

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 379 Pub. Rec./Economic Development Agencies

SPONSOR(S): Giallombardo

TIED BILLS: **IDEN./SIM. BILLS:** SB 968

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee	16 Y, 2 N	Willson	Keating
2) Government Operations Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

The bill provides a public record exemption for certain information held by economic development agencies, including the Department of Economic Opportunity (DEO), pursuant to the administration of state or federally funded small business program. Specifically, the bill exempts the following information:

- The home address, telephone number, and e-mail address of a person who submits an application for a loan on behalf of a business.
- Tax returns.
- Bank and financial statements.
- Credit history information, credit reports, and credit scores.

The bill does not prohibit the disclosure of information held by the economic development agency pursuant to its administration of a small business loan program in an aggregated and anonymized format.

The bill provides for repeal of the public record exemption on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature. The bill provides a statement of public necessity as required by the Florida Constitution.

The bill may have a fiscal impact on agencies responsible for complying with public records requests and redacting exempt information prior to releasing a record.

Article I, section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill provides for a public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of article I, section 24(a) of the Florida Constitution.¹ The general law must state with specificity the public necessity justifying the exemption² and must be no broader than necessary to accomplish its purpose.³

Public policy regarding access to government records is addressed further in s. 119.07(1)(a), F.S., which guarantees every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt. Furthermore, the Open Government Sunset Review Act⁴ provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.⁵

The Open Government Sunset Review Act requires the automatic repeal of a newly created public record exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.⁶

Small Business Loan Programs

The Department of Economic Opportunity (DEO) administers a number of state and federally funded small business loan programs, including:

- Small Business Emergency Bridge Loan Program
- Rebuild Florida Business Loan Fund⁷
- Rural Community Development Revolving Loan Program⁸
- State Small Business Loan Fund⁹
- Florida Minority Business Loan Mobilization Program,¹⁰
- Black Business Loan Program¹¹
- Microfinance Loan Program¹²

¹ Art. I, s. 24(c), FLA. CONST.

² This portion of a public record exemption is commonly referred to as a "public necessity statement."

³ Art. I, s. 24(c), FLA. CONST.

⁴ S. 119.15, F.S.

⁵ S. 119.15(6)(b), F.S.

⁶ S. 119.15(3), F.S.

⁷ DEO, *Rebuild Florida Business Loan Fund*, <https://deosera.force.com/RebuildFloridaBusinessLoanFund/s/loan-programs?program=florida-resiliency-loan> (last visited Feb. 23, 2021).

⁸ S. 288.065, F.S.

⁹ DEO, *Small Business Loan Program*, <https://floridajobs.org/community-planning-and-development/Small-and-Minority-Business-Development-Resources/Small-and-Minority-Business-Programs/small-business-loan-program> (last visited Feb. 23, 2021).

¹⁰ S. 288.706, F.S.

¹¹ Ss. 288.7102–714, F.S.

¹² See Microfinance Programs, ch. 288, part XIV.

Section 288.075, F.S., defines an “Economic development agency” as:

- The Department of Economic Opportunity;
- Any industrial development authority created in accordance with part III of chapter 159 or by special law;
- Space Florida created in part II of chapter 331;
- The public economic development agency of a county or municipality or, if the county or municipality does not have a public economic development agency, the county or municipal officers or employees assigned the duty to promote the general business interests or industrial interests of that county or municipality or the responsibilities related thereto;
- Any research and development authority created in accordance with part V of chapter 159; or
- Any private agency, person, partnership, corporation, or business entity when authorized by the state, a municipality, or a county to promote the general business interests or industrial interests of the state or that municipality or county.

Effect of the Bill

This bill creates a public record exemption for the following information held by an economic development agency pursuant to its administration of a state or federally funded small business loan program:

- The home address, telephone number, and e-mail address of a person who submits an application for a loan on behalf of a business.
- Tax returns.
- Bank and financial statements.
- Credit history information, credit reports, and credit scores.

The bill does not prohibit the disclosure of information held by the economic development agency pursuant to its administration of a small business loan program in an aggregated and anonymized format.

This bill provides a public necessity statement as required by article I, section 24(c) of the Florida Constitution. The public necessity statement provides that in order to process and disburse loan funds, an economic development agency may obtain sensitive information needed to assess viability of loans and that such information may be used to locate, identify, and contact the borrower. The bill states that such information, released, could be used by fraudulent contractors, predatory lenders, thieves, or individuals seeking to impose on the borrower and it is therefore necessary for such information to be protected to ensure that borrowers are not harassed, intimidated, or potentially defrauded.

The bill provides for repeal of the public record exemption on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

B. SECTION DIRECTORY:

Section 1 Amends s. 288.075, F.S.; providing an exemption from public records requirements for certain information held by an economic development agency; providing that such information may be released in an aggregated and anonymized format; providing for future legislative review and repeal of the exemption; providing a statement of public necessity.

Section 2 Provides a public necessity statement as required by the Florida Constitution.

Section 3 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have a minimal fiscal impact on economic development agencies responsible for complying with public records requests and redacting exempt information prior to releasing a record. Such costs, however, would be absorbed as part of the day-to-day responsibilities of these agencies.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to take action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote Requirement

Article I, section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption and includes the required public necessity statement.

Breadth of Exemption

Article 1, section 24(c) of the Florida Constitution requires a newly created or expanded public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public records exemption for sensitive and personal financial information that is held by an economic development agency pursuant to its administration of a state or federally

funded small business loan program, which does not appear to be broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES