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One of the biggest threats to transparency this legislative session was not an overbroad public records or Sunshine Law exemption but the limited participation at committee meetings and restricted access to legislators. Spirited protests and debates were absent. Lawmakers did not have to face constituents at the capitol. All while the rest of the state was open for business. The Capitol eventually reopened to the public – the week immediately following the end of session.

During this unusually restricted session, the legislature approved fourteen new exemptions and reinstated 8 exemptions. But before getting into the exemptions that passed or died in committee, the First Amendment Foundation wants to celebrate the passage of **Senate Bill 400**, which prevents an agency from bringing a declaratory action against a person seeking public records and asking a court to determine whether the information sought is a public record and whether the records are exempt or confidential. This practice drags out requests and makes access to government information more expensive.

Lawsuits against requestors have been brought across the state, notably by the South Florida Water Management District for records related to a mediation and the city of Orlando for records related to the Pulse Nightclub shooting. Declaratory actions have also been brought by the city of Tallahassee.



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In *City of Tallahassee v. Federated Publications*, although the court ruled in favor of the Tallahassee Democrat and determined that the city must hand over the records, the city did not have to pay the newspaper's attorney's fees because the case was decided on the application of a federal statute to the request. The press and individuals seeking records may be left with costly legal fees even if a court finds that the records are subject to disclosure.

Declaratory actions restrict access to public records to only those with the time and money to defend their public records request. While in the House, Sen. Ray Rodrigues introduced this legislation at least three times. The bill finally cleared both chambers and heads to the governor's desk.

SB 400 is a victory for members of the public exercising their constitutional right of access to public records. Public records belong to the public – this important bill guarantees the right of access for *every* person.

New Exemptions

Every year, we see an effort to protect the information of private companies contracting with the government or receiving public funds at the expense of the public's right to know. This session was no different. New exemptions are below, starting with the bills FAF opposed. Unless otherwise noted, bill passed both the House and Senate unanimously.

House Bill 1055, Tommy Gregory (R-Bradenton), creates an exemption for trade secret information held by an agency. Initially, the bill excluded from the definition of trade secrets the amount of money paid and price terms of a contract between a private third-party and a public agency. HB 1055 also created a uniform process to exempt trade secret information and required third parties to claim information submitted to an agency contained trade secret information; failure to give notice of trade secret information would prevent a private party from later claiming the information is protected. Supporters claimed that the bill would promote good government and transparency.

But with each committee stop, the bill was expanded and lost any ability to reign in the misapplication of trade secret exemptions. HB 1055, as amended and approved, contains the existing definition of trade secret and removes the requirement that third parties must claim the information is protected. It will permit both private contractors and agencies to withhold information on the basis of trade secrets and do nothing to limit the overuse and misapplication of the trade secret exemption. The bill undermines confidence in government spending and transparency. The Senate unanimously approved HB 1055. The House voted in favor of the bill, with two representatives voting no.

House Bill 1311, Bobby Payne (R-Palatka), closes meetings of the Public Service Commission at which proprietary confidential business information is discussed. The public necessity statement asserts that revealing confidential business information could impair the ability of utilities regulated by the Commission to fairly compete in the marketplace. Utilities in Florida are regulated monopolies – there is no competitive marketplace. This argument is meritless. Moreover, the ability of the public to watch the work of the Commission holds the Commission to a higher and more balanced standard of accountability. It matters that the public is watching. The House approved the bill, with five Representatives voting no, and the Senate voted in favor of the bill, with one Senator voting no.

Senate Bill 7074, Governmental Oversight and Accountability committee, makes confidential and exempts information received by the Attorney General, Department of Legal Affairs, and law enforcement agencies pursuant to investigations into social media companies authorized by SB 7072, Social Media Platforms (discussed below). Because the bill makes information confidential, not just exempt, agencies cannot release information during investigations. In addition, because exempt records will remain confidential and exempt even after an investigation is complete, this bill could mean records that were merely exempt would remain confidential when held by the Department of Legal Affairs, Attorney General, or other agencies. SB 7074 passed the Senate 27-13, just one vote away from failing. The House approved the bill 79 to 39.

