

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 683 Pub. Rec./Criminal Conflict and Civil Regional Counsel Offices

SPONSOR(S): Brannan

TIED BILLS: **IDEN./SIM. BILLS:** SB 762

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice & Public Safety Subcommittee	17 Y, 0 N	Padgett	Hall
2) Government Operations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Section 320.025, F.S., authorizes the Department of Highway Safety and Motor Vehicles (DHSMV) to issue a confidential registration certificate and registration license plate or decal under a fictitious name for a motor vehicle or vessel owned or operated by:

- A law enforcement agency of state, county, municipal, or federal government;
- The Attorney General's Medicaid Fraud Control Unit; or
- Any state public defender's office.

All records relating to the registration application are exempt from disclosure under the public records provisions in s. 119.07(1), F.S., and article I, section 24(a) of the Florida Constitution.

The Office of Criminal Conflict and Civil Regional Counsel (CCCRC) was created by the Legislature in 2007 to provide legal representation to indigent persons that are constitutionally entitled to court-appointed counsel. The CCCRC primarily provides representation in three types of cases:

- Criminal cases in which the public defender must withdraw due to a conflict of interest;
- Dependency cases; and
- Involuntary civil commitment cases involving a mentally ill person, sexually violent predator, or a person with developmental disabilities.

In representing a defendant in a criminal case, the CCCRC performs similar functions to that of a traditional public defender. To effectively represent a client in a criminal proceeding, both the public defender and CCCRC employ investigators to research cases and conduct interviews with witnesses.

HB 683 authorizes CCCRC to register a vehicle or vessel under a fictitious name with DHSMV and receive a license plate or decal based on such fictitious name. The bill provides CCCRC with the same protections and confidentiality enjoyed by a public defender's office, which performs a virtually identical function.

This bill is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2021.

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 expands 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. The 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 exemption and must be no broader than necessary to accomplish its purpose.²

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 Act (Act)³ provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose and the "Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."⁴ In addition, the exemption may be no broader than is necessary to meet one of the following purposes:⁵

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting 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; or
- Protect trade or business secrets.

The Act also requires the automatic repeal of a public record exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption. When considering reenacting an exemption, the act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption. If continued and expanded, the exemption requires a public necessity statement and a two-thirds vote of the members present.

When creating a public records exemption, the Legislature may provide that a record is "exempt" or "confidential and exempt." If records are designated as "exempt" the records' custodian cannot be compelled to disclose the record to another person.⁶ However, if records are designated as "confidential and exempt" the records' custodian cannot be compelled to disclose the record and is also prohibited from voluntarily disclosing the records except under circumstances specifically defined by the Legislature.⁷

Criminal Conflict and Civil Regional Counsel

¹ Art. I, s. 24(c), Fla. Const.

² *Id.*

³ S. 119.15, F.S.

⁴ S. 119.15(6)(b), F.S.

⁵ *Id.*

⁶ See *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

⁷ See *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

The Office of Criminal Conflict and Civil Regional Counsel (CCCRC) was created by the Legislature in 2007 to provide legal representation to indigent persons that are constitutionally entitled to court-appointed counsel.⁸ The CCCRC primarily provides representation in three types of cases:

- Criminal cases in which the public defender must withdraw due to a conflict of interest;
- Dependency cases; and
- Involuntary civil commitment cases involving a mentally ill person, sexually violent predator, or a person with developmental disabilities.

In representing a defendant in a criminal case, the CCCRC performs similar functions to that of a traditional public defender. To effectively represent a client in a criminal proceeding, both the public defender and CCCRC employ investigators to research cases and conduct interviews with witnesses.⁹

Confidential Motor Vehicle Registration

Section 320.025, F.S., authorizes the Department of Highway Safety and Motor Vehicles (DHSMV) to issue a confidential registration certificate and registration license plate or decal under a fictitious name for a motor vehicle or vessel owned or operated by:

- A law enforcement agency of state, county, municipal, or federal government;
- The Attorney General's Medicaid Fraud Control Unit; or
- Any state public defender's office.¹⁰

To register a motor vehicle or vessel under a fictitious name, the law enforcement agency, Fraud Control Unit, or public defender's office must file a written application with DHSMV affirming the license plate or decal will be used for activities that require concealment of the true owner of the vehicle and listing individuals who are authorized to use the vehicle.¹¹ All records relating to the registration application are exempt from disclosure under the public records provisions in s. 119.07(1), F.S., and article I, section 24(a) of the Florida Constitution.¹²

Effect of Proposed Changes

HB 683 authorizes CCCRC to register a vehicle or vessel under a fictitious name with DHSMV and receive a license plate or decal based on such fictitious name. The bill provides CCCRC with the same protections and confidentiality enjoyed by a public defender's office, which performs a virtually identical function.

The bill provides the public records exemption is a public necessity because:

- Investigations by CCCRC may be jeopardized if a vehicle was registered in the name of the CCCRC or in the name of an investigator; or
- A person under investigation may use registration information to retaliate against a CCCRC office or its investigators.

This bill is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill provides an effective date of July 1, 2021.

B. SECTION DIRECTORY:

Section 1: Amends s. 320.025, F.S., relating to registration certificate and license plate or decal issued under fictitious name; application.

Section 2: Provides a public necessity statement.

⁸ Ch. 2007-62, Laws of Fla.

⁹ S. 27.53(1) and (4), F.S.

¹⁰ S. 320.025(1), F.S.

¹¹ *Id.*

¹² S. 320.025(3), F.S.

Section 3: Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

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 expands 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 expands a public record exemption; thus, it includes a 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 expands the public records exemption to include applications by CCCRC for confidential registration certificates and license plates and decals for vehicles owned by CCCRC.

The CCCRC employees that are eligible to operate the vehicle must be specified in the application to DHSMV. The exemption does not appear to be broader than necessary to accomplish the purpose of the exemption.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES