

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 Governmental Oversight and Accountability

BILL: SB 914

INTRODUCER: Senator Detert

SUBJECT: Public Records/Identifying Medical and Personal Information

DATE: January 29, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cochran</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
2.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 914 makes medical and personal identifying information of an applicant for, or a recipient of, the property tax exemption for totally and permanently disabled persons confidential and exempt from the public record disclosure and copying requirements of Art. I, s. 24(a) of the State Constitution and s. 119.07(1), F.S.

This exemption applies to such information held by a property appraiser, the Department of Revenue, the tax collector, the Auditor General, or the Office of Program Policy Analysis and Government Accountability. This exemption has retroactive application.

The information may be released with the express written consent of the applicant or recipient or the legally authorized representative of such person, by court order upon showing of good cause, or to another agency in the performance of its duties.

The bill requires a two-thirds vote from each chamber for passage.

The bill becomes effective upon becoming law.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business of any public body, officer or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(a).

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ The Public Records Act states that

It is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁵

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may create an exemption to public records requirements.⁹ An exemption must pass by a two-thirds vote of the House and the Senate.¹⁰ In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹ A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.¹²

³ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ Section 119.011(12), F.S., defines “public record” 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 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, 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.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ FLA. CONST., art. I, s. 24(c).

¹² *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So.2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’¹³ Records designated as ‘confidential and exempt’ may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as ‘exempt’ may be released at the discretion of the records custodian.¹⁴

Open Government Sunset Review Act¹⁵

In addition to the constitutional requirements relating to the enactment of a public records exemption, the Legislature may subject the new or broadened exemption to the Open Government Sunset Review Act (OGSR).

The OGSR prescribes a legislative review process for newly created or substantially amended public records.¹⁶ The OGSR provides that an exemption automatically repeals on October 2 of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹⁷ In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

Under the OGSR the purpose and necessity of reenacting the exemption are reviewed. The Legislature must consider the following questions during its review of an exemption:¹⁸

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting 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?

If the Legislature expands an exemption, then a public necessity statement and a two-thirds vote for passage are required.¹⁹ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are not required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless otherwise provided for by law.²⁰

¹³ If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁴ A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

¹⁵ Section 119.15, F.S.

¹⁶ Section 119.15, F.S. According to s. 119.15(4)(b), F.S., a substantially amended exemption is one that is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S. The OGSR process is currently being followed, however, the Legislature is not required to continue to do so. The Florida Supreme Court has found that one legislature cannot bind a future legislature. *Scott v. Williams*, 107 So. 3d 379 (Fla. 2013).

¹⁷ Section 119.15(3), F.S.

¹⁸ Section 119.15(6)(a), F.S.

¹⁹ FLA. CONST., art. I, s. 24(c).

²⁰ Section 119.15(7), F.S.

Statutory Exemptions from Public Records Law

Section 119.07(1)(a), F.S., provides that any person is permitted to inspect and copy any public record unless the record falls under an exemption to the general rule. Among the general exemptions set forth in s. 119.071(5), F.S., are exemptions for social security numbers,²¹ bank account numbers,²² and the identities of recipients of paratransit services.²³

General Overview of Property Taxation

The ad valorem tax or “property tax” is an annual tax levied by counties, cities, school districts, and some special districts. The tax is based on the taxable value of property as of January 1 of each year.²⁴ The property appraiser annually determines the “just value”²⁵ of property within the taxing authority and then applies relevant exclusions, assessment limitations, and exemptions to determine the property’s “taxable value.”²⁶ Tax bills are mailed in November of each year based on the previous January 1 valuation and payment is due by March 31.

The Florida Constitution prohibits the state from levying ad valorem taxes,²⁷ and it limits the Legislature’s authority to provide for property valuations at less than just value, unless expressly authorized.²⁸

The Florida Constitution authorizes the Legislature to provide an exemption for certain real estate owned by totally and permanently disabled persons.²⁹

Property Tax Exemption for Totally and Permanently Disabled Persons³⁰

Section 196.101, F.S., provides that real estate used and owned as a homestead by a totally and permanently disabled person is exempt from taxation. To receive an exemption, persons must apply with their county property appraiser.³¹ If filing for the first time, a certificate of total and

²¹ Section 119.071(5)(a), F.S.

²² Section 119.071(5)(b), F.S.

²³ Section 119.071(5)(h), F.S.

²⁴ Both real property and tangible personal property can be subject to tax. Section 192.001(12), F.S., defines “real property” as land, buildings, fixtures, and all other improvements to land. Section 192.001(11)(d), F.S., defines “tangible personal property” as all goods, chattels, and other articles of value capable of manual possession and whose chief value is intrinsic to the article itself.

²⁵ Property must be valued at “just value” for purposes of property taxation, unless the Florida Constitution provides otherwise. FLA. CONST. art VII, s. 4. Just value has been interpreted by the courts to mean the fair market value that a willing buyer would pay a willing seller for the property in an arm’s-length transaction. *See Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

²⁶ *See* s. 192.001(2) and (16), F.S.

