

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 Banking and Insurance

BILL: SB 1658

INTRODUCER: Senator Collins

SUBJECT: Public Records/Uniform Mitigation Verification Inspection Form Database

DATE: March 14, 2025

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Thomas	Knudson	BI	Pre-meeting
2.			AEG	
3.			FP	

I. Summary:

SB 1658, which is linked to SB 1656, creates a public records exemption for the uniform mitigation verification inspection forms submitted by a policyholder to its insurer, and subsequently electronically filed by the insurer with the OIR, and the associated data entered into the database, including the policyholder’s identity, phone numbers, e-mail addresses, insurance company, and insurance policy numbers. The bill provides that this information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

The exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2030, unless reviewed and saved from repeal by the Legislature.

The bill contains a statement of public necessity, as required by the Florida Constitution.

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

Because the bill creates a new public records exemption, a two-thirds vote of the members present and voting in each house of the Legislature is required for final passage.

The bill provides the effective date is the same date that SB 1656, or similar legislation, if adopted, takes effect. SB 1656 provides an effective date of July 1, 2025.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This 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 who acts on behalf of the government.²

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ The Public Records Act states that:

It is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁵

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted. Section 119.011(12), F.S., defines “public records” to include:

all 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 connection with the transaction of official business by any agency.⁶

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to “perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any government public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are primarily located in s. 11.0431(2)-(3), F.S.

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ 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.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

The Public Records Act contains general exemptions that apply across agencies. Agency or program-specific exemptions often are placed in the substantive statutes relating to that particular agency or program. Only the Legislature may create an exemption to public records requirements.¹⁰ An exemption must be created by general law and must specifically state the public necessity which justifies the exemption.¹¹ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill that enacts an exemption may not contain other substantive provisions¹² and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹³

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*.¹⁴ 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.¹⁵ Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.¹⁶

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act (the Act), prescribe a legislative review process for newly created or substantially amended public records or open meetings exemptions,¹⁷ with specified exceptions.¹⁸ 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 sunset date.¹⁹ 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.²⁰ 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:

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ *Id.*

¹² The bill may, however, contain multiple exemptions that relate to one subject.

¹³ FLA. CONST., art. I, s. 24(c).

¹⁴ *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁵ *Id.*

¹⁶ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁷ 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.

¹⁸ 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.

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;²¹
- 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;²² or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

The Act requires specified questions to be considered during the review process.²⁴ 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.²⁵ If the exemption is reenacted or saved from repeal without substantive changes or if the exemption is 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.²⁶

Residential Property Insurance Mitigation Credits, Discounts, or Other Rate Differentials

Residential property insurance rate filings must account for mitigation measures undertaken by policyholders to reduce hurricane losses.²⁷ Specifically, the rate filings must include actuarially reasonable discounts, credits, or other rate differentials or appropriate reductions in deductibles to consumers who implement windstorm damage mitigation techniques to their properties.²⁸ Upon their filing by an insurer or rating organization, the OIR determines the discounts, credits, other rate differentials and appropriate reductions in deductibles that reflect the full actuarial value of such revaluation,²⁹ which in turn may be used in rate filings under the rating law. Windstorm mitigation measures that must be evaluated for purposes of mitigation discounts include fixtures or construction techniques that enhance roof strength, roof covering

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

²⁴ Section 119.15(6)(a), F.S. The specific 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?

²⁵ FLA. CONST. art. I, s. 24(c).

²⁶ Section 119.15(7), F.S.

²⁷ Section 627.062(2)(j), F.S.

²⁸ Section 627.0629(1), F.S.

²⁹ *Id.*

performance, roof-to-wall strength, wall-to-floor-to-foundation strength, opening protection, and window, door, and skylight strength.³⁰

An insurer is required to notify an applicant or policyholder of any personal lines residential property insurance policy, at the time of the issuance of the policy and at each renewal, of the availability of each premium discount, credit, other rate differential for properties on which fixtures or construction techniques demonstrated to reduce the amount of loss in a windstorm can be or have been installed or implemented.³¹ The Financial Services Commission is required to develop a uniform mitigation verification inspection form to be used by all insurers when submitted by policyholders for the purpose of factoring discounts for wind insurance.³²

III. Effect of Proposed Changes:

SB 1656 amends s. 627.711, F.S., to require the OIR to contract with a Florida public university to design, operate, upgrade, and maintain a statewide database for uniform mitigation verification inspection forms to be managed by the OIR to collect and evaluate mitigation features of residential properties within the state. Beginning on January 1, 2026, each insurer must electronically file a copy of uniform mitigation inspection forms submitted by a policyholder in the database within 15 business days after receipt from the policyholder or the agent, using the electronic format prescribed by the OIR.

Section 1 of this bill provides that the uniform mitigation verification inspection forms submitted by a policyholder to its insurer, and subsequently electronically filed by the insurer with the OIR, and the associated data entered into the database, including the policyholder's identity, phone numbers, e-mail addresses, insurance company, and insurance policy numbers, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

The bill provides for repeal of the exemptions pursuant to the Open Government Sunset Review Act on October 2, 2030, unless reviewed and saved from repeal by the Legislature.

Section 2 provides a public necessity statement, which is required by the Florida Constitution. The bill states that the public records exemption is necessary because disclosing personal identifying information contained in the uniform mitigation verification inspection form significantly undermines the privacy of policyholders and can result in the release of otherwise exempt trade secret information protections claimed by insurers.

Section 3 provides that the bill takes effect on the same date as SB 1656 or similar legislation takes effect, if adopted and becomes a law. SB 1656 provides an effective date of July 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

³⁰ *Id.*

³¹ Section 627.711(1), F.S.

³² Section 627.711(2)(a), F.S.

B. Public Records/Open Meetings Issues:**Vote Requirement**

Article I, section 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 or open meetings requirements. This bill creates a public records exemption; therefore, it requires a two-thirds vote.

Public Necessity Statement

Article I, section 24(a) of the State Constitution and Article I, section 24(b) of the State Constitution requires a bill creating or expanding an exemption to the public records or open meetings requirements to state with specificity the public necessity justifying the exemption. Section 2 includes a public necessity statement for the exemptions. The bill states that the public records exemption is necessary because disclosing personal identifying information contained in the uniform mitigation verification inspection form significantly undermines the privacy of policyholders and can result in the release of otherwise exempt trade secret information protections claimed by insurers.

Breadth of Exemption

Article I, section 24(c), of the State Constitution requires exemptions to the public records and open meetings requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the bill is to protect the personal identifying information regarding policyholders and, in the aggregate, can be used to identify information claimed as a trade secret by insurers. The exemption 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:

The private sector will be subject to the cost associated with an agency's review and redactions of exempt records in response to a public records request.

C. Government Sector Impact:

The government sector will incur costs related to the review and redaction of exempt records associated with responding to public records requests.

VI. Technical Deficiencies:

Line 20 should be amended to clarify that it is the policyholder's identity, phone numbers, e-mail addresses, insurance company, and insurance policy numbers that are subject to the public records exemption.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following section of the Florida Statutes: 627.711.

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.