

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 Commerce and Tourism

BILL: SPB 7014

INTRODUCER: For consideration by the Commerce and Tourism Committee

SUBJECT: OGSR/Department of Legal Affairs

DATE: December 9, 2025

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. McMillan	McKay	CM	Pre-meeting

I. Summary:

SPB 7014 delays for five additional years (to October 2, 2031) the sunset review date for, and repeal of, the public record exemption in s. 501.2041(10), F.S., which makes confidential and exempt from public inspection and copying requirements all information received by the Department of Legal Affairs (DLA) pursuant to an investigation by the DLA or a law enforcement agency of a violation of s. 501.2041, F.S., until the investigation is completed or ceases to be active. However, during an active investigation, information made confidential and exempt from public inspection and copying requirements may be disclosed by the DLA in the performance of its official duties and responsibilities, or to another governmental entity in performance of its official duties and responsibilities.

Once an investigation is completed or ceases to be active, the following information received by the DLA must remain confidential and exempt from public inspection and copying requirements:

- All information to which another public records exemption applies;
- Personal identifying information;
- A computer forensic report;
- Information that would otherwise reveal weaknesses in a business's data security; and
- Proprietary business information.

Without action by the Legislature to extend the repeal date, the exemption in s. 501.2041(10), F.S., will repeal on October 2, 2026. The bill extends the public record exemption for five additional years, setting a new repeal date of October 2, 2031.

The bill is not expected to affect state and local government revenues and expenditures.

The bill takes effect on October 1, 2026.

II. Present Situation:

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 This 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 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 which are used to “perpetuate, communicate, or formalize knowledge of some type.”⁶

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

¹ FLA. CONST. art. I, s. 24(a).

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

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).

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 provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act (the Act), prescribe a legislative review process for newly created or substantially amended public records or open meetings exemptions,¹⁶ with specified exceptions.¹⁷ The Act requires the repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption or repeal the sunset date.¹⁸ In practice, many exemptions are continued by repealing the sunset date, rather than reenacting the exemption.

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.¹⁹ An exemption serves an identifiable purpose if the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption and it meets one of the following purposes:

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. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings.

¹⁷ Section 119.15(2)(a) and (b), F.S., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁸ Section 119.15(3), F.S.

¹⁹ Section 119.15(6)(b), F.S.

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;²⁰
- It protects sensitive, personal information, the release of which would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²¹ or
- It protects trade or business secrets.²²

The Act also requires specified questions to be considered during the review process.²³ In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption or repealing the sunset date, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are again required.²⁴ If the exemption is reenacted or saved from repeal without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to expire, the previously exempt records will remain exempt unless otherwise provided by law.²⁵

Public Necessity Statement

The 2021 public necessity statement for this public record exemption found that information received by the Attorney General and the DLA when investigating a social media platform is likely to result in the gathering of personal identifying information, proprietary business information, or a computer forensic report. The bill's public necessity statement further provided as a basis for the public record exemption that:

The Legislature finds that the harm that may result from the release of information received by the Attorney General and the Department of Legal Affairs pursuant to an investigation by the Attorney General, the Department of Legal Affairs, or a law enforcement agency under s. 501.2041, Florida Statutes, could impair the effective and efficient administration of these investigations, and thus, outweighs the public benefit that may be derived from the disclosure of the information.

²⁰ Section 119.15(6)(b)1., F.S.

²¹ Section 119.15(6)(b)2., F.S.

²² Section 119.15(6)(b)3., F.S.

²³ 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?

²⁴ FLA. CONST. art. I, s. 24(c).

²⁵ Section 119.15(7), F.S.

Unlawful Acts and Practices by Social Media Platforms

In 2021, the Legislature created s. 501.2041, F.S., which provides that a social media platform²⁶ must take the following actions:

- Publish the standards it uses or has used for determining how to censor, deplatform, and shadow ban;
- Apply censorship, deplatforming, and shadow banning standards in a consistent manner;
- Inform each user about any changes to its user rules, terms, and agreements before implementing the changes;
- Notify users before censoring or shadow banning their content;²⁷
- Provide a mechanism that allows a user to request the number of other individual platform participants who were provided or shown the user's content;
- Provide, upon request, a user with the number of other individual platform participants who were provided or shown the user's content;
- Categorize algorithms used for post-prioritization and shadow banning;
- Allow a user to opt out of post-prioritization and shadow banning algorithm categories to allow sequential or chronological posts and content;
- Provide users with an annual notice on the use of algorithms for post-prioritization and shadow banning; and
- If a user has been deplatformed, allow such user to access or retrieve all of the user's information, content, material, and data for at least 60 days after the user receives notice.

