB 869 amends s. 119.071, F.S., to expand the public record exemption for current and former justices and judges and current judicial assistants to include current appellate court clerks. Specifically, the following personal identifying and location information will be exempt from public record requirements under the bill:

- Home addresses, dates of birth, and telephone numbers of current appellate court clerks;
- Names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of current appellate court clerks; and
- Names and locations of schools and day care facilities attended by the children of current appellate court clerks.

Pursuant to the Open Government Sunset Review Act, this expanded exemption will be automatically repealed on October 2, 2029, unless reenacted by the Legislature. The bill also includes the constitutionally required public necessity statement.

The bill provides an effective date of July 1, 2024.

This bill may have a negative, but likely insignificant, fiscal impact on state and local governments. *See* Fiscal Comments.

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 expands an existing public record exemption to include current appellate court clerks and their families; 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 exemption[2] 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 Act (OGSR Act)[5] 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 OGSR 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]

Furthermore, there is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. However, 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.[9]

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[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] *See WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied* 892 So. 2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991); *see* Attorney General Opinion 85-62 (August 1, 1985).

Appellate Court Clerks and Chief Deputy Clerks

The Florida Constitution requires the Florida Supreme Court and each district court of appeal in the state to appoint a clerk to hold office at the pleasure of the appointing court and perform such duties as the appointing court directs.[10] Additionally, each appointed clerk of court may appoint or employ a chief deputy clerk.[11] The chief deputy clerks discharge the duties of the clerk of court during his or her absence and regularly perform duties complementary to those of the clerk of court.[12]

Each clerk of court and his or her chief deputy clerk have administrative and clerical responsibilities, including maintaining all case files and tracking the progress of all cases.[13]

Florida Supreme Court Chief Deputy Clerk Responsibilities

Additional duties of the chief deputy clerk of the Florida Supreme Court include the following:

- Reviewing filings;
- Determining whether active case files and their dockets are in compliance with court policies and procedures;
- Determining action on certain jurisdictional questions;
- Identifying cases requiring further action and initiating such action, including having the case dismissed or having orders issued to correct any deficiencies identified;
- Reviewing non-standard filings and pleadings;
- Giving direction on motions and other pleadings;
- Responding to written and verbal inquiries regarding court policies, procedures, and cases from the court's judges, attorneys, other courts, and self-represented litigants, including inmates;
- Interacting with and providing information to other court personnel, Florida Bar members, and the general public;
- Promulgating policies and procedures pertaining to the court's activities; and
- Performing other administrative functions.[14]

District Courts of Appeal Chief Deputy Clerk Responsibilities

Additional duties of the chief deputy clerks of the district courts of appeal include the following:

- Screening new cases to identify untimely appeals and appeals taken from non-appealable orders;
- Making judgments on non-standard filings and pleadings;
- Identifying cases requiring further action, and initiating that action, including having the case dismissed or having orders issued to correct any deficiencies identified;
- Issuing orders on motions as directed by the court;
- Processing incoming mail;
- Responding to written and verbal inquiries regarding court policies, procedures, and cases from the court's judges, attorneys, other courts, and pro se litigants, including inmates;
- Resolving problems regarding procedural questions from pro se litigants by telephone and in person; and

[10] Art. V, ss. 3(c) and 4(c), Fla. Const.
[11] Ss. 25.201 and 35.22(1), F.S.
[12] Florida Courts, *Florida State Courts System Classification Specification, Classification Title: Chief Deputy Clerk – Supreme Court*, https://www.flcourts.gov/content/download/751200/file/Chief-Deputy-Clerk-Supreme-Court.pdf (last visited Jan. 25, 2024); Florida Courts, *Florida State Courts System Classification Specification, Classification Title: Chief Deputy Clerk – District Court*, https://www.flcourts.gov/content/download/751199/file/Chief-Deputy-Clerk-District-Court.pdf (last visited Jan. 25, 2024).
[13] Florida Supreme Court, *Clerk's Office*, https://supremecourt.flcourts.gov/About-the-Court/Departments-of-the-Court/Clerk-s-Office (last visited Jan. 25, 2024).
[14] Florida Courts, *Florida State Courts System Classification Specification, Classification Title: Chief Deputy Clerk – Supreme Court*, https://www.flcourts.gov/content/download/751200/file/Chief-Deputy-Clerk-Supreme-Court.pdf (last visited Jan. 25, 2024).

- Performing other administrative functions.[15]

Because of their interactions with various parties and their duties involving issuing orders, appellate court clerks and chief deputy clerks may be exposed to the ill will or acts of revenge by disgruntled litigants and their associates and family members.

Currently, neither the personal identifying nor location information of current appellate court clerks or chief deputy clerks is exempt from Florida's public record requirements.

Effect of Proposed Changes

HB 869 amends s. 119.071, F.S., to expand the public record exemption for current and former justices and judges and current judicial assistants to include current appellate court clerks. Specifically, the following personal identifying and location information will be exempt from public record requirements under the bill:

- Home addresses, dates of birth, and telephone numbers of current appellate court clerks;
- Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current appellate court clerks; and
- Names and locations of schools and day care facilities attended by the children of current appellate court clerks.

The bill defines "appellate court clerk" to mean a person appointed as a clerk of the Florida Supreme Court pursuant to s. 3(c), Art. V of the State Constitution, a person appointed as a clerk of a district court of appeal pursuant to s. 4(c), Art. V of the State Constitution, or a court employee assigned to the 2610 or 2620 class code, which are chief deputy clerks of the district courts and the chief deputy clerk of the Florida Supreme Court, respectively.

Pursuant to the Open Government Sunset Review Act, this expanded exemption will be automatically repealed on October 2, 2029, unless reenacted by the Legislature. The bill includes the constitutionally required public necessity statement.

The bill makes additional technical changes.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 119.071, F.S., relating to general exemptions from inspection or copying of public records.
Section 2: Amends s. 744.21031, F.S., relating to public records exemption.
Section 3: Provides a public necessity statement.
Section 4: Provides an effective date of July 1, 2024.

[15] Florida Courts, *Florida State Courts System Classification Specification, Classification Title: Chief Deputy Clerk – District Court*, https://www.flcourts.gov/content/download/751199/file/Chief-Deputy-Clerk-District-Court.pdf (last visited Jan. 25, 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:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have an insignificant negative fiscal impact on state and local agencies that hold records that contain personal identifying and location information of current appellate court clerks and their families, because staff responsible for complying with public record requests may require training related to the expanded public record exemption. Additionally, agencies could incur costs associated with redacting the exempt information prior to releasing records. However, these 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 expands 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 expands a public record exemption; thus, it includes the required public necessity statement. The public necessity statement provides, in part, that the Legislature finds that the responsibilities of appellate court clerks regularly involve issuing

court orders, maintaining case dockets, answering telephone calls, responding to correspondence, and interacting with visitors to the court house, which may result in the clerks incurring the ill will of litigants and their associates and families. The Legislature finds that as a result of this ill will, current appellate court clerks and their spouses and children may be targets for acts of revenge and that the release of such personal identifying and location information may seriously jeopardize the safety of current appellate court clerks and their spouses and children.

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 expands a public record exemption for specified information concerning current appellate court clerks and their families, which does not appear to be 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

A bill to be entitled

An act relating to public records; amending s. 119.071, F.S.; providing a definition; providing an exemption from public records requirements for the personal identifying and location information of current appellate court clerks and the spouses and children of such appellate court clerks; providing for future legislative review and repeal of the exemption; providing for retroactive application; amending s. 744.21031, F.S.; conforming a cross-reference; providing a statement of public necessity; providing an effective date.

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

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

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

(4) AGENCY PERSONNEL INFORMATION.—

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

a. "Appellate court clerk" means a person appointed as a clerk of the Florida Supreme Court pursuant to s. 3(c), Art. V of the State Constitution, a person appointed as a clerk of a district court of appeal pursuant to s. 4(c), Art. V of the

State Constitution, or a court employee assigned to the 2610 or 2620 class code.

b.~~a.~~ "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.

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

d.~~c.~~ "Telephone numbers" includes home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices.

2.a. The home addresses, telephone numbers, dates of birth, and photographs of active or former sworn law enforcement personnel or of active or former civilian personnel employed by a law enforcement agency, including correctional and correctional probation officers, personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect, and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and

enforcement or child support enforcement; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

b. The home addresses, telephone numbers, dates of birth, and photographs of current or former nonsworn investigative personnel of the Department of Financial Services whose duties include the investigation of fraud, theft, workers' compensation coverage requirements and compliance, other related criminal activities, or state regulatory requirement violations; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

c. The home addresses, telephone numbers, dates of birth, and photographs of current or former nonsworn investigative personnel of the Office of Financial Regulation's Bureau of Financial Investigations whose duties include the investigation of fraud, theft, other related criminal activities, or state regulatory requirement violations; the names, home addresses,

telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

d. The home addresses, telephone numbers, dates of birth, and photographs of current or former firefighters certified in compliance with s. 633.408; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such firefighters; and the names and locations of schools and day care facilities attended by the children of such firefighters are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

e. The home addresses, dates of birth, and telephone numbers of current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges, and of current judicial assistants and appellate court clerks; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former justices and judges and of current judicial assistants and appellate court clerks; and the names and locations of schools and day care facilities attended by the children of current or former justices and judges and of current judicial assistants and appellate court clerks are exempt from s. 119.07(1) and s. 24(a), Art. I of the State

Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2029 ~~2028~~, unless reviewed and saved from repeal through reenactment by the Legislature.

f. The home addresses, telephone numbers, dates of birth, and photographs of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; and the names and locations of schools and day care facilities attended by the children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

g. The home addresses, dates of birth, and telephone numbers of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement

hearing officers; and the names and locations of schools and day care facilities attended by the children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

h. The home addresses, telephone numbers, dates of birth, and photographs of current or former human resource, labor relations, or employee relations directors, assistant directors, managers, or assistant managers of any local government agency or water management district whose duties include hiring and firing employees, labor contract negotiation, administration, or other personnel-related duties; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

i. The home addresses, telephone numbers, dates of birth, and photographs of current or former code enforcement officers; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt

from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

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

k. The home addresses, telephone numbers, dates of birth, and photographs of current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, juvenile justice detention officers I and II, juvenile justice detention officer supervisors, juvenile justice residential officers, juvenile justice residential officer supervisors I and II, juvenile justice counselors, juvenile justice counselor supervisors, human services counselor administrators, senior human services counselor administrators, rehabilitation therapists, and social services counselors of the Department of Juvenile Justice; the names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel

are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

l. The home addresses, telephone numbers, dates of birth, and photographs of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel; and the names and locations of schools and day care facilities attended by the children of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

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

Constitution.

