Tab 1 | **SB 738** by Perry; (Similar to CS/H 00411) Public Records and Public Meetings/Firesafety System Plans

Tab 2 | **CS/SB 862** by CJ, Bracy; (Identical to H 00921) Public Records/Sealing of Criminal History Records

Tab 3 | **CS/SB 1018** by CU, Bean (CO-INTRODUCERS) Stargel; (Similar to CS/H 01167) Lifeline Service

Tab 4 | **CS/SB 1212** by CF, Book (CO-INTRODUCERS) Rader; (Similar to CS/H 00417) Public Records/Child Advocacy Centers

Tab 5 | **SB 7016** by AG; (Identical to H 07011) OGSR/School Food and Nutrition Service Program

Tab 6 | **SB 7018** by EE; OGSR/Agency Investigations

Tab 7 | **SB 7020** by EE; (Identical to H 07041) OGSR/Complaints of Violations and Referrals
### Meeting Information

**Meeting Date:** Tuesday, February 6, 2018  
**Time:** 11:00 a.m.—12:30 p.m.  
**Place:** James E. "Jim" King, Jr. Committee Room, 401 Senate Office Building  
**Members:** Senator Baxley, Chair; Senator Mayfield, Vice Chair; Senators Galvano, Rader, Rouson, Stargel, and Stewart

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<tr>
<th>TAB</th>
<th>BILL NO. and INTRODUCER</th>
<th>BILL DESCRIPTION and SENATE COMMITTEE ACTIONS</th>
<th>COMMITTEE ACTION</th>
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</table>
| 1   | SB 738  
Perry  
(Similar CS/H 411) | Public Records and Public Meetings/Firesafety System Plans; Providing an exemption from public records requirements for firesafety system plans held by an agency; providing an exemption from public records and public meetings requirements for information relating to firesafety systems for certain properties and meetings relating to such systems and information; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity, etc. | Favorable  
Yeas 5 Nays 0 |
|     | BI  01/23/2018 Favorable  
GO  02/06/2018 Favorable  
RC | |
| 2   | CS/SB 862  
Criminal Justice / Bracy  
(Identical H 921, Compare H 919, S 690, S 692, Linked CS/S 860) | Public Records/Sealing of Criminal History Records; Expanding an existing public records exemption to include the administrative sealing of specified criminal history records; providing for future review and repeal of the expanded exemption; providing a statement of public necessity, etc. | Favorable  
Yeas 5 Nays 0 |
|     | CJ  01/29/2018 Fav/CS  
GO  02/06/2018 Favorable  
RC | |
| 3   | CS/SB 1018  
Communications, Energy, and Public Utilities / Bean  
(Similar CS/H 1167) | Lifeline Service; Revising the term "eligible telecommunications carrier" to include commercial mobile radio service providers under a specified circumstance, etc. | Fav/CS  
Yeas 5 Nays 0 |
|     | CU  01/10/2018 Fav/CS  
GO  02/06/2018 Fav/CS  
RC | |
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</thead>
<tbody>
<tr>
<td>4</td>
<td>CS/SB 1212</td>
<td>Public Records/Child Advocacy Centers; Providing an exemption from public records requirements to certain identifying and location information of current or former directors, managers, supervisors, and clinical employees of child advocacy centers that meet certain standards and requirements, members of a child protection team, and the spouses and children thereof; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc.</td>
<td>Favorable Yeas 5 Nays 0</td>
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<td>CF 01/16/2018 Fav/CS</td>
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<td>GO 02/06/2018 Favorable</td>
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<td>RC</td>
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<td>5</td>
<td>SB 7016</td>
<td>OGSR/School Food and Nutrition Service Program; Amending provisions relating to an exemption from public record requirements for personal identifying information of an applicant for or participant in a school food and nutrition service program; removing the scheduled repeal of the exemption, etc.</td>
<td>Favorable Yeas 5 Nays 0</td>
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<td>Agriculture</td>
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<td>(Identical H 7011)</td>
<td>GO 02/06/2018 Favorable</td>
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<td>RC</td>
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<tr>
<td>6</td>
<td>SB 7018</td>
<td>OGSR/Agency Investigations; Amending provisions which provides an exemption from public records requirements for complaints of misconduct filed with an agency against an agency employee, and all information obtained pursuant to an agency investigation of such complaints; removing the scheduled repeal of the exemption, etc.</td>
<td>Favorable Yeas 5 Nays 0</td>
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<td>Ethics and Elections</td>
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<td>7</td>
<td>SB 7020</td>
<td>OGSR/Complaints of Violations and Referrals; Amending provisions which provides exemptions from public records and public meetings requirements for complaints alleging a violation of part III of ch. 112, F.S., and related records that are held by the Commission on Ethics or its agents and specified local government entities, for written referrals and related records that are held by the commission or its agents, the Governor, the Department of Law Enforcement, and state attorneys, and for portions of meetings at which complaints or referrals are discussed or acted upon; removing the scheduled repeal of the exemptions, etc.</td>
<td>Favorable Yeas 5 Nays 0</td>
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<td>Ethics and Elections</td>
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<td>(Identical H 7041)</td>
<td>GO 02/06/2018 Favorable</td>
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**Senate Confirmation Hearing:** A public hearing will be held for consideration of the below-named executive appointments to the offices indicated.

<table>
<thead>
<tr>
<th>TAB</th>
<th>OFFICE and APPOINTMENT (HOME CITY)</th>
<th>FOR TERM ENDING</th>
<th>COMMITTEE ACTION</th>
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</thead>
<tbody>
<tr>
<td>8</td>
<td>McGould, Sean (North Palm Beach)</td>
<td>02/01/2020</td>
<td>Recommend Confirm Yeas 5 Nays 0</td>
</tr>
</tbody>
</table>

**Executive Director, Agency for State Technology**

<table>
<thead>
<tr>
<th>TAB</th>
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<th>FOR TERM ENDING</th>
<th>COMMITTEE ACTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>9</td>
<td>Larson, Eric (Tallahassee)</td>
<td>Pleasure of Governor</td>
<td>Recommend Confirm Yeas 5 Nays 0</td>
</tr>
</tbody>
</table>
I. Summary:

SB 738 makes confidential and exempt from public records requirements in s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution, firesafety system plans for any state owned or leased property and any privately owned or leased property and information relating to such systems that are held by a state agency. The bill also makes confidential and exempt from public meeting requirements any portion of a meeting that would reveal a firesafety system plan that is exempt from public records requirements. The exemption is incorporated into the existing public records and public meeting exemptions for security systems.

The exemptions are necessitated because firesafety systems are often integrated with security systems. It is believed that disclosure of sensitive information relating to the firesafety systems could result in identification of vulnerabilities in the firesafety or security systems and allow a security breach that could damage the systems and disrupt their safe and reliable operation.

Because the bill expands a public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

The bill has an effective date of upon becoming law and provides for repeal of the exemption on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

II. Present Situation:

Public Records Law

The Florida 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

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¹ FLA. CONST., art. I, s. 24(a).
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

In addition to the Florida Constitution, the Florida Statutes provide that the public may access
legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public
records laws, and is known as the Public Records Act.⁴ 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.⁵

According to the Public Records Act, a public record includes virtually any document or
recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme
Court has interpreted public records as being “any material prepared in connection with official
agency business which is intended to perpetuate, communicate or formalize knowledge of some
type.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may create an exemption to open meetings requirements by passing a general
law by a two-thirds vote of the House and the Senate.⁹ The exemption must explicitly lay out the
public necessity justifying the exemption, and must be no broader than necessary to accomplish
the stated purpose of the exemption.¹⁰ A statutory exemption which does not meet these two
criteria may be unconstitutional and may not be judicially saved.¹¹

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² Id.
³ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So.2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are primarily located in s. 11.0431(2)-(3), F.S.
⁴ Public records laws are found throughout the Florida Statutes.
⁵ Section 119.01(1), F.S.
⁶ Section 119.011(12), F.S., defines “public record” to mean “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 connection with the transaction of official business by any agency.” 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.”
⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So.2d 633, 640 (Fla. 1980).
⁸ s. 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 *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So.2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme
Court found 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. Id. at 570. The Florida Supreme Court also declined to
narrow the exemption in order to save it. Id. In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So.2d
189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker
County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. Id. at 196.
When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’ Records designated as ‘confidential and exempt’ may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as ‘exempt’ may be released at the discretion of the records custodian under certain circumstances.

**Open Meetings Laws**

The Florida Constitution provides that the public has a right to access governmental meetings. Each collegial body must provide notice of its meetings to the public and permit the public to attend any meeting at which official acts are taken or at which public business is transacted or discussed. This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts, or special districts.

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., which is also known as the “Government in the Sunshine Law” or the “Sunshine Law,” requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be open to the public. The board or commission must provide the public reasonable notice of such meetings. Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin or economic status or which operates in a manner that unreasonably restricts the public’s access to the facility. Minutes of a public meeting must be promptly recorded and open to public inspection. Failure to abide by open meetings requirements will invalidate any resolution, rule, or formal action adopted at a meeting. A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of the House and the Senate. The exemption must explicitly lay out

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12 If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

13 A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So.2d 683 (Fla. 5th DCA 1991).

14 FLA. CONST., art. I, s. 24(b).

15 *Id.*

16 FLA. CONST., art. I, s. 24(b). Meetings of the Legislature are governed by Article III, section 4(e) of the Florida Constitution, which states: “The rules of procedure of each house shall further provide that all prearranged gatherings, between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public.”


18 *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).

19 Section 286.011(1)-(2), F.S.

20 *Id.*

21 Section 286.011(6), F.S.

22 Section 286.011(2), F.S.

23 Section 286.011(1), F.S.

24 Section 286.011(3), F.S.

25 FLA. CONST., art. I, s. 24(c).
the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.26 A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.27

Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public records.28 The OGSR provides that an exemption automatically repeals 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.29 In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

The OGSR 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.30 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 subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;31
- Releasing sensitive personal information 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;32 or
- It protects trade or business secrets.33

The OGSR also requires specified questions to be considered during the review process.34 In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

26 Id.
27 See supra note 11.
28 Section 119.15, F.S. According to s. 119.15(4)(b), F.S., a substantially amended exemption is one that is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.
29 Section 119.15(3), F.S.
30 Section 119.15(6)(b), F.S.
31 Section 119.15(6)(b)1., F.S.
32 Section 119.15(6)(b)2., F.S.
33 Section 119.15(6)(b)3., F.S.
34 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?
If the Legislature expands an exemption, then a public necessity statement and a two-thirds vote for passage are required.\textsuperscript{35} If the exemption is reenacted 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 sunset, the previously exempt records will remain exempt unless otherwise provided for by law.\textsuperscript{36}

\textbf{Exemptions Related to Security Systems}

Current law provides public record and public meeting exemptions for certain information related to security systems. The law specifies the circumstances under which the information may be disclosed and to whom it may be disclosed.

\textbf{Public Records and Public Meeting Exemptions for Security System Plans}

Section 119.071(3)(a)1., F.S., defines “security system plan” to include all:

- Records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to the physical security of the facility or revealing security systems;
- Threat assessments conducted by any agency or any private entity;
- Threat response plans;
- Emergency evacuation plans;
- Sheltering arrangements; or
- Manuals for security personnel, emergency equipment, or security training.

A security system plan or any portion thereof that is held by an agency is confidential and exempt from public record requirements if the plan is for:

- Any property owned by or leased to the state or any of its political subdivisions; or
- Any privately owned or leased property.\textsuperscript{37}

An agency is authorized to disclose the confidential and exempt information:

- To the property owner or leaseholder;
- In furtherance of the official duties and responsibilities of the agency holding the information;
- To another local, state, or federal agency in furtherance of that agency’s official duties and responsibilities; or
- Upon a showing of good cause before a court of competent jurisdiction.\textsuperscript{38}

Section 281.301, F.S., provides that information relating to security systems that is in the possession of an agency is confidential and exempt from public record and public meeting requirements if the security systems are for:

- Any property owned by or leased to the state or any of its political subdivisions; or
- Any privately owned or leased property.

\textsuperscript{35} FLA. CONST., art. I, s. 24(c).
\textsuperscript{36} Section 119.15(7), F.S.
\textsuperscript{37} Section 119.071(3)(a)2., F.S.
\textsuperscript{38} Section 119.071(3)(a)3., F.S.
The law specifies that the protected information includes all records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to or revealing such systems or information.

An agency is authorized to disclose the confidential and exempt information:
- To the property owner or leaseholder;
- In furtherance of the official duties and responsibilities of the agency holding the information;
- To another local, state, or federal agency in furtherance of that agency’s official duties and responsibilities; or
- Upon a showing of good cause before a court of competent jurisdiction.

Section 286.0113, F.S., provides any portion of a meeting that would reveal a security system plan or portion thereof is exempt from public meeting requirements.

III. Effect of Proposed Changes:

Section 1 amends s. 119.071(3), F.S., to make confidential and exempt from public records requirements in s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution, firesafety system plans for any state owned or leased property or any of its political subdivisions and any privately owned or leased property and information relating to such systems that are held by a state agency.

The bill specifies that the public record exemption must be given retroactive application because it is remedial in nature. Thus, records of firesafety system plans and records relating to firesafety systems in existence prior to the effective date of the bill will be protected by the exemption.

This section is subject to the OGSR in accordance with s. 119.15, F.S., and stands repealed on Oct. 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 amends s. 281.301, F.S., to make confidential and exempt from public records requirements in s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution, firesafety system plans for any state owned or leased property or any of its political subdivisions and any privately owned or leased property and information relating to such systems that are held by a state agency.

The bill also makes confidential and exempt from public meeting requirements in s. 286.011, F.S., and s. 24(b), Art. I of the State Constitution, any portion of a meeting that would reveal a firesafety system plan that is exempt from public records requirements.

Section 3 amends s. 286.0113, F.S., to make confidential and exempt from public meeting requirements in s. 286.011, F.S., and s. 24(b), Art. I of the State Constitution, any portion of a meeting that would reveal a firesafety system plan that is exempt from public records requirements.

This section is subject to the OGSR in accordance with s. 119.15, F.S., and stands repealed on Oct. 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.
Section 4 provides a public necessity statement as required by the State Constitution, specifying that as firesafety systems become more integrated with security systems, disclosure of sensitive information relating to the firesafety systems could result in identification of vulnerabilities in the systems and allow a security breach that could damage the systems and disrupt their safe and reliable operation.

Section 5 provides that the bill is effective upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Voting Requirement
Article I, Section 24(c) of the Florida Constitution requires a two-thirds vote of each chamber for public records exemptions to pass.

Public Necessity Statement
Article I, Section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public records exemption. The Florida Constitution provides that an exemption must state with specificity the public necessity of the exemption. The public necessity statement provides that the exemption is needed to protect the public health and safety and economic well-being of the state and to prevent disclosure of sensitive information relating to firesafety systems that could result in identification of vulnerabilities in such systems and allow a security breach that could damage firesafety systems and disrupt their safe and reliable operation.

