

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 267 Public Records/State-funded Infrastructure Bank

SPONSOR(S): Government Operations Subcommittee; La Rosa

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 196

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Ports Subcommittee	12 Y, 0 N	Willson	Vickers
2) Government Operations Subcommittee	9 Y, 1 N, As CS	Williamson	Williamson
3) Economic Affairs Committee	14 Y, 1 N	Willson	Pitts

SUMMARY ANALYSIS

The state-funded infrastructure bank (SIB), which is created within the Department of Transportation (department), is a revolving loan and credit enhancement program to help fund transportation projects that otherwise might be delayed or not built. The SIB is composed of two separate accounts, a federally-funded account that is capitalized by federal money and matching state money, and a state-funded account that is capitalized by state money and bond proceeds. Public and private entities that are carrying out, or propose to carry out, eligible projects can apply to the SIB for a loan or other assistance.

The bill creates a public record exemption for financial information of a private entity applicant that the department requires as part of an application process for loans or credit enhancements from the SIB. It defines the term "financial information."

The bill provides that the public record exemption does not apply to records of an applicant who is in default of an SIB loan.

The public record exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also provides a public necessity statement as required by the State Constitution.

The bill may have a minimal fiscal impact on the department; however, these costs would be absorbed as they are part of the department's day-to-day responsibilities.

Article I, s. 24(c) of the State 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 new public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Public Records Law

Article I, section 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The State Constitution guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.01, F.S., provides that it is the policy of the state that all state, county, and municipal records are open for personal inspection and copying by any person, and that it is the responsibility of each agency¹ to provide access to public records.² Section 119.07(1), F.S., guarantees every person a right to inspect and copy any public record unless an exemption applies. The state's public records laws are construed liberally in favor of granting public access to public records.

Public Records Exemptions

The Legislature may provide by general law for the exemption of records from the requirements of article I, section 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.³

The Open Government Sunset Review Act⁴ provides that a public record 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.⁵

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.⁶

Confidential versus Confidential and Exempt

When creating a public record exemption, the Legislature designates the record as "exempt" or "confidential and exempt." There is a difference between records the Legislature has designated as exempt and those designated as confidential and exempt. A record that is designated as confidential

¹ Section 119.011(2), F.S., 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, 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.

² Section 119.011(12), F.S., defines the term "public records" to mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of 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.

³ FLA CONST. art. I, s. 24(c).

⁴ Section 119.15, F.S.

⁵ Section 119.15(6)(b), F.S.

⁶ Section 119.15(3), F.S.

and exempt may only be released by the records custodian to those persons or entities designated in statute.⁷ However, records designated as exempt only may be disclosed under certain circumstances.⁸

State-funded Infrastructure Bank

Section 339.55, F.S., creates the state-funded infrastructure bank (SIB) within the Department of Transportation (department). It is a revolving loan and credit enhancement program to help fund transportation projects that otherwise might be delayed or not built. The SIB is composed of two separate accounts, a federally-funded account that is capitalized by federal money and matching state money, and a state-funded account that is capitalized by state money and bond proceeds. Public and private entities that are carrying out, or propose to carry out, eligible projects can apply to the SIB for a loan or other assistance.

The federally-funded account is limited to projects which meet federal requirements. The state-funded account is authorized to lend capital costs or provide credit enhancements for:

- A transportation facility project that is on the State Highway System.
- A project that provides for increased mobility on the state's transportation system.
- A project that provides for intermodal connectivity with airports, seaports, rail facilities, and other transportation terminals for the movement of people, cargo and freight.
- Transportation Regional Incentive Program⁹ projects, provided the project receives at least a 25 percent match from non-SIB loan funds.
- Emergency loans for damages incurred to public-use commercial deepwater seaports, public-use airports, and other public-use transit and intermodal facilities that are within an area that is part of an official state declaration of emergency.¹⁰

Loans from the SIB may bear interest at or below market interest rates, as determined by the department. Repayment of any SIB loan must begin no later than 5 years after the project has been completed or, in the case of a highway project, the facility has opened to traffic, whichever is later, and must be repaid in 30 years.¹¹

Currently, there is no public record exemption for the financial statements or financial information submitted as part of a loan application to the SIB.

Proposed Changes

The bill amends s. 339.55, F.S., creating a public record exemption for certain information submitted by a private entity as part of the SIB application process. Specifically, financial information of a private entity applicant that the department requires as part of the application process for loans or credit enhancements from the SIB is exempt from section 119.07(1), F.S., and article I, section 24(a) of the State Constitution. The bill defines "financial information" as any business plan, pro forma statement, account balance, operating income or revenue, asset value, or debt of the applicant.

The public record exemption does not apply to records of an applicant who is in default of a loan issued by the SIB.

The public record exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature. The bill provides a statement of public necessity as required by the State Constitution.

⁷ *WFTV, Inc. v. School Board of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 5th DCA 2004).

⁸ *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991), *review denied*, 589 So. 2d 289 (Fla. 1991).

⁹ *See* s. 339.2819, F.S.

¹⁰ Section 339.55(2), F.S.

¹¹ Section 339.55(4), F.S.

B. SECTION DIRECTORY:

- Section 1. Amends s. 339.55, F.S., creating a public record exemption for financial information required by the department as part of an application to the SIB.
- Section 2. Provides a public necessity statement.
- Section 3. Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have a minimal fiscal impact on the department because staff responsible for complying with public record requests could require training related to the new public record exemption. In addition, the department may incur costs associated with redacting the exempt financial information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the department.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

Vote requirement

Article I, s. 24(c) of the State 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 new public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State 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. The bill creates a public record exemption for financial information of a private entity applicant that the department requires as part of the application process for loans or credit enhancements from the SIB.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 13, 2016, the Government Operations Subcommittee adopted a strike-all amendment and reported the bill favorably with committee substitute. The strike-all amendment:

- Removed the public record exemption for financial statements because it was redundant of the exemption for financial information.
- Defined the term “financial information” as any business plan, pro forma statement, account balance, operating income or revenue, asset value, or debt of the applicant.
- Revised the public necessity statement to conform to changes made to the public record exemption.

This analysis is drafted to the committee substitute as approved by the Government Operations Subcommittee.