



Government Operations Subcommittee

Wednesday, January 13, 2016

10:00 am

Webster Hall (212 Knott)

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Government Operations Subcommittee

Start Date and Time: Wednesday, January 13, 2016 10:00 am
End Date and Time: Wednesday, January 13, 2016 12:00 pm
Location: Webster Hall (212 Knott)
Duration: 2.00 hrs

Consideration of the following bill(s):

HB 267 Public Records/State-funded Infrastructure Bank by La Rosa
CS/HB 293 Public Records/Juvenile Criminal History Records by Criminal Justice Subcommittee, Pritchett
HB 381 Public Records/Florida State Boxing Commission by Raburn
CS/HB 463 Public Records/Unsworn DFS Investigative Personnel by Insurance & Banking Subcommittee, DuBose
HB 505 Voter Identification by Burgess, Cortes, B.
HB 607 State Lottery by Artiles
HB 4041 Write-in Candidates by Geller
HB 7057 Pub. Rec./Child Pornography by Criminal Justice Subcommittee, Spano

Consideration of the following proposed committee bill(s):

PCB GVOPS 16-05 -- OGSR Competitive Solicitations
PCB GVOPS 16-06 -- OGSR Regional Autism Centers

NOTICE FINALIZED on 01/11/2016 4:08PM by Kaiser.Debbi

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 267 Public Records/State-funded Infrastructure Bank
SPONSOR(S): La Rosa
TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 196

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Ports Subcommittee	12 Y, 0 N	Willson	Vickers
2) Government Operations Subcommittee		Williamson	Williamson
3) Economic Affairs Committee			

SUMMARY ANALYSIS

The state-funded infrastructure bank (SIB), which is created within the Department of Transportation (department), is a revolving loan and credit enhancement program to help fund transportation projects that otherwise might be delayed or not built. The SIB is composed of two separate accounts, a federally-funded account that is capitalized by federal money and matching state money, and a state-funded account that is capitalized by state money and bond proceeds. Public and private entities that are carrying out, or propose to carry out, eligible projects can apply to the SIB for a loan or other assistance.

The bill creates a public record exemption for financial statements or other financial information of a private entity applicant that the department requires as part of an application to the SIB. The public record exemption does not apply to the records of an applicant who is in default of a SIB loan.

The public record exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also provides a public necessity statement as required by the State Constitution.

The bill may have a minimal fiscal impact on the department; however, these costs would be absorbed as they are part of the department's day-to-day responsibilities.

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Public Records Law

Article I, section 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The State Constitution guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.01, F.S., provides that it is the policy of the state that all state, county, and municipal records are open for personal inspection and copying by any person, and that it is the responsibility of each agency¹ to provide access to public records.² Section 119.07(1), F.S., guarantees every person a right to inspect and copy any public record unless an exemption applies. The state's public records laws are construed liberally in favor of granting public access to public records.

Public Records Exemptions

The Legislature may provide by general law for the exemption of records from the requirements of article I, section 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.³

The Open Government Sunset Review Act⁴ provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- 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.
- Protects trade or business secrets.⁵

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.⁶

Confidential versus Confidential and Exempt

When creating a public record exemption, the Legislature designates the record as "exempt" or "confidential and exempt." There is a difference between records the Legislature has designated as

¹ Section 119.011(2), F.S., defines the term "agency" to mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of chapter 119, F.S., the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

² Section 119.011(12), F.S., defines the term "public records" to mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

³ FLA CONST. art. I, s. 24(c).

⁴ Section 119.15, F.S.

⁵ Section 119.15(6)(b), F.S.

⁶ Section 119.15(3), F.S.

exempt and those designated as confidential and exempt. A record that is designated as confidential and exempt may only be released by the records custodian to those persons or entities designated in statute.⁷ However, records designated as exempt only may be disclosed under certain circumstances.⁸

State-funded Infrastructure Bank

Section 339.55, F.S., creates the state-funded infrastructure bank (SIB) within the Department of Transportation (department). It is a revolving loan and credit enhancement program to help fund transportation projects that otherwise might be delayed or not built. The SIB is composed of two separate accounts, a federally-funded account that is capitalized by federal money and matching state money, and a state-funded account that is capitalized by state money and bond proceeds. Public and private entities that are carrying out, or propose to carry out, eligible projects can apply to the SIB for a loan or other assistance.

The federally-funded account is limited to projects which meet federal requirements. The state-funded account is authorized to lend capital costs or provide credit enhancements for:

- A transportation facility project that is on the State Highway System.
- A project that provides for increased mobility on the state's transportation system.
- A project that provides for intermodal connectivity with airports, seaports, rail facilities, and other transportation terminals for the movement of people, cargo and freight.
- Transportation Regional Incentive Program⁹ projects, provided the project receives at least a 25 percent match from non-SIB loan funds.
- Emergency loans for damages incurred to public-use commercial deepwater seaports, public-use airports, and other public-use transit and intermodal facilities that are within an area that is part of an official state declaration of emergency.¹⁰

Loans from the SIB may bear interest at or below market interest rates, as determined by the department. Repayment of any SIB loan must begin no later than 5 years after the project has been completed or, in the case of a highway project, the facility has opened to traffic, whichever is later, and must be repaid in 30 years.¹¹

Currently, there is no public record exemption for the financial statements or financial information submitted as part of a loan application to the SIB.

Proposed Changes

The bill amends s. 339.55, F.S., creating a public record exemption for certain information submitted by a private entity as part of the SIB application process. Specifically, financial statements or other financial information of a private entity applicant that the department requires as part of an application to the SIB is exempt from section 119.07(1), F.S., and article I, section 24(a) of the State Constitution.

The public record exemption does not apply to records of an applicant who is in default of a loan issued by the SIB.

The public record exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature. The bill provides a statement of public necessity as required by the State Constitution.

⁷ *WFTV, Inc. v. School Board of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 5th DCA 2004).

⁸ *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991), *review denied*, 589 So. 2d 289 (Fla. 1991).

⁹ *See* s. 339.2819, F.S.

¹⁰ Section 339.55(2), F.S.

¹¹ Section 339.55(4), F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 339.55, F.S., creating a public record exemption for certain financial information required by the department as part of an application to the SIB.

Section 2. Provides a public necessity statement.

Section 3. Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote requirement

Article I., s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I., s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for any financial statement or other financial information held by the Department Transportation as required as part of an application to the state-funded infrastructure bank.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Financial statements and financial information

It is unclear from the bill how financial statements and financial information differ. If the intent is to protect financial information, the sponsor may want to consider limiting the exemption to financial information. Otherwise, the sponsor may want to consider defining the terms "financial statement" and "financial information" for clarity.

Other Comments: Public necessity statement

The public necessity statement provides that the public record exemption is necessary because disclosure of financial information could lead to theft, identity theft, fraud, and other illegal activity of the business. However, it is unclear how a business can be the victim of identity theft.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
 2 An act relating to public records; amending s. 339.55,
 3 F.S.; providing an exemption from public records
 4 requirements for any financial statement or other
 5 financial information of a private entity applicant
 6 that the Department of Transportation requires as part
 7 of an application to the state-funded infrastructure
 8 bank; providing an exception to the exemption;
 9 providing for future legislative review and repeal of
 10 the exemption; providing a statement of public
 11 necessity; providing an effective date.

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

14
 15 Section 1. Subsection (10) is added to section 339.55,
 16 Florida Statutes, to read:

17 339.55 State-funded infrastructure bank.—

18 (10) (a) Any financial statement or other financial
 19 information of a private entity applicant that the department
 20 requires as part of an application to the state-funded
 21 infrastructure bank is exempt from s. 119.07(1) and s. 24(a),
 22 Art. I of the State Constitution. This exemption does not apply
 23 to records of an applicant who is in default of a loan issued
 24 under this section.

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

27 repealed on October 2, 2021, unless reviewed and saved from
28 repeal through reenactment by the Legislature.

29 Section 2. The Legislature finds that it is a public
30 necessity that any financial statement or other financial
31 information of a private entity that the Department of
32 Transportation requires as part of an application to the state-
33 funded infrastructure bank be protected from disclosure. The
34 disclosure of such information could harm a private entity in
35 the marketplace by giving the private entity's competitors
36 insights into its financial status and business plan, thereby
37 putting the private entity at a competitive disadvantage.
38 Additionally, the disclosure of sensitive financial information
39 regarding a private entity could create the opportunity for
40 theft, identity theft, fraud, and other illegal activity,
41 thereby jeopardizing the financial security of the private
42 entity and placing it at risk for substantial financial harm.
43 Without this exemption, private entities might be unwilling to
44 submit an application to the state-funded infrastructure bank.
45 This unwillingness to submit applications could, in turn, limit
46 opportunities the department might otherwise have for finding
47 cost-effective or strategic solutions for constructing and
48 improving transportation facilities. The Legislature also finds
49 that the harm to a private entity in disclosing confidential
50 financial information significantly outweighs any public benefit
51 derived from the disclosure of such information. For these
52 reasons, the Legislature declares that any financial statement

HB 267

2016

53 or other financial information that the department requires as
54 part of an application to the state-funded infrastructure bank
55 is exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
56 Article I of the State Constitution.

57 Section 3. This act shall take effect July 1, 2016.



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Government Operations
 2 Subcommittee

3 Representative La Rosa offered the following:

Amendment (with title amendment)

6 Remove everything after the enacting clause and insert:

7 Section 1. Subsection (10) is added to section 339.55,
 8 Florida Statutes, to read:

9 339.55 State-funded infrastructure bank.—

10 (10) (a) Financial information of a private entity
 11 applicant which the department requires as part of the
 12 application process for loans or credit enhancements from the
 13 state-funded infrastructure bank is exempt from s. 119.07(1) and
 14 s. 24(a), Art. I of the State Constitution. This exemption does
 15 not apply to records of an applicant who is in default of a loan
 16 issued under this section. As used in this subsection, the term
 17 "financial information" means any business plan, pro forma



Amendment No.

18 statement, account balance, operating income or revenue, asset
19 value, or debt of the applicant.

20 (b) This subsection is subject to the Open Government
21 Sunset Review Act in accordance with s. 119.15 and shall stand
22 repealed on October 2, 2021, unless reviewed and saved from
23 repeal through reenactment by the Legislature.

24 Section 2. (1) The Legislature finds that it is a public
25 necessity that financial information of a private entity that
26 the Department of Transportation requires as part of the
27 application process for a loan or credit enhancement from the
28 state-funded infrastructure bank be made exempt from s.
29 119.07(1), Florida Statutes, and s. 24(a), Article I of the
30 State Constitution. Financial information means any business
31 plan, pro forma statement, account balance, operating income or
32 revenue, asset value, or debt of the applicant.

33 (2) The disclosure of such information could harm a
34 private entity in the marketplace by giving the private entity's
35 competitors insights into its financial status and business
36 plan, thereby putting the private entity at a competitive
37 disadvantage. Additionally, the disclosure of sensitive
38 financial information regarding a private entity could create
39 the opportunity for theft, fraud, and other illegal activity,
40 thereby jeopardizing the financial security of the private
41 entity and placing it at risk for substantial financial harm. If
42 an individual is required to provide his or her personal
43 financial information to the department as part of the



Amendment No.

44 application process for his or her business, the individual
 45 could be subject to identity theft and other criminal activity.
 46 Without an exemption from public records requirements under s.
 47 119.07(1), Florida Statutes, and s. 24(a), Article I of the
 48 State Constitution, some private entities might be unwilling to
 49 submit an application to the state-funded infrastructure bank.
 50 This unwillingness to submit applications could, in turn, limit
 51 opportunities the department might otherwise have for providing
 52 loans or credit enhancements to private entities who could
 53 propose cost-effective or strategic solutions for constructing
 54 and improving transportation facilities. The Legislature finds
 55 that the benefit to the public of more private entities applying
 56 for loans or credit enhancements outweighs any public benefit
 57 that may be derived from the disclosure of the financial
 58 information of a private entity. For this reason, the
 59 Legislature declares that financial information that the
 60 department requires as part of an application process for loans
 61 or credit enhancements from the state-funded infrastructure bank
 62 is exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
 63 Article I of the State Constitution.

64 Section 3. This act shall take effect July 1, 2016.

65 -----
66

67 T I T L E A M E N D M E N T

68 Remove everything before the enacting clause and insert:

69 A bill to be entitled



Amendment No.

70 | An act relating to public records; amending s. 339.55, F.S.;

71 | providing an exemption from public records requirements for

72 | financial information of a private entity applicant which the

73 | Department of Transportation requires as part of an application

74 | process for loans or credit enhancements from the state-funded

75 | infrastructure bank; providing for application of the exemption;

76 | defining the term "financial information"; providing for future

77 | legislative review and repeal of the exemption; providing a

78 | statement of public necessity; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 293 Public Records/Juvenile Criminal History Records
SPONSOR(S): Criminal Justice Subcommittee; Pritchett
TIED BILLS: None **IDEN./SIM. BILLS:** SB 700

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Cox	White
2) Government Operations Subcommittee		Williamson	Williamson
3) Judiciary Committee			

SUMMARY ANALYSIS

Section 985.04(1), F.S., specifies that all records obtained under ch. 985, F.S., as a result of a juvenile being involved in the juvenile justice system, are confidential. However, s. 985.04(2), F.S., creates exceptions if the juvenile is:

- Taken into custody for a violation of law which, if committed by an adult, would be a felony;
- Found by a court to have committed three or more violations of law which, if committed by an adult, would be misdemeanors; or
- Transferred to the adult system.

Section 943.053, F.S., allows a juvenile's criminal history information to be disseminated in the same manner as that of an adult.

A recent ruling by Florida's First District Court of Appeal highlighted the inconsistency that exists between s. 985.04(1), F.S., (making most juvenile records confidential) and s. 943.053, F.S. (allowing a juvenile's record to be disseminated in the same manner as that of an adult). The bill addresses these inconsistencies by:

- Making the records of juveniles who have been found to have committed three or more misdemeanors confidential and exempt (currently they are not);
- Ensuring that the list of juvenile records that are not confidential and exempt under s. 985.04(2), F.S., is identical to the list of juvenile records deemed not to be confidential and exempt under s. 943.053, F.S.;
- Requiring the Florida Department of Law Enforcement (FDLE) to release juvenile criminal history records in a manner that takes into account the records' confidential and exempt status; and
- Specifying how FDLE must release juvenile criminal history records.

The bill provides that the exemptions repeal on October 2, 2021, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

FDLE reports that the bill may have a minimal fiscal impact on the department, which can be absorbed by existing resources. See the fiscal section of this bill analysis.

The bill is effective upon becoming a law.

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands current public records exemptions; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Public Records

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

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act² provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:³

- 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.
- Protects trade or business secrets.

The Open Government Sunset Review Act requires the automatic repeal of a public records exemption on October 2nd of the 5th year after its creation or substantial amendment, unless reenacted by the Legislature.⁴ The Act also requires specified questions to be considered during the review process.

Confidential Information of Juveniles

Section 985.04(1), F.S., provides that all records obtained under ch. 985, F.S., resulting from a juvenile's involvement in the juvenile justice system, are confidential. However, several exceptions to the confidentiality of these records are provided. For example, s. 985.04(2), F.S., provides in part that the name, photograph, address, and crime or arrest report of certain juveniles is not confidential and exempt from s. 119.07(1), F.S., solely because of the juvenile's age, if the juvenile is:

- Taken into custody by a law enforcement officer for a violation of law which, if committed by an adult, would be a felony;
- Found by a court to have committed three or more violations of law which, if committed by an adult, would be misdemeanors;
- Transferred to the adult system under s. 985.557, s. 985.56, s. or 985.556, F.S.;
- Taken into custody by a law enforcement officer for a violation of law subject to s. 985.557(2)(b) or (d), F.S.; or
- Transferred to the adult system but sentenced to the juvenile system under s. 985.565, F.S.

¹ FLA. CONST. art. I, s. 24(c).

² See s. 119.15, F.S.

³ s. 119.15(6)(b), F.S.

⁴ s. 119.15(3), F.S.

Criminal Justice Information Program

Section 943.05, F.S., creates the Criminal Justice Information Program (CJIP) within the Florida Department of Law Enforcement (FDLE) to act as the state's central criminal justice information⁵ repository. Law enforcement agencies, clerks of the court, the Department of Corrections (DOC), and the Department of Juvenile Justice (DJJ) are required to submit specified information on offenders they have had contact with for inclusion in CJIP.⁶ This information can then be transmitted between criminal justice agencies.⁷

Currently, s. 943.051, F.S., requires state, county, municipal, or other law enforcement agencies to capture and electronically submit to FDLE the fingerprints, palm prints, and facial images of:

- Each adult person charged with or convicted of a felony, misdemeanor, or violation of a comparable ordinance;
- A juvenile who is charged with or found to have committed an offense which, if committed by an adult, would be a felony; or
- A minor who is charged with or found to have committed an enumerated offense, unless the minor is issued a civil citation pursuant to s. 985.12, F.S.

Dissemination of Criminal History Information under Chapter 943, F.S.

Criminal history information⁸ compiled by CJIP may be released to criminal justice agencies, noncriminal justice agencies, and the private sector upon request in accordance with s. 943.053, F.S. Criminal justice agencies are provided criminal history information free of charge on a priority basis.⁹ With some exceptions, noncriminal justice agencies and persons in the private sector are charged \$24 per name submitted.¹⁰

Currently, s. 943.053, F.S., allows a juvenile's criminal history information to be disseminated in the same manner as that of an adult.¹¹ The statute is silent as to the release of a juvenile's information, which has been made confidential pursuant to s. 985.04, F.S.

G.G. v. FDLE

In *G.G. v. FDLE*,¹² a juvenile with no prior criminal history record was arrested for petit theft – a first degree misdemeanor. Several weeks after the arrest, G.G.'s attorney received G.G.'s criminal history information from FDLE, and discovered that it included information relating to the petit theft arrest.¹³ G.G. filed suit, claiming that the petit theft information should be confidential and exempt pursuant to s. 985.04(1), F.S.¹⁴ The trial court disagreed, holding that s. 943.053(3), F.S., creates an exception to confidentiality established for juvenile criminal history records in s. 985.04(1), F.S.¹⁵

⁵ Section 943.045(12), F.S., provides that the term "criminal justice information" means information on individuals collected or disseminated as a result of arrest, detention, or the initiation of a criminal proceeding by criminal justice agencies, including arrest record information, correctional and release information, criminal history record information, conviction record information, offender registration information, identification record information, and wanted persons record information. The term does not include statistical or analytical records or reports in which individuals are not identified and from which their identities are not ascertainable. The term does not include criminal intelligence information or criminal investigative information.

⁶ s. 943.052, F.S.

⁷ s. 985.051, F.S.

⁸ Section 943.045(5), F.S., defines the term "criminal history information" as information collected by criminal justice agencies on persons, which information consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges and the disposition thereof. The term does not include identification information, such as biometric records, if the information does not indicate involvement of the person in the criminal justice system.

⁹ s. 943.053(3)(a), F.S.

¹⁰ s. 943.053(3)(b), F.S. The guardian ad litem program; vendors of the Department of Children and Families, DJJ, and the Department of Elderly Affairs; the Department of Agriculture and Consumer Services; and other qualified entities are charged a lesser amount.

¹¹ s. 943.053(3)(a), F.S.

¹² 97 So. 3d 268 (Fla. 1st DCA 2012).

¹³ *Id.* at 269.

¹⁴ *Id.*

¹⁵ *Id.*

On appeal, the First District Court of Appeal reversed the trial court's decision and held that FDLE's authority to disseminate criminal justice information under s. 943.053(3), F.S., is expressly limited by s. 985.04, F.S., which, with very few exceptions, makes juvenile records confidential.¹⁶

FDLE – Release of Juvenile Information since G.G.

As noted above, s. 985.04(1), F.S., makes the majority of juvenile records confidential. However, s. 985.04(2), F.S., creates exceptions to the confidentiality requirements for records if the juvenile is:

- Taken into custody for a violation of law which, if committed by an adult, would be a felony;
- Found by a court to have committed three or more violations of law which, if committed by an adult, would be misdemeanors; or
- Transferred to the adult system.

In an effort to comply with the ruling in *G.G. v. FDLE*, FDLE is ensuring that only the above-described records are released. However, because of programming limitations¹⁷ and incomplete reporting of juvenile disposition information,¹⁸ FDLE reports that it is unable to accurately and fairly assess whether a juvenile has been found by a court to have committed three or more misdemeanors.¹⁹ As such, FDLE currently only releases juvenile records to private entities and non-criminal justice agencies if the juvenile is:

- Taken into custody or charged with a crime that would be a felony if committed by an adult; and
- Treated as an adult.²⁰

Effect of the Bill

The ruling in *G.G. v. FDLE* highlighted the inconsistency that exists between s. 985.04(1), F.S., (making the majority of juvenile records confidential) and s. 943.053, F.S. (allowing a juvenile's criminal history information to be disseminated in the same manner as that of an adult). The bill addresses these inconsistencies by:

- Ensuring that the specified juvenile records deemed not to be confidential and exempt under s. 943.053, F.S., are identical to the juvenile records deemed not to be confidential and exempt under s. 985.04, F.S.; and
- Requiring FDLE to release juvenile criminal history records in a manner that takes into account the confidential and exempt status of the record.

Section 985.04, F.S.

The bill amends s. 985.04(1), F.S., clarifying that juvenile records obtained under ch. 985, F.S., are confidential and exempt (rather than just confidential),²¹ and provides that the public records exemption applies retroactively.

¹⁶ *Id.* at 273.

¹⁷ FDLE cites that there would be extensive programming changes required to ensure that the records of juveniles found to have committed three or more misdemeanors were available for dissemination. Florida Department of Law Enforcement, Agency Bill Analysis for HB 7103 (2015), which is identical to this bill (on file with the Criminal Justice Subcommittee)(hereinafter cited as "FDLE Analysis").

¹⁸ Disposition, or charge outcome, reporting for juvenile arrests was not legislatively mandated until July 1, 2008. This has resulted in much lower arrest-disposition reporting rates for juveniles. (The juvenile reporting rate for all arrests is currently 48.5 percent, while the adult rate is 72.2 percent.) FDLE Analysis.

¹⁹ FDLE Analysis, p. 3.

²⁰ *Id.*

²¹ There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48, 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). 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 85-62 Fla. Op. Att'y Gen. (August 1, 1985).

