

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1495 Pub. Rec./Security and Transportation Services Records

**SPONSOR(S):** Judiciary Committee, Holcomb

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1616

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	17 Y, 0 N	Padgett	Hall
2) Ethics, Elections & Open Government Subcommittee	13 Y, 5 N	Skinner	Toliver
3) Judiciary Committee	15 Y, 7 N, As CS	Padgett	Kramer

### SUMMARY ANALYSIS

Section 943.68, F.S., requires the Florida Department of Law Enforcement (FDLE) to provide security and transportation services for specified persons including:

- The Governor and his or her immediate family;
- Visiting governors and their families, upon request by the Governor;
- Other persons, upon request by the Governor, Lieutenant Governor, a member of the Cabinet, the Speaker of the House of Representatives, the President of the Senate, or the Chief Justice of the Florida Supreme Court, provided that the government official requesting the provision of security or transportation services certifies that such services are in the best interest of the state and only if:
  - Such persons are visiting the state and the primary purpose of such visit is for a significant public purpose; or
  - The failure to provide security or transportation services could result in a clear and present danger to the personal safety of such persons or to the safety of other persons or property within the state or could result in public embarrassment to the state.

FDLE may request the assistance of, and coordinate with, other law enforcement agencies in providing transportation and protective services to government officials and other specified persons.

CS/HB 1495 amends s. 943.68, F.S., to create a public records exemption for records held by a law enforcement agency relating to security or transportation services provided by FDLE, or by FDLE in coordination with another law enforcement agency, to specified government officials, their families, and certain other persons. The public records exemption created by the bill is retroactive and applies to any records held by a law enforcement agency before, on, or after the effective date of the bill.

The bill provides the public records exemption is a public necessity because the disclosure of such records could reveal the means and methods used in providing security or transportation services and could impair the ability of FDLE or other law enforcement agencies to provide such services.

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

The bill does not appear to have a fiscal impact.

The bill is effective upon becoming a law.

**Article I, section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands a public record exemption; thus, it requires a two-thirds vote for final passage.**

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Public Records

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

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)<sup>3</sup> 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."<sup>4</sup> In addition, the exemption may be no broader than is necessary to meet one of the following purposes:<sup>5</sup>

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

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

When creating a public record exemption, the Legislature may provide that a record is "exempt" or "confidential and exempt." Records designated as "exempt" may be released at the discretion of the records custodian under certain circumstances, while records designated as "confidential and exempt" are not subject to inspection by the public and may only be released under statutorily defined circumstances.<sup>6</sup>

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<sup>1</sup> Art. I, s. 24(c), Fla. Const.

<sup>2</sup> *Id.*

<sup>3</sup> S. 119.15, F.S.

<sup>4</sup> S. 119.15(6)(b), F.S.

<sup>5</sup> *Id.*

<sup>6</sup> 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 Rivera 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); and Op. Att'y Gen. Fla. 85- 62 (1985).

Section 943.68, F.S., requires the Florida Department of Law Enforcement (FDLE) to provide security and transportation services for specified persons including:

- The Governor and his or her immediate family;
- Visiting governors and their families, upon request by the Governor;
- Other persons, upon request by the Governor, Lieutenant Governor, a member of the Cabinet, the Speaker of the House of Representatives, the President of the Senate, or the Chief Justice of the Florida Supreme Court, provided that the government official requesting the provision of security or transportation services certifies<sup>7</sup> that such services are in the best interest of the state and only if:
  - Such persons are visiting the state and the primary purpose of such visit is for a significant public purpose; or
  - The failure to provide security or transportation services could result in a clear and present danger to the personal safety of such persons or to the safety of other persons or property within the state or could result in public embarrassment to the state.

FDLE may request the assistance of, and coordinate with, other law enforcement agencies to provide transportation and protective services to government officials and other specified persons.<sup>8</sup> FDLE must coordinate with the United States Department of State and the United States Secret Service upon request of those agencies, or by the Governor or a member of the Cabinet.<sup>9</sup>

### **Effect of Proposed Changes**

CS/HB 1495 amends s. 943.68, F.S., to create a public records exemption for records held by a law enforcement agency relating to security or transportation services provided by FDLE, or by FDLE in coordination with another law enforcement agency, to specified government officials, their families, and certain other persons. The public records exemption created by the bill is retroactive and applies to any records held by a law enforcement agency before, on, or after the effective date of the bill.

The bill provides the public records exemption is a public necessity because the disclosure of specified records, “including security, operational, and logistical plans; mansion security, facility operations, access, screenings, and clearances; personal information unrelated to official duties of the protected persons; risk, vulnerability, and threat assessments; travel information relating to the protected person and law enforcement agents and personnel providing the security or transportation services; and identifying information of sworn and nonsworn personnel engaged in a security or transportation services operation or detail, could reveal the means and methods of providing the required security or transportation services and could impair the ability of the law enforcement agency to ensure the safety and security of the protected person. The disclosure of such records could also endanger the law enforcement agents and personnel providing the security or transportation services.”

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

The bill is effective upon becoming a law.

#### **B. SECTION DIRECTORY:**

**Section 1:** Amends s. 943.68, F.S., relating to transportation and protective services.

**Section 2:** Provides a public necessity statement as required by the Florida Constitution.

**Section 3:** Directs the Division of Law Revision to make specified revisions when the bill becomes a law.

**Section 4:** Provides an effective date of upon becoming a law.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

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<sup>7</sup> Certification authority may be delegated to the executive director of FDLE. S. 943.68(6), F.S.

<sup>8</sup> S. 943.68(7), F.S.

<sup>9</sup> S. 943.68(8), F.S.

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

Article I, section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article 1, section 24(c) of the Florida Constitution requires a newly created or expanded public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public records exemption for any records that are held by a law enforcement agency relating to security or transportation services provided to specified public officials and their families, other persons visiting the state if security or transportation services are requested by specified public officials, and other persons for whom the failure to provide security or transportation would result in a clear and present danger to the personal safety of such persons or to the safety of other persons or property within the state or could result in public embarrassment to the state. The exemption applies to specific records relating to a limited group of individuals who qualify

for protection or transportation by FDLE. Thus, the exemption does not appear to be broader than necessary to accomplish the purpose of the exemption.

**B. RULE-MAKING AUTHORITY:**

Not applicable.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On April 11, 2023, the Judiciary Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment revised the public necessity statement to specify that the disclosure of mansion security, facility operations, access, screenings, and clearances, and personal information unrelated to the official duties of the protected individuals could reveal the means and methods of providing the required security or transportation services and could impair the ability of the law enforcement agency to ensure the safety and security of the protected person.

This analysis is drafted to the committee substitute as adopted by the Judiciary Committee.