

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 Fiscal Policy

BILL: CS/SB 1298

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Martin

SUBJECT: Public Records/Public Employees Relations Commission

DATE: February 27, 2026

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
2.	<u>Harmsen</u>	<u>Siples</u>	<u>FP</u>	<u>Unfavorable</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1298 makes confidential and exempt from the public records inspection and copying requirements the showing of interest signed by employees and filed with the Public Employees Relations Commission (commission) as part of a petition to revoke the certification of their bargaining unit. The commission may release the showing of interest to any employee, employer, or employee organization that has sufficient reason to believe that any of the signatures obtained on the showings of interest were obtained by collusion, coercion, intimidation, or misrepresentation, or are otherwise invalid.

This bill is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2031, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill provides a statement of public necessity as required by the State Constitution. Because the bill creates or expands a new public record exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

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

The bill takes effect July 1, 2026.

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.¹ The 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.²

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.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, ch. 119, F.S., known as the Public Records Act, provides requirements for public records held by executive agencies.

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.⁵ A violation of the Public Records Act may result in civil or criminal liability.⁶

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. Each agency has a duty to provide access to public records.⁷

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 connection 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,

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*; see *Sarasota Citizens for Responsible Gov't v. City of Sarasota*, 48 So. 3d 755, 762-763 (Fla. 2010).

³ 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).

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

⁵ Section 119.07(1)(a), F.S.

⁶ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁷ Section 119.01(1), F.S.

communicate, or formalize knowledge of some type.”⁸ It has further held that such material is a public record regardless of whether it is in final form or the ultimate product of an agency.⁹

Creation of Public Records Exemptions

Only the Legislature may create an exemption to public record disclosure and copying requirements.¹⁰ An exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹¹ 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 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 makes exempt from the Public Records Act and those which the Legislature has makes confidential and exempt from the Public Records Act.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 Act¹⁷ (the Act), prescribe a legislative review process for newly created or substantially amended¹⁸ public records or open meetings exemptions, with specified exceptions.¹⁹ 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.²⁰

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.²¹ 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:

⁸ *Shevin v. Byron, Harless, Schaffer, Reid & Assoc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁹ *Id.*

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 Section 119.15, F.S.

¹⁸ 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.

¹⁹ 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.

²⁰ Section 119.15(3), F.S.

²¹ Section 119.15(6)(b), F.S.

- 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;²²
- 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;²³ or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²⁴

The Act also requires specified questions to be considered during the review process.²⁵ In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are again required.²⁶ 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.²⁷

III. Effect of Proposed Changes:

Section 1 amends s. 447.308, F.S., to make a showing of interest signed by employees confidential and exempt from public records inspection and copying requirements. These showings of interest are filed with the commission by public employees who are seeking a revocation of certification of their bargaining unit.

The bill allows the commission to release the showing of interest to any employee, employer, or employee organization that has sufficient reason to believe that any of the signatures obtained on the showings of interest were obtained by collusion, coercion, intimidation, or misrepresentation, or are otherwise invalid.

Showings of interest signed by employees who wish to begin representation by a bargaining agent are already made confidential and exempt in s. 447.307(2), F.S., but the commission may release the documents to any employee, employer, or employee organization that has sufficient

²² Section 119.15(6)(b)1., F.S.

²³ Section 119.15(6)(b)2., F.S.

²⁴ Section 119.15(6)(b)3., F.S.

²⁵ 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?

²⁶ See generally s. 119.15, F.S.

²⁷ Section 119.15(7), F.S.

reason to believe that any of the employee signatures were obtained by collusion, coercion, intimidation, or misrepresentation or are otherwise invalid.

Section 3 provides that the showing of interest statement signed by public employees indicating their desire to no longer be represented by their bargaining agent should enjoy the same confidentiality and exempt status as those showing of interest statements signed by employees who wish to begin representation by a bargaining agent (which is made exempt in s. 447.307(2), F.S. Additionally, section 3 states that it is necessary to make these documents confidential and exempt to avoid a chilling of the employees' exercise of their right to no longer be represented by a union.

Section 2 subjects this exemption to the Open Government Sunset Review Act and repeals the exemption on October 2, 2031, unless it is reviewed and saved from repeal through reenactment by the Legislature. Additionally, this section provides that if this expansion is not saved from repeal, the text of subsection 447.308(1), F.S. will revert to its form as it existed on June 30, 2026.

Section 4 provides that the act takes effect upon becoming a law.

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, nor reduce the percentage of state tax shared with counties or municipalities.

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 creates a new exemption and thus 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. This bill creates a new exemption and thus a statement of public necessity is required.

Section 3 of the bill contains a statement of public necessity which provides that information protected from public copying and disclosure requirements is necessary to avoid a chilling of the employees' exercise of their right to no longer be represented by a

union and provide similar protections to those employees wishing to no longer be represented by a union as those employees wishing to be represented already enjoy.

Breadth of Exemption

Article I, section 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 breadth of the exemption appears to be no broader than necessary to accomplish the purpose of the laws.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector may 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 may 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 447.308 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Governmental Oversight and Accountability on February 11, 2026:

- Changes the effective date of the creation of the exemption for showing of interest cards for the decertification of a union to “upon becoming a law” rather than July 1, 2026.
- Removes the provision that would have expanded a public records exemption to include the personal identifying information of the commission’s chair, commissioners, hearing officers, and their spouses and children.
- Removes the provision that would have expanded the public records and meetings exemption to make confidential and exempt specified commission deliberations and any draft orders and related written communication that is developed in preparation for, or preliminary to, the issuance of a final written order.

- B. **Amendments:**

None.