Breadth of Exemption
Article I, Section 24(c) of the Florida Constitution requires a newly created or expanded public records exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill exempts firesafety system plans for any state owned or leased property and any privately owned or leased property and information relating to such systems that are held by a state agency. This bill appears to be no broader than necessary to accomplish the public necessity for this public records exemption.

C. Trust Funds Restrictions:

None.

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.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 119.071, 281.301, and 286.0113.

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.
A bill to be entitled
An act relating to public records and public meetings;
amending s. 119.071, F.S.; providing an exemption from
public records requirements for firesafety system
plans held by an agency; amending s. 281.301, F.S.;
providing an exemption from public records and public
meetings requirements for information relating to
firesafety systems for certain properties and meetings
relating to such systems and information; amending s.
286.0113, F.S.; providing an exemption from public
meetings requirements for portions of meetings that
would reveal firesafety system plans held by an
agency; providing for future legislative review and repeal of
the exemptions; providing a statement of public
necessity; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (3) of section
119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of
public records.—

(3) SECURITY AND FIRESAFETY.—

(a) As used in this paragraph, the term “security or
firesafety system plan” includes all:

a. Records, information, photographs, audio and visual
presentations, schematic diagrams, surveys, recommendations, or
consultations or portions thereof relating directly to the
physical security or firesafety of the facility or revealing
security or firesafety systems;

b. Threat assessments conducted by any agency or any
private entity;

c. Threat response plans;

d. Emergency evacuation plans;

e. Sheltering arrangements; or

f. Manuals for security or firesafety personnel, emergency
equipment, or security or firesafety training.

2. A security or firesafety system plan or portion thereof
held by an agency is confidential and exempt from s. 119.07(1)
and s. 24(a), Art. I of the State Constitution. This exemption
is remedial in nature, and it is the intent of the Legislature
that this exemption apply to security or firesafety system plans
held by an agency before, on, or after the effective date of
this paragraph. This paragraph is subject to the Open Government
Sunset Review Act in accordance with s. 119.15 and shall stand
repealed on October 2, 2023, unless reviewed and saved from
repeal through reenactment by the Legislature.

3. Information made confidential and exempt by this
paragraph may be disclosed:

a. To the property owner or leaseholder;

b. In furtherance of the official duties and
responsibilities of the agency holding the information;
Section 4. (1) The Legislature finds that it is a public necessity that:

(a) Fire safety system plans held by an agency be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution.

(b) Information relating to fire safety systems for any property owned by or leased to the state or any of its political subdivisions or which is in the possession of an agency be made confidential and exempt by s. 119.071(3)(a) is exempt from s. 286.011 and s. 119.011(2), including all records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to or revealing such systems or information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, and any portion of a meeting all meetings relating directly to or that would reveal such systems or information is confidential and exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution, ss. 119.07(1), 286.011 and other laws and rules requiring public access or disclosure. This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

(2) Information made confidential and exempt by this section may be disclosed:

(a) To the property owner or leaseholder;

(b) In furtherance of the official duties and responsibilities of the agency holding the information;

(c) To another local, state, or federal agency in furtherance of that agency's official duties and responsibilities;

(d) Upon a showing of good cause before a court of competent jurisdiction.

Section 3. Subsection (1) of section 286.0113, Florida Statutes, is amended to read:

286.0113 General exemptions from public meetings.—

(1) That portion of a meeting that would reveal a security or fire safety system plan or portion thereof made confidential and exempt by s. 119.071(3)(a) is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

8-00823-18 2018738__
s. 24(a), Article I of the State Constitution, and any portion of a meeting relating directly to or that would reveal such systems or information be made confidential and exempt from s. 286.011, Florida Statutes, and s. 24(b), Article I of the State Constitution.

(c) Any portion of a meeting revealing firesafety system plans held by an agency be made confidential and exempt from s. 286.011, Florida Statutes, and s. 24(b), Article I of the State Constitution.

(2) As firesafety systems become more connected and integrated with security systems, this connectivity and integration exposes such systems to threats intended to disable their operation. Disabling a firesafety system could impact the safety of individuals within the building and the integrity of the building’s security system. Maintaining safe and reliable firesafety systems is vital to protecting the public health and safety and ensuring the economic well-being of the state. Disclosure of sensitive information relating to firesafety systems could result in identification of vulnerabilities in such systems and allow a security breach that could damage firesafety systems and disrupt their safe and reliable operation, adversely impacting the public health and safety and economic well-being of the state. Because of the interconnected nature of firesafety and security systems, such a security breach may also impact security systems. As a result, the Legislature finds that the public and private harm in disclosing the information made exempt by this act outweighs any public benefit derived from the disclosure of such information. The protection of information made exempt by this act will ensure that firesafety systems are better protected against security threats and will bolster efforts to develop more resilient firesafety systems. Therefore, the Legislature finds that it is a public necessity to make firesafety system plans held by an agency and information relating to firesafety systems for certain properties exempt from public records and public meetings requirements.

(3) The Legislature further finds that these public meetings and public records exemptions must be given retroactive application because they are remedial in nature.

Section 5. This act shall take effect upon becoming a law.
To: Senator Dennis Baxley, Chair
   Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: January 26, 2018

I respectfully request that Senate Bill #738, relating to Public Records/Fire System Plans, be placed on the:

☑ committee agenda at your earliest possible convenience.

☐ next committee agenda.

W. Keith Perry
Senator Keith Perry
Florida Senate, District 8

File signed original with committee office S-020 (03/2004)
I. Summary:

CS/SB 862, which is linked to the passage of CS/SB 860, expands an existing public records exemption to include administratively sealed criminal history records.

An administratively sealed record is a criminal history record of a minor arrested or charged with a felony, misdemeanor, or violation of a comparable rule or ordinance by a state, county, municipal, or other law enforcement agency that is sealed upon notification by the clerk of the court that all the charges related to the arrest or incident of alleged criminal activity:

- Were declined to be filed by the state attorney or statewide prosecutor;
- Were dismissed or nolle prosequi before trial; or
- Resulted in a judgment of acquittal or a not guilty verdict.

The expansion of the exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2023, unless reviewed and saved from repeal by the Legislature. The bill provides a statement of public necessity as required by the State Constitution.

The Florida Constitution requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage because it expands an existing public records exemption.

The bill takes effect on the same date that CS/SB 860 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.
II. Present Situation:

Public Records Law

The Florida 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.\(^2\)

In addition to the Florida Constitution, the Florida Statutes provides that the public may access legislative and executive branch records.\(^3\) Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.\(^4\) The Public Records Act states that:

\[
\text{[i]t is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.}^{5}
\]

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.\(^6\) The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”\(^7\) A violation of the Public Records Act may result in civil or criminal liability.\(^8\)

The Legislature may create an exemption to public records requirements.\(^9\) An exemption must pass by a two-thirds vote of the House and the Senate.\(^10\) In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.\(^11\) A statutory

\(^1\) FLA. CONST., art. I, s. 24(a).
\(^2\) \textit{Id.}
\(^3\) The Public Records Act does not apply to legislative or judicial records. \textit{Locke v. Hawkes}, 595 So. 2d 32 (Fla. 1992). Also see \textit{Times Pub. Co. v. Ake}, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.
\(^4\) Public records laws are found throughout the Florida Statutes.
\(^5\) Section 119.01(1), F.S.
\(^6\) Section 119.011(12), F.S., defines “public record” to mean “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 connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” to mean “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.”
\(^7\) \textit{Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.}, 379 So. 2d 633, 640 (Fla. 1980).
\(^8\) 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).
\(^10\) \textit{Id.}
\(^11\) \textit{Id.}
exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.\textsuperscript{12}

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”\textsuperscript{13} Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as “exempt” are not required to be made available for public inspection, but may be released at the discretion of the records custodian under certain circumstances.\textsuperscript{14}

**Open Government Sunset Review Act**

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public records.\textsuperscript{15} The OGSR provides that an exemption automatically repeals 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.\textsuperscript{16} In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

The OGSR 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.\textsuperscript{17} 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 subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;\textsuperscript{18}
- Releasing sensitive personal information 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;\textsuperscript{19} or
- It protects trade or business secrets.\textsuperscript{20}

\textsuperscript{12} *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So.2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found 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. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

\textsuperscript{13} If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

\textsuperscript{14} *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

\textsuperscript{15} Section 119.15, F.S. According to s. 119.15(4)(b), F.S., a substantially amended exemption is one that is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

\textsuperscript{16} Section 119.15(3), F.S.

\textsuperscript{17} Section 119.15(6)(b), F.S.

\textsuperscript{18} Section 119.15(6)(b)1., F.S.

\textsuperscript{19} Section 119.15(6)(b)2., F.S.

\textsuperscript{20} Section 119.15(6)(b)3., F.S.
The OGSR also requires specified questions to be considered during the review process. In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the Legislature expands an exemption, then a public necessity statement and a two-thirds vote for passage are required. If the exemption is reenacted 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 sunset, the previously exempt records will remain exempt unless otherwise provided for by law.

**Court-ordered Sealing of Criminal History Records**

Florida law makes adult criminal history records accessible to the public unless the record has been sealed or expunged. Section 943.059, F.S., provides the procedure for sealing a criminal history record, which places a record under highly restricted access pursuant to court order.

A person seeking to have his or her criminal history record sealed must obtain a certificate of eligibility for sealing pursuant to requirements set forth in s. 943.059(2), F.S., and subsequently petition the court to seal the record.

A criminal history record of a minor or an adult which is ordered sealed by a court pursuant to s. 943.059, F.S., is confidential and exempt from the provisions of s. 119.07(1), F.S., and Article I, s. 24(a) of the State Constitution. Such record is available only to:

- The person who is the subject of the record;
- The subject’s attorney;
- Criminal justice agencies for their respective criminal justice purposes;
- Judges in the state courts system for the purpose of assisting them in their case-related decision making responsibilities; and
- Specified entities set forth in s. 943.059(4)(a), F.S., for their respective licensing, access authorization, and employment purposes.

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21 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?

22 FLA. CONST., art. I, s. 24(c).

23 Section 119.15(7), F.S.


25 “Sealing of a criminal history record” is the preservation of a record under such circumstances that it is secure and inaccessible to any person not having a legal right of access to the record or the information contained and preserved therein. Section 943.045(19), F.S.

26 Section 943.059, F.S.

27 Section 943.059(4), F.S.

28 Id.
The person who has their criminal history record sealed may lawfully deny or fail to acknowledge the records that were sealed, unless they are:

- A defendant in a criminal prosecution;
- Seeking appointment as a guardian, a position with a criminal justice agency, or a license by the Division of Insurance Agent and Agency Services within the Department of Financial Services;
- Seeking to be employed or licensed by or to contract with the Department of Children and Families, the Division of Vocational Education within the Department of Education, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the disabled, or the elderly;
- Seeking to be employed or licensed by the Department of Education, a district school board, a university laboratory school, a charter school, a private or parochial school, or a local governmental entity that licenses child care facilities;
- Petitioning to have a court-ordered criminal history record expunged or sealed\(^{29}\) or petitioning for relief under s. 943.0583, F.S.;\(^{30}\)
- A candidate for admission to The Florida Bar;
- Attempting to purchase a firearm from a licensed importer, licensed manufacturer, or licensed dealer and is subject to a criminal history check under state or federal law; or
- Seeking to be licensed by the Bureau of License Issuance of the Division of Licensing within the Department of Agriculture and Consumer Services to carry a concealed weapon or concealed firearm.\(^{31}\)

The Florida Department of Law Enforcement (FDLE) must disclose the sealed criminal history record to the entities listed above for their respective licensing, access authorization, and employment purposes. An employee of an entity listed above may only disclose information relating to the existence of a sealed criminal history record to the person to whom the criminal history record relates or to persons having direct responsibility for employment, access authorization, or licensure decisions.\(^ {32}\)

If a person has his or her criminal record sealed, he or she may not be held under any provision of law of this state to commit perjury or otherwise be liable for giving a false statement for failure to acknowledge a sealed criminal history record.\(^ {33}\)

**Administrative Sealing**

CS/SB 860, which is linked to CS/SB 862, creates a process for the administrative sealing of certain criminal history records of a minor.

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\(^{29}\) Section 943.0585, F.S.

\(^{30}\) Section 943.0583, F.S., provides for expunction of criminal history record for victims of human trafficking.

\(^{31}\) Section 943.059(4)(a), F.S.

\(^{32}\) Section 943.059(4)(c), F.S.

\(^{33}\) This is subject to the exceptions enumerated in s. 943.059(4)(a), F.S., whereby a person must acknowledge a sealed criminal history record under certain circumstances. See s. 943.059(4)(b), F.S.
A criminal history record of a minor arrested or charged with a felony, misdemeanor, or violation of a comparable rule or ordinance by a state, county, municipal, or other law enforcement agency is administratively sealed upon notification by the clerk of the court that all the charges related to the arrest or incident of alleged criminal activity:

- Were declined to be filed by the state attorney or statewide prosecutor;
- Were dismissed or nolle prosequi before trial; or
- Resulted in a judgment of acquittal or a not guilty verdict.

Additionally, all appeals must have been exhausted by the prosecution or the time to file an appeal must have expired in order for a record to be administratively sealed.

III. Effect of Proposed Changes:

Section 1 expands the public records exemption for sealed records in s. 943.059, F.S., to include records administratively sealed pursuant to s. 943.0586, F.S.

An administratively sealed criminal history record would be treated the same as a record sealed pursuant to s. 943.059, F.S., making such record confidential and exempt and only available to certain people. Additionally, the person who is the subject of the criminal history record that is administratively sealed would be permitted to lawfully deny or fail to acknowledge the existence of the record, with limited exceptions.\textsuperscript{34}

The bill repeals the expansion of the exemption on October 2, 2023, unless reviewed and saved from repeal by the Legislature.

The bill provides that s. 943.059, F.S., shall revert to that in existence on June 30, 2018, if the expansion of the exemption is not saved from repeal. The bill provides that any amendments made to s. 943.059, F.S., shall be preserved and continue to operate to the extent that such amendments are not dependent upon the portions of text which are not saved from repeal.

Section 2 provides a statement of public necessity as required by the Florida Constitution.\textsuperscript{35} The statement includes the following findings:

- The presence of a criminal history record in a minor’s past which has not been validated through criminal proceedings can jeopardize his or her ability to obtain education, employment, and other opportunities necessary to become a productive, contributing, self-sustaining member of society; and
- Such negative consequences are unwarranted in cases in which a minor was not found to have committed the offense that is the subject of the sealed criminal history record.

Section 3 provides that the bill takes effect on the same date that CS/SB 860 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof, and becomes law.

\textsuperscript{34} See s. 943.059(4), F.S.

\textsuperscript{35} Article I, s. 24(c), FLA. CONST.
IV. **Constitutional Issues:**

A. **Municipality/County Mandates Restrictions:**

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties’ or municipalities’ ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. **Public Records/Open Meetings Issues:**

This bill expands a public records exemption. Therefore, the following constitutional requirements apply.

**Substance of the Bill**

Article I, s. 24(c) of the State Constitution requires that laws enacted to exempt records from public inspection must contain only exemptions and relate to one subject. This bill expands a public records exemption related to sealed criminal history records.

