

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 Rules

BILL: CS/CS/SB 332

INTRODUCER: Governmental Oversight and Accountability Committee; Judiciary Committee; and Senator Bradley

SUBJECT: Public Meetings/Private Property Rights

DATE: February 23, 2026

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------------|----------------|-----------|------------------|
| 1. | <u>Bond</u> | <u>Cibula</u> | <u>JU</u> | <u>Fav/CS</u> |
| 2. | <u>Harmsen</u> | <u>McVaney</u> | <u>GO</u> | <u>Fav/CS</u> |
| 3. | <u>Bond</u> | <u>Kruse</u> | <u>RC</u> | <u>Favorable</u> |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 332 creates a public meetings exemption to allow an agency to meet privately with its attorney to review a claim made against the government pursuant to the Bert J. Harris, Jr., Property Rights Protection Act. The bill also creates a public records exemption for the transcript, recordings, minutes, and records generated during an exempt portion of such meeting. Once the claim is resolved or has expired, the records of the meeting will be open to the public.

The Bert Harris Act creates a means for a landowner to seek compensation in certain instances where a local government entity has taken an action that has reduced the fair market value of the property. A claimant must make a claim prior to filing a lawsuit and the local government must respond to the claim.

Under current law, the meeting among government officials to discuss a Bert Harris claim and determine potential settlement offers must be open to the public. However, similar meetings of a public body to discuss lawsuit strategies and settlement offers in the same type of matter are closed to the public during the course of the lawsuit but open when the litigation is concluded.

The bill is expected to have an indeterminate impact on state and local government expenditures.

The bill is subject to Article I, section 24 of the State Constitution, which requires a two-thirds vote of each house of the Legislature on final passage.

The bill is effective July 1, 2026.

II. Present Situation:

Bert Harris Act

The “Bert J. Harris, Jr., Private Property Rights Protection Act” was first enacted by the 1995 Legislature.¹

The act provides that, when a specific action of a governmental entity has inordinately burdened an existing use of real property or a vested right to a specific use of real property, the property owner of that real property is entitled to relief, which may include compensation for the actual loss to the fair market value of the real property caused by the action of government.² The stated intent of the act is to provide relief in cases that may not rise to the level of a taking under the State Constitution or the United States Constitution.³

For purposes of the act, a governmental entity is an agency of the state, a regional or local government created by the State Constitution or by general or special act, a county or municipality, or any other entity that independently exercises governmental authority.⁴

The act creates a civil cause of action for an affected property owner.⁵ At least 90 days prior to filing a lawsuit, the property owner must file a claim with the governmental entity. The claim must include a written appraisal report that supports the claim and demonstrates the loss in fair market value to the real property.⁶ During the 90-day-notice period, unless extended by agreement of the parties, the governmental entity must reply with a written settlement offer that includes actions that the entity may take to mitigate the impact, including one or more of the following:

- An adjustment of land development or permit standards or other provisions controlling the development or use of land.
- Increases or modifications in the density, intensity, or use of areas of development.
- Transfer of development rights.
- Land swaps or exchanges.

¹ Chapter 95-181, Laws of Fla. Bert J. Harris, Jr. was known as a champion of private property rights in Florida. He was a state Representative who represented the Lake Placid area from 1982 to 1996. He made the promotion of agriculture his life’s avocation. A 1943 honors graduate of the University of Florida with a degree in agriculture, Harris served as a corporal in the U.S. Army Air Corps during World War II. A citrus grower and rancher himself, Harris owned Rainbow Caladiums and was an independent farming consultant until his election into the Legislature. Harris’ efforts with the passage of private property rights to protect landowners from excessive government resulted in the naming of the bill the “Bert J. Harris Jr. Private Property Rights Protection Act.” He also sponsored legislation to settle citrus canker cases, passed legislation to prevent the disparagement of perishable food products and worked to meet the Greenbelt Law. He passed away in 2019. This note is a compilation of historical data gleaned from the Florida Agricultural Hall of Fame, at <https://floridaaaghalloffame.org/1999/10/bert-j-harris-jr/> and other sources, including https://en.wikipedia.org/wiki/Bert_J._Harris_Jr.

² Section 70.001(2), F.S.

³ Section 70.001(9), F.S.

⁴ Section 70.001(3)(c), F.S.

⁵ Section 70.001(5)(b), F.S.

