

**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 Governmental Oversight and Accountability

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BILL: SB 342

INTRODUCER: Senator Harrell

SUBJECT: Public Records/Agency for Health Care Administration

DATE: March 31, 2025

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Smith</u>	<u>Brown</u>	<u>HP</u>	<b>Favorable</b>
2.	<u>White</u>	<u>McVaney</u>	<u>GO</u>	<b>Pre-meeting</b>
3.	_____	_____	<u>RC</u>	_____

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**I. Summary:**

SB 342 exempts from public records inspection and copying requirements the personal identifying and location information of current and former Agency for Health Care Administration personnel whose duties include the investigation of complaints filed against health care facilities, the investigation of Medicaid fraud, abuse, or waste, or the inspection of health care facilities licensed or certified by the agency. Specifically, the bill exempts from public records disclosures:

- The home addresses, telephone numbers, dates of birth, and photographs of relevant current and former Agency for Health Care Administration personnel.
- The names, home addresses, telephone numbers, dates of birth, photographs, and places of employment of the spouses and children of relevant current and former Agency for Health Care Administration personnel.
- The names and locations of schools and day care facilities attended by the children of relevant current and former Agency for Health Care Administration personnel.

This exemption applies to information held by an agency before, on, or after July 1, 2025. It is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2030, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill may increase costs minimally for state and local government agencies.

The bill provides an effective date of October 1, 2025.

## II. Present Situation:

### 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>1</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>2</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>3</sup> Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.<sup>4</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>5</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>6</sup>

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

<sup>2</sup> *Id.* See also, *Sarasota Citizens for Responsible Gov’t v. City of Sarasota*, 48 So. 3d 755, 762-763 (Fla. 2010).

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

<sup>5</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>6</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

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 custodian of the public record.<sup>7</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>8</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>9</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>10</sup>

General exemptions from the public records requirements are contained in the Public Records Act.<sup>11</sup> Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.<sup>12</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>13</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>14</sup> Records designated as "exempt" may be released at the discretion of the records custodian under certain circumstances.<sup>15</sup>

### **Public Records Exemptions for Specified Personnel and their Families (s. 119.071(4), F.S.)**

Section 119.071(4), F.S., exempts from public record disclosure the personal information of specific government employees when held by government agencies. In paragraph (d), "home addresses" is defined as the dwelling location at which an individual resides and includes the physical address, mailing address, street address, parcel identification number, plot identification number, legal property description, neighborhood name and lot number, GPS coordinates, and any other descriptive property information that may reveal the home address. Additionally, "telephone numbers" is defined to include home telephone numbers, personal cellular telephone

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<sup>7</sup> Section 119.07(1)(a), F.S.

<sup>8</sup> Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

<sup>9</sup> FLA. CONST. art. I, s. 24(c).

<sup>10</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>11</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>12</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>13</sup> *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5<sup>th</sup> DCA 2004).

<sup>14</sup> *Id.*

<sup>15</sup> *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5<sup>th</sup> DCA 1991).

numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices.

Section 119.071(4)(d)2., F.S., generally exempts from public disclosure the home addresses, dates of birth, photographs, and telephone numbers of specified public employees and their spouses and children. Additionally exempted, typically, are the spouse's place of work as well as the name and location of any schools or day care facilities of the public employee's children, if any. These public employees include, but are not limited to, sworn law enforcement personnel and active or former civilian personnel employed by a law enforcement agency;<sup>16</sup> current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges;<sup>17</sup> current or former state attorneys;<sup>18</sup> current or former public defenders;<sup>19</sup> county tax collectors;<sup>20</sup> and clerks of a circuit court.<sup>21</sup>