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

o. The home addresses, telephone numbers, dates of birth, and photographs of current or former personnel of the Department of Health whose duties include, or result in, the determination or adjudication of eligibility for social security disability benefits, the investigation or prosecution of complaints filed against health care practitioners, or the inspection of health care practitioners or health care facilities licensed by the Department of Health; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

p. The home addresses, telephone numbers, dates of birth, and photographs of current or former impaired practitioner consultants who are retained by an agency or current or former employees of an impaired practitioner consultant whose duties

result in a determination of a person's skill and safety to practice a licensed profession; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such consultants or their employees; and the names and locations of schools and day care facilities attended by the children of such consultants or employees are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

q. The home addresses, telephone numbers, dates of birth, and photographs of current or former emergency medical technicians or paramedics certified under chapter 401; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such emergency medical technicians or paramedics; and the names and locations of schools and day care facilities attended by the children of such emergency medical technicians or paramedics are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

r. The home addresses, telephone numbers, dates of birth, and photographs of current or former personnel employed in an agency's office of inspector general or internal audit department whose duties include auditing or investigating waste, fraud, abuse, theft, exploitation, or other activities that could lead to criminal prosecution or administrative discipline; the names, home addresses, telephone numbers, dates of birth,

and places of employment of spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

s. The home addresses, telephone numbers, dates of birth, and photographs of current or former directors, managers, supervisors, nurses, and clinical employees of an addiction treatment facility; the home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. For purposes of this sub-subparagraph, the term "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).

t. The home addresses, telephone numbers, dates of birth, and photographs of current or former directors, managers, supervisors, and clinical employees of a child advocacy center that meets the standards of s. 39.3035(2) and fulfills the screening requirement of s. 39.3035(3), and the members of a Child Protection Team as described in s. 39.303 whose duties

include supporting the investigation of child abuse or sexual abuse, child abandonment, child neglect, and child exploitation or to provide services as part of a multidisciplinary case review team; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel and members; and the names and locations of schools and day care facilities attended by the children of such personnel and members are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

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

v. The home addresses, telephone numbers, dates of birth, and photographs of current or former inspectors or investigators of the Department of Agriculture and Consumer Services; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or

former inspectors or investigators; and the names and locations of schools and day care facilities attended by the children of current or former inspectors or investigators are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2028, unless reviewed and saved from repeal through reenactment by the Legislature.

3. An agency that is the custodian of the information specified in subparagraph 2. and that is not the employer of the officer, employee, justice, judge, or other person specified in subparagraph 2. must maintain the exempt status of that information only if the officer, employee, justice, judge, other person, or employing agency of the designated employee submits a written and notarized request for maintenance of the exemption to the custodial agency. The request must state under oath the statutory basis for the individual's exemption request and confirm the individual's status as a party eligible for exempt status.

4.a. A county property appraiser, as defined in s. 192.001(3), or a county tax collector, as defined in s. 192.001(4), who receives a written and notarized request for maintenance of the exemption pursuant to subparagraph 3. must comply by removing the name of the individual with exempt status and the instrument number or Official Records book and page

number identifying the property with the exempt status from all publicly available records maintained by the property appraiser or tax collector. For written requests received on or before July 1, 2021, a county property appraiser or county tax collector must comply with this sub-subparagraph by October 1, 2021. A county property appraiser or county tax collector may not remove the street address, legal description, or other information identifying real property within the agency's records so long as a name or personal information otherwise exempt from inspection and copying pursuant to this section is not associated with the property or otherwise displayed in the public records of the agency.

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

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

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

exemption.

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

8. The exempt status of a home address contained in the Official Records is maintained only during the period when a protected party resides at the dwelling location. Upon conveyance of real property after October 1, 2021, and when such real property no longer constitutes a protected party's home address as defined in sub-subparagraph 1.b. ~~1.a.~~, the protected party must submit a written request to release the removed information to the county recorder. The written request to release the removed information must be notarized, must confirm that a protected party's request for release is pursuant to a conveyance of his or her dwelling location, and must specify the Official Records book and page, instrument number, or clerk's file number for each document containing the information to be released.

9. Upon the death of a protected party as verified by a certified copy of a death certificate or court order, any party can request the county recorder to release a protected

decedent's removed information unless there is a related request on file with the county recorder for continued removal of the decedent's information or unless such removal is otherwise prohibited by statute or by court order. The written request to release the removed information upon the death of a protected party must attach the certified copy of a death certificate or court order and must be notarized, must confirm the request for release is due to the death of a protected party, and must specify the Official Records book and page number, instrument number, or clerk's file number for each document containing the information to be released. A fee may not be charged for the release of any document pursuant to such request.

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

Section 2. Paragraph (c) of subsection (1) of section 744.21031, Florida Statutes, is amended to read:

744.21031 Public records exemption.—

(1) For purposes of this section, the term:

(c) "Telephone numbers" has the same meaning as provided in s. 119.071(4)(d)1.d. ~~s. 119.071(4)(d)1.b.~~

Section 3. The Legislature finds that it is a public necessity that the home addresses, dates of birth, and telephone

numbers of current appellate court clerks; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such appellate court clerks; and the names and locations of schools and day care facilities attended by children of such appellate court clerks be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. While performing their duties to issue court orders, maintain case dockets, answer telephone calls, respond to correspondence, and interact with visitors to the courthouse, appellate court clerks may incur the ill will of litigants and their associates and families. As a result, current appellate court clerks and their spouses and children may be targets for acts of revenge. If such identifying and location information is released, the safety of current appellate court clerks and their spouses and children could be seriously jeopardized. For this reason, the Legislature finds that it is a public necessity that such information be made exempt from public records requirements.

Section 4. This act shall take effect July 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 991 Pub. Rec./Cellular Telephone Numbers and Secure Login Credentials Held by the Department of Financial Services
SPONSOR(S): LaMarca
TIED BILLS: HB 989 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	16 Y, 0 N	Herrera	Lloyd
2) Ethics, Elections & Open Government Subcommittee		Rando	Toliver
3) Commerce Committee			

SUMMARY ANALYSIS

The Department of Financial Services (DFS) has broad duties, including licensure and regulation of insurance agents, agencies, and adjusters; insurance consumer assistance and protection; and holding and attempting to return unclaimed property to its rightful owner. DFS has a number of regulatory responsibilities over the Florida insurance market. DFS regulates insurance adjusters, which includes public adjusters, independent adjusters, and company employee adjusters.

The bill creates a public record exemption within s. 626.171, F.S., for cellular telephone numbers and secure login credentials, held by the DFS, associated with a person's application for licensure for insurance agents, customer representatives, adjusters, service representatives, and reinsurance intermediaries. The exemption applies to cellular telephone numbers and secure login credentials held by the DFS before, on, or after the effective date of the bill.

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

The bill may have an insignificant negative fiscal impact on state government. *See* Fiscal Comments.

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 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 exemption[2] 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 by 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 (OGSR) Act[5] 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 OGSR Act, a new public record exemption, or the 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]

Organization of the Department of Financial Services

The Chief Financial Officer (CFO) is an elected member of the Cabinet, serves as the state's chief fiscal officer,[9] and is designated as the State Fire Marshal. The CFO is the head of the Department of Financial Services (DFS). Effective January 2003, the Department of Insurance, Treasury, State Fire Marshal, and the Department of Banking and Finance were merged to form DFS. DFS consists of 13

[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] Art. IV, s. 4, Fla. Const.

divisions and several specialized offices.[10] DFS is composed of the following divisions and independent office:

- Accounting and Auditing;
- Consumer Services;
- Funeral, Cemetery, and Consumer Services;
- Insurance Agent and Agency Services;
- Investigative and Forensic Services;[11]
- Public Assistance Fraud;
- Rehabilitation and Liquidation;
- Risk Management;
- State Fire Marshal;
- Treasury;
- Unclaimed Property;
- Workers' Compensation;
- Administration; and the
- Office of Insurance Consumer Advocate.

Division of Insurance Agent and Agency Services

DFS has broad duties, including licensure and regulation of insurance agents, agencies, and adjusters; insurance consumer assistance and protection; and holding and attempting to return unclaimed property to its rightful owner.[12] DFS has a number of regulatory responsibilities over the Florida insurance market. DFS regulates insurance adjusters, which includes public adjusters, independent adjusters, and company employee adjusters and conducts insurance-related consumer outreach through its Consumer Services. The Division of Workers' Compensation within DFS administers the workers' compensation system through enforcement of coverage requirements,[13] administration of workers' compensation health care delivery system,[14] data collection,[15] and assisting injured workers, employers, insurers, and providers in fulfilling their responsibilities.[16] DFS also administers the rehabilitation and liquidation of insolvent insurers.

No person may be, act as, or advertise, or hold himself or herself out to be an insurance agent, insurance adjuster, or customer representative unless he or she is currently licensed by DFS and appointed by an appropriate appointing entity or person.[17] There are several types of insurance representatives. These include:

- General lines agents;
- Life insurance agents;
- Health insurance agents;
- Title insurance agents;
- Personal lines agents; and
- Unaffiliated insurance agents.[18]

[10] S. 20.121, F.S.
[11] This division includes the Bureau of Forensic Services; Bureau of Fire, Arson, and Explosives Investigations; Office of Fiscal Integrity; Bureau of Insurance Fraud; and Bureau of Workers' Compensation Fraud.
[12] *See*, e.g., Florida Department of Financial Services, *What is the Purpose of the Department*, https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=4103#:~:text=The%20office%20protects%20the%20public,entrants%20to%20the%20Florida%20market (last visited Jan. 25, 2024).
[13] S. 440.107(3), F.S.
[14] S. 440.13, F.S.
[15] Ss. 440.185 and 440.593, F.S.
[16] S. 440.191, F.S.
[17] S. 626.112, F.S.
[18] S. 626.015, F.S.

