

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 159 Pub. Rec./Lottery Winners

SPONSOR(S): Davis and others

TIED BILLS: IDEN./SIM. **BILLS:** SB 170

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	14 Y, 1 N	Roth	Toliver
2) State Affairs Committee	22 Y, 0 N	Smith	Williamson

SUMMARY ANALYSIS

The Department of the Lottery 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 a winner of a prize valued at \$250,000 or more 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, 2027, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

The bill may have an insignificant negative fiscal impact on the state, but does not appear to have a fiscal impact on local governments.

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 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, s. 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 art. I, s. 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), 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

Department of the Lottery

The Legislature enacted ch. 24, F.S., establishing the Department of the Lottery (department) to operate the state lottery. The purpose and intent of the lottery is to enable the people of Florida to benefit from significant additional moneys for education and to play the best lottery games available.⁷ 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 education⁸ 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;
- The lottery games be operated by a self-supporting, revenue-producing department; 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.⁹

¹ Article I, s. 24(c), FLA. CONST.

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

³ Article I, s. 24(c), FLA. CONST.

⁴ Section 119.15, F.S.

⁵ Section 119.15(6)(b), F.S.

⁶ Section 119.15(3), F.S.

⁷ Section 24.102(1), F.S.

⁸ Approximately 6 percent of the state's education budget is funded by the state lottery. Florida Lottery, *About Us: History*, available at <https://www.flalottery.com/history> (last visited November 30, 2021).

⁹ Section 24.102(2), F.S.

Information about Lottery Prize Winners

Currently, the full name, city of residence, game won, date won, amount won, and name and location of the retailer where the winning ticket was purchased is a public record.¹⁰ The department uses its *Media* page to update news, content, and background information about lottery winners, games, promotions, and special events.¹¹ The information is also featured in press releases and social media posts.¹²

The street address and telephone number of a lottery game winner is confidential and exempt¹³ from public record requirements, unless the winner consents to its release.¹⁴ However, the confidential and exempt street address and telephone number must be made available to:¹⁵

- 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 Children and Families as part of its parent locator service.¹⁶

Additionally, the department must disclose any confidential and exempt information to the Auditor General, the Office of Program Policy Analysis and Government Accountability, or the lottery's independent auditor upon 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.¹⁷

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.¹⁸

Effect of the Bill

The bill creates a public record exemption for the name of a winner of a prize valued at \$250,000 or more 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:

- 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 Children and Families as part of its parent locator service.

¹⁰ Florida Lottery, *Win Responsibly: Public Disclosure*, available at <https://playersguide.flalottery.com/all/win-responsibly/> (last visited November 30, 2021).

¹¹ Florida Lottery, *Media*, available at <https://www.flalottery.com/media> (last visited November 30, 2021).

¹² See Florida Lottery, *Winner News*, available at <https://www.flalottery.com/winnerNews> (last visited November 30, 2021).

¹³ 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 Riviera 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).

¹⁴ Section 24.1051(2), F.S.

¹⁵ *Id.*

¹⁶ 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.

¹⁷ Section 24.1051(3), F.S.

¹⁸ Section 24.1051(4), F.S. A first degree felony is punishable by up to 30 years imprisonment and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S.

Additionally, the department must disclose the name 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, 2027, unless the Legislature reviews and reenacts the exemption by that date.

B. SECTION DIRECTORY:

Section 1: Amends s. 24.1051, F.S., relating to exemptions from inspection or copying of public records held by the department.

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:

The bill could have an insignificant negative 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.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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 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, s. 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, s. 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 temporary public record exemption for the name of certain prize winners 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 additional rulemaking authority to implement. The Department of the Lottery may have to modify existing forms adopted by rule; however, the department appears to have sufficient rulemaking authority to make any necessary modifications.¹⁹

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

¹⁹ The department's 2022 Agency Bill Analysis provides that one way for the department to receive a prize winner's consent for his or her name to be released within 90 days of winning \$250,000 or more, is for the department to amend the Winner Claim form to allow for players to provide their consent. Amending the Winner Claim form would require a rule change. Department of the Lottery, Agency Analysis of 2022 House Bill 159, p. 2 (October 15, 2021) (on file with the Government Operations Subcommittee).