

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1207 Pub. Rec./Members of the Legislature

SPONSOR(S): Government Operations Subcommittee, Beltran

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1488

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	12 Y, 4 N, As CS	Villa	Smith
2) Public Integrity & Elections Committee	11 Y, 3 N	Rubottom	Rubottom
3) State Affairs Committee			

SUMMARY ANALYSIS

Current law provides protection to a wide range of public officers and employees who, in the course of their official duties, make decisions that could subject them to threats and harassment. For example, certain locating and identifying information of justices and judges, state attorneys, and public defenders and the spouses and children thereof are exempt from public record requirements. However, no such exemption currently exist for legislators and their families.

The bill provides a public record exemption for “identification and location information” of current legislators and their spouses and children under certain conditions. The bill defines “identification and location information” to mean the:

- Home address and telephone number of a current member of the Senate or the House of Representatives;
- Name, home address, telephone number, and place of employment of the spouse or child of a current legislator;
- Name and location of a school or day care facility attended by the child of a current legislator.

The bill provides that identification and location information is exempt from public record requirements if the legislator submits to an agency that has custody of such information:

- A written request to exempt such information from public disclosure; and
- A written statement that he or she has made a reasonable effort to protect the identification and location information from being accessible through other means available to the public.

The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2026, unless the Legislature reviews and reenacts the exemption by that date.

The bill may have a minimal fiscal impact on the state and local governments. See Fiscal Comments.

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 provides for 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, 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 broader 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, unless the record is exempt. Furthermore, the Open Government Sunset Review Act⁴ 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 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 Open Government Sunset Review Act requires the automatic repeal of a newly created public record exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.⁶

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, ch. 11, F.S., provides public access requirements for legislative records and relevant provisions codified therein are adopted in the rules of each house of the Legislature.⁷ Current law provides a public record exemption for records held by the legislative branch of government which, if held by an executive agency or other unit of government, would be confidential or exempt from public record requirements.⁸

Public Officers and Employees in Sensitive Roles

Current law provides protection to a wide range of public officers and employees who, in the course of their official duties, make decisions that could subject them to threats and harassment. For example, certain locating and identifying information of justices and judges, state attorneys, and public defenders and the spouses and children thereof are exempt from public record requirements.⁹ However, no such exemption currently exist for legislators and their families.

Effect of the Bill

¹ Article I, s. 24(c), FLA. CONST.

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

³ Article I, s. 24(c), FLA. CONST.

⁴ Section 119.15, F.S.

⁵ Section 119.15(6)(b), F.S.

⁶ Section 119.15(3), F.S.

⁷ See Rule 1.48, *Rules and Manual of the Florida Senate* (2020-2022), and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 1 (2020-2022).

⁸ Section 11.0431(2)(a), F.S.

⁹ Section 119.071(4), F.S.

The bill provides a public record exemption for “identification and location information” of a current member of the Senate or the House of Representatives and their spouses and children under certain conditions. The bill defines “identification and location information” to mean the:

- Home address and telephone number of a current member of the Senate or the House of Representatives;
- Name, home address, telephone number, and place of employment of the spouse or child of a current legislator;
- Name and location of a school or day care facility attended by the child of a current legislator.

The bill provides that identification and location information held by an agency is exempt¹⁰ from public record requirements if the legislator submits to an agency that has custody of such information:

- A written request to exempt such information from public disclosure; and
- A written statement that he or she has made a reasonable effort to protect the identification and location information from being accessible through other means available to the public.

The bill provides a public necessity statement as required by article I, section 24(c) of the Florida Constitution. The public necessity statement provides that members of the Legislature are often confronted with making difficult and impactful policy decisions, and as a result of carrying out their official duties, the members and their families may receive threats, including but not limited to, verbal threats, harassment, and intimidation. The bill states that vulnerability to such threats may discourage residents of this state from seeking elected office in order to protect themselves and their families and it is therefore necessary for such identification and location information to be protected.

The bill provides that the exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2026, unless the Legislature reviews and reenacts the exemption by that date.

B. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., to provide a public record exemption for identification and location information of current legislators and their spouses and children under certain conditions.

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

Section 3 provides an effective date of July 1, 2021.

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:

¹⁰ There is a difference between records the Legislature designates 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. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Rivera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records, to anyone other than the persons or entities specifically designated in statute. See *Op. Att’y Gen. Fla.* (1985).

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have a minimal fiscal impact on governmental entities responsible for complying with public record requirements and redacting information prior to releasing a record. Such costs, however, would be absorbed as part of the day-to-day responsibilities of these entities.

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

Public Necessity Statement

Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption and includes the required public necessity statement.

Breadth of Exemption

Article 1, section 24(c) of the Florida Constitution requires a newly created or expanded public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for identification and location information of current legislators and their families under certain circumstances, which does not appear to be broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

The bill does not require rulemaking nor confer rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 24, 2021, the Government Operations Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS removed Cabinet officers from

the public record exemption, removed criminal penalties created by the original bill, and required legislators to submit a written request in order to exempt identification and location information from public record requirements.

This analysis is drafted to the committee substitute adopted by the Government Operations Subcommittee.