General Lines Agent

A general lines agent[19] is one who sells the following lines of insurance: property;[20] casualty,[21] including commercial liability insurance underwritten by a risk retention group, a commercial self-insurance fund,[22] or a workers' compensation self-insurance fund;[23] surety;[24] health;[25] and, marine.[26] The general lines agent may only transact health insurance for an insurer that the general lines agent also represents for property and casualty insurance. If the general lines agent wishes to represent health insurers that are not also property and casualty insurers, they must be licensed as a health insurance agent.[27]

Title Agents and Agencies

Title insurance insures owners of real property (owner's policy) or others having an interest in real property, as well as lenders (mortgagee policies) against loss by encumbrance, defective title, invalidity, or adverse claim to title. It is a policy issued by a title insurer that, after evaluating a search of title, insures against a number of covered risks, including title defects or liens that are not identified as exceptions. In Florida, title insurers operate on a monoline basis, meaning that the insurer can only transact title insurance and cannot transact any other type of insurance.[28]

Public Adjusters

A public adjuster, excluding duly licensed attorneys, is any individual who, for compensation or any other valuable consideration, directly or indirectly prepares, completes, or submits an insurance claim for an insured or third-party claimant.[29] Additionally, it includes those who, for compensation, act on behalf of or assist an insured or third-party claimant in negotiating or settling a covered insurance claim.[30] The term also encompasses individuals advertising as adjusters for such claims, as well as those who, for compensation, solicit, investigate, or adjust these claims on behalf of the public adjuster, an insured, or a third-party claimant.[31]

Effect of the Bill

The bill creates a public record exemption within s. 626.171, F.S., for cellular telephone numbers and secure login credentials[32] held by the DFS pertaining to applications for licensure for insurance agents, customer representatives, adjusters, service representatives, and reinsurance intermediaries. The bill

[19] S. 626.015(7), F.S.
[20] S. 624.604, F.S.
[21] S. 624.605, F.S.
[22] As defined in s. 624.462, F.S.
[23] Pursuant to s. 624.4621, F.S.
[24] S. 626.606, F.S.
[25] S. 624.603, F.S.
[26] S. 624.607, F.S.
[27] S. 626.829, F.S.
[28] S. 627.786, F.S.
[29] S. 626.854(1), F.S.
[30] *Id*.
[31] *Id*.
[32] The bill defines the term "secure login credential" to mean information held by the DFS for purposes of authenticating a user's logging into a user account on a computer, a computer system, a computer network, or an electronic device; an online user account accessible via the Internet, whether through a mobile device, a website, or any other electronic means; or information used for authentication or password recovery.

provides such telephone numbers and secure login credentials are exempt[33] from public record requirements under s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution. The exemption applies to cellular telephone numbers and secure login credentials held by the DFS before, on, or after the effective date of the bill.

The exemption is subject to the OGSR Act, and will be repealed on October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also provides a statement of public necessity as required by the Florida Constitution.

The bill is effective upon the same date that HB 989 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof becomes law.

B. SECTION DIRECTORY:

Section 1. Amends s. 626.171, F.S., relating to application for license as an agent, customer representative, adjuster, service representative, or reinsurance intermediary.

Section 2. Provides a statement of public necessity.

Section 3. Contains unnumbered section of law.

Section 4. Provides that the bill is effective on the same date as HB 989 or similar bill takes effect.

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 the DFS, as staff responsible for complying with public record requests may require training related to the newly-created public record exemption. However, any additional costs will likely be absorbed within existing resources.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

[33] 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).

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:

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 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 exemption. The bill creates a public record exemption; therefore, it includes a public necessity statement. The public necessity statement states that the Legislature finds, in part, that without the public record exemption, the effective and efficient administration of the electronic filing system would be hindered.

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a newly created 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 cellular telephone numbers and secure login credentials held by the DFS associated with insurance agents, customer representatives, adjusters, service representatives, and reinsurance intermediaries. The purpose of the exemption is to protect sensitive personal information linked to individuals in these roles, that the DFS receives for the purpose of electronic filing or record review. As such, the bill appears to be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

The bill does not confer rulemaking authority nor require the promulgation of rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to public records; amending s. 626.171, F.S.; providing a public records exemption for cellular telephone numbers and secure login credentials obtained by the Department of Financial Services through certain insurance license applications; providing applicability; providing a definition; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing a directive to the Division of Law Revision; providing a contingent effective date.

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

Section 1. Subsection (8) is added to section 626.171, Florida Statutes, as amended by HB 989 or similar legislation, 2024 Regular Session, to read:

626.171 Application for license as an agent, customer representative, adjuster, service representative, or reinsurance intermediary.—

(8)(a) Cellular telephone numbers collected by the department under subsection (2) are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to cellular telephone numbers held by the department

before, on, or after the effective date of this act.

(b) Secure login credentials held by the department for the purpose of allowing a person to electronically file or review records under this section are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to secure login credentials held by the department before, on, or after the effective date of this act. As used in this paragraph, the term "secure login credential" means information held by the department for purposes of authenticating a user's logging into a user account on a computer, a computer system, a computer network, or an electronic device; an online user account accessible via the Internet, whether through a mobile device, a website, or any other electronic means; or information used for authentication or password recovery.

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

Section 2. The Legislature finds that it is a public necessity that all cellular phone numbers and secure login credentials held by the Department of Financial Services relating to electronically filed applications for licenses as insurance agents, customer representatives, adjusters, service representatives, and reinsurance intermediaries be made exempt

from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The unintentional publication of such information may subject the filer to identity theft, financial harm, or other adverse impacts. Without this public records exemption, the effective and efficient administration of the electronic filing system, which is otherwise designed to increase the ease of filing records, would be hindered. For these reasons, the Legislature finds that the public records exemption for all cellular phone numbers and secure login credentials held by the Department of Financial Services relating to electronically filed applications for licenses as insurance agents, customer representatives, adjusters, service representatives, and reinsurance intermediaries serves a public purpose.

Section 3. The Division of Law Revision is directed to replace the phrase "the effective date of this act" wherever it occurs in this act with the date this act becomes a law.

Section 4. This act shall take effect on the same date that HB 989 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7023 PCB CFS 24-02 Pub. Rec. and Meetings/Mental Health and Substance Abuse
SPONSOR(S): Children, Families & Seniors Subcommittee, Maney and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Children, Families & Seniors Subcommittee	16 Y, 0 N	Curry	Brazzell
1) Ethics, Elections & Open Government Subcommittee		Rando	Toliver
2) Health & Human Services Committee			

SUMMARY ANALYSIS

The Baker Act provides legal procedures for voluntary and involuntary mental health examination and treatment, while the Marchman Act addresses substance abuse through a comprehensive system of prevention, detoxification, and treatment services.

Currently, all Baker Act petitions for voluntary and involuntary mental health treatment, court orders, and related records filed with a court are confidential and exempt from public record requirements. Similarly, all Marchman Act petitions for involuntary assessment and stabilization, court orders, and related records are confidential and exempt from public record requirements. Under both Acts, the clerk of court is prohibited from posting personal identifying information on the court docket or in publicly accessible files and may only release confidential and exempt documents to specified individuals. Current law retroactively applies the exemption to all documents filed under both Acts to a specified date, but does not expressly apply the exemption to pending or filed appeals.

The bill makes hearings under the Baker Act and under Parts IV and V of the Marchman Act confidential, absent a judicial finding of good cause or the respondent's consent.

The bill expands the exemption from public record requirements to include a respondent's name, at trial and on appeal, and applications for voluntary mental health examinations or treatment and substance abuse treatment. The bill also adds service providers to the list of individuals to whom the clerk of court may disclose confidential and exempt pleadings and other documents. In addition to applying to documents that were previously filed with a court, these new exemptions also apply to appeals pending or filed on or after July 1, 2024.

The bill creates a narrow exception that allows courts to use a respondent's name in certain instances.

The bill provides that the public record and public meeting exemptions are subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2029, unless the saved from repeal through reenactment by the Legislature. The bill also provides the constitutionally required public necessity statements.

The bill may have an indeterminate, but likely insignificant, negative fiscal impact on the State Courts System.

This bill provides an effective date of July 1, 2024.

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 and public meeting exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government

The Florida Constitution sets forth the state's public policy regarding access to government records and meetings.[1] Every person is guaranteed a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.[2] All meetings of any collegial public body of the executive branch of state government or any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, must be open and noticed to the public.[3] The Legislature, however, may provide by general law an exemption[4] from public record or meeting 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.[5]

Pursuant to the Open Government Sunset Review Act,[6] a new public record or meeting exemption or substantial amendment of an existing exemption is repealed on October 2nd of the fifth year following enactment, unless the Legislature reenacts the exemption.[7]

Public Records

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.[8] Furthermore, the Open Government Sunset Review Act 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."[9] 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.[10]

Public Meetings

Current law also addresses public policy regarding access to government meetings, further requiring all meetings of any board or commission of any state agency or authority, or of any agency or authority of

[1] Art. I, s. 24, FLA. CONST.
[2] Art. I, s. 24(a), FLA. CONST.
[3] Art. I, s. 24 (b), FLA. CONST.
[4] A public record exemption means a provision of general law which provides that a specified record or meeting, or portion thereof, is not subject to the access requirements of s. 119.07(1), F.S., s. 286.011, F.S., or s. 24, Art. I of the Florida Constitution. *See* s. 119.011(8), F.S.
[5] Art. I, s. 24(c), FLA. CONST.
[6] S. 119.15, F.S.
[7] S. 119.15(3), F.S.
[8] *See* s. 119.01, F.S.
[9] S. 119.15(6)(b), F.S.
[10] *Id.*

any county, municipality, or political subdivision, at which official acts are to be taken to be open to the public at all times, unless the meeting is exempt.[11] The board or commission must provide reasonable notice of all public meetings.[12] Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin, or economic status or that operates in a manner that unreasonably restricts the public's access to the facility.[13] Minutes of a public meeting must be promptly recorded and open to public inspection.[14] Failure to abide by public meeting requirements will invalidate any resolution, rule, or formal action adopted at a meeting.[15] A public officer or member of a governmental entity who violates public meeting requirements is subject to civil and criminal penalties.[16]

Mental Health and Mental Illness

Mental health is a state of well-being in which the individual is able to cope with the normal stresses of life, realize his or her abilities, can work productively and fruitfully, and is able to contribute to his or her community.[17] The primary indicators used to evaluate an individual's mental health are:[18]

- **Emotional well-being**- Perceived life satisfaction, happiness, cheerfulness, peacefulness;
- **Psychological well-being**- Self-acceptance, personal growth, including openness to new experiences, optimism, hopefulness, purpose in life, control of one's environment, spirituality, self-direction, and positive relationships; and
- **Social well-being**- Social acceptance, beliefs in the potential of people and society as a whole, personal self-worth and usefulness to society, and sense of community.

