

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1495 Pub. Rec./Security and Transportation Services Records

**SPONSOR(S):** Holcomb

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1616

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	17 Y, 0 N	Padgett	Hall
2) Ethics, Elections & Open Government Subcommittee	13 Y, 5 N	Skinner	Toliver
3) Judiciary Committee			

### SUMMARY ANALYSIS

Section 943.68, F.S., requires the Florida Department of Law Enforcement (FDLE) to provide security and transportation services for specified persons including:

- The Governor and his or her immediate family;
- Visiting governors and their families, upon request by the Governor;
- Other persons, upon request by the Governor, Lieutenant Governor, a member of the Cabinet, the Speaker of the House of Representatives, the President of the Senate, or the Chief Justice of the Florida Supreme Court, provided that the government official requesting the provision of security or transportation services certifies that such services are in the best interest of the state and only if:
  - Such persons are visiting the state and the primary purpose of such visit is for a significant public purpose; or
  - The failure to provide security or transportation services could result in a clear and present danger to the personal safety of such persons or to the safety of other persons or property within the state or could result in public embarrassment to the state.

FDLE may request the assistance of, and coordinate with, other law enforcement agencies in providing transportation and protective services to government officials and other specified persons.

HB 1495 amends s. 943.68, F.S., to create a public record exemption for records held by a law enforcement agency relating to security or transportation services provided by FDLE, or by FDLE in coordination with another law enforcement agency, to specified government officials, their families, and certain other persons. The public record exemption created by the bill is retroactive and applies to any records held by a law enforcement agency before, on, or after the effective date of the bill.

The bill provides the public record exemption is a public necessity because the disclosure of such records could reveal the means and methods used in providing security or transportation services and could impair the ability of FDLE or other law enforcement agencies to provide such services.

This bill is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2028, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill may have an insignificant negative fiscal impact on state and local governments.

The bill is effective upon becoming a 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. This section guarantees every person the right to inspect or copy any public record of the legislative, executive, and judicial branches of government.<sup>1</sup> The Legislature, however, may provide by general law for exemption from public record requirements provided the exemption passes by two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption, and is no broader than necessary to meet its public purpose.<sup>2</sup>

The Florida Statutes also address the public policy regarding access to government records. Section 119.07(1), F.S., guarantees every person the right to inspect and copy any state, county, or municipal record, unless the record is exempt.<sup>3</sup> Furthermore, the Open Government Sunset Review Act<sup>4</sup> provides that a public record exemption may be created, revised, 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>5</sup> An identifiable public purpose is served if the exemption meets 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; or
- Protect trade or business secrets.<sup>6</sup>

Pursuant to the Open Government Sunset Review Act, a new public record exemption or substantial amendment of an existing public record exemption is repealed on October 2<sup>nd</sup> of the fifth year following enactment, unless the Legislature reenacts the exemption.

##### Florida Department of Law Enforcement – Protective Services

Section 943.68, F.S., requires the Florida Department of Law Enforcement (FDLE) to provide security and transportation services for specified persons including:

- The Governor and his or her immediate family;
- Visiting governors and their families, upon request by the Governor;
- Other persons, upon request by the Governor, Lieutenant Governor, a member of the Cabinet, the Speaker of the House of Representatives, the President of the Senate, or the Chief Justice of the Florida Supreme Court, provided that the government official requesting the provision of security or transportation services certifies<sup>7</sup> that such services are in the best interest of the state and only if:

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<sup>1</sup> Art. I, s. 24(a), FLA. CONST.

<sup>2</sup> Art. I, s. 24(c), FLA. CONST.

<sup>3</sup> A public record exemption means a provision of general law which provides that a specified record, or portion thereof, is not subject to the access requirements of s. 119.07(1), F.S., or s. 24, Art. I of the State Constitution. S. 119.011(8), F.S.

<sup>4</sup> S. 119.15, F.S.

<sup>5</sup> S. 119.15(6)(b), F.S.

<sup>6</sup> *Id.*

<sup>7</sup> Certification authority may be delegated to the executive director of FDLE. S. 943.68(6), F.S.

- Such persons are visiting the state and the primary purpose of such visit is for a significant public purpose; or
- The failure to provide security or transportation services could result in a clear and present danger to the personal safety of such persons or to the safety of other persons or property within the state or could result in public embarrassment to the state.

FDLE may request the assistance of, and coordinate with, other law enforcement agencies to provide transportation and protective services to government officials and other specified persons.<sup>8</sup> FDLE must coordinate with the United States Department of State and the United States Secret Service upon request of those agencies, or by the Governor or a member of the Cabinet.<sup>9</sup>

### Effect of Proposed Changes

HB 1495 amends s. 943.68, F.S., to create a public record exemption for records held by a law enforcement agency relating to security or transportation services provided by FDLE, or by FDLE in coordination with another law enforcement agency, to specified government officials, their families, and certain other persons. Such records are exempt<sup>10</sup> from public record requirements. The public record exemption created by the bill is retroactive and applies to any records held by a law enforcement agency before, on, or after the effective date of the bill.

The bill includes the constitutionally required public necessity statement,<sup>11</sup> which provides, in part, the public record exemption is a public necessity because the disclosure of such records could reveal the means and methods used in providing security or transportation services and could impair the ability of FDLE or other law enforcement agencies to ensure the safety and security of the protected person, the law enforcement agents, and personnel providing the security or transportation services.

Pursuant to the Open Government Sunset Review Act, this exemption will be automatically repealed on October 2, 2028, unless reenacted by the Legislature.

The bill is effective upon becoming a law.

#### B. SECTION DIRECTORY:

**Section 1:** Amends s. 943.68, F.S., relating to transportation and protective services.

**Section 2:** Provides a public necessity statement as required by the Florida Constitution.

**Section 3:** Directs the Division of Law Revision to make specified revisions when the bill becomes a law.

**Section 4:** 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:

<sup>8</sup> S. 943.68(7), F.S.

<sup>9</sup> S. 943.68(8), F.S.

<sup>10</sup> There is a difference between records the Legislature designates as 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. The School Board 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 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 (August 1, 1985).

<sup>11</sup> Art. I, s. 24(c), FLA. CONST., requires each public record exemption to “state with specificity the public necessity justifying the exemption.”

See Fiscal Comments.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

The bill may have an insignificant negative fiscal impact on state and local law enforcement agencies holding records that relate to such security or transportation services as staff responsible for complying with public record requests may require training related to the new public record exemption. However, any additional costs will likely be absorbed within existing resources.

**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 creates 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 creates a public record exemption; thus, it includes a public necessity statement. The public necessity statement provides, in part, that the Legislature finds that such records held by a law enforcement agency relating to security or transportation services be made exempt from public record requirements for safety and security reasons and that such reasons outweigh any public benefit from the disclosure of such records.

### Breadth of Exemption

Article I, 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 creates a public record exemption for any records that are held by a law enforcement agency relating to security or transportation services provided to specified public officials and their families, and certain other persons. The exemption applies to specific records relating to a limited group of individuals who qualify for protection or transportation by FDLE. Thus, 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**