

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1195 Pub. Rec./Court Records of Eviction Proceedings

SPONSOR(S): Aloupis

TIED BILLS: HB 1193 **IDEN./SIM. BILLS:** SB 1748

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Property Rights Subcommittee	18 Y, 0 N	Brascomb	Jones
2) Government Operations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

A lease is an estate interest in real property held under a rental agreement by which the owner (landlord) gives another (tenant) the right to occupy or use land for a period of time. A landlord may terminate a lease early and evict a tenant for a number of reasons, including not paying rent, violating the lease or rental agreement, or committing an illegal act.

There is currently no public records exemption for eviction related court records. An eviction on a public court record may prevent a family from relocating to safe, affordable housing because before renting a property, landlords often screen applicant background criteria including credit history, criminal history, and eviction history. Increasingly, landlords purchase reports from tenant screening companies, which collect information from eviction courts and make recommendations based solely on the existence of a court case, regardless of whether the case resulted in a judgment against the tenant.

HB 1193 (2021), to which this bill is linked, authorizes a tenant or mobile home owner who is a defendant in a eviction proceeding to file a motion with the court to have the records of such proceedings sealed and to have his or her name substituted with the word "tenant" on the progress docket under certain circumstances. The bill also requires a court to grant such motion if the parties file a joint stipulation or the case was dismissed. In a mobile home park lot eviction proceeding, the court must substitute the defendant's name on the progress docket with "tenant" if the court entered a judgment in favor of the defendant.

HB 1195, which is linked to the passage of HB 1193, creates a public records exemption for the defendant's name contained in an eviction proceeding progress docket or court record. The bill includes a statement of public necessity as required by the Florida Constitution, stating that the exemption is necessary to protect defendants in eviction proceedings from the negative health and economic impacts associated with the stigma of an eviction on a public court record.

The bill subjects this public record exemption to the Open Government Sunset Review Act, and thus the exemption will be repealed on October 2, 2026, unless it is reviewed and saved from repeal by the Legislature. The bill also provides a statement of public necessity as required by the Florida Constitution.

The bill does not appear to have a fiscal impact on the state or local governments.

The bill will become effective on the same date that HB 1193 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

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 records or public meeting exemption. The bill creates a new public record exemption for the defendant's name contained in an eviction proceeding progress docket or court record; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1195a.CIV

DATE: 3/18/2021

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records and Open Meetings Requirements

The Florida Constitution provides that the public has the right to access government records and meetings. The public may 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 public also has a right to have notice of and access to meetings of any collegial public body of the executive branch of state government or of any local government.² The Legislature's meetings must also be open and noticed to the public, unless there is an exception provided for by the Constitution.³

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. The Public Records Act⁴ guarantees every person's right to inspect and copy any state or local government public record.⁵ The Sunshine Law⁶ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be noticed and open to the public.⁷

The Legislature, however, may create an exemption to public record or open meetings requirements.⁸ An exemption must specifically state the public necessity justifying the exemption⁹ and must be tailored to accomplish the stated purpose of the law.¹⁰ There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act and also confidential, as explained below.

Exempt Records

If a record is exempt, the specified record or meeting, or portion thereof, is not subject to the access requirements of s. 119.07(1), F.S.; s. 286.011, F.S.; or article I, section 24 of the Florida Constitution. If records are only exempt from the Public Records Act but not confidential, the exemption does not prohibit the showing of such information, but simply exempts an entity in possession of the information from the mandatory disclosure requirements in s. 119.07(1)(a), F.S.¹¹

¹ Art. I, s. 24(a), Fla. Const.

² Art. I, s. 24(b), Fla. Const.

³ *Id.*

⁴ Chapter 119, F.S.

⁵ Section 119.011(12), F.S., defines "public record" as 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" 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. The Public Records Act does not apply to legislative or judicial records, *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992), however, the Legislature's records are public pursuant to section 11.0431, F.S.

⁶ Section 286.011, F.S.

⁷ Section 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in the Florida Constitution. Article III, section 4(e) of the Florida Constitution provide that legislative committee meetings must be open and noticed to the public. In addition, prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.

⁸ Art. I, s. 24(c), Fla. Const.

⁹ *Id.*

¹⁰ *Id.*

¹¹ See, *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991), rev. denied, 589 So. 2d 289 (Fla. 1991), in which the court observed that pursuant to s. 119.07(3)(d), F.S., [now s. 119.071(2)(c), F.S.] "active criminal investigative information" was exempt from the requirement that public records be made available for public inspection. However, as stated by the court, "the exemption does not prohibit the showing of such information." *Id.* at 686.