**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 newly created public record or public meeting exemption. The bill expands a public records exemption; thus, it requires a two-thirds vote for final passage.

**Public Necessity Statement**

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands a public records exemption and includes a public necessity statement for the expansion.

**Breadth of Exemption**

Article I, s. 24(c) of the State Constitution requires a public records exemption to be no broader than necessary to accomplish the stated purpose of the law. Based on the legislative findings in the statement of public necessity, this expansion of a public records exemption appears to be no broader than necessary to accomplish the stated purpose.

C. **Trust Funds Restrictions:**

None.

V. **Fiscal Impact Statement:**

A. **Tax/Fee Issues:**

None.
B. **Private Sector Impact:**

None.

C. **Government Sector Impact:**

The bill may have a minimal fiscal impact on agencies responsible for complying with public records requests and redacting confidential and exempt information prior to releasing a record. However, these costs should be able to be absorbed with existing resources.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

CS/SB 860 is the related administrative sealing bill linked to this bill.

VIII. **Statutes Affected:**

This bill substantially amends section 943.059 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.)

**CS by Criminal Justice on January 29, 2018:**

The Committee Substitute updates a reference to CS/SB 860.

B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.
By the Committee on Criminal Justice; and Senator Bracy

591-02589-18 2018862c1

A bill to be entitled
An act relating to public records; amending s.
943.059, F.S.; expanding an existing public records
exemption to include the administrative sealing of
specified criminal history records; conforming
provisions to changes made by the act; providing for
future review and repeal of the expanded exemption;
providing for reversion of specified language if the
exemption is not saved from repeal; providing a
statement of public necessity; providing a contingent
effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (4) of section 943.059, Florida
Statutes, is amended to read:

943.059 Court-ordered sealing of criminal history records.—
The courts of this state shall continue to have jurisdiction
over their own procedures, including the maintenance, sealing,
and correction of judicial records containing criminal history
information to the extent such procedures are not inconsistent
with the conditions, responsibilities, and duties established by
this section. Any court of competent jurisdiction may order a
criminal justice agency to seal the criminal history record of a
minor or an adult who complies with the requirements of this
section. The court shall not order a criminal justice agency to
seal a criminal history record until the person seeking to seal
a criminal history record has applied for and received a
certificate of eligibility for sealing pursuant to subsection

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (4) of section 943.059, Florida
Statutes, is amended to read:

943.059 Court-ordered sealing of criminal history records.—
The courts of this state shall continue to have jurisdiction
over their own procedures, including the maintenance, sealing,
and correction of judicial records containing criminal history
information to the extent such procedures are not inconsistent
with the conditions, responsibilities, and duties established by
this section. Any court of competent jurisdiction may order a
criminal justice agency to seal the criminal history record of a
minor or an adult who complies with the requirements of this
section. The court shall not order a criminal justice agency to
seal a criminal history record until the person seeking to seal
a criminal history record has applied for and received a
certificate of eligibility for sealing pursuant to subsection

CODING: Words *stricken* are deletions; words *underlined* are additions.
to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to sealing, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the sealing of any criminal history record, and any request for sealing a criminal history record may be denied at the sole discretion of the court.

(4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal history record of a minor or an adult which is ordered sealed by a court pursuant to this section or sealed administratively pursuant to s. 943.0586 is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and is available only to the person who is the subject of the record, to the subject’s attorney, to criminal justice agencies for their respective criminal justice purposes, which include conducting a criminal history background check for approval of firearms purchases or transfers as authorized by state or federal law, to judges in the state courts system for the purpose of assisting them in their case-related decisionmaking responsibilities, as set forth in s. 943.053(5), or to those entities set forth in subparagraphs (a)1., 4., 5., 6., 8., 9., and 10. for their respective licensing, access authorization, and employment purposes.

(a) The subject of a criminal history record sealed under this section, under s. 943.0586, or under other provisions of law, including former s. 893.14, former s. 901.33, and former s. 943.058, may lawfully deny or fail to acknowledge the arrests covered by the sealed record, except when the subject of the record:

1. Is a candidate for employment with a criminal justice agency;
2. Is a defendant in a criminal prosecution;
3. Concurrently or subsequently petitions for relief under this section, s. 943.0583, or s. 943.0585;
4. Is a candidate for admission to The Florida Bar;
5. Is seeking to be employed or licensed by or to contract with the Department of Children and Families, the Division of Vocational Rehabilitation within the Department of Education, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the disabled, or the elderly;
6. Is seeking to be employed or licensed by the Department of Education, a district school board, a university laboratory school, a charter school, a private or parochial school, or a local governmental entity that licenses child care facilities;
7. Is attempting to purchase a firearm from a licensed importer, licensed manufacturer, or licensed dealer and is subject to a criminal history check under state or federal law;
8. Is seeking to be licensed by the Division of Insurance Agent and Agency Services within the Department of Financial Services;
9. Is seeking to be appointed as a guardian pursuant to s. 744.3125; or
10. Is seeking to be licensed by the Bureau of License Issuance of the Division of Licensing within the Department of
Agriculture and Consumer Services to carry a concealed weapon or concealed firearm. This subparagraph applies only in the determination of an applicant’s eligibility under s. 790.06.

(b) Subject to the exceptions in paragraph (a), a person who has been granted a sealing under this section, s. 943.0586, former s. 893.14, former s. 901.33, or former s. 943.058 may not be held under any provision of law of this state to commit perjury or to be otherwise liable for giving a false statement by reason of such person’s failure to recite or acknowledge a sealed criminal history record.

(c) Information relating to the existence of a sealed criminal record provided in accordance with the provisions of paragraph (a) is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that the department shall disclose the sealed criminal history record to the entities set forth in subparagraphs (a)1., 4., 5., 6., 8., 9., and 10. for their respective licensing, access authorization, and employment purposes. An employee of an entity set forth in subparagraph (a)1., subparagraph (a)4., subparagraph (a)5., subparagraph (a)6., subparagraph (a)8., subparagraph (a)9., or subparagraph (a)10. may not disclose information relating to the existence of a sealed criminal history record of a person seeking employment, access authorization, or licensure with such entity or contractor, except to the person to whom the criminal history record relates or to persons having direct responsibility for employment, access authorization, or licensure decisions. A person who violates the provisions of this paragraph commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(d) The expansion of the public records exemption under this subsection to include records sealed administratively under s. 943.0586 is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature. If the expansion of the exemption is not saved from repeal, this subsection shall revert to that in existence on June 30, 2018, except that any amendments to such text other than by this act shall be preserved and continue to operate to the extent that such amendments are not dependent upon the portions of text which expire pursuant to this paragraph.

Section 2. The Legislature finds that it is a public necessity that the criminal history records of a minor which have been administratively sealed pursuant to s. 943.0586, Florida Statutes, because a case was not filed, was dismissed or nolle prosequi, or resulted in the granting of a judgment of acquittal or verdict of not guilty be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The presence of a criminal history record in a minor’s past which has not been validated through criminal proceedings can jeopardize his or her ability to obtain education, employment, and other opportunities necessary to becoming a productive, contributing, self-sustaining member of society. Such negative consequences are unwarranted in cases in which the minor was not found to have committed the offense that is the subject of the sealed criminal history record. For these reasons, the Legislature finds that it...
is a public necessity that the criminal history records of minors which have been administratively sealed be confidential and exempt from public records requirements.

Section 3. This act shall take effect on the same date that SB 860 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.
To: Senator Dennis Baxley, Chair  
Committee on Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: January 30, 2018

I respectfully request that Senate Bill #862, relating to Public Records/Sealing of Criminal History Records, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Randolph Bracy  
Florida Senate, District 11
I. Summary:

CS/CS/SB 1018 amends s. 364.10, F.S., relating to Lifeline services, to authorize the Public Service Commission (PSC) to designate a commercial mobile radio service (CMRS) provider as an eligible telecommunications carrier, upon petition, for the limited purpose of providing Lifeline service. The section conforms to federal Lifeline service guidelines by:

- Requiring a subscriber to present proof of continued eligibility upon request of the eligible telecommunications carrier.
- Revising the income eligibility test to 135 from 150 percent or less of federal poverty income guidelines.

The bill removes obsolete language, and makes technical and conforming changes.

Section 364.107, F.S., relating to public records exemptions, is amended to clarify that the Federal Communication Commission or its designee may receive confidential and exempt information for purposes directly connected with eligibility for, verification related to, or auditing of a Lifeline Assistance Plan.

This bill takes effect July 1, 2018.
II. **Present Situation:**

The Lifeline program was created by the federal government in 1985 to provide phone service discounts for qualifying low-income consumers as part of the federal Universal Service Program. In 2016, the Federal Communications Commission (FCC) adopted a comprehensive modernization reform adding broadband access to the Lifeline program. As a result, qualifying households may either receive up to a $9.25 discount on their monthly phone or broadband bill or receive a free Lifeline cell phone and limited voice or broadband from certain wireless carriers.¹ ²

In Florida, the PSC oversees the Lifeline program³ and Lifeline services are provided to eligible customers by an “eligible telecommunications carrier,” a term defined to mean “a telecommunications company, as defined by s. 364.02, which is designated as an eligible telecommunications carrier by the commission pursuant to 47 C.F.R. s. 54.201.”⁴

The commission only evaluates applications for eligible telecommunications carrier (ETC) designation from wireline companies, leaving wireless applications to be evaluated by the FCC.⁵ The commission explains this position as follows: “The Florida 2011 Legislature (HB 1231), removed the FPSC authority to designate ETC wireless providers. Effective July 1, 2012, wireless providers must directly apply for Florida ETC designation with the FCC.”⁶

In 2011, the Florida Legislature passed the “Regulatory Reform Act,” completing its deregulation of retail landline telecommunications service providers. Prior to this Act, s. 364.011, F.S., in part, exempted wireless communications from PSC jurisdiction except as “specifically authorized by federal law.” The Act deleted the quoted language from this statute.⁷ This appears to be the statutory change that the PSC refers to as removing its authority to designate a wireless carrier as an ETC.

Section 364.107, F.S., provides that personal identifying information of a participant in a telecommunications carrier’s Lifeline Assistance Plan under s. 364.10, F.S., held by the Public Service Commission is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. Information made confidential and exempt may be released to the applicable telecommunications carrier for purposes directly connected with eligibility for, verification related to, or auditing of a Lifeline Assistance Plan.

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¹ Florida Public Service Commission, *Florida Lifeline Assistance: Number of Customers Subscribing to Lifeline Service And the Effectiveness of Procedures to Promote Participation*, pg. 3 (Dec. 2017).
³ Section 364.10, F.S.
⁴ Section 364.10(1)(a), F.S.
⁷ Section 3, Ch. 2011-36, L.O.F.
III. Effect of Proposed Changes:

Section 1 amends s. 364.10, F.S., on Lifeline services, to authorize the PSC to designate a commercial mobile radio service (CMRS) provider as an eligible telecommunications carrier, upon petition, for the limited purpose of providing Lifeline service.

The bill conforms the section to federal Lifeline service guidelines by:

- Requiring a subscriber to present proof of continued eligibility upon request of the eligible telecommunications carrier.
- Revising the income eligibility test to 135 from 150 percent or less of federal poverty income guidelines.

The bill removes obsolete language, and makes technical and conforming changes.

Section 2 amends s. 364.107, F.S., relating to public records exemptions, to clarify that the Federal Communication Commission or its designee may receive confidential and exempt information for purposes directly connected with eligibility for, verification related to, or auditing of a Lifeline Assistance Plan.

The bill takes effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties’ or municipalities’ ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill should allow wireless communications services providers to obtain an eligible telecommunications carrier designation quicker, thereby allowing them to provide
Lifeline service to eligible customers and obtain Universal Service payments quicker. This should benefit both the carriers and customers.

C. **Government Sector Impact:**

The PSC may incur costs associated with designating these carriers as eligible telecommunications carriers.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends section 364.10 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.)

**CS/CS by Governmental Oversight and Accountability on February 6, 2018:**

- Retains the original intent of authorizing the Public Service Commission to certify a commercial mobile radio service provider as an eligible telecommunications carrier for the limited purpose of providing Lifeline services, but rewrites the language for clarity.
- Makes further changes to s. 364.10, F.S., as requested by the commission, to update the statute to conform to changes in the industry and in federal law;
- Amends s. 364.107, F.S., on public records relating to Lifeline services, as requested by the commission, to authorize the commission to release confidential and exempt information to the Federal Communications Commission or the Federal Communications Commission designee; and
- Makes technical and conforming changes to both statutes.

**CS by Communications, Energy, and Public Utilities on January 10, 2018:**

For purposes of providing Lifeline services under s. 364.10, F.S., any commercial mobile radio service provider that is certified as an eligible telecommunications carrier by the Public Service Commission is included in the term “eligible telecommunications carrier.” The provision authorizing the commission to make the designation was moved from s. 364.011, F.S.
B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.
The Committee on Governmental Oversight and Accountability (Bean) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause and insert:

Section 1. Section 364.10, Florida Statutes, is amended to read:

364.10 Lifeline service.—

(1)(a) An eligible telecommunications carrier shall provide a Lifeline Assistance Plan to qualified residential subscribers, as defined in the eligible telecommunications carrier’s
published schedules. For the purposes of this section, the term “eligible telecommunications carrier” means a telecommunications company, as defined by s. 364.02, which is designated as an eligible telecommunications carrier by the commission pursuant to 47 C.F.R. s. 54.201. Notwithstanding the provision of s. 364.011 that exempts certain commercial mobile radio service providers from commission oversight, the term “eligible telecommunications carrier” includes any commercial mobile radio service provider designated by the commission pursuant to 47 C.F.R. s. 54.201 and the commission is authorized to make such a designation, upon petition, for the limited purpose of providing Lifeline service.

(b) An eligible telecommunications carrier must offer a consumer who applies for or receives Lifeline service the option of blocking all toll calls or, if technically capable, placing a limit on the number of toll calls a consumer can make. The eligible telecommunications carrier may not charge the consumer an administrative charge or other additional fee for blocking the service.

c) An eligible telecommunications carrier may not collect a service deposit in order to initiate Lifeline service if the qualifying low-income consumer voluntarily elects toll blocking or toll limitation. If the qualifying low-income consumer elects not to place toll blocking on the line, an eligible telecommunications carrier may charge a service deposit.

d) An eligible telecommunications carrier may not charge Lifeline subscribers a monthly number-portability charge.

e) 1. An eligible telecommunications carrier must notify a Lifeline subscriber of impending termination of Lifeline service
if the company has a reasonable basis for believing that the subscriber no longer qualifies for such service. Notification of pending termination must be in the form of a letter that is separate from the subscriber’s bill.

2. An eligible telecommunications carrier shall allow a subscriber 60 days following the date of the pending termination letter to demonstrate continued eligibility. The subscriber must present proof of continued eligibility upon request of the eligible telecommunications carrier. An eligible telecommunications carrier may transfer a subscriber off of Lifeline service, pursuant to its tariff, if the subscriber fails to demonstrate continued eligibility.

