

**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 1298

INTRODUCER: Senator Martin

SUBJECT: Public Records/Public Employees Relations Commission

DATE: January 30, 2026

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

|    | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION             |
|----|---------|----------------|-----------|--------------------|
| 1. | Harmsen | McVaney        | GO        | <b>Pre-meeting</b> |
| 2. |         |                | AEG       |                    |
| 3. |         |                | FP        |                    |

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**I. Summary:**

SB 1298 creates or expands several public records and copying and inspection or meetings requirements relating to the Public Employees Relations Commission (commission) as follows:

- Makes exempt the personal identifying information of the commission’s chair, commissioners, and hearing officers and their spouses and children. This exemption will apply to the specified personal identifying information held by state agencies before, on, and after the effective date of the bill.
- Makes 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.
- Makes confidential and exempt the showing of interest signed by employees and filed with the 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This bill is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2031, unless reviewed and saved from repeal through reenactment by the Legislature.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 three new public exemptions, 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.<sup>1</sup> 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.<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.

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

### 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.<sup>7</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 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,

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

<sup>2</sup> *Id.*; see *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. 4th DCA 2018).

<sup>5</sup> Section 119.07(1)(a), F.S.

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

<sup>7</sup> Section 119.01(1), F.S.

communicate, or formalize knowledge of some type.”<sup>8</sup> 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.<sup>9</sup>

### ***Draft Materials***

Memoranda, whether inter- or intra- office, that communicates “information from one public employee to another or merely prepared for filing, even though not a part of an agency’s later, formal public product, would nonetheless constitute public records in as much as they supply the final evidence of knowledge obtained in connection with the transaction of official business.”<sup>10</sup> Additionally, any agency record, if circulated for review, comment, or information, is a public record regardless of whether it is an official expression of policy or marked “preliminary” or “working draft” or similar label.

When material falls within the statutory definition of “public record” in s. 119.011(12), F.S., and has been prepared to “perpetuate, communicate or formalize knowledge,” the record is subject to disclosure even if the agency believes that the release of the nonfinal product could be detrimental.<sup>11</sup> However, not every record made or received in the course of official business is prepared to “perpetuate, communicate or formalize knowledge.” Accordingly, preliminary drafts or notes prepared for the personal use of the writer may constitute mere “precursors” of public records if they are not intended to be the final evidence of the knowledge recorded.<sup>12</sup> Preliminary handwritten notes prepared by agency attorneys and intended only for the attorneys’ own personal use are not public records.<sup>13</sup>

### ***Attorney Work Product***

In the absence of legislation, an exemption from public records copying and inspection requirements that protects work product does not exist.<sup>14</sup> The Legislature created a statutory exemption for certain agency attorney litigation work product in s. 119.071(1)(d), F.S., which states:

A public record that was prepared by an agency attorney (including an attorney employed or retained by the agency or employed or retained by another public officer or agency to protect or represent the interests of the agency having custody of the record) or prepared at the attorney’s express direction, that reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the agency, and that was prepared

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

<sup>9</sup> *Id.*

<sup>10</sup> *Shevin v. Byron, Harless, Schaffer, Reid & Assoc.*, 379 So. 2d at 640. *See also National Collegiate Athletic Association v. Associated Press*, 18 So. 3d 1201, 1207 (Fla. 1st DCA 2009), review denied, 37 So. 3d 848 (Fla. 2010) (transcript and response prepared as part of NCAA disciplinary proceeding involving state university were public records because the “the purpose of the transcript was to perpetuate the information presented to the infractions committee” and the response “was designed to communicate information to the body that would hear the appeal within the NCAA”).

<sup>11</sup> *See, e.g., Gannett Corporation, Inc. v. Goldtrap*, 302 So. 2d 174 (Fla. 2d DCA 1974) (county’s concern that premature disclosure of a report could be harmful to the county does not make the document confidential).

<sup>12</sup> *See Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

<sup>13</sup> *See* AGO 10-55 (handwritten personal notes taken by city manager to assist in remembering matters discussed during manager’s interviews of city employees are not public records “if the notes have not been transcribed or shown to others and were not intended to perpetuate, communicate, or formalize knowledge”)

<sup>14</sup> *Edelstein v. Donner*, 450 So. 2d 562 (Fla. 3d DCA 1984). *Hillsborough County Aviation Authority v. Azzarelli Construction Company*, 436 So. 2d 153, 154 (Fla. 2d DCA 1983).

exclusively for civil or criminal litigation or for adversarial administrative proceedings, or that was prepared in anticipation of imminent civil or criminal litigation or imminent adversarial administrative proceedings, is exempt [from disclosure] until the conclusion of the litigation or adversarial administrative proceedings.

