

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 Committee on Governmental Oversight and Accountability

BILL: SB 7008

INTRODUCER: Banking and Insurance Committee and Senator Sharief

SUBJECT: OGSR/Financial Technology Sandbox

DATE: March 17, 2025

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Moody</u>	<u>Knudson</u>		BI Submitted as Comm. Bill/Fav
1.	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	Favorable
2.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 7008 saves from repeal the current public records exemption for certain information held by the Office of Financial Regulation (OFR) for certain records containing proprietary business information related to the Financial Technology Sandbox, which offers financial technology innovators a more flexible regulatory framework to operate in Florida for a limited time. Specifically, the bill makes confidential and exempt from public disclosure requirements the following information:

- The reasons why the general law or rule requirements for which an exception or waiver is sought prevent the innovative financial product or service from being made available to consumers;
- Certain information submitted to the OFR to consider in deciding whether to approve an application for the Financial Technology Sandbox; and
- Information provided for evaluation of whether the applicant has a sufficient plan to test, monitor, and assess the innovative financial product or service.

The Open Government Sunset Review Act requires the Legislature to review each public record exemption 5 years after enactment. The affected exemption stands repealed on October 2, 2025, unless reenacted by the Legislature. This bill removes the scheduled repeal of the exemptions, thereby continuing the confidential and exempt status of the information.

The bill is not expected to affect state and local government revenues and expenditures.

The bill takes effect October 1, 2025.

II. Present Situation:

Florida Public Records Law

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

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.³ The Public Records Act states that:

[i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁴

The Public Records Act typically contains general exemptions that apply across agencies. Agency- or program-specific exemptions often are placed in the substantive statutes relating to that particular agency or program.

The Public Records Act does not apply to legislative or judicial records.⁵ Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the legislature.

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 connections 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 which are used to “perpetuate, communicate, or formalize knowledge of some type.”⁶

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 state or local government public record at any reasonable time, under reasonable conditions, and

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Public records laws are found throughout the Florida Statutes.

⁴ Section 119.01(1), F.S.

⁵ *Locke v. Hawkes*, 595 So. 2d 32, 34 (Fla. 1992); see also *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).

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

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

Only the Legislature may create an exemption to public records requirements.⁹ An exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹⁰ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions¹¹ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.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 Open Government Sunset Review Act¹⁶ (the Act) prescribes a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ It requires the automatic repeal of such exemption on October 2 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 public 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:

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.*

¹¹ The bill may, however, contain multiple exemptions that relate to one subject.

¹² FLA. CONST. art. I, s. 24(c)

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., provide that exemptions that are required by federal law or are 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.

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which 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 carefully 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 for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²⁶

Public Record Exemption Related to Financial Technology Sandbox

The Financial Technology Sandbox is intended to allow financial technology innovators to test innovative financial products or services in a supervised, flexible regulatory sandbox, using waivers of specified general law and corresponding rule requirements under defined conditions.²⁷

The Financial Technology Sandbox makes confidential and exempt from public inspection and copying the following records relating to the Financial Technology Sandbox applications because they contain proprietary business information:²⁸

- The reasons why any of the following general law or rule requirements for which a waiver is sought prevent the innovative financial product or service from being made available to consumers, including requirements regarding:

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 FLA. CONST. art. I, s. 24(c). *See generally* s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ Section 559.952, F.S.

²⁸ Section 559.952(5)(h)1., F.S.

- An application for consumer finance lender license,²⁹ except specified requirements such as certain fees and the OFR's authority to investigate the applicant's background.³⁰
- A license for consumer finance lender,³¹ except that the OFR must investigate the applicant's background.³²
- An examination or investigation of a money services business³³ only to the extent that the OFR is required to examine a licensee once every 5 years.³⁴
- Reports by a money services business.³⁵
- A license to engage in the business of a money transmitter or payment instrument seller during the sandbox period.³⁶
- Providing each customer with contact information for the money services business and displaying a license at specified locations.³⁷
- Certain license application provisions for a money services business.³⁸
- A license renewal for a money services business³⁹ except that the OFR may prorate renewal fees in certain circumstances.⁴⁰
- Fees for a money services business⁴¹ only to the extent that they are prorated for renewal fees as provided above.⁴²
- A license for a payment instrument seller or money transmitter⁴³ only to the extent that the requirement prohibits a licensee from engaging in, or advertising that it engages in, the activity of a payment instrument seller or money transmitter during the sandbox period.⁴⁴
- A license provision providing a sample form of payment instrument, if applicable.⁴⁵
- The authority for a money transmitter to charge a different price for a money transmitter service based on the mode of transmission provided the price charged for using a credit card is not more than the price charged when the service is paid with currency or other similar means accepted within the same mode of transmission.⁴⁶
- A licensed payment instrument seller and money transmitter to have a specified net worth, provide a corporate surety bond, or maintain collateral deposit in lieu of bond⁴⁷ to the extent that the OFR may lower such amounts to be commensurate with certain

²⁹ Section 516.03(1), F.S.

