

FLORIDA HOUSE OF REPRESENTATIVES

BILL ANALYSIS

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BILL #: [HB 437](#)

TITLE: Public Records

SPONSOR(S): Andrade

COMPANION BILL: [SB 770](#) (Rouson)

LINKED BILLS: None

RELATED BILLS: None

Committee References

[Government Operations](#)



[Judiciary](#)



[Justice Budget](#)



[State Affairs](#)

SUMMARY

Effect of the Bill:

The bill makes significant revisions to the Public Records Act (Act). The bill establishes a mandatory three-day response timeline for agencies to respond to public record requests and requires written explanations for delays or denials. The bill restricts agencies' ability to charge fees in specified circumstances, authorizes fees waivers for public purposes, and requires written cost estimates upon request. The bill restructures enforcement provisions of the Act by modifying to whom penalties apply and which sanctions are available. The bill broadens the availability of attorney fee awards and requires fees be assessed against the responsible agency rather than individual employees. The bill also revises the Open Government Sunset Review Act by establishing a ten-year legislative review and automatic repeal cycle for public record and public meeting exemptions following reenactment.

Fiscal or Economic Impact:

The bill will likely have a negative fiscal impact on the state and local governments and a positive fiscal impact on the private sector. The bill eliminates or limits certain fees, imposes new response timelines and documentation requirements, and revises enforcement mechanisms, judicial remedies, and attorney fee provisions. The overall fiscal impact is indeterminate at this time, as it depends on factors that cannot be reliably quantified.

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ANALYSIS

EFFECT OF THE BILL:

Agency Response Duties

The bill revises agency obligations for responding to public record requests by providing that a failure to promptly acknowledge a request and respond in good faith constitutes a violation of the Public Records Act (Act). The bill requires a custodian of public records, no later than three business days after receiving a public records request, to either provide the records, provide a good-faith estimate of the time required to produce the records and any costs that will be assessed, or deny the request, in whole or in part, with a written citation to the applicable statutory exemption. If the custodian fails to take one of these actions within the three business days, the agency is prohibited from imposing any costs or fees for providing the records. The bill further provides that an agency's compliance with these requirements does not create a presumption in litigation that a public record request was lawfully delayed. (Section [2](#))

The bill further requires custodians, upon request, to state in writing, and with particularity, the reasons for taking more than 15 days to produce the requested records or the reasons for determining that records are exempt or confidential, including the statutory citations relied upon in making the determination. In litigation, the bill limits the defenses available to agencies in judicial proceedings by prohibiting agencies from asserting exemptions or justifications for delay that were not previously stated in written responses to the requester and by providing that a backlog of public record requests does not constitute a justification for delay. (Section [2](#))

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Costs, Fees, and Electronic Records

The bill revises allowable fees associated with public record requests by limiting the circumstances under which agencies may recover certain costs. Agencies are prohibited from charging fees for requests that require less than 30 minutes to fulfill, for records that have been previously disclosed in response to another public record request, or for the review and redaction of exempt or confidential information. The bill also eliminates the authority for agencies to charge remote electronic access fees and requires agencies to provide a written, detailed cost estimate upon request sufficient to allow a requester to assess the lawfulness of the estimate. (Section [2](#))

The bill requires agencies to provide copies of public records in any electronic format the agency can reasonably produce as part of its standard electronic recordkeeping system and authorizes agencies to charge the actual cost of duplication for such records. The bill authorizes clerical or supervisory assistance costs—capped at the base hourly rate of the lowest paid personnel capable of providing assistance—and information technology costs to be included as part of the actual cost of duplication, rather than only when a request requires extensive labor or information technology use as currently provided in law. In addition, the bill authorizes agencies to reduce or waive fees for a public purpose, including public agency program support, nonprofit activities, journalistic activities, and academic or other research, and prohibits agencies from charging for the first ten hours of work associated with such request. (Sections [1](#) and [2](#))

