

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 Appropriations Committee on Agriculture, Environment, and General Government

BILL: CS/SB 1440

INTRODUCER: Banking and Insurance Committee and Senator Martin

SUBJECT: Public Records/Office of Financial Regulation/Cybersecurity Event

DATE: February 17, 2026

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Moody</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Sanders</u>	<u>Betta</u>	<u>AEG</u>	<u>Favorable</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1440, which is linked to the passage of SB 540, makes confidential and exempt from public records disclosure requirements certain information held by the Office of Financial Regulation (the “Office”) related to mortgage businesses, money services businesses, and financial institutions such as information relating to the cybersecurity requirements proposed in SB 540, investigations conducted by the Office or a law enforcement agency (the “cybersecurity exemptions”), and information contained in a credit union’s application for formation (the “credit union exemption”).

The bill provides statements of public necessity as required by the state constitution.

Because the bill creates a new public records exemption, it requires a two-thirds vote of the membership of both houses of the Legislature for final passage.

The public records exemptions in the bill are subject to the Open Government Sunset Review Act. The cybersecurity exemptions will be repealed on October 2, 2031, unless the statutes are reviewed and reenacted by the Legislature before that date. The credit union exemption will be repealed on October 2, 2029, unless the statute is reviewed and reenacted by the Legislature before that date. While the repeal date is typically five years from enactment of an exemption, the repeal date for the credit union exemption is three years, so that it remains consistent with the repeal dates of other exemptions currently in s. 655.057(5), F.S.

There is no impact to state revenues or expenditures. *See Section V., Fiscal Impact Statement.*

The bill is effective on the same date that SB 540 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

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.¹ The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.³ 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.⁴

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.⁵ 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 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, communicate, or formalize knowledge of some type.”⁶

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Public records laws are found throughout the Florida Statutes.

⁴ Section 119.01(1), F.S.

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

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

The Florida Statutes specify conditions under which public access to 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.⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

Only the Legislature may create an exemption to public records requirements.⁹ An exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹⁰ 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 provisions¹¹ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹²

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*.¹³ 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.¹⁴ Records designated as "exempt" may be released at the discretion of the records custodian under certain circumstances.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ (the Act) prescribes a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ It requires the automatic repeal of such exemption on October 2 of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

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.²⁰

⁷ Section 119.07(1)(a), F.S.

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

⁹ FLA. CONST. art. I, s. 24(c).

¹⁰ *Id.*

¹¹ The bill may, however, contain multiple exemptions that relate to one subject.

¹² FLA. CONST. art. I, s. 24(c)

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

¹⁴ *Id.*

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

¹⁶ Section 119.15, F.S.

¹⁷ 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.

¹⁸ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

An exemption serves an identifiable public 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 subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;²¹
- 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;²² or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

The Act also requires specified questions to be considered during the review process.²⁴ In examining an exemption, the Act directs the Legislature to carefully 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 required.²⁵ 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 sunset, the previously exempt records will remain exempt unless provided for by law.²⁶

Public Records Exemptions

Criminal Intelligence and Investigation Information

The Public Records Act provides an exemption from public records disclosure requirements for active criminal intelligence and active criminal investigation information.²⁷ The exemption includes a request from a law enforcement agency to inspect or copy a public record that is in the custody of another agency, the custodian's response, and any information that would identify whether a law enforcement agency has requested or received such public records. This exemption applies only during the period in which the information constitutes active criminal intelligence and investigation information.²⁸ The requesting law enforcement agency must give

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

²⁴ 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?

²⁵ FLA. CONST. art. I, s. 24(c). *See generally* s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ Section 119.071(2)(c)1., F.S.

²⁸ Section 119.071(2)(c)2.a., F.S.

notice to the custodial agency when the criminal intelligence information or criminal investigative information is no longer active so the information may be made available to the public.²⁹

Financial Regulation

The Office of Financial Regulation (Office or OFR) is responsible for regulating all activities of state-chartered banks, state-chartered credit unions, other financial institutions, finance companies, and the securities industry (together, the “financial services”).³⁰ The number of licensees or state-chartered institutions³¹ regulated by the office is summarized below:

<u>Division</u>	<u>Number of Persons Regulated</u>
Division of Consumer Finance	122,530
Division of Financial Institutions	196
Division of Securities	403,627
Total Regulated Persons	526,353

Financial Institutions

A financial institution must have a federal or state charter to accept deposits. Banks are chartered and regulated as national banks by the Office of the Comptroller of the Currency within the U.S. Department of the Treasury or as state banks by a state regulator.³² The Florida Financial Institutions Codes apply to all state-authorized or state-chartered financial banks, trust companies, and related entities.³³ There are 196 financial institutions regulated by the office, including 57 banks and 67 credit unions.³⁴

Federally chartered banks, publicly or privately held, must comply with rigorous regulatory requirements to become chartered.³⁵ The office is required to make certain findings before approving an application to organize a bank or trust company.³⁶ An application for authority to organize a bank or trust company must be submitted on a form prescribed by the commission and must include certain information, such as detailed financial, business, and biographical information for each proposed director and executive officer, and information relating to initial

²⁹ Section 119.071(2)(c)2.b., F.S.

