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 Appropriations Committee on Transportation, Tourism, and Economic Development

BILL:	SB 1048
INTRODUCER:	Senators Rouson and Davis
SUBJECT:	Public Records/Victims of Reform School Abuse
DATE:	April 18, 2023
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Limones-Borja	McVaney	GO	**Favorable**
2.	Wells	Jerrett	ATD	**Favorable**
3.			FP	

I. Summary:

SB 1048 exempts from public records copying and inspection requirements personal identifying information in an application of individuals applying to seek certification as a victim of Florida reform school abuse.

The bill provides a statement of public necessity as required by the State Constitution.

Because the bill creates a new public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

This bill is subject to the Open Government Sunset Review Act and stands repealed on December 31, 2024, unless reviewed and saved from the repeal through reenactment by the Legislature.

The bill takes effect the same day SB 1046 or any similar legislation does. As filed, SB 1046 takes effect upon becoming 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]

[1] FLA. CONST. art. I, s. 24(a).
[2] *Id*.

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, section 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and 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, chapter 119, F.S., known as the Public Records Act, provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

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]

Section 119.011(12), F.S., defines "public records" to include:

> [a] ll 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 connections with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business that are used to "perpetuate, communicate, or formalize knowledge of some type."[6]

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.[7] A violation of the Public Records Act may result in civil or criminal liability.[8]

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.[9] The exemption must state

[3] *See* Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020)
[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] *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc*., 379 So. 2d 633, 640 (Fla. 1980).
[7] Section 119.07(1)(a), F.S.
[8] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.
[9] FLA. CONST. art. I, s. 24(c).

with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.[10]

General exemptions from the public records requirements are contained in the Public Records Act.[11] Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.[12]

When creating a public records exemption, the Legislature may provide that a record is "exempt" or "confidential and exempt." There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.[13] Records designated as "confidential and exempt" are not subject to inspection by the public and may only be released under the circumstances defined by statute.[14] Records designated as "exempt" may be released at the discretion of the records custodian under certain circumstances.[15]

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act (the Act), prescribe a legislative review process for newly created or substantially amended public records or open meetings exemptions,[16] with specified exceptions.[17] The Act requires the repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption or repeal the sunset date.[18] In practice, many exemptions are continued by repealing the sunset date, rather than reenacting the exemption.

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

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[10] *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).

[11] *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).

[12] *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).

[13] *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

[14] *Id*.

[15] *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

[16] Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings.

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

[18] Section 119.15(3), F.S.

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;[19]
- The release of sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;[20] or
- It protects trade or business secrets.[21]

The Act also requires specified questions to be considered during the review process.[22] In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.[23] 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 expire, the previously exempt records will remain exempt unless otherwise provided by law.[24]

Victims of Florida Reform School Abuse

SB 1046 defines a "victim of Florida reform school abuse" to mean a living person who was confined at the Arthur G. Dozier School for Boys or the Okeechobee School at any time between 1940 and 1975 and who was subjected to mental, physical, or sexual abuse perpetrated by school personnel during the period of confinement.

The Arthur G. Dozier School for Boys

From 1900, to 2011, the state operated the Florida State Reform School in Marianna. In 1967, the name was changed to the Arthur G. Dozier School for Boys (Dozier School).[25] Children were committed to the Dozier school for criminal offenses such as theft and murder, but later on the law was amended to allow for children with minor offenses such as truancy to be committed too.

[19] Section 119.15(6)(b)1., F.S.
[20] Section 119.15(6)(b)2., F.S.
[21] Section 119.15(6)(b)3., F.S.
[22] Section 119.15(6)(a), F.S. The specified questions are:
- 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?

[23] *See generally* s. 119.15, F.S.
[24] Section 119.15(7), F.S.
[25] David Built, *Arthur G. Dozier School for Boys*, Abandoned Florida, Sep. 29, 2015, *available at* https://www.abandonedfl.com/arthur-g-dozier-school-for-boys/ (Mar. 3, 2023).