Senate Bill 68, Ileana Garcia (R-Miami), exempts the home addresses, photos and other identifying information of current or former staff and domestic violence advocates centers certified by DCF. The Senate voted in favor of the bill, 35-3, and the House unanimously approved SB 68.

Senate Bill 166, Keith Perry (R-Gainesville), exempts and makes confidential nonjudicial record of the arrest of a minor who has successfully completed a diversion program and has the record sealed or expunged. A similar bill passed last year; however, Governor Ron DeSantis vetoed the exemption because the companion bill on juvenile justice did not pass. This year, the companion bill passed both chambers.

House Bill 311, David Silvers (D-West Palm Beach), expands the current exemption for examination and assessment instruments to exams administered pursuant to kindergarten screenings and readiness rates; educational services in the Department of Juvenile Justice; instruction for limited English proficient students; civic literacy assessment for students entering the Florida college system; and educator certification requirements. Creates new exemption for examinations administered by a Florida College System or State University or the Florida Department of Education.

House Bill 327, Bob Rommel (R-Naples), exempts the addresses and phone number of individuals seeking shelter or assistance from an agency during an emergency. The bill was amended to make the names of those seeking shelter public. FAF suggested making the names accessible so that family members could know whether loved ones are in shelters after natural disasters. The House unanimously approved HB 327, and the Senate approved the bill 39-1. HB 327 was approved by the Governor.

House Bill 379, Mike Giallombardo (R-Cape Coral), exempts certain identifying information held by an economic development agency administering state or federally funded small business loan program. Specifically, the bill exempts the tax returns, credit history, credit reports, and credit scores of loan recipients. An agency can release the information in an aggregated and anonymized format. At least some information of loan recipients is available to the public; the bill, as amended allows some public oversight of state and federal loan programs. The Senate approved the bill 39-1, and the House approved the bill 102-13. The Governor approved HB 379.

Senate Bill 1048, Aaron Bean (R-Jacksonville), exempts reinvestigation information generated during a new investigation by a conviction integrity unit within a state attorney's office. The exemption applies for a reasonable period of time during an active, ongoing, and good faith investigation of a claim of actual innocence and until the claim is no longer capable of further investigation.

House Bill 1069, Bobby Payne (R-Palatka), exempts information held by the Department of Military Affairs that is stored in a U.S. Department of Defense system of records, transmitted using a Department of Defense network or communications device, or pertains to the Department of Defense.

House Bill 1315, Chip LaMarca (R-Lighthouse Point), exempts drivers' secure login held by the Department of Highway Safety and Motor Vehicles used to access digital driver's license and identification cards, known as Florida Smart ID, and geolocation data held by DHSMV.

House Bill 1359, Chuck Brannan III (R-Lake City), exempts and makes confidential information received by the Department of Highway Safety and Motor Vehicles pursuant to investigations of the Department, including investigations of improperly issued certificates of title. Information is exempt until an investigation ceases to be active or administrative action taken by the Department has concluded or been made part of any hearing or court proceeding.

Senate Bill 1634, Jason Brodeur (R-Lake Mary), the bill exempts and makes confidential certain information held by the Department of Agriculture and

Consumer Services related to shellfish processing facilities, audit records, and aquaculture production records.

House Bill 1639, Michael Grant (R-Port Charlotte), exempts certain records held by a supervisor of elections that, if disclosed, would facilitate unauthorized access to data or unauthorized modification, disclosure, or destruction of information related to security of election technologies.

House Bill 379, Mike Giallombardo (R-Cape Coral), exempts certain identifying information held by an economic development agency administering state or federally funded small business loan program. Specifically, the bill exempts the tax returns, credit history, credit reports, and credit scores of loan recipients. An agency can release the information in an aggregated and anonymized format. At least some information of loan recipients is available to the public; the bill, as amended allows some public oversight of state and federal loan programs. The Senate approved the bill 39-1, and the House approved the bill 102-13. The Governor approved HB 379.

Open Government Sunset Review

House Bill 7001 reinstates an exemption for meetings held by the Interstate Commission of Nurse Licensure Compact Administrators at which exempt information is discussed.

