

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 379 Pub. Rec./Economic Development Agencies
SPONSOR(S): Government Operations Subcommittee, Giallombardo and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 968

FINAL HOUSE FLOOR ACTION: 102 Y's 13 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/HB 379 passed the House on April 14, 2021. The bill was amended in the Senate on April 21, 2021, and returned to the House. The House concurred in the Senate amendment and subsequently passed the bill as amended on April 29, 2021.

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:

- Tax returns.
- Financial information.
- 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.

The bill was approved by the Governor on May 7, 2021, ch. 2021-23, L.O.F., and will become effective on July 1, 2021.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF 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.¹ The general law must state with specificity the public necessity justifying the exemption² and must be no broader than necessary to accomplish its purpose.³

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 Act⁴ 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.⁵

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.⁶

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 Fund⁷
- Rural Community Development Revolving Loan Program⁸
- State Small Business Loan Fund⁹
- Black Business Loan Program¹⁰
- Microfinance Loan Program¹¹

¹ Art. I, s. 24(c), FLA. CONST.

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

³ Art. I, s. 24(c), FLA. CONST.

⁴ S. 119.15, F.S.

⁵ S. 119.15(6)(b), F.S.

⁶ S. 119.15(3), F.S.

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

⁸ S. 288.065, F.S.

⁹ 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).

¹⁰ Ss. 288.7102--714, F.S.

¹¹ See Microfinance Programs, ch. 288, part XIV, F.S.

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

- 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 exempt¹² from public record requirements:

- Tax returns.
- Financial information.
- 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 tax returns 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.

¹² 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.