

**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.)

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Prepared By: The Professional Staff of the Committee on Banking and Insurance

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BILL: CS/SB 1880

INTRODUCER: Banking and Insurance Committee and Senator Broxson

SUBJECT: Public Records/Security of Data and Information Technology in Citizens Property Insurance Corporation

DATE: January 30, 2018

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	<u>RC</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Technical Changes

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**I. Summary:**

CS/SB 1880 creates a public records exemption for data and information from information technology (IT) systems owned by, under contract with, or maintained by Citizens Property Insurance Corporation (Citizens). The bill exempts from the requirements of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution the following data and information held by Citizens:

- Records that identify detection, investigation, or response practices for suspected or confirmed IT security incidents, including suspected or confirmed breaches.
- Portions of risk assessments, evaluations, audits, and other reports of Citizens' IT security program for its data, information and IT resources.

Such records are confidential and exempt if disclosure would facilitate unauthorized access to or unauthorized modification, disclosure, or destruction of data or information, or information technology resources including those related to security of IT resources.

The bill also creates a public meeting exemption for meetings and portions thereof that would reveal the above-described IT security information.

The exemptions are similar to those currently in law for state agencies.

The exemptions are retroactive and apply to records or portions of public meetings, recordings, and transcripts held by Citizens before, on, or after the effective date of the bill.

The bill provides for repeal of the exemptions on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature. The bill provides a public necessity statement as required by the State Constitution.

## II. Present Situation:

### Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.<sup>1</sup> This applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.<sup>2</sup> In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.<sup>3</sup> Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.<sup>4</sup> The Public Records Act states that

it is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.<sup>5</sup>

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.<sup>6</sup> The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”<sup>7</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>8</sup>

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of the House and the Senate.<sup>9</sup> The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish

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<sup>1</sup> FLA. CONST., art. I, s. 24(a).

<sup>2</sup> FLA. CONST., art. I, s. 24(a).

<sup>3</sup> The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So.2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are primarily located in s. 11.0431(2)-(3), F.S.

<sup>4</sup> Public records laws are found throughout the Florida Statutes.

<sup>5</sup> s. 119.01(1), F.S.

<sup>6</sup> s. 119.011(12), F.S., defines “public record” 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” 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.”

<sup>7</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So.2d 633, 640 (Fla. 1980).

<sup>8</sup> s. 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

<sup>9</sup> FLA. CONST., art. I, s. 24(c).

the stated purpose of the exemption.<sup>10</sup> A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.<sup>11</sup>

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’<sup>12</sup> Records designated as ‘confidential and exempt’ may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as ‘exempt’ may be released at the discretion of the records custodian under certain circumstances.<sup>13</sup>

### **Public Record Exemptions Related to Information Technology**

The Information Technology (IT) Security Act<sup>14</sup> requires the Agency for State Technology and state agency<sup>15</sup> heads to meet certain requirements relating to IT security. The IT Security Act provides that the following state agency information is confidential and exempt<sup>16</sup> from public record requirements:

- Comprehensive risk assessments;<sup>17</sup>
- Internal policies and procedures that, if disclosed, could facilitate the unauthorized modification, disclosure, or destruction of data or information technology resources;<sup>18</sup> and
- The results of internal audits and evaluations.<sup>19</sup>

Such confidential and exempt information must be disclosed to the Auditor General, the Cybercrime Office within the Department of Law Enforcement, Agency for State Technology, and, for agencies under the jurisdiction of the Governor, the Chief Inspector General.<sup>20</sup>

<sup>10</sup> FLA. CONST., art. I, s. 24(c).

<sup>11</sup> *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So.2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So.2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

<sup>12</sup> If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

<sup>13</sup> A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So.2d 683 (Fla. 5th DCA 1991).

<sup>14</sup> Section 282.318, F.S.

<sup>15</sup> The term “state agency” means any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government; the Justice Administrative Commission; and the Public Service Commission. The term does not include university boards of trustees or state universities. As used in part I of this chapter, except as otherwise specifically provided, the term does not include the Department of Legal Affairs, the Department of Agriculture and Consumer Services, or the Department of Financial Services. Section 282.0041(23), F.S.

<sup>16</sup> There is a difference between records the Legislature designates exempt from public records requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991) *review denied*, 589 So.2d 289 (Fla. 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 *WFTV, Inc. v. Sch. Bd. of Seminole Cnty*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So.2d 1015 (Fla. 2004); Op. Att’y Gen. Fla. 85-692 (1985).

<sup>17</sup> Section 282.318(4)(d), F.S.

<sup>18</sup> Section 282.318(4)(e), F.S.

<sup>19</sup> Section 282.318(4)(g), F.S.

<sup>20</sup> Section 282.318(4)(d), (e), and (g), F.S.