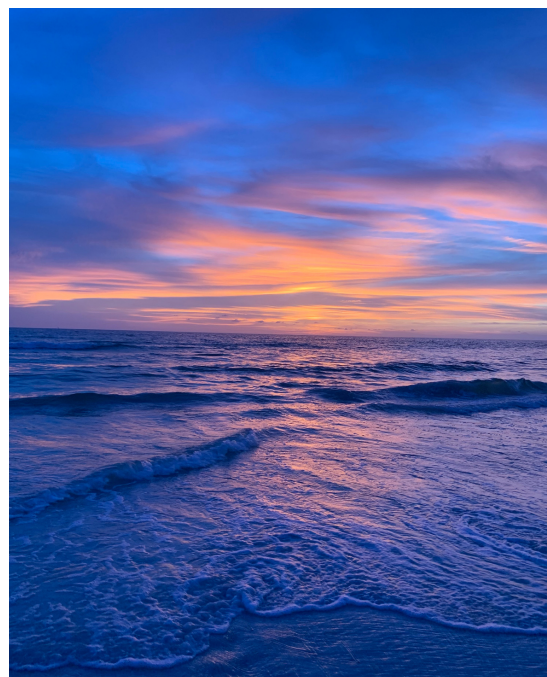
House Bill 7003 exempts proprietary business information provided to the Florida State Boxing Commission pursuant to an audit of the boxing promoter's business records.

House Bill 7007 exempts and make confidential information held by the Department of Agriculture and Consumer Services as part of a joint investigation with another state or federal agency.

House Bill 7009 reinstates the exemption for juvenile criminal history compiled by the Criminal Justice Information program from interstate sources.

Senate Bill 7014 exempts proprietary business information contained in filings to the Office of Insurance Regulation. The bills passed with just one representative and one senator voting no.

Senate Bill 7022 reinstates the exemption for proprietary business information of voice communication service providers submitted to certain state agencies,



including the E911 Board, which oversees state funds to reimburse service providers for efforts to comply with the Emergency Communications Number E911 Act. Trade secret information is not included in the definition of proprietary business information. The Senate unanimously approved SB 7022, and the House approved the bill with two no votes.

Senate Bill 7028 reinstates the exemption for agency-produced data processing software that is sensitive. Sensitive software includes software used to collect, process, store and retrieve exempt information and financial management information of an agency or control and direct access authorizations and security measures for automated systems. The bill passed, with just three representatives and two senators voting no.

House Bill 7037 exempts financial information of private entity applicants to the State Infrastructure Bank (SIB). The exemption is based on the unsupported speculation that private entities may be unwilling to apply to the SIB if information is public. However, Department of Transportation records show no applicants applied in the year following the introduction of the exemption, (thus, confidentiality did not encourage more applications) and there was no difference in the number of applicants in the three years before and after the exemption was enacted. The records make clear an applicant's failure to apply is not due to a fear their information will become public. As a result, the exemption did not meet the constitutional justification of necessity. Nevertheless, the House unanimously approved HB 7037, and the Senate approved the measure, with two senators voting no. The Governor signed HB 7037 into law.

Other Bills Approved by the Legislature

House Bill 1, Juan Alphonso Fernandez-Barquin (R-Miami), increases penalties for offenses that occur when protests turn violent. The bill creates a new definition of committing a riot: a person who participates in a violent public disturbance involving an assembly of three or more people, acting with a common intent to assist each other in violent and disorderly conduct. The overbroad definition of riot and increased penalties may deter protestors and journalists from exercising their First Amendment rights, fearing criminal sanctions for mere presence at a peaceful protest that involves violence or a public disturbance, as determined by law enforcement officers at the scene of the protest.

HB 1 quickly sailed through the House and passed on a vote of 76 to 39 during the fourth week of session. However, the Senate version, **Senate Bill 484**, Danny Burgess (R-Zephyrhills), stalled. The first committee of reference, the Senate Criminal Justice committee, never considered the proposal. Nonetheless, having been approved by the House, HB 1 was circumvented from the Criminal Justice

committee and placed on Senate Appropriations committee calendar. After nearly seven hours of debate and testimony against HB 1, the Senate Appropriations committee passed HB 1, almost entirely on party lines. Every single member of the public who testified before the committee expressed opposition to HB 1, and yet the strength of public opinion against the bill seemed to have very little consequences on the outcome. The Senate approved the bill, again almost entirely along party lines. The Governor signed the bill into law, and it is already in effect.