Penalties for Violations

The bill revises enforcement provisions by providing that a violation of any law granting or limiting access to public records constitutes a violation of the Act. The bill expands the scope of the noncriminal infraction, punishable by a fine up to \$500, from applying to only a *public officer* who violates the Act to applying to any *person* who violates the Act. The bill removes a provision of law subjecting public officers to possible suspension, removal, or impeachment for violating the Act, as well as a provision providing that the unlawful use or disclosure of exempt or confidential information contained in police reports is a third-degree felony. In addition, the bill creates a first-degree misdemeanor for a person outside the state who knowingly violates public record requirements and retains the existing first-degree misdemeanor for any person who willfully and knowingly violates the Act. (Section [3](#))

The bill further requires courts to impose enhanced penalties when an agency violates public record response requirements and either displays intentional disregard of the public's constitutional right of access or engages in a pattern or practice of abuse of the Act. In such cases, the court must assess a penalty payable to the requester equal to twice the amount of attorney fees awarded, in addition to a penalty of \$200 for each day access was unlawfully denied. (Section [3](#))

Attorney Fees

The bill expands provisions governing recoverable enforcement costs, such as attorney fees and litigation costs, to apply to civil actions enforcing any law relating to public records access, rather than limiting such awards to actions brought solely under the Act as currently provided in law. The bill requires attorney fees to be assessed against the responsible agency and not against a person acting on the advice of an agency attorney. (Section [4](#))

The bill removes the requirement that a requester provide written notice of a public record request at least five business days before filing suit in order to recover attorney fees. The bill also authorizes agencies to reimburse attorney fees for individuals acquitted of violations of the Act. (Section [4](#))

Open Government Sunset Review Act

The bill expands the Open Government Sunset Review Act by requiring that, in addition to the existing five-year legislative review, public record and public meeting exemptions must undergo legislative review every ten years following reenactment. The bill requires laws creating new exemptions or substantially amending existing exemptions expressly state this requirement. Accordingly, under the bill, public record and public meeting

exemptions are subject to automatic repeal every ten years following reenactment unless the Legislature acts to reenact the exemption. (Section [5](#))

Miscellaneous Provisions

The bill makes technical and conforming changes. (Multiple Sections)

Effective Date

The effective date of the bill is July 1, 2026. (Section [8](#))

FISCAL OR ECONOMIC IMPACT:

STATE GOVERNMENT:

The bill will likely have an indeterminate, negative fiscal impact on state government. The bill limits or eliminates several categories of fees currently used by agencies to recover costs associated with responding to public record requests, including fees for certain labor, redaction, and remote electronic access. However, the bill authorizes labor and technology costs to be included as part of the actual cost of duplication under certain circumstances, which may offset reduced fee recovery. The bill also imposes new response timeframes, documentation requirements, and enforcement mechanisms that may increase administrative workload and legal costs for agencies. In addition, the bill revises judicial remedies and attorney fee provisions applicable to public records litigation, which may increase litigation-related costs borne by agencies.

The extent of these impacts will vary based on the volume and complexity of public record requests received and other non-quantifiable factors. Accordingly, the overall fiscal impact to state government is indeterminate at this time.

LOCAL GOVERNMENT:

The bill will likely have an indeterminate, negative fiscal impact on local governments. The bill limits or eliminates several categories of fees currently used by agencies to recover costs associated with responding to public record requests, including fees for certain labor, redaction, and remote electronic access. However, the bill authorizes labor and technology costs to be included as part of the actual cost of duplication under certain circumstances, which may offset reduced fee recovery. The bill also imposes new response timeframes, documentation requirements, and enforcement mechanisms that may increase administrative workload and legal costs for agencies. In addition, the bill revises judicial remedies and attorney fee provisions applicable to public records litigation, which may increase litigation-related costs borne by agencies.

The extent of these impacts will vary based on the volume and complexity of public record requests received and other non-quantifiable factors. Accordingly, the overall fiscal impact to local governments is indeterminate at this time.