3. The commission shall establish procedures for such notification and termination.

(f) An eligible telecommunications carrier must shall timely credit a consumer’s bill with the Lifeline Assistance credit as soon as practicable, but no later than 60 days following receipt of notice of eligibility from the Office of Public Counsel or proof of eligibility from the consumer.

(2)(a) An Each local exchange telecommunications company that has more than 1 million access lines and that is designated as an eligible telecommunications carrier, including shall, and any commercial mobile radio service provider designated as an eligible telecommunications carrier pursuant to 47 U.S.C. s. 214(e) may, upon filing a notice of election to do so with the \textit{commission}, provide Lifeline service to any otherwise eligible customer or potential customer who meets an income eligibility test at 135\% percent or less of the federal poverty income guidelines for Lifeline customers. Such a test for eligibility...
must augment, rather than replace, the eligibility standards established by federal law and based on participation in certain low-income assistance programs. Each intrastate interexchange telecommunications company shall file or publish a schedule providing at a minimum the intrastate interexchange telecommunications company’s current Lifeline benefits and exemptions to Lifeline customers who meet the income eligibility test set forth in this subsection. The Office of Public Counsel shall certify and maintain claims submitted by a customer for eligibility under the income test authorized by this subsection.

(b) Each eligible telecommunications carrier subject to this subsection must provide to each state and federal agency providing benefits to persons eligible for Lifeline service applications, brochures, pamphlets, or other materials that inform the persons of their eligibility for Lifeline, and each state agency providing the benefits shall furnish the materials to affected persons at the time they apply for benefits.

(c) An eligible telecommunications carrier may not discontinue basic local telecommunications service to a subscriber who receives Lifeline service because of nonpayment by the subscriber of charges for nonbasic services billed by the telecommunications company, including, but not limited to, long-distance service. A subscriber who receives Lifeline service must pay all applicable basic local telecommunications service fees, including the subscriber line charge, E-911, telephone relay system charges, and applicable state and federal taxes.

(d) An eligible telecommunications carrier may not refuse
to connect, reconnect, or provide Lifeline service because of unpaid toll charges or nonbasic charges other than basic local telecommunications service.

(e) An eligible telecommunications carrier may require that payment arrangements be made for outstanding debt associated with basic local telecommunications service, subscriber line charges, E-911, telephone relay system charges, and applicable state and federal taxes.

(f) An eligible telecommunications carrier may block a Lifeline service subscriber’s access to all long-distance service, except for toll-free numbers, and may block the ability to accept collect calls if the subscriber owes an outstanding amount for long-distance service or amounts resulting from collect calls. However, the eligible telecommunications carrier may not impose a charge for blocking long-distance service. The eligible telecommunications carrier shall remove the block at the request of the subscriber without additional cost to the subscriber upon payment of the outstanding amount. An eligible telecommunications carrier may charge a service deposit before removing the block.

(g)1. By December 31, 2010, Each state agency that provides benefits to persons eligible for Lifeline service shall undertake, in cooperation with the Department of Children and Families, the Department of Education, the commission, the Office of Public Counsel, and telecommunications companies designated eligible telecommunications carriers providing Lifeline services, the development of procedures to promote Lifeline participation. The department departments, the commission, and the Office of Public Counsel may exchange
sufficient information with the appropriate eligible telecommunications carriers or the Federal Communications Commission, or its designee and any commercial mobile radio service provider electing to provide Lifeline service under paragraph (a), such as a person’s name, date of birth, service address, and telephone number, so that eligible customers the carriers can be enrolled identify and enroll an eligible person in the Lifeline and Link-Up programs. The information remains confidential pursuant to s. 364.107 and may only be used for purposes of determining eligibility and enrollment in the Lifeline and Link-Up programs.

2. If any state agency determines that a person is eligible for Lifeline services, the agency shall immediately forward the information to the commission to ensure that the person is automatically enrolled in the program with the appropriate eligible telecommunications carrier. The state agency shall include an option for an eligible customer to choose not to subscribe to the Lifeline service. The Public Service Commission and the Department of Children and Families shall, no later than December 31, 2007, adopt rules creating procedures to automatically enroll eligible customers in Lifeline service.

3. By December 31, 2010, the commission, the Department of Children and Families, the Office of Public Counsel, and each eligible telecommunications carrier offering Lifeline and Link-Up services shall convene a Lifeline Workgroup to discuss how the eligible subscriber information in subparagraph 1. will be shared, the obligations of each party with respect to the use of that information, and the procedures to be implemented to increase enrollment and verify eligibility in these programs.
(h) The commission shall report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31 each year on the number of customers who are subscribing to Lifeline service and the effectiveness of any procedures to promote participation.

(i) The commission may undertake appropriate measures to inform low-income consumers of the availability of the Lifeline and Link-Up programs.

(j) The commission shall adopt rules to administer this section.

Section 2. Subsection (2) of section 364.107, Florida Statutes, is amended to read:

> 364.107 Public records exemption; Lifeline Assistance Plan participants.—

> (2) Information made confidential and exempt under subsection (1) may be released to the applicable telecommunications carrier, the Federal Communications Commission, or the Federal Communications Commission designee for purposes directly connected with eligibility for, verification related to, or auditing of a Lifeline Assistance Plan.

Section 3. This act shall take effect upon becoming law.

================= T I T L E A M E N D M E N T =================

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to designation of eligible
telecommunications carriers; amending s. 364.10, F.S.; revising the term “eligible telecommunications carrier”; authorizing the Public Service Commission to designate any commercial mobile radio service provider as an eligible telecommunications carrier for the purpose of providing Lifeline service; deleting a provision requiring carriers to allow subscribers to demonstrate continued eligibility for Lifeline service under certain conditions; requiring subscribers to furnish proof of eligibility upon request from carrier; revising the carriers that may provide Lifeline service; revising Lifeline service eligibility; deleting obsolete provisions; revising the entities with which the commission may exchange certain information; amending s. 364.107, F.S.; revising the entities to which certain information relating to Lifeline service eligibility may be released; providing an effective date.
The Committee on Governmental Oversight and Accountability (Bean) recommended the following:

Senate Amendment to Amendment (666478) (with title amendment)

Delete line 47 and insert: eligible telecommunications carrier or the Federal Communications Commission or its designee. An eligible

And the title is amended as follows:
Delete line 194
and insert:
the carrier or the Federal Communications Commission
or its designee; revising the carriers that may
provide
The Committee on Governmental Oversight and Accountability (Bean) recommended the following:

**Senate Amendment to Amendment (666478)**

Delete line 134 and insert:

confidential and exempt pursuant to s. 364.107 and may only be used for
A bill to be entitled An act relating to Lifeline service; amending s. 364.10, F.S.; revising the term “eligible telecommunications carrier” to include commercial mobile radio service providers under a specified circumstance; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (1) of section 364.10, Florida Statutes, is amended to read:

364.10 Lifeline service.—

(1)(a) An eligible telecommunications carrier shall provide a Lifeline Assistance Plan to qualified residential subscribers, as defined in the eligible telecommunications carrier’s published schedules. For the purposes of this section, the term “eligible telecommunications carrier” means a telecommunications company, as defined by s. 364.02, or, for the limited purpose of qualification to provide Lifeline service, any commercial mobile radio service provider. Such company or provider must also be which is designated as an eligible telecommunications carrier by the commission pursuant to 47 C.F.R. s. 54.201.

Section 2. This act shall take effect July 1, 2018.
Meeting Date: 2/10/18

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Topic: Lifeline Service

Name: Cameron Yarbrough

Job Title: Government Relations

Address: 215 S. Monroe St., Suite 601

Street: Tallahassee

City: FL

State: 32301

Zip: Phone: 850-521-1980

Email: cyarbrough@gunster.com

Speaking: □ For □ Against □ Information

Waive Speaking: □ In Support □ Against

(The Chair will read this information into the record.)

Representing: □ Link Wireless

Appearing at request of Chair: □ Yes □ No

Lobbyist registered with Legislature: □ Yes □ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.
To: Senator Dennis Baxley, Chair
Committee on Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: January 12, 2018

I respectfully request that Senate Bill # 1018, relating to Lifeline Services, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Aaron Bean
Florida Senate, District 4
I. Summary:

CS/SB 1212 makes exempt from public records requirements the home addresses, telephone numbers, dates of birth, and photographs of current and former employees of a child advocacy center (CAC). This same information of current or former child protection team (CPT) members whose duties are related to child abuse and neglect investigations is also made exempt under the bill. The bill additionally exempts names, home addresses, telephone numbers, photographs, dates of birth, places of employment, and schools and day care facilities of spouses and children.

In the required public necessity statement, the bill provides as justification for the exemption that the exemption is needed to keep personnel and their families safe from persons disgruntled by the actions of CACs and CPTs and who may commit violence against them.

The bill includes a provision for an Open Government Sunset Review and provides an automatic repeal date of October 2, 2023, unless the Legislature reviews and saves the exemption from repeal before that date.

The bill requires a two-thirds vote from each chamber to pass.
II. Present Situation:

Public Records Law

The Florida 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.\(^2\)

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.\(^3\) Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.\(^4\) The Public Records Act states that it 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.\(^5\)

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.\(^6\) The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”\(^7\) A violation of the Public Records Act may result in civil or criminal liability.\(^8\)

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of the House of Representatives and the Senate.\(^9\) The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.\(^10\) A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.\(^11\)

\(^1\) Fla. Const., art. I, s. 24(a).
\(^2\) Id.
\(^3\) The Public Records Act does not apply to legislative or judicial records. Locke v. Hawkes, 595 So. 2d 32 (Fla. 1992). Also see Times Pub. Co. v. Ake, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are primarily located in s. 11.0431(2)-(3), F.S.
\(^4\) Public records laws are found throughout the Florida Statutes.
\(^5\) Section 119.01(1), F.S.
\(^6\) Section 119.011(12), F.S., defines “public record” to mean “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 connection with the transaction of official business by any agency.” 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.”
\(^7\) Shevin v. Byron, Harless, Schaffer, Reid, and Assoc. Inc., 379 So. 2d 633, 640 (Fla. 1980).
\(^8\) 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.
\(^11\) Halifax Hosp. Medical Center v. New-Journal Corp., 724 So. 2d 567 (Fla. 1999). In Halifax Hospital, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define
When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’ Records designated as ‘confidential and exempt’ may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as ‘exempt’ may be released at the discretion of the records custodian under certain circumstances.

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions. The OGSR provides that an exemption automatically repeals 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. In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

The OGSR 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. 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 subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;
- Releasing sensitive personal information 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; or
- It protects trade or business secrets.

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

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important terms and did not justify the breadth of the exemption. Id. at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. Id. In Baker County Press, Inc. v. Baker County Medical Services, Inc., 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The Baker County Press court found that since the law did not contain a public necessity statement, it was unconstitutional. Id. at 196.

12 If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. WFTV, Inc. v. The School Board of Seminole, 874 So. 2d 48 (Fla. 5th DCA 2004).

13 A record classified as exempt from public disclosure may be disclosed under certain circumstances. Williams v. City of Minneola, 575 So. 2d 683 (Fla. 5th DCA 1991).

14 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 information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

15 Section 119.15(3), F.S.

16 Section 119.15(6)(b), F.S.

17 Section 119.15(6)(b)1., F.S.

18 Section 119.15(6)(b)2., F.S.

19 Section 119.15(6)(b)3., F.S.

20 Section 119.15(6)(a), F.S. The specified questions are:
- What specific records or meetings are affected by the exemption?
If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.\textsuperscript{21} If the exemption is reenacted 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 sunset, the previously exempt records will remain exempt unless provided for by law.\textsuperscript{22}

**Child Advocacy Centers (CAC)**

Child advocacy centers (CAC) are community-based, child-focused facilities where child victims of abuse or neglect are interviewed and may receive medical exams, therapy, and other critical services.\textsuperscript{23} Professionals at CACs consult about investigations, treatment, and prosecution of child abuse cases. The primary function of a CAC is to minimize trauma for child victims, improve prosecutions and provide efficient and thorough provision of necessary services to the child victim and the child's family.\textsuperscript{24} CACs provide services such as:

- Forensic interviews conducted in a non-threatening, child-friendly environment.
- Crisis intervention and emotional support for victims and non-offending family members.
- Counseling for victims and non-offending family members.
- Medical evaluations and services.
- Multidisciplinary review of cases by a team of professionals, such as law enforcement officials, child protection teams, prosecutors, medical professionals, mental health professionals, victim assistance staff, and child advocates.
- Evidence-based prevention and intervention programs to reduce the likelihood of child maltreatment and to provide safe and caring homes for children.
- Professional training and community education on child abuse.\textsuperscript{25}

The Florida Network of Children’s Advocacy Centers (FNCAC) is the statewide membership organization for all local CACs in Florida.\textsuperscript{26} Currently, Florida provides 27 CACs throughout the state.\textsuperscript{27}

To receive funding, a CAC must appropriately screen employees and volunteers\textsuperscript{28}, and:

- Be a private, nonprofit incorporated agency or a governmental entity; and

\begin{itemize}
  \item Whom does the exemption uniquely affect, as opposed to the general public?
  \item What is the identifiable public purpose or goal of the exemption?
  \item Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
  \item Is the record or meeting protected by another exemption?
  \item Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?
\end{itemize}

\textsuperscript{21} FLA. CONST. art. I, s. 24(c).
\textsuperscript{22} Section 119.15(7), F.S.
\textsuperscript{23} Florida Network of Child Advocacy Centers, *What is a CAC?*, available at: https://www.fncac.org/what-cac (last visited Jan. 29, 2018).
\textsuperscript{24} Id.
\textsuperscript{25} Id.
\textsuperscript{27} Id.
\textsuperscript{28} Section 39.035(2), F.S.
• Be a child protection team, or by written agreement incorporate the participation and services of a child protection team, with established community protocols that meet the requirements of the National Network of Children’s Advocacy Centers, Inc.

Further, a CAC must provide:
• A neutral, child-focused facility where joint department and law enforcement interviews take place with children in cases of suspected child sexual abuse or physical abuse.
• Staff subject to supervision of a board of directors or governmental entity.
• A case review team that regularly meets or as the caseload requires, with representatives from the Office of the State Attorney, the Department of Children and Families (department), the child protection team, mental health services, law enforcement, and the child advocacy center staff. Medical personnel and a victim’s advocate may participate.
• Case tracking and data collection on child abuse cases by sex, race, age, and other relevant data; cases referred for prosecution; and cases referred for mental health therapy.
• Community training and referrals for medical exams and mental health therapy.
• A written, interagency commitment, on a multidisciplinary approach to the handling of child sexual abuse and serious physical abuse cases.29

Child Protection Teams

A child protection team (CPT) is a medically directed, multidisciplinary team that supplements the child protective investigation efforts of the department and local sheriffs’ offices in cases of child abuse and neglect.30 CPTs provide expertise in evaluating alleged child abuse and neglect, assess risk and protective factors, and provide recommendations for interventions to protect children and enhance a caregiver’s capacity to provide a safer environment.31 The Department of Health (DOH) Children’s Medical Services (CMS) program contracts for CPT services with local community-based programs. CPTs, located in each of the 15 service circuits of the department, are supervised by one or more child protection team medical directors.32

The following reports made to the department central abuse hotline that must be referred to a CPT for assessment are:
• Injuries to the head, bruises to the neck or head, burns, or fractures in a child of any age.
• Bruises on a child five years of age or younger.
• Allegations of sexual abuse of a child.
• Any sexually transmitted disease in a prepubescent child.
• Reported malnutrition or failure of a child to thrive.
• Reported medical neglect of a child.
• A sibling or other child remaining in a home where one or more children have been pronounced dead on arrival or have been injured and later died as a result of suspected abuse, abandonment, or neglect.

