

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1395 Pub. Rec./Lottery Winners

**SPONSOR(S):** Government Operations Subcommittee, Davis

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1836

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	17 Y, 0 N, As CS	Villa	Smith
2) State Affairs Committee			

### SUMMARY ANALYSIS

The Department of the Lottery (department) operates the state lottery. Currently, the street address and telephone number of a lottery game winner is confidential and exempt from public record requirements, unless the winner consents to its release. However, the information must be made available to governmental entities for certain purposes. Any person who discloses the confidential and exempt information with fraudulent intent is guilty of a first degree felony.

The bill creates a public record exemption for the name of major prize winners of the state lottery similar to the public record exemption currently provided for the street address and telephone number of game winners. Specifically, the bill provides that the name of a winner of a prize valued at \$250,000 or more is confidential and exempt from public record requirements for 90 days from the date the prize is claimed, unless the winner consents to the release of his or her name. However, the information must be made available to governmental entities for certain purposes.

Any person who, with intent to defraud or with intent to provide a financial or other advantage to himself, herself, or another, knowingly and willfully discloses any information made confidential and exempt by the bill is guilty of a first degree felony.

The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2026, unless the Legislature reviews and reenacts the exemption by that date.

The bill may have a minimal fiscal impact on the state.

**Article I, section 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 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

Article I, section 24(a) of the Florida 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. The Legislature, however, may provide by general law for the exemption of records from the requirements of article I, section 24(a) of the Florida Constitution.<sup>1</sup> The general law must state with specificity the public necessity justifying the exemption<sup>2</sup> and must be no broader than necessary to accomplish its purpose.<sup>3</sup>

Public policy regarding access to government records is addressed further in s. 119.07(1)(a), F.S., which guarantees every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt. Furthermore, the Open Government Sunset Review Act<sup>4</sup> provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than 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.<sup>5</sup>

The Open Government Sunset Review Act requires the automatic repeal of a newly created public record exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>6</sup>

##### Department of the Lottery

The Legislature enacted ch. 24, F.S., establishing the Department of Lottery (department) to operate the state lottery. The purpose and intent of the lottery is to enable the people of the state to benefit from significant additional moneys for education and to play the best lottery games available. This chapter also specifies it is the intent of the Legislature that:

- The net proceeds of lottery games be used to support improvements in public education<sup>7</sup> without serving as a substitute for existing public education resources;
- The department function as much as possible in the manner of an entrepreneurial business enterprise; and
- The department be accountable to the Legislature and the people of the state through a system of audits and reports and through compliance with financial disclosure, open meetings, and public records laws.<sup>8</sup>

##### Personal Identifying Information Public Record Exemption

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<sup>1</sup> Article I, s. 24(c), FLA. CONST.

<sup>2</sup> This portion of a public record exemption is commonly referred to as a "public necessity statement."

<sup>3</sup> Article I, s. 24(c), FLA. CONST.

<sup>4</sup> Section 119.15, F.S.

<sup>5</sup> Section 119.15(6)(b), F.S.

<sup>6</sup> Section 119.15(3), F.S.

<sup>7</sup> Approximately six percent of the state's education budget is funded by the state lottery. Florida Lottery, *About US*, <https://www.flalottery.com/history> (last visited March 25, 2021).

<sup>8</sup> Section 24.102(2), F.S.

Currently, the street address and telephone number of a lottery game winner is confidential and exempt from public record requirements, unless the winner consents to its release.<sup>9</sup> However, the information must be made available to:

- A state agency in order to collect an outstanding debt owed to the agency;
- A court of the judicial branch in order to collect outstanding child support payments, including spousal support or alimony for the spouse or former spouse of the obligor if the child support obligation is being enforced by the Department of Revenue; and
- The Department of Revenue as part of its parent locator service.<sup>10</sup>

Additionally, the department must disclose any confidential and exempt information to the Auditor General, to the Office of Program Policy Analysis and Government Accountability, or to the lottery's independent auditor upon his or her request. If the President of the Senate or the Speaker of the House of Representatives certifies that confidential and exempt information is necessary for effecting legislative changes, the requested information must be disclosed to him or her and he or she may disclose such information to members of the Legislature and legislative staff as necessary to effect such purpose.<sup>11</sup>