³⁰ Section 20.121(3)(a)2., F.S.

³¹ Florida Office of Financial Regulation, *Fast Facts* (Jan. 2025 ed.), <https://flofr.gov/docs/default-source/documents/fast-facts.pdf> (last visited Feb. 12, 2026) (hereinafter cited as “2025 OFR Fast Facts”).

³² Congressional Research Service, *Introduction to Financial Services: Banking* (April 1, 2025), p. 1, <https://crsreports.congress.gov/product/pdf/IF/IF10035> (last visited Feb. 12, 2026).

³³ Section 655.005(1)(k), F.S., states that the Financial Institutions Codes includes: ch. 655, financial institutions generally; ch. 657, credit unions; ch. 658, banks and trust companies; ch. 660, trust business; ch. 662, family trust companies; ch. 663, international banking; ch. 665, relating to associations; and ch. 667, savings banks.

³⁴ 2025 OFR Fast Facts.

³⁵ See 12 CFR 16; Office of the Comptroller of the Currency, *Comptroller’s Licensing Manual Charters*, (December 2021), p. 4, <https://www.occ.gov/publications-and-resources/publications/comptrollers-licensing-manual/files/charters.pdf> (last visited Feb. 12, 2026).

³⁶ Section 658.21, F.S.

share capital.³⁷ Organizers of credit unions must also submit an application on a form prescribed by the commission which contains specified information relating to the share value, board of directors, and information required to be submitted to the National Credit Union Administration.³⁸

Confidential and Exempt Records in the Financial Institutions Codes

Florida law makes confidential and exempt from public disclosure certain information received by the Office of Financial Regulation (the “Office”) pursuant to an application for authority to organize a new state bank³⁹ or new state trust company⁴⁰ under ch. 658, F.S., including:

- Personal financial information;
- A driver license number, a passport number, a military identification number, or any other number or code issued on a government document used to verify identity;
- Books and records of a current or proposed financial institutions; and
- The proposed business plan and supporting documentation.⁴¹

Current law also makes exempt from public disclosure requirements personal identifying information of a proposed officer or director who is currently employed by, or actively participates in the affairs of, another financial institution received by the office pursuant to an application for authority to organize a new state bank or new state trust company under ch. 658, F.S., until the application is approved or the charter is issued. The term “personal identifying information” is defined as names, home addresses, e-mail addresses, telephone numbers, names of relatives, work experience, professional licensing and educational backgrounds, and photographs.⁴² This will allow the office to disclose the personal identifying information to other governmental entities, e.g., the Florida Department of Law Enforcement or the Federal Bureau of Investigation to conduct a criminal background check in the course of its statutorily imposed duty to investigate these individuals.

Books and records of currently-chartered financial institutions are confidential and may be made available for inspection and examination only in limited circumstances, for instance:⁴³

- To the office or its duly authorized representative;
- To any person duly authorized to act for the financial institution;
- To any federal or state instrumentality or agency authorized to inspect or examine the books and records of an insured financial institution;
- As compelled by a court of competent jurisdiction; and
- As compelled by legislative subpoena, as provided by law.

³⁷ Section 658.19, F.S.

³⁸ Section 657.005, F.S.

³⁹ Section 658.12(17), F.S., defines “state bank” as any bank which has a subsisting bank charter issued pursuant to the provisions of the financial institutions codes or the general banking laws of this state in effect prior to the enactment of the financial institutions codes.

⁴⁰ Section 658.12(19), F.S, defines “state trust company” as a corporation, other than a bank, which has a subsisting trust company charter issued pursuant to the provisions of the financial institutions codes or the applicable laws of the state in effect prior to the enactment of the financial institutions codes.

⁴¹ Section 655.057(5)(a), F.S.

⁴² Section 655.057(5)(b), F.S.

⁴³ Section 655.059(1), F.S.

