

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: HB 7007 PCB EEG 23-05 OGSR/Security and Firesafety System Plans

SPONSOR(S): Ethics, Elections & Open Government Subcommittee, Jacques

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 7040

FINAL HOUSE FLOOR ACTION: 115 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

HB 7007 passed the House on April 26, 2023, and subsequently passed the Senate on May 4, 2023.

The Open Government Sunset Review Act requires the Legislature to review each public record exemption and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

Current law provides public record exemptions for security or firesafety system plans for any property owned by or leased to the state or any of its political subdivisions, or for any privately owned or leased property, held by an agency, as well as information related to such systems. A "security or firesafety system plan" means:

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

Additionally, current law provides public meeting exemptions for portions of a meeting relating directly to, or that would reveal such systems, plans, or information.

The bill saves from repeal the public record and public meeting exemptions for security or firesafety system plans, which will repeal on October 2, 2023, if this bill does not become law. The bill also repeals a duplicative public record and public meeting exemption for security or firesafety system plans and related information.

The bill does not appear to have a fiscal impact on state government or local governments.

The bill was approved by the Governor on May 11, 2023, ch. 2023-75, L.O.F., and will become effective on October 1, 2023.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSR Act)¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.²

The OGSR Act 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.³

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.⁴ If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created, then a public necessity statement and a two-thirds vote for passage are not required.

Physical Building Security-related Public Record Exemptions

Several public record exemptions exist in current law that protect various aspects of the physical security of buildings or facilities from public disclosure:

- Section 119.071(3)(b), F.S., provides a public record exemption for building plans, blueprints, schematic drawings, and diagrams, which depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure owned or operated by an agency.
- Section 119.071(3)(c), F.S., provides a public record exemption for building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout or structural elements of attractions and recreation facilities, entertainment or resort complexes, industrial complexes, retail and service developments, office developments, health care facilities, or hotel or motel developments.
- Section 311.13, F.S., provides a public record exemption for certain seaport security plans. A public record exemption is also provided for photographs, maps, blueprints, drawings, and similar materials that depict critical seaport operating facilities to the extent that a seaport reasonably determines that such items contain information that is not generally known and could jeopardize the seaport's security.
- Section 331.22, F.S., provides a public record exemption for airport security plans of certain aviation authorities or certain aviation departments. Photographs, maps, blueprints, drawings, and similar materials that depict critical airport operating facilities are also exempt to the extent

¹ Section 119.15, F.S.

² Section 119.15(3), F.S.

³ Section 119.15(6)(b), F.S.

⁴ Article I, s. 24(c), FLA. CONST.

that such aviation authority or department reasonably determines that the security plan contains information that is not generally known and could jeopardize airport security.

- Section 1004.0962(2), F.S., provides a public record exemption for any portion of a campus emergency response held by a public postsecondary educational institution.

Public Record and Public Meeting Exemptions Related to Security or Firesafety Systems or Plans

Current law provides public record and public meeting exemptions for certain information related to security or firesafety systems or plans held by an agency.⁵ The law specifies the circumstances under which the information may be disclosed.⁶

Security or Firesafety System Plans

Section 119.071(3)(a), F.S., defines “security or firesafety system plan” to include all:

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

A security or firesafety system plan, or portion thereof, held by an agency is confidential and exempt⁷ from public record requirements if the plan is for any property owned by or leased to the state or any of its political subdivisions or any privately owned or leased property.⁸ An agency is authorized, but not required, to disclose such confidential and exempt plan:

- To the property owner or leaseholder;
- In furtherance of the official duties and responsibilities of the agency holding the information;
- To another local, state, or federal agency in furtherance of that agency’s official duties and responsibilities; or
- Upon a showing of good cause before a court of competent jurisdiction.⁹

Section 119.071(3)(a), F.S., also provides for retroactive application of the public record exemption.

Pursuant to s. 286.0113(1), F.S., any portion of a meeting that would reveal a security or firesafety system plan or portion thereof is exempt from public meeting requirements.¹⁰

⁵ Sections 119.071(3)(a), 281.301(1), and 286.0113(1), F.S. “Agency” means 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. *See* s. 119.011(2), F.S.

⁶ Sections 119.071(3)(a) and 281.301(2), F.S.

⁷ 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. 04-09 (2004).

⁸ Section 119.071(3)(a)2., F.S.

⁹ Section 119.071(3)(a)3., F.S.

¹⁰ Section 286.0113(1), F.S.

Other Information Related to Security or Firesafety Systems or Plans

Section 281.301(1), F.S., provides that information relating to security or firesafety systems, or revealing such systems or information, that is in the possession of an agency is confidential and exempt from public record requirements and any portion of a meeting relating directly to or that would reveal such systems or information is exempt from public meeting requirements, if the security or firesafety systems are for:

- Any property owned by or leased to the state or any of its political subdivisions; or
- Any privately owned or leased property.