Current law provides that any person who, with intent to defraud or with intent to provide a financial or other advantage to himself, herself, or another, knowingly and willfully discloses any confidential and exempt information relating to the lottery is guilty of a first degree felony.<sup>12</sup>

### Lottery Prize Winners

The following information of a lottery prize winner is currently not exempt from public record requirements, and therefore is subject to disclosure:

- Full name;
- City of residence;
- Game won;
- Date won;
- Amount won; and
- Name and location of the retailer where the winning ticket was purchased.<sup>13</sup>

The department regularly releases the nonexempt information of major prize winners as part of its marketing strategy.<sup>14</sup> The information is featured in various venues including press releases, social media post, and the department's website.<sup>15</sup>

### **Effect of the Bill**

The bill creates a public record exemption for the name of major prize winners of the state lottery similar to the public record exemption currently provided for the street address and telephone number of game winners. Specifically, the bill provides that the name of a winner of a prize valued at \$250,000 or more is confidential and exempt<sup>16</sup> from public record requirements for 90 days from the date the

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<sup>9</sup> Section 24.1051(2), F.S.

<sup>10</sup> *Id.* The purpose of the parent locator service is to assist in locating parents who have deserted their children and other persons liable for support of dependent children. Section 409.2577, F.S.

<sup>11</sup> Section 24.1051(3), F.S.

<sup>12</sup> Section 24.1051(4), F.S. A first degree felony is punishable by up to thirty years imprisonment and a fine of up to \$10,000. Sections 755.082 and 755.083, F.S.

<sup>13</sup> Florida Lottery, *Win Responsibly*, <https://playersguide.flalottery.com/a11y/win-responsibly/> (last visited March 25, 2021).

<sup>14</sup> Department of Lottery, Agency Analysis of 2021 HB 1395, p. 2 (March 16, 2021).

<sup>15</sup> See Florida Lottery, *Winner News*, <https://www.flalottery.com/winnerNews> (last visited March 25, 2021).

<sup>16</sup> 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. 04-09 (2004).

prize is claimed, unless the winner consents to the release of his or her name. However, the information must be made available to:

- A state agency in order to collect an outstanding debt owed to the agency;
- A court of the judicial branch in order to collect outstanding child support payments, including spousal support or alimony for the spouse or former spouse of the obligor if the child support obligation is being enforced by the Department of Revenue; and
- The Department of Revenue as part of its parent locator service.

Additionally, as currently provided in law, the department must disclose the information made confidential and exempt by the bill to the:

- Auditor General;
- Office of Program Policy Analysis and Government Accountability;
- Lottery's independent auditor upon his or her request; or
- President of the Senate or the Speaker of the House of Representatives if he or she certifies that the information is necessary for effecting legislative changes. The President of the Senate or the Speaker of the House of Representatives may disclose the confidential and exempt information to members of the Legislature and legislative staff as necessary to effect such purpose.

Any person who, with intent to defraud or with intent to provide a financial or other advantage to himself, herself, or another, knowingly and willfully discloses any information made confidential and exempt by the bill is guilty of a first degree felony.

The bill provides a public necessity statement as required by art. I, s. 24(c) of the Florida Constitution. The public necessity statement provides that persons who win valuable lottery prizes have been the targets of violent and nonviolent criminal acts based upon publicly available identifying information.

The bill provides that the exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2026, unless the Legislature reviews and reenacts the exemption by that date.

#### B. SECTION DIRECTORY:

Section 1 amends s. 24.1051, F.S., to create a temporary public record exemption for the name of a major prize winner of the state lottery.

Section 2 provides a public necessity statement as required by the Florida Constitution.

Section 3 provides an effective date of upon becoming a law.

## 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:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill could have a minimal fiscal impact on the department because department staff responsible for complying with public record requests may require training related to the newly created public record exemption. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the department.

### 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, section 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 a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, section 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 a public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article 1, section 24(c) of the Florida Constitution requires a newly created or expanded public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for the name of a major prize winner of the Florida lottery, which does not appear to be 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 March 30, 2021, the Government Operations Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment limited the public record exemption provided for in the bill to 90 days from the date the prize is claimed.

This analysis is drafted to the committee substitute as adopted by the Government Operations Subcommittee.