

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: HB 1243 Pub. Recs./Safety Standards for Amusement Rides

SPONSOR(S): Bracy Davis and others

TIED BILLS: CS/CS/HB 1241 **IDEN./SIM. BILLS:** CS/SB 904

FINAL HOUSE FLOOR ACTION: 112 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/CS/HB 1241 passed the House on May 3, 2023, as CS/SB 902. HB 1243 passed the House on May 3, 2023, as CS/SB 904.

Department of Agriculture and Consumer Services' (DACCS) investigates accidents involving amusement rides to evaluate the cause of the accident and impound a ride if it poses an immediate serious danger to public health, safety and welfare. Currently, public records created during an active fair accident investigation are available to the public. The disclosure of records during an active investigation may hinder the duration and thoroughness of the investigation.

The bill provides:

- That all investigatory records made or received by DACCS pursuant to an investigation are confidential and exempt from public records until the investigation is no longer active or it is completed.
- That such exemption will be repealed on a specified date unless reviewed and saved from repeal.

The bill provides the following legislative intent: "The premature release of [investigative] records could frustrate or thwart the investigation and impair the ability of the department to effectively and efficiently administer the investigation."

The bill does not appear to have a fiscal impact on state or local government.

The bill was approved by the Governor on May 11, 2023, ch. 2023-51, L.O.F., and will become effective on July 1, 2023.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES: **Current Situation**

Access to Public Records

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, ch. 119, F.S., provides requirements for public records held by executive agencies.

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.³

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁴ 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.”⁵

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.⁶ A violation of the Public Records Act may result in civil or criminal liability.⁷

The Legislature may exempt⁸ 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 with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹⁰

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ S.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.”

⁴ S. 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.”

⁵ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁶ S.119.07(1)(a), F.S.

⁷ S.119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁸ 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.

⁹ FLA. CONST. art. I, s. 24(c).

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

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.” 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.¹³ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁴

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁵ (the act) prescribes a legislative review process for newly created or substantially amended¹⁶ public records or open meetings exemptions, with specified exceptions.¹⁷ 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.¹⁸

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.¹⁹

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;²⁰
- 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;²¹ or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²²

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:²³

- What specific records or meetings are affected by the exemption?

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

¹⁴ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁵ Section 119.15, F.S.

¹⁶ 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.

¹⁷ S. 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.

¹⁸ S. 119.15(3), F.S.

¹⁹ S. 119.15(6)(b), F.S.

²⁰ S. 119.15(6)(b)1., F.S.

²¹ S. 119.15(6)(b)2., F.S.

²² S. 119.15(6)(b)3., F.S.

²³ S. 119.15(6)(a), F.S.

- 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.²⁴ 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.²⁵

Accident Investigations Involving Amusement Rides

DACS is required to inspect all amusement rides in Florida, except those at large parks with more than 1,000 employees and an inspector on staff. The Bureau of Fair Rides Inspection within the department is required to inspect, investigate, and enforce the regulations related to amusement rides.²⁶

Amusement rides regulated in the state of Florida fall into two major groups:

- Temporary amusement rides (those that are regularly relocated with or without assembly);
- Permanent facility amusement rides (those that are not regularly relocated and operate as a lasting part of the premises).²⁷

All temporary amusement rides are inspected each time they are moved or set up at a new location, and permanent rides are inspected semiannually. All amusement rides are required to be permitted annually, are required to undergo nondestructive testing for structural integrity, and must have an annual inspection by a professional engineer or qualified inspector.²⁸

DACS also inspects go-kart tracks, water-related amusement rides, and zip-line courses operating in the state.²⁹

In addition, DACS investigates accidents involving amusement rides to determine the cause of the accident and to determine if a ride can continue to operate. DACS can close and impound amusement rides that pose an immediate serious danger to public health, safety, and welfare.³⁰

Currently, all investigatory records made or received by DACS during the course of an ongoing investigation are available to the public. These public records are not exempt or confidential under the Public Reports Act. DACS has stated that released information can hinder the ability of DACS to conduct a timely and thorough inquiry.³¹

Effect of Bill

The bill:

- Creates a public record exemption for investigatory records made or received by the Department of Agriculture and Consumer Services. The public records exemption would stand

²⁴ See *generally* s. 119.15, F.S.

²⁵ S. 119.15(7), F.S.

²⁶ S. 616.242, F.S.

²⁷ Florida Department of Agriculture and Consumer Services, Fair Rides Inspection, <https://fdacs.gov/Business-Services/Fairs/Fair-Rides-Inspection> (last visited March 22, 2023).

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ Department of Agriculture and Consumer Services, Analysis of 2023 House Bill 1243, p. 1.

repealed on October 2, 2028, unless it is reenacted by the Legislature under the Open Government Sunset Review Act.

- Provides a statement of public necessity which is to allow the department to effectively and efficiently administer safety standards for amusement rides.
- Provides that releasing such records could jeopardize ongoing investigations. The Legislature finds that the harm that may result from the release of these records outweigh public benefit from the disclosure of the information.

More specifically, the bill states that “[a]ll investigatory records made or received by the department pursuant to an investigation are confidential and exempt from [public records requests]....until such time as the investigation is completed or ceases to be active.”

Overall, the bill would require DACS to withhold public records until the completion of the accident investigation or the investigation ceases to be active, so the investigation is not jeopardized.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
None.
2. Expenditures:
None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None.
2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.