

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: HB 385 Pub. Rec./Criminal Conflict and Civil Regional Counsel Offices

SPONSOR(S): Maney and others

TIED BILLS: CS/CS/HB 383 **IDEN./SIM. BILLS:** CS/SB 598

FINAL HOUSE FLOOR ACTION: 117 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

HB 385 passed the House on March 8, 2022, as CS/SB 598. CS/CS/HB 383 passed the House on March 8, 2022, as CS/CS/SB 596.

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

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

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

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

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

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

CS/CS/HB 383, to which this bill is linked, authorizes CCCRC to register a vehicle or vessel under a fictitious name with DHSMV and receive a license plate or decal based on such fictitious name; providing CCCRC with the same protections and confidentiality enjoyed by a public defender's office. This bill expands the existing public records exemption in s. 320.025, F.S., to exempt all records relating to the registration application made by CCCRC to DHSMV from disclosure for as long as such information is retained by DHSMV.

This bill is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2027, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill may have a minimal fiscal impact on state government.

The bill was approved by the Governor on June 20, 2022, ch. 2022-196, L.O.F., and will become effective on July 1, 2022.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Public Records

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of article I, section 24(a) of the Florida Constitution.¹ The general law must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish its purpose.²

Public policy regarding access to government records is addressed further in s. 119.07(1)(a), F.S., which guarantees every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt. Furthermore, the Open Government Sunset Review Act (Act)³ provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose and the "Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."⁴ In addition, the exemption may be no broader than is necessary to meet one of the following purposes:⁵

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

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

Criminal Conflict and Civil Regional Counsel

The Office of Criminal Conflict and Civil Regional Counsel (CCCRC) was created by the Legislature in 2007 to provide legal representation to indigent persons that are constitutionally entitled to court-appointed counsel.⁶ The CCCRC primarily provides representation in three types of cases:

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

¹ Art. I, s. 24(c), Fla. Const.

² *Id.*

³ S. 119.15, F.S.

⁴ S. 119.15(6)(b), F.S.

⁵ *Id.*

⁶ Ch. 2007-62, Laws of Fla.

In representing a defendant in a criminal case, the CCCRC performs similar functions to that of a traditional public defender. To effectively represent a client in a criminal proceeding, both the public defender and CCCRC employ investigators to research cases and conduct interviews with witnesses.⁷

Confidential Motor Vehicle Registration

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

- A law enforcement agency of state, county, municipal, or federal government;
- The Attorney General's Medicaid Fraud Control Unit; or
- Any state public defender's office.⁸

To register a motor vehicle or vessel under a fictitious name, the law enforcement agency, Fraud Control Unit, or public defender's office must file a written application with DHSMV affirming the license plate or decal will be used for activities that require concealment of the true owner of the vehicle and listing individuals who are authorized to use the vehicle.⁹

All records relating to the registration application of the Attorney General's Medicaid Fraud Control Unit, a law enforcement agency, or any state public defender's office, and any records necessary for carrying out the purposes of s. 320.025, F.S., are exempt from disclosure under the public records provisions in s. 119.07(1), F.S., and article I, section 24(a) of the Florida Constitution, as long as the information is retained by DHSMV.¹⁰

Effect of the Bill

CS/CS/HB 383, to which this bill is linked, authorizes CCCRC to register a vehicle or vessel under a fictitious name with DHSMV and receive a license plate or decal based on such fictitious name. This provides CCCRC with the same protections and confidentiality enjoyed by a public defender's office, which performs a virtually identical function. This bill expands the existing public records exemption in s. 320.025, F.S., to provide that all records relating to the registration application made by CCCRC to DHSMV are exempt¹¹ from disclosure for as long as such information is retained by DHSMV.

This bill is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2027, unless reviewed and saved from repeal through reenactment by the Legislature.

The effective date of this bill is July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

⁷ S. 27.53(1) and (4), F.S.

⁸ S. 320.025(1), F.S.

⁹ *Id.*

¹⁰ S. 320.025(3), F.S.

¹¹ 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. Sch. Bd. 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, 687 (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. 85-62 Fla. Op. Att'y Gen. (1985).

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill could have a minimal fiscal impact on DHSMV as agency staff responsible for complying with public record requirements may require training related to the expansion of the public record exemption. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of agencies.