Under the terms of the statute, the work product exemption “is not waived by the release of such public record to another public employee or officer of the same agency or any person consulted by the agency attorney.”<sup>15</sup>

However, certain preliminary trial preparation materials, such as handwritten notes for the attorney’s personal use are not considered a public record and, therefore do not require the protection of an attorney work product exemption or privilege.<sup>16</sup>

This exemption would not likely apply to the documents prepared by a commissioner (or other employee) in advance of conducting a hearing as a hearing officer since the role of hearing officer is not an adversary within the concept of an ‘adversarial administrative hearing.’

### **Creation of Public Records Exemptions**

Only the Legislature may create an exemption to public record disclosure and copying requirements.<sup>17</sup> An exemption must be created by general law and must specifically state the public necessity justifying the exemption.<sup>18</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>19</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>20</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 makes exempt from the Public Records Act and those which the Legislature has makes confidential and exempt from the Public Records Act.<sup>21</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>22</sup> Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.<sup>23</sup>

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<sup>15</sup> Section 119.071(1)(d)2., F.S. *See also* AGO 94-77 (work product exemption continues to apply to records prepared by the county attorney when these records are transferred to the city attorney pursuant to a transfer agreement whereby the city is substituted for the county as a party to the litigation).

<sup>16</sup> *Johnson v. Butterworth*, 713 So. 2d 985 (Fla. 1998).

<sup>17</sup> FLA. CONST. art. I, s. 24(c).

<sup>18</sup> *Id.*

<sup>19</sup> The bill may, however, contain multiple exemptions that relate to one subject.

<sup>20</sup> FLA. CONST. art. I, s. 24(c).

<sup>21</sup> *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

<sup>22</sup> *Id.*

<sup>23</sup> *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

**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 and coping requirements 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 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>24</sup> current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges;<sup>25</sup> current or former state attorneys;<sup>26</sup> current or former public defenders;<sup>27</sup> county tax collectors;<sup>28</sup> and clerks of a circuit court.<sup>29</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>30</sup> and county tax collectors<sup>31</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>32</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,

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<sup>24</sup> Section 119.071(4)(d)2.a., F.S. This would presumably include elected law enforcement officers such as sheriffs.

<sup>25</sup> Section 119.071(4)(d)2.e., F.S.

<sup>26</sup> Section 119.071(4)(d)2.f., F.S.

<sup>27</sup> Section 119.071(4)(d)2.l., F.S.

<sup>28</sup> Section 119.071(4)(d)2.n., F.S.

<sup>29</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>30</sup> See s. 192.001(3), F.S.

<sup>31</sup> See s. 192.001(4), F.S.

<sup>32</sup> Section 119.071(4)(d)4., F.S.

under oath, the statutory basis for the individual's exemption and confirm the individual's status as a party eligible for exempt status.<sup>33</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>34</sup> Home addresses, however, are no longer exempt in the Official Records if the protected party no longer resides at the dwelling<sup>35</sup> or upon his or her death.<sup>36</sup>

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

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act<sup>37</sup> (the Act), prescribe a legislative review process for newly created or substantially amended<sup>38</sup> public records or open meetings exemptions, with specified exceptions.<sup>39</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>40</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>41</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>42</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>43</sup> or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.<sup>44</sup>

<sup>33</sup> Section 119.071(4)(d)3., F.S.

<sup>34</sup> Section 119.071(4)(d)6., F.S.

<sup>35</sup> The protected individual must submit a notarized, written request to release the removed information. Section 119.071(4)(d)8., F.S.

<sup>36</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>37</sup> Section 119.15, F.S.

<sup>38</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>39</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>40</sup> Section 119.15(3), F.S.

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

<sup>42</sup> Section 119.15(6)(b)1., F.S.

<sup>43</sup> Section 119.15(6)(b)2., F.S.

<sup>44</sup> Section 119.15(6)(b)3., F.S.

The Act also requires specified questions to be considered during the review process.<sup>45</sup> 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.<sup>46</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>47</sup>

### Open Meetings Laws

The State Constitution provides that the public has a right to access governmental meetings.<sup>48</sup> Each collegial body must provide notice of its meetings to the public and permit the public to attend any meeting at which official acts are taken or at which public business is transacted or discussed.<sup>49</sup> This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts, or special districts.<sup>50</sup>

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., which is also known as the “Government in the Sunshine Law”<sup>51</sup> or the “Sunshine Law,”<sup>52</sup> requires all meetings of any board or commission of any state or local agency or authority at which official acts are taken be open to the public.<sup>53</sup> The board or commission must provide the public reasonable notice of such meetings.<sup>54</sup> Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin or economic status or which operates in a manner that unreasonably restricts the public’s access to the facility.<sup>55</sup> Minutes of a public meeting must be promptly recorded and open to public

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<sup>45</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>46</sup> See generally s. 119.15, F.S.

