

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: CS/SB 1140

INTRODUCER: Military and Veterans Affairs, Space, and Domestic Security Committee and Senator Hays

SUBJECT: Public Records/Division of Emergency Management/Emergency Planning

DATE: April 2, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ryon/Spaulding</u>	<u>Ryon</u>	<u>MS</u>	<u>Fav/CS</u>
2.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<u>Favorable</u>
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1140 creates a public records exemption for certain personal identification information provided to the Florida Division of Emergency Management (DEM) by an individual or a business for the purpose of receiving assistance with emergency planning. The bill provides for retroactive application of the exemption, and for legislative review and repeal under the provisions of the Open Government Sunset Review Act.

The bill contains a statement of public necessity as required by the State Constitution.

Because the bill creates a public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for passage.

II. Present Situation:

Florida's Public Records Law

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or

employee of the state, or of persons acting on their behalf.¹ The records of the legislative, executive, and judicial branches are specifically included.²

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act³ guarantees every person's right to inspect and copy any state or local government public record⁴ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁵

Only the Legislature may create an exemption to public records requirements.⁶ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.⁷ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions⁸ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.⁹

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁰ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹¹ The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.¹²

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Chapter 119, F.S.

⁴ Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "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." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

⁵ Section 119.07(1)(a), F.S.

⁶ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *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 (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 2004); and *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 FLA. CONST., art. I, s. 24(c).

⁸ The bill may, however, contain multiple exemptions that relate to one subject.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

¹¹ Section 119.15(3), F.S.

¹² Section 119.15(6)(b), F.S.

Open Government Sunset Review Act

The Open Government Sunset Review Act¹³ sets forth a legislative review process for newly-created or substantially-amended public-records or public-meetings 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.

The Act provides that a public-records or public-meetings 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 Act also requires consideration of six questions regarding the scope of the exemption and related protections.¹⁴

Division of Emergency Management's "Get a Plan" Campaign

The Florida Division of Emergency Management (DEM), established in the Executive Office of the Governor,¹⁵ is the state's emergency management agency. The State Emergency Management Act directs the DEM to oversee and manage emergency preparedness, response, recovery and mitigation programs in Florida.¹⁶ Among the DEM's statutorily required duties is the requirement to institute a multifaceted public educational campaign on emergency preparedness.¹⁷ Such a campaign must promote the personal responsibility of individual citizens to be self-sufficient for up to 72 hours following a natural or manmade disaster.¹⁸

In 2006, the DEM launched its "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. "Get a Plan" is an online preparedness tool that allows individuals, families, and businesses to create an emergency plan tailored to the specific needs of the user. The tool allows users to establish a user name and password to access the online tool at their convenience to adjust or update any aspect of their emergency response plan.

Emergency plans may include sensitive information such as alternative locations for families to meet or business relocation in the event of building damage; business contacts, including utility providers, supplier, and employees; backup suppliers for key materials and services dependent

¹³ Section 119.15, F.S.

¹⁴ Section 119.15(6)(a), F.S.

¹⁵ Section 14.2016, F.S.

¹⁶ Section 252.31, F.S.

¹⁷ Section 252.35(2)(i), F.S.

¹⁸ Id.

upon by businesses; important records and documents that the business needs to operate; and emergency community contacts and disaster resources.

From 2006 to 2013, the DEM's "Get a Plan" tool hosted emergency response plans for 50,628 families and 8,551 businesses. Due to technical issues, the "Get a Plan" online tool has been temporarily removed from the DEM's website. However, the DEM plans to re-launch the "Get a Plan" online tool with an improved design and function to encourage more participation among Florida residents and businesses in planning for emergencies.¹⁹

Currently, information collected by the DEM for the purpose of assisting families and businesses with emergency planning is not exempt from the public records requirements in s. 119.071(1), F.S., and s. 24(a), Art. I of the State Constitution.

III. Effect of Proposed Changes:

The bill creates s. 252.905, F.S., to exempt from public records requirements any information provided by an individual or business to the DEM for the purpose of receiving assistance with emergency planning. The exemption applies to information held by the DEM before, on, or after July 1, 2014.

The exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill contains a finding of public necessity for this exemption. It states that it is a public necessity that information furnished by a person or business to the DEM for the purpose of obtaining assistance with emergency planning be exempt from public records requirements. The finding provides that the DEM manages a public awareness program to encourage individuals, families, and businesses to develop disaster plans in preparation of and in response to natural or manmade disasters. These disaster plans may include sensitive information and the potential disclosure of such information serves as a disincentive for creating a disaster plan. The bill finds that without the exemption, the effective and efficient administration of the DEM's statewide public awareness program is significantly impaired. The bill further finds that the harm that may result from the release of personal or business information obtained by the DEM for emergency disaster planning outweighs any public benefit that may be derived from disclosure of information.

The bill provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹⁹ "Get a Plan" Campaign information obtained via e-mail correspondence with DEM staff on March 13, 2014. (On file with the Senate Military and Veterans Affairs, Space, and Domestic Security Committee).

B. Public Records/Open Meetings Issues:

Vote Requirement: Section 24(c), Art. I of the State Constitution requires a two-thirds vote of each house of the Legislature for passage of a newly created public records or public meetings exemption. Because this bill creates a new public records exemption, it requires a two-thirds vote for passage.

Subject Requirement: Section 24(c), Art. I of the State Constitution requires the Legislature to create public records or public meetings exemptions in legislation separate from substantive law changes. This bill complies with that requirement.

Public Necessity Statement: Section 24(c), Art. I of the State Constitution requires a public necessity statement for a newly created public records or public meetings exemption. Because this bill creates a new public records exemption, it includes a public necessity statement.

Breadth: A public records exemption must be no broader than necessary to accomplish the stated purpose of the law.²⁰ The public records exemption in the bill applies only to the DEM for the purpose of providing assistance with emergency planning.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

²⁰ *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So. 2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So. 2d 567 (Fla. 1999).

VIII. Statutes Affected:

This bill creates section 252.905 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Military and Veterans Affairs, Space, and Domestic Security on March 19, 2014:

The committee substitute:

- Creates a new section in ch. 252, F.S., to accommodate the public records exemption in the bill.
- Provides that the exemption is subject to the Open Government Sunset Review Act.
- Adds to the statement of public necessity that without the exemption, the effective and efficient administration of DEM's public awareness program is significantly impaired.

B. Amendments:

None.