

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 Commerce and Tourism

BILL: SB 492

INTRODUCER: Senator Jones

SUBJECT: Public Records/Requesting Specified Leave Relating to a Homicide

DATE: March 24, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Baird	McKay	CM	Pre-meeting
2.			CJ	
3.			AP	

I. Summary:

SB 492, which is linked to the passage of SB 490, provides a public record exemption for information pertaining to family or household members of homicide victims if they are employees of an agency. The information that falls under this exemption is as follows:

- Personal identifying information of an employee contained in the records documenting a homicide that the employee provides the employer; and
- An employee’s written request for leave under the section and the time sheet that reflects the requested leave for at least 1 year after taking the leave.

The bill provides for the repeal of the exemption on October 2, 2028, unless it is reenacted by the Legislature under the Open Government Sunset Review Act.

The bill takes effect on the same date that linked bill SB 490, relating to information pertaining to family or household members of homicide victims, takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

II. Present Situation:

Public Record Exemptions

Article I, s. 24(a) of the Florida Constitution establishes the state’s public policy for accessing government records. This section guarantees that every person has the right to inspect or copy any public record from the legislative, executive, and judicial branches of government. Authority to grant exemptions from public records is vested solely to the Legislature. The Legislature, may provide an exemption of records, from the requirements of art. I, s. 24(a) of the Florida Constitution.¹ A proposed exemption must pass by a two-thirds vote of each chamber, state with

¹ Article I, s. 24(c), FLA. CONST.

specificity the public necessity to justify the exemption,² and be no broader than necessary to accomplish the public purpose.³

Public policy regarding access to government records is addressed further in s. 119.07(1), F.S., which guarantees every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt. Public exemptions are subject to the Open Government Sunset Review Act (Act)⁴ which provides that a public record or public meeting exemption may be created⁵ or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than necessary to meet 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.
- Protect trade or business secrets.⁶

The Act requires the Legislature to review each public record exemption and each public meeting exemption five years after enactment. If the Legislature does not reenact an exemption, it will automatically repeal on October 2nd of the fifth year after enactment.

Linked Bill SB 490

SB 490, to which this bill is linked, requires certain employers with over 50 employees to grant 3 days of unpaid leave in any 12-month period to employees who have been employed for over 3 months if a member of their family or household was a victim of homicide. The leave must be used to:

- Make funeral or burial arrangements or attend a funeral or memorial service for a family or household member who is a homicide victim;
- Secure his or her home from the perpetrator, or his or her associates, of the homicide, or seek new housing to escape;
- Attend meetings in person with a representative from a law enforcement agency or the state attorney's office responsible for investigating or prosecuting the homicide; or
- Attend or prepare for court or court-related proceedings arising from the homicide.

SB 490 defines "family or household member" as spouses, former spouses, persons related by blood or marriage, persons residing together or have resided together in the past, or parents of a child in common. With the exception of people who have a child in common, the family or household members must have resided together in the past or were currently residing in the same dwelling unit prior to the homicide.⁷

² This portion of a public record exemption is commonly referred to as a "public necessity statement."

³ Article I, s. 24(c), FLA. CONST.

⁴ Section 119.15, F.S.

⁵ An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.

⁶ Section 119.15(6)(b), F.S.

⁷ Section 741.28, F.S.

Before using this type of leave, all other leaves must be exhausted, and proper notice must be given unless in imminent danger. All information given to a private employer is to remain confidential.

III. Effect of Proposed Changes:

The bill provides a public record exemption for information pertaining to family or household members of homicide victims who are employees of a Florida agency⁸ for the following information:

- Personal identifying information of an employee contained in the records documenting a homicide that the employee provides the employer; and
- An employee's written request for leave under the section and the time sheet that reflects the requested leave for at least 1 year after taking the leave.

The bill provides a public necessity statement as required by article I, section 24(c) of the Florida Constitution. The public necessity statement provides that it is a public necessity that the personal identifying information, timesheet, and written request for leave held by employers for employees who are requesting leave after a family or household member is the victim of a homicide be confidential and exempt⁹ from public records requirements. Such employees are at a heightened risk of physical and emotional harm from perpetrators of the homicide and the harm that may result from the release of the employee's personal identifying information, timesheet, and written request for leave outweighs any public benefit that may be derived from the disclosure of such information.

As with all public exemptions, this exemption is subject to the Act in accordance with s. 119.15 and will be repealed on October 2nd of the fifth year unless reviewed and saved from repeal.

The bill takes effect on the same date that SB 490 is adopted and becomes law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties and municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties and municipalities.

⁸ Section 741.313(7)(a),(b), F.S.

⁹ 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. (1985).

B. Public Records/Open Meetings Issues:*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.

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 creates a public records exemption for sensitive investigative materials and personal information, which does not appear to be broader than necessary to accomplish its purpose.

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:

None.

VI. Technical Deficiencies:

Line 54 of the bill references a SB but does not include the senate bill number. The reference should be to SB 490, the companion bill to SB 492.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends 448.046 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.

B. Amendments:

None.