29 Section 39.3035(1), F.S.
31 Id.
32 Section 39.303(1), F.S.
• Symptoms of serious emotional problems in a child when emotional or other abuse, abandonment, or neglect is suspected.\(^{33}\)

Upon referral from the department or law enforcement, the CPT may provide:
• Medical diagnoses and evaluations;
• Child forensic interviews;
• Child and family assessments;
• Multidisciplinary staffings;
• Psychological and psychiatric evaluations; and
• Expert court testimony.\(^{34}\)

III. Effect of Proposed Changes:

Section 1 amends s. 119.071, F.S., to exempt from public records requirements the home addresses, telephone numbers, dates of birth, and photographs of:
• Current or former directors, managers, supervisors, and clinical employees of a CAC that meets statutory requirements;
• Current or former CPT employees whose duties include supporting the investigation of child abuse or sexual abuse, child abandonment, child neglect, or child exploitation or providing services as part of a multidisciplinary case review team; and
• Spouses and children of CAC and CPT personnel, and including the places of employment, schools, and day care facilities attended by these family members.

The bill also provides that the public records exemption is subject to an Open Government Sunset Review and will stand repealed October 2, 2023, unless reviewed and saved from repeal by the Legislature before that date.

Section 2 provides a public necessity statement for the exemption, specifying that CAC and CPT personnel and their families may be in danger of physical and emotional harm from disgruntled individuals who may react inappropriately and violently to actions taken by the personnel. The bill further finds that the risk continues after the personnel no longer holds a position at a CAC or CPT. The bill finds that the harm that may result from the release of such personal identifying and location information outweighs any public benefit that may be derived from the disclosure of the information.

Section 3 provides that the bill takes effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties’ or municipalities’ ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

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\(^{33}\) Section 39.303(4), F.S.

\(^{34}\) Section 39.303(3), F.S.
B. Public Records/Open Meetings Issues:

Voting Requirement
Article I, Section 24(c) of the Florida Constitution requires a two-thirds vote of each chamber for a public records exemption to pass.

Public Necessity Statement
Article I, section 24(c) of the Florida Constitution requires a public records exemption bill to contain a public necessity statement for a newly created or expanded public record or public meeting exemption and to state with specificity the public necessity of the exemption. The public necessity statement provides that the exemption is needed to protect the safety of personnel of the CAC and CPT and their families from potential violence by persons disgruntled by the actions of the CAC and CPT.

Breadth of Exemption
Article I, section 24(c) of the Florida Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill seeks to prevent the disclosure of specified identifying information of CPT and CAC personnel and their families to protect their safety. Therefore, the bill appears to be no broader than necessary to accomplish the public necessity of the exemption.

C. Trust Funds Restrictions:
None.

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.
VIII. Statutes Affected:

This bill substantially amends s. 119.071 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families, and Elder Affairs on January 16, 2018:
The amendment does the following:
- Removes the reference to “social security numbers” from the exemption and the public necessity statement because there is currently a general exemption for social security numbers.
- Adds the names of spouses and children of exempted personnel to the information to be held exempt. This will standardize information to be held exempt.
- Alters the public necessity statement to more closely mirror the substance of the bill by adding the qualifying phrase “whose duties include supporting the investigation of child abuse or sexual abuse, child abandonment, child neglect, or child exploitation or to provide services as a part of a multidisciplinary case review team” in reference to child protection team members.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.
By the Committee on Children, Families, and Elder Affairs; and Senator Book

A bill to be entitled
An act relating to public records; amending s. 119.071, F.S.; providing an exemption from public records requirements for certain identifying and location information of current or former directors, managers, supervisors, and clinical employees of child advocacy centers that meet certain standards and requirements, members of a child protection team, and the spouses and children thereof; providing for retroactive application; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (d) of subsection (4) of section 119.071, Florida Statutes, is amended to read:
119.071 General exemptions from inspection or copying of public records.—
(4) AGENCY PERSONNEL INFORMATION.—
(d)1. For purposes of this paragraph, the term "telephone numbers" includes home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices.
2a. The home addresses, telephone numbers, dates of birth, and photographs of active or former sworn or civilian law enforcement personnel, including correctional and correctional officers, personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect, and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

b. The home addresses, telephone numbers, dates of birth, and photographs of current or former nonsworn investigative personnel of the Department of Financial Services whose duties include the investigation of fraud, theft, workers’ compensation coverage requirements and compliance, other related criminal activities, or state regulatory requirement violations; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

CODING: Words [strike] are deletions; words [underline] are additions.
CODING: Words **_** are deletions; words **underlined** are additions.

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Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

c. The home addresses, telephone numbers, dates of birth, and photographs of current or former nonsworn investigative personnel of the Office of Financial Regulation’s Bureau of Financial Investigations whose duties include the investigation of fraud, theft, other related criminal activities, or state regulatory requirement violations; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

d. The home addresses, telephone numbers, dates of birth, and photographs of current or former firefighters certified in compliance with s. 633.408; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such firefighters; and the names and locations of schools and day care facilities attended by the children of such firefighters are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

e. The home addresses, dates of birth, and telephone numbers of current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former justices and judges; and the names and locations of schools and day care facilities attended by the children of current or former justices and judges are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

f. The home addresses, telephone numbers, dates of birth, and photographs of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; and the names and locations of schools and day care facilities attended by the children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

g. The home addresses, dates of birth, and telephone numbers of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division...
The home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

j. The home addresses, telephone numbers, places of employment, dates of birth, and photographs of current or former guardians ad litem, as defined in s. 39.820; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such persons; and the names and locations of schools and day care facilities attended by the children of such persons are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

k. The home addresses, telephone numbers, dates of birth, and photographs of current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, juvenile justice detention officers I and II, juvenile justice detention officer supervisors, juvenile justice residential officers, juvenile justice residential officer supervisors I and II, juvenile justice counselors, juvenile justice counselor supervisors, human services counselor administrators, senior human services counselor administrators, rehabilitation administrators, rehabilitation managers, or assistant managers of any local government agency or water management district whose duties include hiring and firing employees, labor contract negotiation, administration, or other personnel-related duties; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.
shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

n. The home addresses, telephone numbers, and dates of birth of county tax collectors; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such tax collectors; and the names and locations of schools and day care facilities attended by the children of such tax collectors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

o. The home addresses, telephone numbers, dates of birth, and photographs of current or former personnel of the Department of Health whose duties include, or result in, the determination or adjudication of eligibility for social security disability benefits, the investigation or prosecution of complaints filed against health care practitioners, or the inspection of health care practitioners or health care facilities licensed by the Department of Health; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

p. The home addresses, telephone numbers, dates of birth, and photographs of current or former investigators or inspectors of the Department of Business and Professional Regulation; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such current or former investigators or inspectors; and the names and locations of schools and day care facilities attended by the children of such current or former investigators and inspectors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

CODING: Words [stricken] are deletions; words [underlined] are additions.
and photographs of current or former impaired practitioner consultants who are retained by an agency or current or former employees of an impaired practitioner consultant whose duties result in a determination of a person’s skill and safety to practice a licensed profession; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such consultants or their employees; and the names and locations of schools and day care facilities attended by the children of such consultants or employees are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

q. The home addresses, telephone numbers, dates of birth, and photographs of current or former emergency medical technicians or paramedics certified under chapter 401; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such emergency medical technicians or paramedics; and the names and locations of schools and day care facilities attended by the children of such emergency medical technicians or paramedics are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

r. The home addresses, telephone numbers, dates of birth, and photographs of current or former personnel employed in an agency's office of inspector general or internal audit department whose duties include auditing or investigating waste, fraud, abuse, theft, exploitation, or other activities that could lead to criminal prosecution or administrative discipline; the names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.
Act in accordance with s. 119.15 and shall stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

3. An agency that is the custodian of the information specified in subparagraph 2. and that is not the employer of the officer, employee, justice, judge, or other person specified in subparagraph 2. shall maintain the exempt status of that information only if the officer, employee, justice, judge, other person, or employing agency of the designated employee submits a written request for maintenance of the exemption to the custodial agency.

4. The exemptions in this paragraph apply to information held by an agency before, on, or after the effective date of the exemption.

Section 2. (1) The Legislature finds that it is a public necessity that the following identifying and location information be exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution:

(a) The home addresses, telephone numbers, dates of birth, and photographs of current or former directors, managers, supervisors, and clinical employees of a child advocacy center that meets the standards of s. 39.3035(1), Florida Statutes, and fulfills the screening requirement of s. 39.3035(2), Florida Statutes, and

(b) The home addresses, telephone numbers, dates of birth, and photographs of current or former members of a child protection team as described in s. 39.303, Florida Statutes, whose duties include supporting the investigation of child exploitation or to provide services as part of a multidisciplinary case review team, and

(c) The names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of personnel and members identified in paragraphs (a) and (b).

(d) The names and locations of schools and day care facilities attended by the children of such personnel and members.

(2) The Legislature finds that the release of such identifying and location information may place current or former directors, managers, supervisors, and clinical employees of a child advocacy center that meets the standards of s. 39.3035(1), Florida Statutes, and fulfills the screening requirement of s. 39.3035(2), Florida Statutes, and the members of a child protection team as described in s. 39.303, Florida Statutes, whose duties include supporting the investigation of child abuse, or sexual abuse, child abandonment, child neglect, or child exploitation or to provide services as part of a multidisciplinary case review team, and the family members of such personnel, in danger of physical and emotional harm from hostile persons who may react inappropriately and violently to actions taken by such directors, managers, supervisors, or clinical employees of a child advocacy center or a member of a child protection team. These personnel and members provide services that are necessary and appropriate for abused, abandoned, neglected, and exploited children. In addition, these personnel and members provide valuable and supportive services to the state’s most vulnerable residents. Despite the value of
such services, some persons may become hostile toward these personnel and members and may pose a threat to them indefinitely. The harm that may result from the release of such personal identifying and location information outweighs any public benefit that may be derived from the disclosure of the information.

Section 3. This act shall take effect July 1, 2018.
2/6/18

Meeting Date

12/12

Bill Number (if applicable)

Topic: PUBLIC RECORDS/CHILD ADVOCACY CENTERS

Name: DAPHNEE SAINVIL

Job Title: POLICY ADVISOR

Address: 115 S. ANDREWS AVE.

FT. LAUDERDALE FL 33301

Phone: 954-253-7320

Email: dsainvil@broward.org

Speaking: [ ] For [ ] Against [ ] Information

Waive Speaking: [ ] In Support [ ] Against

(The Chair will read this information into the record.)

Representing: BROWARD COUNTY GOVT

Appearing at request of Chair: [ ] Yes [ ] No

Lobbyist registered with Legislature: [ ] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)
The Florida Senate

APPEARANCE RECORD

Meeting Date

Topic

Name Greg Pound

Job Title Saving families @ Gmail.com

Address 9600 Sunrise Dr

City Largo

State FL

Zip 33773

Phone

Email

Speaking: ■ For ■ Against ☑ Information

Waive Speaking: ■ In Support ■ Against
(The Chair will read this information into the record.)

Representing

Appearing at request of Chair: ■ Yes ☑ No

Lobbyist registered with Legislature: ■ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.
January 17, 2018

Chair Dennis Baxley
Committee on Governmental Oversight and Accountability
525 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chair Baxley,

I respectfully request that you place CS/SB 1212, relating to Public Records/Child Advocacy Centers, on the agenda of the Committee on Governmental Oversight and Accountability at your earliest convenience.

Should you have any questions or concerns, please feel free to contact my office or me. Thank you in advance for your consideration.

Thank you,

Senator Lauren Book
Senate District 32

cc: Diana Caldwell, Staff Director
Tamra Redig, Administrative Assistant
I. Summary:

SB 7016 provides an Open Government Sunset Review (OGSR) of a public records exemption for certain personal identifying information of students and families who receive free or reduced cost meals during the school year, including the summer period. Specifically, the public records exemption upon which the OGSR is based makes exempt from disclosure by designated agencies personal identifying information on recipients of free or reduced cost meals.

The public records exemption is scheduled for repeal October 2, 2018, unless reviewed and saved from repeal before that date.

The original public necessity statement of the bill provided that the exemption is needed to protect information of sensitive, personal nature, the release of which could be defamatory, cause unwarranted damage to reputation, and possibly jeopardize the individual’s personal safety. The justification upon which the exemption is based remains valid. Therefore, the bill deletes the repeal date of the public records exemption.

Additionally, agencies identified in the original public records exemption as holding the personal identifying information are the Department of Agriculture and Consumer Services (DACS), the Department of Children and Families (DCF), and the Department of Education (DOE). The DCF indicates, however, that the agency does not receive information related to applicants and participants in school food and nutrition programs. Therefore, the bill narrows the exemption by removing the reference to the DCF as one of the agencies that holds this personal identifying information.

As the bill continues an existing public records exemption, and narrows rather than expands the exemption, a vote of each house by simply majority for passage is required.
II. Present Situation:

Public Records Law

The Florida 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.\(^2\)

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.\(^3\) Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.\(^4\) The Public Records Act states that it 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.\(^5\)

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.\(^6\) The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”\(^7\) A violation of the Public Records Act may result in civil or criminal liability.\(^8\)

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of the House of Representatives and the Senate.\(^9\) The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.\(^10\) A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.\(^11\)

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\(^1\) Fla. Const., art. I, s. 24(a).
\(^2\) Fla. Const., art. I, s. 24(a).
\(^3\) The Public Records Act does not apply to legislative or judicial records. Locke v. Hawkes, 595 So. 2d 32 (Fla. 1992). Also see Times Pub. Co. v. Ake, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are primarily located in s. 11.0431(2)-(3), F.S.
\(^4\) Public records laws are found throughout the Florida Statutes.
\(^5\) Section 119.01(1), F.S.
\(^6\) Section 119.011(12), F.S., defines “public record” to mean “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 connection with the transaction of official business by any agency.” 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.”
\(^7\) Shevin v. Byron, Harless, Schaffer, Reid, and Assoc. Inc., 379 So. 2d 633, 640 (Fla. 1980).
\(^8\) 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).
\(^10\) Fla. Const., art. I, s. 24(c).
\(^11\) Halifax Hosp. Medical Center v. New-Journal Corp., 724 So. 2d 567 (Fla. 1999). In Halifax Hospital, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define
When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’ Records designated as ‘confidential and exempt’ may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as ‘exempt’ may be released at the discretion of the records custodian under certain circumstances.

