

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GAC 18-03 Public Record Exemption/Lottery
SPONSOR(S): Government Accountability Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Accountability Committee		Moore	Williamson

SUMMARY ANALYSIS

The Department of the Lottery (department) is established to operate the state lottery with the purpose of maximizing revenues in a manner consonant with the dignity of the state and the welfare of its citizens. The department may adopt rules governing the establishment and operation of the state lottery and is specifically authorized to determine by rule information relating to the operation of the lottery that is confidential and exempt from public record requirements.

The bill creates s. 24.1051, F.S., transfers current public record exemptions of the department and provisions relating to public record exemptions to that section, and clarifies that the following information held by the department is confidential and exempt from public records requirements:

- Certain information that, if released, could harm the security or integrity of the department.
- Information that must be maintained as confidential in order for the department to participate in a multi-state lottery association or game.
- Personal identifying information obtained by the department when processing background investigations of current or potential retailers or vendors.
- Financial information about an entity that is not publicly available and is provided to the department in connection with its review of the financial responsibility of the entity, provided that the entity marks such information as confidential. However, financial information related to any contract or agreement, or an addendum thereto, with the department including the amount of money paid, any payment structure or plan, expenditures, incentives, bonuses, fees, and penalties, are public record.

The bill specifies that such information held by the department before, on, or after the effective date of the bill is confidential and exempt. The bill also clarifies the law by removing language that appears to conflict with the constitutional amendment that was adopted in 1992.

The bill provides for repeal of the exemption on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature. The bill provides a public necessity statement as required by the State Constitution.

The bill may have a minimal fiscal impact on the department. See Fiscal Comments section.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

Article I, s. 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, s. 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 record 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:⁵

- 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.

The Act also requires the automatic repeal of a public record exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.⁶

Department of the Lottery

Article X, s. 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 implement the constitutional provision. 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.⁷

¹ FLA. CONST. art. I, s. 24(c).

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

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.

⁷ Section 24.102(2), F.S.

Chapter 24, F.S., 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.⁸ Section 24.105, F.S., authorizes the department to adopt rules governing the establishment and operation of the state lottery. The department is specifically authorized to determine by rule information relating to the operation of the lottery that is confidential and exempt from public record requirements. Such information includes trade secrets; security measures, systems, or procedures; security reports; information concerning bids or other contractual data, the disclosure of which would impair the efforts of the department to contract for goods or services on favorable terms; employee personnel information unrelated to compensation, duties, qualifications, or responsibilities; and information obtained by the Division of Security pursuant to its investigations which is otherwise confidential. To be deemed confidential, the information must be necessary to the security and integrity of the lottery. This statutory authorization was created prior to a 1992 constitutional amendment that provided that *only* the Legislature may create a public record exemption.

Current law requires the department to maintain the confidentiality of the street address and telephone number of a game winner, which are confidential and exempt⁹ from public record requirements, unless the winner consents to the release of the information.¹⁰ The department must disclose any confidential and exempt information to the Auditor General, to the Office of Program Policy Analysis and Government Accountability, or to the lottery's independent auditor upon his or her request. In addition, if the President of the Senate or the Speaker of the House of Representatives certifies that confidential information is necessary for effecting legislative changes, the requested information must be disclosed to him or her, and he or she may disclose such information to members of the Legislature and legislative staff as necessary to effect such purpose.¹¹

Current law provides that any person who, with intent to defraud or with intent to provide a financial or other advantage to himself, herself, or another, knowingly and willfully discloses any confidential and exempt information relating to the lottery is guilty of a first degree felony.¹²

Effect of the Bill

The bill creates s. 24.1051, F.S., transfers current public record exemptions of the department and provisions relating to public record exemptions to that section, and clarifies that the following information held by the department is confidential and exempt from public records requirements:

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

⁸ Section 24.104, F.S.

⁹ 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).

¹⁰ Section 24.105(12)(b), F.S.

¹¹ Section 24.105(12)(c), F.S.

¹² A first degree felony is punishable by up to thirty years imprisonment and a fine of up to \$10,000. Sections 755.082 and 755.083, F.S.

- Information that must be maintained as confidential in order for the department to participate in a multi-state lottery association or game.
- Personal identifying information obtained by the department when processing background investigations of current or potential retailers or vendors.
- Financial information about an entity that is not publicly available and is provided to the department in connection with its review of the financial responsibility of the entity, provided that the entity marks such information as confidential. However, financial information related to any contract or agreement, or an addendum thereto, with the department including the amount of money paid, any payment structure or plan, expenditures, incentives, bonuses, fees, and penalties, are public record.

The bill specifies that such information held by the department before, on, or after the effective date of the bill is confidential and exempt. The bill also clarifies the law by removing language that appears to conflict with the constitutional amendment that was adopted in 1992.

The bill provides a public necessity statement as required by the State Constitution, specifying that the public record exemption is necessary to maintain the effective and efficient administration of the lottery.

The bill provides for repeal of the exemption on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill maintains the public record exemption for certain information about a game winner, the requirement that the department provide access to confidential information in certain instances, and the penalty provisions found in current law.

B. SECTION DIRECTORY:

Section 1. creates s. 24.1051, F.S., relating to exemptions from inspection or copying of public records and transfers and redesignates certain provisions in s. 24.105, F.S., to the newly created section.

Section 2. transfers and redesignates s. 24.118(4), F.S., relating to other prohibited acts; penalties, to the newly created s. 24.1051, F.S., and amends such provisions.

Section 3. provides a statement of public necessity.

Section 4. directs the Division of Law Revision and Information to replace the term “the effective date of this subsection” in the bill with the effective date of the bill.

Section 5. provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to impact state government revenues.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to impact local government revenues.

2. Expenditures:

The bill does not appear to impact local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

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

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 Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record exemption. The bill expands a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

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

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a newly created or expanded public record exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill expands a public record exemption for certain information held by the Department of the Lottery. As such, the exemption does not appear to be in conflict with the constitutional requirement that it be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.