

**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 Environment and Natural Resources

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BILL: SB 7000

INTRODUCER: Environment and Natural Resources Committee

SUBJECT: OGSR/Site-Specific Location Information for Threatened and Endangered Species

DATE: February 11, 2024      REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Carroll</u>	<u>Rogers</u>	_____	<b>EN Submitted as Comm. Bill/Fav</b>

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**I. Summary:**

SB 7000 repeals the sunset date in s. 379.1026, F.S., to allow the public records exemption for site-specific location information on endangered and threatened species to remain in statute.

The public records exemption for site-specific location information is subject to the Open Government Sunset Review Act, which requires the Legislature to review each public record and public meeting exemption five years after enactment. The exemption amended by this bill is scheduled for repeal on October 2, 2025. This bill removes the scheduled repeal to continue the confidential and exempt status of the information.

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

The bill takes effect October 1, 2025.

**II. Present Situation:**

**Florida 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.<sup>1</sup> 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 acting on behalf of the government.<sup>2</sup> In addition to the Florida Constitution, the Florida Statutes provide that the public may access

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

<sup>2</sup> *Id.*

legislative and executive branch records.<sup>3</sup> Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.<sup>4</sup> The Public Records Act states that:

[i]t 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.<sup>5</sup>

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.<sup>6</sup> The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”<sup>7</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>8</sup>

The Legislature may create an exemption to public records requirements by passing a general law by a two-thirds vote of each of the House and the Senate.<sup>9</sup> The exemption must explicitly lay out the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.<sup>10</sup> A statutory exemption, which does not meet these two criteria, may be unconstitutional and may not be judicially saved.<sup>11</sup>

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”<sup>12</sup> Records designated “confidential and exempt” may be released by the records custodian only under the circumstances defined by statutory exemptions.

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<sup>3</sup> 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., and FLA. CONST. art. I, s. 24(b). Public records exemptions for the Legislature are primarily located in s. 11.0431(2)-(3), F.S.

<sup>4</sup> Public records laws are found throughout the Florida Statutes.

<sup>5</sup> Section 119.01(1), F.S.

<sup>6</sup> Section 119.011(12), F.S., defines “public record” to mean “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.” 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>7</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

<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.*

<sup>11</sup> *Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found 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. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a public records statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

<sup>12</sup> If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.<sup>13</sup>

### **The Exemption**

The public records exemption amended in this bill exempts from public records laws site-specific location information held by an agency concerning threatened or endangered species, as defined in the Florida Endangered and Threatened Species Act, or concerning threatened or endangered species listed by a federal agency.<sup>14</sup> The exemption does not apply to the site-specific location information on animals held in captivity.<sup>15</sup>

When the exemption became law in 2020, the Legislature found that the harm caused by the release of site-specific location information outweighed any public benefit from the disclosure of such information.<sup>16</sup> The Legislature found that the exemption was a public necessity, because it would:

- Reduce the risk of exposure to wildlife poachers and threats to the integrity of the site due to increased traffic to the area,
- Protect private property owners from potential trespass and related liability issues when threatened or endangered species are found on their property, and
- Encourage private property owners and researchers to share information they might be hesitant to provide if such location information were made public.<sup>17</sup>

Unless it is reviewed by the Legislature and saved from repeal, the exemption will be repealed on October 2, 2025.<sup>18</sup>

### **Threatened and Endangered Species**

The Endangered Species Act of 1973 protects and conserves imperiled species and their ecosystems.<sup>19</sup> The Act is administered by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service. The Act requires these agencies to designate certain species as threatened or endangered.<sup>20</sup> It defines endangered species as “any species which is in danger of extinction throughout all or a significant portion of its range”<sup>21</sup> and it defines a threatened species as “any species which is likely to become an endangered species within the foreseeable

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<sup>13</sup> *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

<sup>14</sup> Section 379.1026, F.S.

<sup>15</sup> *Id.*

<sup>16</sup> Chapter 2020-129, Laws of Fla.

<sup>17</sup> *Id.*

<sup>18</sup> Section 379.1026, F.S.

<sup>19</sup> U.S. Fish and Wildlife Service, *ESA Basics: 50 Years of Conserving Endangered Species*, 1 (Feb. 2023) available at <https://www.fws.gov/sites/default/files/documents/endangered-species-act-basics-february-2023.pdf>.

<sup>20</sup> 16 U.S.C. §1533; see U.S. Fish and Wildlife Service, *ESA Basics: 50 Years of Conserving Endangered Species* at 1.