PRIVATE SECTOR:

The bill is expected to have an indeterminate, positive fiscal impact on the private sector. The bill limits or eliminates certain fees associated with public record requests, including fees for certain labor, redaction, and remote electronic access, which may reduce costs for individuals, businesses, nonprofit organizations, and other entities seeking public records. The bill also requires agencies to produce records in electronic formats they can reasonably produce and authorizes fee waivers for public purposes, which may reduce barriers and costs associated with obtaining public records. However, authorization for agencies to recover labor and technology costs as part of the actual costs of duplication under certain circumstances may partially offset these reduced costs. In addition, changes to enforcement mechanisms, judicial remedies, and attorney fee provisions may affect litigation-related costs for private parties.

RELEVANT INFORMATION

SUBJECT OVERVIEW:

Constitutional Right of Access to Public Records

The Florida Constitution guarantees every person the right to inspect or copy any public record made or received in connection with the official business of a public body, officer, or employee of the state.¹ The Constitution authorizes the Legislature to create exemptions from public record requirements only by general law passed by a two-thirds vote of each house. Any such exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish its stated purpose.

Public Records Act

Agency Response Duties

The Public Records Act (Act)² requires custodians of public records³ to permit inspection and copying of public records at reasonable times and under reasonable conditions.⁴ Custodians must promptly acknowledge public record requests and respond in good faith, including making reasonable efforts to determine whether responsive records exist and where they may be assessed.⁵

If a custodian contends that all or part of a record is exempt from public record requirements, the custodian must redact exempt portions, produce any nonexempt portions, and state the basis for the exemption, including the applicable statutory citation.⁶ Upon request, the custodian must provide a written explanation stating with particularity the reasons a record is exempt or confidential.⁷

Costs, Fees, and Electronic Records

The Act authorizes agencies to provide access to public records by remote electronic means.⁸ Agencies may charge fees for such access when provided under a contractual arrangement, including the direct and indirect costs of providing such access.⁹ When remote electronic access is provided to the general public, any fees assessed must be in accordance with the general fee framework governing public records.

When no specific fee is prescribed by law, agencies may charge per-page copy fees for standard paper records, including up to 15 cents per one-sided page and an additional five cent charge for two-sided copies.¹⁰ For nonstandard copies, agencies may charge the actual cost of duplication.¹¹ In addition, agencies may assess a special service charge when the nature or volume of a public record request requires extensive clerical or supervisory

¹ [Art. I, s. 24, FLA. CONST.](#)

² See [ch. 119, F.S.](#)

³ "Custodian of public records" means the elected or appointed state, county, or municipal officer charged with the responsibility of maintaining the office having public records, or his or her designee. [S. 119.011\(5\), F.S.](#)

⁴ [S. 119.07\(1\)\(a\), F.S.](#)

⁵ [S. 119.07\(1\)\(c\), F.S.](#)

⁶ [S. 119.07\(1\)\(d\)-\(e\), F.S.](#)

⁷ [S. 119.07\(1\)\(f\), F.S.](#)

⁸ [S. 119.07\(2\)\(a\), F.S.](#)

⁹ [S. 119.07\(2\)\(c\), F.S.](#) In addition, current law separately authorizes the Department of Management Services to collect transaction-based or subscription fees for remote electronic access to public records, with revenues deposited into the appropriate program trust fund. [S. 282.711, F.S.](#)

¹⁰ [S. 119.07\(4\)\(a\)1.-2., F.S.](#) Agencies may also charge up to one dollar per page for certified copies of public records. [S. 119.07\(4\)\(c\), F.S.](#)

¹¹ [S. 119.07\(4\)\(a\)3., F.S.](#) "Actual cost of duplication" means the cost of the material and supplies used to duplicate the public record, but does not include labor cost or overhead cost associated with such duplication. [S. 119.011\(1\), F.S.](#)

assistance or extensive use of information technology resources,¹² provided the charge is reasonable and based on the actual labor or technology costs incurred by the agency in responding to the request.¹³

