

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 1000

INTRODUCER: Governmental Oversight and Accountability Committee and Senator DiCeglie

SUBJECT: Public Records/Recording Notification Service

DATE: February 13, 2024

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bond</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
2.	<u>Harmsen</u>	<u>McVaney</u>	<u>GO</u>	<b>Fav/CS</b>
3.	<u>Bond</u>	<u>Twogood</u>	<u>RC</u>	<b>Pre-meeting</b>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1000 makes confidential and exempt from public records inspection and copying requirements the electronic mail addresses, telephone numbers, personal and business names, and parcel identification numbers submitted to the clerk or property appraiser for the purpose of registering for a recording notification service or a related service pursuant to s. 28.47, F.S. The bill applies to currently held information and to information acquired in the future.

This exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2029, unless saved from repeal.

The bill provides a statement of public necessity as required by the State Constitution.

The bill is not expected to impact state or local government revenues or expenditures.

The bill is effective upon becoming a law.

## II. Present Situation:

### Recording Notification Services

In recent years, there has been an increase in fraudulent real property attempted conveyances in which a fraudster executes and records a deed which purports to convey real property title to him or herself.<sup>1</sup> This allows the falsified owner to take out loans that use the property as collateral.<sup>2</sup>

All deeds that are recorded in the clerk's office are deemed to have been accepted by the clerk, and officially recorded, at the time the clerk or deputy affixed on the deed the register numbers required under Florida law.<sup>3</sup> Generally, clerks of courts serve in a ministerial role must record any document that meets its statutory requirements. However, the Lee County Clerk of Court is operating a pilot program wherein they are permitted to require that any person who files a deed or other instrument that conveys real property or an interest therein to present a government-issued identification, which the clerk must record.<sup>4</sup>

The 2023 Legislature created a requirement that each clerk of the court create a recording notification service by July 1, 2024.<sup>5</sup> A recording notification service provides real property owners with early notice of possible title fraud related to their real property. The service works as follows:

- A registrant electronically subscribes to receive recording notifications related to his or her “monitored identity.”
- The clerk sends a confirmation of registration electronically.
- If a document is presented for recording that contains a monitored identity, the clerk must electronically notify the registrant of the recording date, official records book and page number or instrument number assigned to the land record by the clerk, instructions for electronically searching for and viewing the land record using the assigned official record book and page number or instrument number, and a phone number at which the clerk's office may be contacted during normal business hours with questions related to the recording notification.

A registrant may unsubscribe from the reporting service at any time.

Section 28.47, F.S., also allows, but does not require, a county property appraiser to operate a notification service under the same requirements, and applies its provisions to any such electronic land record notification service adopted by a county property appraiser before July 1, 2023.<sup>6</sup>

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<sup>1</sup> See, example, Mike DeForest, Click Orlando, *Florida Man Accused of Using Fake Deeds to Take Ownership of Two Homes* (Sep. 12, 2022), <https://www.clickorlando.com/news/investigators/2022/09/12/florida-man-used-fake-deeds-to-take-ownership-of-2-homes-court-records-claim-heres-how/> (last visited Feb. 5, 2024).

<sup>2</sup> Home Title Lock, *Everything You Need to Know About Home Title Fraud* (Jun. 24, 2021), <https://www.hometitlelock.com/articles/everything-you-need-to-know-about-home-title-fraud> (last visited Feb. 5, 2024).

<sup>3</sup> Sections 28.222 and 695.26, F.S. See also, e.g., Citrus County Florida Clerk of the Circuit Court and Comptroller, *Recording Activity Notification (RAN) FAQ: Why do Fraudulent Documents Get Recorded?*, <https://www.citrusclerk.org/Faq.aspx?QID=446> (last visited Feb. 2, 2024).

<sup>4</sup> Section 28.2225, F.S.

<sup>5</sup> Section 28.47, F.S.; ch. 2023-238, Laws of Fla.

<sup>6</sup> Section 28.47(6), F.S.

## Access to Public Records - Generally

The State Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.<sup>7</sup> 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.<sup>8</sup>

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the legislature.<sup>9</sup> Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.<sup>10</sup> Lastly, ch. 119, F.S., known as the Public Records Act, provides requirements for public records held by executive agencies.

## Executive Agency Records – The Public Records Act

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.<sup>11</sup>

Section 119.011(12), F.S., defines “public records” to include:

[a]ll 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 connections with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business that are used to “perpetuate, communicate, or formalize knowledge of some type.”<sup>12</sup>

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

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<sup>7</sup> FLA. CONST. art. I, s. 24(a).

<sup>8</sup> *Id.* See also, *Sarasota Citizens for Responsible Gov’t v. City of Sarasota*, 48 So. 3d 755, 762-763 (Fla. 2010).

<sup>9</sup> See Rule 1.48, *Rules and Manual of the Florida Senate*, (2022-2024) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2022-2024).

<sup>10</sup> *State v. Wooten*, 260 So. 3d 1060 (Fla. 4<sup>th</sup> DCA 2018).

<sup>11</sup> Section 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.”