The bill also amends s. 985.04(2), F.S., to specify that the following juvenile records are not confidential and exempt:

- Records where a juvenile has been taken into custody by a law enforcement officer for a violation of law which, if committed by an adult, would be a felony;
- Records where a juvenile has been charged with a violation of law which, if committed by an adult, would be a felony;
- Records where a juvenile has been found to have committed an offense which, if committed by an adult, would be a felony; or
- Records where a juvenile has been transferred to adult court pursuant to part X of ch. 985, F.S.

Notably, the bill removes language specifying that the records of juveniles who have been found to have committed three or more misdemeanor violations are not confidential and exempt. These records will now be confidential and exempt.

Section 943.053, F.S.

The bill amends s. 943.053, F.S., so that the list of juvenile records deemed not to be confidential and exempt under s. 985.04(2), F.S., is identical to the list of juvenile records deemed not to be confidential and exempt under s. 943.053, F.S. Because the language regarding three or more misdemeanors is not included on the list, FDLE will no longer be tasked with determining whether the juvenile had three or more misdemeanors before releasing such records to the private sector and noncriminal justice agencies.

The bill further amends s. 943.053, F.S., to establish a separate process for the dissemination of *juvenile* criminal history information. Under this process, juvenile criminal history information, including the information that is confidential and exempt, is available to:

- A criminal justice agency for criminal justice purposes on a priority basis and free of charge;
- The person to whom the record relates, or his or her attorney;
- The parent, guardian, or legal custodian of the person to whom the record relates, provided such person has not reached the age of majority, been emancipated by a court, or been legally married; or
- An agency or entity specified in s. 943.0585(4) or s. 943.059(4), F.S.,²² for the purposes specified therein, and to any person within such agency or entity who has direct responsibility for employment, access authorization, or licensure decisions.

Juvenile criminal history information that is not confidential and exempt may be released to the private sector and noncriminal justice agencies upon tender of fees and in the same manner that criminal history information relating to adults is released.

The bill provides that juvenile records deemed confidential and exempt under the provisions of s. 943.053, F.S., which are released by the sheriff, DOC, or DJJ to private entities under contract with each entity retain their confidential status upon release to these private entities.

The bill repeals all new public records exemptions provided for in the bill on October 2, 2021, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.²³

Lastly, the bill makes conforming changes to ss. 496.4101 and 943.056, F.S., to reflect changes made in the act and reenacts ss. 110.1127, 373.6055, 408.809, 943.046, 943.05, 943.0542, 943.0543, 985.045, and 985.11, F.S., to incorporate amendments by the bill to statutes that are cross-referenced in the reenacted sections.

²² These sections require persons who are seeking employment with specified agencies (e.g., DCF, Department of Health, or DJJ) to acknowledge their criminal history record, even if such record has been sealed or expunged.

²³ FLA. CONST. art. I, s. 24(c).

B. SECTION DIRECTORY:

Section 1. Amends s. 985.04, F.S., relating to oaths; records; confidential information.

Section 2. Amends s. 943.053, F.S., relating to dissemination of criminal justice information; fees.

Section 3. Amends s. 496.4101, F.S., relating to licensure of professional solicitors and certain employees thereof.

Section 4. Amends s. 943.056, F.S., relating to criminal history records; access, review, and challenge.

Section 5. Reenacts s. 110.1127, F.S., relating to employee background screening and investigations.

Section 6. Reenacts s. 373.6055, F.S., relating to criminal history checks for certain water management district employees and others.

Section 7. Reenacts s. 408.809, F.S., relating to background screening; prohibited offenses.

Section 8. Reenacts s. 943.046, F.S., relating to notification of criminal offender information.

Section 9. Reenacts s. 943.05, F.S., relating to Criminal Justice Information Program; duties; crime reports.

Section 10. Reenacts s. 943.0542, F.S., relating to access to criminal history information provided by the department to qualified entities.

Section 11. Reenacts s. 943.0543, F.S., relating to National Crime Prevention and Privacy Compact; ratification and implementation.

Section 12. Reenacts s. 985.045, F.S., relating to court records.

Section 13. Reenacts s. 985.11, F.S., relating to fingerprinting and photographing.

Section 14. Provides a public necessity statement.

Section 15. Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

FDLE reports that the Computerized Criminal History System requires an update to comply with the ruling or to implement the bill, which will require 891 hours of programming at \$85 dollars per hour for a total of \$75,877.²⁴ Additionally, the bill may require staff training related to the expansion of the public records exemption, which will likely result in an insignificant fiscal impact to FDLE. FDLE indicates that these costs, however, will be absorbed, as they are part of the day-to-day responsibilities of the agency.²⁵

²⁴ FDLE Analysis, p. 6.

²⁵ Email from Ronald Draa, Legislative Affairs Director, FDLE, HB 293 (November 10, 2015).

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:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote Requirement

Article I, 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 records or public meetings exemption. The bill expands public records exemptions; therefore, 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 records or public meetings exemption. The bill expands public records exemptions; therefore, it includes a public necessity statement.

Breadth of Exemption

Article I, section 24(c) of the Florida Constitution requires a newly created public records or public meetings exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill's expanded public records exemptions do not appear to be in conflict with the constitutional requirement that the exemptions be no broader than necessary to accomplish their purpose.

B. RULE-MAKING AUTHORITY:

The bill provides that all criminal history information relating to juveniles must be provided upon tender of fees and in the manner prescribed by rules of the FDLE.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 17, 2015, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment reenacts necessary cross-referenced provisions of statute that are impacted by changes made in the act.

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

27 amendment made by the act to s. 943.053, F.S., in a
 28 reference thereto; reenacting s. 408.809(6), F.S.,
 29 relating to background screening, to incorporate the
 30 amendment made by the act to s. 943.053, F.S., in a
 31 reference thereto; reenacting s. 943.046(1), F.S.,
 32 relating to notification of criminal offender
 33 information, to incorporate the amendment made by the
 34 act to s. 943.053, F.S., in a reference thereto;
 35 reenacting s. 943.05(2)(h), F.S., relating to the
 36 Criminal Justice Information Program, to incorporate
 37 the amendment made by the act to s. 943.053, F.S., in
 38 a reference thereto; reenacting s. 943.0542(2)(c),
 39 F.S., relating to access to criminal history
 40 information provided by the Department of Law
 41 Enforcement to qualified entities, to incorporate the
 42 amendment made by the act to s. 943.053, F.S., in a
 43 reference thereto; reenacting s. 943.0543(5), F.S.,
 44 relating to the National Crime Prevention and Privacy
 45 Compact, to incorporate the amendment made by the act
 46 to s. 943.053, F.S., in a reference thereto;
 47 reenacting s. 985.045(2), F.S., relating to court
 48 records, to incorporate the amendments made by the act
 49 to ss. 943.053 and 985.04, F.S., in references
 50 thereto; reenacting s. 985.11(1)(b), F.S., relating to
 51 fingerprinting and photographing juveniles, to
 52 incorporate the amendments made by the act to ss.

53 943.053 and 985.04, F.S., in references thereto;
 54 providing a statement of public necessity; providing
 55 an effective date.

56
 57 Be It Enacted by the Legislature of the State of Florida:

58
 59 Section 1. Subsections (1) and (2) of section 985.04,
 60 Florida Statutes, are amended to read:

61 985.04 Oaths; records; confidential information.—

62 (1) (a) Except as provided in subsections (2), (3), (6),
 63 and (7) and s. 943.053, all information obtained under this
 64 chapter in the discharge of official duty by any judge, any
 65 employee of the court, any authorized agent of the department,
 66 the Florida Commission on Offender Review, the Department of
 67 Corrections, the juvenile justice circuit boards, any law
 68 enforcement agent, or any licensed professional or licensed
 69 community agency representative participating in the assessment
 70 or treatment of a juvenile is confidential and exempt from s.
 71 119.07(1) and s. 24(a), Art. I of the State Constitution. This
 72 exemption applies to information obtained before, on, or after
 73 the effective date of this exemption.

74 (b) Such confidential and exempt information ~~and~~ may be
 75 disclosed only to the authorized personnel of the court, the
 76 department and its designees, the Department of Corrections, the
 77 Florida Commission on Offender Review, law enforcement agents,
 78 school superintendents and their designees, any licensed

79 professional or licensed community agency representative
 80 participating in the assessment or treatment of a juvenile, and
 81 others entitled under this chapter to receive that information,
 82 or upon order of the court.

83 (c) Within each county, the sheriff, the chiefs of police,
 84 the district school superintendent, and the department shall
 85 enter into an interagency agreement for the purpose of sharing
 86 information about juvenile offenders among all parties. The
 87 agreement must specify the conditions under which summary
 88 criminal history information is to be made available to
 89 appropriate school personnel, and the conditions under which
 90 school records are to be made available to appropriate
 91 department personnel. Such agreement shall require notification
 92 to any classroom teacher of assignment to the teacher's
 93 classroom of a juvenile who has been placed in a probation or
 94 commitment program for a felony offense. The agencies entering
 95 into such agreement must comply with s. 943.0525, and must
 96 maintain the confidentiality of information that is otherwise
 97 exempt from s. 119.07(1), as provided by law.

98 (2) (a) Notwithstanding any other provisions of this
 99 chapter, the name, photograph, address, and crime or arrest
 100 report of a child:

101 1. (a) ~~Taken into custody if the child has been taken into~~
 102 ~~custody~~ by a law enforcement officer for a violation of law
 103 which, if committed by an adult, would be a felony;

104 2. Charged with a violation of law which, if committed by

105 an adult, would be a felony;
 106 3. Found to have committed an offense which, if committed
 107 by an adult, would be a felony; or

108 4. Transferred to adult court pursuant to part X of this
 109 chapter,

110 ~~(b) Found by a court to have committed three or more~~
 111 ~~violations of law which, if committed by an adult, would be~~
 112 ~~misdemeanors;~~

113 ~~(c) Transferred to the adult system under s. 985.557,~~
 114 ~~indicted under s. 985.56, or waived under s. 985.556;~~

115 ~~(d) Taken into custody by a law enforcement officer for a~~
 116 ~~violation of law subject to s. 985.557(2)(b) or (d); or~~

117 ~~(e) Transferred to the adult system but sentenced to the~~
 118 ~~juvenile system under s. 985.565.~~

119
 120 are ~~shall~~ not be considered confidential and exempt from s.
 121 119.07(1) solely because of the child's age.

122 (b) This subsection is subject to the Open Government
 123 Sunset Review Act in accordance with s. 119.15 and shall stand
 124 repealed on October 2, 2021, unless reviewed and saved from
 125 repeal through reenactment by the Legislature.

126 Section 2. Subsections (3), (8), (9), and (10) of section
 127 943.053, Florida Statutes, are amended to read:

128 943.053 Dissemination of criminal justice information;
 129 fees.-

130 (3) (a) Criminal history information, ~~including information~~

131 relating to an adult ~~minors~~, compiled by the Criminal Justice
 132 Information Program from intrastate sources shall be available
 133 on a priority basis to criminal justice agencies for criminal
 134 justice purposes free of charge. After providing the program
 135 with all known personal identifying information, persons in the
 136 private sector and noncriminal justice agencies may be provided
 137 criminal history information upon tender of fees as established
 138 in this subsection and in the manner prescribed by rule of the
 139 Department of Law Enforcement. ~~Any access to criminal history~~
 140 ~~information by the private sector or noncriminal justice~~
 141 ~~agencies as provided in this subsection shall be assessed~~
 142 ~~without regard to the quantity or category of criminal history~~
 143 ~~record information requested.~~

144 (b)1. Criminal history information relating to a juvenile
 145 compiled by the Criminal Justice Information Program from
 146 intrastate sources shall be released as provided in this
 147 section. Such information is confidential and exempt from s.
 148 119.07(1) and s. 24(a), Art. I of the State Constitution, unless
 149 such juvenile has been:

150 a. Taken into custody by a law enforcement officer for a
 151 violation of law which, if committed by an adult, would be a
 152 felony;

153 b. Charged with a violation of law which, if committed by
 154 an adult, would be a felony;

155 c. Found to have committed an offense which, if committed
 156 by an adult, would be a felony; or

157 d. Transferred to adult court pursuant to part X of
 158 chapter 985,

159
 160 and provided the criminal history record has not been expunged
 161 or sealed under any law applicable to such record.

162 2. This paragraph is subject to the Open Government Sunset
 163 Review Act in accordance with s. 119.15 and shall stand repealed
 164 on October 2, 2021, unless reviewed and saved from repeal
 165 through reenactment by the Legislature.

166 (c)1. Criminal history information relating to juveniles,
 167 including criminal history information consisting in whole or in
 168 part of information that is confidential and exempt under
 169 paragraph (b), shall be available to:

170 a. A criminal justice agency for criminal justice purposes
 171 on a priority basis and free of charge;

172 b. The person to whom the record relates, or his or her
 173 attorney;

174 c. The parent, guardian, or legal custodian of the person
 175 to whom the record relates, provided such person has not reached
 176 the age of majority, been emancipated by a court, or been
 177 legally married; or

178 d. An agency or entity specified in s. 943.0585(4) or s.
 179 943.059(4), for the purposes specified therein, and to any
 180 person within such agency or entity who has direct
 181 responsibility for employment, access authorization, or
 182 licensure decisions.

183 2. After providing the program with all known personal
 184 identifying information, the criminal history information
 185 relating to a juvenile which is not confidential and exempt
 186 under this subsection may be released to the private sector and
 187 noncriminal justice agencies not specified in s. 943.0585(4) or
 188 s. 943.059(4) in the same manner as provided in paragraph (a).
 189 Criminal history information relating to a juvenile which is not
 190 confidential and exempt under this subsection is the entire
 191 criminal history information relating to a juvenile who
 192 satisfies any of the criteria listed in sub-subparagraphs
 193 (b)1.a. through (b)1.d., except for any portion of such
 194 juvenile's criminal history record which has been expunged or
 195 sealed under any law applicable to such record.

196 3. All criminal history information relating to juveniles,
 197 other than that provided to criminal justice agencies for
 198 criminal justice purposes, shall be provided upon tender of fees
 199 as established in this subsection and in the manner prescribed
 200 by rule of the Department of Law Enforcement.

201 (d) The fee for access to criminal history information by
 202 the private sector or a noncriminal justice agency shall be
 203 assessed without regard to the size or category of criminal
 204 history record information requested.

205 (e) ~~(b)~~ The fee per record for criminal history information
 206 provided pursuant to this subsection and s. 943.0542 is \$24 per
 207 name submitted, except that the fee for the guardian ad litem
 208 program and vendors of the Department of Children and Families,

209 the Department of Juvenile Justice, and the Department of
 210 Elderly Affairs shall be \$8 for each name submitted; the fee for
 211 a state criminal history provided for application processing as
 212 required by law to be performed by the Department of Agriculture
 213 and Consumer Services shall be \$15 for each name submitted; and
 214 the fee for requests under s. 943.0542, which implements the
 215 National Child Protection Act, shall be \$18 for each volunteer
 216 name submitted. The state offices of the Public Defender shall
 217 not be assessed a fee for Florida criminal history information
 218 or wanted person information.

219 (8) Notwithstanding ~~the provisions of~~ s. 943.0525, and any
 220 user agreements adopted pursuant thereto, and notwithstanding
 221 the confidentiality of sealed records as provided for in s.
 222 943.059 and juvenile records as provided for in paragraph
 223 (3)(b), the sheriff of any county that has contracted with a
 224 private entity to operate a county detention facility pursuant
 225 to ~~the provisions of~~ s. 951.062 shall provide that private
 226 entity, in a timely manner, copies of the Florida criminal
 227 history records for its inmates. The sheriff may assess a charge
 228 for the Florida criminal history records pursuant to ~~the~~
 229 ~~provisions of~~ chapter 119. Sealed records and confidential
 230 juvenile records received by the private entity under this
 231 section remain confidential and exempt from ~~the provisions of~~ s.
 232 119.07(1).

233 (9) Notwithstanding ~~the provisions of~~ s. 943.0525, and any
 234 user agreements adopted pursuant thereto, and notwithstanding

235 the confidentiality of sealed records as provided for in s.
 236 943.059 and juvenile records as provided for in paragraph
 237 (3) (b), the Department of Corrections shall provide, in a timely
 238 manner, copies of the Florida criminal history records for
 239 inmates housed in a private state correctional facility to the
 240 private entity under contract to operate the facility pursuant
 241 to ~~the provisions of~~ s. 944.105. The department may assess a
 242 charge for the Florida criminal history records pursuant to ~~the~~
 243 ~~provisions of~~ chapter 119. Sealed records and confidential
 244 juvenile records received by the private entity under this
 245 section remain confidential and exempt from ~~the provisions of~~ s.
 246 119.07(1).

247 (10) Notwithstanding ~~the provisions of~~ s. 943.0525 and any
 248 user agreements adopted pursuant thereto, and notwithstanding
 249 the confidentiality of sealed records as provided for in s.
 250 943.059 or of juvenile records as provided for in paragraph
 251 (3) (b), the Department of Juvenile Justice or any other state or
 252 local criminal justice agency may provide copies of the Florida
 253 criminal history records for juvenile offenders currently or
 254 formerly detained or housed in a contracted juvenile assessment
 255 center or detention facility or serviced in a contracted
 256 treatment program and for employees or other individuals who
 257 will have access to these facilities, only to the entity under
 258 direct contract with the Department of Juvenile Justice to
 259 operate these facilities or programs pursuant to ~~the provisions~~
 260 ~~of~~ s. 985.688. The criminal justice agency providing such data

261 may assess a charge for the Florida criminal history records
 262 pursuant to ~~the provisions of~~ chapter 119. Sealed records and
 263 confidential juvenile records received by the private entity
 264 under this section remain confidential and exempt from ~~the~~
 265 ~~provisions of~~ s. 119.07(1). Information provided under this
 266 section shall be used only for the criminal justice purpose for
 267 which it was requested and may not be further disseminated.

268 Section 3. Paragraph (b) of subsection (3) of section
 269 496.4101, Florida Statutes, is amended to read:

270 496.4101 Licensure of professional solicitors and certain
 271 employees thereof.-

272 (3)

273 (b) Fees for state and federal fingerprint processing and
 274 fingerprint retention fees shall be borne by the applicant. The
 275 state cost for fingerprint processing is that authorized in s.
 276 943.053(3)(e) ~~943.053(3)(b)~~ for records provided to persons or
 277 entities other than those specified as exceptions therein.

278 Section 4. Subsection (1) of section 943.056, Florida
 279 Statutes, is amended to read:

280 943.056 Criminal history records; access, review, and
 281 challenge.-

282 (1) For purposes of verification of the accuracy and
 283 completeness of a criminal history record, the Department of Law
 284 Enforcement shall provide, in the manner prescribed by rule,
 285 such record for review upon verification, by fingerprints, of
 286 the identity of the requesting person. If a minor, or the parent

287 or legal guardian of a minor, requests a copy of the minor's
 288 criminal history record, the Department of Law Enforcement shall
 289 provide such copy, including any portions of the record which
 290 may be confidential under s. 943.053(3)(b), for review upon
 291 verification, by fingerprints, of the identity of the minor. The
 292 providing of such record shall not require the payment of any
 293 fees, except those provided for by federal regulations.

294 Section 5. For the purpose of incorporating the amendment
 295 made by this act to section 943.053, Florida Statutes, in a
 296 reference thereto, subsection (4) of section 110.1127, Florida
 297 Statutes, is reenacted to read:

298 110.1127 Employee background screening and
 299 investigations.-

300 (4) Background screening and investigations shall be
 301 conducted at the expense of the employing agency. If
 302 fingerprinting is required, the fingerprints shall be taken by
 303 the employing agency, a law enforcement agency, or a vendor as
 304 authorized pursuant to s. 435.04, submitted to the Department of
 305 Law Enforcement for state processing, and forwarded by the
 306 Department of Law Enforcement to the Federal Bureau of
 307 Investigation for national processing. The agency or vendor
 308 shall remit the processing fees required by s. 943.053 to the
 309 Department of Law Enforcement.

310 Section 6. For the purpose of incorporating the amendment
 311 made by this act to section 943.053, Florida Statutes, in a
 312 reference thereto, paragraph (a) of subsection (3) of section

313 373.6055, Florida Statutes, is reenacted to read:

314 373.6055 Criminal history checks for certain water
315 management district employees and others.—

316 (3)(a). The fingerprint-based criminal history check shall
317 be performed on any person described in subsection (1) pursuant
318 to the applicable water management district's security plan for
319 buildings, facilities, and structures. With respect to employees
320 or others with regular access, such checks shall be performed at
321 least once every 5 years or at other more frequent intervals as
322 provided by the water management district's security plan for
323 buildings, facilities, and structures. Each individual subject
324 to the criminal history check shall file a complete set of
325 fingerprints which are taken in a manner required by the
326 Department of Law Enforcement and the water management district
327 security plan. Fingerprints shall be submitted to the Department
328 of Law Enforcement for state processing and to the Federal
329 Bureau of Investigation for federal processing. The results of
330 each fingerprint-based check shall be reported to the requesting
331 water management district. The costs of the checks, consistent
332 with s. 943.053(3), shall be paid by the water management
333 district or other employing entity or by the individual checked.

334 Section 7. For the purpose of incorporating the amendment
335 made by this act to section 943.053, Florida Statutes, in a
336 reference thereto, subsection (6) of section 408.809, Florida
337 Statutes, is reenacted to read:

338 408.809 Background screening; prohibited offenses.—

339 (6) The costs associated with obtaining the required
 340 screening must be borne by the licensee or the person subject to
 341 screening. Licensees may reimburse persons for these costs. The
 342 Department of Law Enforcement shall charge the agency for
 343 screening pursuant to s. 943.053(3). The agency shall establish
 344 a schedule of fees to cover the costs of screening.

345 Section 8. For the purpose of incorporating the amendment
 346 made by this act to section 943.053, Florida Statutes, in a
 347 reference thereto, subsection (1) of section 943.046, Florida
 348 Statutes, is reenacted to read:

349 943.046 Notification of criminal offender information.—

350 (1) Any state or local law enforcement agency may release
 351 to the public any criminal history information and other
 352 information regarding a criminal offender, including, but not
 353 limited to, public notification by the agency of the
 354 information, unless the information is confidential and exempt
 355 from s. 119.07(1) and s. 24(a), Art. I of the State
 356 Constitution. However, this section does not contravene any
 357 provision of s. 943.053 which relates to the method by which an
 358 agency or individual may obtain a copy of an offender's criminal
 359 history record.