⁶ Section 70.001(4)(a), F.S.

- Other mitigation including payments in lieu of onsite mitigation, or location on the least sensitive portion of the property.
- Conditioning the amount of development or use permitted.
- A requirement that issues be addressed on a more comprehensive basis than a single proposed use or development.
- Issuance of the development order, a variance, a special exception, or any other extraordinary relief.
- Purchase of the real property, or an interest therein, by an appropriate governmental entity or payment of compensation.

Alternatively, the entity may reply with a statement that there will be no changes to the action of the governmental entity.⁷ The governmental entity must also make a written statement of allowable uses of the property, whether or not it makes a settlement offer.⁸

If the property owner rejects the settlement offer and written statement of allowable uses, then the property owner has exhausted the available remedies and may file a claim in circuit court in the county in which the real property is located.⁹ Any act prior to the property owner's filing of a claim is a pre-suit action, for which certain protections—namely, a public meeting exemption prescribed in s. 286.011(8), F.S.—that apply to parties in pending litigation do not apply.¹⁰ Thus, in order to craft a proposed settlement as required in s. 70.001(4)(c), F.S., the governmental entity must hold a public meeting. Claimants can attend these public meetings and discover the entity's view of the claim and its possible responses.

The governmental entity must reply to the property owner's claim within the judicial process after a claim is filed. Before filing for a judgment on the claim (or other type of pleading), the movant attorney has a duty to confer with opposing counsel (or the opposing party) to make a good-faith effort to resolve the issues raised in the motion—including a discussion of the anticipated results if they do not settle and alternative settlement strategies.¹¹ Ordinarily, lawyers and clients can meet in private regarding litigation strategy, whether they are private actors or public.¹² The reason for this privacy is to encourage the client to be open and honest with his or her attorney without fear that others will be able to pry into those conversations. Further, being fully informed by the client enables the attorney to provide the best legal advice.¹³

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.¹⁴ This applies to the official business

⁷ Section 70.001(4)(c)11., F.S.

⁸ Section 70.001(4)(c) and (5)(a), F.S.

⁹ Section 70.001(5)(b), F.S.

¹⁰ Op. Att'y Gen. Fla. 09-25 (2009).

¹¹ Florida Rule of Civil Procedure Rule 1.202.

¹² Section 90.502, F.S.

¹³ Jacqueline Kate Unger, *Maintaining the Privilege: A Refresher on Important Aspects of the Attorney-Client Privilege*, ABA Law Today (Oct. 2013), https://www.americanbar.org/groups/business_law/resources/business-law-today/2013-october/maintaining-the-privilege/.

¹⁴ FLA. CONST. art. I, s. 24(a).

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.¹⁵

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.¹⁶ 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.¹⁷

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.¹⁸ 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.”¹⁹

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.²⁰ A violation of the Public Records Act may result in civil or criminal liability.²¹

Only the Legislature may create an exemption to public records requirements.²² An exemption must be created by general law and must specifically state the public necessity justifying the

¹⁵ *Id.*; see also *Sarasota Citizens for Responsible Gov’t v. City of Sarasota*, 48 So. 3d 755, 762-763 (Fla. 2010).

¹⁶ Public records laws are found throughout the Florida Statutes.

¹⁷ Section 119.01(1), F.S.

¹⁸ *Locke v. Hawkes*, 595 So. 2d 32, 34 (Fla. 1992); *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).

¹⁹ *Shevin v. Byron, Harless, Schaffer, Reid & Assoc.*, 379 So. 2d 633, 640 (Fla. 1980).

²⁰ Section 119.07(1)(a), F.S.

²¹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

²² FLA. CONST. art. I, s. 24(c).

exemption.²³ 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 provisions²⁴ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.²⁵

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*.²⁶ 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.²⁷ Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.²⁸

Open Meetings Law

The Florida Constitution provides that the public has a right to access governmental meetings.²⁹ 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.³⁰ This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts, or special districts.

Public policy regarding access to government meetings is also addressed in the Florida Statutes. Section 286.011, F.S., which is also known as the “Government in the Sunshine Law,”³¹ or the “Sunshine Law,”³² requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be open to the public.³³ A commonly used exception creates an exception for meetings often referred as a “shade meeting.” By general law passed by a two-thirds vote of each house, the Legislature may exempt any meeting from the public meeting requirements.³⁴

Shade Meetings

A shade meeting refers to a private meeting of any public board or commission to discuss litigation strategy with an attorney hired by that board or commission.³⁵ To be lawful, a shade meeting must comply with these requirements:

- The board or commission’s attorney must advise the board or commission at a public meeting that the attorney desires advice concerning the litigation.