<sup>21</sup> 16 U.S.C. §1532(6). The definition excludes “a species of the Class Insecta determined by the Secretary to constitute a pest whose protection under the provisions of this chapter would present an overwhelming and overriding risk to man.” *Id.*

future throughout all or a significant portion of its range.”<sup>22</sup> The term species includes both plants and animals.<sup>23</sup>

In evaluating whether a species should be listed under the Act, the appropriate federal agency must consider factors like the present or threatened destruction, modification, or curtailment of its habitat or range; its overutilization for commercial, recreational, scientific, or educational purposes; disease or predation; the inadequacy of existing regulatory mechanisms; or other natural or manmade factors affecting its continued existence.<sup>24</sup>

If a fish or wildlife species native to Florida is federally listed as threatened or endangered, it will also be designated by the Florida Fish and Wildlife Conservation Commission (FWC) as a state threatened or endangered species.<sup>25</sup> If a species is federally delisted, FWC has the authority to maintain that species as a state-designated species<sup>26</sup> and it may also independently list species as state-designated threatened or endangered species.<sup>27</sup>

The Florida Endangered and Threatened Species Act defines threatened species as “any species of fish and wildlife naturally occurring in Florida which may not be in immediate danger of extinction, but which exists in such small populations as to become endangered if it is subject to increased stress as a result of further modification of its environment.”<sup>28</sup> It defines an endangered species as “any species of fish and wildlife naturally occurring in Florida, whose prospects of survival are in jeopardy due to modification or loss of habitat; overutilization for commercial, sporting, scientific, or educational purposes; disease; predation; inadequacy of regulatory mechanisms; or other natural or manmade factors affecting its continued existence.”<sup>29</sup>

The Florida Endangered and Threatened Species Act does not include plant species in its definitions of threatened and endangered species. State protections and listing authorizations for threatened and endangered plants are found in chapter 581, F.S., which is administered by the Florida Department of Agriculture and Consumer Services.<sup>30</sup> Because the public records exemption applies to threatened and endangered species listed under the Florida Endangered and Threatened Species Act and species listed by a federal agency as endangered or threatened, site-

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<sup>22</sup> 16 U.S.C. §1532(20).

<sup>23</sup> 16 U.S.C. §1532(16). Species is defined to include “any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.” *Id.*

<sup>24</sup> 16 U.S.C. §1533(a)(1). These determinations must be made only on the basis of the best scientific and commercial data available after a review of a species’ status and after considering any efforts being made by other governmental entities to protect it. 16 U.S.C. §1533(b)(1).

<sup>25</sup> Fla. Admin. Code §68A-27.0012(1); FWC, *Endangered and Threatened Species Management and Conservation Plan: Progress Report Fiscal Year 2022-2023*, 10 (Oct. 2023) available at <https://myfwc.com/media/mv4ezszl/2022-23endangeredspeciesreport.pdf>; see U.S. Fish and Wildlife Service, *ESA Basics: 50 Years of Conserving Endangered Species* at 2.

<sup>26</sup> Fla. Admin. Code §68A-27.0012(1).

<sup>27</sup> Fla. Admin. Code §68A-27.0012(2). FWC itself may initiate evaluation of a species for listing, or it may begin the process after receiving a species evaluation request. *Id.*

<sup>28</sup> Section 379.2291(3)(c), F.S.

<sup>29</sup> Section 379.2291(3)(b), F.S.

<sup>30</sup> Section 581.185, F.S.; see 581.011, F.S., defining department as “the Department of Agriculture and Consumer Services of the state or its authorized representative.”

specific location information on *plant* species listed only by the state<sup>31</sup> are not exempt from public records requests.

### ***Site-Specific Location Information***

FWC's management of threatened and endangered species includes surveying and monitoring species, improving and restoring habitat, developing management plans, conservation planning, and raising awareness.<sup>32</sup> Surveying and monitoring are important tools that wildlife managers use to better understand how their management actions are affecting species. Knowing the effects of management actions on a species can help managers pinpoint the actions that have led to species stabilization and conservation.<sup>33</sup>

The importance of surveying and monitoring means that state fish and wildlife managers are constantly collecting data showing site-specific location information on threatened and endangered species.<sup>34</sup> For example, FWC biologists track Florida panthers with radio collars.<sup>35</sup> The locations of panthers collared with VHF transmitters are monitored two times per week by aircraft, while panthers fitted with GPS-transmitting radio collars can be constantly monitored.<sup>36</sup> FWC and the U.S. Fish and Wildlife Service also collect location data on panthers from multiple trail camera locations.<sup>37</sup>



A sedated Florida panther is fitted with a radio collar to allow researchers to track this individual's movements. *Photo courtesy of FWC.*

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

Section 119.15, F.S., the Open Government Sunset Review Act (OGSR), prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.<sup>38</sup> The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment. In order to save an exemption from repeal,

<sup>31</sup> For the list of plant species listed by the state, in addition to plant species listed by the federal government, *see* Fla. Admin. Code §5B-40.0055.