<sup>47</sup> Section 119.15(7), F.S.

<sup>48</sup> FLA. CONST., art. I, s. 24(b).

<sup>49</sup> *Id.*

<sup>50</sup> FLA. CONST., art. I, s. 24(b). Meetings of the Legislature are governed by Article III, section 4(e) of the Florida Constitution, which states: “The rules of procedure of each house shall further provide that all prearranged gatherings, between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public.”

<sup>51</sup> *Times Pub. Co. v. Williams*, 222 So.2d 470, 472 (Fla. 2d DCA 1969).

<sup>52</sup> *Board of Public Instruction of Broward County v. Doran*, 224 So.2d 693, 695 (Fla. 1969).

<sup>53</sup> Section 286.011(1)-(2), F.S.

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

<sup>55</sup> Section 286.011(6), F.S.

inspection.<sup>56</sup> Failure to abide by open meetings requirements will invalidate any resolution, rule, or formal action adopted at a meeting.<sup>57</sup> A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.<sup>58</sup>

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of the House and the Senate.<sup>59</sup> The exemption must explicitly lay out the public necessity justifying the exemption and be no broader than necessary to accomplish the stated purpose of the exemption.<sup>60</sup> A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.<sup>61</sup>

### **The Public Employees Relations Commission's Open Meetings and Public Records Exemptions**

Section 447.205(10), F.S., provides that the commission's deliberations in any proceeding before it are closed and exempt from open meetings requirements. However, oral arguments heard before the commission pursuant to chs. 120 and 447, F.S., are specifically deemed to be open meetings.

Additionally, all of the commission's draft orders, which are developed in preparation for, or preliminary to, the issuance of a final written order are confidential and exempt from the statutory public copying and inspection requirements.

Examples of final orders issued by the commission include:

- Issuance of a final order approving the certification election for an employee organization.<sup>62</sup> This order is granted after the commission's investigation of the organization's petition for sufficiency, and hearing conducted on the same matter by the commission or an agent of the commission.
- Unfair labor practices hearings conducted in accordance with chs. 120 and 447, F.S. The hearing officer in an unfair labor practices evidentiary hearing may be one designated by the commission—either a member of the commission, an employee agent designated by the commission, or the commission itself. This order is granted upon a finding by the commission of a violation.

The commission also issues orders and decisions, which may be considered a final order in some circumstances. For example, it “orders” an election by secret ballot during an employee organization's certification process; and “orders” the termination of a public employee's employment upon a finding of a violation of the strike ban in s. 447.505.<sup>63</sup> Likewise, the commission issues “decisions” deemed final agency action in state career service appeals, age

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<sup>56</sup> Section 286.011(2), F.S.

<sup>57</sup> Section 286.011(1), F.S.

<sup>58</sup> Section 286.011(3), F.S.

<sup>59</sup> FLA. CONST., art. I, s. 24(c).

<sup>60</sup> *Id.*

<sup>61</sup> *See supra* note 10.

<sup>62</sup> 447.307(3)(b), F.S.

<sup>63</sup> Section 447.507(5), F.S.

discrimination hearings, and veterans preference hearings;<sup>64</sup> similarly, an approval or disapproval of an employee organization's registration is deemed a "decision [that]...is final agency action..."<sup>65</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 119.071(4), F.S., to exempt from public records disclosure requirements of s. 119.07(1), F.S., and article I, section 24(a) of the State Constitution the following information:

- The home addresses, telephone numbers, and dates of birth of the Public Employees Relations Commission's chair, commissioners, and hearing officers;
- The names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such commission personnel; and
- The names and locations of schools and day care facilities attended by the children of such personnel.

This exemption will apply to this personal identifying information held by state agencies before, on, and after July 1, 2026.

**Section 7** provides in pertinent part that there is a public necessity for the exemption of the personal identifying information of these commission staff and their family members because such personnel and their families are at a heightened risk of physical and emotional harm, threats, and endangerment as a result of disgruntled individuals who have a contentious reaction to actions taken by the commission.

**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 sub-subparagraph 119.071(4)(d)2.g. will revert to its form as it existed on June 30, 2026.

**Section 3** amends s. 447.205, F.S., to expand the public records and public meetings exemptions for *any* commission deliberation (whether or not it relates to a proceeding before it), and *any* draft orders and related written communication that is developed in preparation for, or preliminary to, the issuance of *any written order*.