Florida law also contains several provisions which make confidential and exempt from the Public Records Act certain records or information of financial institutions relating to:

- Investigations conducted by the office;⁴⁴
- Reports of examinations,⁴⁵ operations, or condition, including working papers,⁴⁶ or portions thereof, prepared by, or for the use of, the office or any state or federal agency responsible for the regulation or supervision of financial institutions⁴⁷ in Florida;⁴⁸
- Informal enforcement actions;^{49, 50}
- Trade secrets⁵¹ held by the office;⁵²
- Any portion of a required shareholder list which reveals the shareholders' identities;⁵³ and
- Confidential documents supplied to the office or to employees of any financial institution by other state or federal governmental agencies.⁵⁴

Any person who willfully discloses information made confidential commits a felony of the third degree.⁵⁵ There is no provision in the Financial Institutions Codes which makes confidential or exempts from the Public Records Act information received by the office in relation to an application for authority to organize a new credit union.⁵⁶ While some of the information submitted as part of an application may constitute a trade secret, protected under s. 655.057(4), F.S., other information, such as a driver's license number or passport number, are not specifically protected in that context. The exemptions do not prevent or restrict:

- Publishing certain reports that must be submitted to the office or that are required to be published by federal law or regulation;
- Providing records or information to any other state, federal, or foreign agency responsible for the regulation and supervision of financial institutions;

⁴⁴ Section 655.057(1), F.S.

⁴⁵ Section 655.057(13)(a), F.S., defines "examination report" as records submitted to or prepared by the office as part of the office's duties performed pursuant to s. 655.012, F.S., or s. 655.045(1), F.S.

⁴⁶ Section 655.057(13)(d), F.S., defines "working papers" as the records of the procedures followed, the tests performed, the information obtained, and the conclusions reached in an examination or investigation performed under s. 655.032, F.S., or s. 655.045, F.S. Working papers include planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of the books and records of a financial institution as defined in s. 655.005(1), F.S., and scheduled or commentaries prepared or obtained in the course of such examination or investigation.

⁴⁷ Section 655.005(1)(i), F.S., defines "financial institution" as a state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust entity, international trust company representative office, qualified limited service affiliate, credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq. Section 655.005(1)(i), F.S.

⁴⁸ Section 655.057(2), F.S.

⁴⁹ Section 655.057(13)(b), F.S., defines "informal enforcement actions" as a board resolution, a document of resolution, or an agreement in writing between the office and a financial institution which meets certain criteria.

⁵⁰ Section 655.057(3), F.S.

⁵¹ Section 688.002(4), F.S., defines "trade secrets" as information, including a formula, pattern, compilation, program, device, method, technique, or process that meets specified criteria. The trade secret must also comply with s. 655.0591, F.S.

⁵² Section 655.057(4), F.S.

⁵³ Section 655.057(9), F.S.

⁵⁴ Section 655.057(10), F.S.

⁵⁵ Section 655.057(14), F.S. A third degree felony is punishable by up to five years imprisonment and up to a \$5,000 fine. Sections 775.082, 775.083, and 775.084, F.S.

⁵⁶ Section 657.002(4), F.S. defines "credit union" as any cooperative society organized pursuant to ch. 657, F.S.

- Disclosing or publishing summaries of the economic condition or similar data of financial institutions;
- Reporting any suspicious criminal activity to appropriate law enforcement or prosecutorial agencies;
- Furnishing certain information requested by the Chief Financial Officer or specified agency of any financial institution that is, or has applied to be, designated as a qualified public depository; and
- Furnishing information to Federal Home Loan Banks regarding its member institutions.⁵⁷

Orders to produce confidential records or information issued by courts or administrative law judges must provide for inspection in camera by the court or administrative law judge. Other procedural safeguards are provided for in the Financial Institutions Codes to protect the confidentiality of the records or information, including provisions that an order directing the release of information is reviewable by the office.⁵⁸

Cybersecurity

There are federal standards for protecting customer information and Florida consumer protection laws for data security; however, there are no cybersecurity regulations under the financial services provisions. The Department of Legal Affairs (DLA) is responsible for enforcing a violation and may disclose information to office relating to a covered entity's⁵⁹ violation of data security requirements of confidential personal information under consumer protection laws but the office has no regulatory authority to enforce any violation of the data security provisions in the consumer protection laws.⁶⁰

Federal Standards for Safeguarding Customer Information

Financial institutions⁶¹ that are subject to the Federal Trade Commission's (FTC) jurisdiction are regulated under the Federal Standards for Safeguarding Customer Information (Safeguard Rules).⁶² The Safeguard Rules do not apply to financial institutions that maintain customer

⁵⁷ Section 655.057(6), F.S.

⁵⁸ Section 655.057(7), F.S.

⁵⁹ Section 501.171(1)(b), F.S., defines "covered entity" as a sole proprietorship, partnership, corporation, trust, estate, cooperative, association, or other commercial entity that acquires, maintains, stores, or uses personal information. The term also includes governmental entities with respect to certain notice requirements.

⁶⁰ Section 501.171(9)(a), F.S.

⁶¹ 16 C.F.R. 314.2 defines "financial institution" as any institution the business of which is engaging in activity that is financial in nature or incidental to such financial activities as described in section 4(k) of the Bank Holding Company Act of 1956, 12 U.S.C. 1843(k). An institution that is significantly engaged in financial activities, or significantly engaged in activities incidental to such financial activities, is a financial institution.

