

HOUSE OF REPRESENTATIVES STAFF FINAL BILL 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, LaMarca, and others

TIED BILLS: CS/CS/HB 909 **IDEN./SIM. BILLS:** CS/SB 946

FINAL HOUSE FLOOR ACTION: 116 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/HB 911 passed the House on April 26, 2023, as CS/SB 946.

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, articles of incorporation, or registration of fictitious names. In receiving and filing required records under 15 different statutory chapters, DOS may accept submission of such documents electronically.

The bill creates a public record exemption for email addresses collected by DOS in certain instances and secure login credentials held by DOS for the purpose of allowing a person to electronically file records under certain chapters of law. The bill provides for retroactive application of the exemptions, provides for future review and repeal of the public record exemptions, and provides a statement of public necessity as required by the Florida Constitution.

The bill may have a negative, but likely insignificant, fiscal impact on DOS that will be absorbed within existing resources. It does not appear to have a fiscal impact on local governments.

The bill was approved by the Governor on May 11, 2023, ch. 2023-52, L.O.F., and became effective on that date.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF 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

Effect of the Bill

The bill creates a public record exemption for email addresses collected by DOS pursuant to s. 15.16(3), F.S., and provides for retroactive application of the public record exemption.

The bill also creates a public record exemption for secure login credentials held by DOS for the purpose of allowing a person to electronically file records pursuant to specific statutory chapters and provides for retroactive application of the public record exemption.¹⁷ The bill defines “secure login credentials” to mean information held by DOS for purposes of authenticating a user logging into a user account on a computer, a computer system, a computer network, or an electronic device; an online user account accessible over the Internet, whether through a mobile device, a website, or any other electronic means; or information used for authentication or password recovery.

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 a statement of public necessity as required by the Florida Constitution.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

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.

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

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.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.