Currently, the commission's deliberations in any proceeding before it, except for a hearing held or oral argument heard by the commission pursuant to ch. 120, F.S, is exempt from open meeting laws. All of the commission's draft orders developed in preparation for, or preliminary to, the issuance of a *final written order* are confidential and exempt from s. 119.08(1), F.S.

**Section 7** provides, in pertinent part, that commission deliberations and draft orders and their related written communication must be made confidential and exempt because the commission relies on the confidentiality as a quasi-judicial body. The statement further expresses that updates

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<sup>64</sup> Section 447.207(11), F.S.

<sup>65</sup> Section 447.305(8)(b), F.S.

in technology, current practices of the commission related to the use of hearing offices, and modern methods of communication require the confidential and exempt status.

**Section 4** 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 447.205, F.S. will revert to its form as it existed on June 30, 2026.

**Section 5** amends s. 447.308, F.S., to make a showing of interest signed by employees confidential and exempt from s. 119.07(1) and article I, section 24(a) of the State Constitution. These showings of interest are filed with the commission by 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 reason to believe that any of the employee signatures were obtained by collusion, coercion, intimidation, or misrepresentation or are otherwise invalid.

**Section 7** provides, in pertinent part, 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 7 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 6** 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 8** provides that the act takes effect on July 1, 2026.

#### **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 both creates a new exemption and expands two current exemptions 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 both creates a new exemption and expands two current exemptions and thus a statement of public necessity is required.

Section 7 of the bill contains a statement of public necessity which provides that information protected from public copying and disclosure requirements is necessary to

- Protect commission staff and their family members from a heightened risk of physical and emotional harm, threats, and endangerment as a result of disgruntled individuals who have a contentious reaction to actions taken by the commission;
- Ensure the commission has the necessary confidentiality as a quasi-judicial body; and
- 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.

***Draft Orders and Related Communications***

The exemption provided for in section 3 of the bill may be broader than necessary to accomplish the purposes of the laws.

The exemption of the commission's draft orders and related written communications developed in preparation for issuance of any order may be overbroad in two ways. First, the exemption may apply for an unnecessary length of time. Under the bill, the confidential and exempt status of the draft orders and related communications continue even after the commission has issued its final order. The final order, presumably, will include a vast majority of the information included in the draft version; it does not follow

that the necessity to protect as confidential and exempt such information should continue after its release in another document. Second, the exemption may apply to too many orders. The commission has authority to issue many types of orders, including recommended orders, an order granting certification in a labor hearing, a scheduling order, and others.

The public necessity statement states that this expansion is intended to clarify and reflect technological updates, modern communication, and the use of hearing officers “to prepare draft orders and assist in preparing final orders...”. However, similar quasi-judicial agencies do not have any parallel exemption even for drafts of their final orders. For instance, the Division of Administrative Hearings, the Public Service Commission, and the Florida Gaming Commission do not have a blanket draft order exemption. Instead, each has provisions that allow the bodies to close their meeting to discuss information that is otherwise held confidential and exempt or exempt,<sup>66</sup> or to maintain material that is the subject of an ongoing investigation as exempt, only until the investigation is finalized.<sup>67</sup>

### ***Totality of the Bill***

The breadth of the exemption of specified commission personnel (section 1) and of a showing of interest to revoke a bargaining agent’s certification as signed by an employee (section 5), when considered separately as individual exemptions, appear no broader than necessary to accomplish the purpose of the laws. However, together with section 3, the exemptions in the bill may be too unrelated, as further discussed in the Other Constitutional Issues section of this analysis *infra*.

#### **C. Trust Funds Restrictions:**

None.

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

None.

#### **E. Other Constitutional Issues:**

Article I, section 24 of the State Constitution provides that the Legislature may pass a general law to grant an exemption from public copying and inspection requirements, but that such law “shall relate to one subject.” It is not clear that the three exemptions provided for in this bill share a close enough nexus to be considered one subject. While the commission’s chair, commissioners, and hearing officers at times are in the same physical location as the showing of interest to revoke a bargaining agent’s certification, little else that unifies them. In particular, the public necessity statement relies on vastly different rationales to justify the personal identifying information exemption, the exemption of commission draft orders and related written communications developed in preparation for the issuance of any order by the commission or its designees, and the

<sup>66</sup> See, e.g., ss. 16.716(1)-(2), and 350.01(9), F.S.

<sup>67</sup> See, e.g., ss. 350.121, 365.174, and 550.0251(9), F.S.

exemption of showing of interest cards used in an attempt to revoke a bargaining unit's certification. This may be indicative of the three exemptions not being sufficiently related to be considered "one subject."

**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 the following sections of the Florida Statutes: 119.071, 447.205, and 447.308.

**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.