⁶² 16 C.F.R. 314.1(b).

information⁶³ for fewer than 5,000 customers.^{64,65} Financial institutions subject to the Safeguard Rules are required to develop, implement, and maintain a comprehensive written information security program⁶⁶ that must be tailored to the size and complexity of the institution's system and activities, and must meet other specified criteria and elements,⁶⁷ such as basing the system on a risk assessment that identifies certain factors, evaluating and adjusting the program following the testing and monitoring results, and establishing a written incident response plan.⁶⁸ A financial institution must notify the FTC of a notification event⁶⁹ that involves information of at least 5,000 consumers.⁷⁰

Florida Security of Confidential Personal Information

Section 501.171, F.S., provides covered entities, governmental entities, and third-party agents are required to take reasonable measures to protect and secure electronic data containing personal

⁶³ 16 C.F.R. 314.2(d) defines "customer information" as any record containing nonpublic personal information about a customer of a financial institution, whether in paper, electronic, or other form, that is handled or maintained by or on behalf of a financial institution or a financial institution's affiliates. 16 C.F.R. 314.2(l) defines (1) "nonpublic personal information" as (i) Personally identifiable financial information; and (ii) Any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information that is not publicly available. (2) Nonpublic personal information does not include: (i) Publicly available information; or (ii) Any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived without using any personally identifiable financial information that is not publicly available. 16 C.F.R. 314.2(b)(1) defines "consumer" as an individual who obtains or has obtained a financial product or service from a financial institution that is to be used primarily for personal, family, or household purposes, or that individual's legal representative.

⁶⁴ 16 C.F.R. 314.2(c) defines "customer" as a consumer who has a customer relationship with a financial institution. 16 C.F.R. 314.2(e)(1) defines "customer relationship" as a continuing relationship between a consumer and a financial institution under which the financial institution provides one or more financial products or services to the consumer that are to be used primarily for personal, family, or household purposes. 16 C.F.R. 314.2(g)(1) defines "financial product or service" as any product or service that a financial holding company could offer by engaging in a financial activity under section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

⁶⁵ 16 C.F.R. 314.6.

⁶⁶ 16 C.F.R. 314.2(i) defines "information security program" as the administrative, technical, or physical safeguards a financial institution uses to access, collect, distribute, process, protect, store, use, transmit, dispose of, or otherwise handle customer information.

⁶⁷ 16 C.F.R. 314.3(a).

⁶⁸ 16 C.F.R. 314.4.

⁶⁹ 16 C.F.R. 314.2(m) defines "notification event" as acquisition of unencrypted customer information without the authorization of the individual to which the information pertains. Customer information is considered encrypted for this purpose if the encryption key was accessed by an unauthorized person. Unauthorized acquisition will be presumed to include unauthorized access to unencrypted customer information unless the financial institution has reliable evidence showing that there has not been, or could not reasonably have been, unauthorized acquisition of such information.

⁷⁰ 16 C.F.R. 314.4(j)(1).

information.^{71,72} When the security of a data system is breached, a covered entity must provide notice to the Department of Legal Affairs (DLA), affected individuals, and credit reporting agencies in certain circumstances.⁷³ A covered entity that fails to provide the required notices may face civil penalties.⁷⁴

Notice to the Department of Legal Affairs

Covered entities must provide written notice of any breach of security that affects 500 or more Floridians to the DLA within 30 days after the determination of the breach or a reason to believe a breach occurred.⁷⁵ The notice may be delayed an additional 15 days for good cause, if certain conditions are met.⁷⁶ The notice must include specified information.⁷⁷ A covered entity must also provide certain information upon request of the DLA,⁷⁸ and may provide any other information regarding the breach to the DLA at any time to supplement the required information.⁷⁹

Notice to Individuals

A covered entity must provide notice to each individual in Florida whose personal information was, or is reasonably believed to have been, accessed as a result of a breach. Notice must be provided as quickly as possible, taking into account the time needed to determine the scope of

⁷¹ Section 501.171(1)(g), F.S., defines 1. “personal information” as a. An individual’s first name or first initial and last name in combination with one of the following: (I) A social security number; (II) A driver license or identification card number, passport number, military identification number, or other number issued by a governmental entity used to verify identity; (III) A financial account number or credit or debit card number, in combination with any required security code, access code, or password needed to permit access to the financial account; (IV) An individual’s medical history, mental or physical condition, or medical treatment or diagnosis; (V) An individual’s health insurance policy number or subscriber identification number and any unique identifier used by a health insurer; (VI) An individual’s biometric data; or (VII) Any information regarding an individual’s geolocation. b. A user name or e-mail address, in combination with a password or security question and answer is also considered “personal information.” 2. Information that is publicly available from a federal, state, or local governmental entity or information that is encrypted, secured, or modified by a method or technology that removes personally identifiable information is not considered “personal information.” Section 501.702(4), F.S., defines “biometric data” as data generated by automatic measurements of an individual’s biological characteristics. The term includes fingerprints, voiceprints, eye retinas or irises, or other unique biological patterns or characteristics used to identify a specific individual. The term does not include physical or digital photographs; video or audio recordings or data generated from video or audio recordings; or information collected, used, or stored for health care treatment, payment, or operations under the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. ss. 1320d et seq.

