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DATE: February 27, 2002

HOUSE OF REPRESENTATIVES
COUNCIL FOR SMARTER GOVERNMENT
ANALYSIS

BILL #: CS/HB 735 (PCB SEC 02-13)
RELATING TO: Public Records/State Property/Security System Plans
SPONSOR(S): Council for Smarter Government, Select Committee on Security, Representative(s)
Gelber and others

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) SECURITY, SELECT YEAS 8 NAYS 0
 - (2) STATE ADMINISTRATION YEAS 5 NAYS 0
 - (3) COUNCIL FOR SMARTER GOVERNMENT YEAS 13 NAYS 0
 - (4)
 - (5)
-

I. SUMMARY:

The council substitute creates a public records 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. The council substitute provides for exceptions to the public records exemption.

The council substitute provides a public necessity statement, as required by the Florida Constitution, which states that the exemption is necessary in order to ensure the safety of government infrastructures and to ensure public safety. Such exempt information is a vital component of public safety and if it were made publicly available then the ability for persons who desire to harm individuals located in those structures is increased.

The council substitute provides for retroactive application of the public records exemption.

The council substitute provides for future review and repeal of the exemption.

The council substitute does not appear to have a fiscal impact on state or local government.

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II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|-----------------------------------------|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Public Records Law

Florida Constitution

Article I, s. 24(a), Florida Constitution, expresses Florida's public policy regarding access to government records as follows:

Every person has the right to inspect or copy any public records made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Article I, s. 24(c), Florida Constitution, does, however, permit the Legislature to provide by general law for the exemption of records from the requirements of s. 24. 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.

Florida Statutes

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07(1)(a), F.S., provides:

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at a reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

Open Government Sunset Review Act of 1995

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, provides that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes, and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or
3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

C. EFFECT OF PROPOSED CHANGES:

The council substitute creates a public records 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 agency¹. The council substitute provides for exceptions to the public records exemption. Such exempt information may be disclosed:

- To another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities;
- To a licensed architect, engineer, or contractor who is performing work on or related to the building, arena, stadium, water treatment facility, or other agency owned or operated structure; or
- Upon a showing of good cause before a court of competent jurisdiction.

The receiving entities or persons must maintain the exempt status of such information.

The council substitute provides a public necessity statement, as required by s. 24, Art. I of the State Constitution, which states that the exemption is necessary in order to ensure the safety of

¹ Section 119.011(2), F.S., defines "agency" as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unity of government created or established by law including, for the purposes of this chapter, 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."

government infrastructures and to ensure public safety. Such exempt information is a vital component of public safety and if it were made publicly available then the ability for persons who desire to harm individuals located in those structures is increased.

The council substitute provides for retroactive application of the public records exemption. Additionally, this exemption is made subject to the Open Government Sunset Review Act of 1995 and will repeal on October 2, 2007, unless reviewed and saved from repeal through reenactment by the legislature.

D. SECTION-BY-SECTION ANALYSIS:

See "Effect of Proposed Changes".

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The council substitute does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The council substitute does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The council substitute does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Committee on State Administration

On February 21, 2002, the Committee on State Administration reported HB 735 favorably with a strike-all amendment. That amendment is traveling with the bill. The strike-all amendment creates a public records exemption for building plans, blueprints, schematic drawings, and diagrams for structures owned or operated by an agency. The amendment provides for exceptions to the exemption, provides for retroactive application of the exemption, and provides for future review and repeal of the public records exemption. The bill creates an exemption for security system plans. The bill's exemption is not needed because a substantially similar exemption already exists in law.

Council for Smarter Government

On February 26, 2002, the Council for Smarter Government reported HB 735 favorably as a council substitute. The council substitute creates a public records exemption for building plans, blueprints, schematic drawings, and diagrams for structures owned or operated by an agency. The council substitute provides for exceptions to the exemption, provides for retroactive application of the exemption, and provides for future review and repeal of the public records exemption. The original bill creates an exemption for security system plans. The exemption contained in the original bill is not needed because a substantially similar exemption already exists in law.

VII. SIGNATURES:

COMMITTEE ON SECURITY, SELECT:

Prepared by:

David M. Greenbaum

Staff Director:

Thomas Randle/Richard Hixson

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AS REVISED BY THE COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

Staff Director:

Heather A. Williamson, M.S.W.

J. Marleen Ahearn, Ph.D., J.D.

AS FURTHER REVISED BY THE COUNCIL FOR SMARTER GOVERNMENT:

Prepared by:

Council Director:

Heather A. Williamson, M.S.W.

Don Rubottom