A social media platform is prohibited from applying post-prioritization or shadow banning algorithms for content and material posted by or about a political candidate during their candidacy. Additionally, a social media platform is prohibited from taking action to censor, deplatform, or shadow ban a journalistic enterprise based on the content of its publication or broadcast.²⁸

A social media platform that fails to comply with s. 501.2041, F.S., commits an unfair or deceptive act or practice. If the DLA, by its own inquiry or as a result of a complaint, suspects that a violation is imminent, occurring, or has occurred, the DLA may investigate the suspected violation in accordance with the Florida Deceptive and Unfair Trade Practices Act (FDUTPA). In an investigation by the DLA into alleged violations, the DLA's investigative powers include,

²⁶ Section 501.2041, F.S., defines "social media platform" as any information service, system, Internet search engine, or access software provider that: (1) provides or enables computer access by multiple users to a computer server, including an Internet platform or a social media site; (2) operates as a sole proprietorship, partnership, limited liability company, corporation, association, or other legal entity; (3) does business in Florida; and (4) satisfies at least one of the following thresholds: has annual gross revenues in excess of \$100 million, as adjusted in January of each odd-numbered year to reflect any increase in the Consumer Price Index, or has at least 100 million monthly individual platform participants globally.

²⁷ Section 501.2041, F.S., provides that a notification must be in writing, be delivered via electronic mail or direct electronic notification to the user within 7 days after the censoring action, include a thorough rationale explaining the reason that the social media platform censored the user, and include a precise and thorough explanation of how the social media platform became aware of the censored content or material.

²⁸ Section 501.2041, F.S., provides that the prohibition does not apply if the content or material is obscene as defined in s. 847.001, F.S. Section 847.001, F.S., defines "obscene" as the status of material which: (1) the average person, applying contemporary community standards, would find, taken as a whole, appeals to prurient interests; (2) depicts or describes, in a patently offensive way, sexual conduct; and (3) taken as a whole, lacks serious literary, artistic, political, or scientific value.

but are not limited to, the ability to subpoena any algorithm used by a social media platform related to any alleged violation.

A user may only bring a private cause of action against a social media platform for failing to notify such user of an act of censoring or deplatforming, or for failing to apply censorship, deplatforming, and shadow banning standards in a consistent manner. The court may award the following damages to a user:

- Up to \$100,000 in statutory damages per proven claim;
- Actual damages;
- If aggravating factors are present, punitive damages;
- Other forms of equitable relief, including injunctive relief; and
- If the user was deplatformed, costs and reasonable attorney fees.

Ongoing Litigation

In 2021, NetChoice and the Computer & Communications Industry Association (NetChoice)²⁹ challenged the constitutionality of SB 7072 (now s. 501.2041, F.S.), in the United States District Court for the Northern District of Florida.³⁰ NetChoice claimed that the law violates their free speech rights, and argued that social media platforms are exercising editorial judgement when they moderate content on their platforms.³¹ Additionally, NetChoice argued that the law is preempted by federal law.³² The district court granted NetChoice's motion for a preliminary injunction.³³

The state appealed, and the United States Court of Appeals for the Eleventh Circuit concluded that the provisions of SB 7072 (now s. 501.2041, F.S.) that restrict a social media platform's ability to engage in content moderation violate the First Amendment.³⁴ Furthermore, the Eleventh Circuit found that the provision requiring a social media platform to provide "thorough rationale" for every content moderation decision it makes violates the First Amendment.³⁵ Thus, the Eleventh Circuit substantially affirmed the preliminary injunction against enforcement of the law.³⁶

In 2024, the Supreme Court vacated the Eleventh Circuit's decision and remanded the case back to the Eleventh Circuit for further proceedings.³⁷

²⁹ These are trade associations that represent internet and social media companies like Facebook, Twitter, Google, and TikTok.

³⁰ See *NetChoice, LLC v. Moody*, 546 F.Supp.3d 1082 (N.D. Florida 2021).

³¹ *Id.* In the case, NetChoice argued that social media companies are exercising editorial judgement similar to the editorial judgment of a newspaper editor.

³² *Id.* NetChoice argued that the law is preempted by 27 U.S.C. §230(c)(2).

³³ *Id.* The district court concluded that the provisions of the law that make social media platforms liable for deprioritizing content or removing content are likely preempted by federal law, as well as found that the law's provisions violate the social media platforms' First Amendment rights by restricting their editorial judgement.

³⁴ See *NetChoice, LLC v. Moody*, 34 F.4th 1196 (11th Cir. 2022).

³⁵ *Id.*

³⁶ *Id.* The Eleventh Circuit affirmed in part, vacated in part, and remanded.

³⁷ See *Moody v. NetChoice, LLC*, 603 U.S. 707 (2024).