⁷² Section 501.171(2), F.S.

⁷³ Section 501.171(3) - (5), F.S.

⁷⁴ Section 501.171(9), F.S.

⁷⁵ Section 501.171(3)(a), F.S.

⁷⁶ *Id.*

⁷⁷ Section 501.171(3)(b), F.S. (providing the information that must be included is: 1. A synopsis of the events surrounding the breach at the time the notice is provided; 2. The number of individuals in this state who were or potentially have been affected by the breach; 3. Any services related to the breach being offered or scheduled to be offered by the covered entity to individuals, without charge, and instructions as to how to use such services; 4. A copy of the notice sent to individuals affected or potentially affected by the breach or an explanation of other actions being taken, such as a delay in notification at the request of law enforcement, a determination that the breach was unlikely to cause harm, or notice provided in compliance with federal law; and 5. The name, address, telephone number, and e-mail address of the employee of the covered entity from whom additional information may be obtained about the breach).

⁷⁸ Section 501.171(3)(c), F.S. (providing the information that must be provided is: 1. A police report, incident report, or computer forensics report; 2. A copy of the policies in place regarding breaches; and 3. Any steps taken by the covered entity to rectify the breach).

⁷⁹ Section 501.171(3)(d), F.S.

the breach of security, to identify affected individuals, and to restore reasonable integrity of the data system that was breached. However, notice must be provided within 30 days of determination of the breach or reason to believe a breach occurred unless specified exceptions apply.⁸⁰ The notice must be sent to the individual's mailing address or e-mail address and must include specified information.⁸¹

This notice may be substituted in lieu of direct notice to the individual if the cost of providing notice will exceed \$250,000, the number of affected individuals exceeds 500,000, or the covered entity does not have an e-mail address or mailing address for the affected individuals.⁸² The substitute notice must include a conspicuous notice on the Internet website of the covered entity, if the entity maintains a website, and notice in print and broadcast media, including major media in urban and rural areas where the affected individuals reside.⁸³

Notice to Credit Reporting Agencies

If a breach requires more than 1,000 individuals to be notified at a single time, the covered entity must also notify all consumer reporting agencies that compile and maintain files on a nationwide basis of the timing, distribution, and content of the notices.⁸⁴

Committee Substitute for Senate Bill 540

Committee Substitute for Senate Bill 540 (2026) regulates information security programs and cybersecurity event investigations of mortgage brokers and lenders, and money services businesses substantially similar to the Safeguard Rules. The bill provides that covered entities are not relieved from complying with Florida Security of Confidential Personal Information under consumer protection laws in s. 501.171, F.S., and any licensee that is a covered entity under that chapter remains subject to the requirements of that section. The bill authorizes the Financial Services Commission (the "commission") to adopt rules that allow a licensee that is in full compliance with the Safeguard Rules to be deemed in compliance with information security program requirements.

Committee Substitute for Senate Bill 540 (2026) requires each financial institution to take reasonable measures to protect and secure data that are in electronic form and that contain personal information. The legislation is substantially similar to the Florida Security of Confidential Personal Information in ch. 501, F.S., consumer protection laws.

III. Effect of Proposed Changes:

SB 1440, which is linked to the passage of SB 540, makes confidential and exempt from public records disclosure certain information related to mortgage businesses, money services

⁸⁰ Section 501.171(4)(a), F.S.

⁸¹ Section 501.171(4)(d) and (e), F.S. (providing the notice must include: 1. The date, estimated date, or estimated date range of the breach of security; 2. A description of the personal information that was accessed or reasonably believed to have been accessed as a part of the breach of security; and 3. Information that the individual can use to contact the covered entity about the breach of security and the individual's personal information maintained by the covered entity).

⁸² Section 501.171(4)(f), F.S.

⁸³ *Id.*

⁸⁴ Section 501.171(5), F.S.

businesses, and financial institutions. The bill provides the public records exemptions are subject to the required Act and are repealed unless reviewed and reenacted by the Legislature. Public necessity statements for each public records exemption are included in the bill.

