

The bill takes effect on the same date that SB 482 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

II. Present Situation:

Access to Public Records - Generally

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 The right to inspect or copy 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

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

Executive Agency Records – The Public Records Act

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

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

All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connections with the transaction of official business by any agency.

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020).

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

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business that are used to “perpetuate, communicate, or formalize knowledge of some type.”⁶

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

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

General exemptions from the public records requirements are contained in the Public Records Act.¹¹ Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹²

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.¹³ Records designated as “confidential and exempt” are not subject to inspection by the public and may only be released under the circumstances defined by statute.¹⁴ Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.¹⁵

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

⁷ Section 119.07(1)(a), F.S.

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST. art. I, s. 24(c).

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

¹¹ *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹² *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹³ *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁴ *Id.*

¹⁵ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act¹⁶ (the Act), prescribe a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ The Act requires the repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.²⁰ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²² or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

The Act also requires specified questions to be considered during the review process.²⁴ In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote

¹⁶ Section 119.15, F.S.

¹⁷ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹⁸ Section 119.15(2)(a) and (b), F.S., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

²⁴ 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?

²⁵ See generally s. 119.15, F.S.

for passage are *not* required. If the Legislature allows an exemption to expire, the previously exempt records will remain exempt unless otherwise provided by law.²⁶

The Dozier School

From January 1, 1900, to June 30, 2011, the state operated the Florida State Reform School in Marianna.²⁷ Over the years, the school has operated under several different names: Florida State Reform School, Florida Industrial School for Boys, Florida School for Boys, and Arthur G. Dozier School for Boys (hereinafter, Dozier School). The school originally housed children as young as five years old, who had committed minor criminal offenses, such as incorrigibility and truancy. Additionally, many children who had not been charged with a crime were committed to the school as wards of the state and orphans.²⁸

As early as 1901, reports surfaced of children being chained to walls in irons, brutal whippings, and peonage (involuntary servitude).²⁹ In the first 13 years of operation, six state-led investigations took place. Those investigations found that children as young as five years old were being hired out for labor, unjustly beaten, and were without education or proper food and clothing.³⁰

In 1955, the state opened a new reform school in Okeechobee to address overcrowding at the Dozier School.³¹ Staff members of the Dozier School were transferred to the Florida School for Boys at Okeechobee (hereinafter, Okeechobee School), where they instituted the same degrading policies and abusive practices as those implemented at the Dozier School.³²

In 2005, former students of the Dozier School began to publish accounts of the abuse they experienced at the school.³³ These stories prompted Governor Charlie Crist to direct the Florida Department of Law Enforcement to investigate the Dozier School and the deaths that were alleged and occurred at the school.³⁴

Victims of Florida Reform School Abuse

SB 482 creates the “Arthur G. Dozier School for Boys and Okeechobee School Abuse Victim Certification Act.” The bill defines a “victim of Florida reform school abuse” as a living person who was confined at the Arthur G. Dozier School for Boys or the Okeechobee School at any time between 1940 and 1975 and who was subjected to mental, physical, or sexual abuse

²⁶ Section 119.15(7), F.S.

²⁷ Erin H. Kimmerle, Ph.D., E. Christian Wells, Ph.D., and Antoinette Jackson, Ph.D.; Florida Institute for Forensic Anthropology & Applied Sciences, University of South Florida, *Report on the Investigation into the Deaths and Burials at the Former Arthur G. Dozier School for Boys in Marianna, Florida*, pg. 22 (January 18, 2016), available at: <http://mediad.publicbroadcasting.net/p/wusf/files/201601/usf-final-dozier-summary-2016.pdf> (last visited January 5, 2022).

²⁸ *Id.*

²⁹ *Id.* at 12.

³⁰ *Id.* at 27.

³¹ *Id.* at 22.

³² *Id.*

³³ *Id.* at 30.

³⁴ *Id.*

perpetrated by personnel of the school during the period of confinement. More than 500 former students have come forward with reports of physical, mental, and sexual abuse by school staff.

The bill requires a person seeking to be certified as a victim of Florida reform school abuse to submit an application to the DOS by September 1, 2022. The application must include:

- An affidavit stating:
 - That the applicant was confined at the Dozier School or the Okeechobee School;
 - The beginning and ending days of the confinement; and
 - That the applicant was subjected to mental, physical, or sexual abuse perpetrated by school personnel during the confinement.
- Documentation from the State Archives of Florida, the Dozier School, or the Okeechobee School, demonstrating that the applicant was confined at the school for any length of time between 1940 and 1975; and
- Proof of identification, including a current form of photo ID.

III. Effect of Proposed Changes:

This bill is the public records exemption linked to SB 482. This bill creates a public records exemption to exempt any personal identifying information on an application submitted to the DOS by, or on behalf of, a person seeking certification as a victim of Florida reform school abuse, as defined in the Arthur G. Dozier School for Boys and Okeechobee School Abuse Victim Certification Act. Such information shall be made exempt from s. 119.07(1), F.S., and s. 24(a), Article I of the State Constitution.

The bill also contains a statement of public necessity as required by s. 24(c), Art. I of the State Constitution. The public necessity statement provides that:

The Legislature finds that it is a public necessity that personal identifying information in applications for certification as a victim of Florida reform school abuse which are submitted to the Department of State be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The Legislature finds that the release of personal identifying information contained in a certification application could subject victims of Florida reform school abuse to further trauma. The Legislature further finds that such victims would be more likely to come forward to seek redress if personal identifying information in the application were protected from public disclosure. The Legislature finds that the harm that may result from the release of such information outweighs the public benefit that may be derived from the disclosure of the information.

The bill further provides that the exemption is subject to the Open Government Sunset Review Act and will be repealed on December 31, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill takes effect on the same date that SB 482 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill enacts a new exemption for personal identifying information in an application submitted to the DOS by, or on behalf of, a person seeking certification as a victim of Florida reform school abuse, thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemption.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect victims of Florida reform school abuse. This bill exempts only the personal identifying information in an application submitted to the DOS from the public records requirements. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates an undesignated section 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.