

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: SB 1000

INTRODUCER: Senator DiCeglie

SUBJECT: Public Records/Recording Notification Service

DATE: January 12, 2024

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	<b>Pre-meeting</b>
2.			GO	
3.			RC	

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**I. Summary:**

SB 1000 exempts from public records copying and inspection requirements the electronic mail addresses, telephone numbers, personal and business names, and parcel identification numbers submitted to the clerk or property appraiser by a person who registers for a recording notification service. The bill applies to existing information and to information acquired in the future.

The bill provides a statement of public necessity as required by the State Constitution. In compliance with the Open Government Sunset Review Act, the exemption is repealed October 2, 2029, unless saved from repeal.

Because the bill creates a new 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 is effective upon becoming law.

**II. Present Situation:**

**Recording Notification Services**

The 2023 Legislature created a requirement that each clerk of the court create a recording notification service by July 1, 2024.<sup>1</sup> A recording notification service provides real property owners with early notice of possible title fraud related to their real property. The service works as follows:

- A registrant electronically subscribes to receive recording notifications related to his or her “monitored identity.”
- The clerk sends a confirmation of registration electronically.

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<sup>1</sup> Section 28.47, F.S., ch. 2023-238, Laws of Fla.

- If a document is presented for recording that contains a monitored identity, the clerk must electronically notify the registrant of the recording date, official records book and page number or instrument number assigned to the land record by the clerk, instructions for electronically searching for and viewing the land record using the assigned official record book and page number or instrument number, and a phone number at which the clerk’s office may be contacted during normal business hours with questions related to the recording notification.

The Act also allows, but does not require, a county property appraiser to similarly operate a notification service under the same requirements.

### **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.<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup> Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.<sup>5</sup> Lastly, ch. 119, F.S., known as the Public Records Act, provides requirements for public records held by executive branch and local government 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.<sup>6</sup>

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

[a]ll 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

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<sup>2</sup> FLA. CONST. art. I, s. 24(a).

<sup>3</sup> *Id.*

<sup>4</sup> See Rule 1.48, *Rules and Manual of the Florida Senate*, (2022-2024) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2022-2024).

<sup>5</sup> *State v. Wooten*, 260 So. 3d 1060 (Fla. 4<sup>th</sup> DCA 2018).

<sup>6</sup> 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.”

received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business that are used to “perpetuate, communicate, or formalize knowledge of some type.”<sup>7</sup>

The Florida Statutes specify conditions under which public access to governmental 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.<sup>8</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>9</sup>

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.<sup>10</sup> 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.<sup>11</sup>

General exemptions from the public records requirements are contained in the Public Records Act.<sup>12</sup> Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.<sup>13</sup>

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*.<sup>14</sup> 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.<sup>15</sup> Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.<sup>16</sup>

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

<sup>8</sup> Section 119.07(1)(a), F.S.

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

<sup>10</sup> FLA. CONST. art. I, s. 24(c).

<sup>11</sup> *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).

<sup>12</sup> *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).

<sup>13</sup> *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).

<sup>14</sup> *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5<sup>th</sup> DCA 2004).

<sup>15</sup> *Id.*

<sup>16</sup> *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5<sup>th</sup> DCA 1991).

## Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act<sup>17</sup> (the Act), prescribe a legislative review process for newly created or substantially amended<sup>18</sup> public records or open meetings exemptions, with specified exceptions.<sup>19</sup> The Act requires the repeal of such exemption 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 or repeal the sunset date.<sup>20</sup> In practice, many exemptions are continued by repealing the sunset date, rather than reenacting the exemption.

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.<sup>21</sup> An exemption serves an identifiable purpose if the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption *and* it meets one of the following purposes:

- It allows the state or its political subdivisions to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;<sup>22</sup>
- 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;<sup>23</sup> or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.<sup>24</sup>

The Act also requires specified questions to be considered during the review process.<sup>25</sup> In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption or repealing the sunset date, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>26</sup> If the exemption is

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<sup>17</sup> Section 119.15, F.S.

<sup>18</sup> 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.

<sup>19</sup> 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.

<sup>20</sup> Section 119.15(3), F.S.

<sup>21</sup> Section 119.15(6)(b), F.S.

<sup>22</sup> Section 119.15(6)(b)1., F.S.

<sup>23</sup> Section 119.15(6)(b)2., F.S.

<sup>24</sup> Section 119.15(6)(b)3., F.S.

<sup>25</sup> 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?

<sup>26</sup> See generally s. 119.15, F.S.

continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are not required. If the Legislature allows an exemption to expire, the previously exempt records will remain exempt unless otherwise provided by law.<sup>27</sup>

### III. Effect of Proposed Changes:

**Section 1** creates a public records exemption to provide that all electronic mail addresses, telephone numbers, personal and business names, and parcel identification numbers submitted to the clerk or property appraiser by a person who registers for a recording notification service or a related service offered by the clerk or property appraiser designed to notify the person who registers of a real property transfer, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except upon court order.

This exemption applies to information held by the clerk or property appraiser before, on, or after the effective date of the bill. This exemption is subject to the Open Government Sunset Review Act and is repealed on October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature.

**Section 2** directs the Division of Law Revision to replace the phrase “the effective date of this act” wherever it occurs in this bill with the date this bill becomes a law.

**Section 3** provides the public necessity statement, as required by the State Constitution. The public necessity statement finds that it is a public necessity that all electronic mail addresses, telephone numbers, personal and business names, and parcel identification numbers submitted to the clerk or property appraiser by a person who registers for a recording notification service under s. 28.47, Florida Statutes, or a related service offered by the clerk or property appraiser designed to notify the person who registers of a real property transfer, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The recording notification service, created in response to a recent increase in fraudulent real property conveyances, notifies a registrant by electronic mail when a land record associated with the registrant’s monitored identity has been recorded in the public records of the county so that the registrant may quickly identify a fraudulent conveyance and take necessary action. Some clerks and property appraisers have also begun offering related services for which a person may register to receive notifications of potentially fraudulent real property transfers by an alternative form of communication, such as by text message. The Legislature finds that it is a public necessity to protect persons who register for a recording notification service or a related service offered by the clerk or property appraiser to receive notifications of real property transfers, and persons whose personal or business names or parcel identification numbers are submitted for monitoring by such persons, from becoming victims of other types of fraud by virtue of their registration or status as a person whose information has been submitted for monitoring. The Legislature also finds that it is a public necessity to protect persons whose personal or business names or parcel identification numbers are not submitted to a recording notification service or a related service for monitoring from becoming the target of a fraudulent real property conveyance by virtue of their lack of participation in any such service. Thus, the Legislature finds that this act serves a

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<sup>27</sup> Section 119.15(7), F.S.

compelling state interest. The Legislature further finds that the harm that may result from the release of the electronic mail addresses, telephone numbers, personal and business names, and parcel identification numbers submitted to the clerk or property appraiser by a person who registers for a recording notification service or a related service to receive notifications of real property transfers outweighs any public benefit that may be derived from the disclosure of such information.

**Section 4** provides that the bill is effective upon becoming 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 records pertaining to a recording notification program; therefore, the bill requires a two-thirds vote of each chamber for enactment.

###### **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 3 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 encourage real property owners to register for notification of potentially fraudulent documents affecting the owner's title. This purpose may not be met if land owners are deterred from registration because their contact information would be made public. Also, without an exemption a sophisticated thief might use public records to avoid registrants and thereby avoid notice and capture. This bill exempts only records pertaining to registrants 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.

**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 28.47 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.