²³ *Id.*

²⁴ The bill may, however, contain multiple exemptions that relate to one subject.

²⁵ FLA. CONST. art. I, s. 24(c).

²⁶ *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

²⁷ *Id.*

²⁸ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

²⁹ FLA. CONST., art. I, s. 24(b).

³⁰ *Id.*

³¹ *Times Pub. Co. v. Williams*, 222 So. 2d 470, 472 (Fla. 2d DCA 1969).

³² *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).

³³ Section 286.011(1)-(2), F.S.

³⁴ FLA. CONST., art. I, s. 24(c).

³⁵ Section 286.011(8), F.S.

- The subject matter of the meeting must be confined to settlement negotiations or strategy sessions related to litigation expenditures.
- The entire private session must be recorded by a certified court reporter.
- The entity must give reasonable public notice of the time and date of the attorney-client session and the names of persons who will be attending the session.
- The transcript must be made part of the public record upon conclusion of the litigation.³⁶

III. Effect of Proposed Changes:

The bill creates a public meetings exemption allowing an agency,³⁷ or the chief administrative or executive officer of an agency, to conduct a private meeting with an attorney for the purpose of discussing a pre-suit claim submitted pursuant to the procedures required by the Bert J. Harris, Jr. Private Property Rights Protection Act.

The meeting must be:

- Limited to the subject of settlement negotiations or strategy sessions relating to the claim.
- Noticed to occur during an otherwise open meeting, and the notice must include the time and date of the session, and the names of who will attend.
- Initiated upon the agency attorney's notice at a public meeting that he or she desires advice concerning a Bert Harris Act claim.
- Recorded by a certified court reporter, whose notes must also include the start and finish times of the closed session, all discussion and proceedings, the name of all persons present, and the names of all persons speaking. These notes must be transcribed and filed with the governmental entity's clerk within a reasonable time after the meeting.

The transcript, recordings, minutes, and records generated during the shaded meeting is exempt from public records laws. Any transcript created becomes public record upon any settlement of the claim, or at the expiration of the statute of limitations for hearing a claim arising under the Bert Harris Act if no litigation is filed and there is no settlement of a claim. The process created for this pre-suit meeting is the same as the process provided for in s. 286.011(8), F.S., that currently applies to the very similar attorney-client meetings of a governing body.

The bill also includes a public necessity statement and complies with the Open Government Sunset Review Act.

The bill is effective July 1, 2026, and is repealed October 2, 2031, unless saved from repeal.

³⁶ Sections 286.011(8)(a)-(e), F.S.

³⁷ The bill defines an agency in accordance with the definition provided in s. 119.011, F.S., 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."

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, or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:**Vote Requirement**

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption from the public records and public meetings requirements. This bill creates a public records and meetings exemption for meetings that occur within the context of the Bert Harris Act to facilitate a settlement and for records, transcripts, minutes, and recordings generated during that shaded meeting. Thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records and public meetings requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemptions.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption from the public meetings requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to provide for private discussion of litigation and settlement strategies for a Bert Harris Act claim. This bill closes only those portions of the meetings at which such conversations are had and therefore is no broader than necessary.

Additionally, the bill requires the local government to record and create a transcript of the pre-suit settlement meeting. The transcript, recording, minutes, and records generated during the exempt portion of the meeting are protected from disclosure by a public records exemption created by the bill. The transcript becomes a part of the public record at the settlement of a Bert Harris claim, or upon the expiration of the statute of limitations for such a claim. This is therefore narrowly tailored to protect just the information from the shaded meetings.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill is expected to have an indeterminate impact on state and local government expenditures.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 70.90 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

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

- Creates a public record exemption for the transcript and recording required to be made during the exempt portion of a meeting.
- Specifies that the exemptions are applicable to all agencies subject to public meeting and public record requirements.
- Updates the public necessity statement.

CS by Judiciary on January 27, 2026:

The amendment changed the placement of the exemption to a standalone section without changing process or effect, added a public necessity statement, and added a future repeal to comply with the Open Government Sunset Review Act.

B. Amendments:

None.