²⁷ FLA. CONST. art. VII, s. 1(a)

²⁸ *See* FLA. CONST. art. VII, s. 4.

²⁹ FLA. CONST. art. VII, s. 3(b).

³⁰ Section 196.101, F.S.

³¹ Florida Department of Revenue, *Homestead and Other Exemptions*, <http://dor.myflorida.com/dor/property/taxpayers/exemptions.html> (last visited January 6, 2016).

permanent disability (Form DR-416)³² from two licensed doctors of this state or from the United States Department of Veterans Affairs is required.³³ For the legally blind, one of the two may be a certificate from a Florida-licensed optometrist (Form DR-416B).^{34,35} Real estate used and owned as a homestead by a quadriplegic, less any portion used for commercial purposes, is exempt from all ad valorem taxation.³⁶

Real estate used and owned as a homestead by a paraplegic, hemiplegic, or other totally and permanently disabled person, who must use a wheelchair for mobility or who is legally blind, is exempt from taxation if the gross household income is below the current gross income limit of \$27,732.^{37,38} Gross income is the income, including veterans' and social security benefits, of all persons residing in the homestead.³⁹

Confidentiality of Returns

Section 193.074, F.S., states:

All returns of property and returns required by former s. 201.022 submitted by the taxpayer pursuant to law shall be deemed to be confidential in the hands of the property appraiser, the clerk of the circuit court, the department, the tax collector, the Auditor General, and the Office of Program Policy Analysis and Government Accountability, and their employees and persons acting under their supervision and control, except upon court order or order of an administrative body having quasi-judicial powers in ad valorem tax matters, and such returns are exempt from the provisions of s. 119.07(1).

III. Effect of Proposed Changes:

Section 1 makes confidential and exempt from public disclosure medical and personal identifying information of an applicant for or a recipient of the property tax exemption for totally and permanently disabled persons under s. 196.101, F.S., which is held by the property appraiser, the Department of Revenue, the tax collector, the Auditor General, and the Office of Program Policy Analysis and Government Accountability. The applicant or recipient of the tax exemption must make reasonable efforts to protect such information from being accessible through other means available to the public.

³² Florida Department of Revenue, *Physician's Certification of Total and Permanent Disability*, <http://dor.myflorida.com/dor/property/forms/current/dr416.pdf> (last visited January 6, 2016).

³³ Florida Department of Revenue, *Homestead and Other Exemptions*, <http://dor.myflorida.com/dor/property/taxpayers/exemptions.html> (last visited January 6, 2016).

³⁴ Florida Department of Revenue, *Optometrist's Certification of Total and Permanent Disability*, <http://dor.myflorida.com/dor/property/forms/current/dr416b.pdf> (last visited January 6, 2016).

³⁵ Florida Department of Revenue, *Homestead and Other Exemptions*, <http://dor.myflorida.com/dor/property/taxpayers/exemptions.html> (last visited January 6, 2016).

³⁶ *Id.*

³⁷ *Id.*

³⁸ Florida Department of Revenue, *Florida Property Tax Valuation and Income Limitation Rates*, <http://dor.myflorida.com/dor/property/resources/limitations.html> (last visited January 8, 2016).

³⁹ Florida Department of Revenue, *Homestead and Other Exemptions*, <http://dor.myflorida.com/dor/property/taxpayers/exemptions.html> (last visited January 6, 2016).

Information made confidential and exempt by this paragraph shall be disclosed with the express written consent of the applicant or recipient or the legally authorized representative of such person, by court order upon showing of good cause, or to another agency in the performance of its duties. The information disclosed to another agency will remain confidential and exempt.

This exemption has retroactive application.

This section is subject to the OGSR and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal by the Legislature.

Section 2 establishes the Legislature's purpose for enacting the new exemption, finding that it is a public necessity to exempt the medical and personal identifying information of an applicant for or a recipient of a property tax exemption for totally and permanently disabled persons under s. 196.101, F.S., from public records requirements. The release of an applicant's or recipient's medical or personal identifying information allows the public to gain knowledge of sensitive medical information, and could be used to harass or target these individuals in a negative way. The harm that may result from the release of this private information outweighs any public benefit that may be derived from disclosure of the information.

Section 3 provides that the act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The county/municipality mandates provision of Art. VII, section 18, of the State Constitution may apply because county tax collectors and county property appraisers may incur additional costs relating to redacting information made confidential and exempt under this bill. However, an exemption may apply based on the limited fiscal impact that is anticipated to be incurred.

B. Public Records/Open Meetings Issues:

Pursuant to Article I, s. 24(c) of the State Constitution, all public records exemptions require a two-thirds vote by both the Senate and the House. The public necessity statement sufficiently supports the breadth of the exemption.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Indeterminate. The property appraiser, the Department of Revenue, the tax collector, the Auditor General, and the Office of Program Policy Analysis and Government Accountability will have to spend resources for training its staff and redacting information, however, these costs can be absorbed within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.071 of the Florida Statutes.

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.