<sup>12</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

custodian of the public record.<sup>13</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>14</sup>

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.<sup>15</sup> 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.<sup>16</sup>

General exemptions from the public records requirements are contained in the Public Records Act.<sup>17</sup> Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.<sup>18</sup>

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.<sup>19</sup> Records designated as “confidential and exempt” are not subject to inspection by the public and may only be released under the circumstances defined by statute.<sup>20</sup> Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.<sup>21</sup>

### **Open Government Sunset Review Act**

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act<sup>22</sup> (the Act), prescribe a legislative review process for newly created or substantially amended<sup>23</sup> public records or open meetings exemptions, with specified exceptions.<sup>24</sup> The Act requires the repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption or repeal the

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<sup>13</sup> Section 119.07(1)(a), F.S.

<sup>14</sup> Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

<sup>15</sup> FLA. CONST. art. I, s. 24(c).

<sup>16</sup> *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 statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

<sup>17</sup> *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).

<sup>18</sup> *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).

<sup>19</sup> *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5<sup>th</sup> DCA 2004).

<sup>20</sup> *Id.*

<sup>21</sup> *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5<sup>th</sup> DCA 1991).

<sup>22</sup> Section 119.15, F.S.

<sup>23</sup> 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.

<sup>24</sup> Section 119.15(2)(a) and (b), F.S., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

sunset date.<sup>25</sup> In practice, many exemptions are continued by repealing the sunset date, rather than reenacting the exemption.

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.<sup>26</sup> An exemption serves an identifiable purpose if the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption *and* it meets one of the following purposes:

- It allows the state or its political subdivisions to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;<sup>27</sup>
- 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;<sup>28</sup> or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.<sup>29</sup>

The Act also requires specified questions to be considered during the review process.<sup>30</sup> In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption or repealing the sunset date, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>31</sup> 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 expire, the previously exempt records will remain exempt unless otherwise provided by law.<sup>32</sup>

### III. Effect of Proposed Changes:

**Section 1** creates a public records exemption to provide that all electronic mail addresses, telephone numbers, personal and business names, and parcel identification numbers submitted to the clerk or property appraiser for the purpose of registering for a recording notification service

<sup>25</sup> Section 119.15(3), F.S.

<sup>26</sup> Section 119.15(6)(b), F.S.

<sup>27</sup> Section 119.15(6)(b)1., F.S.

<sup>28</sup> Section 119.15(6)(b)2., F.S.

<sup>29</sup> Section 119.15(6)(b)3., F.S.

<sup>30</sup> Section 119.15(6)(a), F.S. The specified questions are:

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

<sup>31</sup> See *generally* s. 119.15, F.S.

<sup>32</sup> Section 119.15(7), F.S.

or a related service pursuant to s. 28.47, F.S. offered by the clerk or property appraiser designed to notify the person who registers of a real property transfer, are confidential and exempt from public records copying and inspection requirements, except upon court order.

This exemption applies to information held by the clerk or property appraiser before, on, or after the effective date of the bill. This exemption is subject to the Open Government Sunset Review Act and is repealed on October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature. This information, if submitted to the clerk or property appraiser for another purpose, is not confidential and exempt in that capacity.

**Section 2** directs the Division of Law Revision to replace the phrase “the effective date of this act” wherever it occurs in this bill with the date this bill becomes a law.

**Section 3** provides the public necessity statement, as required by the State Constitution. The public necessity statement finds that it is a public necessity that all electronic mail addresses, telephone numbers, personal and business names, and parcel identification numbers submitted to the clerk or property appraiser for the purpose of registering for a recording notification service or a related service offered by the clerk or property appraiser pursuant to s. 28.47, F.S., be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution.

As the basis for this finding, the bill states that it is a public necessity to protect such persons or business names from becoming victims of other types of fraud by virtue of their registration or status as a person whose information has been submitted for monitoring.

The bill further states that it is a public necessity to protect persons whose personal or business names or parcel identification numbers *are not submitted* to a recording notification service or a related service from becoming the target of a fraudulent real property conveyance by virtue of their lack of participation in any such service.

Lastly, the bill finds that the harm that may result from the release of the information made confidential and exempt from public records laws in this bill outweighs any public benefit that may be derived from the disclosure of such information.

**Section 4** provides that the bill is effective upon becoming a law.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

Not applicable. The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties’ or municipalities’ ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

**B. Public Records/Open Meetings Issues:****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 bill creating or expanding an exemption to the public records requirements. This bill enacts a new exemption for records pertaining to a recording notification program; therefore, the bill requires a two-thirds vote of each chamber for enactment.

**Public Necessity Statement**

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 3 of the bill contains a statement of public necessity for the exemption.

**Breadth of Exemption**

Article I, s. 24(c), of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to encourage real property owners to register for notification of potentially fraudulent documents affecting the owner's title. This purpose may not be met if land owners are deterred from registration because their contact information would be made public. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None identified.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

This exemption may persuade those previously hesitant to register for a recording notification service based on the concern of making their email address and phone numbers a public record to do so.

**C. Government Sector Impact:**

The clerks of court and comptroller and property appraisers may incur additional workload related to training about the new exemption and redaction of records exempted by this provision. This workload will likely be absorbed within current resources.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 28.47 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Governmental Oversight and Accountability on February 6, 2024:**

- Clarifies that only the specified personal identifying information, when held by a clerk or property appraiser for the purposes of registering for a recording notification service or a related service, is confidential and exempt.
- Limits the programs that can apply this public record exemption to only a recording notification service operated pursuant to s. 28.47, F.S., or a related service recognized by s. 28.47(6), F.S.

**B. Amendments:**

None.