360 Section 9. For the purpose of incorporating the amendment
 361 made by this act to section 943.053, Florida Statutes, in a
 362 reference thereto, paragraph (h) of subsection (2) of section
 363 943.05, Florida Statutes, is reenacted to read:

364 943.05 Criminal Justice Information Program; duties; crime

365 reports.—

366 (2) The program shall:

367 (h) For each agency or qualified entity that officially
 368 requests retention of fingerprints or for which retention is
 369 otherwise required by law, search all arrest fingerprint
 370 submissions received under s. 943.051 against the fingerprints
 371 retained in the statewide automated biometric identification
 372 system under paragraph (g).

373 1. Any arrest record that is identified with the retained
 374 fingerprints of a person subject to background screening as
 375 provided in paragraph (g) shall be reported to the appropriate
 376 agency or qualified entity.

377 2. To participate in this search process, agencies or
 378 qualified entities must notify each person fingerprinted that
 379 his or her fingerprints will be retained, pay an annual fee to
 380 the department unless otherwise provided by law, and inform the
 381 department of any change in the affiliation, employment, or
 382 contractual status of each person whose fingerprints are
 383 retained under paragraph (g) if such change removes or
 384 eliminates the agency or qualified entity's basis or need for
 385 receiving reports of any arrest of that person, so that the
 386 agency or qualified entity is not obligated to pay the upcoming
 387 annual fee for the retention and searching of that person's
 388 fingerprints to the department. The department shall adopt a
 389 rule setting the amount of the annual fee to be imposed upon
 390 each participating agency or qualified entity for performing

391 these searches and establishing the procedures for the retention
 392 of fingerprints and the dissemination of search results. The fee
 393 may be borne by the agency, qualified entity, or person subject
 394 to fingerprint retention or as otherwise provided by law.

395 Consistent with the recognition of criminal justice agencies
 396 expressed in s. 943.053(3), these services shall be provided to
 397 criminal justice agencies for criminal justice purposes free of
 398 charge. Qualified entities that elect to participate in the
 399 fingerprint retention and search process are required to timely
 400 remit the fee to the department by a payment mechanism approved
 401 by the department. If requested by the qualified entity, and
 402 with the approval of the department, such fees may be timely
 403 remitted to the department by a qualified entity upon receipt of
 404 an invoice for such fees from the department. Failure of a
 405 qualified entity to pay the amount due on a timely basis or as
 406 invoiced by the department may result in the refusal by the
 407 department to permit the qualified entity to continue to
 408 participate in the fingerprint retention and search process
 409 until all fees due and owing are paid.

410 3. Agencies that participate in the fingerprint retention
 411 and search process may adopt rules pursuant to ss. 120.536(1)
 412 and 120.54 to require employers to keep the agency informed of
 413 any change in the affiliation, employment, or contractual status
 414 of each person whose fingerprints are retained under paragraph
 415 (g) if such change removes or eliminates the agency's basis or
 416 need for receiving reports of any arrest of that person, so that

417 the agency is not obligated to pay the upcoming annual fee for
 418 the retention and searching of that person's fingerprints to the
 419 department.

420 Section 10. For the purpose of incorporating the amendment
 421 made by this act to section 943.053, Florida Statutes, in a
 422 reference thereto, paragraph (c) of subsection (2) of section
 423 943.0542, Florida Statutes, is reenacted to read:

424 943.0542 Access to criminal history information provided
 425 by the department to qualified entities.—

426 (2)

427 (c) Each such request must be accompanied by payment of a
 428 fee for a statewide criminal history check by the department
 429 established by s. 943.053, plus the amount currently prescribed
 430 by the Federal Bureau of Investigation for the national criminal
 431 history check in compliance with the National Child Protection
 432 Act of 1993, as amended. Payments must be made in the manner
 433 prescribed by the department by rule.

434 Section 11. For the purpose of incorporating the amendment
 435 made by this act to section 943.053, Florida Statutes, in a
 436 reference thereto, subsection (5) of section 943.0543, Florida
 437 Statutes, is reenacted to read:

438 943.0543 National Crime Prevention and Privacy Compact;
 439 ratification and implementation.—

440 (5) This compact and this section do not affect or abridge
 441 the obligations and responsibilities of the department under
 442 other provisions of this chapter, including s. 943.053, and do

443 not alter or amend the manner, direct or otherwise, in which the
 444 public is afforded access to criminal history records under
 445 state law.

446 Section 12. For the purpose of incorporating the
 447 amendments made by this act to sections 943.053 and 985.04,
 448 Florida Statutes, in references thereto, subsection (2) of
 449 section 985.045, Florida Statutes, is reenacted to read:

450 985.045 Court records.—

451 (2) The clerk shall keep all official records required by
 452 this section separate from other records of the circuit court,
 453 except those records pertaining to motor vehicle violations,
 454 which shall be forwarded to the Department of Highway Safety and
 455 Motor Vehicles. Except as provided in ss. 943.053 and
 456 985.04(6)(b) and (7), official records required by this chapter
 457 are not open to inspection by the public, but may be inspected
 458 only upon order of the court by persons deemed by the court to
 459 have a proper interest therein, except that a child and the
 460 parents, guardians, or legal custodians of the child and their
 461 attorneys, law enforcement agencies, the Department of Juvenile
 462 Justice and its designees, the Florida Commission on Offender
 463 Review, the Department of Corrections, and the Justice
 464 Administrative Commission shall always have the right to inspect
 465 and copy any official record pertaining to the child. Public
 466 defender offices shall have access to official records of
 467 juveniles on whose behalf they are expected to appear in
 468 detention or other hearings before an appointment of

469 representation. The court may permit authorized representatives
 470 of recognized organizations compiling statistics for proper
 471 purposes to inspect, and make abstracts from, official records
 472 under whatever conditions upon the use and disposition of such
 473 records the court may deem proper and may punish by contempt
 474 proceedings any violation of those conditions.

475 Section 13. For the purpose of incorporating the
 476 amendments made by this act to sections 943.053 and 985.04,
 477 Florida Statutes, in references thereto, paragraph (b) of
 478 subsection (1) of section 985.11, Florida Statutes, is reenacted
 479 to read:

480 985.11 Fingerprinting and photographing.—

481 (1)

482 (b) Unless the child is issued a civil citation or is
 483 participating in a similar diversion program pursuant to s.
 484 985.12, a child who is charged with or found to have committed
 485 one of the following offenses shall be fingerprinted, and the
 486 fingerprints shall be submitted to the Department of Law
 487 Enforcement as provided in s. 943.051(3)(b):

488 1. Assault, as defined in s. 784.011.

489 2. Battery, as defined in s. 784.03.

490 3. Carrying a concealed weapon, as defined in s.
 491 790.01(1).

492 4. Unlawful use of destructive devices or bombs, as
 493 defined in s. 790.1615(1).

494 5. Neglect of a child, as defined in s. 827.03(1)(e).

495 6. Assault on a law enforcement officer, a firefighter, or
 496 other specified officers, as defined in s. 784.07(2)(a).

497 7. Open carrying of a weapon, as defined in s. 790.053.

498 8. Exposure of sexual organs, as defined in s. 800.03.

499 9. Unlawful possession of a firearm, as defined in s.
 500 790.22(5).

501 10. Petit theft, as defined in s. 812.014.

502 11. Cruelty to animals, as defined in s. 828.12(1).

503 12. Arson, resulting in bodily harm to a firefighter, as
 504 defined in s. 806.031(1).

505 13. Unlawful possession or discharge of a weapon or
 506 firearm at a school-sponsored event or on school property as
 507 defined in s. 790.115.

508

509 A law enforcement agency may fingerprint and photograph a child
 510 taken into custody upon probable cause that such child has
 511 committed any other violation of law, as the agency deems
 512 appropriate. Such fingerprint records and photographs shall be
 513 retained by the law enforcement agency in a separate file, and
 514 these records and all copies thereof must be marked "Juvenile
 515 Confidential." These records are not available for public
 516 disclosure and inspection under s. 119.07(1) except as provided
 517 in ss. 943.053 and 985.04(2), but shall be available to other
 518 law enforcement agencies, criminal justice agencies, state
 519 attorneys, the courts, the child, the parents or legal
 520 custodians of the child, their attorneys, and any other person

521 authorized by the court to have access to such records. In
 522 addition, such records may be submitted to the Department of Law
 523 Enforcement for inclusion in the state criminal history records
 524 and used by criminal justice agencies for criminal justice
 525 purposes. These records may, in the discretion of the court, be
 526 open to inspection by anyone upon a showing of cause. The
 527 fingerprint and photograph records shall be produced in the
 528 court whenever directed by the court. Any photograph taken
 529 pursuant to this section may be shown by a law enforcement
 530 officer to any victim or witness of a crime for the purpose of
 531 identifying the person who committed such crime.

532 Section 14. The Legislature finds that it is a public
 533 necessity that the criminal history information of juveniles,
 534 who have not been adjudicated delinquent of a felony or who have
 535 been found only to have committed misdemeanor offenses and
 536 certain criminal history information relating to a juvenile
 537 compiled by the Criminal Justice Information Program be made
 538 confidential and exempt from s. 119.07(1), Florida Statutes, and
 539 s. 24(a), Article I of the State Constitution under ss. 985.04
 540 and 943.053, Florida Statutes. Many individuals who have either
 541 completed their sanctions and received treatment or who were
 542 never charged in the juvenile justice system have found it
 543 difficult to obtain employment. The presence of an arrest or a
 544 misdemeanor record in these individuals' juvenile past and
 545 certain criminal history information relating to a juvenile
 546 compiled by the Criminal Justice Information Program creates an

547 unnecessary barrier to becoming productive members of society,
 548 thus frustrating the rehabilitative purpose of the juvenile
 549 system. The Legislature therefore finds that it is in the best
 550 interest of the public that individuals with juvenile
 551 misdemeanor records are given the opportunity to become
 552 contributing members of society. Therefore, prohibiting the
 553 unfettered release of juvenile misdemeanor records and certain
 554 criminal history information relating to a juvenile compiled by
 555 the Criminal Justice Information Program is of greater
 556 importance than any public benefit that may be derived from the
 557 full disclosure and release of such arrest records and
 558 information.

559 Section 15. This act shall take effect upon becoming a
 560 law.



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Government Operations
2 Subcommittee

3 Representative Fitzenhagen offered the following:

4
5 **Amendment**

6 Remove lines 98-158 and insert:

7 (2) (a) Notwithstanding any other provisions of this
8 chapter, the name, photograph, address, and crime or arrest
9 report of a child:

10 1. Found to have committed an offense which, if committed
11 by an adult, would be a felony; or

12 2. Transferred to adult court pursuant to part X of this
13 chapter,

14 ~~(a) Taken into custody if the child has been taken into~~
15 ~~custody by a law enforcement officer for a violation of law~~
16 ~~which, if committed by an adult, would be a felony;~~

17 ~~(b) Found by a court to have committed three or more~~



Amendment No.

18 ~~violations of law which, if committed by an adult, would be~~
19 ~~misdemeanors;~~

20 ~~(c) Transferred to the adult system under s. 985.557,~~
21 ~~indicted under s. 985.56, or waived under s. 985.556;~~

22 ~~(d) Taken into custody by a law enforcement officer for a~~
23 ~~violation of law subject to s. 985.557(2)(b) or (d); or~~

24 ~~(e) Transferred to the adult system but sentenced to the~~
25 ~~juvenile system under s. 985.565~~

26

27 are shall not be considered confidential and exempt from s.
28 119.07(1) solely because of the child's age.

29 (b) This subsection is subject to the Open Government
30 Sunset Review Act in accordance with s. 119.15 and shall stand
31 repealed on October 2, 2021, unless reviewed and saved from
32 repeal through reenactment by the Legislature.

33 Section 2. Subsections (3), (8), (9), and (10) of section
34 943.053, Florida Statutes, are amended to read:

35 943.053 Dissemination of criminal justice information;
36 fees.-

37 (3)(a) Criminal history information, ~~including information~~
38 relating to an adult ~~minors~~, compiled by the Criminal Justice
39 Information Program from intrastate sources shall be available
40 on a priority basis to criminal justice agencies for criminal
41 justice purposes free of charge. After providing the program
42 with all known personal identifying information, persons in the
43 private sector and noncriminal justice agencies may be provided



Amendment No.

44 criminal history information upon tender of fees as established
45 in this subsection and in the manner prescribed by rule of the
46 Department of Law Enforcement. ~~Any access to criminal history~~
47 ~~information by the private sector or noncriminal justice~~
48 ~~agencies as provided in this subsection shall be assessed~~
49 ~~without regard to the quantity or category of criminal history~~
50 ~~record information requested.~~

51 (b)1. Criminal history information relating to a juvenile
52 compiled by the Criminal Justice Information Program from
53 intrastate sources shall be released as provided in this
54 section. Such information is confidential and exempt from s.
55 119.07(1) and s. 24(a), Art. I of the State Constitution, unless
56 such juvenile has been:

57 a. Found to have committed an offense which, if committed
58 by an adult, would be a felony; or

59 b. Transferred to adult court pursuant to part X of
60 chapter 985,

61
62

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 381 Public Records/Florida State Boxing Commission
SPONSOR(S): Raburn
TIED BILLS: IDEN./SIM. **BILLS:** SB 578

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	11 Y, 0 N	Brown-Blake	Anstead
2) Government Operations Subcommittee		Williamson	Williamson
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

The bill amends a public records exemption under s. 548.062, F.S., related to promoters of pugilistic exhibitions, including boxing, kickboxing, and mixed martial arts. The current exemption provides that all proprietary confidential business information **required to be filed with the Florida State Boxing Commission (Commission) after a match** or obtained during an audit of the promoter’s books and records pursuant to s. 548.06, F.S., is confidential and exempt from s. 119.07(1), F.S., and Article I, section 24(a) of the Florida Constitution.

Specifically, the bill expands the exemption to cover all proprietary confidential business information **provided by a promoter to the Commission** or obtained during an audit of the promoter’s books and records pursuant to s. 548.06, F.S. The definition of “proprietary confidential business information” is not amended or expanded, nor does it modify the language providing that the proprietary confidential business information may be disclosed to another governmental entity in the performance of its duties and responsibilities.

The bill provides that the exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2021, unless reviewed and saved from repeal by the Legislature. It also provides a public necessity statement as required by the State Constitution.

The bill is effective July 1, 2016.

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 or public meeting exemption. The bill expands the current public records exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Public Records Laws

The State of Florida has a long history of providing public access to governmental records and meetings. The Florida Legislature enacted the first public records law in 1892.¹ One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.² Article I, section 24 of the Florida Constitution, provides that:

(a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the State Constitution, the Public Records Act,³ which pre-dates the State Constitution's public records provisions, specifies conditions under which public access must be provided to records of an agency.⁴ Section 119.07(1)(a), F.S., provides that every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

Unless specifically exempted, all agency records are available for public inspection. The term "public record" is broadly defined to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency."⁵

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge.⁶ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.⁷

¹ Section 1390, 1391 F.S. (Rev. 1892).

² FLA. CONST. art. I, s. 24.

³ Chapter 119, F.S.

⁴ The word "agency" is defined in s. 119.011(2), F.S., to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Florida Constitution also establishes a right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted by law or the State Constitution.

⁵ Section 119.011(12), F.S.

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

⁷ *Wait v. Florida Power & Light Co.*, 372 So.2d 420 (Fla. 1979).

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in statute.⁸ If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.⁹

Only the Legislature is authorized to create exemptions to open government requirements.¹⁰ Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.¹¹ A bill enacting an exemption¹² may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.¹³

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)¹⁴ provides for the systematic review, through a five-year cycle ending October 2 of the fifth year following enactment, of a public records or public meetings exemption.

The Act states an exemption may be created, revised, or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves.¹⁵ An identifiable public purpose is served if the exemption meets one of three specified criteria and if 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. An exemption meets the three statutory criteria if it:

- 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 the individual under this provision is exempted.
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.¹⁶

While the standards in the Open Government Sunset Review Act may appear to limit the Legislature in the exemption review process, those aspects of the act are only statutory, as opposed to constitutional. Accordingly, the standards do not limit the Legislature because one session of the Legislature cannot bind another.¹⁷ The Legislature is only limited in its review process by constitutional requirements.

⁸ 85-62 Fla. Op. Att'y Gen. (1985).

⁹ *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991), *review denied*, 589 So.2d 289 (Fla. 1991).

¹⁰ *See supra* note 2.

¹¹ *Memorial Hospital-West Volusia v. News-Journal Corporation*, 784 So.2d 438 (Fla. 2001); *Halifax Hospital Medical Center v. News-Journal Corp.*, 724 So.2d 567, 569 (Fla. 1999).

¹² Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

¹³ *See supra* note 2.

¹⁴ Section 119.15, F.S.

¹⁵ Section 119.15(6)(b), F.S.

¹⁶ *Id.*

¹⁷ *Straughn v. Camp*, 293 So.2d 689, 694 (Fla. 1974).

The Florida State Boxing Commission (Commission), Generally

The function of the Commission is to license and regulate professional boxing, kickboxing, and mixed martial arts. The Commission ensures that all matches are conducted in accordance with provisions of state laws and rules. It also makes certain that health and safety requirements are met and that matches are competitive and physically safe for participants.¹⁸ The Commission regulates professional boxing, kickboxing, and mixed martial arts matches by designating employees to attend the matches, appointing match officials, and ensuring the matches are held in a safe and fair manner.

The Commission is appointed by the Governor and consists of five members.¹⁹ It collects revenue via license issuance, live event permit fees, and taxation on gross receipts associated with live events in the state.²⁰

Licensure of Promoters

Section 548.002(20), F.S., defines “promoter” as any person or entity, including any officer, director, employee, or stockholder of a corporate promoter, who produces, arranges, or stages any match involving a professional. Section 548.012, F.S., provides for the licensure of promoters.

Applicants for promoter licensure are required to submit a completed application along with a non-refundable application fee of \$250²¹ and must deposit with the Commission a surety bond, cash, or certified check in the amount of \$15,000 prior to being issued a promoter license.²²

Promoters are responsible for producing the events at which matches are held, and are responsible for ensuring the following requirements are met:

- Insurance is obtained for the event in the following amounts:
 - Minimum of \$20,000 per participant for medical, surgical and hospital care for injuries sustained while engaged in a match.
 - Minimum of \$20,000 per participant for life insurance covering death caused by injuries received while engaged in a bout.
 - Any deductible associated with these policies is entirely the responsibility of the promoter of record.²³
- Live Event Permit is issued for the event from the Commission.²⁴
- Location of the weigh-in and pre-match physical is scheduled, and the participants are notified of the location. Additionally, the promoter is responsible for ensuring the weigh-in location is appropriate for the weigh-in, pre-match physicals are completed, and the required documentation is present from each participant.²⁵
- The correct number of all access credentials are provided for the Commission employees that will attend the event.
- The venue has the appropriate ring and apron, required equipment, and medical personnel and equipment present for the match.²⁶

¹⁸ Florida State Boxing Commission Annual Report, Fiscal Year 2011-2012, p. 5, available at https://www.google.com/url?q=http://www.myfloridalicense.com/dbpr/os/news/Boxing10_17_12.html&sa=U&ei=vfoVU-X3CsPW2AWps4D4Cw&ved=0CAYQFjAA&client=internal-uds-cse&usg=AFQjCNF-2nwlF6jibOo9m4VuSq-Q1wUTHw (last viewed March 4, 2014).

¹⁹ Section 548.003(1), F.S.

²⁰ See *supra* note 2.

²¹ Rule 61K1-1.003, F.A.C.

²² Rule 61K1-1.005, F.A.C.

²³ Rule 61K1-1.0035, F.A.C.

²⁴ See *supra* note 21.

²⁵ Rule 61K1-1.004, F.A.C.

²⁶ Rule 61K1-1.0031, F.A.C.

- Payment is made to the referees, judges, and ringside physicians assigned by the Commission for the event.²⁷
- Reporting requirements as set forth in s. 548.06, F.S., are complied with regarding gross receipts and the applicable taxes related to gross receipts are paid.

Promoter Records Requirements

Section 548.06, F.S., requires that, within 72 hours after a match, the promoter of a match file a written report with the Commission. The report must include information about the number of tickets sold, the amount of gross receipts, and any other facts that the Commission requires.

The written report shall be accompanied by a tax payment in the amount of five percent of the total gross receipts, exclusive of any federal taxes; however, the tax payment derived from the gross price charged for the sale or lease of broadcasting, television, and motion picture rights cannot exceed \$40,000 for any single event. For the purposes of ch. 548, F.S., “gross receipts” is defined as:

- The gross price charged for the sale or lease of broadcasting, television, and pay-per-view rights of any match occurring within the state of Florida.
- The face value of all tickets sold and complimentary tickets issued, provided, or given above five percent of the seats in the house and not authorized by the Commission.
- The face value of any seat or seating issued, provided, or given in exchange for advertising, sponsorships, or anything of value to the promoter of an event.

Promoters are permitted to issue, provide, or give complimentary tickets for up to five percent of the seats in the house without including the tickets in the gross receipts and without paying corresponding taxes on them. The promoter may request the Commission’s authorization to issue, provide, or give more than five percent of the seats in the house as complimentary tickets if the tickets are provided to specific entities or individuals.

Chapter 548, F.S., does not require the promoter to retain records in relation to the filing of the written report. Currently, ch. 548, F.S., does not provide an exemption from the public records requirements for any documents or information provided in the reports submitted to the commission pursuant to s. 548.06, F.S.

Current Public Records Exemption

Section 548.062, F.S., provides a public records exemption for proprietary confidential business information submitted by promoters in a post-match report to the Commission or obtained by audit of the Commission. “Proprietary confidential business information” is defined as information that is owned or controlled by the promoter; that is intended by the promoter to be and is treated by the promoter as private in that the disclosure of the information would cause harm to the promoter or its business operations; that has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or a private agreement that provides that the information will not be released to the public; and that concerns any of the following:

- The number of ticket sales for a match.
- The amount of gross receipts after a match.
- Trade secrets.
- Business plans.
- Internal auditing controls and reports of internal auditors.
- Reports of external auditors.²⁸

²⁷ See *supra* note 22.

²⁸ s. 548.062(1), F.S.