³⁰ Section 559.952(5)(h)1.a., F.S.

³¹ Section 516.05(1) and (2), F.S.

³² Section 559.952(5)(h)1.a., F.S.

³³ Section 560.109, F.S.

³⁴ Section 559.952(5)(h)1.a., F.S.

³⁵ Sections 559.952(5)(h)1.a. and 560.118, F.S.

³⁶ Sections 559.952(5)(h)1.a. and 560.125(1), F.S.

³⁷ Sections 559.952(5)(h)1.a. and 560.128, F.S.

³⁸ Sections 559.952(5)(h)1.a. and 560.141, F.S.

³⁹ Section 560.142(1) and (2), F.S.

⁴⁰ Section 559.952(5)(h)1.a., F.S.

⁴¹ Section 560.143(2), F.S.

⁴² Section 559.952(5)(h)1.a., F.S.

⁴³ Section 560.204, F.S.

⁴⁴ Section 559.952(5)(h)1.a., F.S.

⁴⁵ Section 559.952(5)(h)1.a. and 560.205(2), F.S.

⁴⁶ Sections 559.952(5)(h)1.a. and 560.208(2), F.S.

⁴⁷ Section 560.209, F.S.

- factors⁴⁸ and the maximum number of consumers authorized to receive the financial product or service.⁴⁹
- Specified information that the OFR must consider in deciding whether to approve or deny an application for the Financial Technology Sandbox⁵⁰ regarding the nature of the innovative financial product or service and the applicant’s business plan;⁵¹ and
 - Information provided for evaluation of whether the applicant has a sufficient plan to test, monitor, and assess the innovative financial product or service.⁵²

This information may be released to appropriate state and federal agencies for the purposes of investigation.⁵³

III. Effect of Proposed Changes:

Section 1 amends s. 559.952(5)(h)1., F.S., to remove the scheduled repeal date of the public record exemption for information held by the OFR relating to a Financial Technology Sandbox application.

The OFR reports that 14 Financial Technology Sandbox applications have been received but none of them have been approved. The OFR states “Applicants either withdrew their application or the application was abandoned for failing to respond to requests for information.”⁵⁴

Section 2 provides that the bill is effective October 1, 2025.

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, nor reduce the percentage of state tax shared with counties or municipalities.

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

⁴⁸ Section 559.952(5)(c), F.S. (providing certain factors that the OFR must consider when deciding whether to approve or deny an application, such as the nature of the innovative financial product, the potential risk to consumers and methods that will be used to protect them, the business plan, and whether the applicant has the necessary personnel with adequate expertise).

⁴⁹ Section 559.952(5)(h)1.a., F.S.

⁵⁰ Section 559.952(5)(h)1.b., F.S.

⁵¹ Section 559.952(5)(c)1. and 3., F.S.

⁵² Section 559.952(5)(c)4. and (h)1.c., F.S.

⁵³ *Id.*

⁵⁴ The OFR, *OGSR Questionnaire*, p. 2 (July 26, 2024) (on file with the Senate Committee on Banking and Insurance).

public records disclosure requirements. This bill continues a current public records exemption beyond its current date of repeal. The bill does not create or expand an exemption. Thus, the bill does not require an extraordinary vote 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 disclosure requirements to state with specificity the public necessity justifying the exemption. This bill continues a current public records and public meetings exemption without expansion. Thus, a statement of public necessity is not required.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records disclosure requirements to be no broader than necessary to accomplish the stated purpose of the law. The exemption in the bill does not appear to be broader than necessary to accomplish the purpose of the law. The bill provides the specific information that would be made exempt to prevent the unintentional release of information that may injure the financial technology innovator applying for a license under the Financial Technology Sandbox by providing competitors with confidential business information.

C. Trust Funds Restrictions:

None identified.

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 continue to 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:

The government sector will continue to incur costs related to the review and redaction of exempt records associated with responding to public records requests.

VI. Technical Deficiencies:

None identified

VII. Related Issues:

None identified.

VIII. Statutes Affected:

This bill amends section 559.952 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.