Section 1 makes confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution (together, the “public record disclosure requirements”) all mortgage broker information received by the Office of Financial Regulation (OFR or office) regarding information security as required in ch. 560, F.S., and established in SB 540 (2026), or received by the office as result of an investigation by the office or a law enforcement agency of a cybersecurity event, until such time as the investigation is completed or ceases to be active. The public records exemption of the information received by the office must be construed in conformity with the public records exemption for criminal intelligence and investigation information in the Public Records Act.⁸⁵ The exemption is subject to the Open Government Sunset Review Act and is repealed on October 2, 2031, unless reviewed and reenacted by the Legislature before that date.

Section 2 provides the following public necessity statement for the public records exemption in Section 1 of the bill:

The Legislature finds that it is a public necessity that information on cybersecurity events submitted to or obtained by the Office of Financial Regulation [as required in ch. 494, F.S., and established in SB 540 (2026),] or as a result of an investigation by the office which involve information security programs of loan originators, mortgage brokers, and mortgage lenders and nonpublic personal data of customers of such loan originators, mortgage brokers, and mortgage lenders be made confidential and exempt [from public records disclosure requirements.]

Premature or unrestricted release of information on cybersecurity events⁸⁶...could compromise ongoing investigations, expose system vulnerabilities, and hinder the office’s ability to protect consumers and regulate financial institutions effectively. Disclosure of such information could also place affected individuals at heightened risk of identity theft and financial fraud while revealing trade secrets, proprietary data, and technical safeguards that could be exploited by malicious actors.

Protecting information on cybersecurity events ensures that entities cooperate fully with regulators, encourages accurate reporting of security incidents, and maintains the overall integrity of the financial and cybersecurity infrastructure of this state.

⁸⁵ Section 119.071(2)(c), F.S.; *See supra* notes 27 through 29.

⁸⁶ Section 494.00123(1)(c), F.S., created in SB 540 (2026), defines “cybersecurity event” as an event resulting in unauthorized access to, or disruption or misuse of, an information system, information stored on such information system, or customer information held in physical form.

It is therefore a public necessity that all information received by the office pursuant to s. 494.00123, Florida Statutes,⁸⁷ or through an investigation by the office or a law enforcement agency of a cybersecurity event pursuant to s. 494.00123, Florida Statutes, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the Florida Constitution.

Section 3 creates a public records exemption for all information received by the Office of Financial Regulation (OFR or office) as required in ch. 560, F.S., and established in SB 540 (2026), or as a result of an investigation by the office or a law enforcement agency is confidential and exempt from [public records disclosure requirements], until such time as the investigation is completed or ceases to be active. The public records exemption must be construed in conformity with the public records exemption for criminal intelligence and investigation information in the Public Records Act.⁸⁸ The exemption is subject to the Open Government Sunset Review Act and is repealed on October 2, 2031, unless reviewed and reenacted by the Legislature before that date.

Section 4 provides for the following public necessity statement for the public records exemption in section 3:

The Legislature finds that it is a public necessity that information related to cybersecurity incidents, data breaches, and information security programs submitted to or obtained by the Office of Financial Regulation be made confidential and exempt from public disclosure. Premature or unrestricted release of such information could compromise ongoing investigations, expose system vulnerabilities, and hinder the office's ability to protect consumers and regulate money services businesses effectively. Disclosure could also place affected individuals at heightened risk of identity theft and financial fraud while revealing trade secrets, proprietary data, and technical safeguards that could be exploited by malicious actors. Protecting this information ensures that entities cooperate fully with regulators, encourages accurate reporting of security incidents, and maintains the overall integrity of this state's financial and cybersecurity infrastructure.

Section 5 makes confidential and exempt from public records disclosure requirements all information received by the office as required in ch. 655, F.S., and established in SB 540 (2026), or received by the office pursuant to an investigation by the office or a law enforcement agency as provided in ch. 655, F.S., and established in SB 540 (2026), is confidential and exempt from [public records disclosure requirements] until such time as the investigation is completed or ceases to be active. This exemption shall be construed in conformity with the public records exemption for criminal intelligence and investigation information in the Public Records Act.⁸⁹

⁸⁷ Section 494.00123, F.S., is created in SB 540 (2026).

⁸⁸ Section 119.071(2)(c), F.S.; *See supra* notes 27 - 29.

⁸⁹ Section 119.071(2)(c), F.S.; *See supra* notes 27 through 29.

During an active investigation, information made confidential and exempt in Section 5 of the bill may be disclosed by the office:

- In the furtherance of its official duties and responsibilities;
- For print, publication, or broadcast if the office determines that such release would assist in notifying the public or locating or identifying a person that the office believes to be a victim of a data breach or improper disposal of customer records, except for information made confidential and exempt even after the investigation is completed or ceases to be active as provided in section 5 of the bill; or
- To another governmental entity in the furtherance of its official duties and responsibilities.