Mental illness is collectively all diagnosable mental disorders or health conditions that are characterized by alterations in thinking, mood, or behavior (or some combination thereof) associated with distress or impaired functioning.[19] Thus, mental health refers to an individual's mental state of well-being, whereas mental illness signifies an alteration of that well-being. Mental illness affects millions of people in the United States each year. Nearly one in five adults lives with a mental illness.[20] An estimated 49.5% of adolescents aged 13-18 have a mental illness.[21]

The Baker Act

The Florida Mental Health Act, otherwise known as the Baker Act, was enacted in 1971 to revise the state's mental health commitment laws.[22] The Act provides legal procedures for mental health examination and treatment, including voluntary and involuntary examinations. It additionally protects the rights of all individuals examined or treated for mental illness in Florida.[23]

[11] S. 286.011(1), F.S.
[12] *Id.*
[13] S. 286.011(6), F.S.
[14] S. 286.011(2), F.S.
[15] S. 286.011(1), F.S.
[16] S. 286.011(3), F.S.
[17] World Health Organization, *Mental Health: Strengthening Our Response,* https://www.who.int/news-room/fact-sheets/detail/mental-health-strengthening-our-response (last visited Jan. 24 , 2024).
[18] Centers for Disease Control and Prevention, *Mental Health Basics*, http://medbox.iiab.me/modules/en-cdc/www.cdc.gov/mentalhealth/basics.htm (last visited Jan. 24, 2024).
[19] *Id*.
[20] National Institute of Mental Health (NIH), *Mental Illness*, https://www.nimh.nih.gov/health/statistics/mental-illness (last visited Jan. 24, 2024).
[21] *Id*.
[22] Ss. 394.451-394.47892, F.S.
[23] S. 394.459, F.S.

Voluntary Admissions

Under current law, an adult may apply for voluntary admission to a facility for observation, diagnosis, or treatment by giving their express and informed consent.[24] The facility may admit the adult if it finds evidence of mental illness, the adult to be competent to provide express and informed consent, and that the adult is suitable for treatment.

A facility may also receive a minor for observation, diagnosis, or treatment if the minor's guardian applies for admission.[25] If the facility finds there is evidence of mental illness, and the minor is suitable for treatment at that facility, then they can admit the minor, but only after a clinical review to verify the voluntariness of the minor's assent.[26]

A voluntary patient who is unwilling or unable to provide express and informed consent to mental health treatment must either be discharged or transferred to involuntary status.[27] Additionally, facilities must discharge a patient within 24 hours if he or she is sufficiently improved such that admission is no longer appropriate, consent is revoked, or discharge is requested, unless the patient is qualified for and is transferred to involuntary status.[28]

Involuntary Examination

Individuals in acute mental or behavioral health crisis may require emergency treatment to stabilize their condition. Emergency mental health examination and stabilization services may be provided on a voluntary or involuntary basis.[29] An involuntary examination is required if there is reason to believe that the person has a mental illness and because of his or her mental illness:[30]

- The person has refused voluntary examination after conscientious explanation and disclosure of the purpose of the examination or is unable to determine for himself or herself whether examination is necessary; **and**
- Without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself; such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services; **or**
- There is a substantial likelihood that without care or treatment the person will cause serious bodily harm to himself or herself or others in the near future, as evidenced by recent behavior.

The involuntary examination may be initiated in one of three ways:[31]

- A court may enter an ex parte order stating that a person appears to meet the criteria for involuntary examination, based on sworn testimony. The order of the court shall be made a part of the patient's clinical record.
- A law enforcement officer must take a person who appears to meet the criteria for involuntary examination into custody and deliver the person or have him or her delivered to an appropriate, or the nearest, receiving facility for examination. The officer shall execute a written report detailing the circumstances under which the person was taken into custody, and the report shall be made a part of the patient's clinical record.
- A physician, a physician assistant, clinical psychologist, psychiatric nurse, an advanced practice registered nurse, mental health counselor, marriage and family therapist, or clinical social

[24] S. 394.4625, F.S.
[25] *Id*.
[26] *Id*.
[27] S. 394.4625(1)(e), F.S.
[28] S. 394.4625(2), F.S.
[29] Ss. 394.4625 and 394.463, F.S.
[30] S. 394.463(1), F.S.
[31] S. 394.463(2)(a), F.S.

worker may execute a certificate stating that he or she has examined a person within the preceding 48 hours and finds that the person appears to meet the criteria for involuntary examination and stating the observations upon which that conclusion is based. The report and certificate shall be made a part of the patient's clinical record.

Involuntary patients must be taken to either a public or private facility which has been designated by the Department of Children and Families (DCF) as a Baker Act receiving facility. The purpose of receiving facilities is to receive and hold, or refer, as appropriate, involuntary patients under emergency conditions for psychiatric evaluation and to provide short-term treatment or transportation to the appropriate service provider.[32] The examination period must be for up to 72 hours.[33] A minor patient must be examined by the receiving facility within 12 hours following his or her arrival at the facility.[34]

Involuntary Outpatient Services

A person may be ordered to involuntary outpatient services[35] upon a finding of the court that by clear and convincing evidence:[36]

- The person is 18 years of age or older;
- The person has a mental illness;
- The person is unlikely to survive safely in the community without supervision, based on a clinical determination;
- The person has a history of lack of compliance with treatment for mental illness;
- The person has:
    - At least twice within the immediately preceding 36 months been involuntarily admitted to a receiving or treatment facility, or has received mental health services in a forensic or correctional facility; or
    - Engaged in one or more acts of serious violent behavior toward self or others, or attempts at serious bodily harm to himself or herself or others, within the preceding 36 months;
- The person is, as a result of his or her mental illness, unlikely to voluntarily participate in the recommended treatment plan and either he or she has refused voluntary placement for treatment or he or she is unable to determine for himself or herself whether placement is necessary;
- In view of the person's treatment history and current behavior, the person is in need of involuntary outpatient services in order to prevent a relapse or deterioration that would be likely to result in serious bodily harm to himself or herself or others, or a substantial harm to his or her well-being;
- It is likely that the person will benefit from involuntary outpatient services; and
- All available, less restrictive alternatives that would offer an opportunity for improvement of his or her condition have been judged to be inappropriate or unavailable.

A petition for involuntary outpatient services may be filed by a receiving or treatment facility's administrator.[37] The petition must allege and sustain each of the criterion for involuntary outpatient services and be accompanied by a certificate recommending involuntary outpatient services by a qualified professional and a proposed treatment plan.[38]

The petition for involuntary outpatient services must be filed in the county where the patient is located, unless the patient is being placed from a state treatment facility, in which case the petition must be filed

[32] S. 394.455(39), F.S.
[33] S. 394.463(2)(g), F.S.
[34] *Id.*
[35] Current statute uses both "services" and "placement". For the purposes of the analysis, the term "services" will be used.
[36] S. 394.4655(2), F.S.
[37] S. 394.4655(4)(a), F.S.
[38] S. 394.4655(4)(b), F.S.

in the county where the patient will reside.[39] When the petition has been filed, the clerk of the court shall provide copies of the petition and the proposed treatment plan to DCF, the managing entity, the patient, the patient's guardian or representative, the state attorney, and the public defender or the patient's private counsel.[40]

Once a petition for involuntary outpatient services has been filed with the court, the court must hold a hearing within five working days, unless a continuance is granted.[41] The state attorney for the circuit in which the patient is located is required to represent the state, rather than the petitioner, as the real party in interest in the proceeding.[42] The court must, within one court working day of the filing of the petition appoint the public defender to represent the person who is the subject of the petition, unless that person is otherwise represented by counsel.[43]

At the hearing on involuntary outpatient services, the court shall consider testimony and evidence regarding the patient's competence to consent to treatment; if the court finds that the patient is incompetent to consent to treatment, it shall appoint a guardian advocate.[44] If the court concludes that the patient meets the criteria for involuntary outpatient services, it must issue an order for involuntary outpatient services.[45] The order must specify the duration of involuntary outpatient services, up to 90 days, and the nature and extent of the patient's mental illness.[46] The order of the court and the treatment plan shall be made part of the patient's clinical record.[47]

If, at any time before the conclusion of the initial hearing on involuntary outpatient services, it appears to the court that the person does not meet the criteria for involuntary outpatient services but, instead, meets the criteria for involuntary inpatient placement, the court may order the person admitted for involuntary inpatient examination.[48]

Involuntary Inpatient Placement

A person may be placed in involuntary inpatient placement for treatment upon a finding of the court by clear and convincing evidence that:

- He or she is mentally ill and because of his or her mental illness:
    - He or she has refused voluntary placement for treatment after sufficient and conscientious explanation and disclosure of the purpose of placement for treatment; or is unable to determine for himself or herself whether placement is necessary; **and**
    - He or she is manifestly incapable of surviving alone or with the help of willing and responsible family or friends, including available alternative services, and, without treatment, is likely to suffer from neglect or refuse to care for himself or herself, and such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; **or**
    - There is substantial likelihood that in the near future he or she will inflict serious bodily harm on himself or herself or another person, as evidenced by recent behavior causing, attempting, or threatening such harm; and

[39] S. 394.4655(4)(c), F.S.
[40] *Id.*
[41] S. 394.4655(7)(a)1., F.S.
[42] *Id.*
[43] S. 394.4655(5), F.S.
[44] S. 394.4655(7)(d), F.S.
[45] S. 394.4655(7)(b)1., F.S.
[46] *Id.*
[47] *Id.*
[48] S. 394.4655(7)(c), F.S. Additionally, if the person instead meets the criteria for involuntary assessment, protective custody, or involuntary admission pursuant to the Marchman Act, the court may order the person to be admitted for involuntary assessment pursuant to the statutory requirements of the Marchman Act.

