

**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 7000

INTRODUCER: Environment and Natural Resources Committee

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

DATE: March 10, 2025

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

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

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**I. Summary:**

SB 7000 saves from repeal the current public records exemption making site-specific location information on endangered and threatened species exempt from public inspection and copying requirements.

The exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2025, unless reenacted by the Legislature. This bill saves the exemptions from repeal by deleting the scheduled repeal date, thereby maintaining the current exempt status of the information.

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

The bill takes effect October 1, 2025.

**II. Present Situation:**

**Florida Public Records Law**

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> 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>

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

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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> Public records laws are found throughout the Florida Statutes.

[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>4</sup>

The Public Records Act typically 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.

The Public Records Act does not apply to legislative or judicial records.<sup>5</sup> Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the legislature.

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 which are used to “perpetuate, communicate, or formalize knowledge of some type.”<sup>6</sup>

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 state or local government 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>

Only the Legislature may create an exemption to public records requirements.<sup>9</sup> An exemption must be created by general law and must specifically state the public necessity justifying the exemption.<sup>10</sup> Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions<sup>11</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>12</sup>

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<sup>4</sup> Section 119.01(1), F.S.

<sup>5</sup> *Locke v. Hawkes*, 595 So. 2d 32, 34 (Fla. 1992); see also *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).

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

<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.*

<sup>11</sup> The bill may, however, contain multiple exemptions that relate to one subject.

<sup>12</sup> FLA. CONST. art. I, s. 24(c)

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>

### **The Exemption**

The public records exemption retained by this bill exempts from public records disclosure requirements 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>16</sup> The exemption does not apply to the site-specific location information of animals held in captivity.<sup>17</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>18</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>19</sup>

Unless it is reviewed by the Legislature and saved from repeal, the exemption will be repealed on October 2, 2025.<sup>20</sup>

### **Threatened and Endangered Species**

#### ***The Federal Endangered Species Act***

The Endangered Species Act of 1973 (the Act) protects and conserves imperiled species and their ecosystems.<sup>21</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

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

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

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

<sup>16</sup> Section 379.1026, F.S.

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

<sup>18</sup> Chapter 2020-129, Laws of Fla.

<sup>19</sup> *Id.*

<sup>20</sup> Section 379.1026, F.S.

<sup>21</sup> U.S. Fish and Wildlife Service, *ESA Basics: 50 Years of Conserving Endangered Species* (Feb. 2023), 1, <https://www.fws.gov/sites/default/files/documents/endangered-species-act-basics-february-2023.pdf> (last visited Mar. 4, 2025).

as threatened or endangered.<sup>22</sup> It defines endangered species as “any species which is in danger of extinction throughout all or a significant portion of its range”<sup>23</sup> and it defines a threatened species as “any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.”<sup>24</sup> The term species includes both plants and animals.<sup>25</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>26</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>27</sup> If a species is federally delisted, FWC has the authority to maintain that species as a state-designated species<sup>28</sup> and it may also independently list species as state-designated threatened or endangered species.<sup>29</sup>

### ***Florida Endangered and Threatened Species Act***

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>30</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>31</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

<sup>22</sup> 16 U.S.C. s. 1533; *see* U.S. Fish and Wildlife Service, *supra* note 21 at 1.

<sup>23</sup> 16 U.S.C. s. 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.*

<sup>24</sup> 16 U.S.C. s. 1532(20).

<sup>25</sup> 16 U.S.C. s. 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>26</sup> 16 U.S.C. s. 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. s. 1533(b)(1).

<sup>27</sup> Rule 68A-27.0012(1), F.A.C.; Florida Fish and Wildlife Conservation Commission, *Endangered and Threatened Species Management and Conservation Plan: Progress Report Fiscal Year 2022-2023* (Oct. 2023), 10, <https://myfwc.com/media/mv4ezszl/2022-23endangeredspeciesreport.pdf> (last visited Mar. 3, 2025); *see* U.S. Fish and Wildlife Service, *supra* note 21 at 2.

<sup>28</sup> Rule 68A-27.0012(1), F.A.C.

<sup>29</sup> Rule 68A-27.0012(2), F.A.C. The Florida Fish and Wildlife Conservation Commission (FWC) itself may initiate evaluation of a species for listing, or it may begin the process after receiving a species evaluation request. *Id.*

<sup>30</sup> Section 379.2291(3)(c), F.S.

<sup>31</sup> Section 379.2291(3)(b), F.S.

threatened and endangered plants are found in ch. 581, F.S., which is administered by the Florida Department of Agriculture and Consumer Services.<sup>32</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-specific location information on *plant* species listed only by the state<sup>33</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>34</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>35</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>36</sup> For example, FWC biologists track Florida panthers with radio collars.<sup>37</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>38</sup> FWC and the U.S. Fish and Wildlife Service also collect location data on panthers from multiple trail camera locations.<sup>39</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

<sup>32</sup> Section 581.185, F.S.; *see* s. 581.011, F.S. (defining department as “the Department of Agriculture and Consumer Services of the state or its authorized representative”).

<sup>33</sup> For the list of plant species listed by the state, in addition to plant species listed by the federal government *see* Rule 5B-40.0055 F.A.C.

<sup>34</sup> *Endangered and Threatened Species Management and Conservation Plan: Progress Report Fiscal Year 2022-2023*, *supra* note 27 at 12.

<sup>35</sup> *Id.*

<sup>36</sup> *See, e.g.*, FWC, *Endangered and Threatened Species Management and Conservation Plan: Progress Report Fiscal Year 2022-2023*, *supra* note 27 at 25-27.

<sup>37</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>38</sup> *Endangered and Threatened Species Management and Conservation Plan: Progress Report Fiscal Year 2022-2023*, *supra* note 27 at 25.

<sup>39</sup> *Id.*

exemptions.<sup>40</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, the Legislature must reenact the exemption or repeal the sunset date.<sup>41</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>42</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>43</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>44</sup> or
- It protects trade or business secrets.<sup>45</sup>

The OGSR also requires specified questions to be considered during the review process.<sup>46</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>47</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>48</sup>

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<sup>40</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.

<sup>41</sup> Section 119.15(3), F.S.

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

<sup>43</sup> Section 119.15(6)(b)1., F.S.

<sup>44</sup> Section 119.15(6)(b)2., F.S.

<sup>45</sup> Section 119.15(6)(b)3., F.S.

<sup>46</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>47</sup> FLA. CONST. art. I, s. 24(c).

<sup>48</sup> Section 119.15(7), F.S.

## 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 first codified in 2020, due to concerns that public availability of the information undermined FWC's conservation efforts and hurt public trust among collaborators and stakeholders.<sup>49</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>50</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>51</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>52</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>53</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>54</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** removes the scheduled repeal date of the public record exemption, thereby continuing the exempt status of 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.

**Section 2** 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

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<sup>49</sup> FWC, *Agency Analysis of SB 812*, 2 (Dec. 2019), on file with the Senate Committee on Environment and Natural Resources.

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

<sup>51</sup> *Id.* at 2, 3.

<sup>52</sup> *Id.* at 3.

<sup>53</sup> Email from FWC (Jan. 1, 2025), on file with the Senate Committee on Environment and Natural Resources.

<sup>54</sup> *Id.*

have to raise revenue in the aggregate, or reduce the percentage of state tax shared with counties or 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 disclosure 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 disclosure 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 disclosure 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 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 continue to 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 continue to incur costs related to the review and redaction of exempt records associated with responding to public records requests.

**VI. Technical Deficiencies:**

None identified.

**VII. Related Issues:**

None identified.

**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.