

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: SB 1650

INTRODUCER: Senator Gaetz

SUBJECT: Public Records/Commission on Ethics

DATE: January 23, 2026

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	White	McVaney	GO	Pre-meeting
2.			EE	
3.			RC	

I. Summary:

SB 1650 amends s. 112.3243, F.S., created by SB 92 (2026), to make confidential and exempt from public records inspection and copying requirements all information received, produced, or derived by the Commission on Ethics in connection with an investigation of remedies available to an aggrieved employee who is subject to an adverse personnel action in violation of SB 92.

The exemption expires on October 2, 2031, unless reviewed by the Legislature and saved from repeal by reenactment.

The bill provides a statement 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 members present and voting in each house of the Legislature for final passage.

The bill may minimally increase costs for the Commission on Ethics.

The bill takes effect on the same day as SB 92 or any similar legislation. As filed, SB 92 takes effect on January 1, 2027.

II. Present Situation:

Access to Public Records - Generally

The State Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three

¹ FLA. CONST. art. I, s. 24(a).

branches of state government, local governmental entities, and any person acting on behalf of the government.²

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, ch. 119, F.S., known as the Public Records Act, provides requirements for public records held by executive agencies.

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, and that providing access to public records is a duty of each agency.⁵

Section 119.011(12), F.S., defines “public records” to include:

[a]ll documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connections with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business that are used to “perpetuate, communicate, or formalize knowledge of some type.”⁶

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any 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

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

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2022-2024) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2022-2024).

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

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

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

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.

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.⁹ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹⁰ General exemptions from the public records requirements are contained in the Public Records Act.¹¹ Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.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

Public Records Exemptions for Investigations into Ethics Violations

Section 112.324, F.S., charges the Commission on Ethics with investigating breaches of ethical standards for public employees and officers. Any complaint alleging a violation of such standards; records relating to an investigation of such a complaint, and proceedings on the investigation are confidential and exempt from public records copying and inspection requirements.¹⁶ The exemption continues until the complaint is dismissed, the alleged violator requests the records and proceedings be made public, the commission chooses not to investigate, or the commission determines there is probable cause an ethics violation has occurred.¹⁷

Public Records Exemptions for the Public Whistleblower’s Act

The public-sector Whistleblower’s Act (WBA) protects public employees who disclose inappropriate government conduct. Under the WBA, an agency or independent contractor may not take any adverse action affecting the rights or interests of an employee who disclosed information pursuant to the WBA’s process.¹⁸ Documents and records relating to the

⁹ FLA. CONST. art. I, s. 24(c).

¹⁰ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹¹ *See, e.g., s. 119.071(1)(a)*, F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹² *See, e.g., s. 213.053(2)(a)*, F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

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 112.324(2), F.S.

¹⁷ *Id.*

¹⁸ Section 112.3187(4), F.S.

Commission on Human Relations' investigations under the WBA are exempt from public records disclosure requirements.¹⁹

III. Effect of Proposed Changes:

Section 1 amends s. 112.3243, F.S., to make confidential and exempt all information received, produced, or derived by the Commission on Ethics in connection with an investigation authorized under SB 92 into whether an employee is entitled to relief under s. 112.3243, F.S., created in SB 92. SB 92 protects from retaliation government employees, applicants for employment with agencies, and employees of private employers doing business with state or local government, who disclosed alleged violations of certain standards of conduct and ethical obligations of public employees and officers. As a part of that protection, SB 92 allows the Commission on Ethics to determine if an employee is entitled to certain relief, such as reinstatement to a position, back pay, and attorney's fees.

The bill does not provide when, if ever, the confidential and exempt status of the information expires.

In accordance with the Open Government Sunset Review Act, the bill provides that the exemption shall stand repealed on October 2, 2031, unless reviewed and saved from repeal through reenactment of the Legislature.

Section 2 provides a public necessity statement that information produced or derived from fact-finding or other investigations conducted by the Commission on Ethics into prohibited retaliation for an employee's disclosure of an ethical violation remain confidential and exempt while the investigation is active. Premature release of such information could thwart the investigation and impair the efficient and effective operation of the Commission on Ethics.

Section 3 provides that the bill takes effect on the same day as SB 92 or any similar legislation. As filed, SB 92 takes effect on January 1, 2027.

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, 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

¹⁹ Sections 112.3188 and 112.31901, F.S.

exemption to the public records disclosure requirements. This bill enacts a new exemption for information received, produced, or derived by the Commission on Ethics in connection to an investigation into whether an allegedly aggrieved employee qualifies for remedies after suffering an adverse personnel action in violation of SB 92, and, thus, the bill 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. Section 2 of the bill contains a statement of public necessity for the exemption which provides that information produced or derived information produced or derived from fact-finding or other investigations conducted by the Commission on Ethics into prohibited remain confidential and exempt while the investigation is active. Premature release of such information could thwart the investigation and impair the efficient and effective operation of the Commission on Ethics.

Breadth of Exemption

Article I, section 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The exemption provided for in the bill may be unconstitutionally overbroad for three reasons.

