

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 Fiscal Policy

BILL: SB 248

INTRODUCER: Senator Martin

SUBJECT: Public Records/Personal Identifying Information of Certain Victims

DATE: March 22, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hunter</u>	<u>Ryon</u>	<u>CA</u>	Favorable
2.	<u>Hunter</u>	<u>Yeatman</u>	<u>FP</u>	Favorable

I. Summary:

SB 248 provides a 30 day public records exemption for records held by the Division of Emergency Management identifying a victim of a disaster or emergency in which a state of emergency is declared by the Governor. A “victim” is defined as a person who is critically injured and death appears to be imminent or a person killed during such an event.

The specific personal information made exempt from public records disclosure requirements includes the victim’s name, address, date of birth, and home and cellular telephone numbers.

In its statement of public necessity, the bill provides that during and immediately after an emergency or a disaster, a victim and his or her family are in a vulnerable state as they attempt to recover from the emergency situation, and that the public availability of the specified information may leave the victim or the victim’s family vulnerable to exploitation from those seeking to take advantage of the victim’s misfortune.

The bill is subject to the Open Government Sunset Review Act and is repealed on October 2, 2028, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill takes effect upon becoming a law.

II. Present Situation:

Access to Public Records - Generally

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 The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three

¹ FLA. CONST. art. I, s. 24(a).

branches of state government, local governmental entities, and any person acting on behalf of the government.²

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the Legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, chapter 119, F.S., known as the Public Records Act, provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

The Public Records Act provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

Section 119.011(12), F.S., defines “public records” to include:

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

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and 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

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2020-2022) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2020-2022).

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” 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.”

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

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.

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.⁹ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹⁰

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act¹¹ (the Act), prescribe a legislative review process for newly created or substantially amended¹² public records or open meetings exemptions, with specified exceptions.¹³ The Act requires the repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁴

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.¹⁵ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;¹⁶
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however; only personal identifying information is exempt;¹⁷ or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.¹⁸

The Act also requires specified questions to be considered during the review process.¹⁹ In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

⁹ FLA. CONST. art. I, s. 24(c).

¹⁰ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹¹ Section 119.15, F.S.

¹² An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹³ 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.

¹⁴ Section 119.15(3), F.S.

¹⁵ Section 119.15(6)(b), F.S.

¹⁶ Section 119.15(6)(b)1., F.S.

¹⁷ Section 119.15(6)(b)2., F.S.

¹⁸ Section 119.15(6)(b)3., F.S.

¹⁹ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁰ If the exemption is continued without substantive changes or if the exemption is continued and 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.²¹

General exemptions from the public records requirements are contained in the Public Records Act.²² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.²³

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*.²⁴ 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.²⁵ Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.²⁶

State Emergency Management Act

The State Emergency Management Act (act), ch. 252, F.S., was enacted to be the legal framework for this state’s emergency management activities, recognizing the state’s vulnerability to a wide range of emergencies, including natural, manmade, and technological disasters.²⁷ In order to reduce the state’s vulnerability to these circumstances and to prepare to respond to them, the act promotes the state’s emergency readiness through enhanced coordination, long-term planning, and adequate funding.²⁸

The act creates the Division of Emergency Management (division) within the Executive Office of the Governor and grants the division with powers and duties necessary to mitigate the vulnerability of life, property, and economic prosperity due to natural and manmade disasters.²⁹ The responsibilities of the division include:

- 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?

²⁰ See generally s. 119.15, F.S.

²¹ Section 119.15(7), F.S.

²² See, e.g., s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

²³ See, e.g., s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

²⁴ *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

²⁵ *Id.*

²⁶ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

²⁷ Section 252.311(1), F.S.

²⁸ Section 252.311(2), F.S.

²⁹ Sections 252.32(1)(a) and 252.34(3), F.S.