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions. The OGSR provides that an exemption automatically repeals 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. In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

The OGSR 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. 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 subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;
- Releasing sensitive personal information 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; or
- It protects trade or business secrets.

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

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12 A record classified as exempt from public disclosure may be disclosed under certain circumstances. Williams v. City of Minneola, 575 So. 2d 683 (Fla. 5th DCA 1991).
13 A record designated as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. WFTV, Inc. v. The School Board of Seminole, 874 So. 2d 48 (Fla. 5th DCA 2004).
14 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 information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.
15 Section 119.15(3), F.S.
16 Section 119.15(6)(b), F.S.
17 Section 119.15(6)(b)1., F.S.
18 Section 119.15(6)(b)2., F.S.
19 Section 119.15(6)(b)3., F.S.
20 Section 119.15(6)(a), F.S. The specified questions are:
If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.\textsuperscript{21} If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are \textit{not} required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.\textsuperscript{22}

\textbf{School Food and Nutrition Service Programs}

Federal law authorizes federal financial assistance to states for the operation of school food and nutrition service programs.\textsuperscript{23} The United States Department of Agriculture annually prescribes income guidelines for determining eligibility for free and reduced price meals.\textsuperscript{24} DACS is the state administrator of school food and nutrition service programs. Programs include the National School Lunch Program, the Special Milk Program, the School Breakfast Program, the Summer Food Service Program, the Fresh Fruit and Vegetable Program, and any other program that relates to school nutrition under the purview of DACS.\textsuperscript{25}

Applicants for, or participants in school food and nutrition service programs provide certain sensitive, personal information to DACS and the DOE. In addition, the DCF receives information from the United States Social Security Administration and determines Medicaid eligibility for Florida and forwards that information to DACS and local education agencies to determine qualification in a school food and nutrition service program. Although DCF shares certain information with DACS, DCF does not receive information related to applicants for, or participants in school food and nutrition service programs.

\textbf{Public Records Exemption for School Food Programs}

Current law provides a public records exemption for personal identifying information of an applicant for, or participant in a school food and nutrition service program for information held by the DACS, the DCF, and the DOE.\textsuperscript{26} The public records exemption makes exempt from disclosure this information except to another governmental entity in the performance of its official duties and responsibilities, or a person with written consent of the applicant for, or

\begin{itemize}
  \item What specific records or meetings are affected by the exemption?
  \item Whom does the exemption uniquely affect, as opposed to the general public?
  \item What is the identifiable public purpose or goal of the exemption?
  \item Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
  \item Is the record or meeting protected by another exemption?
  \item Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?
\end{itemize}

\textsuperscript{21} FLA. CONST. art. I, s. 24(c).
\textsuperscript{22} Section 119.15(7), F.S.
\textsuperscript{25} Section 595.402(3), F.S.
\textsuperscript{26} Chapter 2013-217, L.O.F.(HB 7089).
participant in the program. Additionally, a legal guardian may access certain information about participation in the program.

The public necessity statement for the bill provides that the protected information is of a sensitive, personal nature, the release of which could defame the individual, cause unwarranted damage to his or her reputation, and possibly jeopardize his or her safety. Additionally, the state’s ability to effectively and efficiently administer the program would be significantly impaired without the exemption.

The bill upon which the exemption is based provides that the exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2018, unless reviewed and saved from repeal by the Legislature before that date.

Staff Review of the Exemption

The Open Government Sunset Review Act requires that a public records exemption must serve an identifiable public purpose in order to be maintained. As part of the Open Government Sunset Review, professional staff of the Senate Agriculture Committee sent a questionnaire to DACS, DOE, and DCF. DACS and DOE recommend continuing the exemption, and DCF does not oppose narrowing the application of the exemption by removing DCF from the exemption.

III. Effect of Proposed Changes:

The bill provides an Open Government Sunset Review of a public records exemption for certain personal identifying information of students and families who receive free or reduced cost meals during the school year, including the summer period. Specifically, the public records exemption upon which the OGSR is based makes exempt from disclosure by designated agencies personal identifying information on recipients of free or reduced cost meals.

The original public necessity statement of the bill provided that the exemption is needed to protect information of sensitive, personal nature, the release of which could be defamatory, cause unwarranted damage to reputation, and possibly jeopardize the individual’s personal safety. The justification upon which the exemption is based remains valid. Therefore, the bill deletes the repeal date of the public records exemption.

Additionally, agencies identified in the original public records exemption as holding the personal identifying information are the DACS, the DCF, and the DOE. The DCF indicates, however, that the agency does not receive information related to applicants and participants in school food and nutrition programs. Therefore, the bill recommends narrowing the exemption by removing the reference to the DCF as one of the agencies that holds this personal identifying information.

As the bill continues an existing public records exemption, and narrows rather than expands the exemption, a vote of each house by simply majority for passage is required.

The bill takes effect October 1, 2018.

27 The survey is on file with the Senate Agriculture Committee.
IV. **Constitutional Issues:**

A. **Municipality/County Mandates Restrictions:**

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties’ or municipalities’ ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. **Public Records/Open Meetings Issues:**

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 newly created or expanded public records exemption. The bill does not create or expand a public records exemption, and actually narrows the existing exemption. Therefore, just a simple majority vote suffices for passage.

C. **Trust Funds Restrictions:**

None.

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.

VIII. **Statutes Affected:**

This bill amends section 595.409 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.
Florida Senate - 2018 SB 7016

By the Committee on Agriculture

575-02459A-18 20187016__

A bill to be entitled An act relating to a review under the Open Government Sunset Review Act; amending s. 595.409, F.S., relating to an exemption from public record requirements for personal identifying information of an applicant for or participant in a school food and nutrition service program; removing applicability of the exemption to such information held by the Department of Children and Families; removing the scheduled repeal of the exemption; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 595.409, Florida Statutes, is amended to read:

595.409 Public records exemption.—

(1) Personal identifying information of an applicant for or participant in a school food and nutrition service program, as defined in s. 595.402, held by the department, the Department of Children and Families, or the Department of Education before, on, or after the effective date of this exemption.

(2)(a) This section does not prohibit a participant’s legal guardian from obtaining confirmation of acceptance and approval, dates of applicability, or other information the legal guardian may request.

(3) This exemption applies to any information identifying a program applicant or participant held by the department, the Department of Children and Families, or the Department of Education before, on, or after the effective date of this exemption.

(4) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. This act shall take effect October 1, 2018.
The Florida Senate

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date: 2/6/18

Bill Number (if applicable): SB 7016

Topic: School Food Nutrition Program

Name: DIANA PADGETT

Job Title: Gov. Consultant

Address: 1492 VIEUX CARRE

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Phone: 850-212-4204

Email: EARTHLINK.NET

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☑ In Support ☐ Against

(The Chair will read this information into the record.)

Representing: FL. School Nutrition Association

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)
I. Summary:

SB 7018 is based on an Open Government Sunset Review of a public records exemption for complaints of misconduct filed with an agency against an agency employee and all information obtained from an investigation by the agency of the complaint of misconduct. The bill removes the scheduled October 2, 2018, repeal date.

Since the bill does not create or expand an exemption to public records law, the bill requires a majority vote of each house of the Legislature for passage.

The bill has an effective date of October 1, 2018.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business. 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.

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1 FLA. CONST., Art. I, s. 24(a).
2 Id.
In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records. Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act. The Public Records Act states that it 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.

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted. The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.” A violation of the Public Records Act may result in civil or criminal liability.

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of the House and the Senate. The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption. A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’ Records designated as ‘confidential and exempt’ may be released by the records custodian only under the circumstances defined by the Legislature.

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3 The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also, see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S.

4 Public records laws are found throughout the Florida Statutes.

5 Section 119.01(1), F.S.

6 Section 119.011(12), F.S., defines “public record” to mean “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 connection with the transaction of official business by any agency.” 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.”

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

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 *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found 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. Id. at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. Id. In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. Id. at 196.

12 If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).
Records designated as ‘exempt’ may be released at the discretion of the records custodian under certain circumstances.\textsuperscript{13}

**Open Government Sunset Review Act**

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.\textsuperscript{14} The OGSR provides that an exemption automatically repeals 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.\textsuperscript{15} In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

The OGSR 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.\textsuperscript{16} 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 subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;\textsuperscript{17}
- Releasing sensitive personal information 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;\textsuperscript{18} or
- It protects trade or business secrets.\textsuperscript{19}

The OGSR also requires specified questions to be considered during the review process.\textsuperscript{20} In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the Legislature expands an exemption, a public necessity statement and a two-thirds vote for passage are required.\textsuperscript{21} If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are

\textsuperscript{13} Williams v. City of Minneola, 575 So. 2d 683 (Fla. 5th DCA 1991).
\textsuperscript{14} 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 information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.
\textsuperscript{15} Section 119.15(3), F.S.
\textsuperscript{16} Section 119.15(6)(b), F.S.
\textsuperscript{17} Section 119.15(6)(b)1., F.S.
\textsuperscript{18} Section 119.15(6)(b)2., F.S.
\textsuperscript{19} Section 119.15(6)(b)3., F.S.
\textsuperscript{20} 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?
\textsuperscript{21} FLA. CONST. Art. I, s. 24(c).
not required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.\textsuperscript{22}

**Public Record Exemption under Review**

Current law requires that complaints of misconduct filed with an agency\textsuperscript{23} against an agency employee be kept confidential and exempt\textsuperscript{24} from public record requirements.\textsuperscript{25} If an agency investigates such a complaint, the information obtained from the investigation is also confidential and exempt.\textsuperscript{26} The complaint and the investigative information remain confidential and exempt until either the investigation ceases to be active or the agency provides written notice to the employee who is the subject of the complaint.\textsuperscript{27} The written notice may be delivered personally or by mail and must state that the agency has concluded the investigation with a finding to proceed with disciplinary action or file charges\textsuperscript{28} or not to proceed.\textsuperscript{29}

The 2013 public necessity statement\textsuperscript{30} for the exemption provides the following policy rationale for its enactment:

The disclosure of information, such as the nature of the complaint against an agency employee and testimony and evidence given in the investigation of the complaint, could injure an individual and deter that person from providing information pertaining to internal investigations, thus impairing the ability of an agency to conduct an investigation that is fair and reasonable. In the performance of its lawful duties and responsibilities, an agency may need to obtain information for the purpose of determining an administrative action. Without an exemption from public record requirements to protect information of a sensitive personal nature provided to an agency in the course of an internal investigation, such information becomes a public record when received and must be divulged upon request. Disclosure of information obtained during an internal investigation conducted by an agency inhibits voluntary participation of individuals during internal investigations and makes it difficult if not impossible to determine the truth.\textsuperscript{31}

\textsuperscript{22} Section 119.15(7), F.S.
\textsuperscript{23} See supra note 6.
\textsuperscript{24} There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (See WFTV, Inc. v. The School Board of Seminole, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); City of Riviera Beach v. Barfield, 642 So.2d 1135 (Fla. 4th DCA 1994); Williams v. City of Minneola, 575 So.2d 683 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in statute. (See Attorney General Opinion 85-62, August 1, 1985).
\textsuperscript{25} Section 119.071(2)(k)1., F.S.
\textsuperscript{26} Id.
\textsuperscript{27} Id.
\textsuperscript{28} Section 119.071(2)(k)1.b., F.S.
\textsuperscript{29} Section 119.071(2)(k)1.a., F.S.
\textsuperscript{30} Article I, s. 24(c), FLA. CONST., requires each public record exemption “state with specificity the public necessity statement justifying” its existence.
\textsuperscript{31} Chapter 2013-248, L.O.F.
The public records exemption regarding complaints of misconduct filed with a state agency against an agency employee will repeal on October 2, 2018, unless reenacted by the Legislature.

**Open Government Sunset Review Results**

During the 2017 interim, staff with the Senate Committee on Ethics and Elections sent a questionnaire to every state agency, county, city, sheriff’s office, public defender’s office, and state attorney’s office. In all, 62 questionnaire responses were received. A majority of respondents recommended that the exemption be reenacted without changes and no respondents recommended letting the exemption repeal. Many respondents reported that their agency had received public record requests for the exempt information. The most common rationale offered for maintaining the exemption was that the temporary confidentiality it afforded the agency allowed it to maintain the fairness and integrity of the investigation that in turn encouraged all parties involved to be candid and forthcoming.

**III. Effect of Proposed Changes:**

**Section 1** amends s. 119.071(2), F.S., to remove the scheduled repeal date of October 2, 2018, in the public records exemption.

Effectively, the bill permits the public records exemption for complaints of misconduct filed with an agency against an agency employee and all information obtained from an investigation by the agency of the complaint of misconduct to continue as it currently exists.

**Section 2** provides an effective date of October 1, 2018.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties’ or municipalities’ ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

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 newly created or expanded public records exemption. The bill does not create or expand a public records exemption, therefore it does not require a two-thirds vote for final passage.

The bill reenacts an existing public records exemption for complaints of misconduct filed with an agency against an agency employee and all information obtained from an investigation by the agency of the complaint. The bill complies with the requirements of article I, s. 24(c) of the State Constitution that public records exemptions may only be addressed in legislation separate from substantive changes to law.

32 The questionnaire and responses are on file with the Senate Committee on Ethics and Elections.
C. Trust Funds Restrictions:

None.

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.

VIII. Statutes Affected:

This bill substantially amends section 119.071 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.
A bill to be entitled
An act relating to a review under the Open Government
Sunset Review Act; amending s. 119.071, F.S., which
provides an exemption from public records requirements
for complaints of misconduct filed with an agency
against an agency employee, and all information
obtained pursuant to an agency investigation of such
complaints; removing the scheduled repeal of the
exemption; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (k) of subsection (2) of section
119.071, Florida Statutes, is amended to read:
119.071 General exemptions from inspection or copying of
public records.—
(2) AGENCY INVESTIGATIONS.—
(k) A complaint of misconduct filed with an agency
against an agency employee and all information obtained pursuant
to an investigation by the agency of the complaint of misconduct
is confidential and exempt from s. 119.07(1) and s. 24(a), Art.
I of the State Constitution until the investigation ceases to be
active, or until the agency provides written notice to the
employee who is the subject of the complaint, either personally
or by mail, that the agency has either:
1. Concluded the investigation with a finding not to
   proceed with disciplinary action or file charges; or
2. Concluded the investigation with a finding to proceed
   with disciplinary action or file charges.

Section 2. This act shall take effect October 1, 2018.
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<th>Topic</th>
<th>Greg Pound</th>
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<td>Appearing at request of Chair:</td>
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<td>Lobbyist registered with Legislature:</td>
<td>Yes, No</td>
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While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.
I. **Summary:**

SB 7020 is based upon an Open Government Sunset Review (OGSR) of a public records and public meetings exemption for certain information relating to complaints of violations by public officers and public employees. The public records exemption upon which the OGSR is based makes confidential and exempt from public records disclosure a complaint and records relating to a complaint or to any preliminary investigation held by:

- The Commission on Ethics (commission) or its agents;
- A Commission on Ethics and Public Trust established by a county or municipality; or
- A county or municipality that has established a local investigatory process to enforce more stringent standards of conduct and disclosure requirements than those provided in the Code of Ethics.

