

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: SB 170

INTRODUCER: Senator Polsky

SUBJECT: Public Records/Lottery Winners

DATE: November 1, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>Imhof</u>	<u>RI</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 170 amends s. 24.1051(3), F.S., to provide a public records exemption for 90 days from the date a prize is claimed, for the name of a winner of a lottery prize valued at \$250,000 or more, unless the winner consents to the release of his or her name, or if disclosure is required by other provisions of current law.

The exemption is subject to the Open Government Sunset Review Act (act) and will stand repealed on October 2, 2027, unless reviewed and reenacted by the Legislature.

The bill creates a public records exemption, and therefore it requires a two-thirds vote of the members present and voting for final passage.

The bill takes effect upon becoming a law.

II. Present Situation:

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S.,

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The law must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2020-2022) and Rule 14.1, *Rules of the Florida House of Representatives*, (2020-2022).

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. 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.”

⁶ Section 119.011(12), F.S., defines “public record” to mean “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.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *Id.* See, e.g., *Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ (the act) prescribes a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

The act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.²⁰

An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- 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;²¹
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²² or

¹² See, e.g., s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ See, e.g., s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ See *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁶ Section 119.15, F.S.

¹⁷ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹⁸ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

In examining an exemption, the act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption. The act requires the Legislature to consider the following specific questions in such a review:²⁴

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²⁶

Department of the Lottery

Operations

Section 15 of Article X of the State Constitution allows lotteries to be operated by the state. The Department of the Lottery (department) operates the state lottery in accordance with the intent of the Legislature, stated in s. 24.102(2), F.S., which provides:

- The net proceeds of lottery games must be used to support improvements in public education;
- Lottery operations must be undertaken as an entrepreneurial business enterprise; and
- The department must be accountable through audits, financial disclosure, open meetings, and public records laws.

The department operates the Florida Lottery to maximize revenues “consonant with the dignity of the state and the welfare of its citizens”²⁷ for the benefit of public education.²⁸ The department contracts with retailers (e.g., supermarkets, convenience stores, gas stations, and newsstands) to provide adequate and convenient availability of lottery tickets.²⁹ Retailers receive commissions of five percent of the ticket price, one percent of the prize value for redeeming winning tickets,

²³ Section 119.15(6)(b)3., F.S.

²⁴ Section 119.15(6)(a), F.S.

²⁵ *See generally* s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ *See* s. 24.104, F.S.

²⁸ *See* s. 24.121(2), F.S.

²⁹ *See* s. 24.105(16), F.S.

and bonus and performance incentive payments.³⁰ Retailers are eligible to receive bonuses for selling select winning tickets and performance incentive payments.³¹

The department selects retailers based on financial responsibility, integrity, reputation, accessibility, convenience, security of the location, and estimated sales volume, with special consideration for small businesses.³² Retailers must be at least 18 years old, and the sale of lottery tickets must occur as part of an ongoing retail business. Contracting with a retailer with a felony conviction or plea within the last 10 years is prohibited,³³ and the authority to act as a retailer may not be transferred.³⁴

Retailers may not extend credit or lend money to a person to purchase a lottery ticket. The use of a credit or charge card or other instrument issued by a bank, savings association, credit union, charge card company, or by a retailer (for installment sales of goods) is allowed, if the lottery ticket purchase is part of a purchase transaction for other goods and services that cost \$20 or more.³⁵

The department may establish by rule a system to verify and pay winning lottery tickets:³⁶

- Any lottery retailer, as well as any department office, may redeem a winning ticket valued at less than \$600.³⁷ Payments less than \$50 are generally paid by a retailer in cash, depending on store policy or local ordinance. Higher amounts may be paid by cash, check, or money order at no cost to the winner.
- Only a department office may redeem a winning ticket valued at \$600 or more.³⁸ Winning tickets are paid at the claimant's option in a combination of cash, check, or lottery tickets (with a limitation of \$200 payable in cash).

Prizes must be claimed within certain time limits, depending on the type of game played. Instant lottery tickets (e.g., scratch-off tickets), must be redeemed within 60 days after the end of that lottery game.³⁹ Other lottery tickets (e.g., tickets for drawings) must be redeemed within 180 days after the winning drawing.

³⁰ See Office of Program Policy Analysis and Gov't Accountability, Florida Legislature, *Review of the Florida Lottery, 2020*, Report No. 21-02, (Jan. 2021), available at <https://oppaga.fl.gov/Documents/Reports/21-02.pdf>, at page 1, (footnote 4) (last visited Oct. 19, 2021).

³¹ *Id.*

³² See s. 24.112(2), F.S., which also includes a statement of legislative intent that retailer selections be based on business considerations and public convenience, without regard to political affiliation.

³³ See s. 24.112(3)(c), F.S. There is an exception to this prohibition, when the department determines that the person has been pardoned or had his or her civil rights restored, he or she has engaged in lawful commerce and maintained good integrity and citizenship within the community, or the person in question has terminated his or her relationship with the retailer.

³⁴ See s. 24.112(4), F.S.

³⁵ See s. 24.118(1), F.S.

³⁶ See s. 24.115, F.S., and Fla. Admin. Code R. 53ER 21-3.

³⁷ *Id.* The winner has the option of presenting a winning ticket in person to any lottery retailer, any of the nine lottery district offices, or to lottery headquarters in Tallahassee.

³⁸ *Id.* Mega Millions® and Powerball® prizes up to \$1 million may be claimed at any lottery district office. All other prizes greater than \$250,000 must be claimed at lottery headquarters.

³⁹ See s. 24.115(1)(f), F.S.