- Carrying out the State Emergency Management Act;
- Maintaining a comprehensive statewide program of emergency management; and
- Coordinating with efforts of the federal government with other departments and agencies of state government, with county and municipal governments and school boards, and with private agencies that have a role in emergency management.³⁰

The act also delineates the Governor's authority to declare a state of emergency, issue executive orders, and otherwise lead the state during emergencies. If the Governor finds that an emergency³¹ has occurred or is imminent, he or she must declare a state of emergency.³² An executive order or proclamation of a state of emergency shall identify whether the state of emergency is due to a minor,³³ major,³⁴ or catastrophic³⁵ disaster.³⁶ The state of emergency must continue until the Governor finds that the threat or danger has been dealt with to the extent that the emergency conditions no longer exist, but no state of emergency may continue for longer than 60 days unless renewed by the Governor.³⁷ Additionally, the Legislature may end a state of emergency by passing a concurrent resolution.³⁸

In a state of emergency, the Governor has broad power to perform necessary actions to ensure Floridians' health, safety, and welfare. A state of emergency provides the Governor with additional authority not otherwise present, such as the ability to impose curfews, order evacuations, determine means of ingress and egress to and from affected areas, and commandeer or utilize private property subject to compensation.³⁹ To effectively facilitate emergency measures, the Governor has the power to issue executive orders, proclamations, and rules, which have the force and effect of law.⁴⁰

III. Effect of Proposed Changes:

The bill creates s. 252.3591 F.S., to provide a 30 day public records exemption for records held by the Division of Emergency Management identifying victims of a disaster or emergency in which a state of emergency is declared by the Governor. A "victim" is defined as a person who is critically injured and death appears to be imminent or a person killed during such an event.

The specific personal information made exempt from public records disclosure requirements includes the victim's name, address, date of birth, and home and cellular telephone numbers.

³⁰ Section 252.35(1) and (2), F.S.

³¹ "Emergency" means any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property (s. 252.34(4), F.S.).

³² Section 252.36(2), F.S.

³³ "Minor disaster" means a disaster that is likely to be within the response capabilities of local government and to result in only a minimal need for state or federal assistance (s. 252.34(2)(c), F.S.).

³⁴ "Major disaster" means a disaster that will likely exceed local capabilities and require a broad range of state and federal assistance (s. 252.34(2)(b), F.S.).

³⁵ "Catastrophic disaster" means a disaster that will require massive state and federal assistance, including immediate military involvement (s. 252.34(2)(a), F.S.)

³⁶ Section 252.36(4)(c), F.S.

³⁷ *Supra* note 32

³⁸ Section 252.36(3), F.S.

³⁹ *See* s. 252.36(6), F.S.

⁴⁰ Section 252.36(1)(b), F.S.

The bill provides a public necessity statement as required by Article I, s. 24(c) of the State Constitution, which provides, in part, that during and immediately after an emergency or a disaster, a victim and his or her family are in a vulnerable state as they attempt to recover from the emergency situation, and that the public availability of the victim's name, address, date of birth, and home and cellular telephone numbers may leave the victim or the victim's family vulnerable to exploitation from those seeking to take advantage of the victim's misfortune. The bill is subject to the Open Government Sunset Review Act and is repealed on October 2, 2028, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill takes effect upon becoming a law.

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 requirements. This bill enacts a new exemption for the personal identifying and location information for persons who are critically injured and death appears to be imminent or a person killed, during a disaster or emergency in which a state of emergency is declared by the Governor, 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 requirements to state with specificity the public necessity justifying the exemption. Section 2. of the bill contains a statement of public necessity for the exemption.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The stated purpose of the law is to protect victims of a declared state of emergency as the person and their family attempt to recover from such an event, and that personal identifying information may leave a victim or their family vulnerable to exploitation. The exemption 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:

The bill may cause the Division of Emergency Management to incur costs associated with redacting the exempt information of disaster victims. However, such costs are likely insignificant and can be absorbed within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 252.3591 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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