The public records exemption additionally applies to written referrals and related records held by the commission, the Governor, the Department of Law Enforcement, or a state attorney, as well as records relating to a preliminary investigation of referrals held by the commission.

A proceeding, or any portion thereof, conducted by the commission, a Commission on Ethics and Public Trust, or a county or municipality that has established its own investigatory process, pursuant to a complaint or preliminary investigation, is exempt from public meeting requirements. Similarly, a proceeding of the commission in which a determination regarding a referral is discussed or acted upon is exempt from public meeting requirements.

The above records and meetings are exempt until:

- The complaint is dismissed;
- The alleged violator requests in writing that the records or proceedings be made public;
- The commission determines it will not investigate the referral; or
The commission, a Commission on Ethics and Public Trust, or a county or municipality that has established its own investigatory process determines, based on the investigation, whether probable cause exists to believe that a violation has occurred.

The public records exemption is scheduled for repeal October 2, 2018, unless reviewed and saved from repeal before that date.

The original public necessity statement of the bill provided that the exemption is needed as release of the information could defame or otherwise damage the reputation of the individual under investigation, or significantly impair the integrity of the investigation.

The justification upon which the exemption is based remains valid. Additionally, the exemption is time-limited. Therefore, the bill deletes the repeal date of the public records exemption.

As the bill continues an existing public records exemption, a vote of each house by simply majority for passage is required.

The bill takes effect October 1, 2018.

II. Present Situation:

Public Records Law

The Florida 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.\(^2\)

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.\(^3\) Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.\(^4\) The Public Records Act states that it 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.\(^5\)

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.\(^6\) The Florida Supreme

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\(^1\) FLA. CONST., art. I, s. 24(a).
\(^2\) FLA. CONST., art. I, s. 24(a).
\(^3\) The Public Records Act does not apply to legislative or judicial records. Locke v. Hawkes, 595 So. 2d 32 (Fla. 1992). Also see Times Pub. Co. v. Ake, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are primarily located in s. 11.0431(2)-(3), F.S.
\(^4\) Public records laws are found throughout the Florida Statutes.
\(^5\) Section 119.01(1), F.S.
\(^6\) Section 119.011(12), F.S., defines “public record” to mean “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 connection with the transaction of official business by
Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.” A violation of the Public Records Act may result in civil or criminal liability.

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of the House of Representatives and the Senate. The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption. A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’ Records designated as ‘confidential and exempt’ may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as ‘exempt’ may be released at the discretion of the records custodian under certain circumstances.

**Open Meetings Laws**

The Florida Constitution provides that the public has a right to access governmental meetings. Each collegial body must provide notice of its meetings to the public and permit the public to attend any meeting at which official acts are taken or at which public business is transacted or discussed. This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts, or special districts.

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any agency.” 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.”

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

9 Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

8 FLA. CONST., art. I, s. 24(c).

FLA. CONST., art. I, s. 24(c).

11 Halifax Hosp. Medical Center v. New-Journal Corp., 724 So. 2d 567 (Fla. 1999). In Halifax Hospital, the Florida Supreme Court found 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. Id. at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. Id. In Baker County Press, Inc. v. Baker County Medical Services, Inc., 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The Baker County Press court found that since the law did not contain a public necessity statement, it was unconstitutional. Id. at 196.

12 If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. WFTV, Inc. v. The School Board of Seminole, 874 So. 2d 48 (Fla. 5th DCA 2004).

13 A record classified as exempt from public disclosure may be disclosed under certain circumstances. Williams v. City of Minneola, 575 So. 2d 683 (Fla. 5th DCA 1991).

14 FLA. CONST., art. I, s. 24(b).

15 FLA. CONST., art. I, s. 24(b).

16 FLA. CONST., art. I, s. 24(b). Meetings of the Legislature are governed by Article III, section 4(e) of the Florida Constitution, which states: “The rules of procedure of each house shall further provide that all prearranged gatherings, between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent
Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., which is also known as the “Government in the Sunshine Law,”\textsuperscript{17} or the “Sunshine Law,”\textsuperscript{18} requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be open to the public.\textsuperscript{19} The board or commission must provide the public reasonable notice of such meetings.\textsuperscript{20} Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin, or economic status or which operates in a manner that unreasonably restricts the public’s access to the facility.\textsuperscript{21} Minutes of a public meeting must be promptly recorded and open to public inspection.\textsuperscript{22} Failure to abide by open meetings requirements will invalidate any resolution, rule, or formal action adopted at a meeting.\textsuperscript{23} A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.\textsuperscript{24}

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of the House of Representatives and the Senate.\textsuperscript{25} The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.\textsuperscript{26} A statutory exemption that does not meet these two criteria may be unconstitutional and may not be judicially saved.\textsuperscript{27}

**Open Government Sunset Review Act**

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.\textsuperscript{28} The OGSR provides that an exemption automatically repeals 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.\textsuperscript{29} In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

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\textsuperscript{17} *Times Pub. Co. v. Williams*, 222 So. 2d 470, 472 (Fla. 2d DCA 1969).

\textsuperscript{18} *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).

\textsuperscript{19} Section 286.011(1)-(2), F.S.

\textsuperscript{20} *Id.*

\textsuperscript{21} Section 286.011(6), F.S.

\textsuperscript{22} Section 286.011(2), F.S.

\textsuperscript{23} Section 286.011(1), F.S.

\textsuperscript{24} Section 286.011(3), F.S.

\textsuperscript{25} FLA. CONST., art. I, s. 24(c).

\textsuperscript{26} FLA. CONST., art. I, s. 24(c).

\textsuperscript{27} *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found 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. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

\textsuperscript{28} 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 information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

\textsuperscript{29} Section 119.15(3), F.S.
The OGSR 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. 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 subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;
- Releasing sensitive personal information 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; or
- It protects trade or business secrets.

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

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required. If the exemption is reenacted 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 sunset, the previously exempt records will remain exempt unless provided for by law.

**Florida Commission on Ethics**

The Florida Commission on Ethics (commission) serves as guardian of the standards of conduct for the officers and employees of the state and its political subdivisions. It is an independent commission, created by the Florida Constitution, responsible for investigating and issuing public reports on complaints of breaches of the public trust by public officers and employees. The commission must investigate sworn complaints of violations of the Code of Ethics for Public

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30 Section 119.15(6)(b), F.S.
31 Section 119.15(6)(b)1., F.S.
32 Section 119.15(6)(b)2., F.S.
33 Section 119.15(6)(b)3., F.S.
34 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?
35 FLA. CONST. art. I, s. 24(c).
36 Section 119.15(7), F.S.
37 Section 112.320, F.S.
38 Article II, s. 8(f), FLA. CONST.
39 Section 112.312(3), F.S., defines “breach of the public trust” as a violation of a provision of the State Constitution or the Code of Ethics which establishes a standard of ethical conduct, a disclosure requirement, or a prohibition applicable to public officers or employees in order to avoid conflicts between public duties and private interests, including, without limitation, a violation of s. 8, Art. II of the State Constitution or of the Code of Ethics.
Officers and Employees (Code of Ethics)\(^ {40} \) or of any other law over which it has jurisdiction.\(^ {41} \) The commission may initiate an investigation if it receives a sworn complaint.\(^ {42} \) It may also investigate an alleged violation submitted to the commission via referral from the Governor, Florida Department of Law Enforcement, a state attorney, or a U.S. Attorney.\(^ {43} \)

Complaints or referrals against a candidate in any election may not be filed, nor may any intention of filing such a complaint or referral be disclosed, on the day of any such election or within the 30 days immediately preceding the date of the election, unless the complaint or referral is based upon personal information or information other than hearsay.

Current law provides that the Code of Ethics does not prohibit the governing body of a political subdivision or an agency from imposing upon its own officers and employees additional or more stringent standards of conduct and disclosure requirements than those specified in the Code of Ethics, provided that those standards of conduct and disclosure requirements do not otherwise conflict with the provisions of the Code of Ethics.\(^ {44} \)

Public Record and Public Meeting Exemptions under Review

Current law provides that the complaint and records relating to the complaint or to any preliminary investigation held by the commission or its agents, by a Commission on Ethics and Public Trust established by any county,\(^ {45} \) or by any municipality,\(^ {46} \) or by any county or municipality that has established a local investigatory process to enforce more stringent standards of conduct and disclosure requirements than those provided in the Code of Ethics are confidential and exempt\(^ {47} \) from public records requirements.\(^ {48} \)

Written referrals, and records relating thereto, held by the commission, the Governor, the Department of Law Enforcement, or a state attorney, as well as records relating to any preliminary investigation of such referrals held by the commission, are confidential and exempt from public records requirements.\(^ {49} \)

\(^ {40} \) Chapter 112, Part III, F.S.
\(^ {41} \) Section 112.322(1), F.S.
\(^ {42} \) Section 112.324(1)(a), F.S.
\(^ {43} \) Section 112.324(1)(b), F.S.
\(^ {44} \) Section 112.326, F.S.
\(^ {45} \) Section 125.011(1), F.S., defines “county” as a county operating under a home rule charter adopted pursuant to ss. 10, 11, and 24, Art. VIII of the Constitution of 1885, as preserved by Art. VIII, s. 6(e) of the Constitution of 1968, which county, by resolution of its board of county commissioners, elects to exercise the powers herein conferred.
\(^ {46} \) Section 165.031(3), F.S., defines “municipality” as a municipality created pursuant to general or special law authorized or recognized pursuant to s. 2 or s. 6, Art. VIII of the State Constitution.
\(^ {47} \) There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (See WFTV, Inc. v. The School Board of Seminole, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); City of Riviera Beach v. Barfield, 642 So.2d 1135 (Fla. 4th DCA 1994); Williams v. City of Minneola, 575 So.2d 683 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in statute. (See Attorney General Opinion 85-62, August 1, 1985).
\(^ {48} \) Section 112.324(2)(a), F.S.
\(^ {49} \) Section 112.324(2)(b), F.S.
A proceeding, or any portion thereof, conducted by the commission, a Commission on Ethics and Public Trust, or a county or municipality that has established such local investigatory process, pursuant to a complaint or preliminary investigation, is exempt from public meetings requirements.\(^{50}\) Additionally, any proceeding of the commission in which a determination regarding a referral is discussed or acted upon is exempt from public meetings requirements.\(^{51}\)

The above records and meetings are exempt until:

- The complaint is dismissed;
- The alleged violator requests in writing that such records or proceeding be made public;
- The commission determines it will not investigate the referral; or
- The commission, a Commission on Ethics and Public Trust, or a county or municipality that has established such local investigatory process determines, based on such investigation, whether probable cause exists to believe that a violation has occurred.\(^{52}\)

The 2013 public necessity statement for the public records and public meetings exemption provides as justification that release of this information could:

- Be defamatory to the individual under investigation;
- Cause unwarranted damage to the reputation of the individual under investigation; or
- Significantly impair the integrity of the investigation.

Pursuant to the Open Government Sunset Review Act, the public record and public meeting exemptions will repeal on October 2, 2018, unless reenacted by the Legislature.

**Open Government Sunset Review**

During the 2017 interim, committee staff sent a questionnaire to the commission and to every county and city in the state. In all, 43 responses were received.\(^{53}\) The commission stated it has received approximately five or six public record requests for the confidential and exempt information, however, the commission has not taken a position on whether the exemptions should be reenacted.

Of those received from the counties and cities, only three attested that they either had a Commission on Ethics and Public Trust or had established a local investigatory process to enforce more stringent standards of conduct and disclosure requirements than those provided in the Code of Ethics. Those respondents stated they have received public record requests for the confidential and exempt records and each recommended reenactment of the exemptions.

**III. Effect of Proposed Changes:**

This bill is based upon an Open Government Sunset Review (OGSR) of a public records and public meetings exemption for certain information relating to complaints of violations by public officers and public employees. The public records exemption upon which the OGSR is based

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\(^{50}\) Section 112.324(2)(c), F.S.

\(^{51}\) Section 112.324(2)(d), F.S.

\(^{52}\) Section 112.324(2)(e), F.S.

\(^{53}\) The questionnaire and responses are on file with the Senate Committee on Ethics and Elections.
makes confidential and exempt from public records disclosure a complaint and records relating to a complaint or to any preliminary investigation held by:
- The Commission on Ethics (commission) or its agents;
- A Commission on Ethics and Public Trust established by a county or municipality; or
- A county or municipality that has established a local investigatory process to enforce more stringent standards of conduct and disclosure requirements than those provided in the Code of Ethics.

The public records exemption additionally applies to written referrals and related records held by the commission, the Governor, the Department of Law Enforcement, or a state attorney, as well as records relating to a preliminary investigation of referrals held by the commission.

A proceeding, or any portion thereof, conducted by the commission, a Commission on Ethics and Public Trust, or a county or municipality that has established its own investigatory process, pursuant to a complaint or preliminary investigation, is exempt from public meeting requirements. Similarly, a proceeding of the commission in which a determination regarding a referral is discussed or acted upon is exempt from public meeting requirements.

The above records and meetings are exempt until:
- The complaint is dismissed;
- The alleged violator requests in writing that the records or proceedings be made public;
- The commission determines it will not investigate the referral; or
- The commission, a Commission on Ethics and Public Trust, or a county or municipality that has established its own investigatory process determines, based on the investigation, whether probable cause exists to believe that a violation has occurred.

The public records exemption is scheduled for repeal October 2, 2018, unless reviewed and saved from repeal before that date.

The original public necessity statement of the bill provided that the exemption is needed as release of the information could defame or otherwise damage the reputation of the individual under investigation, or significantly impair the integrity of the investigation.

The justification upon which the exemption is based remains valid. Additionally, the exemption is time-limited. Therefore, the bill deletes the repeal date of the public records exemption.

As the bill continues an existing public records exemption, a vote of each house by simply majority for passage is required.

The bill takes effect October 1, 2018. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

   The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties’ or municipalities’ ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.
B. Public Records/Open Meetings Issues:

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 newly created or expanded public records exemption. The bill does not create or expand a public records exemption. Therefore, just a simple majority vote suffices for passage.

C. Trust Funds Restrictions:

None.

IV. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

V. Technical Deficiencies:

None.

VI. Related Issues:

None.

VII. Statutes Affected:

This bill substantially amends section 112.324 of the Florida Statutes.