The release of the proprietary confidential business information is authorized to another governmental entity in the performance of its duties and responsibilities.²⁹ The exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2019, unless reviewed and saved from repeal by the Legislature.³⁰

Effect of the Bill

The bill amends the public records exemption under s. 548.062, F.S. The current exemption provides that all proprietary confidential business information **required to be filed with the Commission after a match** or obtained during an audit of the promoter's books and records pursuant to s. 548.06, F.S., is confidential and exempt from s. 119.07(1), F.S., and Article I, section 24(a) of the Florida Constitution. Specifically, the bill expands the exemption to cover all proprietary confidential business information **provided by a promoter to the Commission** or obtained during an audit of the promoter's books and records pursuant to s. 548.06, F.S.

The definition of "proprietary confidential business information" is not amended or expanded, nor does it modify the language providing that the proprietary confidential business information may be disclosed to another governmental entity in the performance of its duties and responsibilities.

The bill provides that the section is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill also provides a public necessity statement as required by the State Constitution. It provides that:

The disclosure of proprietary confidential business information could injure a promoter in the marketplace by giving the promoter's competitors insights into the promoter's financial status and business plan, thereby putting the promoter at a competitive disadvantage. The Legislature also finds that the harm to a promoter in disclosing proprietary confidential business information significantly outweighs any public benefit derived from the disclosure of such information.

B. SECTION DIRECTORY:

Section 1 amends s. 548.062, F.S., providing an exemption from public records requirements for proprietary confidential business information submitted by promoters to the Commission or obtained by audit of the Commission pursuant to s. 548.06, F.S.

Section 2 provides the legislative statement of public necessity for the public records exemption.

Section 3 provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Department anticipates no impact on revenues.

²⁹ s. 548.062(2), F.S.

³⁰ s. 548.062(3), F.S.

2. Expenditures:

The Department anticipates no impact on expenditures.

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 records or public meetings exemption. The bill expands the current public records 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 records or public meetings exemption. The bill expands the current public records exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a newly created public records or public meetings exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill expands the current public records exemption for proprietary confidential business information filed with the Commission after a match to include such information provided by a promoter to the Commission.

B. RULE-MAKING AUTHORITY:

There appears to be no rulemaking authority added or amended.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues: Public necessity statement

It is suggested that lines 30-31 of the public necessity statement be modified to clarify that the Legislature finds that it is a public necessity that proprietary confidential business information provided by a promoter to the Florida State Boxing Commission be made confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. This will ensure that the public necessity statement comports with the expanded public records exemption.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 548.062, F.S.; revising an exemption from public
 4 records requirements with respect to certain
 5 proprietary confidential business information obtained
 6 by the Florida State Boxing Commission; extending the
 7 period for legislative review and repeal of the
 8 exemption; providing a statement of public necessity;
 9 providing an effective date.

10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25
 26

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

Section 1. Subsections (2) and (3) of section 548.062,
 Florida Statutes, is amended to read:

548.062 Public records exemption.—

(2) Proprietary confidential business information provided
 by a promoter in the ~~written report required to be filed with~~
 the commission ~~after a match~~ or obtained by the commission
 through an audit of the promoter's books and records pursuant to
 s. 548.06 is confidential and exempt from s. 119.07(1) and s.
 24(a), Art. I of the State Constitution. Information made
 confidential and exempt by this subsection may be disclosed to
 another governmental entity in the performance of its duties and
 responsibilities.

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

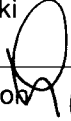


27 on October 2, ~~2021~~ 2019, unless reviewed and saved from repeal
28 through reenactment by the Legislature.

29 Section 2. The Legislature finds that it is a public
30 necessity that proprietary confidential business information be
31 protected from disclosure. The disclosure of proprietary
32 confidential business information could injure a promoter in the
33 marketplace by giving the promoter's competitors insights into
34 the promoter's financial status and business plan, thereby
35 putting the promoter at a competitive disadvantage. The
36 Legislature also finds that the harm to a promoter in disclosing
37 proprietary confidential business information significantly
38 outweighs any public benefit derived from the disclosure of such
39 information. For these reasons, the Legislature declares that
40 any proprietary confidential business information provided by a
41 promoter to the Florida State Boxing Commission is confidential
42 and exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
43 Article I of the State Constitution.

44 Section 3. This act shall take effect July 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 463 Public Records/Unsworn DFS Investigative Personnel
SPONSOR(S): Insurance & Banking Subcommittee; DuBose
TIED BILLS: IDEN./SIM. **BILLS:** SB 592

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	11 Y, 1 N, As CS	Peterson	Luczynski 
2) Government Operations Subcommittee		Toliver 	Williamson 
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

Current law provides public records exemptions for personal identification and location information of certain current or former agency personnel and their spouses and children.

CS/HB 463 expands the current public records exemptions to include current and former unsworn investigative personnel of the Department of Financial Services. The exemption covers the home addresses, telephone numbers, dates of birth, and photographs of the personnel; 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 child care facilities attended by their children.

The bill provides for repeal of the exemption on October 2, 2021, unless reviewed and saved from repeal by the Legislature. In addition, the bill provides a statement of public necessity as required by the State Constitution.

The bill may have an insignificant fiscal impact on the state and local governments.

The bill takes effect upon becoming a law.

Article I, section 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records or public meetings exemption. The bill expands the current public records exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Public Records

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of the legislative, executive, or judicial branches of government.¹ The Legislature, however, may by general law exempt records from the constitutional requirement.² An exemption must state with specificity the public necessity justifying the exemption and may be no broader than necessary to accomplish the stated purpose of the law.³ A bill enacting an exemption must pass by a two-thirds vote of the members present and voting.⁴

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly-created or substantially-amended public records or open meetings exemptions.⁵ A public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose. An identifiable public purpose is served, if the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a government program, which administration would be significantly impaired without the exemption;
- Protects personal identifying information that, if released, would be defamatory or would jeopardize an individual's safety; or
- Protects trade or business secrets.⁶

The Act directs the Legislature to consider the following as part of the review process:

- What specific records or meetings are affected by the exemption?
- What specific parties does the exemption affect?
- What is the public purpose of the exemption?
- Can the information contained in the records or meetings be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?⁷

Finally, the Act requires the automatic repeal of an exemption on October 2 of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.⁸

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(c).

³ *Id.*

⁴ *Id.*

⁵ Section 119.15, F.S.

⁶ Section 119.15(6)(b), F.S.

⁷ Section 119.15(6)(a), F.S.

⁸ Section 119.15(3), F.S.

Exemptions for Agency Personnel Identification and Location Information

Current law provides public records exemptions for personal identification and location information of certain current or former agency personnel and their spouses and children.⁹ Categories of personnel covered by these exemptions include:

- Law enforcement, including correctional, and specified investigatory personnel;
- Firefighters;
- Justices and judges;
- Local and statewide prosecuting attorneys;
- Magistrates, administrative law judges, and child support hearing officers;
- Local government agency and water management district human resources administrators;
- Code enforcement officers;
- Guardians ad litem;
- Specified Department of Juvenile Justice personnel;
- Public defenders and criminal conflict and civil regional counsel;
- Investigators or inspectors of the Department of Business and Professional Regulation;
- County tax collectors;
- Employees of the Department of Health who make eligibility determinations for social security disability benefits, investigate or prosecute complaints against practitioners, or inspect health care facilities; and
- Impaired practitioner consultants and employees of a consultant who make determinations regarding a health care practitioner's safety and skill to practice.

Although the types of exempt information vary, the following information is exempt¹⁰ from public records requirements for all personnel listed above:

- Home addresses and telephone numbers¹¹ of the named personnel;
- Home addresses, telephone numbers, and places of employment of the spouses and their children; and,
- Names and locations of schools and day care facilities attended by their children.

If exempt information is held by an agency that is not the employer of the protected personnel, he or she must submit a written request to the non-employing agency to maintain the public records exemption.¹²

Currently, personal identification and location information of unsworn investigative personnel of the Department of Financial Services (DFS) and their spouses and children is not exempt from public disclosure, unless subject to another exemption.¹³

⁹ See s. 119.071(4)(d), F.S.

¹⁰ There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates as *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, the record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See 85-62 Fla. Op. Att'y Gen. (1985).

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

¹² Section 119.071(4)(d)3., F.S.

¹³ For example, the exemption related to former law enforcement officers applies to certain DFS employees. Section 119.071(4)(d)2.a.(I) and (II), F.S.

Effect of the Bill

CS/HB 463 expands the current public records exemptions for identification and location information of specified agency personnel to include current and former unsworn investigative personnel of the DFS. It provides that the home addresses, telephone numbers, dates of birth, and photographs of such personnel; 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 child care facilities attended by their children are exempt from public records requirements.

The bill currently affects 206 employees in the Divisions of: Insurance Agent & Agency Services;¹⁴ Accounting & Auditing;¹⁵ Funeral, Cemetery & Consumer Services;¹⁶ Workers Compensation;¹⁷ and Public Assistance Fraud.^{18, 19} While the bill does not define “investigative personnel,” the DFS defines it to include unsworn investigators who have authority to issue enforcement actions and their supervisors.²⁰ Supervisors are included because they review enforcement actions and periodically accompany investigators in the field and the State Attorney’s office.²¹ The term does not include support staff or others who do not carry a badge.²²

These personnel conduct face-to-face interviews, collect evidence, inspect and assess compliance, conduct surveillance, and prepare reports that cause consequences for the target of an investigation. These efforts may result in arrest and prosecution for crimes up to and including first degree felonies; loss of commerce and property; monetary fines; or the suspension or loss of professional licenses.²³

The DFS has provided numerous examples from each of the affected divisions of employees who have been threatened as a result of their duties and who have feared repercussion. Threats range from weapons brandished; verbal threats to harm the person or his or her family; harassment; and intimidation.²⁴ Threats have been made directly and indirectly, including telephone messages left on personal phone lines.²⁵ In at least one instance, the target of the investigation used a public records request to obtain an investigator’s personnel file.²⁶

¹⁴ The Division of Insurance Agent & Agency Services conducts administrative investigations of its licensees, which include insurance agents and agencies; insurance adjusters; bail bond agents and agencies; navigators; title agents, agencies, and escrow accounts; and warranty sales. Disciplinary action, including license revocation and a permanent ban from the insurance industry, may result. Approximately, 10-20 percent of the division’s cases are referred for criminal investigation.

¹⁵ The Office of Fiscal Integrity within the Division of Accounting & Auditing investigates suspicion of theft, attempted theft, or the misappropriation of state funds.

¹⁶ The Division of Funeral, Cemetery & Consumer Services regulates the deathcare industry in Florida. The division investigates complaints from the public regarding conduct of licensees, such as allegations of fraudulent activities or improper handling of human remains. Disciplinary action, including license revocation, may result.

¹⁷ Investigators in the Division of Workers’ Compensation enforce the statutory requirement that employers secure workers’ compensation coverage for their employees. Investigators issue stop-work orders, ceasing all the business operations of the employer if the employer lacks workers’ compensation coverage. Mandatory fines may also be imposed.

¹⁸ The Division of Public Assistance Fraud investigates recipients of Supplemental Nutrition Assistance Program, Medicaid, School Readiness, Social Security Administration disability programs, and Temporary Assistance for Needy Families, and merchants, daycare providers and employees of the Department of Children & Families or Early Learning Coalitions alleged to have committed fraud.

¹⁹ Email from Elizabeth Boyd, Legislative Affairs Director, Florida Department of Financial Services, RE: HB 463 (Nov. 9, 2015) (on file with the House Insurance & Banking Subcommittee).

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ Florida Department of Financial Services, Agency Analysis of 2015 House Bill 463, p.1 (Nov. 10, 2015) (on file with the House Insurance & Banking Subcommittee).

²⁴ *Id.*

²⁵ *Id.*

²⁶ Email from Elizabeth Boyd, Legislative Affairs Director, Florida Department of Financial Services, RE: HB 463 (Nov. 5, 2015) (on file with the House Insurance & Banking Subcommittee).

The bill provides that the exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2021, unless reviewed and saved from repeal by the Legislature. It also provides a public necessity statement as required by the State Constitution.

B. SECTION DIRECTORY:

Section 1: Amends s. 119.071, F.S., to provide an exemption from public records requirements for the personal identifying and location information of certain unsworn investigative personnel of the DFS.

Section 2: Provides a public necessity statement.

Section 3: Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records or public meetings exemption. The bill expands current public records exemptions; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public records or public meetings exemption. The bill expands current public records exemptions; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public records or public meetings exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public records exemption for the identification and location information of investigative personnel of the DFS.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 18, 2015, the Insurance & Banking Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The amendments revised the scope of the exemption to remove social security numbers, photographs of the spouse and children, and language related to the types of investigations and to add further description of the justification for the exemption.

The staff analysis is drafted to reflect the committee substitute.

27 former sworn or civilian law enforcement personnel, including
 28 correctional and correctional probation officers, personnel of
 29 the Department of Children and Families whose duties include the
 30 investigation of abuse, neglect, exploitation, fraud, theft, or
 31 other criminal activities, personnel of the Department of Health
 32 whose duties are to support the investigation of child abuse or
 33 neglect, and personnel of the Department of Revenue or local
 34 governments whose responsibilities include revenue collection
 35 and enforcement or child support enforcement; the home
 36 addresses, telephone numbers, social security numbers,
 37 photographs, dates of birth, and places of employment of the
 38 spouses and children of such personnel; and the names and
 39 locations of schools and day care facilities attended by the
 40 children of such personnel are exempt from s. 119.07(1)..

41 (II) The names of the spouses and children of active or
 42 former sworn or civilian law enforcement personnel and the other
 43 specified agency personnel identified in sub-sub-subparagraph
 44 (I) are exempt from s. 119.07(1) and s. 24(a), Art. I of the
 45 State Constitution.

46 (III) Sub-sub-subparagraph (II) is subject to the Open
 47 Government Sunset Review Act in accordance with s. 119.15, and
 48 shall stand repealed on October 2, 2018, unless reviewed and
 49 saved from repeal through reenactment by the Legislature.

50 (IV) The home addresses, telephone numbers, dates of
 51 birth, and photographs of current or former unsworn
 52 investigative personnel of the Department of Financial Services;

53 the names, home addresses, telephone numbers, dates of birth,
 54 and places of employment of the spouses and children of such
 55 personnel; and the names and locations of schools and child care
 56 facilities attended by the children of such personnel are exempt
 57 from s. 119.07(1) and s. 24(a), Art. I of the State
 58 Constitution. This sub-sub-subparagraph is subject to the Open
 59 Government Sunset Review Act in accordance with s. 119.15 and
 60 shall stand repealed on October 2, 2021, unless reviewed and
 61 saved from repeal through reenactment by the Legislature.

62 b. The home addresses, telephone numbers, dates of birth,
 63 and photographs of firefighters certified in compliance with s.
 64 633.408; the home addresses, telephone numbers, photographs,
 65 dates of birth, and places of employment of the spouses and
 66 children of such firefighters; and the names and locations of
 67 schools and day care facilities attended by the children of such
 68 firefighters are exempt from s. 119.07(1).

69 c. The home addresses, dates of birth, and telephone
 70 numbers of current or former justices of the Supreme Court,
 71 district court of appeal judges, circuit court judges, and
 72 county court judges; the home addresses, telephone numbers,
 73 dates of birth, and places of employment of the spouses and
 74 children of current or former justices and judges; and the names
 75 and locations of schools and day care facilities attended by the
 76 children of current or former justices and judges are exempt
 77 from s. 119.07(1).

78 d.(I) The home addresses, telephone numbers, social

79 security numbers, dates of birth, and photographs of current or
 80 former state attorneys, assistant state attorneys, statewide
 81 prosecutors, or assistant statewide prosecutors; the home
 82 addresses, telephone numbers, social security numbers,
 83 photographs, dates of birth, and places of employment of the
 84 spouses and children of current or former state attorneys,
 85 assistant state attorneys, statewide prosecutors, or assistant
 86 statewide prosecutors; and the names and locations of schools
 87 and day care facilities attended by the children of current or
 88 former state attorneys, assistant state attorneys, statewide
 89 prosecutors, or assistant statewide prosecutors are exempt from
 90 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

91 (II) The names of the spouses and children of current or
 92 former state attorneys, assistant state attorneys, statewide
 93 prosecutors, or assistant statewide prosecutors are exempt from
 94 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

95 (III) Sub-sub-subparagraph (II) is subject to the Open
 96 Government Sunset Review Act in accordance with s. 119.15, and
 97 shall stand repealed on October 2, 2018, unless reviewed and
 98 saved from repeal through reenactment by the Legislature.

99 e. The home addresses, dates of birth, and telephone
 100 numbers of general magistrates, special magistrates, judges of
 101 compensation claims, administrative law judges of the Division
 102 of Administrative Hearings, and child support enforcement
 103 hearing officers; the home addresses, telephone numbers, dates
 104 of birth, and places of employment of the spouses and children

105 of general magistrates, special magistrates, judges of
 106 compensation claims, administrative law judges of the Division
 107 of Administrative Hearings, and child support enforcement
 108 hearing officers; and the names and locations of schools and day
 109 care facilities attended by the children of general magistrates,
 110 special magistrates, judges of compensation claims,
 111 administrative law judges of the Division of Administrative
 112 Hearings, and child support enforcement hearing officers are
 113 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 114 Constitution if the general magistrate, special magistrate,
 115 judge of compensation claims, administrative law judge of the
 116 Division of Administrative Hearings, or child support hearing
 117 officer provides a written statement that the general
 118 magistrate, special magistrate, judge of compensation claims,
 119 administrative law judge of the Division of Administrative
 120 Hearings, or child support hearing officer has made reasonable
 121 efforts to protect such information from being accessible
 122 through other means available to the public.

123 f. The home addresses, telephone numbers, dates of birth,
 124 and photographs of current or former human resource, labor
 125 relations, or employee relations directors, assistant directors,
 126 managers, or assistant managers of any local government agency
 127 or water management district whose duties include hiring and
 128 firing employees, labor contract negotiation, administration, or
 129 other personnel-related duties; the names, home addresses,
 130 telephone numbers, dates of birth, and places of employment of

131 the spouses and children of such personnel; and the names and
 132 locations of schools and day care facilities attended by the
 133 children of such personnel are exempt from s. 119.07(1) and s.
 134 24(a), Art. I of the State Constitution.

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

143 h. The home addresses, telephone numbers, places of
 144 employment, dates of birth, and photographs of current or former
 145 guardians ad litem, as defined in s. 39.820; the names, home
 146 addresses, telephone numbers, dates of birth, and places of
 147 employment of the spouses and children of such persons; and the
 148 names and locations of schools and day care facilities attended
 149 by the children of such persons are exempt from s. 119.07(1) and
 150 s. 24(a), Art. I of the State Constitution, if the guardian ad
 151 litem provides a written statement that the guardian ad litem
 152 has made reasonable efforts to protect such information from
 153 being accessible through other means available to the public.

154 i. The home addresses, telephone numbers, dates of birth,
 155 and photographs of current or former juvenile probation
 156 officers, juvenile probation supervisors, detention

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

171 j.(I) The home addresses, telephone numbers, dates of
 172 birth, and photographs of current or former public defenders,
 173 assistant public defenders, criminal conflict and civil regional
 174 counsel, and assistant criminal conflict and civil regional
 175 counsel; the home addresses, telephone numbers, dates of birth,
 176 and places of employment of the spouses and children of such
 177 defenders or counsel; and the names and locations of schools and
 178 day care facilities attended by the children of such defenders
 179 or counsel are exempt from s. 119.07(1) and s. 24(a), Art. I of
 180 the State Constitution.

181 (II) The names of the spouses and children of the
 182 specified agency personnel identified in sub-sub-subparagraph

183 (I) are exempt from s. 119.07(1) and s. 24(a), Art. I of the
 184 State Constitution. This sub-sub-subparagraph is subject to the
 185 Open Government Sunset Review Act in accordance with s. 119.15
 186 and shall stand repealed on October 2, 2019, unless reviewed and
 187 saved from repeal through reenactment by the Legislature.

188 k. The home addresses, telephone numbers, and photographs
 189 of current or former investigators or inspectors of the
 190 Department of Business and Professional Regulation; the names,
 191 home addresses, telephone numbers, and places of employment of
 192 the spouses and children of such current or former investigators
 193 and inspectors; and the names and locations of schools and day
 194 care facilities attended by the children of such current or
 195 former investigators and inspectors are exempt from s. 119.07(1)
 196 and s. 24(a), Art. I of the State Constitution if the
 197 investigator or inspector has made reasonable efforts to protect
 198 such information from being accessible through other means
 199 available to the public. This sub-subparagraph is subject to the
 200 Open Government Sunset Review Act in accordance with s. 119.15
 201 and shall stand repealed on October 2, 2017, unless reviewed and
 202 saved from repeal through reenactment by the Legislature.

203 l. The home addresses and telephone numbers of county tax
 204 collectors; the names, home addresses, telephone numbers, and
 205 places of employment of the spouses and children of such tax
 206 collectors; and the names and locations of schools and day care
 207 facilities attended by the children of such tax collectors are
 208 exempt from s. 119.07(1) and s. 24(a), Art. I of the State

209 Constitution if the county tax collector has made reasonable
 210 efforts to protect such information from being accessible
 211 through other means available to the public. This sub-
 212 subparagraph is subject to the Open Government Sunset Review Act
 213 in accordance with s. 119.15 and shall stand repealed on October
 214 2, 2017, unless reviewed and saved from repeal through
 215 reenactment by the Legislature.

216 m. The home addresses, telephone numbers, dates of birth,
 217 and photographs of current or former personnel of the Department
 218 of Health whose duties include, or result in, the determination
 219 or adjudication of eligibility for social security disability
 220 benefits, the investigation or prosecution of complaints filed
 221 against health care practitioners, or the inspection of health
 222 care practitioners or health care facilities licensed by the
 223 Department of Health; the names, home addresses, telephone
 224 numbers, dates of birth, and places of employment of the spouses
 225 and children of such personnel; and the names and locations of
 226 schools and day care facilities attended by the children of such
 227 personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of
 228 the State Constitution if the personnel have made reasonable
 229 efforts to protect such information from being accessible
 230 through other means available to the public. This sub-
 231 subparagraph is subject to the Open Government Sunset Review Act
 232 in accordance with s. 119.15 and shall stand repealed on October
 233 2, 2019, unless reviewed and saved from repeal through
 234 reenactment by the Legislature.

