

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SB 1110

INTRODUCER: Senator Flores

SUBJECT: Public Records/Residential Facilities Serving Victims of Sexual Exploitation and Human Trafficking

DATE: March 20, 2015 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	Favorable
2.	_____	_____	GO	_____
3.	_____	_____	AP	_____

I. Summary:

SB 1110, which is linked to the passage of SB 1106 or similar legislation, creates a public records exemption for the location information of a safe house, safe foster home, or other residential facility serving child victims of sexual exploitation. It also creates an exemption for the location information of a residential facility offering services for adult victims of human trafficking involving commercial sexual activity. (These exemptions apply to information held by an agency.)

The exempted location information can be disclosed to an agency as necessary to maintain health and safety standards or to address emergency situations in the safe house or residential facility.

The bill provides for repeal of the exemptions on October 2, 2020, pursuant to the Open Government Sunset Review Act, unless reviewed and reenacted by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

Since the bill creates two public records exemptions, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

II. Present Situation:

Public Records Laws

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 any public body, officer, or

employee of the state, or of persons acting on their behalf.¹ The records of the legislative, executive, and judicial branches are specifically included.²

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act³ guarantees every person's right to inspect and copy any state or local government public record⁴ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁵

Only the Legislature may create an exemption to public records requirements.⁶ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.⁷ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions⁸ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.⁹

The Open Government Sunset Review Act¹⁰ requires a newly created or expanded public records exemption to be repealed on October 2 of the fifth year after enactment, unless reviewed and reenacted by the Legislature.¹¹ It further provides that a public records exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet the public purpose it serves.¹²

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Chapter 119, F.S.

⁴ Section 119.011(12), F.S., defines "public records" 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." Section 119.011(2), F.S., defines "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 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 Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

⁵ Section 119.07(1)(a), F.S.

⁶ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances (*see WFTV, Inc. v. 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, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see Attorney General Opinion 85-62*, August 1, 1985).

⁷ FLA. CONST., art. I, s. 24(c).

⁸ The bill may, however, contain multiple exemptions that relate to one subject.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ Section 119.15, F.S.

¹¹ Section 119.15(3), F.S.

¹² Section 119.15(5)(b), F.S.

Residential Facilities Serving Victims of Sexual Exploitation and Human Trafficking

The human trafficking statute, s. 787.06, F.S., states that the Legislature finds that this crime is a form of modern-day slavery and that victims of human trafficking include young children, teenagers, and adults. These victims are subjected to force, fraud, or coercion so they can become forced labor or be sexually exploited.¹³ The statute also expresses legislative intent that the Department of Children and Families (DCF) and other state agencies cooperate with other state and federal agencies to ensure that these victims can access social services and benefits to alleviate their plight.¹⁴

Section 409.1678, F.S., provides specialized residential options for children who are victims of sexual exploitation¹⁵ to include safe foster homes and safe houses. A “safe foster home” is a foster home certified by the DCF to care for sexually exploited children.¹⁶ A “safe house” is a group residential placement certified by the DCF to also care for sexually exploited children.¹⁷ To be certified, a safe foster home must hold a license as a family foster home, and a safe house must hold a license as a residential child-caring agency, both defined under s. 409.175, F.S.¹⁸

These residential facilities must also do the following to be designated a safe foster home or safe house under the statute: use strength-based and trauma-informed approaches to care; serve exclusively one sex; group sexually exploited children by age or maturity level; care for them in a way that separates them from children with other needs; have awake staff members on duty 24 hours a day; provide appropriate security; and meet all other department criteria.¹⁹

There are traditional residential facilities that serve both children and adult victims of sexual exploitation, but if these facilities serve adults, they cannot be designated a safe foster home or safe house under s. 409.1678, F.S.

III. Effect of Proposed Changes:

SB 1110, which is linked to the passage of SB 1106 or similar legislation, creates a public records exemption for the location information of a safe house, safe foster home, or other residential facility serving child victims of sexual exploitation. It also creates an exemption for the location information of a residential facility offering services for adult victims of human trafficking involving commercial sexual activity. (These exemptions apply to information held by an agency as defined in s. 119.011, F.S.²⁰)

¹³ Section 787.06(1)(a), F.S.

¹⁴ Section 787.06(1)(d), F.S.

¹⁵ Defined in part, to include allowing, encouraging, or forcing a child to participate in the trade of human trafficking for commercial sexual activity. Section 39.01(69)(g)3., F.S.

¹⁶ Section 409.1678(1)(a), F.S.

¹⁷ Section 409.1678(1)(b), F.S.

¹⁸ Section 409.1678(2)(c), F.S.

¹⁹ *Id.*

²⁰ Agency is defined as 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 the Ethics Commission, Public Service Commission, 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 bill allows the exempted location information to be disclosed to an agency as necessary to maintain health and safety standards or to address emergency situations in the safe house or residential facility.

The bill provides the following public necessity statement as required by the Florida Constitution:

The Legislature finds that it is a public necessity to make confidential and exempt from public records requirements the location information of safe houses, safe foster homes, and other residential facilities serving child victims of sexual exploitation or adult victims of human trafficking involving commercial sexual activity. Knowledge about such location information could enable the individuals who victimized these persons to locate and attempt to return them to their former situations, or continue their victimization and inhibit their recoveries. It could also enable other individuals to locate and attempt to victimize the residents.

It also provides for repeal of the exemptions on October 2, 2020, unless reviewed and reenacted by the Legislature.

Finally, the bill will take effect on the same date that SB 1106 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. 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, or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

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

Public Necessity Statement

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

Breadth of Exemption

Article I, s. 24(c) of the Florida 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 two public records exemptions limited to location information of safe houses, safe foster homes, and other residential facilities serving child victims of sexual exploitation and adult victims of human trafficking involving commercial sexual activity.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 409.1678 and 787.06.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