Senate Bill 7072, Governmental Oversight and Accountability, is a similar story. The House Commerce committee introduced a proposed committee bill to regulate social media on March 5. It was approved by the House on April 20. A senate bill that required social media websites to notify users if their account was suspended or disabled was never considered. On April 1, halfway through session, the Senate Governmental Oversight and Accountability committee introduced the bill. SB 7072 was approved by two Senate committees, Senate, and the House during the last few weeks of session.

SB 7072 regulates social media companies and limits the ability of websites to remove content for violating companies' policies. The bill prohibits companies from removing (deplatforming) candidates for office and censoring "journalistic enterprises." The bill is likely preempted by Section 230 of the federal Communications Decency Act of 1996. In addition, by forcing social media websites to carry speech that violates companies' Terms of Use policies, the bill runs afoul of the First Amendment Freedom of Speech.

House Bill 35, Randy Fine (R-Palm Bay), allows government entities to publish legal notices on newspaper websites. In its final version approved by the legislature, HB 35 also requires notices to be published on the existing statewide notice site; this will prevent boards and commissions from hiding notices on government websites.

House Bill 781, Will Robinson (R-Bradenton), in part provides that clerks of court may enter access agreements to permit certain individuals to access otherwise exempt property records to conduct a title search. The information may be made available to a title insurer, a title insurance agent or agency, or an attorney admitted to practice in Florida. The sponsor of the Senate version, Ed Hooper, explained that this bill is meant to cure obstacles created by the 2019 law expanding the definition of home address. Rather than narrow the expansive definition of home address, the bill gives certain professionals access to otherwise exempt information – while other businesses, journalists, and the public cannot access the information.

Senate Bill 890, Ed Hooper (R-Palm Harbor), amends Fla. Stat. § 119.0712(2) and imposes a noncriminal infraction, punishable by a fine not exceeding \$2,000, for

unauthorized use or release of information in the Driver and Vehicle Information Database.

House Bill 1229, Jenna Persons-Mulicka (R-Fort Myers), requires a county recorder or clerk of court to make known on a publicly available website the identity of an adult against whom an injunction for protection of a minor from domestic violence, sexual violence, or stalking is entered and the fact that a protective injunction has been entered against that respondent.

Bills We Tracked that Didn't Pass

While there were efforts to repeal public records exemptions and make COVID-19 information more accessible, these bills were never heard and died in committee. Fortunately, bills that would have reduced accountability of elected officials and closed searches for president of state colleges and universities died. Below are all the bills that died, organized by category. Unless otherwise noted, bills died in committee.

Senate Bill 296, Annette Taddeo (D-Miami), would have repealed Fla. Stat. § 11.0431(2)(e), an exemption for a draft and request for a draft of reapportionment plan or redistricting plan, and any supporting documents associated with a redistricting and reappointment plan.

House Bill 6069, Anna Eskamani (D-Orlando), would have repealed Fla. Stat. § 288.075(2)(a), which upon requests by a private entity, exempts and makes confidential information concerning the private corporation's plans, intentions, or interests to locate, relocate, or expand any of its business activities in the state.

COVID-19

Senate Bill 1264, Annette Taddeo (D-Miami), would have required the Department of Health to issue daily reports online, including aggregate COVID testing and vaccination data, at the county level. These reports, which are public records, would have included the birth year, sex, race, ethnicity, and county of each individual tested and vaccinated. The House version was withdrawn, and SB 1264 died in committee.

Three bills would have addressed remote meetings of the legislature and local governments during a declared state of emergency. Each bill died in committee.

Education Records

House Bill 997/Senate Bill 220, Sam Garrison (R-Orange Park), Jeff Brandes (R-St. Petersburg), would have created an exemption for any personal identifying information of any applicant for president of a state university or Florida College System Institution.



It would have also exempted any portion of a meeting for the purpose of identifying or vetting applicants. While information of an applicant would become public when the final group was established or 21 days before date of interview with each applicant, the bill contained no minimum number for a final group of applicants – there could be a final group of just one applicant. FAF opposed this bill and noted there is no evidence that secret searches result in better candidates. Moreover, Florida institutions have improved in national rankings led by candidates selected in the Sunshine. This exemption has been introduced in almost every session since 2015, and every year, the bill has failed. The House passed HB 997; however, HB 997 died in the Senate, failing to reach the supermajority need to pass a public records exemption.