- All available less restrictive treatment alternatives which would offer an opportunity for improvement of his or her condition have been judged to be inappropriate.[49]

A receiving or treatment facility's administrator must file a petition for involuntary inpatient placement in the court in the county where the patient is located.[50] Upon filing, the clerk of the court must provide copies to DCF, the patient, the patient's guardian or representative, and the state attorney and public defender of the judicial circuit in which the patient is located.[51]

The court proceedings for involuntary inpatient placement closely mirror those for involuntary outpatient services.[52] However, unlike an order for involuntary outpatient services, which statute makes part of the patient's clinical record, nothing in the laws governing involuntary inpatient placement makes the court's order part of the patient's clinical record.

Confidentiality of Service Provider Records in Baker Act Proceedings in Florida

In 2019, the Legislature created a public record exemption for certain information filed with a court under the Baker Act.[53] Specifically, all petitions for voluntary and involuntary admissions for mental health treatment, court orders, and related records that are filed with or by a court under the Baker Act are confidential and exempt[54] from public record requirements. However, the clerk of the court may disclose the pleadings and other documents to:[55]

- The petitioner;
- The petitioner's attorney;
- The respondent;
- The respondent's attorney;
- The respondent's guardian or guardian advocate, if applicable;
- In the case of a minor respondent, the respondent's parent, guardian, legal custodian, or guardian advocate;
- The respondent's treating health care practitioner;
- The respondent's health care surrogate or proxy;
- DCF, without charge;
- The Department of Corrections, without charge, if the respondent is committed or is to be returned to the custody of the Department of Corrections from DCF; or
- A person or entity authorized to view records upon a court order for good cause.

Currently, a respondent's name, at trial and on appeal, and applications for voluntary and involuntary admission for mental health examinations are not part of the public record exemption, meaning this information is subject to public disclosure under current law.

However, the clerk of court is prohibited from publishing personal identifying information on a court docket or in a publicly accessible file.[56] This means that a court may not use a respondent's name to schedule and adjudicate cases, which includes transmitting a copy of any court order to the parties.

[49] S. 394.467(1), F.S.
[50] S. 394.467(2)-(3), F.S.
[51] S. 394.467(3), F.S.
[52] *See* s. 394.467(6)-(7), F.S.
[53] Ch. 2019-51, Laws of Fla., codified as s. 394.464, F.S.
[54] 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).
[55] S. 394.464(1), F.S.
[56] S. 394.464(3), F.S.

The 2019 public necessity statement[57] for the exemption provides that the Legislature finds that:[58]

> A person's mental health is … an intensely private matter. The public stigma associated with a mental health condition may cause persons in need of treatment to avoid seeking treatment and related services if the record of such condition is accessible to the public. Without treatment, a person's condition may worsen, the person may harm himself or herself or others, and the person may become a financial burden on the state. The content of such records or personal identifying information should not be made public merely because they are filed with or by a court or placed on a docket. Making such petitions, orders, records, and identifying information confidential and exempt from disclosure will protect such persons from the release of sensitive, personal information which could damage their and their families' reputations. The publication of personal identifying information on a physical or virtual docket, regardless of whether any other record is published, defeats the purpose of protections otherwise provided. Further, the knowledge that such sensitive, personal information is subject to disclosure could have a chilling effect on a person's willingness to seek out and comply with mental health treatment services.

The exemption applies to all documents filed with a court before, on, or after July 1, 2019.[59] Current law does not expressly apply the exemption to pending or filed appeals.

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2024, unless reenacted by the Legislature.[60]

Substance Abuse

Substance abuse refers to the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs.[61] Substance use disorders occur when the chronic use of alcohol or drugs causes significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.[62] Repeated drug use leads to changes in the brain's structure and function that can make a person more susceptible to developing a substance use disorder.[63] Brain imaging studies of persons with substance use disorders show physical changes in areas of the brain that are critical to judgment, decision making, learning and memory, and behavior control.[64]

According to the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, a diagnosis of substance use disorder is based on evidence of impaired control, social impairment, risky use, and pharmacological criteria.[65] The most common substance use disorders in the United States are from the use of alcohol, tobacco, cannabis, stimulants, hallucinogens, and opioids.[66]

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[57] Art. I, s. 24(c), FLA. CONST., requires each public record exemption to "state with specificity the public necessity justifying the exemption."
[58] Ch. 2019-51, Laws of Fla.
[59] S. 394.464(5), F.S.
[60] S. 394.464(6), F.S.
[61] *World Health Organization, Substance Abuse*, http://www.who.int/topics/substance_abuse/en/ (last visited Jan. 24, 2024).
[62] Substance Abuse and Mental Health Services Administration, *Substance Use Disorders,* http://www.samhsa.gov/disorders/substance-use (last visited Jan. 24, 2024).
[63] National Institute on Drug Abuse*, Drugs, Brains, and Behavior: The Science of Addiction*, https://www.drugabuse.gov/publications/drugs-brains-behavior-science-addiction/drug-abuse-addiction (last visited Jan. 24, 2024).
[64] *Id.*
[65] *Supra*, note 62.
[66] *Id.*

The Marchman Act

In the early 1970s, the federal government furnished grants for states "to develop continuums of care for individuals and families affected by substance abuse."[67] The grants provided separate funding streams and requirements for alcoholism and drug abuse.[68] In response, the Florida Legislature enacted ch. 396, F.S., (alcohol) and ch. 397, F.S. (drug abuse).[69] In 1993, legislation combined chapters 396 and 397, F.S., into a single law, entitled the Hal S. Marchman Alcohol and Other Drug Services Act (Marchman Act).[70] The Marchman Act supports substance abuse prevention and remediation through a system of prevention, detoxification, and treatment services to assist individuals at risk for or affected by substance abuse.

An individual may receive services under the Marchman Act through either voluntary or involuntary admission.

Voluntary Admissions

The Marchman Act encourages individuals to seek voluntary substance abuse impairment services within the existing financial and space capacities of a service provider. Any individual who wishes to enter treatment may apply to a service provider for voluntary admission. Within the financial and space capabilities of the service provider, the individual must be admitted to treatment when sufficient evidence exists that he or she is impaired by substance abuse and his or her medical and behavioral conditions are not beyond the safe management capabilities of the service provider.[71]

Under the Marchman Act, a minor's consent to services has the same force and effect as an adult's.[72]

Involuntary Admissions

The Marchman Act establishes a variety of methods under which substance abuse assessment, stabilization, and treatment can be obtained on an involuntary basis.[73] There are five involuntary admission procedures that can be broken down into two categories: non-court involved admissions and court involved admissions. Regardless of the nature of the proceedings, an individual meets the criteria for an involuntary admission under the Marchman Act when there is good faith reason to believe the individual is substance abuse impaired and, because of such impairment, has lost the power of self-control with respect to substance use; and either has inflicted, attempted or threatened to inflict, or unless admitted, is likely to inflict physical harm on himself or herself or another; or the person's judgment has been so impaired because of substance abuse that he or she is incapable of appreciating the need for substance abuse services and of making a rational decision in regard to substance abuse services.[74]

[67] Darran Duchene & Patrick Lane, *Fundamentals of the Marchman Act,* Risk RX, Vol. 6 No. 2 (Apr. – Jun. 2006) State University System of Florida Self-Insurance Program, *available at* http://flbog.sip.ufl.edu/risk-rx-article/fundamentals-of-the-marchman-act/ (last visited Jan. 24, 2024).
[68] *Id.*
[69] *Id.*
[70] Chapter 93-39, L.O.F., codified in Chapter 397, F.S. Reverend Hal S. Marchman was an advocate for persons who suffer from alcoholism and drug abuse. *Supra* note 67.
[71] S. 397.601, F.S.
[72] S. 397.601(4)(a), F.S.
[73] *See* ss. 397.675 – 397.6978, F.S.
[74] S. 397.675, F.S.

Non-Court Involved Involuntary Admissions

The three types of non-court procedures for involuntary admission for substance abuse treatment under the Marchman Act are:

- **Protective Custody**: This procedure is used by law enforcement officers when an individual is substance-impaired or intoxicated in public and is brought to the attention of the officer.[75]
- **Emergency Admission**: This procedure permits an individual who appears to meet the criteria for involuntary admission to be admitted to a hospital, an addiction receiving facility, or a detoxification facility for emergency assessment and stabilization. Individuals admitted for involuntary assessment and stabilization under this provision must have a physician's certificate for admission, demonstrating the need for this type of placement and recommending the least restrictive type of service that is appropriate to the needs of the individual.[76]
- **Alternative Involuntary Assessment for Minors**: This procedure provides a way for a parent, legal guardian, or legal custodian to have a minor admitted to an addiction receiving facility to assess the minor's need for treatment by a qualified professional.[77]

Court Involved Involuntary Admissions

The two court-involved Marchman Act procedures are involuntary assessment and stabilization, which provides for short-term court-ordered substance abuse services, and involuntary services,[78] which provides for long-term court-ordered substance abuse treatment.

Involuntary Assessment and Stabilization

Involuntary assessment and stabilization involves filing a petition with the clerk of court.[79] Once the petition is filed with the clerk of court, the court issues a summons to the respondent and the court must schedule a hearing to take place within 10 days, or can issue an ex parte order immediately.[80]

After hearing all relevant testimony, the court determines whether the respondent meets the criteria for involuntary assessment and stabilization and must immediately enter an order that either dismisses the petition or authorizes the involuntary assessment and stabilization of the respondent.[81]

If the court determines the respondent meets the criteria, it may order him or her to be admitted for a period of 5 days[82] to a hospital, licensed detoxification facility, or addictions receiving facility, for involuntary assessment and stabilization.[83] During that time, an assessment is completed on the

[75] Ss. 397.6771 – 397.6772, F.S. A law enforcement officer may take the individual to his or her residence, to a hospital, a detoxification center, or addiction receiving facility, or in certain circumstances, to jail. Minors, however, cannot be taken to jail.
[76] S. 397.679, F.S.
[77] S. 397.6798, F.S.
[78] The term "involuntary services" means "an array of behavioral health services that may be ordered by the court for a person with substance abuse impairment or co-occurring substance abuse impairment and mental health disorders." S. 397.311(22), F.S. SB 12 (2016), ch. 2016-241, Laws of Fla., renamed "involuntary treatment" as "involuntary services" in ss. 397.695 – 397.6987, F.S., however some sections of the Marchman Act continue to refer to "involuntary treatment." For consistency, this analysis will use the term "involuntary services."
[79] S. 397.6811, F.S.
[80] S. 397.6815, F.S. Under the ex parte order, the court may order a law enforcement officer or other designated agent of the court to take the respondent into custody and deliver him or her to the nearest appropriate licensed service provider.
[81] S. 397.6818, F.S.
[82] If a licensed service provider is unable to complete the involuntary assessment and, if necessary, stabilization of an individual within 5 days after the court's order, it may, within the original time period, file a request for an extension of time to complete its assessment. The court may grant additional time, not to exceed 7 days after the date of the renewal order, for the completion of the involuntary assessment and stabilization of the individual. The original court order authorizing the involuntary assessment and stabilization, or a request for an extension of time to complete the assessment and stabilization that is timely filed, constitutes legal authority to involuntarily hold the individual for a period not to exceed 10 days in the absence of a court order to the contrary. S. 397.6821, F.S.
[83] S. 397.6811, F.S. The individual may also be ordered to a less restrictive component of a licensed service provider for assessment only upon entry of a court order or upon receipt by the licensed service provider of a petition.

individual.[84] The written assessment is then sent to the court. Once the written assessment is received, the court must either: [85]

- Release the individual and, if appropriate, refer the individual to another treatment facility or service provider, or to community services;
- Allow the individual to remain voluntarily at the licensed provider; or
- Hold the individual if a petition for involuntary services has been initiated.

