

FINAL BILL ANALYSIS

BILL #: HB 597

FINAL HOUSE FLOOR ACTION:

116 Y's 0 N's

SPONSOR: Rep. Taylor

GOVERNOR'S ACTION: Approved

COMPANION BILLS: SB 874

SUMMARY ANALYSIS

HB 597 passed the House on April 27, 2011, and subsequently passed the Senate on May 3, 2011. The bill was approved by the Governor on May 31, 2011, chapter 2011-85, Laws of Florida, and takes effect July 1, 2011.

The bill creates a public record exemption for any information furnished by a person to an agency for the purpose of being provided with emergency notifications by an agency.

The bill provides for retroactive application of the public record exemption. It also provides for repeal of the exemption on October 2, 2016, unless reviewed and saved from repeal by the Legislature. The bill provides a public necessity statement as required by the State Constitution.

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

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Public Records Law

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The 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.

Emergency Notifications

State agencies are required to have emergency plans in place in case of a natural disaster. The emergency plans are not required to have any sort of associated notification system.

The Department of Health has taken steps to keep the public health community informed of public health emergencies using the Florida Department of Health Emergency Notification System or FDENS.³

Sheriff's offices, universities, public utilities and other entities throughout Florida have in place emergency notification systems. For example, the Sumter County Sheriff's Office uses the CodeRED Emergency Notification System. It is a high-speed telephone communication service for emergency notifications that works off of a database compiled from the phone database maintained for the Sheriff's office by the purveyors of the CodeRED system. The system allows the Sumter County Sheriff's Office to telephone all or targeted areas of the county in case of an emergency situation that requires immediate action.⁴

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

² Section 119.15, F.S.

³ See <http://www.doh.state.fl.us/fdens/index.html> (last visited March 22, 2011).

⁴ Examples include a boil-water notice, missing child notice, or evacuation notice. See <http://www.sumtercountysheriff.org/emergencymanagement/codered.asp> (last visited March 22, 2011).

Brevard County has in place a similar emergency alert notification system for natural emergencies.⁵ Florida State University has a more comprehensive alert system that includes text messages, voice-mail messages, email messages, facebook messages, indoor and outdoor sirens, and a hotline.⁶

Current law provides a public record exemption for persons requesting emergency assistance through E911. The exemption applies to the name, address, telephone number, or personal information about or information that may identify any person requesting emergency services or reporting an emergency while such information is in the custody of the public agency or public safety agency providing emergency services.⁷

Effect of Proposed Changes

The bill creates a public record exemption for any information furnished by a person to an agency⁸ for the purpose being provided with emergency notification by the agency. The exemption includes the person's name, address, telephone number, e-mail address, or other electronic communication address. Such information held by an agency before, on, or after⁹ the effective date of the exemption is made exempt¹⁰ from public records requirements.

The bill provides for repeal of the exemption on October 2, 2016, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.¹¹

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

⁵ See <http://embrevard.com/> (last visited March 22, 2011).

⁶ See <http://www.safety.fsu.edu/emergencymanagement/fsualert.html> (last visited March 22, 2011).

⁷ Section 365.171(12), F.S.

⁸ Section 119.011(2), F.S., defines "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 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."

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 retroactively. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d 373 (Fla. 2001).

¹⁰ 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).

¹¹ Section 24(c), Art. I of the State Constitution.

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.