The following information received by the office remains confidential and exempt from public records disclosure requirements upon completion of an investigation or once an investigation ceases to be active:

- All information to which another public records exemption applies.
- Personal information.
- A computer forensic report.
- Information that would otherwise reveal weaknesses in a financial institution's data security.
- Information that would disclose a financial institution's proprietary information.

The bill defines "proprietary information" to mean information that:

- Is owned or controlled by the financial institution.
- Is intended to be private and is treated by the financial institution as private because disclosure would harm the financial institution or its business operations.
- Has not been disclosed except as required by law or a private agreement that provides that the information will not be released to the public.
- Is not publicly available or otherwise readily ascertainable through proper means from another source in the same configuration as received by the office.

The term "proprietary information" includes trade secrets,⁹⁰ and competitive interests, the disclosure of which would impair the competitive business of the financial institution that is the subject of the information.

The bill defines "customer records" to mean any material, regardless of the physical form, on which personal information is recorded or preserved by any means, such as written or spoken words, graphically depicted, printed, or electromagnetically transmitted which are provided by an individual in this state to a financial institution for the purpose of purchasing or leasing a product or obtaining a service.

Section 5 is subject to the Open Government Sunset Review and is repealed on October 2, 2031, unless reviewed and reenacted by the Legislature before that date.

Section 6 provides for the following public necessity statement for the public records exemption in Section 5:

⁹⁰ *Supra* note 42.

The Legislature finds that it is a public necessity that all information received by the Office of Financial Regulation pursuant to a notification of a violation of s. 655.0171, Florida Statutes [as established in SB 540], or received by the Department of Legal Affairs pursuant to an investigation by the department or a law enforcement agency relating to a violation of s. 655.0171, Florida Statutes, be made confidential and exempt from public records disclosure requirements for the following reasons:

A notification of a violation of s. 655.0171, Florida Statutes, is likely to result in an investigation. The premature release of such information could frustrate or thwart the investigation and impair the ability of the office to effectively and efficiently administer s. 655.0171, Florida Statutes. In addition, release of such information before completion of an active investigation could jeopardize the ongoing investigation.

The Legislature finds that it is a public necessity to continue to protect from public disclosure all information to which another public record exemption applies once an investigation is completed or ceases to be active. Release of such information by the office would undo the specific statutory exemption protecting that information.

An investigation of a data breach or improper disposal of customer records is likely to result in the gathering of sensitive personal information, including social security numbers, identification numbers, and personal financial information of customers of financial institutions. Such information could be used for the purpose of identity theft, and release of such information could subject possible victims of the data breach or improper disposal of customer records to further financial harm.

Release of a computer forensic report or other information that would otherwise reveal weaknesses in a covered financial institution's data security could compromise the future security of that financial institution, or other financial institutions, if such information were available upon conclusion of an investigation or once an investigation ceased to be active. The release of such report or information could compromise the security of current financial institutions and make those financial institutions susceptible to future data breaches. Release of such report or information could result in the identification of vulnerabilities and further breaches of that system.

Notices received by the office and information received during an investigation of a data breach are likely to contain proprietary information, including trade secrets, about the security of the breached system. The release of the proprietary information could result in the identification of vulnerabilities and further breaches of that system. In addition, a trade secret derives independent, economic value, actual or potential, from being generally unknown to, and not readily ascertainable by, other persons.

Allowing public access to proprietary information, including a trade secret, through a public records request could destroy the value of the proprietary information and cause a financial loss to the financial institution submitting the information. Release of such information could give business competitors an unfair advantage and weaken the position of the financial institution supplying the proprietary information in the marketplace.

Section 7 provides the following information received by the office pursuant to an application for authority to organize a new state credit union (the “credit union exemption”) is confidential and exempt from public records disclosure requirements:

- Personal financial information.
- A driver license number, a passport number, a military identification number, or any other number or code issued on a government document used to verify identity.
- Books and records of a current or proposed financial institution.
- The proposed credit union’s proposed business plan.

The personal identifying information of a proposed officer or proposed director who is currently employed by, or actively participates in the affairs of, another financial institution received by the office in an application for authority to organize a new state credit union under ch. 667, F.S., is exempt from public records disclosure requirements until the application is approved and the charter is issued. The term “personal identifying information” includes names, home addresses, e-mail addresses, telephone numbers, names of relatives, work experience, professional licensing and educational backgrounds, and photographs.

Section 7 is subject to the Open Government Sunset Review Act and is repealed on October 2, 2029, unless reviewed and reenacted by the Legislature before that date. While the repeal date is typically five years from enactment of an exemption, the repeal date for the credit union exemption is three years, so that it remains consistent with the repeal dates of other exemptions currently in s. 655.057(5), F.S.