Confidential Records

The term “confidential” is not defined in the Public Records Act; however, it is used in Article I, s. 24 of the Florida Constitution, which provides that every person has the right to inspect or copy any public record, except with respect to records exempted or specifically made confidential by the Constitution. If information is made confidential in the statutes, the information is not subject to inspection by the public and may be released only to those persons and entities designated in the statute.¹²

Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public record or open meetings exemptions.¹³ The OGSR provides that an exemption automatically is repealed 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.¹⁴

The OGSR provides that a public record or open meeting exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹⁵ An exemption serves an identifiable purpose if it meets one of the following criteria:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;
- It protects sensitive personal information, the release of which would be defamatory or would jeopardize an individual’s safety (If this public purpose is cited as the basis of an exemption, only personal identifying information is exempt); or
- It protects trade or business secrets.¹⁶

In addition, the Legislature must find that the identifiable public purpose is compelling enough to override Florida’s open government public policy and that the purpose of the exemption cannot be accomplished without the exemption.¹⁷

Residential Tenancies and Eviction

A lease is an estate interest in real property held under a rental agreement by which the owner (landlord) gives another (tenant) the right to occupy or use land for a period of time.¹⁸ Section 83.56, F.S., establishes the circumstances under which a residential landlord or tenant may terminate a rental agreement. A landlord may terminate a tenancy early and evict a tenant for a number of reasons, including not paying rent, violating the lease or rental agreement, or committing an illegal act. To terminate the tenancy, the landlord must first give the tenant written notice. The type of notice is determined by the reason for the termination:

- If the tenant fails to pay rent, then the landlord can give the tenant a three-day notice to pay rent or terminate the rental agreement.
- If the tenant violates the lease or rental agreement and the violation can be corrected, then the landlord can give the tenant a seven-day notice to cure.
- If the tenant intentionally destroys the rental property or other tenants’ property, creates unreasonable disturbances, or repeats the same lease violation within a 12-month period, an

¹² *WFTV, Inc. v. School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004), rev. denied, 892 So. 2d 1015 (Fla. 2004). See also, 04-09 Fla Op. Att’y Gen. (2004) and 86-97 Fla Op. Att’y Gen. (1986).

¹³ 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. Section 119.15(2), F.S.

¹⁴ Section 119.15(3), F.S.

¹⁵ Section 119.15(6)(b), F.S.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ West’s Encyclopedia of American Law, Leasehold (2008), <https://legaldictionary.thefreedictionary.com/leasehold> (last visited Mar. 15, 2021). See s. 689.01, F.S.

unconditional quit notice allows the landlord to terminate the tenancy at the end of a seven-day period and proceed with the eviction without giving the tenant time to fix or cure a violation.

There is currently no public records exemption for eviction related court records. An eviction on a public court record may prevent a family from relocating to safe, affordable housing because before renting a property, landlords often screen applicant background criteria including credit history, criminal history, and eviction history.¹⁹ Increasingly, landlords search court websites and purchase reports from tenant screening companies, which collect information from eviction courts and aggregate it with other publicly available data.²⁰ Some tenant screening companies make recommendations based solely on the existence of a court case, regardless of whether the case resulted in a judgment against the tenant.²¹ Reliance on screening company reports may have also increased due to the decision by the three major credit bureaus in 2017 to not include the vast majority of civil judgments on a standard consumer credit report without other identifying information, such as a birthdate or social security number.²²

HB 1193 (2021)

HB 1193 (2021), to which this bill is linked, authorizes a tenant or mobile home owner who is a defendant in a eviction proceeding to file a motion with the court to have the records of such proceedings sealed and to have his or her name substituted with the word “tenant” on the progress docket if:

- The parties file a joint stipulation.
- The case was dismissed.
- The case was resolved by settlement or stipulation of the parties and the defendant has complied with the terms of the agreement.
- A default judgment was entered against the defendant, and the defendant has satisfied any monetary award included in the judgment.
- A judgment was entered against the defendant on the merits at least 5 years before the motion was filed under this subsection, and the tenant has satisfied any monetary award included in the judgment.

HB 1193 also requires a court to grant such motion if the parties file a joint stipulation or the case was dismissed. In a mobile home park lot eviction proceeding under s. 723.061, F.S., the court must substitute the defendant’s name on the progress docket with “tenant” if the court entered a judgment in favor of the defendant.

Effect of Proposed Changes

HB 1195 creates a public records exemption for the defendant’s name contained in an eviction proceeding progress docket or court record. The bill includes a statement of public necessity as required by the Florida Constitution, stating that the exemption is necessary to protect defendants in eviction proceedings from the negative health and economic impacts associated with the stigma of an eviction on a public court record.

The bill is effective the same date that HB 1193 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

B. SECTION DIRECTORY:

Section 1: Creates s. 86.626, F.S., relating to court records of eviction proceedings; public records exemption.

Section 2: Provides a public necessity statement.

¹⁹ Lawyers’ Committee for Better Housing, *Prejudged: The Stigma of Eviction Records*, Housing Action Illinois (March 2018), <http://housingactionil.org/downloads/EvictionReport2018.pdf> (last visited Mar. 15, 2021).

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

Section 3: Provides an effective date of the same date that HB 1193 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None,

D. FISCAL COMMENTS:

The bill may have a minimal fiscal impact on clerks because staff responsible for complying with public records requests may require training related to the creation of the public record exemption. The costs, however, will likely be absorbed within existing resources.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

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 or expanded public record or public meeting exemption. The bill creates a new 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 or expanded public record or public meeting exemption. The bill creates a new 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 or expanded public record exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a new public record exemption to protect the defendant's name contained in an eviction proceeding progress docket or court records.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES