

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.)

Prepared By: The Professional Staff of the Appropriations Committee on Health and Human Services

BILL: CS/SB 1146

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Burgess

SUBJECT: Public Records/Hope Florida Program

DATE: April 14, 2025

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
2.	<u>Sneed</u>	<u>McKnight</u>	<u>AHS</u>	<u>Pre-meeting</u>
3.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1146 is a public records companion bill to CS/SB 1144 (2025), to exempt from public records certain personal identifying information of participants in the Hope Florida program. The exemption applies to records held by the Hope Florida Office within the Executive Office of the Governor, and state agencies while administering the Hope Florida program, and is effective on, before, and after the bill takes effect.

This exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2030, unless saved by the Legislature from repeal.

The bill contains a statement of public necessity as required by the State Constitution. The bill creates a new public records exemption and, therefore, requires a two-thirds vote of the members present and voting for final passage.

This bill will have an insignificant negative fiscal impact on state expenditures that can be absorbed within existing resources. **See Section V., Fiscal Impact Statement.**

This bill takes effect on the same day as CS/SB 1144 (2025), 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 State 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:

[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 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.”⁶

¹ FLA. CONST. art. I, s. 24(a).

² *Id.* See also, *Sarasota Citizens for Responsible Gov’t v. City of Sarasota*, 48 So. 3d 755, 762-763 (Fla. 2010).

³ 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).

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.”

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

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

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

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).

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.

such exemption on October 2 of the fifth year after its 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 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 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 again 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 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

Hope Florida Program

CS/SB 1144, which is linked to this bill, statutorily creates the Hope Florida program and codifies the creation of a Hope Florida Office within the Executive Office of the Governor (EOG). The bill requires all state agencies to participate in Hope Florida if directed to do so by

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.

²⁶ Section 119.15(7), F.S.

the EOG. However, the Department of Children and Families, Agency for Persons with Disabilities, Department of Juvenile Justice, Statewide Guardian ad Litem Office, Department of Education, Agency for Health Care Administration, Division of Emergency Management, Department of Veterans' Affairs, Department of Commerce, and the Department of Elderly Affairs are required to participate.

The bill allows public-private partners, including CareerSource Florida and the Florida Commission on Community Service, to participate in Hope Florida at the direction of the Office.

The Hope Florida program is intended to “streamline access to support, services, and assistance so that residents in need can reach their full potential within their local communities and to holistically coordinate care through Hope Navigators.” The program further strives to establish a seamless network of support systems managed through a centralized system that is composed of private businesses, nonprofit entities, state agencies, and faith-based organizations.

III. Effect of Proposed Changes:

Section 1 amends s. 23.44, F.S., to create a public records exemption making confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, Hope Florida participants' personal identifying information. The exemption applies to records held by the Hope Florida Office, or participating state agencies for the purposes of operating the Hope Florida program. The exemption applies to all materials received on, before, or after the effective date of the bill.

The exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and will stand repealed on October 2, 2030, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 provides the constitutionally required public necessity statement, which states the Hope Florida program collects personal identifying information of its participants in order to fulfill its mission. These individuals are often in vulnerable situations and subject to abuse and exploitation. Allowing public access to participant data could impair the effective and efficient administration of the program and otherwise discourage individuals and families from seeking support through Hope Florida's resources.

The bill takes effect upon CS/SB 1144, or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof. CS/SB 1144, if passed, takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

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

Article I, section 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 disclosure requirements. This bill enacts a new exemption for the personal identifying information for participants in the Hope Florida program and, thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

Article I, section 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records disclosure 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 which provides that allowing access to the personal identification information of the program's participants could impair the effective and efficient administration of the Hope Florida program and otherwise discourage individuals and families from seeking support through Hope Florida's resources.

Breadth of Exemption

Article I, section 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 proposed law is to protect participants in the Hope Florida program and further the mission of the program.

This bill exempts the personal identifying information for participants in the Hope Florida program from the public records disclosure requirements. What personal identifying information means, however, is unclear.²⁷ Thus, the exemption may be broader than necessary to accomplish the purpose of the law.

The Legislature therefore may wish to clarify what personal identifying information is to ensure that the constitutional breadth of exemption requirement is met.

Additionally, this bill may grant greater protections to individuals who sign up for government services through, or with the assistance of, the Hope Florida program than for those who independently reach out to an agency. This application of exempt status to the same information that, when held in another fashion is not exempt, may make the breadth of this exemption suspect.

C. Trust Funds Restrictions:

None identified.

²⁷ See *infra* "VI. Technical Deficiencies."

D. State Tax or Fee Increases:

None identified.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None identified.

B. Private Sector Impact:

The private sector will be subject to the cost associated with an agency's review and redactions of exempt records in response to a public records request.

C. Government Sector Impact:

This bill may cause a minimal increase in workload on agencies holding records that contain personal identifying information of participants in the Hope Florida program because staff responsible for complying with public record requests may require training related to the new public record exemption. Additionally, agencies may incur costs associated with redacting the exempt information prior to releasing a record. However, the workload can be absorbed within existing resources.

VI. Technical Deficiencies:

The bill does not define the term "personal identifying information." As the term is not universally used throughout the Florida Statutes, it is unclear what specific information is exempted from public records disclosure and inspection requirements. The lack of clarity as to what personal identifying information means could also raise a constitutional question regarding the breadth of the exemption.²⁸ The Legislature may wish to clarify what specific information is encompassed by the term personal identifying information for this purpose.

Additionally, the bill does not define the term "public-private partners." The bill allows the Office to release confidential and exempt information to a "public-private partner," but what entities qualify as one is unclear.

VII. Related Issues:

None identified.

²⁸ See *supra* "IV. Constitutional Issue."

VIII. Statutes Affected:

This bill amends s. 23.44, which is created by linked SB 1144.

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 Governmental Oversight and Accountability on April 1, 2025:

- Makes a Hope Florida program participant's personal identifying information exempt, rather than confidential and exempt, from public records disclosures requirements. This allows an agency records custodian who holds such exempt information to release it at his or her discretion.
- Applies the public records exemption to records held by the Hope Florida Office or a participating agency before, on, or after the effective date of the bill.

B. Amendments:

None.