The department may adopt rules governing the types of lottery games to be conducted,⁴⁰ including lottery terminals or devices that “may be operated solely by the player without the assistance of the retailer.”⁴¹

The department promotes responsible lottery ticket play and directs persons struggling with a gambling problem to contact the 1-888-ADMIT-IT telephone line for assistance.⁴²

Confidential and Exempt Information Held by the Department of Lottery

Section 24.051, F.S., provides the following information held by the department is confidential and exempt from inspection and copying requirements under s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution:

- Information that, if released, could harm the security or integrity of the department, including:
 - Information relating to the security of the department’s technologies, processes, and practices designed to protect networks, computers, data processing software, data, and data systems from attack, damage, or unauthorized access.
 - Security information or information that would reveal security measures of the department, whether physical or virtual.
 - Information about lottery games, promotions, tickets, and ticket stock, including information concerning the description, design, production, printing, packaging, shipping, delivery, storage, and validation of such games, promotions, tickets, and stock.
 - Information concerning terminals, machines, and devices that issue tickets.
- Information that must be maintained as confidential in order for the department to participate in a multistate lottery association or game.
- Personal identifying information obtained by the department when processing background investigations of current or potential retailers or vendors.
- Financial information about an entity which is not publicly available and is provided to the department in connection with its review of the financial responsibility of the entity pursuant to ss. 24.111 or s. 24.112, F.S., provided that the entity marks such information as confidential. However, financial information related to any contract or agreement, or an addendum thereto, with the department, including the amount of money paid, any payment structure or plan, expenditures, incentives, bonuses, fees, and penalties, shall be public record.

Information made confidential and exempt under s. 24.1051, F.S., may be released to other governmental entities as needed in connection with the performance of their duties. The

⁴⁰ See s. 24.105(9)(a), F.S.

⁴¹ Prior to 1996, there was no provision for player-activated lottery terminals or devices. Section 4 of ch. 96-341, Laws of Fla., authorized such machines, subject to restrictions that they be: (1) designed solely for dispensing of instant lottery tickets; (2) activated by coin or currency; (3) in the direct line of sight of on-duty retail employees; (4) capable of being electronically deactivated for 5 minutes or more; and (5) incapable of redeeming winning tickets, though they may dispense change. Chapter 2012-130, Laws of Fla., moved the restrictions on player-activated machines from s. 24.105(9)(a)4., F.S., to s. 24.112(15), F.S. As amended, the law (1) authorizes lottery vending machines to dispense “online lottery tickets, instant lottery tickets, or both,” and (2) prohibits use of mechanical reels or video depictions of slot machine or casino game themes or titles (but does not prohibit use of casino game themes or titles on lottery tickets, signage, or advertising displays on the vending machines).

⁴² See <http://www.flalottery.com/playResponsibly> (last visited Oct. 19, 2021).

receiving governmental entity must maintain the confidential and exempt status of such information.

The exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and is repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 24.1051(2), F.S., provides the street address and the telephone number of a winner are confidential and exempt from inspection and copying requirements pursuant to s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution, unless the winner consents to the release of such information, or if required by:

- Section 24.115(4), F.S., relating to debts owed to a state agency or child support collected through a court, including spousal support or alimony if the child support obligation is being enforced by the Florida Department of Revenue; or
- Section 409.2577, F.S., relating to locating parents who have deserted their children.

Any information made confidential and exempt under this section must be disclosed to the Auditor General, to the Office of Program Policy Analysis and Government Accountability, or to the independent auditor selected under s. 24.123, F.S., upon request. If the President of the Senate or the Speaker of the House of Representatives certifies that information made confidential and exempt under this section is necessary for effecting legislative changes, the requested information shall 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.⁴³

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 relating to the lottery designated as confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution pursuant to s. 24.1051, F.S., is guilty of a felony of the first degree, punishable by a term of imprisonment not to exceed thirty years, and a fine not to exceed \$10,000.⁴⁴

III. Effect of Proposed Changes:

The bill amends s. 24.1051(3), F.S., to provide a public records exemption for 90 days from the date a lottery prize is claimed, for the name of a winner of a lottery prize valued at \$250,000 or more, unless the winner waives the exemption, thereby consenting to the release of his or her name, or if required by law.

The bill provides for the repeal of the exemption pursuant to the Open Government Sunset Review Act on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

⁴³ Section 24.0151(3), F.S.

⁴⁴ Section 24.1051(4), F.S.

The bill includes the following legislative statement of public necessity:

The Legislature finds that it is a public necessity that the name of a winner of a lottery prize valued at \$250,000 or more be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution for 90 days from the date the prize is claimed, unless such exemption is waived by the winner. Persons who win valuable lottery prizes have been the targets of violent and nonviolent criminal acts based upon publicly available identifying information. For this reason, the Legislature finds that it is a public necessity to temporarily maintain the confidential and exempt status of such information. The Legislature finds that the harm that may result from the release of the name of a winner of a lottery prize valued at \$250,000 or more outweighs the public benefit that may be derived from the disclosure of the information.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

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 bill creating or expanding an exemption to the public records requirements.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The exemption in the bill does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the department, the impacts to lottery game ticket sales and transfers to the Educational Enhancement Trust Fund are indeterminate.⁴⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

Under the bill, a winner of a lottery prize valued at \$250,000 or more will be able to decline to have their name disclosed publicly for a period of 90 days after the prize is claimed. The department indicates a change to its rule on payment of prizes and its winner claim form will be required, and that “real winner stories are an important component to promoting transparency and building trust with the public.”⁴⁶

VIII. Statutes Affected:

This bill substantially amends section 24.1051 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

⁴⁵ See Department of the Lottery, *Agency Bill Analysis for SB 170* at 2 (Oct. 6, 2021) (on file with the Senate Committee on Regulated Industries).

⁴⁶ *Id.*

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