Involuntary Services

If the individual has previously been subject to at least one of the four other involuntary admissions procedures within a specified period, a court may require the individual to be admitted for treatment for a longer period through involuntary services.[86]

Similar to a petition for involuntary assessment and stabilization, a petition for involuntary services must contain identifying information for all parties and attorneys and facts necessary to support the petitioner's belief that the respondent is in need of involuntary services.[87] A hearing on a petition for involuntary services must be held within five days unless the court grants a continuance.[88] If the court finds that the conditions for involuntary substance abuse treatment have been proven, it may order the respondent to receive involuntary services for a period not to exceed 90 days.[89] However, substance abuse treatment facilities other than addictions receiving facilities are not locked; therefore, individuals receiving treatment in such unlocked facilities under the Marchman Act may voluntarily leave treatment at any time, and the only legal recourse is for a judge to issue a contempt of court charge and impose brief jail time.[90]

Confidentiality of Service Provider Records in Marchman Act Proceedings in Florida

In 2017, the Legislature created a public record exemption for certain information filed with a court under the Marchman Act.[91] Specifically, all petitions for involuntary assessment and stabilization, court orders, and related records that are filed with or by a court under the Marchman Act are confidential and exempt from public record requirements. However, the clerk of the court may disclose the pleadings and other documents to:[92]

- The petitioner;
- The petitioner's attorney;
- The respondent;
- The respondent's attorney;
- The respondent's guardian or guardian advocate, if applicable;
- In the case of a minor respondent, the respondent's parent, guardian, legal custodian, or guardian advocate;
- The respondent's treating health care practitioner;

[84] S. 397.6819, F.S. The licensed service provider must assess the individual without unnecessary delay using a qualified professional. If an assessment is performed by a qualified professional who is not a physician, the assessment must be reviewed by a physician before the end of the assessment period.
[85] S. 397.6822, F.S. The timely filing of a Petition for Involuntary Services authorizes the service provider to retain physical custody of the individual pending further order of the court.
[86] S. 397.693, F.S.
[87] S. 397.6951, F.S.
[88] S. 397.6955, F.S.
[89] S. 397.697(1), F.S. If the need for services is longer, the court may order the respondent to receive involuntary services for a period not to exceed an additional 90 days.
[90] *Supra,* note 67. If the respondent leaves treatment, the facility will notify the court and a status conference hearing may be set. If the respondent does not appear at this hearing, a show cause hearing may be set. If the respondent does not appear for the show cause hearing, the court may find the respondent in contempt of court.
[91] Ch. 2017-25, Laws of Fla., codified as s. 397.6760, F.S.
[92] S. 397.6760(1), F.S.

- The respondent's health care surrogate or proxy;
- DCF, without charge;
- The Department of Corrections, without charge, if the respondent is committed or is to be returned to the custody of the Department of Corrections from DCF; or
- A person or entity authorized to view records upon a court order for good cause.

Under current law, a respondent's name, at trial and on appeal, and applications for voluntary and involuntary substance abuse treatment are not part of the public record exemption. However, as in the Baker Act, the clerk of court is prohibited from publishing personal identifying information on a court docket or in a publicly accessible file.[93]

The 2017 public necessity statement for the exemption provides that the Legislature finds that:[94]

> A person's health and sensitive, personal information regarding his or her actual or alleged substance abuse impairment are intensely private matters. The media have obtained, and published information from, such records without the affected person's consent. The content of such records or personal identifying information should not be made public merely because they are filed with or by a court or placed on a docket. Making such petitions, orders, records, and identifying information confidential and exempt from disclosure will protect such persons from the release of sensitive, personal information which could damage their and their families' reputations. The publication of personal identifying information on a physical or virtual docket, regardless of whether any other record is published, defeats the purpose of protections otherwise provided. Further, the knowledge that such sensitive, personal information is subject to disclosure could have a chilling effect on a person's willingness to seek out and comply with substance abuse treatment services.

The exemption applies to all documents filed with a court before, on, or after July 1, 2017.[95] Current law does not expressly apply the exemption to pending or filed appeals.

Effect of the Bill

The bill makes hearings under the Baker Act and under Parts IV and V of the Marchman Act confidential, absent a judicial finding of good cause or the respondent's consent.

The bill expands the public record exemption for Baker petitions for voluntary or involuntary admissions to include a respondent's name, at trial and on appeal, and all applications for such admissions. The bill also requires that admissions for mental health examinations be kept confidential and exempt from public record requirements.

The bill expands the public record exemption for certain Marchman Act petitions for involuntary assessments and stabilization to include voluntary assessments. The information held confidential and exempt is expanded to include a respondent's name, at trial and on appeal, and all applications for substance abuse treatment or assessment and stabilizations. The bill also expands the scope of the exemption to cover information filed with a court under Part IV of the Marchman Act.

The bill also adds service providers to the list of individuals to whom the clerk of court may disclose confidential and exempt pleadings and other documents.

[93] S. 397.6760(3), F.S.
[94] Ch. 2017-25, Laws of Fla.
[95] S. 397.6760(5), F.S.

The bill maintains the current prohibition against a clerk of court publishing personal identifying information on a court docket or in a publicly accessible file, but creates a narrow exception that allows courts to use a respondent's name to schedule and adjudicate cases. In addition to applying to documents that were previously filed with a court, these new exemptions also apply to appeals pending or filed on or after July 1, 2024.

The bill provides statements of public necessity as required by the Florida Constitution, specifying that the exemptions protect sensitive personal information, the release of which could cause unwarranted damage to the reputation of an individual.

The bill provides that the public record and public meeting exemptions are subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2029, unless the saved from repeal through reenactment by the Legislature.

This bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 394.464, F.S., relating to court records; confidentiality.
Section 2: Amends s. 397.6760, F.S., relating to records; confidentiality.
Section 3: Provides statements of public necessity.
Section 4: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill has an indeterminate, but likely insignificant, negative fiscal impact on the State Courts System.[96]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

[96] Office of the State Courts Administrator, Agency Analysis of HB 1157, p. 2 (Jan. 21, 2022).

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 or public meeting exemption. The bill creates a public record and public meeting 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 each newly created or expanded public record or public meeting exemption. The bill creates a public record and public meeting exemption; thus, it includes statements of public necessity. The statements provide that the Legislature finds, in part, that the mental health or substance abuse impairments of a person are medical conditions, which are intensely private matters that should be protected from public disclosure.

Breadth of Exemption

Article I, section 24(c) of the Florida Constitution requires a newly created or expanded public record exemption or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill makes hearings under the Baker Act and under Parts IV and V of the Marchman Act confidential and expands current exemptions from public record requirements to include a respondent's name, at trial and on appeal, and applications for voluntary mental health examinations or treatment and substance abuse, none of which appear broader than necessary to accomplish their purpose.

B. RULE-MAKING AUTHORITY:

The bill does not create new, or expand existing rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to public records and meetings; amending ss. 394.464 and 397.6760, F.S.; specifying that all hearings relating to mental health and substance abuse, respectively, are confidential and closed to the public; providing exceptions; exempting certain information from public records requirements; expanding a public records exemption to include certain petitions and applications; authorizing disclosure of certain confidential and exempt documents to certain service providers; authorizing courts to use a respondent's name for certain purposes; revising applicability to include certain appeals; revising the date for future legislative review and repeal of the exemption; providing public necessity statements; providing an effective date.

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

Section 1. Section 394.464, Florida Statutes, is amended to read:

394.464 Court proceedings and records; confidentiality.—

(1) Absent a judicial finding of good cause or the respondent's consent, all hearings under this part are confidential and closed to the public.

(2)(a) ~~(1)~~ The respondent's name, at trial and on appeal, and all petitions or applications for voluntary and involuntary admission for mental health examination or treatment, court orders, and related records that are filed with or by a court under this part are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Pleadings and other documents made confidential and exempt by this section may be disclosed by the clerk of the court, upon request, to any of the following:

1. ~~(a)~~ The petitioner.

2. ~~(b)~~ The petitioner's attorney.

3. ~~(c)~~ The respondent.

4. ~~(d)~~ The respondent's attorney.

5. ~~(e)~~ The respondent's guardian or guardian advocate, if applicable.

6. ~~(f)~~ In the case of a minor respondent, the respondent's parent, guardian, legal custodian, or guardian advocate.

7. ~~(g)~~ The respondent's treating health care practitioner and service provider.

8. ~~(h)~~ The respondent's health care surrogate or proxy.

9. ~~(i)~~ The Department of Children and Families, without charge.

10. ~~(j)~~ The Department of Corrections, without charge, if the respondent is committed or is to be returned to the custody of the Department of Corrections from the Department of Children

and Families.

11.~~(k)~~ A person or entity authorized to view records upon a court order for good cause. In determining if there is good cause for the disclosure of records, the court must weigh the person or entity's need for the information against potential harm to the respondent from the disclosure.

(b)~~(2)~~ This subsection ~~section~~ does not preclude the clerk of the court from submitting the information required by s. 790.065 to the Department of Law Enforcement.

