

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 379 Pub. Rec./Economic Development Agencies

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

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 968

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee	16 Y, 2 N	Willson	Keating
2) Government Operations Subcommittee	15 Y, 1 N, As CS	Villa	Smith
3) Commerce Committee	20 Y, 0 N	Willson	Hamon

### SUMMARY ANALYSIS

The Department of Economic Opportunity (DEO) and other state economic development agencies administer various loan programs available to eligible small businesses. These loan programs include, among others, the Rural Community Development Revolving Loan Program, the Small Business Emergency Bridge Loan Program, and the Black Business Loan Program.

The bill creates a public record exemption for certain information held by an economic development agency pursuant to the administration of a state or federally funded small business loan program. Specifically, the bill exempts the following information:

- The home address, telephone number, and e-mail address of a person who submits an application for a loan on behalf of a business.
- Tax returns.
- Bank and financial statements.
- Credit history information, credit reports, and credit scores.

The bill allows the disclosure of the exempt information held by the economic development agency pursuant to its administration of a small business loan program in an aggregated and anonymized format.

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 and local governments.

**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 provides for 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>

##### Small Business Loan Programs

The Department of Economic Opportunity (DEO) administers a number of state and federally funded small business loan programs, including:

- Small Business Emergency Bridge Loan Program
- Rebuild Florida Business Loan Fund<sup>7</sup>
- Rural Community Development Revolving Loan Program<sup>8</sup>
- State Small Business Loan Fund<sup>9</sup>
- Black Business Loan Program<sup>10</sup>
- Microfinance Loan Program<sup>11</sup>

Section 288.075, F.S., defines an "Economic development agency" as:

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

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

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

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

<sup>7</sup> DEO, *Rebuild Florida Business Loan Fund*, <https://deosera.force.com/RebuildFloridaBusinessLoanFund/s/loan-programs?program=florida-resiliency-loan> (last visited Feb. 23, 2021).

<sup>8</sup> S. 288.065, F.S.

<sup>9</sup> DEO, *Small Business Loan Program*, <https://floridajobs.org/community-planning-and-development/Small-and-Minority-Business-Development-Resources/Small-and-Minority-Business-Programs/small-business-loan-program> (last visited Feb. 23, 2021).

<sup>10</sup> Ss. 288.7102–714, F.S.

<sup>11</sup> See Microfinance Programs, ch. 288, part XIV.

- The Department of Economic Opportunity;
- Any industrial development authority created in accordance with part III of chapter 159 or by special law;
- Space Florida created in part II of chapter 331;
- The public economic development agency of a county or municipality or, if the county or municipality does not have a public economic development agency, the county or municipal officers or employees assigned the duty to promote the general business interests or industrial interests of that county or municipality or the responsibilities related thereto;
- Any research and development authority created in accordance with part V of chapter 159; or
- Any private agency, person, partnership, corporation, or business entity when authorized by the state, a municipality, or a county to promote the general business interests or industrial interests of the state or that municipality or county.

## Effect of the Bill

This bill creates a public record exemption for certain information held by economic development agencies as part of its administration of a state or federally funded small business loan program. Specifically, the bill provides the following information is exempt<sup>12</sup> from public record requirements:

- The home address, telephone number, and e-mail address of a person who submits an application for a loan on behalf of a business.
- Tax returns.
- Bank and financial statements.
- Credit history information, credit reports, and credit scores.

The bill does not prohibit the disclosure of information held by the economic development agency pursuant to its administration of a small business loan program in an aggregated and anonymized format.

This bill provides a public necessity statement as required by article I, section 24(c) of the Florida Constitution. The public necessity statement provides that in order to assess the viability of loans, an economic development agency may obtain sensitive information, including contact and financial information, of an applicant or borrower and, if released, the sensitive information could be used by fraudulent contractors, predatory lenders, thieves, or individuals seeking to impose on the applicant or borrower.

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. 288.075, F.S.; providing an exemption from public records requirements for certain information held by an economic development agency; providing that such information may be released in an aggregated and anonymized format; providing for future legislative review and repeal of the exemption.

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

**Section 3** Provides an effective date of July 1, 2021.

<sup>12</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. (1985).

## 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 may have a minimal fiscal impact on economic development agencies responsible for complying with public records requests and redacting exempt information prior to releasing a record. Such costs, however, would be absorbed as part of the day-to-day responsibilities of these agencies.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to take 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, 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 and includes the required 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.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 17, 2021, the Government Operations Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The first amendment corrected a reference in the bill from section to subsection. The second amendment revised the public necessity statement to align with the information exempted in the bill.

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