VIII. 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.
A bill to be entitled
An act relating to a review under the Open Government Sunset Review Act; amending s. 112.324, F.S., which provides exemptions from public records and public meetings requirements for complaints alleging a violation of part III of ch. 112, F.S., and related records that are held by the Commission on Ethics or its agents and specified local government entities, for written referrals and related records that are held by the commission or its agents, the Governor, the Department of Law Enforcement, and state attorneys, and for portions of meetings at which complaints or referrals are discussed or acted upon; removing the scheduled repeal of the exemptions; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (2) of section 112.324, Florida Statutes, is amended to read:

112.324 Procedures on complaints of violations and referrals; public records and meeting exemptions.—

(2)(a) The complaint and records relating to the complaint or to any preliminary investigation held by the commission or its agents, by a Commission on Ethics and Public Trust established by any county defined in s. 125.011(1) or by any municipality defined in s. 165.031, or by any county or municipality that has established a local investigatory process to enforce more stringent standards of conduct and disclosure requirements as provided in s. 112.326 are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) Written referrals and records relating to such referrals held by the commission or its agents, the Governor, the Department of Law Enforcement, or a state attorney, and records relating to any preliminary investigation of such referrals held by the commission or its agents, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(c) Any portion of a proceeding conducted by the commission, a Commission on Ethics and Public Trust, or a county or municipality that has established such local investigatory process, pursuant to a complaint or preliminary investigation, is exempt from s. 286.011, s. 24(b), Art. I of the State Constitution, and s. 120.525.

(d) Any portion of a proceeding of the commission in which a determination regarding a referral is discussed or acted upon is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution, and s. 120.525.

(e) The exemptions in paragraphs (a)-(d) apply until:

1. The complaint is dismissed as legally insufficient;

2. The alleged violator requests in writing that such records and proceedings be made public;

3. The commission determines that it will not investigate the referral; or

4. The commission, a Commission on Ethics and Public Trust, or a county or municipality that has established such local investigatory process determines, based on such investigation,
whether probable cause exists to believe that a violation has occurred.

(f) A complaint or referral under this part against a candidate in any general, special, or primary election may not be filed nor may any intention of filing such a complaint or referral be disclosed on the day of any such election or within the 30 days immediately preceding the date of the election, unless the complaint or referral is based upon personal information or information other than hearsay.

(g) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. This act shall take effect October 1, 2018.
CERTIFICATION

STATE OF FLORIDA
COUNTY OF Palm Beach

Before me, the undersigned Notary Public of Florida, personally appeared

Sean McGould

who, after being duly sworn, say: (1) that he/she has carefully and personally prepared or read the answers to the foregoing questions; (2) that the information contained in said answers is complete and true; and (3) that he/she will, as an appointee, fully support the Constitutions of the United States and of the State of Florida.

Signature of Applicant-Affiant

Sworn to and subscribed before me this 9th day of May, 2017.

Signature of Notary Public-State of Florida

(Print, Type, or Stamp Commissioned Name of Notary Public)

My commission expires: ________________________________

Personally Known □ OR □ Produced Identification

Type of Identification Produced ________________________________

(seal)
STATE OF FLORIDA
DEPARTMENT OF STATE
Division of Elections

I, Ken Detzner, Secretary of State,
do hereby certify that

Sean G. McGould

is duly appointed a member of the
Investment Advisory Council

for a term beginning on the Fourteenth day of March, A.D., 2017, until the First day of February, A.D., 2020 and is subject to be confirmed by the Senate during the next regular session of the Legislature.

Given under my hand and the Great Seal of the State of Florida, at Tallahassee, the Capital, this the Thirtieth day of May, A.D., 2017.

Secretary of State
March 13, 2017

Mr. Sean G. McGould
Lighthouse Partners
3801 PGA Boulevard
Suite 500
Palm Beach Gardens, Florida 33410

Dear Mr. McGould:

It is my honor to appoint you to the Investment Advisory Council effective March 14, 2017. Your term will run through February 1, 2020. I know that you will be a valuable addition to the Council.

By copy of this letter, I am advising Ash Williams with the State Board of Administration of your appointment. The Council staff will soon be providing you with an orientation package and meeting schedule. Should you have any questions in the meantime, please feel free to contact me or Kari Glisson at (850)413-1398.

Thank you for your willingness to serve.

Sincerely,

Pam Bondi

Cc: Ash Williams, Executive Director & Chief Investment Officer, Florida State Board of Administration
STATE OF FLORIDA
County of [Name]

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

[Title of Office]

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words “so help me God.” See § 92.52, Fla. Stat.]

Signature

Sworn to and subscribed before me this 9th day of May 2017.

Signature of Officer Administering Oath or of Notary Public

Print Name

Signature

ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address: ☑ Home □ Office

[Name]
Street or Post Office Box

City, State, Zip Code

Signature
The Florida Senate

COMMITTEE RECOMMENDATION ON EXECUTIVE APPOINTMENT

COMMITTEE: Committee on Governmental Oversight and Accountability
MEETING DATE: Tuesday, February 6, 2018
TIME: 11:00 a.m.—12:30 p.m.
PLACE: James E. "Jim" King, Jr. Committee Room, 401 Senate Office Building

TO: The Honorable Joe Negron, President
FROM: Committee on Governmental Oversight and Accountability

The committee was referred the following executive appointment subject to confirmation by the Senate:

Office: Investment Advisory Council

Appointee: McGould, Sean

Term: 3/14/2017-2/1/2020

After inquiry and due consideration, the committee recommends that the Senate confirm the aforesaid executive appointment made by the Board of Administration.
IN THE FLORIDA SENATE
TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of
Eric Larson
Executive Director, Agency for State Technology

NOTICE OF HEARING

TO: Mr. Eric Larson

YOU ARE HEREBY NOTIFIED that the Committee on Governmental Oversight and Accountability of the Florida Senate will conduct a hearing on your executive appointment on Tuesday, February 6, 2018, in the James E. "Jim" King, Jr. Committee Room, 401 Senate Office Building, commencing at 11:00 a.m., pursuant to Rule 12.7(1) of the Rules of the Florida Senate.

Please be present at the time of the hearing.
DATED this the 1st day of February, 2018

Committee on Governmental Oversight and Accountability

[Signature]
Senator Dennis Baxley
As Chair and by authority of the committee

cc: Members, Committee on Governmental Oversight and Accountability
Office of the Sergeant at Arms
CERTIFICATION

STATE OF FLORIDA
COUNTY OF Leon

Before me, the undersigned Notary Public of Florida, personally appeared Eric Larson, who, after being duty sworn, say: (1) that he/she has carefully and personally prepared or read the answers to the foregoing questions; (2) that the information contained in said answers is complete and true; and (3) that he/she will, as an appointee, fully support the Constitutions of the United States and of the State of Florida.

Signature of Applicant-Applicant

Sworn to and subscribed before me this 25 day of September, 2017.

Signature of Notary Public-State of Florida

(Virginia Kent)

(Print, Type, or Stamp Commissioned Name of Notary Public)

My commission expires: 6/20/2020

Personally Known □ OR Produced Identification □

Type of Identification Produced __________________________________________

(seal)
STATE OF FLORIDA
DEPARTMENT OF STATE
Division of Elections

I, Ken Detzner, Secretary of State,
do hereby certify that

Eric Larson

is duly appointed Executive Director,
State Chief Information Officer

for a term beginning on the Tenth-day of March, A.D., 2017, to
serve at the pleasure of the Governor and is subject to be
confirmed by the Senate during the next regular session of the
Legislature.

Given under my hand and the Great Seal of the
State of Florida, at Tallahassee, the Capital, this
the Ninth day of October, A.D., 2017.

[Signature]

Secretary of State
March 10, 2017

Secretary Kenneth W. Detzner
Secretary of State
State of Florida
R. A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Detzner:

Please be advised I have made the following appointment:

    Eric Larson

as State Chief Information Officer, succeeding Jason Allison, subject to confirmation by the Senate. This appointment is effective for a term beginning March 10, 2017, and ending at the pleasure of the Governor.

Please prepare the necessary papers and mail to:

Mr. Eric Larson

Thank you for your assistance in this matter.

Sincerely,

Rick Scott
Governor

RS/cr
STATE OF FLORIDA
County of Leon

OATH OF OFFICE
(Art. II. § 5(b), Fla. Const.)

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of Executive Director for the Agency for State Technology

(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

Signature

Sworn to and subscribed before me this 28 day of September, 2017.

Signature of Officer Administering Oath or of Notary Public

Virginia Kent

Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known ☑ OR Produced Identification □

Type of Identification Produced

ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address: ☑ Home □ Office

Street or Post Office Box

City, State, Zip Code

Signature

DS-DE 56 (Rev. 11/16)
The Florida Senate

Committee Witness Oath

Chair:

Please raise your right hand and be sworn in as a witness.

Do you swear or affirm that the evidence you are about to give will be the truth, the whole truth, and nothing but the truth?

Witness's Name: Eric Larson

Answer: "I do."

Pursuant to §90.605(1), Florida Statutes: "The witness's answer shall be noted in the record."

Committee Name: Governmental Oversight and Accountability

Date: February 6, 2018

File 1 copy with the Secretary of the Senate S-002 (01/12/2015)
The Florida Senate

APPEARANCE RECORD

Meeting Date

Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic

Name

Job Title

Address

Phone

Email

Speaking: [ ] For [ ] Against [ ] Information

Representing

Appearing at request of Chair: [ ] Yes [ ] No

Lobbyist registered with Legislature: [ ] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.
TO: The Honorable Joe Negron, President

FROM: Committee on Governmental Oversight and Accountability

The committee was referred the following executive appointment subject to confirmation by the Senate:

Office: Executive Director, Agency for State Technology

Appointee: Larson, Eric

Term: 3/10/2017-Pleasure of Governor

After inquiry and due consideration, the committee recommends that the Senate confirm the aforesaid executive appointment made by the Governor.
The Florida Senate

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date 2/4/18

Topic Office Appointments

Name Greg Round

Job Title

Address 9166 Sunrise Dr

Street

City

State

Zip

Phone

Email

Speaking: □ For □ Against □ Information

Waive Speaking: □ In Support □ Against

(The Chair will read this information into the record.)

Representing

Appearing at request of Chair: □ Yes □ No

Lobbyist registered with Legislature: □ Yes □ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.
February 6, 2018

Senator Dennis Baxley
404 S. Monroe Street
525 Knott Building
Tallahassee, FL 32399

Dear Chairman Baxley:

I am writing to request approval to be excused from the Committee on Governmental Oversight and Accountability meeting scheduled for today. I apologize for the delay in submitting this request.

I appreciate your consideration in this matter.

Sincerely,

Bill Galvano

cc: Diana Caldwell
    Tamra Redig
February 6, 2018

Senator Dennis Baxley, Chair
Government Oversight & Accountability
320 Senate Office Building
Tallahassee, Florida 32399

Dear Senator Baxley,

Please excuse my absence from Government Oversight and Accountability Committee meeting today as I was in Community Affairs presenting another bill.

Onward & Upward,

[Signature]
Senator Dennis Baxley
Senate District 12

DKB/dd
Meeting called to order by Vice Chair Mayfield
11:05:20 AM Roll call - Quorum is present
11:05:36 AM Chair, Comments. Pledge of Allegiance led by Sen. Stargel
11:06:19 AM Recording Paused
11:06:20 AM Informal Recess
11:06:32 AM Recording Resumed
11:07:55 AM Questions, Appearance Cards, Debate? None
11:08:01 AM Sen. Bracy waives close
11:08:11 AM Roll call CS/SB 862 - Favorable
11:08:32 AM Recording Paused. Informal Recess
11:10:19 AM Recording Resumed
11:10:21 AM Tab 8 - Senate Confirmation Sean McGould, Appointment to the Investment Advisory Council
11:10:27 AM No debate. No appearance cards. Motion to confirm?
11:10:37 AM Motion by Sen Stargel to Recommend Confirmation
11:10:54 AM Roll Call for Confirmation of Sean McGould - favorable
11:11:17 AM Tab 9 - Eric Larson - Appointment to the Agency for State Technology
11:11:51 AM Eric Larson is sworn in by Chair. Eric addresses the committee
11:14:17 AM Questions? None
11:14:32 AM Greg Pound, constituent, giving information regarding appointments. Nothing against Mr. Larson
11:15:59 AM Chair address Mr. Pound with regard to his questions and concerns.
11:16:33 AM Sen. Stargel is in support of Eric Larson
11:17:12 AM Debate? None,
11:17:25 AM Sen. Stargel and Sen. Rader make motion to recommend confirmation of Eric Larson as Executive Director Chief Information Officer, Agency for State Technology
11:17:39 AM Roll Call - Confirmation of Eric Larson - favorable
11:17:57 AM Recording Paused. Informal Recess
11:18:13 AM Recording Resumed
11:18:36 AM Chair recognizes FSU group in audience
11:19:00 AM Student from FSU group - FBLA addresses the committee
11:19:50 AM Sen. Rader to FSU group
11:21:01 AM Student addresses committee
11:21:45 AM Chair to students
11:21:56 AM National President of FBLA
11:23:20 AM Questions?
11:23:27 AM Sen. Rader, where is the 1st Amendment Foundation on this?
11:23:51 AM Greg Pound, Largo, Does not oppose bill but is speaking to give information on problem with Ethics in elections office
11:25:29 AM Debate? None.
11:25:35 AM Sen. Perry waives close
11:25:48 AM Roll call on SB 7018 - Favorable
11:26:07 AM Tab 7 - SB 7020 by Sen. Perry - OSGR/Complaints of Violations and Referrals
11:26:29 AM Questions? None.
11:26:36 AM No appearance cards and no debate
11:26:52 AM Roll call SB 7020 - favorable
11:28:02 AM Sen. Perry waives close
11:28:08 AM Roll call SB 738 - favorable
11:35:23 AM Recording Resumed
Chair calls meeting back to order.
Tab 4 - SB 1212 by Sen. Book, Public Records/Child Advocacy Centers
Questions? None
Daphnee Sainvil, Policy Advisor, Broward Co. Gov't. waives in support
Greg Pound, citizen, to oppose bill
Debate? Questions?
Sen. Stargel, question of sponsor. Just personal information?
Sen. Book in response
Debate
Sen. Stargel comments that she support the bill
Sen. Rouson to Mr. Pound regarding what bill does
Chair, echo comments made by Sen. Rader, Sen. Stargel, Sen. Rouson
Sen. Book to close
Roll call SB 1212 - Favorable
Motion by Sen. Rouson to be shown as voting in the affirmative for SB 862, Conf. Tab 8 and Tab 9, SB 7018- SB 7020, SB 738
Tab 3 - CS/SB 1018 by Sen. Stargel, Lifeline Service
3 amendments to CS/SB 1018 by Sens. Bean and Stargel
Barcode 666478 Strike all amendment
Questions? No appearance cards
Technical Amendment 494990
Questions on amendment to amendment,
Amendment to amendment is adopted
Technical Amendment 842668 - Adopted
Back on main amendment as amended.
Debate? None
Sen. Stargel waives to close
Amendment is adopted
On bill as amended
Cameron Yarbrough, Gov. Relations, Q Link Wireless, waives in support
Sen. Stargel to close. Waives close
Roll call - CS/CS SB 1018 - Favorable
Tab 5 - SB 7016 - Sen. Grimsley to present bill - OSGR/Complaints of Violations and Referrals
No questions. No debate.
Diana Padgett, Gov. Consultant, FL. School Nutrition Association, waives in support
Sen. Grimsley waives close
Roll Call on SB 7016 - Favorable
Chair - business? None
Sen. Rader moves to adjourn