(c)~~(3)~~ The clerk of the court may not publish personal identifying information on a court docket or in a publicly accessible file, but the court may use a respondent's name to schedule and adjudicate cases, which includes the transmission of any court order to the parties or the service provider.

(d)~~(4)~~ A person or entity receiving information pursuant to this subsection ~~section~~ shall maintain that information as confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(e)~~(5)~~ The exemption under this subsection ~~section~~ applies to all documents filed with a court before, on, or after July 1, 2019, and appeals pending or filed on or after July 1, 2024.

(f)~~(6)~~ This subsection ~~section~~ is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2029 ~~2024~~, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. Section 397.6760, Florida Statutes, is amended to read:

397.6760 Court proceedings and records; confidentiality.—

(1) Absent a judicial finding of good cause or the respondent's consent, all hearings under this part or part IV are confidential and closed to the public.

(2)(a) The respondent's name, at trial and on appeal, and all petitions or applications for voluntary and involuntary substance abuse treatment or assessment and stabilization, court orders, and related records that are filed with or by a court under this part or part IV are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Pleadings and other documents made confidential and exempt by this section may be disclosed by the clerk of the court, upon request, to any of the following:

1.~~(a)~~ The petitioner.

2.~~(b)~~ The petitioner's attorney.

3.~~(c)~~ The respondent.

4.~~(d)~~ The respondent's attorney.

5.~~(e)~~ The respondent's guardian or guardian advocate, if applicable.

6.~~(f)~~ In the case of a minor respondent, the respondent's parent, guardian, legal custodian, or guardian advocate.

7.~~(g)~~ The respondent's treating health care practitioner and service provider.

8.~~(h)~~ The respondent's health care surrogate or proxy.

9.~~(i)~~ The Department of Children and Families, without charge.

10.~~(j)~~ The Department of Corrections, without charge, if the respondent is committed or is to be returned to the custody of the Department of Corrections from the Department of Children and Families.

11.~~(k)~~ A person or entity authorized to view records upon a court order for good cause. In determining if there is good cause for the disclosure of records, the court must weigh the person or entity's need for the information against potential harm to the respondent from the disclosure.

(b)~~(2)~~ This subsection ~~section~~ does not preclude the clerk of the court from submitting the information required by s. 790.065 to the Department of Law Enforcement.

(c)~~(3)~~ The clerk of the court may not publish personal identifying information on a court docket or in a publicly accessible file, but the court may use a respondent's name to schedule and adjudicate cases, which includes the transmission of any court order to the parties or the service provider.

(d)~~(4)~~ A person or entity receiving information pursuant to this subsection ~~section~~ shall maintain that information as confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(e)~~(5)~~ The exemption under this subsection ~~section~~ applies

to all documents filed with a court before, on, or after July 1, 2017, and appeals pending or filed on or after July 1, 2024.

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

Section 3. (1) The Legislature finds that it is a public necessity that court hearings under part I of chapter 394 and parts IV and V of chapter 397, Florida Statutes, be made confidential and closed to the public unless the court finds good cause to open a hearing to the public or the respondent consents to a hearing being open to the public. The mental health or substance abuse impairments of a person are medical conditions that should be protected from public disclosure. A person's health and sensitive personal information regarding his or her mental health or substance abuse impairment are intensely private matters. Making hearings where such impairments, conditions, and personal information may be communicated as confidential and closed to the public will protect such persons from the release of sensitive personal information that could damage their and their families' reputations. Allowing public hearings relating to such information defeats the purpose of protections otherwise provided. Further, the knowledge that such sensitive personal information is subject to disclosure could have a chilling effect on a person's willingness to seek out and

comply with mental health or substance abuse treatment services.

(2) The Legislature finds that it is a public necessity that voluntary applications or petitions for involuntary examination or treatment, court orders, and related records that are filed with or by a court or relevant service provider under part I of chapter 394 and parts IV and V of chapter 397, Florida Statutes, respectively, and the personal identifying information of a person with a potential mental, emotional, or behavioral disorder or a substance abuse disorder which is published on a court docket and maintained by the clerk of the court under part I of chapter 394 and parts IV and V of chapter 397, Florida Statutes, or with the relevant service provider be made confidential and exempt from disclosure under s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The mental health or substance abuse impairments of a person are medical conditions that should be protected from public disclosure. A person's health and sensitive personal information regarding his or her mental health or substance abuse impairment are intensely private matters. Making such applications, petitions, orders, records, and personal identifying information confidential and exempt from disclosure will protect such persons from the release of sensitive personal information that could damage their and their families' reputations. The publication of personal identifying information on a physical or virtual docket, regardless of whether any other

record is published, defeats the purpose of protections otherwise provided. Further, the knowledge that such sensitive personal information is subject to disclosure could have a chilling effect on a person's willingness to seek out and comply with mental health or substance abuse treatment services.

Section 4. This act shall take effect July 1, 2024.

HB 7041

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: Pub. Rec. & Meetings HB 7041 PCB SHI 24-01 Public Records and Meetings Exemptions
SPONSOR(S): Select Committee on Health Innovation, Andrade
TIED BILLS: HB 1549 **IDEN./SIM. BILLS:** SB 322

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Select Committee on Health Innovation	11 Y, 0 N	McElroy	Calamas
1) Ethics, Elections & Open Government Subcommittee		Rando	Toliver
2) Health & Human Services Committee			

SUMMARY ANALYSIS

HB 1549, to which this bill is linked, requires Florida to join the Interstate Medical Licensure Compact, the Audiology and Speech-Language Pathology Interstate Compact and the Physical Therapy Licensure Compact.

Each of these compacts require compact member states to share certain licensure and personal identifying information concerning physicians, speech-language pathologists, audiologists, and physical therapists authorized to practice under their respective compact. The compacts further require that certain meetings be closed to the public.

The bill creates a public record exemption for certain licensure and personal identifying information, other than the name, licensure information, or licensure number, for providers authorized to practice under each compact, obtained from the data system and held by the Department of Health (DOH) or the applicable board from public record requirements, unless the laws of the state that originally reported the information authorizes disclosure.

The bill creates a public meeting exemption to allow the commission of each compact to convene in a closed meeting if the meeting is held to discuss certain specified matters. The bill also creates a public meeting exemption for commission meetings of each compact, or portions of such meetings, at which matters exempt from public disclosure by federal or state law are discussed. The bill provides that any recordings, minutes, and records generated from such a meeting, or portions of such meeting, are also exempt from public record requirements.

The bill provides that the public record and public meeting exemptions are subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2029, unless saved from repeal through reenactment by the Legislature.

This bill may have a, negative, but likely insignificant, fiscal impact on DOH and other boards, and no fiscal impact on local governments.

The bill will become effective on the same date that HB 1549 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes 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 or public meeting exemption. The bill creates public record and public meeting exemptions; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government

The Florida Constitution sets forth the state's public policy regarding access to government records and meetings. Every person is guaranteed a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.[1] All meetings of any collegial public body of the executive branch of state government or any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, must be open and noticed to the public.[2] The Legislature, however, may provide by general law an exemption[3] from public record or meeting 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.[4]

Pursuant to the Open Government Sunset Review Act,[5] a new public record or meeting exemption or substantial amendment of an existing exemption is repealed on October 2nd of the fifth year following enactment, unless the Legislature reenacts the exemption.[6]

Public Records

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.[7] Furthermore, the Open Government Sunset Review Act 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."[8] 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.[9]

[1] Art. I, s. 24(a), FLA. CONST.
[2] Art. I, s. 24(b), FLA. CONST.
[3] A public record exemption means a provision of general law which provides that a specified record or meeting, or portion thereof, is not subject to the access requirements of s. 119.07(1), F.S., s. 286.011, F.S., or s. 24, Art. I of the Florida Constitution. *See* s. 119.011(8), F.S.
[4] Art. I, s. 24(c), FLA. CONST.
[5] Section 119.15, F.S.
[6] Section 119.15(3), F.S.
[7] *See* s. 119.01, F.S.
[8] Section 119.15(6)(b), F.S.
[9] *Id.*

Public Meetings

Current law also addresses public policy regarding access to government meetings, further requiring all meetings of any board or commission of any state agency or authority, or of any agency or authority of any county, municipality, or political subdivision, at which official acts are to be taken to be open to the public at all times, unless the meeting is exempt.[10] The board or commission must provide reasonable notice of all public meetings.[11] Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin, or economic status or that operates in a manner that unreasonably restricts the public's access to the facility.[12] Minutes of a public meeting must be promptly recorded and open to public inspection.[13] Failure to abide by public meeting requirements will invalidate any resolution, rule, or formal action adopted at a meeting.[14] A public officer or member of a governmental entity who violates public meeting requirements is subject to civil and criminal penalties.[15]

Health Care Licensure Compacts

HB 1549, to which this bill is linked, requires Florida to join the Interstate Medical Licensure Compact, the Audiology and Speech-Language Pathology Interstate Compact, and the Physical Therapy Licensure Compact. The compacts were created to facilitate multistate practice of licensed physicians, speech-language pathologists, audiologists, and physical therapists.

Under their respective compact, an eligible licensed physician, speech-language pathologist, audiologist, physical therapist or a physical therapist assistant is authorized to practice within the scope of his or her license in all compact member states. Each health care provider practicing under this compact privilege must comply with the practice laws of the state in which he or she is providing service or where the patient is located.

Under each compact, member states are also required to report certain licensure information on licensees in compact member states to a shared data system, including identifying information, licensure data, and any adverse actions taken against the health care providers license or compact privilege. Investigative information pertaining to a licensee in any compact member state must be available to other member states. Compact member states may designate information submitted to the data system that may not be shared with the public without the express permission of that member state.

Under each compact, HB 1549 requires Florida to share information that is not currently exempt from public record requirements under s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution.

Interstate Medical Licensure Compact

The Interstate Medical Licensure Compact (Medical Compact) requires states to share licensee information for all licensed physicians, or physicians who have applied for licensure, to a coordinated data system. Information that will be shared that is not currently exempt from public record requirements under s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution, includes:

- Identifying information;
- Licensure data;
- Public action taken against a licensed physician who has applied for or received an expedited license through the compact; and

[10] Section 286.011(1), F.S.
[11] *Id.*
[12] Section 286.011(6), F.S.
[13] Section 286.011(2), F.S.
[14] Section 286.011(1), F.S.
[15] Section 286.011(3), F.S.