Section 8 provides the following public necessity statement for the public records exemption in Section 7:

The Legislature finds that it is a public necessity that information received by the Office of Financial Regulation pursuant to an application for authority to organize a new state credit union pursuant to the Financial Institutions Codes, chapters 655-667, Florida Statutes, be made confidential and exempt from [public records disclosure requirements] to the extent that disclosure would reveal:

- Personal financial information;
- A driver license number, a passport number, a military identification number, or any other number or code issued on a government document used to verify identity;
- Books and records of a current or proposed financial institution; or
- A proposed credit union’s business plan and any attached supporting documentation.

The Legislature further finds that it is a public necessity that the personal identifying information of a proposed officer or proposed director who is currently employed by, or actively participates in the affairs of, another financial institution be made confidential and exempt from [public records disclosure requirements] for the duration of the application process, until the application is approved and a charter is issued.

The office may receive sensitive personal, financial, and business information in conjunction with its duties related to the review of applications for the organization or establishment of new state credit union. The exemptions from public records requirements ... are necessary to ensure the office's ability to administer its regulatory duties while preventing unwarranted damage to the proposed new state credit union or certain proposed officers or proposed directors of new state credit unions in this state. The release of information that could lead to the identification of an individual involved in the potential establishment of a new state credit union may subject such individual to retribution and jeopardize his or her current employment with, or participation in the affairs of, another financial institution. Thus, the public availability of such information has a chilling effect on the establishment of new state credit union. Further, the public availability of the books and financial records of a current or proposed state credit union presents an unnecessary risk of harm to the business operations of such credit union. Finally, the public availability of a proposed state credit union's business plan may cause competitive harm to its future business operations and presents an unfair competitive advantage for existing state credit unions that are not required to release such information.

Section 9 provides an effective date on the same date that SB 540 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the Florida 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. SB 1440 enacts a new exemption for specified public

records relating to mortgage businesses, money services businesses, and financial institutions such as information relating to the cybersecurity requirements proposed in SB 540, investigations conducted by office, and information contained in a credit union's application for formation. Therefore, the bill will require two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires the law state with specificity the public necessity to justify a new or substantially amended exemption. Sections 2, 4, 6, and 8 of the bill contain statements of public necessity for the exemptions.

Scope of Exemption

Article I, s. 24(c) of the Florida 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 relating to information security and cybersecurity investigations do not appear to be broader than necessary to accomplish the purpose of the law. The exemptions reduce potential interference with investigations, and the office's ability to protect consumers and regulate financial institutions. The exemptions safeguard against the risk of potential identity theft, financial fraud, and trade secret exploitation. The exemptions help ensure that entities cooperate with regulators, encourage accurate reporting, and maintain overall integrity of the financial and cybersecurity infrastructure.

The credit union exemption in the bill does not appear to be broader than necessary to accomplish the purpose of the law. The bill provides that specific information would be made confidential and exempt to prevent unwarranted damage or unnecessary risk of harm to the proposed new credit union, or the proposed officer or director.

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:

The private sector will be subject to the cost, to the extent imposed, associated with redactions made in response to a public record request.

Those individuals or businesses that wish to protect trade secret information submitted to the office as part of their application to organize a new state credit union may no longer be required to use court processes to declare the information trade secret, and thus exempt from production as a public record.⁹¹ The submitter will be able to rely on the public record exemption for specific information instead.

C. Government Sector Impact:

The bill does not impact state revenues or expenditures. The bill does not appear to have a fiscal impact on local government. Staff responsible for compliance with public record requests may require training related to the new public record exemptions. Additionally, the Office of Financial Regulation (office) may experience additional workload associated with the redaction of exempt information prior to the release of a record. However, this workload should be absorbed as part of the day-to-day agency responsibilities and offset by fees collected for the preparation and copying of public records.⁹²

The office reports that “the lack of protection for this sensitive information in Florida may influence an applicant to choose a national charter over a state charter.” The new public records exemption may cause an increase in the number of applications for new state banks or state trust companies that the office receives.⁹³

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 494.00125, 560.129, 655.0171, and 655.057

⁹¹ See s. 655.0591, F.S.

⁹² Section 119.07(2) and (4), F.S.

⁹³ Florida Office of Financial Regulation, *2026 Agency Legislative Bill Analysis for SB 1014*, (Jan. 21, 2026), p. 4, (on file with the Senate Committee on Banking and Insurance).

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 Banking and Insurance Committee on January 28, 2026:

- Removes the new public records exemption for certain information in an application to organize a financial institution and instead expands an existing provision in current law that exempts such information for some financial institutions to apply to such information contained in an application to organize a new state credit union.
- Updates the public necessity statement to apply to new state credit unions.

- B. **Amendments:**

None.