235 n. The home addresses, telephone numbers, dates of birth,
 236 and photographs of current or former impaired practitioner
 237 consultants who are retained by an agency or current or former
 238 employees of an impaired practitioner consultant whose duties
 239 result in a determination of a person's skill and safety to
 240 practice a licensed profession; the names, home addresses,
 241 telephone numbers, dates of birth, and places of employment of
 242 the spouses and children of such consultants or their employees;
 243 and the names and locations of schools and day care facilities
 244 attended by the children of such consultants or employees are
 245 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 246 Constitution if a consultant or employee has made reasonable
 247 efforts to protect such information from being accessible
 248 through other means available to the public. This sub-
 249 subparagraph is subject to the Open Government Sunset Review Act
 250 in accordance with s. 119.15 and shall stand repealed on October
 251 2, 2020, unless reviewed and saved from repeal through
 252 reenactment by the Legislature.

253 3. An agency that is the custodian of the information
 254 specified in subparagraph 2. and that is not the employer of the
 255 officer, employee, justice, judge, or other person specified in
 256 subparagraph 2. shall maintain the exempt status of that
 257 information only if the officer, employee, justice, judge, other
 258 person, or employing agency of the designated employee submits a
 259 written request for maintenance of the exemption to the
 260 custodial agency.

261 4. The exemptions in this paragraph apply to information
 262 held by an agency before, on, or after the effective date of the
 263 exemption.

264 5. Except as otherwise expressly provided in this
 265 paragraph, this paragraph is subject to the Open Government
 266 Sunset Review Act in accordance with s. 119.15, and shall stand
 267 repealed on October 2, 2017, unless reviewed and saved from
 268 repeal through reenactment by the Legislature.

269 Section 2. The Legislature finds that it is a public
 270 necessity to exempt from public records requirements the home
 271 addresses, telephone numbers, dates of birth, and photographs of
 272 current or former unsworn investigative personnel of the
 273 Department of Financial Services; the names, home addresses,
 274 telephone numbers, dates of birth, and places of employment of
 275 the spouses and children of such personnel; and the names and
 276 locations of schools and child care facilities attended by the
 277 children of such personnel. The efforts of such personnel can
 278 lead to arrests and prosecutions for crimes up to and including
 279 first degree felony violations and can also result in the loss
 280 of commerce and property, the assessment of monetary fines, or
 281 the suspension or loss of professional licenses. The department
 282 has documented numerous examples of personnel who have been
 283 threatened and who have feared repercussions as a result of
 284 their carrying out their duties. These threats have included
 285 weapons being brandished, verbal threats made to harm them or
 286 their family members, harassment, and intimidation. In at least

287 one instance, the target of the investigation used a public
 288 records request to access an investigator's personnel file. As a
 289 result, the Legislature finds that the release of such personal
 290 identifying and location information might place these unsworn
 291 investigative personnel of the department and their family
 292 members in danger of physical and emotional harm from
 293 disgruntled individuals who have contentious reactions to
 294 actions taken by such personnel, or whose business or
 295 professional practices have come under the scrutiny of such
 296 personnel. The Legislature further finds that the harm that may
 297 result from the release of such personal identifying and
 298 location information outweighs any public benefit that may be
 299 derived from the disclosure of the information.

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



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Government Operations

2 Subcommittee

3 Representative DuBose offered the following:

4
5 **Amendment**

6 Remove lines 52-55 and insert:

7 investigative personnel of the Department of Financial Services
8 whose duties include the investigation of fraud, theft, workers'
9 compensation coverage requirements and compliance, other
10 criminal activities, or state regulatory requirement violations;
11 the names, home addresses, telephone numbers, dates of birth,
12 and places of employment of the spouses and children of such
13 personnel; and the names and locations of schools and day care



Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Government Operations
 2 Subcommittee
 3 Representative DuBose offered the following:

Amendment

Remove lines 273-276 and insert:

7 Department of Financial Services whose duties include the
 8 investigation of fraud, theft, workers' compensation coverage
 9 requirements and compliance, other criminal activities, or state
 10 regulatory requirement violations; the names, home addresses,
 11 telephone numbers, dates of birth, and places of employment of
 12 the spouses and children of such personnel; and the names and
 13 locations of schools and day care facilities attended by the

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 505 Voter Identification
SPONSOR(S): Burgess, Jr. and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 666

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Toliver <i>LT</i>	Williamson <i>RAW</i>
2) Veteran & Military Affairs Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

The Florida Election Code requires a voter to provide certain forms of identification for various electoral activities. The acceptable forms of identification vary according to the activity, but examples include a United States passport, Florida driver license or identification card, military identification, or student identification.

The bill adds veteran health identification cards issued by the United States Department of Veterans Affairs and licenses to carry a concealed weapon or firearm to the current lists of valid forms of identification for purposes of identification at the polls, completing absentee ballot affidavits, and identification for first time voters registering by mail.

The bill may have a fiscal impact on the Department of State if it is required to revise its existing rules and publications. In addition, the bill may have a fiscal impact on the supervisors of elections due to their having to alter absentee ballot instructions for certain first-time voters and absentee ballot affidavits.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Voter Identification

The Florida Election Code¹ requires certain forms of identification for various electoral activities. The acceptable forms of identification vary according to the activity.

A person registering to vote in Florida for the first time may hand deliver or mail his or her voter registration application.² A person registering by mail who has never previously voted in Florida and who the Department of State verifies has not been issued a current and valid Florida driver license, Florida identification card, or social security number must provide a copy of certain specified forms of identification or indicate that he or she is exempt from providing such identification³ prior to voting.⁴ The following are valid and acceptable forms of identification provided the identification has not expired and includes the name and photograph of the applicant:

- United States passport.
- Debit or credit card.
- Military identification.
- Student identification.
- Retirement center identification.
- Neighborhood association identification.
- Public assistance identification.⁵

In addition, a utility bill, bank statement, government check, paycheck, and other government documents (excluding voter identification cards) are considered valid and acceptable forms of identification provided they are current and contain the name and current residence address of the applicant.⁶

If an applicant meeting the aforementioned requirements opts to vote by absentee ballot and has not yet provided the required identification by the time his or her ballot is mailed, the applicant must still provide a copy of one of the acceptable forms of identification discussed above or indicate he or she is exempt.⁷

¹ Chapters 97-106, F.S.

² Section 97.053(1), F.S.

³ Section 97.0535(4), F.S., provides that the following persons are exempt from the identification requirements:

- Persons 65 years of age or older.
- Persons with a temporary or permanent physical disability.
- Members of the uniformed service on active duty who, by reason of such active duty, are absent from the county on election day, and their spouses or dependents.
- Members of the Merchant Marine who, by reason of service in the Merchant Marine, are absent from the county on election day, and their spouses or dependents.
- Persons currently residing outside the United States who are eligible to vote in Florida.

⁴ Section 97.0535(1), F.S.

⁵ Section 97.0535(3)(a), F.S.

⁶ Section 97.0535(3)(b), F.S.

⁷ Section 101.6923, F.S.

Current law requires the precinct register to be used at the polls for the purpose of identifying the elector before allowing him or her to vote. The clerk or inspector must require each elector upon entering the polling place to present one of the following current and valid picture identifications for the purpose of identifying each elector before allowing him or her to vote:

- Florida driver license.
- Florida identification card issued by the Department of Highway Safety and Motor Vehicles.
- U.S. passport.
- Debit or credit card.
- Military identification.
- Student identification.
- Retirement center identification.
- Neighborhood association identification.
- Public assistance identification.⁸

An elector voting by absentee ballot must sign a voter's certificate.⁹ The supervisor of elections compares the signature of the elector on the voter's certificate with the signature in the voter registration books or the precinct register to determine if the elector is registered to vote in the county.¹⁰ If the signatures do not match, the elector has until 5:00 p.m. on the day before the election to complete an absentee ballot affidavit to correct the discrepancy.¹¹ The instructions for the absentee ballot affidavit require the elector to make a copy of a form of identification that includes the person's name and photograph or a form of identification that shows the person's name and current residence address. The following are acceptable forms of such identification that must accompany the absentee ballot affidavit when provided to the supervisor of elections:

- U.S. passport;
- Debit or credit card;
- Military identification;
- Student identification;
- Retirement center identification ;
- Neighborhood association identification;
- Public assistance identification; or
- Current utility bill, bank statement, government check, paycheck, or other government document (excluding voter identification cards).¹²

Veteran Health Identification Card

The veteran health identification card is issued by the U.S. Department of Veterans Affairs (USDVA) to veterans who are enrolled in the USDVA health care system for identification and check-in at USDVA appointments.¹³ In order to receive an identification card, the veteran must apply for enrollment in the USDVA health care system and provide a primary and secondary form of identification.¹⁴ Once the veteran's enrollment is verified, the veteran must have his or her picture taken at the local USDVA medical center for inclusion on the identification card.¹⁵

License to Carry a Concealed Weapon or Firearm

The Department of Agriculture and Consumer Services is authorized to issue licenses to carry concealed weapons or concealed firearms to qualified persons.¹⁶ Recipients of a Florida concealed

⁸ Section 101.043(1)(a), F.S.

⁹ Section 101.64(1), F.S.

¹⁰ Section 101.68(1), F.S.

¹¹ Section 101.68(4)(b), F.S.

¹² Section 101.68(4)(c), F.S.

¹³ U.S. Department of Veterans Affairs, Health Benefits, available at <http://www.va.gov/healthbenefits/vhic/index.asp> (last visited Jan. 11, 2016).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Section 790.06(1), F.S.

weapon or firearm license in part must be 21 years of age or older; demonstrate competency with a firearm; and, unless currently serving overseas in the United States Armed Forces, currently reside in the United States as a U.S. citizen or a lawful permanent resident alien.¹⁷

Effect of the Bill

The bill adds veteran health identification cards issued by the United States Department of Veterans Affairs and licenses to carry a concealed weapon or firearm to the current lists of valid forms of identification for purposes of identification at the polls, completing absentee ballot affidavits, and identification for first time voters registering by mail.

B. SECTION DIRECTORY:

Section 1 amends s. 97.0535, F.S., to expand the list of acceptable forms of identification for first time voters registering by mail.

Section 2 amends s. 101.043, F.S., to expand the list of acceptable forms of identification for identification at the polls.

Section 3 amends s. 101.68, F.S., to expand the list of acceptable forms of identification for completing an absentee ballot affidavit.

Section 4 amends s. 101.6923, F.S., to expand the list of acceptable forms of identification for certain first-time voters.

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:

There may be a fiscal impact to the Department of State if it is required to revise its existing rules and publications.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

There may be a fiscal impact to supervisors of elections associated with the alteration of the special instructions required by s. 101.6923, F.S., and absentee ballot affidavits required by s. 101.68(4), F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

¹⁷ Section 790.06(2), F.S.
STORAGE NAME: h0505.GVOPS.DOCX
DATE: 1/11/2016

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Article VII, section 18, of the Florida Constitution explicitly exempts election laws from the municipality/county "mandates" provision within that section.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill may require the Division of Elections within the Department of State to alter its rules to conform to the changes in law; however, no additional rulemaking authority is necessary.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled

2 An act relating to voter identification; amending s.
 3 97.0535, F.S.; expanding the list of acceptable forms
 4 of identification for certain voter registration
 5 applicants to include veteran health identification
 6 cards and licenses to carry a concealed weapon or
 7 firearm; amending s. 101.043, F.S.; expanding the list
 8 of acceptable forms of identification at a polling
 9 place or early voting site to include veteran health
 10 identification cards and licenses to carry a concealed
 11 weapon or firearm; amending ss. 101.68 and 101.6923,
 12 F.S.; revising absentee ballot and special absentee
 13 ballot instructions, respectively, to conform to
 14 changes made by the act; providing an effective date.

15
 16 Be It Enacted by the Legislature of the State of Florida:

17
 18 Section 1. Paragraph (a) of subsection (3) of section
 19 97.0535, Florida Statutes, is amended to read:

20 97.0535 Special requirements for certain applicants.—

21 (3)(a) The following forms of identification shall be
 22 considered current and valid if they contain the name and
 23 photograph of the applicant and have not expired:

- 24 1. United States passport.
 25 2. Debit or credit card.
 26 3. Military identification.

- 27 4. Student identification.
- 28 5. Retirement center identification.
- 29 6. Neighborhood association identification.
- 30 7. Public assistance identification.
- 31 8. Veteran health identification card issued by the United
- 32 States Department of Veterans Affairs.
- 33 9. A license to carry a concealed weapon or firearm issued
- 34 pursuant to s. 790.06.
- 35 Section 2. Paragraph (a) of subsection (1) of section
- 36 101.043, Florida Statutes, is amended to read:
- 37 101.043 Identification required at polls.—
- 38 (1)(a) The precinct register, as prescribed in s. 98.461,
- 39 shall be used at the polls for the purpose of identifying the
- 40 elector at the polls before allowing him or her to vote. The
- 41 clerk or inspector shall require each elector, upon entering the
- 42 polling place, to present one of the following current and valid
- 43 picture identifications:
- 44 1. Florida driver license.
- 45 2. Florida identification card issued by the Department of
- 46 Highway Safety and Motor Vehicles.
- 47 3. United States passport.
- 48 4. Debit or credit card.
- 49 5. Military identification.
- 50 6. Student identification.
- 51 7. Retirement center identification.
- 52 8. Neighborhood association identification.

53 9. Public assistance identification.

54 10. Veteran health identification card issued by the
 55 United States Department of Veterans Affairs.

56 11. A license to carry a concealed weapon or firearm
 57 issued pursuant to s. 790.06.

58 Section 3. Paragraph (d) of subsection (4) of section
 59 101.68, Florida Statutes, is amended to read:

60 101.68 Canvassing of absentee ballot.—

61 (4)

62 (d) Instructions must accompany the absentee ballot
 63 affidavit in substantially the following form:

64
 65 READ THESE INSTRUCTIONS CAREFULLY BEFORE COMPLETING THE
 66 AFFIDAVIT. FAILURE TO FOLLOW THESE INSTRUCTIONS MAY CAUSE YOUR
 67 BALLOT NOT TO COUNT.

68
 69 1. In order to ensure that your absentee ballot will be
 70 counted, your affidavit should be completed and returned as soon
 71 as possible so that it can reach the supervisor of elections of
 72 the county in which your precinct is located no later than 5
 73 p.m. on the 2nd day before the election.

74 2. You must sign your name on the line above (Voter's
 75 Signature).

76 3. You must make a copy of one of the following forms of
 77 identification:

78 a. Identification that includes your name and photograph:

79 United States passport; debit or credit card; military
 80 identification; student identification; retirement center
 81 identification; neighborhood association identification; ~~or~~
 82 public assistance identification; veteran health identification
 83 card issued by the United States Department of Veterans Affairs;
 84 or a Florida license to carry a concealed weapon or firearm; or

85 b. Identification that shows your name and current
 86 residence address: current utility bill, bank statement,
 87 government check, paycheck, or government document (excluding
 88 voter identification card).

89 4. Place the envelope bearing the affidavit into a mailing
 90 envelope addressed to the supervisor. Insert a copy of your
 91 identification in the mailing envelope. Mail, deliver, or have
 92 delivered the completed affidavit along with the copy of your
 93 identification to your county supervisor of elections. Be sure
 94 there is sufficient postage if mailed and that the supervisor's
 95 address is correct.

96 5. Alternatively, you may fax or e-mail your completed
 97 affidavit and a copy of your identification to the supervisor of
 98 elections. If e-mailing, please provide these documents as
 99 attachments.

100 Section 4. Subsection (2) of section 101.6923, Florida
 101 Statutes, is amended to read:

102 101.6923 Special absentee ballot instructions for certain
 103 first-time voters.—

104 (2) A voter covered by this section shall be provided with

105 | printed instructions with his or her absentee ballot in
 106 | substantially the following form:

107 |
 108 | READ THESE INSTRUCTIONS CAREFULLY BEFORE MARKING YOUR
 109 | BALLOT. FAILURE TO FOLLOW THESE INSTRUCTIONS MAY CAUSE
 110 | YOUR BALLOT NOT TO COUNT.

111 |
 112 | 1. In order to ensure that your absentee ballot will be
 113 | counted, it should be completed and returned as soon as possible
 114 | so that it can reach the supervisor of elections of the county
 115 | in which your precinct is located no later than 7 p.m. on the
 116 | date of the election. However, if you are an overseas voter
 117 | casting a ballot in a presidential preference primary or general
 118 | election, your absentee ballot must be postmarked or dated no
 119 | later than the date of the election and received by the
 120 | supervisor of elections of the county in which you are
 121 | registered to vote no later than 10 days after the date of the
 122 | election.

123 | 2. Mark your ballot in secret as instructed on the ballot.
 124 | You must mark your own ballot unless you are unable to do so
 125 | because of blindness, disability, or inability to read or write.

126 | 3. Mark only the number of candidates or issue choices for
 127 | a race as indicated on the ballot. If you are allowed to "Vote
 128 | for One" candidate and you vote for more than one, your vote in
 129 | that race will not be counted.

130 | 4. Place your marked ballot in the enclosed secrecy

131 envelope and seal the envelope.

132 5. Insert the secrecy envelope into the enclosed envelope
 133 bearing the Voter's Certificate. Seal the envelope and
 134 completely fill out the Voter's Certificate on the back of the
 135 envelope.

136 a. You must sign your name on the line above (Voter's
 137 Signature).

138 b. If you are an overseas voter, you must include the date
 139 you signed the Voter's Certificate on the line above (Date) or
 140 your ballot may not be counted.

141 c. An absentee ballot will be considered illegal and will
 142 not be counted if the signature on the Voter's Certificate does
 143 not match the signature on record. The signature on file at the
 144 start of the canvass of the absentee ballots is the signature
 145 that will be used to verify your signature on the Voter's
 146 Certificate. If you need to update your signature for this
 147 election, send your signature update on a voter registration
 148 application to your supervisor of elections so that it is
 149 received no later than the start of canvassing of absentee
 150 ballots, which occurs no earlier than the 15th day before
 151 election day.

152 6. Unless you meet one of the exemptions in Item 7., you
 153 must make a copy of one of the following forms of
 154 identification:

155 a. Identification which must include your name and
 156 photograph: United States passport; debit or credit card;

157 military identification; student identification; retirement
 158 center identification; neighborhood association identification;
 159 ~~or~~ public assistance identification; veteran health
 160 identification card issued by the United States Department of
 161 Veterans Affairs; or a Florida license to carry a concealed
 162 weapon or firearm; or

163 b. Identification which shows your name and current
 164 residence address: current utility bill, bank statement,
 165 government check, paycheck, or government document (excluding
 166 voter identification card).

167 7. The identification requirements of Item 6. do not apply
 168 if you meet one of the following requirements:

169 a. You are 65 years of age or older.

170 b. You have a temporary or permanent physical disability.

171 c. You are a member of a uniformed service on active duty
 172 who, by reason of such active duty, will be absent from the
 173 county on election day.

174 d. You are a member of the Merchant Marine who, by reason
 175 of service in the Merchant Marine, will be absent from the
 176 county on election day.

177 e. You are the spouse or dependent of a member referred to
 178 in paragraph c. or paragraph d. who, by reason of the active
 179 duty or service of the member, will be absent from the county on
 180 election day.

181 f. You are currently residing outside the United States.

182 8. Place the envelope bearing the Voter's Certificate into

183 the mailing envelope addressed to the supervisor. Insert a copy
 184 of your identification in the mailing envelope. DO NOT PUT YOUR
 185 IDENTIFICATION INSIDE THE SECRECY ENVELOPE WITH THE BALLOT OR
 186 INSIDE THE ENVELOPE WHICH BEARS THE VOTER'S CERTIFICATE OR YOUR
 187 BALLOT WILL NOT COUNT.

188 9. Mail, deliver, or have delivered the completed mailing
 189 envelope. Be sure there is sufficient postage if mailed.

190 10. FELONY NOTICE. It is a felony under Florida law to
 191 accept any gift, payment, or gratuity in exchange for your vote
 192 for a candidate. It is also a felony under Florida law to vote
 193 in an election using a false identity or false address, or under
 194 any other circumstances making your ballot false or fraudulent.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 607 State Lottery
SPONSOR(S): Artiles and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 790

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Moore <i>AM</i>	Williamson <i>W</i>
2) Government Operations Appropriations Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

The state lottery is authorized by article X, section 15 of the Florida Constitution. Chapter 24, F.S., establishes the state lottery and creates the Department of the Lottery (department) to operate the state lottery with the purpose of maximizing revenues and using them to support improvements in public education.

The department is authorized to adopt rules governing the operation of the state lottery, including the type of lottery games to be conducted and the sales price of tickets. Currently, the department operates both online games and instant (scratch-off) games. Online games allow players to select from a range of numbers on a play slip that are printed by computer terminals connected to the department's system for a drawing at a later time. The department conducts several state online games and also offers two multi-state online games: Powerball and Mega Millions. Scratch-off games are tickets with latex covering that players scratch off to determine instantly whether they have won. As of December 23, 2015, the department offers 75 different scratch-off games with tickets ranging in price from \$1 to \$25.

The department is required to deposit a certain percentage of the gross revenues of online and scratch-off ticket sales into the Educational Enhancement Trust Fund (EETF), which is administered by the Department of Education. Funds in the EETF must be used to benefit public education in accordance with ch. 24, F.S. In Fiscal Year 2013-2014, the amount of lottery revenues deposited into the EETF was \$1.5 billion.

The bill limits the number of scratch-off games that may be available for sale by the department at any one time to 20 and specifies that the sales price of lottery tickets may not exceed \$5.

According to the Revenue Estimating Impact Conference, the bill will result in a reduction in the funds transferred to the EETF of \$263.6 million for Fiscal Year (FY) 2016-17; \$291.8 million for FY 2017-18; \$287.6 million for FY 2018-19; \$302.9 million for FY 2019-20; and \$306.1 million for FY 2020-21.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Lottery Operations

Article X, section 15 of the Florida Constitution authorizes the state lottery. Although the Constitution initially prohibited lotteries, it was amended in 1986 to allow lotteries to be operated only by the state.