- Public and confidential complaint, disciplinary, or investigatory information.

Audiology and Speech-Language Pathology Compact

The Audiology and Speech-Language Pathology Compact (ASLP Compact) requires member states to report the following licensure information and other non-exempt information for all licensed audiologists and speech-language pathologists practicing under the ASLP Compact:

- Identifying information;
- Licensure data;
- Adverse actions against the audiologist's or speech-language pathologist's license;
- Nonconfidential information related to participation in alternative programs;
- Any licensure application denials and reasons for such denial; and
- Other information, determined by commission rule, which may facilitate the administration of the compact.

Physical Therapy Licensure Compact

The Physical Therapy Licensure Compact (PT Compact) requires each member state to report the following licensure information and other non-exempt information for all licensed physical therapists and physical therapist assistants practicing under the compact:

- Identifying information;
- Licensure data;
- Investigative information;
- Adverse actions against the physical therapists or physical therapist assistant's license or compact privilege;
- Any licensure application denials and reasons for such denial; and
- Other information, determined by commission rule, which may facilitate the administration of the compact.

Commission Meetings

The Medical Compact, ASLP Compact, and the PT Compact each require their respective compact commission to conduct meetings. The commission meetings must be open to the public, and public notice must be given. However, for the discussion of certain specified topics, each compact requires the commission to conduct a closed meeting. To close a public meeting in Florida, a specific exemption from public meeting requirements under s. 24(b), Art. I of the Florida Constitution and s. 286.011, F.S., is required. Current law does not provide a public meeting exemption for commission meetings.

The effective date of the bill is the same date that HB 1549 or similar legislation takes effect, if such legislation is adopted in the same legislative session, or an extension thereof and becomes law.

Effect of the Bill

The bill makes personal identifying information, other than the name, licensure status, or licensure number, of a physician, speech-language pathologist, audiologist, or physical therapist authorized to practice under their respective compact, obtained from the coordinated data system and held by the DOH or the applicable board exempt from public record requirements, unless the laws of the state that originally reported the information authorizes disclosure. Disclosure under such circumstance is limited to the extent permitted under the laws of the reporting state.

The bill also creates a public meeting exemption for commission meetings of each compact, or portions of such meetings, where matters exempt from public disclosure by federal or state law are discussed. Recordings, minutes, and records generated during an exempt portion of a commission meeting are also exempt from public disclosure.

The bill provides statements of public necessity for the public record exemptions, as required by the Florida Constitution, and states that the protection of such information is required under the Medical Compact, ASLP Compact, and the PT Compact, which the state must adopt in order to become a party state to each compact. Without the public record exemptions, the state would be unable to effectively and efficiently implement and administer the compacts.

Additionally, the bill provides a statement of public necessity for the public meeting exemption, as required by the Florida Constitution, and states that the compacts require any meeting where matters exempt from public disclosure by federal or state law are discussed to be closed to the public. Without the public meeting exemption, the state will be prohibited from becoming a party to the compacts and would be unable to effectively and efficiently administer the compacts. The bill further provides that it is a public necessity for the recordings, minutes, and records generated during an exempt meeting be made exempt, as the release of such information would negate the public meeting exemption.

The bill provides that the public record and public meeting exemptions are subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2029, unless saved from repeal through reenactment by the Legislature.

The effective date of the bill is the same date that HB 1549 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law, which is July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Creates s. 456.4503, F.S., relating to Interstate Medical Licensure Compact Commission; public records and meetings exemption.
Section 2: Creates s. 468.1336, F.S., relating to Audiology and Speech-language Pathology; public records and meetings exemption.
Section 3: Creates s. 486.113, F.S., relating to Physical Therapy Licensure Compact Commission; public records and meetings exemption.
Section 4: Provides statements of public necessity as required by the Florida Constitution.
Section 5: Provides that the bill is effective on the same date as HB 1549 (2024) or similar legislation takes effect.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill may have a negative, but likely insignificant, fiscal impact on DOH and applicable boards because staff responsible for complying with public record requests may require training related to the implementation of the new public record exemption. The costs, however, would likely be absorbed as they are part of the day-to-day responsibilities of agencies.

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

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 public record and public meeting exemptions; 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 public record and public meeting exemptions; thus, it includes statements of public necessity. The statements of public necessity provide that the Legislature finds, in part, that the protection of the exempt information and closure of certain meetings are required under each compact, and without the exemptions, the state would be unable to effectively and efficiently implement and administer the compacts.

Breadth of Exemption
Article I, s. 24(c) of the Florida Constitution provides that an exemption must be created by general law and the law must contain only exemptions from public record or public meeting requirements. The exemption does not appear to be in conflict with the constitutional requirement.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rule-making or rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to public records and meetings exemptions; creating ss. 456.4503, 468.1336, and 486.113, F.S.; providing an exemption from public records requirements for certain information held by the Department of Health, the Board of Speech-Language Pathology and Audiology, and the Board of Physical Therapy Practice pursuant to the Interstate Medical Licensure Compact, the Audiology and Speech-language Pathology Interstate Compact, and the Physical Therapy Licensure Compact; authorizing disclosure of the information under certain circumstances; providing an exemption from public meetings requirements for certain meetings of the Interstate Medical Licensure Compact Commission, the Audiology and Speech-language Pathology Interstate Compact Commission, and the Physical Therapy Licensure Compact Commission; providing an exemption from public records requirements for recordings, minutes, and records generated during the closed portion of such meetings; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity; providing contingent effective dates.

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

Section 1. Section 456.4503, Florida Statutes, is created to read:

456.4503 Interstate Medical Licensure Compact Commission; public records and meetings exemptions.—

(1) A physician's personal identifying information, other than the physician's name, licensure status, or licensure number, obtained from the coordinated database and reporting system described in Section 8 of s. 456.4501 and held by the department is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution unless the state that originally reported the information to the coordinated database and reporting system authorizes the disclosure of such information by law. If disclosure is so authorized, information may be disclosed only to the extent authorized by law by the reporting state.

(2)(a) A meeting or a portion of a meeting of the Interstate Medical Licensure Compact Commission established in Section 11 of s. 456.4501 at which matters specifically exempted from disclosure by federal or state law are discussed is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

(b) Recordings, minutes, and records generated during an exempt meeting or portion of such a meeting are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(3) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed

on October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. Section 468.1336, Florida Statutes, is created to read:

468.1336 Audiology and Speech-language Pathology Interstate Compact Commission; public meetings and public records exemptions.—

(1) An audiologist's or a speech-language pathologist's personal identifying information, other than the audiologist's or the speech-language pathologist's name, licensure status, or licensure number, obtained from the coordinated database and reporting system described in article IX of s. 468.1335 and held by the department or the board is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution unless the state that originally reported the information to the coordinated database and reporting system authorizes the disclosure of such information by law. If disclosure is so authorized, information may be disclosed only to the extent authorized by law by the reporting state.

(2)(a) A meeting or a portion of a meeting of the Audiology and Speech-language Pathology Interstate Compact Commission established in article VIII of s. 468.1335 at which matters specifically exempted from disclosure by federal or state law are discussed is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

(b) Recordings, minutes, and records generated during an exempt meeting or portion of such a meeting are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

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

Section 3. Section 486.113, Florida Statutes, is created to read:

486.113 Physical Therapy Licensure Compact Commission; public records and meetings exemptions.—

(1) A physical therapist's personal identifying information, other than the physical therapist's name, licensure status, or licensure number, obtained from the coordinated database and reporting system described in article VIII of s. 486.112 and held by the department or the board is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution unless the state that originally reported the information to the coordinated database and reporting system authorizes the disclosure of such information by law. If disclosure is so authorized, information may be disclosed only to the extent authorized by law by the reporting state.

(2)(a) A meeting or a portion of a meeting of the Physical Therapy Compact Commission or the executive board or any other committee of the commission established in article VII of s.

486.112 at which matters specifically exempted from disclosure by federal or state law are discussed is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

(b) Recordings, minutes, and records generated during an exempt meeting or portion of such a meeting are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

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

Section 4. (1) The Legislature finds that it is a public necessity that a physician's, an audiologist's or a speech-language pathologist's, and a physical therapist's personal identifying information, other than the person's name, licensure status, or licensure number, obtained from the coordinated database and reporting system described in Section 8 of s. 456.4501, Florida Statutes, article IX of s. 468.1335, Florida Statutes, and article VIII of s. 486.112, Florida Statutes, and held by the Department of Health, the Board of Speech-Language Pathology and Audiology, and the Board of Physical Therapy Practice be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Protection of such information is required under the Interstate Medical Licensure Compact, the Audiology and Speech-language Pathology Interstate Compact, and the Physical Therapy Licensure Compact,

each of which the state must adopt in order to become a member state of the respective compact. Without the public records exemption, the state would be unable to effectively and efficiently implement and administer the respective compact.

(2)(a) The Legislature finds that it is a public necessity that any meeting of the Interstate Medical Licensure Compact Commission, the Audiology and Speech-language Pathology Interstate Compact Commission, or the Physical Therapy Licensure Compact Commission held as provided in s. 456.4501, Florida Statutes, s. 468.1335, Florida Statutes, or s. 486.112, Florida Statutes, in which matters specifically exempted from disclosure by federal or state law are discussed be made exempt from s. 286.011, Florida Statutes, and s. 24(b), Article I of the State Constitution.

(b) The Interstate Medical Licensure Compact, the Audiology and Speech-language Pathology Interstate Compact, and the Physical Therapy Licensure Compact require any meeting, or any portion of a meeting, of the Interstate Medical Licensure Compact Commission, the Audiology and Speech-language Pathology Interstate Compact Commission, and the Physical Therapy Licensure Compact Commission in which the substance of paragraph (a) is discussed to be closed to the public. In the absence of a public meetings exemption, the state would be prohibited from becoming a member state of the respective compact and, thus, prohibited from effectively and efficiently administering the

respective compact.

(3) The Legislature also finds that it is a public necessity that the recordings, minutes, and records generated during a meeting that is exempt pursuant to s. 456.4503(2), Florida Statutes, s. 468.1336(2), Florida Statutes, or s. 486.113(2), Florida Statutes, be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Release of such information would negate the public meetings exemption. As such, the Legislature finds that the public records exemption is a public necessity.

Section 5. This act shall take effect on the same date that HB 1549 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.