

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 911 Pub. Rec./E-mail Addresses and Secure Login Credentials/DOS
SPONSOR(S): Constitutional Rights, Rule of Law & Government Operations Subcommittee, McFarland
TIED BILLS: CS/HB 909 **IDEN./SIM. BILLS:** SB 946

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|------------------|---------|--|
| 1) Constitutional Rights, Rule of Law & Government Operations Subcommittee | 13 Y, 0 N, As CS | Wagoner | Miller |
| 2) Ethics, Elections & Open Government Subcommittee | 18 Y, 0 N | Shapiro | Toliver |
| 3) State Affairs Committee | 18 Y, 0 N | Wagoner | Williamson |

SUMMARY ANALYSIS

CS/HB 909 (2023) authorizes the Department of State (DOS) to implement a password protected system for the electronic filing of certain records, such as business registration documents, trademarks, fictitious names, judgements, federal liens, and notary commissions. Corporations upload these records through Sunbiz, the official website of DOS's Division of Corporations (Division). Documents submitted to the Division are accepted without further inquiry if the submission meets the statutory requirements and is accompanied by the correct processing or filing fee.

This bill, which is linked to the passage of CS/HB 909, creates a public record exemption for email addresses and secure login credentials held by DOS for purposes of the password protected system. The bill provides that the public record exemptions are subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2028, unless reviewed and saved from repeal by the Legislature. It also provides statements of public necessity as required by the Florida Constitution.

The bill may have a negative, but likely insignificant, fiscal impact on DOS and does not appear to have a fiscal impact on local governments.

Article I, s. 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.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Public Records

Article I, s. 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.¹ 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.²

The Florida Statutes also address the public policy regarding access to government records. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt.³ Furthermore, the Open Government Sunset Review Act⁴ provides that a public record 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."⁵ An identifiable public purpose is served if the exemption meets one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects 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
- Protects trade or business secrets.⁶

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

Documents Filed with Department of State

The Department of State (DOS) is the state's central location responsible for receiving and maintaining a number of documents as required by statute, such as service of process for legal proceedings,⁷ articles of incorporation,⁸ or registration of fictitious names.⁹ In receiving and filing required records under 15 different statutory chapters,¹⁰ DOS may accept submission of such documents electronically.¹¹

¹ Art. I, s. 24(a), FLA. CONST.

² Art. I, s. 24(c), FLA. CONST.

³ 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. See s. 119.011(8), F.S.

⁴ S. 119.15, F.S.

⁵ S. 119.15(6)(b), F.S.

⁶ *Id.*

⁷ See, e.g., ss. 48.061, 48.062, and 48.181, F.S.

⁸ S. 607.0203, F.S.

⁹ S. 865.09, F.S.

¹⁰ Chs. 48, 55, 117, 118, 495, 605, 606, 607, 610, 617, 620, 621, 679, 713, and 865, F.S.

¹¹ S. 15.16(3), F.S.

The Division of Corporations

The Division of Corporations (Division) within DOS collects, maintains, and makes available to the public all information related to business entities and certain information related to sole proprietorships operating in Florida and certain financial transactions that take place in the state.¹² The Division also serves as the State's central filing location for filing:

- Business entities;
- Trade and service marks;
- Fictitious name registrations;
- Judgment and federal tax liens;
- UCC financing statements; and
- Notary commissions and apostilles.¹³

Sunbiz

All files maintained electronically by the Division may be accessed through its website — Sunbiz.¹⁴ Records available through Sunbiz are easily accessible and searchable, including the filed records of business entities, trademarks, fictitious names, federal liens, substitute service of process, notaries, and cable franchises. Corporations file and upload their records and pay fees through Sunbiz.¹⁵ All information filed electronically with the Division may be readily changed. If the submitted document meets the statutory requirements and is accompanied by the correct processing or filing fee, the document is accepted by the Division without further inquiry.¹⁶

CS/HB 909 (2023)

CS/HB 909, with which this bill is linked, permits DOS to implement a password protected system for the electronic filing of certain records, providing greater security as required documents are filed and maintained for public access. Additionally, CS/HB 909 provides a starting point for currently registered businesses to create an account by using their email address that is on file with DOS as of January 1, 2024. Through this registered email address, DOS may require additional verification of an authorized account holder in order to file a record through the electronic system.

Effect of the Bill

The bill provides that email addresses collected and held by DOS pursuant to specific statutory chapters,¹⁷ and secure login credentials held by DOS for purposes of a password protected system implemented pursuant to CS/HB 909, before, on, or after the effective date of the bill are exempt¹⁸ from public record requirements. The bill defines “secure login credentials” to mean information held by DOS

¹² Florida Division of Corporations, *About Us*, <https://dos.myflorida.com/sunbiz/about-us/>, (last visited March 16, 2023).

¹³ *Id.*

¹⁴ Florida Department of State, *Search Records: Corporations, Limited Liability Companies, Limited Partnerships, and Trademarks*, <https://dos.myflorida.com/sunbiz/search/> (last visited March 10, 2023).

¹⁵ Florida Department of State, *Start E-Filing*, <https://www.dos.myflorida.com/sunbiz/start-business/efile/> (last visited March 10, 2023).;

¹⁶ Florida Department of State, *Florida Department of State's Duties and Records*, <https://dos.myflorida.com/sunbiz/manage-business/mind-your-sunbizness/sunbizness-identity-theft-resource-guide/florida-department-of-state-s-duties-and-records/>, (last visited March 10, 2023); see also Derek Gilliam, *Sarasota Rep. McFarland files bill to secure Sunbiz.org, prevent hijacking of businesses*, *Herald-Tribune* (Feb. 22, 2023), www.heraldtribune.com (last visited March 2, 2023).

¹⁷ Chs. 48, 55, 117, 118, 495, 605, 606, 607, 610, 617, 620, 621, 679, 713, and 865, F.S.

¹⁸ 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. 04- 09 (2004).

for purposes of authenticating a user login-in on an electronic device accessible over the internet, or information used for authentication or password recovery.

The bill provides that the public record exemptions created are subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2028, unless saved from repeal by reenactment by the Legislature. It also provides statements of public necessity as required by the Florida Constitution.

B. SECTION DIRECTORY:

Section 1 amends s. 119.0172, F.S., relating to executive branch agency-specific exemptions from inspection or copying of public records.

Section 2 provides a public necessity statement.

Section 3 provides that the bill is effective on the same date that CS/HB 909 (2023) 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 may have a negative, but likely insignificant, fiscal impact on DOS because agency staff responsible for complying with public record requests may require training related to the creation of the public record exemption. The costs, however, would be absorbed as they are part of the day-to-day responsibilities of the agency.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

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 newly created or expanded public records exemption. The bill creates public record exemptions; thus, a two-thirds vote is required for passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public records exemption. The bill creates public record exemptions, thus, it includes, a public necessity statement. The public necessity statement provides that the identifying information exempted under the bill can be used as a tool to perpetuate fraud against an individual or corporation, the release of which could cause great financial harm to the individual or corporation.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created or expanded public records exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill provides a public record exemption for specified information collected for the purpose of providing secure login credentials to file specific documents online and therefore appears to be no broader than necessary to accomplish its stated purpose.

B. RULE-MAKING AUTHORITY:

The bill neither provides rulemaking authority nor requires rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 9, 2023, the Constitutional Rights, Rule of Law & Government Operations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment made conforming changes.

This analysis is drawn to the committee substitute as approved by the Constitutional Rights, Rule of Law & Government Operations Subcommittee.