

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #: HB 7061

FINAL HOUSE FLOOR ACTION:

SPONSOR(S): Civil Justice Subcommittee;
Passidomo

116 Y's

2 N's

**COMPANION
BILLS:** CS/SB 1536

GOVERNOR'S ACTION: Pending

SUMMARY ANALYSIS

HB 7061 passed the House on March 18, 2015. The bill was amended by the Senate on April 27, 2015, and subsequently passed the House on April 28, 2015. The bill creates a public records exemption related to investigations of violations of the Florida RICO (Racketeer Influenced and Corrupt Organization) Act. The bill provides that information held by an investigative agency during an investigation of RICO Act violations is generally confidential and exempt from a public records request. The exemption is similar to other investigative exemptions and ends upon the conclusion of the investigation.

The bill contains the following Legislative findings:

- It is a public necessity that the information held by an investigative agency related to an investigation of RICO Act violations be confidential and exempt;
- Premature release of the information could thwart the investigation and impair the ability of the agency to enforce the Act and;
- It protects the reputation of potential defendants in the event the investigation is closed without further action.

The bill contains a sunset provision and will be repealed on October 2, 2020, unless it is reenacted.

The bill provides a statement of public necessity as required by the State Constitution.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2015.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Public Records Law - In General

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.¹

Exempt versus Confidential and Exempt

There is a difference between records the Legislature has determined to be exempt and those which have been determined to be confidential and exempt.² If the Legislature has determined the information to be confidential then the information is not subject to inspection by the public.³ Also, if the information is deemed to be confidential it may only be released to those person and entities designated in statute.⁴ However, the agency is not prohibited from disclosing the records in all circumstances where the records are deemed only exempt.⁵

Civil Investigative Subpoenas

Under the RICO Act, an investigative agency⁶ may, during the course of an investigation into civil violations of the RICO Act, subpoena witnesses and material if the agency has reason to believe that a person or other enterprise has engaged in conduct that violates the RICO Act. Generally, investigatory subpoenas are used to obtain information from third-parties through the production of documents, files, and records or through testimony.

Section 895.06, F.S., authorizes investigative agencies to apply ex parte to a circuit court for an order directing that a person or entity who has been subpoenaed pursuant to the RICO Act may not disclose the existence of the subpoena to anyone except the subpoenaed person's attorney for a period of 90 days.

Effect of the Bill

The bill creates a public records exemption that provides that information held by an investigative agency pursuant to an investigation of a violation of the RICO Act is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. However, information that is confidential and exempt may be disclosed by the investigative agency to a government entity in the performance of its official duties and a court or tribunal. The information will no longer be confidential and exempt once all investigations to which the information pertains are completed, unless the information is otherwise protected by law. An investigation is considered complete once the investigative agency either files an action or closes its investigation without filing an action.

¹ Art I., s. 24(c), Fla. Const.

² *WFTV, Inc. v. School Board of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA), *review denied*, 892 So. 2d 1015 (Fla. 2004).

³ *Id.*

⁴ *Id.*

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

⁶ "Investigative agency" means the Department of Legal Affairs, the Office of Statewide Prosecution, or the office of a state attorney. s. 895.02(7), F.S.

The bill provides that the exemption it creates is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill includes a public necessity statement.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

Like any other public records exemption, the bill may lead to a minimal fiscal impact on the affected portions of the government, in this case, the Department of Legal Affairs and law enforcement agencies. Staff responsible for complying with public record requests could require training related to expansion of the public record exemption, and court and clerk offices could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the agencies.