Court Records

House Bill 843/Senate Bill 1974, Michael Grieco (D-North Bay Village)/Jason Pizzo (D-Miami), would have exempted and made confidential a petition, records and documents related to a domestic violence injunction that have been ordered sealed. Records could be sealed even if no determination was made whether an injunction should be issued.

Senate Bill 470, Randolph Bracy (D-Orlando), SB 470 would have made confidential and exempted criminal history records expunged under SB 468 – misdemeanor convictions of obtaining, purchasing, or possessing 20 grams or less of cannabis. The Senate unanimously passed SB 470, but it died in House messages.

Two different bills relating to eviction records died. **House Bill 1193**, Vance Aloupis, Jr. (R-Miami), would have allowed a defendant in an eviction proceeding to move to seal the proceeding and have his or her name replaced with “tenant” on the progress docket. **House Bill 1195** would have exempted any records sealed under HB 1193. The House passed both bills, but the bills died in the Senate. **House Bill 657/Senate Bill 926**, Dianne Hart (D-Tampa) and Darryl Rouson (D-St. Petersburg), would have sealed records relating to an action by a landlord for possession of dwelling unit based upon nonpayment of rent if the complaint was filed on or after March 1, 2020 and the tenant was adversely affected by COVID-19. Both bills died in committee.

House Bill 523, Jackie Toledo (R-Tampa), would have provided a process to expunge the criminal history record of victims of human trafficking. HB 525 would have created an exemption for the petition, pleadings and documents filed pursuant to expungement. The House passed HB 525, but it died in the Senate.

Senate Bill 1806, Lauren Book (D-Plantation), would have expanded the exemption for Baker and Marchman records to exempt the names of respondents of petitions for treatment and examination.

Criminal Justice and Law Enforcement

House Bill 1549/Senate Bill 246, Dianne Hart (D-Tampa)/Jeff Brandes (R-St. Petersburg), would have exempted a portion of a meeting of the conditional aging release program within the Department of Corrections (created by SB 232) at which the panel discusses records exempt or made confidential, including protected health information covered by the HIPAA.

House Bill 1547/Senate Bill 248, Dianne Hart (D-Tampa), Jeff Brandes (R-St. Petersburg), would have exempted a portion of a meeting at which conditional medical release program (created by SB 232) which information would be discussed that is exempt from public inspection and copying, such as protected health information.

Senate Bill 444, Randolph Bracy (D-Orlando), would have exempted and made confidential arrest booking photos.

Senate Bill 732, Randolph Bracy (D-Orlando), would have required the release of body camera recordings of law enforcement officers when discharging a firearm or using force that results in death or injury of another individual as soon as the recording ceases to be active criminal intelligence information or active criminal investigative information.

House Bill 683/Senate Bill 762, Chuck Brennan (R-Lake City)/Dennis Baxley (R-Lady Lake), would have allowed criminal conflict and civil regional conflict counsel to apply for confidential registration certificate and apply for registration license plate or decal under a fictitious name. The bills would have exempted records relating to the registration application for a license plate/decal under a fictitious name.

House Bill 875/Senate Bill 808, Fentrice Driskell (D-Tampa), Audrey Gibson (D-Jacksonville), would have required agencies using intelligence-led policing to maintain accurate and up-to-date data about targeted individuals and how often law enforcement has targeted individuals. It would also have required agencies to retain all audio and video data related to intelligence-led policing interactions in accordance with requirements of public records act.

Agency Records

House Bill 49/Senate Bill 218, Dan Daley (D-Sunrise), Jason Pizzo (D-Miami), would have exempted and made confidential all records concerning reports of animal cruelty

required to be reported to law enforcement officer, animal control officer, or agent appointed to investigate animal cruelty pursuant to HB 47.

House Bill 619/Senate Bill 512, Webster Barnaby (R-Orange City), Danny Burgess (R-Zephyrhills) would have exempted and made confidential certain information received by the Office of Financial Regulation for an application for a de novo banking charter. The bills would have exempted personal identifying information, including the names, of a shareholder, subscriber, proposed officer, or director of the proposed bank. HB 619 passed the House but died in the Senate.

