

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 327 Pub. Rec./Disaster Response

**SPONSOR(S):** State Affairs Committee, Government Operations Subcommittee, Rommel

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 418

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Pandemics & Public Emergencies Committee	18 Y, 0 N	Landry	Dearden
2) Government Operations Subcommittee	17 Y, 0 N, As CS	Roth	Smith
3) State Affairs Committee	23 Y, 0 N, As CS	Roth	Williamson

### SUMMARY ANALYSIS

The Division of Emergency Management (the Division) is established within the Executive Office of the Governor and serves as the state's emergency management agency. The State Emergency Management Act directs the Division to oversee and manage emergency preparedness, response, recovery, and mitigation programs in Florida. The Division prepares a State Comprehensive Emergency Management Plan (CEMP), which must coordinate with, and integrate into, the Federal Government's emergency management plans. The CEMP includes an emergency shelter component that promotes coordination between public, private, and nonprofit sectors. While emergency shelters are not required to collect personal information of their residents, emergency shelters may collect information for the purpose of maintaining accountability.

The bill creates a public record exemption for the address and telephone number of a person provided public emergency shelter during a storm or other catastrophic event held by an agency that provided the emergency shelter.

The bill provides that the exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2026, unless reviewed and saved from repeal by the Legislature. The bill provides a statement of public necessity as required by the Florida Constitution.

The bill may have a minimal fiscal impact on the state and local governments.

**Article I, s. 24(c) of the Florida 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.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Public Records

Article I, s. 24(a) of the Florida 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, section 24(a).<sup>1</sup> The general law must state with specificity the public necessity justifying the exemption and must be no more broad than necessary to accomplish its purpose.<sup>2</sup>

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 Act<sup>3</sup> 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:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect 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.
- Protect trade or business secrets.<sup>4</sup>

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.<sup>5</sup>

##### Public Emergency Shelters

The State Emergency Management Act<sup>6</sup> establishes the Division of Emergency Management (the Division) within the Executive Office of the Governor. The Division serves as the state's emergency management agency, which oversees and manages emergency preparedness, response, recovery, and mitigation programs in Florida.<sup>7</sup>

The Division manages a program for surveying existing private and public buildings, with the owner's consent, for the purpose of identifying appropriately designed and located facilities to serve as shelters in the event of an emergency.<sup>8</sup> Suitable public facilities, such as schools, post-secondary education facilities, and other facilities owned or leased by the state or local governments, must be made available at the request of the local emergency management agencies.<sup>9</sup>

The Division prepares a State Comprehensive Emergency Management Plan (CEMP), which must coordinate with, and integrate into, the Federal Government's emergency management plans.<sup>10</sup> The

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<sup>1</sup> Art. I, s. 24(c), FLA. CONST.

<sup>2</sup> Art. I, s. 24(c), FLA. CONST.

<sup>3</sup> Section 119.15, F.S.

<sup>4</sup> Section 119.15(6)(b), F.S.

<sup>5</sup> Section 119.15(3), F.S.

<sup>6</sup> Sections 252.31 through 252.60, F.S., are known as the State Emergency Management Act. Section 252.31, F.S.

<sup>7</sup> Section 14.2016, F.S.

<sup>8</sup> Section 252.385(2)(a), F.S.

<sup>9</sup> Section 252.385(4)(a), F.S.

<sup>10</sup> *Supra* note 8.

CEMP<sup>11</sup> includes a shelter component, known as the Statewide Emergency Shelter Plan (the plan). The Division prepares and submits the plan to the Governor and Cabinet each even-numbered year.<sup>12</sup> The plan must promote shelter activity coordination between the public, private, and nonprofit sectors.<sup>13</sup> The plan must also include the following:

- Contain strategies to ensure the availability of adequate shelter space in each region of the state;
- Establish strategies for refuge-of-last-resort programs;
- Provide strategies to assist local emergency management efforts to ensure that adequate staffing plans exist for all shelters, including medical and security personnel;
- Provide for a post-disaster communications system for public shelters;
- Establish model shelter guidelines for operations, registration, inventory, power generation capability, information management, and staffing; and
- Set forth policy guidance for sheltering people with special needs.<sup>14</sup>

Public emergency shelters are not required to record personal information on shelter residents. However, current law does not prevent the collection of this information. Emergency shelters might collect personal information on their residents for maintaining accountability of those staying in the shelter and for locating family members in the case of family reunification.

### **Effect of the Bill**

The bill creates a public record exemption for the address and telephone number of a person provided public emergency shelter during a storm or catastrophic event held by an agency<sup>15</sup> that provided the emergency shelter. Such information is made exempt<sup>16</sup> from public records requirements.

As required by the Florida Constitution, the bill provides a public necessity statement, which asserts that, during an emergency, people affected are in a vulnerable state, as they have voluntarily displaced themselves from their residences and possessions to seek refuge. Further, the information submitted by an individual seeking emergency shelter during a storm or other catastrophic event could be used by persons seeking to take advantage of their vulnerability during or following an emergency. Additionally, those seeking emergency shelter for their safety and the safety of their families should not be forced to forfeit their privacy for the sake of safety.

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<sup>11</sup> See Comprehensive Emergency Management Plan, Division of Emergency Management, available at <https://www.floridadisaster.org/globalassets/cemp/2020-cemp/2020-state-cemp.pdf> (last visited February 25, 2021).

<sup>12</sup> 2020 Statewide Emergency Management Shelter Plan, Division of Emergency Management, available at <https://portal.floridadisaster.org/shelters/External/Current/2020%20SESP/2020%20SESP%20Entire%20Document.pdf> (last visited February 25, 2021).

<sup>13</sup> Section 252.35(2)(a)2., F.S.

<sup>14</sup> *Id.*

<sup>15</sup> The bill 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...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.” Section 119.011(2), F.S.

<sup>16</sup> There is a difference between records the Legislature designates 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. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Rivera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 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 statute. See Op. Att’y Gen. Fla. (1985).

The bill provides that the exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2026, unless reviewed and saved from repeal by the Legislature.

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 252.385, F.S., relating to public shelter space.

**Section 2:** Provides a statement of public necessity.

**Section 3:** Provides an effective date of upon becoming a law.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**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:

See Fiscal Comments.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

The bill may have a minimal fiscal impact on agencies because agency staff responsible for complying with public records requests may require training related to the creation of the public record exemption. Agencies could incur costs associated with redacting the exempt information prior to releasing a record. The costs, however, would be absorbed by existing resources, as they are part of the day-to-day responsibilities of agencies.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to 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.

2. Other:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record 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 Florida Constitution requires a public necessity statement for a newly created or expanded public record exemption. The bill creates a public record exemption; therefore, it includes a public necessity statement.

Breadth of Exemption

Article I, section 24(c) of the Florida Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. This bill creates a public record exemption for the address and telephone number of a person provided public emergency shelter during a storm or other catastrophic event held by an agency that provided the emergency shelter. The purpose of the exemption is to protect persons made vulnerable due to a disaster from actors who might use the information maliciously.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 2, 2021, the Government Operations Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment removed references to “assistance” throughout the bill and specified that the exempted information is for individuals provided public emergency shelter during a storm or other catastrophic event.

On March 17, 2021, the State Affairs Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment removes the “name” from the public record exemption and makes conforming changes to the public necessity statement to reflect the change.

This analysis is drafted to the committee substitute as approved by the State Affairs Committee.