Chapter 24, F.S., was enacted by ch. 87-65, L.O.F., to establish the state lottery. Section 24.102, F.S., outlines the purpose and intent of the chapter, which is to enable the people of the state to benefit from significant additional moneys for education and to play the best lottery games available. This section also specifies it is the intent of the Legislature that:

- The net proceeds of lottery games be used to support improvements in public education without serving as a substitute for existing public education resources;
- The lottery be operated by a state department that functions as much as possible in the manner of an entrepreneurial business enterprise;
- The lottery games be operated by a self-supporting, revenue-producing department; and
- The department be accountable to the Legislature and the people of the state through a system of audits and reports and through compliance with financial disclosure, open meetings, and public records laws.¹

Chapter 24, F.S., also establishes the Department of the Lottery (department) to operate the state lottery with the purpose of maximizing revenues in a manner consonant with the dignity of the state and the welfare of its citizens.² Section 24.105(9), F.S., authorizes the department to adopt rules governing the establishment and operation of the state lottery, including the type of lottery games to be conducted and the sales price of tickets.

Currently, the department operates both online games and instant (scratch-off) games. Online games allow players to select from a range of numbers on a play slip that are printed by computer terminals connected to the department's system for a drawing at a later time.³ The department conducts several state online games⁴ and also offers two multi-state online games: Powerball and Mega Millions. Scratch-off games are tickets with latex covering that players scratch off to determine instantly whether they have won.⁵ As of December 23, 2015, the department offers 75 different scratch-off games with tickets ranging in price from \$1 to \$25.⁶

Players may purchase tickets at approximately 13,000 retailers.⁷ Tickets for online games and scratch-off games may be purchased using full service vending machines.⁸ Scratch-off tickets may also be purchased from instant ticket vending machines.⁹ Currently, there are approximately 1,500 instant

¹ Section 24.102(2), F.S.

² Section 24.104, F.S.

³ Office of Program Policy Analysis and Gov't Accountability, Florida Legislature, *Lottery Transfers Continue to Increase; Options Remain to Enhance Transfers and Improve Efficiency*, Report No. 15-03, at 1 (January 2015), available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1503rpt.pdf> [hereinafter OPPAGA Report 15-03].

⁴ The current online games are Florida Lotto, Lucky Money, Fantasy 5, Play 4, Cash 3, and Millionaire Raffle. Florida Lottery, <http://www.flalottery.com> (last visited Dec. 22, 2015).

⁵ *Id.*

⁶ *Id.*

⁷ OPPAGA Report 15-03, at 7.

⁸ Full service vending machines offer both online games and scratch-off games.

⁹ Office of Program Policy Analysis and Gov't Accountability, Florida Legislature, *Lottery Transfers Have Recovered; Options Remain to Enhance Transfers*, Report No. 14-06 (Jan. 2014), available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1406rpt.pdf>.

ticket vending machines and 500 full service vending machines in use in the state.¹⁰ Florida ranked second highest among U.S. lotteries in Fiscal Year 2013-2014, with total lottery ticket sales of \$5.4 billion.¹¹

Use of Lottery Revenues

The department generates revenues through the sale of lottery game tickets and does not receive monies from the General Revenue Fund. For Fiscal Year 2014-2015, the Legislature appropriated \$163.5 million from lottery sales revenue for lottery operations and authorized 420 positions.¹² In that year, the department allocated approximately 75 percent, or \$122.5 million, of its \$163.5 million appropriation to produce and advertise online and scratch-off games.¹³

In addition to funding the operational appropriation, lottery revenue is used to pay prizes and retailer commissions.¹⁴ In Fiscal Year 2013-2014, prizes totaled \$3.43 billion and retailer commissions totaled \$297.3 million.¹⁵ Lottery tickets are sold through retailers across the state, such as supermarkets, convenience stores, gas stations, and newsstands.¹⁶ Retailers receive commissions for selling tickets at a rate of five percent of the ticket price and/or one percent of the prize value (up to \$599) for winning tickets that they redeem at their location.¹⁷ Retailers are eligible to receive bonuses for selling select winning tickets and performance incentive payments.¹⁸

Educational Enhancement Trust Fund

Section 24.121, F.S., establishes the Educational Enhancement Trust Fund (EETF) and directs the department to deposit a certain percentage of the gross revenue from online and scratch-off ticket sales into the EETF at least once each quarter. Funds in the EETF, which is administered by the Department of Education, must be used to benefit public education in accordance with ch. 24, F.S.

Pursuant to s. 24.121(5)(a), F.S., public educational programs and purposes funded by the EETF may include, but are not limited to:

- Endowment;
- Scholarship;
- Matching funds;
- Direct grants;
- Research and economic development related to education;
- Salary enhancement;
- Contracts with independent institutions to conduct programs consistent with the state master plan for postsecondary education; or
- Any other educational program or purpose deemed desirable by the Legislature.

The Legislature must equitably apportion funds in the EETF among public schools, community colleges, and universities, with certain exceptions.¹⁹ Prior to the expenditure of funds, each school district must establish policies and procedures that define enhancement and the types of expenditures consistent with that definition.²⁰ In addition, each school district must make available to the public and

¹⁰ *Id.* at 7.

¹¹ OPPAGA Report 15-03 at 1; however, as indicated therein in footnote 4, Florida is ranked ninth in per capita sales, meaning that the eight states that are higher in the ranking than Florida sell more tickets per person in their states.

¹² *Id.*

¹³ *Id.* at 2.

¹⁴ Section 24.121(1) and (3), F.S.

¹⁵ OPPAGA Report 15-03 at 1.

¹⁶ *Id.* at 1 (footnote 3).

¹⁷ *Id.* Section 24.115(1)(e), F.S., limits on-site redemption of tickets to amounts less than \$600, and validation procedures must be performed appropriate to the lottery game involved.

¹⁸ OPPAGA Report 15-03, at 1 (footnote 3).

¹⁹ Section 24.121(5)(b), F.S.

²⁰ Section 24.121(5)(a), F.S.

distribute on a quarterly basis, in an easy to understand format, how the lottery funds allocated to the school district have been spent.²¹

In Fiscal Year 2013-2014, the amount of lottery revenues deposited into the EETF was \$1.5 billion.²²

Effect of Proposed Changes

The bill limits the number of scratch-off games that may be available for sale by the department at any one time to 20. In addition, the bill specifies that the sales price of lottery tickets may not exceed \$5.

B. SECTION DIRECTORY:

Section 1. amends. s. 24.105, F.S., relating to powers and duties of the department.

Section 2. provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

On December 11, 2015, the Revenue Estimating Impact Conference determined the bill will result in the following reduction in lottery revenues transferred to the EETF:

- FY 2016-17 \$263.6 million
- FY 2017-18 \$291.8 million
- FY 2018-19 \$287.6 million
- FY 2019-20 \$302.9 million
- FY 2020-21 \$306.1 million

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate fiscal impact on the private sector as a result of the likely decline in ticket sales and the likely reduction in the amount of prize money paid.

D. FISCAL COMMENTS:

None.

²¹ Section 24.121(5)(f), F.S.

²² Florida Lottery, *Florida Lottery FY 2013-14 Annual Achievement Report 22* (2015), available at <http://www.flalottery.com/exptkt/annualreport13-14.pdf>.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
 2 An act relating to the state lottery; amending s.
 3 24.105, F.S.; providing a limitation on the number of
 4 scratch-off games available for sale by the Department
 5 of the Lottery at any one time; providing a limitation
 6 on the sales price of lottery tickets; providing an
 7 effective date.

8
 9 Be It Enacted by the Legislature of the State of Florida:

10
 11 Section 1. Paragraphs (a) and (b) of subsection (9) of
 12 section 24.105, Florida Statutes, are amended to read:

13 24.105 Powers and duties of department.—The department
 14 shall:

15 (9) Adopt rules governing the establishment and operation
 16 of the state lottery, including:

17 (a) The type of lottery games to be conducted, except
 18 that:

19 1. No name of an elected official shall appear on the
 20 ticket or play slip of any lottery game or on any prize or on
 21 any instrument used for the payment of prizes, unless such prize
 22 is in the form of a state warrant.

23 2. No coins or currency shall be dispensed from any
 24 electronic computer terminal or device used in any lottery game.

25 3. Other than as specifically provided in s. 24.112, no
 26 terminal or device may be used for any lottery game which may be

HB 607

2016

27 | operated solely by the player without the assistance of the
28 | retailer.

29 | 4. The number of scratch-off games which may be available
30 | for sale by the department at any one time may not exceed 20.

31 | (b) The sales price of tickets, not to exceed \$5.

32 | Section 2. This act shall take effect July 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4041 Write-in Candidates
SPONSOR(S): Geller
TIED BILLS: IDEN./SIM. BILLS: SB 410

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		Toliver <i>VT</i>	Williamson <i>RAW</i>
2) Transportation & Economic Development Appropriations Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

The Florida Constitution sets forth residency requirements for legislators, county commissioners, justices and judges, and the governor, lieutenant governor, and members of the cabinet. The constitutional residency requirement for legislators, county commissioners, justices and judges has been interpreted by Florida courts to mean that residency within the district represented by the office sought is required only at the time of election.

The Florida Statutes provide a residency requirement for write-in candidates. Section 99.0615, F.S., requires a write-in candidate to reside within the district represented by the office sought at the time of qualification. Two recent Florida District Courts of Appeal have held the statute unconstitutional because it conflicts with the residency requirements within the Florida Constitution, which requires residency at the time of election and not at the time of qualification. Both cases have been appealed to the Florida Supreme Court. The Florida Supreme Court has heard oral arguments on the issue but has not issued an opinion in either case.

This bill repeals s. 99.0615, F.S., which was found unconstitutional by the First and Fourth District Courts of Appeal.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Residency Requirements for Candidates

The Florida Constitution sets forth eligibility requirements, which includes residency requirements, for legislators,¹ county commissioners,² judges,³ and the governor, lieutenant governor, and members of the cabinet.⁴ The Florida Supreme Court has held that the legislature is prohibited from imposing any additional eligibility requirements upon candidates for these offices;⁵ however, the legislature is allowed to mandate certain qualifications solely for the purpose of entry onto the ballot, such as full and public disclosure of financial interests, taking an oath, and paying filing fees.⁶

The Florida Constitution sets forth the following residency requirements:

- A legislator must be an elector and resident of the district from which elected, and must have resided in the state for two years prior to the election.⁷
- A county commissioner must be elected from the district from which he or she resides.⁸
- A justice or judge must reside in the territorial jurisdiction of the court from which elected.⁹
- The governor, lieutenant governor, and members of the cabinet must be an elector who has resided in the state for the seven years preceding the election.¹⁰

The constitutional residency requirement for legislators, county commissioners, justices, and judges has been interpreted by Florida courts to mean that residency within the district represented by the office sought is required only at the time of election.¹¹

The Florida Statutes also provide residency requirements in certain instances. Section 1001.361, F.S., provides that notwithstanding any local law or county charter, each candidate for district school board member must be a resident of the district school board member residence area at the time of qualification. Section 1001.463, F.S., provides that the office of district school superintendent is automatically vacated if the superintendent moves from the district he or she represents.

As for municipal elections, s. 100.3605, F.S., provides that The Florida Election Code governs the conduct of a municipality's election in the absence of an applicable special act, charter, or ordinance provision. As such, the residency requirement for city commissioners is at the time of assuming office, unless otherwise provided by special act, charter, or ordinance provision.¹²

Residency Requirements for Write-in Candidates

The Florida Statutes provide a residency requirement for write-in candidates. Section 99.0615, F.S., requires a write-in candidate to reside within the district represented by the office sought at the time of qualification.

¹ Article III, s. 15(c), FLA. CONST.

² Article VIII, s. 1(e), FLA. CONST.

³ Article V, s. 8, FLA. CONST.

⁴ Article IV, s. 5, FLA. CONST.

⁵ *State v. Grassi*, 532 So.2d 1055 (Fla. 1988).

⁶ *Matthews v. Steinberg*, 153 So.3d 295, 297 (Fla. 1st DCA 2014) citing *Norman v. Ambler*, 46 So.3d 178, 182-83 (Fla. 1st DCA 2010).

⁷ Article III, s. 15(c), FLA. CONST.

⁸ Article VIII, s. 1(e), FLA. CONST.

⁹ Article V, s. 8, FLA. CONST.

¹⁰ Article IV, s. 5(b), FLA. CONST.

¹¹ *Norman*, 46 So.3d at 183 (residency of legislators); *Grassi*, 532 So.2d at 1056 (residency of county commissioners); *Miller v. Mendez*, 804 So.2d 1243, 1246-47 (Fla. 2001) (residency of judges).

¹² Division of Elections Opinion 94-04 (1994).

Litigation Concerning Residency Requirements for Write-in Candidates

In September 2014, the Florida Fourth District Court of Appeal held in *Francois v. Brinkmann* that s. 99.0615, F.S., was unconstitutional because “the timing of its residency requirement for write-in candidates conflicts with the timing of the residency requirement for county commission candidates as established by Article VIII, section 1(e) of the Florida Constitution.”¹³ The case involved a county commission primary where five candidates were on the ballot and an additional candidate, Mr. Francois, entered the race as a write-in candidate.¹⁴ Mr. Francois did not live in the district represented by the office sought at the time of filing his papers to qualify as a write-in candidate.¹⁵ In *Francois*, the court reasoned that s. 99.0615, F.S., imposed qualifications in contravention to those specified in the constitution and, therefore, the statute was unconstitutional.¹⁶

One month following the *Francois* decision, the Florida First District Court of Appeal also held s. 99.0615, F.S., unconstitutional in *Matthews v. Steinberg*.¹⁷ The *Matthews* case involved a write-in candidate for state representative who did not “reside within the district he wished to represent at the time he filed his qualifying paperwork with the Division of Elections.”¹⁸ The *Matthews* court, like the *Francois* court,¹⁹ found that the requirement that residency occur at the time of qualification within s. 99.0615, F.S., was in direct contravention of the Florida Constitution’s requirement of residency at the time of election and, therefore, was unconstitutional.²⁰

Both cases, *Francois* and *Matthews*, were appealed to the Florida Supreme Court.²¹ The Florida Supreme Court ordered the proceedings for the *Matthews* case stayed pending disposition of the *Francois* case.²² The Florida Supreme Court heard oral arguments for the *Francois* case on April 9, 2015, but has not issued an opinion.²³

Effect of the Bill

The bill repeals s. 99.0615, F.S., which was found unconstitutional by the First and Fourth District Courts of Appeal.

B. SECTION DIRECTORY:

Section 1 repeals s. 99.0615, F.S., relating to write-in candidate residency requirements.

Section 2 provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

¹³ *Francois v. Brinkmann*, 147 So.3d 613, 616 (Fla. 4th DCA 2014); appeal filed with the Florida Supreme Court (*Brinkmann v. Francois*, SC14-1899).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Francois*, 147 So.3d at 616.

¹⁷ *Matthews*, 153 So.3d 295; appeal filed with the Florida Supreme Court (*Steinberg v. Matthews*, SC14-2202).

¹⁸ *Id.*

¹⁹ *Id.* at 297 citing *Francois*, 147 So.3d at 615 (“The statutory requirement directly contravenes and adds to the constitutional fiat that legislators reside in the district at the time of election.”)

²⁰ *Id.* at 298

²¹ *Brinkmann v. Francois*, SC14-1899; *Steinberg v. Matthews*, SC14-2202.

²² *Steinberg v. Matthews*, SC14-2202, Order Stay Proceedings, 11/17/2014, available at

http://jweb.flcourts.org/pls/docket/ds_docket?p_caseyear=2014&p_casenum=2202 (last visited 12/11/2015).

²³ *Brinkmann v. Francois*, SC14-1899.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill is exempt from the mandate requirements because it is amending the elections laws.

2. Other:

The constitutionality of s. 99.0615, F.S., is currently before the Florida Supreme Court in *Brinkmann v. Francois*, SC14-1899; however, the Florida Supreme Court has not issued an opinion in the case.

B. RULE-MAKING AUTHORITY:

The bill does not appear to require any additional rulemaking authority for the Division of Elections, Department of State.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7057 PCB CRJS 16-02 Pub. Rec./Child Pornography
SPONSOR(S): Criminal Justice Subcommittee, Spano
TIED BILLS: HB 7055 **IDEN./SIM. BILLS:** SB 1366

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee	12 Y, 0 N	White	White
1) Government Operations Subcommittee		Williamson	Williamson
2) Judiciary Committee			

SUMMARY ANALYSIS

Current law provides a public records exemption for the following criminal intelligence information and criminal investigative information:

- Information that may reveal the identity of a victim of any sexual offense, including an offense proscribed in ch. 794, 796, 800, 827, or 847, F.S.;
- Photographs, videotapes, or images of any part of the body of the victim of a sexual offenses prohibited by ch. 794, 796, 800, 827, or 847, F.S., and s. 810.145, F.S., regardless of whether such identifies the victim; and
- Information in a videotaped statement of a minor who is alleged to be or who is a victim of sexual battery, lewd acts, or other sexual misconduct proscribed in ch. 800, F.S., or ss. 794.011, 827.071, 847.012, 847.0125, 847.013, 847.0133, or 847.0145, F.S.

HB 7055, which is tied to this bill, repeals s. 827.071, F.S., relating to sexual performance by a child, and moves its provisions to ss. 847.003 and 847.0137, F.S.

This bill amends the above-described public records exemptions to remove references to s. 827.071, F.S., and add references to ss. 847.003 and 847.0137, F.S. These changes conform to the changes made by HB 7055.

This bill provides for repeal of the reenacted exemptions on October 2, 2021, unless they are reviewed and saved from repeal by the Legislature. It also provides a public necessity statement as required by the Florida Constitution.

The bill also reenacts sections of law pertaining to judicial proceedings, court records, definitions, and the unlawful disclosure or publication of identifying information to incorporate the changes made by the bill.

The bill takes effect on the same date that HB 7055 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law. HB 7055 takes effect on October 1, 2016.

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 records or public meetings exemption. The bill expands the current public records exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Public Records

Article I, section 24(a) of the Florida 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, section 24(a) of the Florida Constitution.¹ The general law must state with specificity the public necessity justifying the exemption² and must be no more broad than necessary to accomplish its purpose.³

Public policy regarding access to government records is addressed further in s. 119.07(1)(a), F.S., which guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act⁴ provides that a public records exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no more broad than necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.⁵

The Act also requires the automatic repeal of a public records exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.⁶ Specified questions must be considered by the Legislature during the review process.⁷

Public Records Exemptions for Certain Victim Information

Current law provides a public records exemption for the following criminal intelligence information⁸ and criminal investigative information:⁹

- Information that may reveal the identity of a victim of any sexual offense, including an offense proscribed in ch. 794,¹⁰ 796,¹¹ 800,¹² 827,¹³ or 847,¹⁴ F.S.;

¹ FLA. CONST. art. I, s. 24(c).

² This portion of a public records exemption is commonly referred to as a "public necessity statement."

³ FLA. CONST. art. I, s. 24(c).

⁴ s. 119.15, F.S.

⁵ s. 119.15(6)(b), F.S.

⁶ s. 119.15(3), F.S.

⁷ Section 119.15(6)(a), F.S., requires the Legislature to consider the following questions as part of the review process: 1) What specific records or meetings are affected by the exemption? 2) What specific parties does the exemption affect? 3) What is the public purpose of the exemption? 4) Can the information contained in the records or meetings be readily obtained by alternative means? If so, how? 5) Is the record or meeting protected by another exemption? 6) Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

⁸ Section 119.011(3)(a), F.S., defines "criminal intelligence information" as information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity.

⁹ Section 119.011(3)(b), F.S., defines "criminal investigative information" as information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance.

¹⁰ Chapter 794, F.S., relates to sexual battery.

¹¹ Chapter 796, F.S., relates to prostitution.

¹² Chapter 800, F.S., relates to lewdness and indecent exposure.

- Photographs, videotapes, or images of any part of the body of the victim of a sexual offense prohibited by ch. 794, 796, 800, 827, or 847, F.S., and s. 810.145,¹⁵ F.S., regardless of whether it identifies the victim; and
- Information in a videotaped statement of a minor who is alleged to be or who is a victim of sexual battery, lewd acts, or other sexual misconduct proscribed in ch. 800, F.S., or ss. 794.011,¹⁶ 827.071,¹⁷ 847.012,¹⁸ 847.0125,¹⁹ 847.013,²⁰ 847.0133,²¹ or 847.0145,²² F.S.²³

Current law also requires the confidential and exempt²⁴ status of criminal investigative information and criminal intelligence information to be maintained in court records and in court proceedings. If a petition for access to such confidential and exempt information is filed with the trial court having jurisdiction over the alleged offense, the confidential and exempt status must be maintained by the court if the state or the victim demonstrates that certain criteria are met.²⁵

In addition, information or records that have been made part of a court file and that may reveal the identity of a person who is a victim of a sexual offense is exempt from public records requirements as provided in s. 119.071(2)(h), F.S.²⁶

HB 7055

HB 7055, which is tied to this bill, repeals s. 827.071, F.S., relating to sexual performance by a child, and moves its provisions to ss. 847.003 and 847.0137, F.S. HB 7055 takes effect October 1, 2016.

Effect of the Bill

The bill amends the above-described public records exemptions to remove references to s. 827.071, F.S.,²⁷ and add references to ss. 847.003 and 847.0137, F.S. These changes conform to the changes made by HB 7055.

The bill provides for repeal of the reenacted exemptions on October 2, 2021, unless they are reviewed and saved from repeal by the Legislature. It also provides a public necessity statement as required by the Florida Constitution.

The bill also reenacts sections of law pertaining to judicial proceedings, court records, definitions, and the unlawful disclosure or publication of identifying information to incorporate the changes made by the bill.

¹³ Chapter 827, F.S., relates to abuse of children.

¹⁴ Chapter 847, F.S., relates to obscenity.

¹⁵ Section 810.145, F.S., relates to video voyeurism.

¹⁶ Section 794.011, F.S., relates to sexual battery.

¹⁷ Section 827.071, F.S., relates to sexual performance by a child.

¹⁸ Section 847.012, F.S., relates to harmful materials and sale of distribution to minors or using minors in production prohibited.

¹⁹ Section 847.0125, F.S., relates to retail display of materials harmful to minors prohibited.

²⁰ Section 847.013, F.S., relates to exposing minors to harmful motion pictures, exhibitions, shows, presentations, or representations.

²¹ Section 847.0133, F.S., relates to protection of minors and prohibition of certain acts in connection with obscenity.

²² Section 847.0145, F.S., relates to selling or buying of minors.

²³ s. 119.071(2)(h)2. and (j)2.a., F.S.

²⁴ In 2001, the Florida Supreme Court ruled that a public record exemption does not apply retroactively unless the legislation clearly expresses such intent. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d 373 (Fla. 2001).