Records that include exempt information about the above-specified personnel and their spouses and children (minor or adult) may be held by, among others, their employing agency, clerks of court and comptrollers, county tax collectors and property appraisers, school districts, and law enforcement agencies. County property appraisers<sup>22</sup> and county tax collectors<sup>23</sup> holding exempted information need only remove the name of an individual with exempt status and the instrument number or Official Records book and page number identifying the property with the exemption status from all publicly available records. County property appraisers and county tax collectors may not remove the street address, legal description, or other information identifying real property so long as the name or personal information otherwise exempt is not associated with the property or otherwise displayed in the public records.<sup>24</sup>

The personnel, their spouses or children, or their employing agency claiming an exemption under s. 119.071(4)(d)2., F.S., must affirmatively assert the right to the exemption by submitting a written and notarized request to each non-employer agency that holds the employee's or their spouse or child's information. The individual or entity asserting the exemption must provide, under oath, the statutory basis for the individual's exemption and confirm the individual's status as a party eligible for exempt status.<sup>25</sup>

These exemptions under s. 119.071(4)(d)2., F.S., have retroactive application, applying to information held by an agency before, on, or after the effective date of the exemption.<sup>26</sup> Home

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<sup>16</sup> Section 119.071(4)(d)2.a., F.S. This would presumably include elected law enforcement officers such as sheriffs.

<sup>17</sup> Section 119.071(4)(d)2.e., F.S.

<sup>18</sup> Section 119.071(4)(d)2.f., F.S.

<sup>19</sup> Section 119.071(4)(d)2.l., F.S.

<sup>20</sup> Section 119.071(4)(d)2.n., F.S.

<sup>21</sup> Section 119.071(4)(d)2.y., F.S. Circuit court clerks' exemption from public records under this statute is set to repeal on October 2, 2029, unless saved by the Legislature.

<sup>22</sup> See s. 192.001(3), F.S.

<sup>23</sup> See s. 192.001(4), F.S.

<sup>24</sup> Section 119.071(4)(d)4., F.S.

<sup>25</sup> Section 119.071(4)(d)3., F.S.

<sup>26</sup> Section 119.071(4)(d)6., F.S.

addresses, however, are no longer exempt in the Official Records if the protected party no longer resides at the dwelling<sup>27</sup> or upon his or her death.<sup>28</sup>

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

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act<sup>29</sup> (the Act), prescribe a legislative review process for newly created or substantially amended<sup>30</sup> public records or open meetings exemptions, with specified exceptions.<sup>31</sup> The Act requires the repeal of such exemption on October 2 of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>32</sup>

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>33</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 governmental program, and administration would be significantly impaired without the exemption;<sup>34</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>35</sup> or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.<sup>36</sup>

The Act also requires specified questions to be considered during the review process.<sup>37</sup> In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

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<sup>27</sup> The protected individual must submit a notarized, written request to release the removed information. Section 119.071(4)(d)8., F.S.

<sup>28</sup> A certified copy of a death certificate or court order must be presented with a notarized request to release the information to remove the exemption. Section 119.071(4)(d)9., F.S. Note, the Clerk is also called the "county recorder." *See* s. 28.222(2), F.S.

<sup>29</sup> Section 119.15, F.S.

<sup>30</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>31</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.

<sup>32</sup> Section 119.15(3), F.S.

<sup>33</sup> Section 119.15(6)(b), F.S.

<sup>34</sup> Section 119.15(6)(b)1., F.S.

<sup>35</sup> Section 119.15(6)(b)2., F.S.

<sup>36</sup> Section 119.15(6)(b)3., F.S.

<sup>37</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?