First, the created exemption is for “[a]ll information received by the commission or information produced or derived from fact-finding or other investigations conducted by the commission” if the information is received or derived from allegations relating to an active investigation. The Legislature may wish to clearly tailor what specific information is exempted. The Legislature could provide that a complaint and records relating to the complaint or any investigation are confidential and exempt. This mirrors a similar exemption for investigatory records of the Commission on Ethics.²⁰

Second, the exemption in this bill extends to information from “other investigations” that relate to the investigation at issue in this bill. While the “other investigations” language in the bill emulates language in the Commission on Human Relations’ (CHR) public record exemption for records it holds, the CHR’s jurisdiction under ch. 112, F.S., is exclusively limited to investigations under the WBA into retaliatory actions taken for certain reports of misconduct. Another agency investigates the underlying misconduct that is reported (those investigations have their own, separate, public records exemptions). This means that the CHR is unlikely to have “other investigations” “relating to” its investigation into the retaliatory actions prohibited under ch. 112, F.S., the WBA.

By comparison, the Commission on Ethics investigates both the retaliatory action and the original misconduct that allegedly forms the basis for the retaliation. Further, the

²⁰ See s. 112.324(2), F.S.

Commission on Ethics may investigate the retaliatory action as an ethical violation in addition to the investigation subject to the public records exemptions in this bill. This means that the same conduct may instigate a parallel Commission on Ethics investigation for the same conduct. Therefore, there will always be at least one, if not more, “other investigations” by the Commission on Ethics “relating to” the investigation into the retaliations. This creates a far more expansive public records exemption as compared to the limited possible “other investigations” by the CHR “relating to” the WBA investigation. Furthermore, those related investigations already have existing public records exemptions for their records. The Legislature may wish to specify what may constitute an ‘other investigation’—such as an investigation into ethical violations pursuant to s. 112.3242, F.S., that form the basis of or are into the prohibited retaliatory actions.

Third, the bill does not provide when, if ever, the confidential and exempt status of the protected information expires. This may not be the intent, based on the public necessity statement and similar public records exemptions already existing in law. The public necessity statement speaks to the premature release of documents and states the importance of information remaining confidential and exempt *until the investigation is terminated or ceases to be active*. Additionally, similar exemptions under the WBA and for other investigations by the Commission on Ethics specify when the public records exemptions no longer apply.²¹ In contrast, the exemption created in this bill appears to continue in perpetuity. Without providing when the confidential and exempt status expires, the exemption created in the bill is likely broader than necessary to accomplish the purpose of the law. The Legislature may wish to amend the bill to specify the public records exemptions expire upon the dismissal of a complaint or the termination of an investigation.

C. Trust Funds Restrictions:

None identified.

D. State Tax or Fee Increases:

None identified.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None identified.

²¹ The WBA provides that the relevant public records exemption only applies if “an investigation is active,” and goes on to define when an investigation is active. Section 112.3188(2), F.S. For other information held by the Commission on Ethics during an investigation into an ethical complaint, s. 112.324, F.S., specifies when the exemptions no longer apply.

B. Private Sector Impact:

None identified.

C. Government Sector Impact:

The bill may increase costs minimally for the Commission on Ethics to provide staff responsible for complying with public records requests training related to the new public record exemption. However, the costs should be absorbed as part of the day-to-day responsibilities.

VI. Technical Deficiencies:

SB 92, the companion bill to this bill, provides investigatory procedures for the Commission on Ethics in response to adverse personnel actions taken in retaliation for ethics complaints. As a part of these procedures:

- If a complaint is legally sufficient, the commission must make a fact-finding *report* and share it with the agency head or independent contractor within 180 days of receiving the complaint.
- If the commission determines that reasonable grounds exist to believe that a prohibited retaliatory action has, is, or will occur and will require corrective action:
 - The commission must *report* such determination to the agency head or independent contractor and the complainant;
 - If the commission finds the agency or independent contractor has implemented a corrective action in response to the commission's reports, the commission must make a *record* of such finding which must be filed with the agency head or independent contractor, together with any *written* comments that the individual provides; but
 - If the commission finds the agency or independent contractor has not implemented a corrective action within 35 days, the commission must terminate its investigation and provide a *notice* of termination and the reason for the termination to the complainant and agency head or independent contractor; the commission must also notify the complainant of his or her right to appeal.
- If the commission determines that no reasonable grounds exist to believe that a personnel action has, is, or will occur, the commission must share this determination (which may be in writing), the fact-finding *report*, and the *notice* of termination of investigation to the agency head or independent contractor and the complainant.

As written, this bill does not provide a mechanism allowing the Commission on Ethics to release any of the above information. This appears to be contrary to the purpose of the investigation, as the Commission on Ethics will not be able to submit a written recommendation of corrective action, such as a reinstatement to a position, without violating the confidential status created in this bill. The lack of a release mechanism further appears to implicitly conflict with SB 92 because the commission cannot provide the fact-finding report, or any other required report or documentation, as is required under SB 92 without violating the confidential status provided in this bill.

The Legislature may wish to provide a release mechanism to allow the Commission on Ethics to share and submit any reports and documentation in accordance with SB 92.

VII. Related Issues:

None identified.

VIII. Statutes Affected:

This bill substantially amends section 112.3243 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