²⁵ There is a difference between records the Legislature designates exempt from public records requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991) *review denied*, 589 So. 2d 289 (Fla. 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 WFTV, Inc. v. Sch. Bd. of Seminole Cnty*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 2004); *Op. Att'y Gen. Fla. 85-692* (1985).

²⁶ s. 92.56, F.S.

²⁷ s. 119.0714(1)(h), F.S.

²⁷ Section 119.15(7), F.S., provides that records made before the date of a repeal of an exemption under this section may not be made public unless otherwise provided by law.

B. SECTION DIRECTORY:

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

Section 2. Provides a public necessity statement.

Section 3. Reenacts s. 92.56, F.S., relating to judicial proceedings and court records involving sexual offenses and human trafficking.

Section 4. Reenacts s. 119.011, F.S., relating to definitions.

Section 5. Reenacts s. 119.0714, F.S., relating to court files; court records; official records.

Section 6. Reenacts s. 794.024, F.S., relating to unlawful to disclose identifying information.

Section 7. Reenacts s. 794.03, F.S., relating to unlawful to publish or broadcast information identifying sexual offense victim.

Section 8. Provides that the act takes effect on the same date that HB 7055 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

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:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote Requirement

Article I, 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 records or public meetings exemption. The bill expands the current public records exemption; therefore, 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 records or public meetings exemption. The bill expands the current public records exemption; therefore, it includes a public necessity statement.

Breadth of Exemption

Article I, section 24(c) of the Florida Constitution requires a newly created public records or public meetings exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill's expanded public records exemption does not appear to be in conflict with the constitutional requirement that an exemption be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Public records exemption for criminal intelligence and investigative information

Current law provides a public records exemption for criminal intelligence information or criminal investigative information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in chapter 827, F.S. The bill removes the public records exemption for victims of sexual offenses proscribed in chapter 827, F.S., because the tied bill (HB 7055) repeals certain provisions of that chapter.

Section 119.15(7), F.S., provides that records created before the date of the repeal of an exemption may not be made public unless otherwise provided by law. This bill does not provide that the records that are currently confidential and exempt will be made publicly available. As such, any records containing the identity of a person who is a victim of any sexual offense proscribed in chapter 827, F.S., that were created prior to the repeal of the exemption will remain confidential and exempt from public records requirements.

Other Comments: Open Government Sunset Review date

The bill amends s. 119.071(2)(h), F.S., which provides a public records exemption for certain criminal intelligence information or criminal investigative information, to remove references to chapter 827, F.S. It also extends the Open Government Sunset Review date to October 2, 2021, on line 68. However, the date does not need to be extended because the bill is narrowing the public records exemption.

Other Comments: Public necessity statement

The bill provides the public necessity for making certain criminal intelligence information or criminal investigative information confidential and exempt from public records requirements. However, the public records exemption that is being expanded is for any information in a videotaped statement of a minor who is alleged to be or who is a victim of sexual battery, lewd acts, or other sexual misconduct as proscribed by certain provisions in law. As such, the public necessity statement should be amended to comport with the public records exemption.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 119.071, F.S.; expanding the exemption from public
 4 records requirements for criminal intelligence
 5 information and criminal investigative information to
 6 include information, photographs, videotapes, or
 7 images of victims of specified offenses; providing for
 8 future review and repeal of the exemption; providing a
 9 statement of public necessity; reenacting s.
 10 92.56(1)(a), F.S., relating to judicial proceedings
 11 and court records involving sexual offenses, s.
 12 119.011(3)(c), relating to definitions for public
 13 records, s. 119.0714(1)(h), F.S., relating to court
 14 files and records, s. 794.024(1), F.S., relating to
 15 the unlawful disclosure of identifying information,
 16 and s. 794.03, F.S., relating to making it unlawful to
 17 publish or broadcast information identifying sexual
 18 offense victim, to incorporate the amendment made by
 19 the act to s. 119.071, F.S., in references thereto;
 20 providing a contingent effective date.

21
 22 Be It Enacted by the Legislature of the State of Florida:

23
 24 Section 1. Paragraphs (h) and (j) of subsection (2) of
 25 section 119.071, Florida Statutes, are amended to read:
 26 119.071 General exemptions from inspection or copying of

27 public records.—

28 (2) AGENCY INVESTIGATIONS.—

29 (h)1. The following criminal intelligence information or
 30 criminal investigative information is confidential and exempt
 31 from s. 119.07(1) and s. 24(a), Art. I of the State
 32 Constitution:

33 a. Any information that reveals the identity of the victim
 34 of the crime of child abuse as defined by chapter 827 or that
 35 reveals the identity of a person under the age of 18 who is the
 36 victim of the crime of human trafficking proscribed in s.
 37 787.06(3)(a).

38 b. Any information that may reveal the identity of a
 39 person who is a victim of any sexual offense, including a sexual
 40 offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter
 41 794, chapter 796, chapter 800, ~~chapter 827~~, or chapter 847.

42 c. A photograph, videotape, or image of any part of the
 43 body of the victim of a sexual offense prohibited under s.
 44 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796,
 45 chapter 800, s. 810.145, ~~chapter 827~~, or chapter 847, regardless
 46 of whether the photograph, videotape, or image identifies the
 47 victim.

48 2. Criminal investigative information and criminal
 49 intelligence information made confidential and exempt under this
 50 paragraph may be disclosed by a law enforcement agency:

51 a. In the furtherance of its official duties and
 52 responsibilities.

53 b. For print, publication, or broadcast if the law
 54 enforcement agency determines that such release would assist in
 55 locating or identifying a person that such agency believes to be
 56 missing or endangered. The information provided should be
 57 limited to that needed to identify or locate the victim and not
 58 include the sexual nature of the offense committed against the
 59 person.

60 c. To another governmental agency in the furtherance of
 61 its official duties and responsibilities.

62 3. This exemption applies to such confidential and exempt
 63 criminal intelligence information or criminal investigative
 64 information held by a law enforcement agency before, on, or
 65 after the effective date of the exemption.

66 4. This paragraph is subject to the Open Government Sunset
 67 Review Act in accordance with s. 119.15, and shall stand
 68 repealed on October 2, 2021 ~~2020~~, unless reviewed and saved from
 69 repeal through reenactment by the Legislature.

70 (j)1. Any document that reveals the identity, home or
 71 employment telephone number, home or employment address, or
 72 personal assets of the victim of a crime and identifies that
 73 person as the victim of a crime, which document is received by
 74 any agency that regularly receives information from or
 75 concerning the victims of crime, is exempt from s. 119.07(1) and
 76 s. 24(a), Art. I of the State Constitution. Any information not
 77 otherwise held confidential or exempt from s. 119.07(1) which
 78 reveals the home or employment telephone number, home or

79 employment address, or personal assets of a person who has been
80 the victim of sexual battery, aggravated child abuse, aggravated
81 stalking, harassment, aggravated battery, or domestic violence
82 is exempt from s. 119.07(1) and s. 24(a), Art. I of the State
83 Constitution, upon written request by the victim, which must
84 include official verification that an applicable crime has
85 occurred. Such information shall cease to be exempt 5 years
86 after the receipt of the written request. Any state or federal
87 agency that is authorized to have access to such documents by
88 any provision of law shall be granted such access in the
89 furtherance of such agency's statutory duties, notwithstanding
90 this section.

91 2.a. Any information in a videotaped statement of a minor
92 who is alleged to be or who is a victim of sexual battery, lewd
93 acts, or other sexual misconduct proscribed in chapter 800 or in
94 s. 794.011, former s. 827.071, s. 847.003, s. 847.012, s.
95 847.0125, s. 847.013, s. 847.0133, s. 847.0137, or s. 847.0145,
96 which reveals that minor's identity, including, but not limited
97 to, the minor's face; the minor's home, school, church, or
98 employment telephone number; the minor's home, school, church,
99 or employment address; the name of the minor's school, church,
100 or place of employment; or the personal assets of the minor; and
101 which identifies that minor as the victim of a crime described
102 in this subparagraph, held by a law enforcement agency, is
103 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
104 of the State Constitution. Any governmental agency that is

105 | authorized to have access to such statements by any provision of
 106 | law shall be granted such access in the furtherance of the
 107 | agency's statutory duties, notwithstanding the provisions of
 108 | this section.

109 | b. A public employee or officer who has access to a
 110 | videotaped statement of a minor who is alleged to be or who is a
 111 | victim of sexual battery, lewd acts, or other sexual misconduct
 112 | proscribed in chapter 800 or in s. 794.011, former s. 827.071,
 113 | s. 847.003, s. 847.012, s. 847.0125, s. 847.013, s. 847.0133, s.
 114 | 847.0137, or s. 847.0145 may not willfully and knowingly
 115 | disclose videotaped information that reveals the minor's
 116 | identity to a person who is not assisting in the investigation
 117 | or prosecution of the alleged offense or to any person other
 118 | than the defendant, the defendant's attorney, or a person
 119 | specified in an order entered by the court having jurisdiction
 120 | of the alleged offense. A person who violates this provision
 121 | commits a misdemeanor of the first degree, punishable as
 122 | provided in s. 775.082 or s. 775.083.

123 | c. This subparagraph is subject to the Open Government
 124 | Sunset Review Act in accordance with s. 119.15 and shall stand
 125 | repealed on October 2, 2021, unless reviewed and saved from
 126 | repeal through reenactment by the Legislature.

127 | Section 2. The Legislature finds that it is a public
 128 | necessity that criminal intelligence information or criminal
 129 | investigative information that may reveal the identity of a
 130 | person who is a victim of former s. 827.071, s. 847.003, or s.

131 847.0137, Florida Statutes, which is a photograph, videotape, or
 132 image of any part of the body of the victim of those provisions
 133 or which is information in a videotaped statement of a minor who
 134 is alleged to be or who is a victim of those provisions, be made
 135 confidential and exempt from s. 119.07(1), Florida Statutes, and
 136 s. 24(a), Article I of the State Constitution. The Legislature
 137 finds that such information, photographs, videotapes, or images
 138 often depict the victim in graphic fashion, frequently nude.
 139 Such highly sensitive photographs, videotapes, or images of a
 140 victim of these sexual offenses, if viewed, copied, or
 141 publicized, could result in trauma, sorrow, humiliation, or
 142 emotional injury to the victim and the victim's family.

143 Section 3. For the purpose of incorporating the amendment
 144 made by this act to section 119.071, Florida Statutes, in a
 145 reference thereto, paragraph (a) of subsection (1) of section
 146 92.56, Florida Statutes, is reenacted to read:

147 92.56 Judicial proceedings and court records involving
 148 sexual offenses and human trafficking.-

149 (1)(a) The confidential and exempt status of criminal
 150 intelligence information or criminal investigative information
 151 made confidential and exempt pursuant to s. 119.071(2)(h) must
 152 be maintained in court records pursuant to s. 119.0714(1)(h) and
 153 in court proceedings, including testimony from witnesses.

154 Section 4. For the purpose of incorporating the amendment
 155 made by this act to section 119.071, Florida Statutes, in a
 156 reference thereto, paragraph (c) of subsection (3) of section

157 119.011, Florida Statutes, is reenacted to read:
 158 119.011 Definitions.—As used in this chapter, the term:
 159 (3)
 160 (c) "Criminal intelligence information" and "criminal
 161 investigative information" shall not include:
 162 1. The time, date, location, and nature of a reported
 163 crime.
 164 2. The name, sex, age, and address of a person arrested or
 165 of the victim of a crime except as provided in s. 119.071(2)(h).
 166 3. The time, date, and location of the incident and of the
 167 arrest.
 168 4. The crime charged.
 169 5. Documents given or required by law or agency rule to be
 170 given to the person arrested, except as provided in s.
 171 119.071(2)(h), and, except that the court in a criminal case may
 172 order that certain information required by law or agency rule to
 173 be given to the person arrested be maintained in a confidential
 174 manner and exempt from the provisions of s. 119.07(1) until
 175 released at trial if it is found that the release of such
 176 information would:
 177 a. Be defamatory to the good name of a victim or witness
 178 or would jeopardize the safety of such victim or witness; and
 179 b. Impair the ability of a state attorney to locate or
 180 prosecute a codefendant.
 181 6. Informations and indictments except as provided in s.
 182 905.26.

183 Section 5. For the purpose of incorporating the amendment
 184 made by this act to section 119.071, Florida Statutes, in a
 185 reference thereto, paragraph (h) of subsection (1) of section
 186 119.0714, Florida Statutes, is reenacted to read:

187 119.0714 Court files; court records; official records.—

188 (1) COURT FILES.—Nothing in this chapter shall be
 189 construed to exempt from s. 119.07(1) a public record that was
 190 made a part of a court file and that is not specifically closed
 191 by order of court, except:

192 (h) Criminal intelligence information or criminal
 193 investigative information that is confidential and exempt as
 194 provided in s. 119.071(2)(h).

195 Section 6. For the purpose of incorporating the amendment
 196 made by this act to section 119.071, Florida Statutes, in a
 197 reference thereto, subsection (1) of section 794.024, Florida
 198 Statutes, is reenacted to read:

199 794.024 Unlawful to disclose identifying information.—

200 (1) A public employee or officer who has access to the
 201 photograph, name, or address of a person who is alleged to be
 202 the victim of an offense described in this chapter, chapter 800,
 203 s. 827.03, s. 827.04, or s. 827.071 may not willfully and
 204 knowingly disclose it to a person who is not assisting in the
 205 investigation or prosecution of the alleged offense or to any
 206 person other than the defendant, the defendant's attorney, a
 207 person specified in an order entered by the court having
 208 jurisdiction of the alleged offense, or organizations authorized

HB 7057

2016

209 to receive such information made exempt by s. 119.071(2)(h), or
 210 to a rape crisis center or sexual assault counselor, as defined
 211 in s. 90.5035(1)(b), who will be offering services to the
 212 victim.

213 Section 7. For the purpose of incorporating the amendment
 214 made by this act to section 119.071, Florida Statutes, in a
 215 reference thereto, Section 794.03, Florida Statutes, is
 216 reenacted to read:

217 794.03 Unlawful to publish or broadcast information
 218 identifying sexual offense victim.—No person shall print,
 219 publish, or broadcast, or cause or allow to be printed,
 220 published, or broadcast, in any instrument of mass communication
 221 the name, address, or other identifying fact or information of
 222 the victim of any sexual offense within this chapter, except as
 223 provided in s. 119.071(2)(h) or unless the court determines that
 224 such information is no longer confidential and exempt pursuant
 225 to s. 92.56. An offense under this section shall constitute a
 226 misdemeanor of the second degree, punishable as provided in s.
 227 775.082 or s. 775.083.

228 Section 8. This act shall take effect on the same date
 229 that HB 7055 or similar legislation takes effect, if such
 230 legislation is adopted in the same legislative session or an
 231 extension thereof and becomes a law.



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Government Operations
2 Subcommittee

3 Representative Spano offered the following:
4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Paragraph (j) of subsection (2) of section
8 119.071, Florida Statutes, is amended to read:

9 119.071 General exemptions from inspection or copying of
10 public records.—

11 (j)1. Any document that reveals the identity, home or
12 employment telephone number, home or employment address, or
13 personal assets of the victim of a crime and identifies that
14 person as the victim of a crime, which document is received by
15 any agency that regularly receives information from or
16 concerning the victims of crime, is exempt from s. 119.07(1) and
17 s. 24(a), Art. I of the State Constitution. Any information not



Amendment No.

18 otherwise held confidential or exempt from s. 119.07(1) which
19 reveals the home or employment telephone number, home or
20 employment address, or personal assets of a person who has been
21 the victim of sexual battery, aggravated child abuse, aggravated
22 stalking, harassment, aggravated battery, or domestic violence
23 is exempt from s. 119.07(1) and s. 24(a), Art. I of the State
24 Constitution, upon written request by the victim, which must
25 include official verification that an applicable crime has
26 occurred. Such information shall cease to be exempt 5 years
27 after the receipt of the written request. Any state or federal
28 agency that is authorized to have access to such documents by
29 any provision of law shall be granted such access in the
30 furtherance of such agency's statutory duties, notwithstanding
31 this section.

32 2.a. Any information in a videotaped statement of a minor
33 who is alleged to be or who is a victim of sexual battery, lewd
34 acts, or other sexual misconduct proscribed in chapter 800 or in
35 s. 794.011, ~~s. 827.071~~, s. 847.003, s. 847.012, s. 847.0125, s.
36 847.013, s. 847.0133, s. 847.0137, or s. 847.0145, which reveals
37 that minor's identity, including, but not limited to, the
38 minor's face; the minor's home, school, church, or employment
39 telephone number; the minor's home, school, church, or
40 employment address; the name of the minor's school, church, or
41 place of employment; or the personal assets of the minor; and
42 which identifies that minor as the victim of a crime described
43 in this subparagraph, held by a law enforcement agency, is



Amendment No.

44 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
45 of the State Constitution. Any governmental agency that is
46 authorized to have access to such statements by any provision of
47 law shall be granted such access in the furtherance of the
48 agency's statutory duties, notwithstanding the provisions of
49 this section.

50 b. A public employee or officer who has access to a
51 videotaped statement of a minor who is alleged to be or who is a
52 victim of sexual battery, lewd acts, or other sexual misconduct
53 proscribed in chapter 800 or in s. 794.011, ~~s. 827.071~~, s.
54 847.003, s. 847.012, s. 847.0125, s. 847.013, s. 847.0133, s.
55 847.0137, or s. 847.0145 may not willfully and knowingly
56 disclose videotaped information that reveals the minor's
57 identity to a person who is not assisting in the investigation
58 or prosecution of the alleged offense or to any person other
59 than the defendant, the defendant's attorney, or a person
60 specified in an order entered by the court having jurisdiction
61 of the alleged offense. A person who violates this provision
62 commits a misdemeanor of the first degree, punishable as
63 provided in s. 775.082 or s. 775.083.

64 c. This subparagraph is subject to the Open Government
65 Sunset Review Act in accordance with s. 119.15 and shall stand
66 repealed on October 2, 2021, unless reviewed and saved from
67 repeal through reenactment by the Legislature.

68 Section 2. The Legislature finds that it is a public
69 necessity that any information in a videotaped statement of a



Amendment No.

70 minor who is alleged to be or who is a victim of sexual battery,
71 lewd acts, or other sexual misconduct as proscribed in s.
72 847.003 or s. 847.0137, Florida Statutes, be made confidential
73 and exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
74 Article I of the State Constitution. The Legislature finds that
75 such information is highly sensitive and shows the minor victim
76 describing in graphic detail sexual acts for which the minor is
77 alleged to be or is a victim. If such information regarding a
78 minor victim of sex crimes was viewed, copied, or publicized, it
79 could result in trauma, sorrow, humiliation, or emotional injury
80 to the minor victim and the victim's family. The Legislature
81 finds that it is important to strengthen the protections
82 afforded minor victims of sex crimes in order to ensure their
83 privacy and to prevent their revictimization. This exemption
84 serves to minimize the trauma to those minor victims because the
85 release of such information would compound the tragedy already
86 visited upon their lives. For these reasons, the Legislature
87 finds that it is a public necessity to make confidential and
88 exempt any information in a videotaped statement of a minor who
89 is alleged to be or who is a victim of sexual battery, lewd
90 acts, or other sexual misconduct as proscribed in s. 847.003 or
91 s. 847.0137, Florida Statutes.

92 Section 3. This act shall take effect on the same date
93 that HB 7055 or similar legislation takes effect, if such
94 legislation is adopted in the same legislative session or an
95 extension thereof and becomes a law.



Amendment No.

96
97
98
99
100
101
102
103
104
105
106
107

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

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to public records; amending s. 119.071, F.S.;
expanding the exemption from public records requirements for any
information in a videotaped statement of a minor who is alleged
to be or who is a victim of sexual battery, lewd acts, or other
sexual misconduct; providing for future review and repeal of the
exemption; providing a statement of public necessity; providing
a contingent effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GVOPS 16-05 OGSR Competitive Solicitations
SPONSOR(S): Government Operations Subcommittee
TIED BILLS: IDEN./SIM. BILLS: SB 7030

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee		Moore <i>AM</i>	Williamson <i>Raw</i>

SUMMARY ANALYSIS

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

Agency procurements of commodities or contractual services exceeding \$35,000 are governed by statute and rule and require one of the following three types of competitive solicitations to be used, unless otherwise authorized by law: invitation to bid (ITB), request for proposals (RFP), or invitation to negotiate (ITN).

Current law provides general public record and public meeting exemptions associated with competitive solicitations. Sealed bids, proposals, or replies in response to an ITB, RFP, or ITN are exempt from public record requirements until a time certain. In addition, a meeting at which a negotiation with a vendor is conducted pursuant to a competitive solicitation, at which a vendor makes an oral presentation as part of a competitive solicitation, or at which a vendor answers questions as part of a competitive solicitation is exempt from public meeting requirements. Any portion of a team meeting at which negotiation strategies are discussed is also exempt from public meeting requirements. A complete recording must be made of an exempt meeting. The recording is exempt from public record requirements until a time certain.

The bill reenacts the public record and public meeting exemptions, which will repeal on October 2, 2016, if this bill does not become law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.²

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- 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.
- Protects trade or business secrets.³

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.⁴ If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created⁵ then a public necessity statement and a two-thirds vote for passage are not required.

Agency Procurements

Agency⁶ procurements of commodities or contractual services exceeding \$35,000 are governed by statute and rule and require use of one of the following three types of competitive solicitations,⁷ unless otherwise authorized by law:⁸

- Invitation to bid (ITB): An agency must use an ITB when the agency is capable of specifically defining the scope of work for which a contractual service is required or when the agency is capable of establishing precise specifications defining the actual commodity or group of commodities required.⁹

¹ Section 119.15, F.S.

² Section 119.15(3), F.S.

³ Section 119.15(6)(b), F.S.

⁴ Section 24(c), Art. I of the State Constitution.

⁵ An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.

⁶ Section 287.012(1), F.S., defines "agency" as any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. "Agency" does not include the university and college boards of trustees or the state universities and colleges.

⁷ Section 287.012(6), F.S., defines "competitive solicitation" as the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.

⁸ See s. 287.057, F.S.

⁹ Section 287.057(1)(a), F.S.

