

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 385 Pub. Rec./Criminal Conflict and Civil Regional Counsel Offices

**SPONSOR(S):** Maney

**TIED BILLS:** CS/HB 383 **IDEN./SIM. BILLS:** CS/SB 598

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice & Public Safety Subcommittee	14 Y, 0 N	Padgett	Hall
2) Government Operations Subcommittee	17 Y, 0 N	Landry	Toliver
3) Judiciary Committee			

### SUMMARY ANALYSIS

The Office of Criminal Conflict and Civil Regional Counsel (CCCRC) was created by the Legislature in 2007 to provide legal representation to indigent persons that are constitutionally entitled to court-appointed counsel. The CCCRC primarily provides representation in three types of cases:

- Criminal cases in which the public defender must withdraw due to a conflict of interest;
- Dependency cases; and
- Involuntary civil commitment cases involving a mentally ill person, sexually violent predator, or a person with developmental disabilities.

In representing a defendant in a criminal case, the CCCRC performs similar functions to that of a traditional public defender. To effectively represent a client in a criminal proceeding, both the public defender and CCCRC employ investigators to research cases and conduct interviews with witnesses.

Section 320.025, F.S., authorizes the Department of Highway Safety and Motor Vehicles (DHSMV) to issue a confidential registration certificate and registration license plate or decal under a fictitious name for a motor vehicle or vessel owned or operated by:

- A law enforcement agency of state, county, municipal, or federal government;
- The Attorney General's Medicaid Fraud Control Unit; or
- Any state public defender's office.

All records relating to the registration application are exempt from disclosure under the public records provisions in s. 119.07(1), F.S., and article I, section 24(a) of the Florida Constitution.

CS/HB 383 (2022), to which this bill is linked, authorizes CCCRC to register a vehicle or vessel under a fictitious name with DHSMV and receive a license plate or decal based on such fictitious name; providing CCCRC with the same protections and confidentiality enjoyed by a public defender's office. This bill expands the existing public records exemption in s. 320.025, F.S., to exempt all records relating to the registration application made by CCCRC to DHSMV from disclosure for as long as such information is retained by DHSMV.

This bill is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2027, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill might have a minimal fiscal impact on state government. See Fiscal Comments.

The bill will become effective on the same date that CS/HB 383 (2022) or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

**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 expands 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. The 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 and must be no broader than necessary to accomplish its purpose.<sup>2</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 (Act)<sup>3</sup> provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose and the "Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."<sup>4</sup> In addition, the exemption may be no broader than is necessary to meet one of the following purposes:<sup>5</sup>

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting 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; or
- Protect trade or business secrets.

The Act also requires the automatic repeal of a public record exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption. When considering reenacting an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption. If continued and expanded, the exemption requires a public necessity statement and a two-thirds vote of the members present.

##### Criminal Conflict and Civil Regional Counsel

The Office of Criminal Conflict and Civil Regional Counsel (CCCRC) was created by the Legislature in 2007 to provide legal representation to indigent persons that are constitutionally entitled to court-appointed counsel.<sup>6</sup> The CCCRC primarily provides representation in three types of cases:

- Criminal cases in which the public defender must withdraw due to a conflict of interest;
- Dependency cases; and
- Involuntary civil commitment cases involving a mentally ill person, sexually violent predator, or a person with developmental disabilities.

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<sup>1</sup> Art. I, s. 24(c), Fla. Const.

<sup>2</sup> *Id.*

<sup>3</sup> S. 119.15, F.S.

<sup>4</sup> S. 119.15(6)(b), F.S.

<sup>5</sup> *Id.*

<sup>6</sup> Ch. 2007-62, Laws of Fla.

In representing a defendant in a criminal case, the CCCRC performs similar functions to that of a traditional public defender. To effectively represent a client in a criminal proceeding, both the public defender and CCCRC employ investigators to research cases and conduct interviews with witnesses.<sup>7</sup>

### Confidential Motor Vehicle Registration

Section 320.025, F.S., authorizes the Department of Highway Safety and Motor Vehicles (DHSMV) to issue a confidential registration certificate and registration license plate or decal under a fictitious name for a motor vehicle or vessel owned or operated by:

- A law enforcement agency of state, county, municipal, or federal government;
- The Attorney General's Medicaid Fraud Control Unit; or
- Any state public defender's office.<sup>8</sup>

To register a motor vehicle or vessel under a fictitious name, the law enforcement agency, Fraud Control Unit, or public defender's office must file a written application with DHSMV affirming the license plate or decal will be used for activities that require concealment of the true owner of the vehicle and listing individuals who are authorized to use the vehicle.<sup>9</sup>

All records relating to the registration application of the Attorney General's Medicaid Fraud Control unit, a law enforcement agency, or any state public defender's office, and any records necessary for carrying out the purposes of s. 320.025, F.S., are exempt from disclosure under the public records provisions in s. 119.07(1), F.S., and article I, section 24(a) of the Florida Constitution, as long as the information is retained by DHSMV.<sup>10</sup>

### **Effect of Proposed Changes**

CS/HB 383 (2022), to which this bill is linked, authorizes CCCRC to register a vehicle or vessel under a fictitious name with DHSMV and receive a license plate or decal based on such fictitious name. This provides CCCRC with the same protections and confidentiality enjoyed by a public defender's office, which performs a virtually identical function. This bill expands the existing public records exemption in s. 320.025, F.S., to provide that all records relating to the registration application made by CCCRC to DHSMV are exempt<sup>11</sup> from disclosure for as long as such information is retained by DHSMV.

The bill provides the public records exemption is a public necessity because:

- Investigations by CCCRC may be jeopardized if a vehicle was registered in the name of the CCCRC or in the name of an investigator; or
- A person under investigation may use registration information to retaliate against a CCCRC office or its investigators.

This bill is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2027, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill will become effective on the same date that CS/HB 383 (2022) or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

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<sup>7</sup> S. 27.53(1) and (4), F.S.

<sup>8</sup> S. 320.025(1), F.S.

<sup>9</sup> *Id.*

<sup>10</sup> S. 320.025(3), F.S.

<sup>11</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 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 Attorney General Opinion 85-62 (Aug. 1, 1985).

B. SECTION DIRECTORY:

**Section 1:** Amends s. 320.025, F.S., relating to registration certificate and license plate or decal issued under fictitious name; application.

**Section 2:** Provides a public necessity statement.

**Section 3:** Provides that the bill is effective on the same date that HB 383 (2022) or similar legislation takes effect.

**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 DHSMV as agency staff responsible for complying with public record requires may require training related to the expansion of the public record exemption. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of agencies.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The 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 expands 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 expands 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 expands the public records exemption to include applications by CCCRC for confidential registration certificates and license plates and decals for vehicles owned by CCCRC. The CCCRC employees that are eligible to operate the vehicle must be specified in the application to DHSMV. The exemption does not appear to be broader than necessary to accomplish the purpose of the exemption.

#### B. RULE-MAKING AUTHORITY:

Not applicable.

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

None.

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

None.