Florida Deceptive and Unfair Trade Practices Act (FDUTPA)

The Department of Legal Affairs and the State Attorney, as enforcing authorities, may seek the following remedies:

- Declaratory judgments.
- Injunctive relief.
- Actual damages on behalf of consumers and businesses.
- Cease and desist orders.
- Civil penalties of up to \$10,000 per willful violation.³⁸

Remedies for private parties are limited to the following:

- A declaratory judgment and an injunction where a person is aggrieved by a FDUTPA violation.
- Actual damages, attorney fees, and court costs, where a person has suffered a loss due to a FDUTPA violation.³⁹

Section 501.2041(10), F.S., Exemption

In 2021, the Legislature created s. 501.2041(10), F.S., which makes confidential and exempt from public inspection and copying requirements all information received by the DLA pursuant to an investigation by the DLA or a law enforcement agency of a violation of s. 501.2041, F.S., until the investigation is completed or ceases to be active. However, during an active investigation, information made confidential and exempt from public inspection and copying requirements may be disclosed by the DLA in the performance of its official duties and responsibilities, or to another governmental entity in performance of its official duties and responsibilities.

Once an investigation is completed or ceases to be active, the following information received by the DLA must remain confidential and exempt from public inspection and copying requirements:

- All information to which another public records exemption applies;
- Personal identifying information;
- A computer forensic report;
- Information that would otherwise reveal weaknesses in a business's data security; and
- Proprietary business information.⁴⁰

³⁸ Sections 501.207(1), 501.208, and 501.2075, F.S. Civil Penalties are deposited into general revenue. Section 501.2075, F.S. Enforcing authorities may also request attorney fees and costs of investigation or litigation. Section 501.2105, F.S.

³⁹ Section 501.211(1) and (2), F.S.

⁴⁰ Section 501.2041(10), F.S., defines "proprietary information" as information that: (1) is owned or controlled by the business; (2) is intended to be private and is treated by the business as private because disclosure would harm the business or its business operations; (3) has not been disclosed except as required by law or private agreement that provides that the information will not be released to the public; (4) is not publicly available or otherwise readily ascertainable through proper means from another source in the same configuration as received by the DLA; and includes trade secrets as defined in s. 688.002, F.S., or competitive interests, the disclosure of which would impair the competitive advantage of the business that is the subject of the information. Section 688.002, F.S., defines "trade secrets" as information, including a formula, pattern, compilation, program, device, method, technique, or process that: (1) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Open Government Sunset Review of the Public Record Exemption for Useful Acts and Practices by Social Media Platforms

The staff of the Senate Commerce and Tourism Committee and the House Government Operations Subcommittee jointly met with the DLA to ascertain whether the public record exemption in s. 501.2041(10), F.S., remains necessary.

Public Record Exemption Findings

The DLA indicated that the public record exemption has not been utilized due to ongoing litigation regarding the constitutionality of the provisions in s. 501.2041, F.S. Thus, the bill delays for five additional years the sunset review date for, and the repeal of, the public record exemption.

III. Effect of Proposed Changes:

The bill delays for five additional years (to October 2, 2031) the sunset review date for, and repeal of, the public record exemption in s. 501.2041(10), F.S., which makes confidential and exempt from public inspection and copying requirements all information received by the DLA pursuant to an investigation by the DLA or a law enforcement agency of a violation of s. 501.2041, F.S., until the investigation is completed or ceases to be active. However, during an active investigation, information made confidential and exempt from public inspection and copying requirements may be disclosed by the DLA in the performance of its official duties and responsibilities, or to another governmental entity in performance of its official duties and responsibilities.

Once an investigation is completed or ceases to be active, the following information received by the DLA must remain confidential and exempt from public inspection and copying requirements:

- All information to which another public records exemption applies;
- Personal identifying information;
- A computer forensic report;
- Information that would otherwise reveal weaknesses in a business's data security; and
- Proprietary business information.

Without action by the Legislature to extend the repeal date, the exemption in s. 501.2041(10), F.S., will repeal on October 2, 2026. The bill extends the public record exemption for five additional years, setting a new repeal date of October 2, 2031.

The bill takes effect on October 1, 2026.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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 to the public records disclosure requirements. The bill delays for five additional years a current public record exemption. The bill does not create or expand an exemption. Thus, the bill does not require a two-thirds vote for enactment.

Public Necessity Statement

Article I, s. 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. The bill does not create or expand an exemption. Thus, a statement of public necessity is not required.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records disclosure requirements to be no broader than necessary to accomplish the stated purpose of the law. The exemption in the bill does not appear to be broader than necessary to accomplish the purpose of the law.

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:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None identified.

VIII. Statutes Affected:

This bill substantially amends section 501.2041(10) 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.