Penalties for Violations

The Act establishes both civil and criminal penalties for violations of public record requirements. A public officer who violates any provision of the Act commits a noncriminal infraction punishable by a fine of up to \$500.¹⁴ A public officer who knowingly violates response requirements commits a first-degree misdemeanor and is subject to suspension, removal, or impeachment.¹⁵

Any person who willfully and knowingly violates the Act commits a first-degree misdemeanor.¹⁶ More severe penalties apply to certain misconduct involving exempt or confidential information contained in police reports; specifically, a person who willfully and knowingly uses or discloses such information for prohibited commercial solicitation purposes commits a third-degree felony while the information remains exempt or confidential.¹⁷ These restrictions do not apply to lawful publication by news media or to permissible data collection or analysis by authorized persons.

Attorney Fees

Courts are required to assess and award reasonable enforcement costs, including reasonable attorney fees, against an agency when the court determines that the agency unlawfully refused to permit a public record to be inspected or copied.¹⁸ As a general rule, a requester must provide written notice identifying the public record request to the agency's custodian of public records at least five business days before filing suit in order to be eligible for an award of attorney fees.¹⁹ This notice requirement does not apply if the agency fails to prominently post contact information for its custodian of public records in the agency's primary administrative building and on the agency's website.²⁰

Current law also requires courts to evaluate whether a public record request or related civil action was brought for an improper purpose. If the court determines that a requester acted primarily to cause a violation of the Act or for a frivolous purpose, the court may not award attorney fees and costs to the requester and must instead award the agency its reasonable attorney fees and costs incurred in responding to the action.²¹

Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSR Act)²² sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the

¹² "Information technology resources" means data processing hardware and software and services, communications, supplies, personnel, facility resources, maintenance, and training. [S. 119.011\(9\), F.S.](#)

¹³ [S. 119.07\(4\)\(d\), F.S.](#)

¹⁴ [S. 119.10\(1\)\(a\), F.S.](#)

¹⁵ [S. 119.10\(1\)\(b\), F.S.](#) A first-degree misdemeanor is punishable by up to one year of imprisonment and a \$1,000 fine. [Ss. 775.082 and 775.083, F.S.](#)

¹⁶ [S. 119.10\(2\)\(a\), F.S.](#)

¹⁷ [S. 119.10\(2\)\(b\), F.S.](#) See also [s. 119.105, F.S.](#)

¹⁸ [S. 119.12\(1\)\(a\), F.S.](#) Public record enforcement actions do not create a private right of action for monetary damages and recoverable payments are limited to reasonable enforcement costs, including attorney fees, directly attributable to the civil action. [S. 119.12\(4\), F.S.](#)

¹⁹ [S. 119.12\(1\)\(b\), F.S.](#)

²⁰ [S. 119.12\(2\), F.S.](#)

²¹ [S. 119.12\(3\), F.S.](#)

²² [S. 119.15, F.S.](#)

exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.²³

The OGSR Act also requires that a law creating a new exemption or substantially amending an existing exemption include specific statements in the text of the law. Such a law must expressly state that the record or meeting is exempt from the constitutional right of access and from the applicable public record or public meetings law, and must provide for repeal of the exemption after five years subject to legislative review before the scheduled repeal date.²⁴

| BILL HISTORY | | | | |
|--|--------|------|------------------------------------|-------------------------|
| COMMITTEE REFERENCE | ACTION | DATE | STAFF DIRECTOR/ POLICY CHIEF | ANALYSIS PREPARED BY |
| Government Operations Subcommittee | | | Toliver | Villa |
| Judiciary Committee | | | | |
| Justice Budget Subcommittee | | | | |
| State Affairs Committee | | | | |

²³ [S. 119.15\(3\), F.S.](#)

²⁴ [S. 119.15\(4\), F.S.](#)