

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/CS/HB 273 Pub. Rec./Animal Foster or Adoption  
**SPONSOR(S):** State Affairs Committee, Local Administration, Federal Affairs & Special Districts  
Subcommittee, Holcomb  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 660

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration, Federal Affairs & Special Districts Subcommittee	17 Y, 0 N, As CS	Burgess	Darden
2) State Affairs Committee	20 Y, 0 N, As CS	Skinner	Williamson

**SUMMARY ANALYSIS**

The records of a public animal shelter, humane organization, or animal control agency, like the records of other public agencies in the state, are open to the public to inspect or copy unless those records have been made exempt from public record requirements. These records may include information such as the identifying information of a person who adopts or fosters an animal from the facility.

The bill creates a public record exemption for the personal identifying information of a person who fosters, adopts, or otherwise receives legal custody of an animal from a shelter or animal control agency operated by a humane society or a county, municipality, or other incorporated political subdivision. The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

The bill does not appear to impact state government and may have an insignificant negative 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 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

The Florida Constitution sets forth the state's public policy regarding access to government records, guaranteeing every person a 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 an exemption<sup>2</sup> from public record requirements provided that the exemption passes by a 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>3</sup>

Current law also addresses the public policy regarding access to government records by guaranteeing every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt.<sup>4</sup> Furthermore, the Open Government Sunset Review (OGSR) Act<sup>5</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>6</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>7</sup>

Pursuant to the OGSR Act, a new public record exemption, or the 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.<sup>8</sup>

##### Public Records of Public or Private Animal Agencies

The records of a public animal shelter, humane organization, or animal control agency operated by a humane society must be made available to the public in the same manner as other public records.<sup>9</sup> These records may include information such as the identifying information of a person who adopts or fosters an animal from the facility.

Public or private animal shelters, humane organizations, and animal control agencies operated by a humane organization or by a county, municipality, or other incorporated political subdivision<sup>10</sup> must

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

<sup>2</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 Florida Constitution. See s. 119.011(8), F.S.

<sup>3</sup> Art. I, s. 24(c), FLA. CONST.

<sup>4</sup> See s. 119.01, F.S.

<sup>5</sup> S. 119.15, F.S.

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

<sup>7</sup> *Id.*

<sup>8</sup> S. 119.15(3), F.S.

<sup>9</sup> S. 823.15(2)(b), F.S.

<sup>10</sup> The term "political subdivision" includes counties, cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts, and all other districts in this state. S. 1.01(8), F.S.

make the following information available on a monthly basis and maintain such information for the preceding three years:

- The total number of dogs and cats taken in, divided into species, in the following categories:
  - Surrendered by owner;
  - Stray;
  - Impounded;
  - Confiscated;
  - Transferred from within Florida;
  - Transferred into or imported from out of the state; and
  - Born in shelter.
- The disposition of all animals taken in, divided into species, including dispositions by:
  - Adoption;
  - Reclamation by owner;
  - Death in kennel;
  - Euthanasia at the owner's request;
  - Transfer to another public or private animal shelter, humane organization, or animal control agency operated by a humane society or by a county, municipality, or other incorporated political subdivision;
  - Euthanasia;
  - Released in field/trapped, neutered, released (TNR);
  - Lost in care/missing animals or records; and
  - Ending inventory/shelter count at end of the last day of the month.<sup>11</sup>

If a public or private animal shelter, humane organization, or animal control agency operated by a humane society, or by a county, municipality, or other incorporated political subdivision, routinely euthanizes dogs based on size or breed alone, the entity must provide a written statement of such policy.<sup>12</sup> Dogs euthanized due to breed, temperament, or size must be recorded and included in the calculation of the total euthanasia percentage.<sup>13</sup>

Employees, agents, or contractors of such entities may implant dogs and cats with radio frequency identification microchips and may contact the owner of record listed on such microchip to verify pet ownership.<sup>14</sup>

### Effect of Proposed Changes

The bill makes the personal identifying information of a person who fosters, adopts, or otherwise receives legal custody of an animal from an animal shelter or animal control agency operated by a humane society or a county, municipality, or other incorporated political subdivision held by the shelter or agency exempt<sup>15</sup> from public record requirements. The public record exemption is subject to the Open Government Sunset Review Act and will automatically repeal on October 2, 2029, unless reviewed and saved from repeal by the Legislature.

The bill includes the constitutionally required public necessity statement,<sup>16</sup> which provides, in part, that the public record exemption is necessary in order to shield those seeking to adopt, foster, or otherwise

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<sup>11</sup> S. 823.15(2)(a)1. and 2., F.S.

<sup>12</sup> S. 823.15(2)(a)3., F.S.

<sup>13</sup> *Id.*

<sup>14</sup> S. 823.15(5) and (6), F.S.

<sup>15</sup> There is a difference between records the Legislature designates *exempt* from public record requirements and those the Legislature designates *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); *State v. Wooten*, 260 So. 3d 1060, 1070 (Fla. 4th DCA 2018); *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).

<sup>16</sup> Art. I, s. 24(c), FLA. CONST., requires each public record exemption to "state with specificity the public necessity justifying the exemption."

gain legal custody of an animal from potential stalking, harassment, and intimidation from the animals' previous owners.

**B. SECTION DIRECTORY:**

Section 1: Amends s. 823.15, F.S., to provide an exemption from public record requirements.

Section 2: Provides a public necessity statement.

Section 3: 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:

None.

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

1. Revenues:

None.

2. Expenditures:

The bill may have an insignificant negative fiscal impact on local governments that are custodians of animal shelter and animal control records, as staff responsible for complying with public record requests may require training related to the newly-created public record exemptions. However, any additional costs will likely be absorbed within existing resources.

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

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

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 or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote Requirement

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.

### Public Necessity Statement

Article I, s. 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 public record exemption is necessary to shield those seeking to adopt, foster, or otherwise gain legal custody of an animal from potential stalking, harassment, and intimidation from the animal's previous owners.

### Breadth of Exemption

Article I, s. 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 the personal identifying information of a person who fosters, adopts, or otherwise receives legal custody of an animal from an animal shelter or animal control agency operated by a humane society or a county, municipality, or other incorporated political subdivision held by the shelter or agency. The exemption is limited to those who foster, adopt, or otherwise receive legal custody of an animal to prevent harm to such persons from previous owners.

#### B. RULE-MAKING AUTHORITY:

The bill neither provides authority for nor requires rulemaking by an agency.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On January 25, 2024, the Local Administration, Federal Affairs & Special Districts Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment changed the bill's effective date to upon becoming a law.

On February 7, 2024, the State Affairs Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment applied the public record exemption to information held by animal control agencies operated by a humane society.

This analysis is drafted to the committee substitute as approved by the State Affairs Committee.