

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 551 Pub. Rec./Health Care Facilities

SPONSOR(S): Health Innovation Subcommittee; Oversight, Transparency & Administration Subcommittee; Burton

TIED BILLS: **IDEN./SIM. BILLS:** SB 906

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee	11 Y, 0 N, As CS	Hoffman	Harrington
2) Health Innovation Subcommittee	14 Y, 0 N, As CS	Royal	Crosier
3) Government Accountability Committee			

SUMMARY ANALYSIS

Current law provides a public record exemption for building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout or structural elements of an attractions and recreation facility, entertainment or resort complex, industrial complex, retail and service development, office development, or hotel or motel development held by an agency. Although health care facilities are required to submit similar building plans and related documents to agencies, there is not appear a public record exemption for these building plans.

The bill expands the public record exemption for building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final forms, which depict the internal layout and structural elements to include health care facilities. Specifically, the bills provides that such plans for a hospital, ambulatory surgical center, nursing home, hospice, or intermediate care facility for the developmentally disabled are exempt from public disclosure.

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

The bill may have a minimal fiscal impact on the state and local governments. See Fiscal Comments.

Article I, s. 24(c) of the Florida 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 expands a public record exemption for building plans and related documents; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

The State Constitution guarantees every person the right to inspect or copy any public record made or received in connection with the official business of the legislative, executive, or judicial branches of government.¹ The Legislature, however, may provide by general law for the exemption of records from the constitutional requirement.² The general law must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the law.³ A bill enacting an exemption must pass by a two-thirds vote of the members present and voting.⁴

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 Act provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose.⁵ In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a government program, which administration would be significantly impaired without the exemption;
- Protect personal identifying information that, if released, would be defamatory or would jeopardize an individual's safety; or
- Protect trade or business secrets.⁶

Public Record Exemption for Building Plans and Related Documents

Current law provides a public record exemption for building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout or structural elements of an attractions and recreation facility, entertainment or resort complex, industrial complex, retail and service development, office development, or hotel or motel development held by an agency.⁷ Such information is exempt from public disclosure.⁸ This exemption does not apply to comprehensive plans or site plans which are submitted for approval or which have been approved under local land development regulations, local zoning regulations, or development-of-regional-impact review.

Health Care Facilities

Health care facilities require review of methods of proposed construction by the Agency for Health Care Administration.⁹ The Agency ensures compliance with health care rules, codes and standards to

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(c).

³ *Id.*

⁴ *Id.*

⁵ Section 119.15, F.S.

⁶ Section 119.15(6)(b), F.S.

⁷ Section 119.071(3)(c), F.S.

⁸ There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates as 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, the record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See 85-62 Fla. Op. Att'y Gen. (1985).

⁹ Section 408.035(h), F.S.

provide protection of public health and safety.¹⁰ Schematics, preliminary plans and construction documents received by the Agency and other government agencies for hospitals, ambulatory surgical centers, nursing homes and intermediate care facilities for the developmentally disabled are public record and subject to release upon request.¹¹ These plans include building floor plans, communication systems, medical gas systems, electrical systems, emergency generators, and other physical plant and security details.¹²

Recent security threats have been shared by state and federal security and emergency preparedness officials that describe the targeting of health care facilities by terrorists.¹³ Because architectural and engineering plans reviewed and held by government agencies include information regarding emergency egress, locking arrangements, critical life safety systems and restricted areas, these plans could be used by criminals or terrorists to examine the physical plant for vulnerabilities and aid in the planning, training and execution of criminal activities.¹⁴

Effect of the Bill

This bill expands the public records exemption for building plans and other related documents for an attractions and recreation facility, entertainment or resort complex, industrial complex, retail and service development, office development, or hotel or motel development held by an agency. Specifically, this bill expands this exemption to include health care facilities. The public record exemption is retroactive and applies to records held before, on, or after the effective date of this bill.

The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2023, unless saved from repeal through reenactment by the Legislature.

This bill provides a public necessity statement as required by the Florida Constitution, which states that the building plans could be used by criminals or terrorists to examine the physical plant for vulnerabilities. In addition, information contained in the documents could aid in the planning, training, and execution of criminal actions including infant abduction, cyber-crime, arson, and terrorism.

B. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., relating to public record exemptions for building plans for health care facilities.

Section 2 provides a public necessity statement.

Section 3 provides that the bill will take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to impact state revenues.

¹⁰ Agency for Health Care Administration, Agency Analysis of 2018 House Bill 551, p. 2 (Nov. 16, 2017).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*; Department of Homeland Security, *Terrorists Call for Attacks on Hospitals, Healthcare Facilities* (Feb. 8, 2017) available at: <http://www.arkhospitals.org/Misc.%20Files/AttacksHospitalsHCFacilities.pdf>.

¹⁴ Agency for Health Care Administration, Agency Analysis of 2018 House Bill 551, p. 2 (Nov. 16, 2017).

2. Expenditures:
See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
The bill does not appear to impact local government revenues.
2. Expenditures:
See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

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 expands an existing 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 expands an existing 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 or expanded public record exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill expands an existing public record exemption for access to building plans, blueprints, schematic drawings and diagrams for healthcare facilities. The expansion of the public record exemption seeks to prevent criminals and terrorists from accessing information that could aid the conduct of criminal activity targeting health care facilities.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 6, 2017, the Oversight, Transparency & Administration Subcommittee adopted one amendment and reported the bill favorably with a committee substitute. The amendment conformed the public necessity statement to the bill by clarifying that the information is exempt only, rather than confidential.

On January 10, 2018, the Health Innovation Subcommittee adopted an amendment that removes emergency generators from the list of items or systems included in a health care facility's building plans that would be made exempt from public records by the bill.

The bill was reported favorably as a committee substitute. The analysis is drafted to the committee substitute.