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are again required.<sup>38</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>39</sup>

## **Florida Agency for Health Care Administration**

### ***Health Care Policy and Oversight***

The Agency for Health Care Administration (AHCA) is created in s. 20.42, F.S. It is the chief health policy and planning entity for the state and is responsible for, among other things, health facility licensure, inspection, and regulatory enforcement. It licenses or certifies and regulates over 30 different types of health care providers, including hospitals, nursing homes, assisted living facilities, and home health agencies. In total, the AHCA licenses, certifies, regulates, or provides exemptions for more than 50,000 providers.<sup>40</sup>

Generally applicable provisions of health care provider licensure, including facility inspections and complaints, are addressed in the Health Care Licensing Procedures Act in part II of ch. 408, F.S. Additional chapters or sections in the Florida Statutes provide specific licensure or regulatory requirements pertaining to health care providers in this state.<sup>41</sup>

Section 408.10, F.S., requires the AHCA to make a toll-free telephone number available to the public for the purpose of handling consumer complaints about the quality of care provided in Florida's health care facilities. The AHCA currently accepts complaints through its hotline and on its website through Licensed Health Care Facility Complaint and Unlicensed Health Care Facility Complaint forms.<sup>42</sup> The AHCA's Complaint Administration Unit receives and processes complaints about the quality of care provided in Florida's health care facilities.

Section 408.811, F.S., outlines procedures for authorized AHCA personnel to inspect health care providers and businesses suspected of operating without a license. An authorized AHCA officer or employee may make or cause to be made *any inspection or investigation deemed necessary* by the AHCA to determine the state of compliance with the law and applicable rules. Inspections are generally unannounced, with re-licensure inspections occurring biennially, unless otherwise specified. Providers with a strong regulatory record may be exempt from routine inspections, but at least 10 percent of these providers will still be inspected by the AHCA. Inspections by

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- 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>38</sup> See generally s. 119.15, F.S.

<sup>39</sup> Section 119.15(7), F.S.

<sup>40</sup> See the Agency for Health Care Administration, Health Care Policy and Oversight <https://ahca.myflorida.com/health-care-policy-and-oversight> (last visited Feb.13, 2025).

<sup>41</sup> See s. 408.802, F.S., for the health care provider types and applicable licensure statutes.

<sup>42</sup> See the Agency for Health Care Administration, Complaint Administration Unit <https://ahca.myflorida.com/health-care-policy-and-oversight/bureau-of-field-operations/complaint-administration-unit> (last visited Feb.13, 2025).

recognized certifying organizations may substitute for state inspections. Providers must produce requested records for inspection at no cost. If deficiencies are found, they must be corrected within 30 days, and a plan of correction must be submitted within 10 days, if required. Providers must maintain public records of inspection reports for at least three years, and these reports must be made available to clients and prospective clients upon request.

### ***Office of Medicaid Program Integrity***

The AHCA is also responsible for the administration of the Florida Medicaid program, authorized under Title XIX of the Social Security Act.<sup>43</sup> This authority includes establishing and maintaining a Medicaid state plan approved by the Centers for Medicare & Medicaid Services (CMS) and maintaining any Medicaid waivers needed to operate the Florida Medicaid program as directed by the Legislature.<sup>44</sup>

The Medicaid program is funded with both state and federal tax dollars, and both the states and the federal government have an interest in curbing and investigating Medicaid fraud and recovering overpayments made by the government for improper services. Medicaid fraud means an intentional deception or misrepresentation made by a health care provider or a Medicaid recipient with the knowledge that the deception could result in some unauthorized benefit to him or herself or some other person.<sup>45</sup>

Most providers who commit Medicaid fraud fall into one or more of these categories:

- Billing for patients who did not really receive services,
- Billing for a service and/or equipment that wasn't provided,
- Billing for items and services that the patient no longer needs,
- Overcharging for equipment or services,
- Concealing ownership or associations in a related company,
- Paying a “kickback” in exchange for a referral for medical services or equipment,
- Billing more than once for the same service,
- Using false credentials such as diplomas, licenses or certifications, or
- Ordering tests or prescriptions that the patient does not need.<sup>46</sup>

The AHCA's Office of Medicaid Program Integrity audits and investigates providers suspected of overbilling or defrauding Florida's Medicaid program, recovers overpayments, issues administrative sanctions, and refers cases of suspected fraud for criminal investigation.<sup>47</sup>

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<sup>43</sup> Section 409.902, F.S.