<sup>32</sup> FWC, *Endangered and Threatened Species Management and Conservation Plan: Progress Report Fiscal Year 2022-2023* at 12.

<sup>33</sup> *Id.*

<sup>34</sup> *See, e.g.,* FWC, *Endangered and Threatened Species Management and Conservation Plan: Progress Report Fiscal Year 2022-2023* at 25-27.

<sup>35</sup> FWC, *Capturing Florida Panthers*, <https://myfwc.com/wildlifehabitats/wildlife/panther/capture/> (last visited Jan. 2025). The photo on this page of the analysis can be found at this site.

<sup>36</sup> FWC, *Endangered and Threatened Species Management and Conservation Plan: Progress Report Fiscal Year 2022-2023* at 25.

<sup>37</sup> *Id.*

<sup>38</sup> Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

the Legislature must reenact the exemption or repeal the sunset date.<sup>39</sup> In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

The OGSR 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>40</sup> An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;<sup>41</sup>
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;<sup>42</sup> or
- It protects trade or business secrets.<sup>43</sup>

The OGSR also requires specified questions to be considered during the review process.<sup>44</sup> In examining an exemption, the OGSR asks the Legislature to carefully 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>45</sup> 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 sunset, the previously exempt records will remain exempt unless provided for by law.<sup>46</sup>

### **Open Government Sunset Review Findings and Recommendations**

FWC recommends the preservation of the public records exemption for site-specific location information on threatened and endangered species. FWC supported the exemption when it was

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<sup>39</sup> Section 119.15(3), F.S.

<sup>40</sup> Section 119.15(6)(b), F.S.

<sup>41</sup> Section 119.15(6)(b)1., F.S.

<sup>42</sup> Section 119.15(6)(b)2., F.S.

<sup>43</sup> Section 119.15(6)(b)3., F.S.

<sup>44</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>45</sup> FLA. CONST. art. I, s. 24(c).

<sup>46</sup> Section 119.15(7), F.S.

first codified in 2020, due to concerns that the information's public availability undermined FWC's conservation efforts and hurt public trust among collaborators and stakeholders.<sup>47</sup>

More specifically, FWC supported the exemption because the agency was concerned with protecting private property owners enrolled in its management plan from potential trespass and related liability issues when threatened or endangered species are found on their properties.<sup>48</sup> FWC was also concerned that allowing the public to easily access site-specific location information would have a chilling effect on its necessary collaboration with nongovernmental organizations, universities, other management agencies, and private consultants to help make management decisions for threatened and endangered species.<sup>49</sup> FWC also stated that the easy availability of site-specific location information jeopardized threatened and endangered species due to an increased risk of poaching or degradation of habitat from increased use of the site.<sup>50</sup>

FWC has received approximately 800 public records requests for site-specific location information on 12 threatened or endangered species or species groups since fiscal year 2021-2022.<sup>51</sup> There have been well over 100 requests each for manatees, gopher tortoises, Cape Sable seaside sparrows, and marine turtles and over 70 requests each for Florida pine snakes, alligator snapping turtles, and Florida panthers.<sup>52</sup>

Citing the same concerns it had in 2020, FWC supports the continuation of the public records exemption with the passage of this bill.

### III. Effect of Proposed Changes:

**Section 1** repeals the October 2, 2025 sunset date for the public records exemption in s. 379.1026, F.S., which protects site-specific location information held by an agency concerning an endangered species, a threatened species, or a species listed by a federal agency as endangered or threatened. The result of the repeal of the sunset date provision is that site-specific location information concerning endangered or threatened species will remain exempt from public records law.

**Section 2** provides an effective date of October 1, 2025.

### IV. Constitutional Issues:

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

None.

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<sup>47</sup> FWC, *Agency Analysis of SB 812*, 2 (Dec. 2019), on file with the Senate Committee on Environment and Natural Resources.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 2, 3.

<sup>50</sup> *Id.* at 3.

<sup>51</sup> Email from FWC (Jan. 1, 2025), on file with the Senate Committee on Environment and Natural Resources.

<sup>52</sup> *Id.*

**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 does not create or expand an exemption and thus, the bill does not require a two-thirds vote to be enacted.

**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. This bill does not create or expand an exemption and thus, a statement of public necessity is not required.

**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 exemptions in the bill do not appear to be broader than necessary to accomplish the purposes of the laws.

**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:**

None.

**C. Government Sector Impact:**

None.



**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 379.1026 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.