The law specifies that the protected information includes all records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to or revealing such systems or information.¹¹

Any agency is authorized, but not required, to disclose the confidential and exempt information:

- To the property owner or leaseholder;
- In furtherance of the official duties and responsibilities of the agency holding the information;
- To another local, state, or federal agency in furtherance of that agency's official duties and responsibilities; or
- Upon a showing of good cause before a court of competent jurisdiction.¹²

Public Record and Public Meeting Exemptions under Review

In 1987, the Legislature initially created¹³ the public record and public meeting exemption found in s. 281.301(1), F.S., for security systems and records for any property owned by or leased to the state or any of its political subdivisions, and all meetings relating to or revealing such systems. In 1990, the Legislature amended¹⁴ the exemptions, specifying that *information* relating to the security systems for any property owned by or leased to the state or any of its political subdivisions is protected.¹⁵ The Legislature also exempted information related to the security systems for any privately owned or leased property held by an agency and specified that the protected information, in addition to records, includes information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations.¹⁶ The Legislature further provided that the protected information was not only exempt from public record requirements, but confidential and exempt.¹⁷

In 2001, the Legislature created¹⁸ the public record exemption found in s. 119.071(3)(a), F.S., and the public meeting exemption found in s. 286.0113(1), F.S., for security system plans. The 2001 public necessity statement¹⁹ for the public record and public meeting exemptions cite safety issues as the required public necessity for the exemptions.²⁰

¹¹ *Id.*

¹² Section 281.301(2), F.S.

¹³ Chapter 87-355, L.O.F.

¹⁴ Chapter 90-360, L.O.F.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Chapter 2001-361, L.O.F.

¹⁹ Article I, s. 24(c), FLA. CONST., requires each public record exemption to "state with specificity the public necessity justifying the exemption."

²⁰ The 2001 public necessity statement provides, in part, "...security-system plans contain components that address safety issues for public and private property on which public business is conducted and address the security of private property on which a large segment of the public relies. The public relies on radio and television towers, telephone and cable lines, power plants and grids, oil and gas pipelines, and many types of privately owned infrastructure to provide necessary services. To coordinate the response of the public sector and the private sector in an emergency, such as an act of terrorism, public agencies must be able to review security-system plans for public and private property. If the information in security-system plans is available for inspection and copying, terrorists could use this information to hamper or disable emergency-response preparedness, thereby increasing injuries and fatalities."

In 2018, the Legislature amended²¹ all three exemptions, creating public record and public meeting exemptions for firesafety system plans and information relating to firesafety systems that were identical to the exemptions under those statutes for security system plans and information relating to such plans. The Legislature also provided that portions of public meetings in which firesafety system plans and information relating to firesafety systems are discussed are exempt from public meeting requirements. The 2018 public necessity statement cites the connectivity and integrated nature of firesafety systems and security systems as necessitating the creation of the exemptions.²²

Pursuant to the OGSR Act, these exemptions will repeal on October 2, 2023, unless reenacted by the Legislature.

During the 2022 interim, subcommittee staff sent questionnaires to city governments, county governments, and state agencies. In total, staff received 66 responses from those entities.²³ The vast majority of respondents²⁴ indicated that the exemptions are functioning well. No respondent recommended eliminating the public record exemption for security or firesafety system plans or the related public meeting exemption. Regarding the substantive similarities between, and possible duplicative nature of, the public record exemptions - ss. 119.071(3)(a) and 281.301(1), F.S. - and the public meeting exemptions - ss. 281.301(1) and 286.0113(1), F.S. - the responses varied in scope. For the public record exemptions, some respondents indicated the two public record exemptions are duplicative and one could be eliminated, some respondents thought the redundancy beneficial, and other respondents indicated the two exemptions were not duplicative. Regarding the question of whether the public meeting exemptions were redundant or duplicative, respondents provided some of the same indications.

Effect of the Bill

The bill removes the scheduled repeal date of the public record and public meeting exemptions for security or firesafety system plans under ss. 119.071(3)(a) and 286.0113(1), F.S., thereby maintaining the public record and public meeting exemptions for such plans. The bill repeals s. 281.301, F.S., as the information and meetings protected under this section of law appears to be duplicative of the two exemptions being maintained.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

²¹ Chapter 2018-146, L.O.F.

²² The 2018 public necessity statement provides, in part, “[d]isclosure of sensitive information relating to firesafety systems could result in identification of vulnerabilities in such systems and allow a security breach that could damage firesafety systems and disrupt their safe and reliable operation, adversely impacting the public health and safety and economic well-being of the state. Because of the interconnected nature of firesafety and security systems, such a security breach may also impact security systems.”

²³ Open Government Sunset Review Questionnaire, Public Records and Public Meetings Related to Security and Firesafety Systems, Plans, and Information, responses on file with the Ethics, Elections & Open Government Subcommittee.

²⁴ Six responses recommended changes to the public record exemptions and two responses recommended changes to the public meeting exemptions.

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.