Additionally, many children who had not been charged with a crime were committed to the school as wards of the state and orphans.[26]

Beginning as early as 1901, there were reports of children being chained to walls in irons, brutal whippings, and peonage.[27] In the first 13 years of operation, six state-led investigations took place. Those investigations found that children as young as five years old were being hired out for labor, unjustly beaten, and were without education or proper food and clothing.[28] In 2005, former students of the Dozier School began to publish accounts of the abuse they experienced at the school.[29] These stories prompted Governor Charlie Crist to direct the Florida Department of Law Enforcement (FDLE) to investigate the Dozier School and the deaths that were alleged and occurred at the school. In 2008, Governor Charlie Crist directed the FDLE to investigate 32 unmarked graves located on the property surrounding the school in response to complaints lodged by former students at the Dozier School.[30] The former students of Dozier alleged that students who died as a result of abuse were buried at the school cemetery.[31]

The Okeechobee School

Due to overcrowding at the Dozier School, the state opened a new reform school in Okeechobee. The first 50 boys were transferred to the Okeechobee campus from the Marianna campus along with 20 staff members.[32] Interviews with former students in the school found that the former superintendent and deputy superintendent of the Florida School for Boys in Okeechobee (Okeechobee School), would administer corporal punishment himself.[33] Several students at the Okeechobee School died in the 1960s, some of those under questionable circumstances. Two of them being a 13-year-old boy found floating face down in the school's sewage tank, and a teen shot dead during an alleged escape attempt.[34]

III. Effect of Proposed Changes:

Section 1 creates a public records exemption for any personal identifying information in an application submitted to the Department of State by, or on behalf of, a person seeking certification as a victim of Florida reform school abuse.

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[26] Erin H. Kimmerle, Ph.D. et al., *Report on the Investigation into the Deaths and Burials at the Former Arthur G. Dozier School for Boys in Marianna, Florida*, The University of South Florida, pg. 22, January 18, 2016, *available at* http://mediad.publicbroadcasting.net/p/wusf/files/201601/usf-final-dozier-summary-2016.pdf (Mar. 3, 2023).
[27] *See supra* note 26, at 12.
[28] *See supra* note 26, at 27.
[29] Office of Executive Investigations, Florida Department of Law Enforcement, *FDLE Investigative Report* (May 14, 2009), available at http://thewhitehouseboys.com/fdlereport.html (last visited Mar. 30, 2023)
[30] *Id.*
[31] *Id.*
[32] Richard Marion, *OYDC closure brings an end to troubled history*, South Central Florida Life (Jul. 15, 2020), *available at* https://www.southcentralfloridalife.com/stories/oydc-closure-brings-an-end-to-troubled-history,9159 (Last visited Mar. 13, 2023).
[33] *Id.*
[34] WPBF News, *Investigation uncovers deaths of boys at Okeechobee Florida School for Boys* (April 10, 2015), available at https://www.wpbf.com/article/investigation-uncovers-deaths-of-boys-at-okeechobee-florida-school-for-boys/1325188# (Last visited Mar. 30, 2023).

Section 2 provides a public necessity statement as required by Article I, s. 24(c) of the State Constitution. The public necessity statement provides that the release of personal identifying information from the application could subject the victims to further trauma. The public necessity statement also provides that victims would be more likely to come forward if their personal identifying information is protected from public disclosure.

Section 3 provides that the bill takes effect the same day SB 1046 or any similar legislation does, if it is adopted in the same legislative session or an extension thereof. As filed, SB 1046 takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

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. This bill enacts a new exemption for records pertaining to personal identifying information in an application; therefore, the bill requires a two-thirds vote of each chamber for enactment.

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. Section 2 of the bill contains a statement of public necessity for 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 purpose of the law is to the victims of reform school abuse. This bill exempts only personal identifying information in an application to the DOS. The exemption 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 identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector will be subject to the cost, to the extent imposed, associated with making the redactions in response to a public record request.

C. Government Sector Impact:

The bill may have a minimal fiscal impact on the DOS for workload related to the redaction of personal identifying information in responding to public records requests.

VI. Technical Deficiencies:

The bill will require an amendment to fill in the blank spot on line 43 with a reference to SB 1046, the underlying substantive bill linked to this public records exemption.

VII. Related Issues:

According to s. 119.15(3), F.S., the Open Government Sunset Review Act, a newly enacted or substantially amended exemption is scheduled for review and repeal by the Legislature in the 5th year after creation, unless the Legislature acts to reenact the exemption. The bill inserts the newly created exemption into an existing paragraph with other exemptions that are scheduled for review and repeal in 2024, which is the first year after enactment instead of the 5th year. However, the deviation from the schedule set forth in the Open Government Sunset Review Act is supported by the reasoning that a previous legislature cannot bind a future legislature.

VIII. Statutes Affected:

This bill creates an unnumbered section of law.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.