Senate Bill 746, Ana Maria Rodriguez (R-Doral), would exempted and made confidential reports provided to the Department of Health as required by SB 744, which specifically excluded personal identifying information, such as the name and address of patients.

House Bill 971, Fiona McFarland (R-Sarasota), would have exempted and made confidential all information received by the Department of Legal Affairs pursuant to an investigation of a violation of HB 969, regulating businesses' use of consumer data.

Senate Bill 1828, Darryl Rouson (D-St. Petersburg), would have exempted any personal identifying information submitted to the Department of State to be certified as a victim of Dozier School for Boys and Okeechobee School and to file a claim for victim compensation.

House Bill 1395, Tracie Davis (D-Jacksonville), would have exempted the name of certain lottery prize winners for 90 days. At the end of the 90 days, the name of winners would have become public. FAF suggested the 90-day time period to allow winners to take necessary safety precautions before public disclosure and allow the public to access the names of winners and detect any suspicious patterns of lottery winnings. The House voted in favor of HB 1395, with only one representative voting no. The bill died in the Senate.

Elections

House Bill 155/Senate B 1492, Cyndi Stevenson (R-St. Augustine), Doug Broxson (R-Pensacola), would have made confidential and exempted certain identifying information obtained for voter registration. Notably, a political party or official, a candidate, an elected official, or a registered political committee could still access the information, for political purpose only. As a result, because the exemption would not apply to campaigns, PACs, or political parties, this bill would have done nothing to reduce political solicitation calls, texts or emails.



Home Address

With the exception of **Senate Bill 68**, mentioned above, all home address exemptions died in committee. Bills to exempt the information of judicial assistants, county attorneys, assistant county attorneys, and the Department of Agriculture inspectors stalled.

One exemption of particular concern – **House Bill 1207/Senate Bill 1488**, Mike Beltran (R-Valrico)/Kelli Stargel (R-Lakeland) – died in the House State Affairs committee and on the Senate calendar respectively. HB 1207 and SB 1488 would have made it impossible to know whether legislators live in the districts they are elected to represent. In addition, because the bills exempt the names and places of employment of lawmakers' spouses and adult children, there would be no public oversight of conflicts of interests between legislatures and their spouses and children.

Public Records

Senate Bill 298, Annette Taddeo (D-Miami), would have required the clerk of circuit court to provide an electronic option for payment of court-related fines and any other monetary fees received by the clerk. The bill would have also required an agency to provide an electronic option for the payment of any fee associated with a request to inspect or copy records. As a result, FAF supported this bill because it would have increased the ways citizens could pay for and access records.

Public Safety and Security

House Bill 27/Senate Bill 1172, Dan Daley (D-Sunrise)/Lauren Book (D-Plantation), would have exempted and made confidential records related to buyer or transferee who is not found to be prohibited from receipt or transfer of ammunition.

House Bill 1153/Senate Bill 1824, Joseph Casello (D-Boynton Beach)/Bobby Powell (D-West Palm Beach), would have exempted information provided to the Division of Emergency Management or local emergency management agency for the purpose of being provided assistance with emergency planning or management.

Meetings

Senate Bill 1852, Darryl Rouson (D-St. Petersburg), would have exempted portions of meetings of a Mental Health & Substance Abuse Disorder Services Commission established to examine services in Florida, investigate and make recommendations for system of care.

Open Government Sunset Review

17 exemptions under review were not reinstated. 16 of these exemptions applied to trade secret information. Trade secret information would be exempt under HB 1055. Some of the OGSR bills only applied to the third-party submitting information. For example, Fla. Stat. § 381.83 required a person submitting documents to the Department of Health to claim the information contained trade secrets. As explained above, HB 1055 will let individuals submitting records and agencies to claim the information is exempt. More agencies will now be able to claim information is trade secret under this new bill.

The other OGSR bill to fail was Senate Bill 7050, which exempted unsolicited proposals received by a public entity. The Senate approved the bill 39-1, but it died in the House.



The regular legislative sessions is finished, but our work is not. Stay connected with FAF.