<sup>44</sup> Medicaid.gov, Medicaid State Plan Amendments, available at <https://www.medicaid.gov/medicaid/medicaid-state-plan-amendments/index.html> (last visited Feb. 13, 2025).

<sup>45</sup> See the Agency for Health Care Administration, Medicaid Fraud: Protect Your Tax Dollars <https://ahca.myflorida.com/agency-administration/office-of-inspector-general/medicaid-fraud-protect-your-tax-dollars> (last visited Feb.13, 2025).

<sup>46</sup> *Id.*

<sup>47</sup> See the Agency for Health Care Administration, Office of Medicaid Program Integrity <https://ahca.myflorida.com/health-care-policy-and-oversight/office-of-medicaid-program-integrity> (last visited Feb.13, 2025).

### III. Effect of Proposed Changes:

**Section 1** exempts from public records disclosure requirements of s. 119.07(1) and s. 24(a), Art. I of the State Constitution the following information:

- The home addresses, telephone numbers, dates of birth, and photographs of current or former personnel of the AHCA whose duties include the investigation of complaints filed against health care facilities, the investigation of Medicaid fraud, abuse, or waste, or the inspection of health care facilities licensed or certified by the agency;
- The names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and
- The names and locations of schools and day care facilities attended by the children of such personnel.

These exemptions are subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2030, unless reviewed and saved from repeal through reenactment by the Legislature.

At present, the agency estimates that a total of 421 current investigative staff positions would be included in this exemption. This number is fluid and will change over time due to new hires and staff changes.<sup>48</sup>

**Section 2** of the bill provides, as required by the State Constitution, a statement of public necessity. It states that the release of such personal identifying and location information might place the AHCA's current or former personnel and their family members in danger of physical and emotional harm from disgruntled individuals who have contentious reactions to actions carried out by such personnel or whose business or professional practices have come under scrutiny as a result of such investigations and AHCA actions.

Under the bill, the Legislature finds that the potential for harm outweighs any public benefit that may be derived from the disclosure of such personal identifying and location information.

**Section 3** of the bill provides an effective date of October 1, 2025.

### IV. Constitutional Issues:

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

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

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<sup>48</sup> Agency for Health Care Administration, Senate Bill 342 Legislative Analysis (Feb. 12, 2025) (on file with the Senate Committee on Health Policy).



**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 disclosure requirements. This bill enacts a new exemption for certain personal identifying and locating information of relevant current and former AHCA personnel and their spouses and children. Thus, the bill requires a two-thirds vote to be enacted.

**Public Necessity Statement**

Article I, section 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records disclosure requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemption which provides that the AHCA's current or former personnel and their family members are in danger of physical and emotional harm from disgruntled individuals who have contentious reactions to actions carried out by such personnel or whose business or professional practices have come under scrutiny as a result of such investigations.

**Breadth of Exemption**

Article I, section 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 protect current and former agency personnel, and their spouse and children, from physical and emotional harm. This bill exempts only their personal identifying and location information from the public records requirements. The records to a large degree mirror existing exemptions for other sensitive public officers and employees in s. 119.071(4)(d), F.S. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

**C. Trust Funds Restrictions:**

None identified.

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

None identified.

**E. Other Constitutional Issues:**

None identified.

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

None identified.

**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:**

This bill may cause a minimal increase in workload on agencies holding records that contain personal identifying information of public officers as well as their spouses and children because staff responsible for complying with public record requests may require training related to the new public record exemption. Additionally, agencies may incur costs associated with redacting the exempt information prior to releasing a record. However, the workload will likely be absorbed within current resources.

**VI. Technical Deficiencies:**

The title does not provide notice that the exemption created by the bill will apply to information held by an agency before, on, or after the bill's effective date.

**VII. Related Issues:**

None identified.

**VIII. Statutes Affected:**

This bill substantially amends section 119.071 of the Florida Statutes.

**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.