- Request for proposals (RFP): An agency must use an RFP when the purposes and uses for which the commodity, group of commodities, or contractual service being sought can be specifically defined and the agency is capable of identifying necessary deliverables.¹⁰
- Invitation to negotiate (ITN): An ITN is a solicitation used by an agency that is intended to determine the best method for achieving a specific goal or solving a particular problem and identifies one or more responsive vendors with which the agency may negotiate in order to receive the best value.¹¹

Public Record and Public Meeting Exemptions under Review

Current law provides a general public record exemption for sealed bids, proposals, or replies received by an agency pursuant to a competitive solicitation¹² and a general public meeting exemption for certain meetings conducted pursuant to a competitive solicitation.¹³ For purposes of both exemptions, a “competitive solicitation” is defined as the process of requesting and receiving sealed bids, proposals, or replies in accordance with the terms of a competitive process, regardless of the method of procurement.¹⁴ The exemptions have been modified over the years, with the most recent modification occurring in 2011.

Public Record Exemption for Sealed Bids, Proposals, or Replies

Current law provides that sealed bids, proposals, or replies received by an agency pursuant to a competitive solicitation are exempt¹⁵ from public record requirements until the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or replies, whichever is earlier.¹⁶ If an agency rejects all bids, proposals, or replies and concurrently provides notice of its intent to reissue the competitive solicitation, the rejected bids, proposals, or replies remain exempt until the agency provides notice of an intended decision concerning the reissued competitive solicitation or until the agency withdraws the reissued competitive solicitation.¹⁷ A bid, proposal, or reply is not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies.¹⁸

According to the public necessity statement, “[t]emporarily protecting such information ensures that the process of responding to a competitive solicitation remains fair and economical for vendors, while still preserving oversight after a competitive solicitation decision is made or withdrawn.”¹⁹

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2016, unless reenacted by the Legislature.²⁰

Public Meeting Exemption for Certain Vendor Discussions and Team Meeting Negotiations, and Associated Public Record Exemption

The public meeting exemption provides that any portion of a meeting at which a negotiation with a vendor is conducted pursuant to a competitive solicitation, at which a vendor makes an oral

¹⁰ Section 287.057(1)(b), F.S.

¹¹ Section 287.057(1)(c), F.S.

¹² Section 119.071(1)(b), F.S.

¹³ Section 286.0113(2), F.S.

¹⁴ Sections 119.071(1)(b)1. and 286.0113(2)(a)1., F.S.

¹⁵ 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. *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). 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* Attorney General Opinion 85-62 (August 1, 1985).

¹⁶ Section 119.071(1)(b)2., F.S.

¹⁷ Section 119.071(1)(b)3., F.S.

¹⁸ *Id.*

¹⁹ Section 3, ch. 2011-140, L.O.F.

²⁰ Section 119.071(1)(b)4., F.S.

presentation as part of a competitive solicitation, or at which a vendor answers questions as part of a competitive solicitation is exempt from public meetings requirements.²¹ In addition, any portion of a team meeting at which negotiation strategies are discussed is exempt from public meeting requirements.²² A “team” is defined as a group of members established by an agency for the purpose of conducting negotiations as part of a competitive solicitation.²³

A complete recording must be made of any portion of an exempt meeting.²⁴ The recording of, and any records presented at, the exempt meeting are exempt from public record requirements until the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever occurs earlier.²⁵ If the agency rejects all bids, proposals, or replies and concurrently provides notice of its intent to reissue a competitive solicitation, the recording and any records presented at the meeting remain exempt until the agency provides notice of an intended decision concerning the reissued competitive solicitation or until the agency withdraws the reissued competitive solicitation.²⁶ A recording and any records presented at an exempt meeting are not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies.²⁷

The 2011 public necessity statement for the exemptions provided that:

Protecting such meetings and temporarily protecting the recording and any records presented by a vendor at such meetings, ensures that the process of responding to a competitive solicitation remains fair and economical for vendors, while still preserving oversight after a competitive solicitation decision is made or withdrawn. It is unfair and inequitable to compel vendors to disclose to competitors the nature and details of their proposals during such meetings or through the minutes or records presented at such meetings. Such disclosure impedes full and frank discussion of the strengths, weaknesses, and value of a bid, proposal, or response, thereby limiting the ability of the agency to obtain the best value for the public.²⁸

The public necessity statement further provided that:

Team members often meet to strategize about competitive solicitations and the approach to take as part of the evaluation process. Without the public meeting exemption and the limited public record exemption, the effective and efficient administration of the competitive solicitation process would be hindered.²⁹

Pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2016, unless reenacted by the Legislature.³⁰

Staff Review of the Exemptions

During the 2015 interim, subcommittee staff held meetings with affected persons tasked with implementing the public record and public meeting exemptions, as well as vendors who participate in the competitive solicitation process. These parties recommended reenactment of the public record and public meeting exemptions under review.

²¹ Section 286.0113(2)(b)1., F.S.

²² Section 286.0113(2)(b)2., F.S.

²³ Section 286.0113(2)(a)2., F.S.

²⁴ Section 286.0113(2)(c)1., F.S.

²⁵ Section 286.0113(2)(c)2., F.S.

²⁶ Section 286.0113(2)(c)3., F.S.

²⁷ *Id.*

²⁸ Section 3, ch. 2011-140, L.O.F.

²⁹ *Id.*

³⁰ Section 286.0113(2)(d), F.S.

Effect of the Bill

The bill removes the scheduled repeal of the public record and public meeting exemptions, thereby reenacting:

- The public record exemption for sealed bids, proposals, or replies received by an agency pursuant to a competitive solicitation;
- The public meeting exemption for any portion of a meeting at which a vendor participates in a negotiation, makes an oral presentation, or answers questions as part of a competitive solicitation or at which negotiation strategies are discussed; and
- The public record exemption for the recording of, and any records presented at, exempt meetings.

B. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., to reenact the public record exemption for competitive solicitations.

Section 2 amends s. 286.0113, F.S., to reenact the public record and public meeting exemptions for competitive solicitations.

Section 3 provides an effective date of October 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties 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

Not applicable.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

A bill to be entitled
 An act relating to a review under the Open Government
 Sunset Review Act; amending s. 119.071, F.S., relating
 to an exemption from public records requirements for
 bids, proposals, or replies submitted to an agency in
 response to a competitive solicitation; removing the
 scheduled repeal of the exemption; amending s.
 286.0113, F.S., relating to an exemption from public
 meetings requirements for portions of meetings at
 which a vendor participates in a negotiation, makes an
 oral presentation, or answers questions as part of a
 competitive solicitation or at which negotiation
 strategies are discussed, and which provides an
 exemption from public records requirements for the
 recording of, and any records presented at, exempt
 meetings; removing the scheduled repeal of the
 exemptions; providing an effective date.

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

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

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

(1) AGENCY ADMINISTRATION.—

(b)1. For purposes of this paragraph, "competitive

PCB GVOPS 16-05

ORIGINAL

2016

27 solicitation" means the process of requesting and receiving
28 sealed bids, proposals, or replies in accordance with the terms
29 of a competitive process, regardless of the method of
30 procurement.

31 2. Sealed bids, proposals, or replies received by an
32 agency pursuant to a competitive solicitation are exempt from s.
33 119.07(1) and s. 24(a), Art. I of the State Constitution until
34 such time as the agency provides notice of an intended decision
35 or until 30 days after opening the bids, proposals, or final
36 replies, whichever is earlier.

37 3. If an agency rejects all bids, proposals, or replies
38 submitted in response to a competitive solicitation and the
39 agency concurrently provides notice of its intent to reissue the
40 competitive solicitation, the rejected bids, proposals, or
41 replies remain exempt from s. 119.07(1) and s. 24(a), Art. I of
42 the State Constitution until such time as the agency provides
43 notice of an intended decision concerning the reissued
44 competitive solicitation or until the agency withdraws the
45 reissued competitive solicitation. A bid, proposal, or reply is
46 not exempt for longer than 12 months after the initial agency
47 notice rejecting all bids, proposals, or replies.

48 ~~4. This paragraph is subject to the Open Government Sunset~~
49 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~
50 ~~on October 2, 2016, unless reviewed and saved from repeal~~
51 ~~through reenactment by the Legislature.~~

52 Section 2. Subsection (2) of section 286.0113, Florida

53 Statutes, is amended to read:

54 286.0113 General exemptions from public meetings.—

55 (2) (a) For purposes of this subsection:

56 1. "Competitive solicitation" means the process of
 57 requesting and receiving sealed bids, proposals, or replies in
 58 accordance with the terms of a competitive process, regardless
 59 of the method of procurement.

60 2. "Team" means a group of members established by an
 61 agency for the purpose of conducting negotiations as part of a
 62 competitive solicitation.

63 (b)1. Any portion of a meeting at which a negotiation with
 64 a vendor is conducted pursuant to a competitive solicitation, at
 65 which a vendor makes an oral presentation as part of a
 66 competitive solicitation, or at which a vendor answers questions
 67 as part of a competitive solicitation is exempt from s. 286.011
 68 and s. 24(b), Art. I of the State Constitution.

69 2. Any portion of a team meeting at which negotiation
 70 strategies are discussed is exempt from s. 286.011 and s. 24(b),
 71 Art. I of the State Constitution.

72 (c)1. A complete recording shall be made of any portion of
 73 an exempt meeting. No portion of the exempt meeting may be held
 74 off the record.

75 2. The recording of, and any records presented at, the
 76 exempt meeting are exempt from s. 119.07(1) and s. 24(a), Art. I
 77 of the State Constitution until such time as the agency provides
 78 notice of an intended decision or until 30 days after opening

79 the bids, proposals, or final replies, whichever occurs earlier.

80 3. If the agency rejects all bids, proposals, or replies
 81 and concurrently provides notice of its intent to reissue a
 82 competitive solicitation, the recording and any records
 83 presented at the exempt meeting remain exempt from s. 119.07(1)
 84 and s. 24(a), Art. I of the State Constitution until such time
 85 as the agency provides notice of an intended decision concerning
 86 the reissued competitive solicitation or until the agency
 87 withdraws the reissued competitive solicitation. A recording and
 88 any records presented at an exempt meeting are not exempt for
 89 longer than 12 months after the initial agency notice rejecting
 90 all bids, proposals, or replies.

91 ~~(d) This subsection is subject to the Open Government~~
 92 ~~Sunset Review Act in accordance with s. 119.15 and shall stand~~
 93 ~~repealed on October 2, 2016, unless reviewed and saved from~~
 94 ~~repeal through reenactment by the Legislature.~~

95 Section 3. This act shall take effect October 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GVOPS 16-06 OGSR Regional Autism Centers
SPONSOR(S): Government Operations Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee		Toliver LT	Williamson <i>Law</i>

SUMMARY ANALYSIS

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

The Legislature has established seven regional autism centers (centers) throughout the state. The centers are tasked with providing nonresidential resources and training services to persons of all ages and all levels of intellectual functioning who have autism, an autistic-like disability, a dual sensory impairment, a sensory impairment with other handicapping conditions, or a pervasive developmental disorder that is not otherwise specified. Each center must provide services within its geographical region of the state, be operationally and fiscally independent, and coordinate services within and between state agencies, local agencies, and school districts.

Current law provides two public record exemptions for the centers. The first exemption provides that all records relating to a client of a center who receives the services of a center or participates in center activities, and all records relating to the client's family, are confidential and exempt from public record requirements. Confidential and exempt client records may be released in certain instances. The second exemption provides that personal identifying information of a donor or prospective donor to the center who desires to remain anonymous is confidential and exempt from public record requirements.

The bill reenacts the public record exemptions, which will repeal on October 2, 2016, if this bill does not become law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

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

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- 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.
- Protects trade or business secrets.³

If, and only if, in reenacting an exemption that will repeal and the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.⁴ If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created⁵ then a public necessity statement and a two-thirds vote for passage are not required.

Regional Autism Centers

In 2002 the Legislature established six regional autism centers⁶ (center) throughout the state, adding a seventh in 2005.⁷ The seven centers are located at the:

- College of Medicine at Florida State University;⁸
- College of Medicine at the University of Florida;⁹
- University of Florida Health Science Center at Jacksonville;¹⁰
- Louis de la Parte Florida Mental Health Institute at the University of South Florida;¹¹

¹ Section 119.15, F.S.

² Section 119.15(3), F.S.

³ Section 119.15(6)(b), F.S.

⁴ Section 24(c), Art. I, FLA. CONST.

⁵ An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.

⁶ Chapter 2002-387, L.O.F.

⁷ Chapter 2005-49, L.O.F.

⁸ The College of Medicine at Florida State University serves Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Jefferson, Leon, Liberty, Madison, Okaloosa, Santa Rosa, Taylor, Wakulla, Walton, and Washington Counties. Section 1004.55(1)(a), F.S.

⁹ The College of Medicine at the University of Florida serves Alachua, Bradford, Citrus, Columbia, Dixie, Gilchrist, Hamilton, Hernando, Lafayette, Levy, Marion, Putnam, Suwannee, and Union Counties. Section 1004.55(1)(b), F.S.

¹⁰ The University of Florida Health Science Center at Jacksonville serves Baker, Clay, Duval, Flagler, Nassau, and St. Johns Counties. Section 1004.55(1)(c), F.S.

¹¹ The Louis de la Parte Florida Mental Health Institute at the University of South Florida serves Charlotte, Collier, DeSoto, Glades, Hardee, Hendry, Highlands, Hillsborough, Lee, Manatee, Pasco, Pinellas, Polk, and Sarasota Counties. Section 1004.55(1)(d), F.S.

- Mailman Center for Child Development and the Department of Psychology at the University of Miami;¹²
- College of Health and Public Affairs at the University of Central Florida;¹³ and
- Department of Exceptional Student Education at Florida Atlantic University.¹⁴

Current law requires the centers to provide nonresidential resources and training services to persons of all ages and all levels of intellectual functioning who have autism,¹⁵ an autistic-like disability, a dual sensory impairment, a sensory impairment with other handicapping conditions, or a pervasive developmental disorder that is not otherwise specified.¹⁶ Each center must be operationally and fiscally independent and provide services within its geographical region of the state.¹⁷ Additionally, each center must coordinate services within and between state agencies, local agencies, and school districts. However, services offered by the center may not be duplicative of those offered by the agencies or school districts.¹⁸

Each center must provide expertise in autism, autistic-like behaviors, and sensory impairments; individual and direct family assistance; technical assistance and consultation services; professional training programs; public education programs; coordination and dissemination of local and regional information regarding available resources; and support to state agencies in the development of training for early child care providers and educators with respect to developmental disabilities.¹⁹

Public Record Exemptions under Review

In 2011, the Legislature created public record exemptions for the centers.²⁰ All records that relate to the client of a center who receives the center's services or participates in center activities are confidential and exempt²¹ from public record requirements. The public record exemption also applies to records that relate to the client's family.²² In addition, personal identifying information of a donor or prospective donor to a center who desires to remain anonymous is confidential and exempt from public record requirements.²³

Upon request, the center must provide a copy of the client's individual record to the client, if he or she is competent, or to the client's parent or legal guardian, if he or she is incompetent.²⁴

¹² The Mailman Center for Child Development and the Department of Psychology at the University of Miami serves Broward, Miami-Dade, and Monroe Counties. Section 1004.55(1)(e), F.S.

¹³ The College of Health and Public Affairs at the University of Central Florida serves Brevard, Lake, Orange, Osceola, Seminole, Sumter, and Volusia Counties. Section 1004.55(1)(f), F.S.

¹⁴ The Department of Exceptional Student Education at Florida Atlantic University serves Palm Beach, Martin, St. Lucie, Okeechobee, and Indian River Counties. Section 1004.55(1)(g), F.S.

¹⁵ Section 393.063(3), F.S., defines "autism" as a pervasive, neurologically based developmental disability of extended duration which causes severe learning, communication, and behavior disorders with age of onset during infancy or childhood. Individuals with autism exhibit impairment in reciprocal social interaction, impairment in verbal and nonverbal communication and imaginative ability, and a markedly restricted repertoire of activities and interests.

¹⁶ Section 1004.55(1), F.S.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Section 1004.55(4), F.S.

²⁰ Chapter 2011-22, L.O.F.; codified as s. 1004.55(6), F.S.

²¹ There is a difference between records the Legislature designates exempt from public records requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991) *review denied*, 589 So. 2d 289 (Fla. 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 WFTV, Inc. v. Sch. Bd. of Seminole Cnty.*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 2004); Op. Att'y Gen. Fla. 85-692 (1985).

²² Section 1004.55(6)(a)1., F.S.

²³ Section 1004.55(6)(b), F.S.

²⁴ Section 1004.55(6)(a)2., F.S.

A center may release the confidential and exempt records relating to a client or the client's family as follows:

- To physicians, attorneys, or governmental entities having need of the confidential and exempt information to aid a client, as authorized by the client, if competent, or the client's parent or legal guardian if the client is incompetent.²⁵
- In response to a subpoena or to persons authorized by order of the court.²⁶
- To the State Board of Education or the Board of Governors of the State University System when the director of the center deems it necessary for the treatment of a client, maintenance of adequate records, compilation of treatment data, or evaluation of programs.²⁷

The center may release information contained in the confidential and exempt records in the following instances, provided that personal identifying information of the client or the client's family is removed:

- To a person engaged in bona fide research if that person agrees to sign a confidentiality agreement with the center, maintain the confidentiality of the information received, and, to the extent permitted by law and after the research has concluded, destroy any confidential and exempt information obtained.²⁸
- By the director of the center or the director's designee for statistical and research purposes provided that any confidential and exempt information is removed in the reporting of such statistical or research data.²⁹

The 2011 public necessity statement provides that the public record exemption for records relating to a client or the client's family is a public necessity because:

Matters of personal health are traditionally private and confidential concerns between the patient and the health care provider. The private and confidential nature of personal health matters pervades both the public and private health care sectors. For these reasons, the individual's expectation of and right to privacy in all matters regarding his or her personal health necessitates this exemption.³⁰

The public necessity statement further provides that release of records relating to a client or the client's family could be defamatory or could cause unwarranted damage to the name or reputation of the client or the client's family. It also provides that:

Protecting such records ensures an environment in which the discussion of the condition of autism or related disorders can be conducted in a free and open manner, thus enabling individuals with autism and their families to receive appropriate diagnostic and treatment information and cope more effectively with the enormous challenges posed by neurodevelopmental disorders and sensory impairments.³¹

With regard to the public record exemption for personal identifying information of a donor or prospective donor to the center, the 2011 public necessity statement provides that:

If the identity of a prospective or actual donor who desires to remain anonymous is subject to disclosure, there is a chilling effect on donations because donors are

²⁵ Section 1004.55(6)(a)3.a., F.S.

²⁶ Section 1004.55(6)(a)3.b., F.S.

²⁷ Section 1004.55(6)(a)3.c., F.S.

²⁸ Section 1004.55(6)(a)4.a., F.S.

²⁹ Section 1004.55(6)(a)4.b., F.S.

³⁰ Section 2, ch. 2011-221, L.O.F.

³¹ *Id.*

concerned about disclosure of personal information leading to theft and, in particular, identity theft, including personal safety and security.³²

Pursuant to the Open Government Sunset Review Act, the public record exemptions will repeal on October 2, 2016, unless reenacted by the Legislature.³³

Staff Review of the Exemptions

During the 2015 interim, subcommittee staff sent questionnaires to each center as part of the Open Government Sunset Review process.³⁴ All respondents recommended reenactment of the exemption without changes.³⁵ The centers indicated that the public record exemption for records relating to a client or the client's family provides the clients of the centers with the security of knowing that sensitive information about themselves or their child is protected from a public records request. This ensures the integrity of the relationship between the client and the center.³⁶ In addition, a center's response provided that the public record exemption for donor information is important because many of the donors are clients or are family member of clients.³⁷

Effect of the Bill

The bill removes the scheduled repeal of the public record exemptions, thereby reenacting:

- The public record exemption for all records relating to a client of the center or the client's family; and
- The public record exemption for personal identifying information of a donor or prospective donor to the center who desires to remain anonymous.

The bill also clarifies that the director of a center, or his or her designee, may release information for statistical and research purposes, so long as any confidential and exempt information is removed in the reporting of the data.

B. SECTION DIRECTORY:

Section 1 amends s. 1004.55, F.S., to save from repeal the public record exemptions for regional autism centers.

Section 2 provides an effective date of October 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

³² *Id.*

³³ Section 1004.55(6)(c), F.S.

³⁴ Open Government Sunset Review of s. 1004.55(6), F.S., relating to regional autism centers, questionnaire by House and Senate staff. Responses are on file with the Government Operations Subcommittee.

³⁵ *Id.* at question 11.

³⁶ *Id.* at question 12.

³⁷ *Id.* at question 20.

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:
None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

27 and exempt records as follows:

28 a. To physicians, attorneys, or governmental entities
 29 having need of the confidential and exempt information to aid a
 30 client, as authorized by the client, if competent, or the
 31 client's parent or legal guardian if the client is incompetent.

32 b. In response to a subpoena or to persons authorized by
 33 order of court.

34 c. To the State Board of Education or the Board of
 35 Governors of the State University System when the director of
 36 the center deems it necessary for the treatment of the client,
 37 maintenance of adequate records, compilation of treatment data,
 38 or evaluation of programs.

39 4. Provided that personal identifying information of a
 40 client or the client's family has been removed, a regional
 41 autism center may release information contained in the
 42 confidential and exempt records ~~as follows:~~

43 ~~a.~~ to a person engaged in bona fide research if that
 44 person agrees to sign a confidentiality agreement with the
 45 regional autism center, agrees to maintain the confidentiality
 46 of the information received, and, to the extent permitted by law
 47 and after the research has concluded, destroy any confidential
 48 information obtained.

49 5.b. The director of the center or his or her designee may
 50 release information for statistical and research purposes ~~by the~~
 51 ~~director of the center or designee,~~ provided that any
 52 confidential and exempt information is removed in the reporting

53 of such statistical or research data.

54 (b) Donor information.—Personal identifying information of
 55 a donor or prospective donor to a regional autism center who
 56 desires to remain anonymous is confidential and exempt from s.
 57 119.07(1) and s. 24(a), Art. I of the State Constitution.

58 ~~(c) Review and repeal. This subsection is subject to the~~
 59 ~~Open Government Sunset Review Act in accordance with s. 119.15~~
 60 ~~and shall stand repealed on October 2, 2016, unless reviewed and~~
 61 ~~saved from repeal through reenactment by the Legislature.~~

62 Section 2. This act shall take effect October 1, 2016.