

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 549 Pub. Rec./Site-specific Location Information of Endangered and Threatened Species

SPONSOR(S): Agriculture & Natural Resources Subcommittee, Overdorf

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 812

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	11 Y, 0 N, As CS	Melkun	Moore
2) State Affairs Committee	22 Y, 0 N	Melkun	Williamson

SUMMARY ANALYSIS

An endangered species is any species of fish or wildlife naturally occurring in Florida whose prospects of survival are in jeopardy due to modification or loss of habitat; overutilization for commercial, sporting, scientific, or educational purposes; disease; predation; inadequacy of regulatory mechanisms; or other natural or manmade factors affecting its continued existence. A threatened species is any species of fish or wildlife naturally occurring in Florida that is not in immediate danger of extinction, but exists in such small populations that it is at risk of becoming endangered if it is subjected to increased stress as a result of further modification of its environment.

At the federal level, the National Oceanic and Atmospheric Administration's National Marine Fisheries Service is responsible for determining whether to list most marine species as endangered or threatened, and the United States Fish and Wildlife Service is responsible for determining whether to list other species. On the state level, the Florida Fish and Wildlife Conservation Commission (FWC) may designate species by rule as state-designated threatened species.

In managing species listed as endangered or threatened, FWC conducts significant research that includes population trends, migratory patterns, reproductive ecology, distribution data, den locations, satellite telemetry, point localities for artificial reefs, and mark-recapture data. FWC often collaborates with nongovernmental organizations, universities, other management agencies, and private consultants when making management decisions for listed species.

The bill provides that site-specific location information concerning a federally-designated endangered or threatened species or a state-designated threatened species held by an agency is exempt from public records requirements. The bill specifies that the public record exemption does not apply to animals in captivity.

The bill provides for repeal of the exemption on October 2, 2025, unless reviewed and saved from repeal 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 state and local governments. See Fiscal Comments

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record exemption. The bill creates 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 Laws

Article I, s. 24(a) of the State 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.

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record.

Public Record Exemptions

The Legislature may provide by general law for the exemption of records from the requirements of Art. I, s. 24(a) of the State Constitution.¹ The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.²

Furthermore, the Open Government Sunset Review Act³ provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. The exemption may be no broader than is 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.⁴

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.⁵

Florida's Management of Endangered Species

Pursuant to Art. IV, s. 9 of the State Constitution, the Florida Fish and Wildlife Conservation Commission (FWC) exercises the regulatory and executive powers of the state with respect to wild animal life, fresh water aquatic life, and marine life.⁶ Under the Florida Endangered and Threatened Species Act, FWC is responsible for research and management of freshwater and upland species as well as marine species.⁷

An endangered species is any species of fish or wildlife naturally occurring in Florida whose prospects of survival are in jeopardy due to modification or loss of habitat; overutilization for commercial, sporting, scientific, or educational purposes; disease; predation; inadequacy of regulatory mechanisms; or other natural or manmade factors affecting its continued existence.⁸ A threatened species is any species of

¹ Art. I, s. 24(c), FLA. CONST.

² Art. I, s. 24(c), FLA. CONST.

³ Section 119.15, F.S.

⁴ Section 119.15(6)(b), F.S.

⁵ Section 119.15(3), F.S.

⁶ Art. IV, s. 9, FLA. CONST.

⁷ Section 379.2291(4), F.S.

⁸ Section 379.2291(3)(b), F.S.

fish or wildlife naturally occurring in Florida that is not in immediate danger of extinction, but exists in such small populations that it is at risk of becoming endangered if it is subjected to increased stress as a result of further modification of its environment.⁹

At the federal level, the National Oceanic and Atmospheric Administration's National Marine Fisheries Service is responsible for determining whether to list most marine species as endangered or threatened, and the United States Fish and Wildlife Service (USFWS) is responsible for determining whether to list other species.¹⁰ On the state level, FWC may designate species by rule as state-designated threatened species.¹¹ FWC's rule designating species as threatened also includes a list of federally-designated endangered and threatened species.¹² Intentionally killing, wounding, or destroying the eggs or nest of any species designated as endangered or threatened is a third degree felony.¹³

In the management of species listed as endangered or threatened, FWC conducts significant research for surveying and monitoring such species, including habitat improvement and restoration, development and implementation of management plans, and conservation planning. Research data typically includes population trends, migratory patterns, reproductive ecology, distribution data, den locations, satellite telemetry, point localities for artificial reefs, and mark-recapture data.¹⁴ FWC often collaborates with nongovernmental organizations, universities, other management agencies, and private consultants when making management decisions for listed species.¹⁵

Effect of the Bill

The bill provides that site-specific location information concerning a federally-designated endangered or threatened species or a state-designated threatened species held by an agency¹⁶ is exempt¹⁷ from public records requirements. The bill specifies that the exemption does not apply to animals in captivity.

The bill provides a public necessity statement as required by the State Constitution, specifying that the release of such information would jeopardize the continued existence of endangered and threatened species by increasing the risk of exposure to poachers or by threatening the integrity of the site due to increased use or traffic. The public necessity statement also provides that the protection of such information would protect private property owners from potential trespass and related liability issues when endangered or threatened species are found on their properties and would encourage such property owners, as well as researchers, to provide agencies with information they might not otherwise provide if such location information were made public.

The bill provides for repeal of the exemption on October 2, 2025, unless reviewed and saved from repeal by the Legislature.

⁹ Section 379.2291(3)(c), F.S.

¹⁰ 50 C.F.R. 17 (animals); 50 C.F.R. 23 (plants); 50 C.F.R. 223 and 224 (marine species).

¹¹ Rule 68A-27.001(3), F.A.C.

¹² Rules 68A-27.003 and 68A-27.0031, F.A.C.; FWC, *Florida's Endangered and Threatened Species*, available at <https://myfwc.com/media/1945/threatend-endangered-species.pdf> (last visited Jan. 28, 2020).

¹³ Section 379.411, F.S.

¹⁴ Florida Fish and Wildlife Conservation Commission, Agency Analysis of 2020 House Bill 549, p. 2 (Jan. 14, 2020).

¹⁵ *Id.*

¹⁶ Section 119.011(2), F.S., defines the term "agency" to include 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 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.

¹⁷ 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).

B. SECTION DIRECTORY:

- Section 1. Creates s. 379.1026, F.S., to provide a public record exemption for site-specific location information for endangered and threatened species.
- Section 2. Provides a public necessity statement as required by the State Constitution.
- Section 3. Provides an effective date of July 1, 2020.

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:

- 1. Revenues:
None.
- 2. Expenditures:
See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill could have a minimal fiscal impact on agencies because agency staff responsible for complying with public record requests may require training related to the creation of the public record exemption. In addition, agencies 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 agencies.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote Requirement

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

Public Necessity Statement

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

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for site-specific location information concerning a federally-designated endangered or threatened species or state-designated threatened species. 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 confer rulemaking authority nor require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 4, 2020, the Agriculture & Natural Resources Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment specified that the exemption does not apply to animals in captivity and removed a provision specifying when release of the exempt information would not waive the exemption.

This analysis is drafted to the committee substitute as approved by the Agriculture & Natural Resources Subcommittee.