

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	SB 2510	FINAL HOUSE FLOOR ACTION:		
SUBJECT/SHORT TITLE	Public Records / Dependent Eligibility Verification Services	110	Y's 2	N's
SPONSOR(S):	Appropriations	GOVERNOR'S ACTION: Approved		
COMPANION BILLS:	SB 2508			

SUMMARY ANALYSIS

Senate Bill 2510 passed the Senate on May 8, 2017, as amended by the conference committee. The House concurred in the conference committee amendment to the Senate bill and subsequently passed the bill as amended on May 8, 2017.

The bill makes confidential and exempt from public inspection and copying most documents submitted to the Department of Management Services (DMS) or its third party provider contracted to provide dependent eligibility verification services. If documents collected by the DMS for another purpose are not exempt in that situation, those same documents submitted for dependent eligibility verification purposes will not be exempt from public inspection and copying.

The bill also includes a constitutionally required public necessity statement. The exemption, unless reenacted by the legislature, will stand repealed on October 2, 2022, pursuant to the Open Government Sunset Review Act.

The bill has no fiscal impact on state or local government.

This bill was approved by the Governor on June 16, 2017, ch. 2017-128, L.O.F., and will become effective on July 1, 2017.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

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 government business.¹ This applies to 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

Additionally, 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:

[i]t 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 In order for an exemption to become effective, it must pass by a two-thirds vote of both the House of Representatives and the Senate.¹⁰ In addition, an exemption must explicitly lay out the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹ A statutory exemption that does not meet these criteria may be unconstitutional and may not be judicially saved.¹²

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

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 *Id.*

¹¹ *Id.*

¹² *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). See also *Baker County Press, Inc., v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004).

When the Legislature creates a public records exemption, it 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. Any records designated as “exempt” are not required to be made available for public inspection, but may be released at the discretion of the records custodian under certain circumstances.¹⁴

Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁵ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; unless reenacted by the Legislature and saved from repeal.¹⁶

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹⁷ An exemption serves an identifiable purpose if it meets one of the following purposes and the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁸
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹⁹ or
- It protects trade or business secrets.²⁰

In addition, the OGSR also requires specified questions to be considered during the review process.²¹ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, an exemption is expanded, then a public necessity statement and a two-thirds vote for passage is required.²² If the exemption is reenacted or narrowed without substantive changes, then a public necessity statement and a two-thirds vote for passage is not required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²³

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

¹⁵ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it 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.

¹⁶ Section 119.15(3), F.S.

¹⁷ Section 119.15(6)(b), F.S.

¹⁸ Section 119.15(6)(b)1., F.S.

¹⁹ Section 119.15(6)(b)2., F.S.

²⁰ Section 119.15(6)(b)3., F.S.

²¹ Section 119.15(6)(a), F.S. The specified questions are:

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

²² FLA. CONST., art. I, s. 24(c).

²³ Section 119.15(7), F.S.

Current Relevant Public Record Exemptions

Personal identifying information for a dependent child²⁴ of a current or former officer, or employee of an agency, is exempt from public disclosure if the child is insured by an agency group insurance plan.²⁵

Any social security numbers²⁶ held by an agency, most birth records,²⁷ papers and records of any governmental agency relating to adoptions,²⁸ and the names of spouses and children of certain personnel²⁹, are confidential and exempt from public disclosure.

Dependent Eligibility Verification Audit

In the FY 2017-2018 General Appropriations Act, \$1 million in funding is provided in Specific Appropriation 2806 to the Department of Management Services (DMS) to competitively procure a contract for a dependent eligibility verification audit. The DMS is directed to conduct the audit and is authorized to request and receive certain documents based on the provisions of SB 2508. The DMS, or its third party provider will request various documents to verify current dependent eligibility. Documents to be requested include tax transcripts from the Internal Revenue Service, marriage licenses, birth certificates, adoption documents, and other various documents.

Effect of the Bill

The bill makes confidential and exempt from public inspection and copying most documents submitted to the Department of Management Services (DMS) or its third party provider contracted to provide dependent eligibility verification services. If documents collected by the DMS for another purpose are not exempt in that situation, those same documents submitted for dependent eligibility verification purposes will not be exempt from public inspection and copying.

The bill also includes a constitutionally required public necessity statement. The exemption, unless reenacted by the legislature, will stand repealed on October 2, 2022, pursuant to the Open Government Sunset Review Act.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

²⁴ As defined in s. 409.2554(2), F.S.

²⁵ Section 119.071(4)(b)2.a., F.S.

²⁶ Section 119.071(5)(a)5., F.S.

²⁷ Section 382.025, F.S.

²⁸ Section 63.162, F.S.

²⁹ Section 119.071(4), F.S. The personnel include law enforcement officers, investigative personnel at the departments of Financial Services and Business and Professional Regulation, state attorneys and statewide prosecutors, personnel involved in human resources, labor relations, and employee relations, code enforcement officers, guardians ad litem, juvenile justice workers, public defenders, agency inspector general staff, and others.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.