In addition, the IT Security Act provides that records held by a state agency that identify detection, investigation, or response practices for suspected or confirmed IT security incidents, including suspected or confirmed breaches, are confidential and exempt.<sup>21</sup> Portions of risk assessments, evaluations, external audits, and other reports of a state agency's IT security program for the data, information, and IT resources of the state agency that are held by a state agency are confidential and exempt from public record requirements.<sup>22</sup> Such records, and portions thereof, are only confidential and exempt if disclosure would facilitate the unauthorized access to or the unauthorized modification, disclosure, or destruction of:

- Physical or virtual data or information; or
- IT resources, including:
  - Information relating to the security of the state agency's technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or
  - Physical or virtual security information that relates to the state agency's existing or proposed IT systems.<sup>23</sup>

Such confidential and exempt records, and portions thereof, must be made available to the Auditor General, the Cybercrime Office within Department of Law Enforcement, Agency for State Technology, and, for agencies under the jurisdiction of the Governor, the Chief Inspector General. In addition, the records, and portions thereof, may be released to a local government, another state agency, or a federal agency for IT security purposes or in furtherance of the state agency's official duties.<sup>24</sup>

### **Citizens Property Insurance Corporation**

Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted<sup>25</sup> market. It is not a private insurance company.<sup>26</sup>

Records and meetings held by Citizens regarding information security incidents, such as investigations into security breaches, security technologies, processes and practices as well as security risk assessments are subject to Florida open records laws<sup>27,28</sup> Public disclosure of this information presents a significant security risk and would reveal weaknesses within Citizens' computer networks, raising the potential for exploitation.

Section 282.318, F.S., exempts from Open Meeting and Public Records laws data and information from technology systems owned, contracted, or maintained by a state agency.

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<sup>21</sup> Section 282.318(4)(i), F.S.

<sup>22</sup> Section 282.318(5), F.S.

<sup>23</sup> Section 282.318(4)(i) and (5), F.S.

<sup>24</sup> *Id.*

<sup>25</sup> Admitted market means insurance companies licensed to transact insurance in Florida.

<sup>26</sup> Section 627.351(6)(a).1., F.S.

<sup>27</sup> FLA. CONST. art. I, s. 24 (c).

<sup>28</sup> Chapter 119, F.S.

However, s. 282.318(2), F.S., defines “state agency” as having the same meaning as provided in s. 282.0041, F.S. State agency is defined in s. 282.0041(23), F.S., as meaning:

[A]ny official, officer, commission, board, authority, council, committee, or department of the executive branch of state government; the Justice Administrative Commission; and the Public Service Commission.

Because Citizens is not created within the executive branch, it is not covered by the definition.

Therefore, Citizens is vulnerable to the disclosure of information and records which, if disclosed, could potentially compromise the confidentiality, integrity, and availability of its information technology system. Such system contains highly sensitive policyholder, insurer, claims, financial, accounting and banking, personnel, and other records.<sup>29</sup>

### III. Effect of Proposed Changes:

The bill creates public record and public meeting exemptions to protect data and records pertaining to the security of the Citizens information networks from disclosure. The bill provides that records held by Citizens that identify detection, investigation, or response practices for suspected or confirmed IT security incidents, including suspected or confirmed breaches, are confidential and exempt from public record requirements. In addition, portions of risk assessments, evaluations, audits, and other reports of Citizens’ IT security program for its data, information, and IT resources that are held by Citizens are confidential and exempt. Such records, and portions thereof, are only confidential and exempt if disclosure would facilitate unauthorized access to or unauthorized modification, disclosure, or destruction of:

- Physical or virtual data or information; or
- IT resources, including:
  - Information relating to the security of Citizens’ technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or
  - Physical or virtual security information that relates to Citizens’ existing or proposed IT systems.

The bill also creates a public meeting exemption for meetings and portions thereof that would reveal the above-described IT security information. Recordings or transcripts of such closed portions of meetings must be taken. Recordings or transcripts are confidential and exempt from public record requirements, unless a court, following an in camera review, determines that the meeting was not restricted to the discussion of confidential and exempt data and information. In the event of such a judicial determination, only that portion of a transcript that reveals nonexempt data and information may be disclosed to a third party.

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<sup>29</sup> Section 627.351(6)(x), F.S., requires Citizens to hold the following records as confidential and exempt from disclosure under Florida’s public record laws: underwriting files, claim files, certain audit files, attorney-client privileged material, certain proprietary information licensed to Citizens, employee assistance program information, information relating to the medical condition or medical status of a Citizens employee, certain information relating to contract negotiations, and certain records related to closed meetings.

The bill requires the confidential and exempt records related to the public meeting exemption to be available to the Auditor General, the Cybercrime Office of Department of Law Enforcement, and the Office of Insurance Regulation. Such records and portions of meetings, recordings, and transcripts may also be available to a state or federal agency for security purposes or in furtherance of the agency's official duties.

The public record exemptions are retroactive and apply to records or portions of public meetings, recordings, and transcripts held by Citizens before, on, or after the effective date of the bill.

The bill provides a public necessity statement as required by the State Constitution, specifying that the public record and public meeting exemptions are necessary to ensure effective investigations of IT security breaches, to prevent identity theft and other crimes, and to prevent the disclosure of weaknesses in Citizens' data security.

The bill provides for repeal of the exemptions on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill will take effect upon becoming a law.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

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 public record and public meeting exemptions; thus, it requires a two-thirds vote for final passage.

##### **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.

**VIII. Statutes Affected:**

This bill creates section 627.352 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

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

**CS by Banking and Insurance on January 30, 2018:**

The CS makes a technical change correcting the 5 year sunset review date to October 2, 2023.

**B. Amendments:**

None.