

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 7011 Pub. Rec./Emergency Planning or Notification by Agency

SPONSOR(S): Government Operations Subcommittee

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1140

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee		Stramski	Williamson

SUMMARY ANALYSIS

The Division of Emergency Management (division) is established in the Executive Office of the Governor. It is the state's emergency management agency. The division is required to institute a multifaceted public educational campaign on emergency preparedness. The campaign must promote the personal responsibility of individual citizens to be self-sufficient for up to 72 hours following a natural or manmade disaster.

In 2006, the division launched the "Get a Plan" campaign to encourage individuals, families, and businesses to develop disaster plans in preparation of and in response to natural or manmade disasters. It is an online tool that allows individuals, families, and businesses to create an emergency plan tailored to the specific needs of the user.

Current law provides a public record exemption for any information furnished by a person to an agency for the purpose of being provided with emergency notification by the agency. Current law also provides a public record exemption for any security system plan held by an agency for any privately owned or leased property. For purposes of the exemption, a security system plan includes, in part, threat response plans, emergency evacuation plans, and sheltering arrangements.

The bill creates a public record exemption for any information furnished by a person or business to the division for the purpose of being provided assistance with emergency planning. It provides for retroactive application of the public record exemption.

The bill provides for repeal of the exemption on October 2, 2019, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution..

The bill does not appear to have a fiscal impact on local government. The bill may create a minimal fiscal impact on the division. See FISCAL COMMENTS.

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 newly created or expanded public record or public meeting exemption. The bill creates a new 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, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This 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, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.¹

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act² provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects 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.
- Protects trade or business secrets.

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

Division of Emergency Management

The Division of Emergency Management (division) is established in the Executive Office of the Governor.³ It is the state's emergency management agency. The State Emergency Management Act⁴ directs the division to oversee and manage emergency preparedness, response, recovery, and mitigation programs in Florida.

The division is required to institute a multifaceted public educational campaign on emergency preparedness. The campaign must promote the personal responsibility of individual citizens to be self-sufficient for up to 72 hours following a natural or manmade disaster.⁵ In 2006, the division launched the "Get a Plan" campaign to encourage individuals, families, and businesses to develop disaster plans in preparation of and in response to natural or manmade disasters. It is an online tool that allows individuals, families, and businesses to create an emergency plan tailored to the specific needs of the user.

Current Public Records Exemptions

¹ Section 24(c), Art. I of the State Constitution.

² See s. 119.15, F.S.

³ Section 14.2016, F.S.

⁴ See ss. 252.31-252.60, F.S.

⁵ Section 252.35(2)(i), F.S.

Currently, any information provided by a person to an agency for the purpose of being notified of an emergency by the agency, including the person's name, address, telephone number, e-mail address, or other electronic communication address, is exempt⁶ from public records requirements.⁷ The exemption applies to such information held by an agency⁸ before, on, or after the effective date of the exemption.⁹

Current law also provides a public record exemption for any security system plan, or portion thereof, held by an agency.¹⁰ The exemption, in part, protects from public disclosure security system plans for any privately owned or leased property. For purposes of the public record exemption, a security system plan includes all:

- Records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to the physical security of the facility or revealing security systems;
- Threat assessments conducted by any agency or any private entity;
- Threat response plans;
- Emergency evacuation plans;
- Sheltering arrangements; or
- Manuals for security personnel, emergency equipment, or security training.

Effect of Proposed Changes

The bill creates a public record exemption for any information furnished by a person or business to the Division of Emergency Management for the purpose of being provided assistance with emergency planning. It provides for retroactive application of the public record exemption.

The bill provides for repeal of the exemption on October 2, 2019, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

B. SECTION DIRECTORY:

Section 1 creates s. 252.905, F.S., creating an exemption from public records requirements for certain information furnished to the Division of Emergency Management.

Section 2 provides a public necessity statement.

Section 3 provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

⁶ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. See Attorney General Opinion 85-62 (August 1, 1985).

⁷ Section 119.071(5)(j), F.S.

⁸ Section 119.011(2), F.S., defines the term "agency" to mean 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 chapter 119, F.S., 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.

⁹ The Supreme Court of Florida ruled that a public record exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied as such. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001).

¹⁰ Section 119.071(3)(a), F.S.

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill could create a minimal fiscal impact on the Division of Emergency Management as staff could require training related to the creation of the public record exemption. In addition, the Division of Emergency Management could incur costs associated with redacting the exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the division.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

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 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, s. 24(c) of the State 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 I, s. 24(c) of the State 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 record exemption for information provided by a person or business to

the Division of Emergency Management for the purpose of being provided assistance with emergency planning or emergency notification by the agency.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Division of Emergency Management

The Division of Emergency Management anticipates that exempting information submitted for emergency planning purposes will encourage participation in the emergency preparedness public awareness program.¹¹

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

¹¹ Bill Analysis for HB 7011 by the Division of Emergency Management dated February 7, 2014 (on file with the Government Operations Subcommittee).