

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7011 PCB OTM 19-02 OGSR/Division of Emergency Management
SPONSOR(S): Oversight, Transparency & Public Management Subcommittee; Daniels
TIED BILLS: **IDEN./SIM. BILLS:** SB 7032

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Oversight, Transparency & Public Management Subcommittee	13 Y, 0 N	Toliver	Harrington
1) State Affairs Committee	22 Y, 0 N	Toliver	Williamson

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

Current law requires the Division of Emergency Management (DEM) to institute statewide public awareness programs. These programs must include an intensive public educational campaign to educate the public on the personal responsibility of individual citizens to be self-sufficient for up to 72 hours following a natural or manmade disaster. DEM has created an online tool, the "Get A Plan" website, that allows individuals, families, and businesses to create an emergency plan tailored to their specific needs. In 2014, the Legislature created a public record exemption for information submitted to the "Get A Plan" website. The exemption protects information furnished by a person or a business to DEM for the purpose of being provided assistance with emergency planning.

The bill reenacts the public record exemption, which will repeal on October 2, 2019, if this bill does not become law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting 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.²

The Act 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:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect 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.
- Protect trade or business secrets.³

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.⁴ If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created then a public necessity statement and a two-thirds vote for passage are not required.

Division of Emergency Management

The Division of Emergency Management (DEM) is established within the Executive Office of the Governor.⁵ DEM is the state's emergency management agency. DEM is charged with administering programs for the purpose of rapidly applying all available aid to communities stricken by an emergency and serving as a liaison between the state and federal agencies.⁶ The State Emergency Management Act⁷ directs DEM to oversee and manage emergency preparedness, response, recovery, and mitigation programs in Florida.⁸

The State Emergency Management Act requires DEM to institute statewide public awareness programs.⁹ These programs must include an intensive public educational campaign on emergency preparedness issues.¹⁰ The educational campaign must educate the public on the personal responsibility of individual citizens to be self-sufficient for up to 72 hours following a natural or manmade disaster.¹¹ In 2006, DEM launched the "Get a Plan" campaign to encourage individuals,

¹ Section 119.15, F.S.

² Section 119.15(3), F.S.

³ Section 119.15(6)(b), F.S.

⁴ Section 24(c), Art. I, FLA. CONST.

⁵ Section 14.2016(1), F.S.

⁶ *Id.*

⁷ Sections 252.31-252.60, F.S.

⁸ *Id.*

⁹ Section 252.32(2)(i), F.S.

¹⁰ *Id.*

¹¹ *Id.*

families, and businesses to develop disaster plans in preparation of and in response to natural or manmade disasters. It is an online tool that allows individuals, families, and businesses to create an emergency plan tailored to the specific needs of the user.

Public Record Exemption under Review

In 2014, the Legislature created a public record exemption for information furnished by a person or a business to DEM for the purpose of being provided assistance with emergency planning.¹² The exemption applies to information held by DEM before, on, or after July 1, 2014. The protected information is exempt¹³ from public record requirements.

The 2014 public necessity statement¹⁴ for the exemption provides that:

The public awareness program encourages individuals, families, and businesses to develop disaster plans in preparation of and in response to such natural or manmade disasters. Emergency plans may include sensitive information such as alternate locations for families to meet or business relocation in the event of building damage; business contacts, including utility providers, suppliers, and employees; backup suppliers for key materials and services depended upon by the business; important records and documents that the business needs to operate; and emergency community contracts and disaster resources. Without this exemption, the effective and efficient administration of the Division of Emergency Management's statewide public awareness program is significantly impaired. The potential disclosure of sensitive information has served as a disincentive for creating a disaster plan, particularly among businesses that fear that the disclosure of sensitive information may place their businesses at a competitive disadvantage.¹⁵

Pursuant to the Open Government Sunset Review Act,¹⁶ the exemption will repeal on October 2, 2019, unless reenacted by the Legislature.

During the 2018 interim, House and Senate staff met with staff from DEM. DEM staff noted the "Get A Plan" website gives users a choice as to whether to create an account. A user who creates a profile will have his or her information saved on DEM servers and can return to his or her profile to update emergency planning information. If a user opts not to create a profile, he or she can still create an emergency plan using a template but none of the information is saved. As of August 2018, 51,612 plans have been created on the Get A Plan website, with 2,774 people opting to create a profile.¹⁷ DEM staff stated the exemption is necessary to protect personal information entrusted to them and to encourage public participation. DEM recommended that the exemption be reenacted without changes.

¹² Chapter 2014-188, L.O.F.; codified as s. 252.905, F.S.

¹³ There is a difference between records the Legislature designates 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 statute. (*See Attorney General Opinion 85-62*, August 1, 1985).

¹⁴ Article I, s. 24(c), FLA. CONST., requires each public record exemption "state with specificity the public necessity justifying the exemption."

¹⁵ Chapter 2014-188, L.O.F.

¹⁶ Section 119.15, F.S.

¹⁷ Email from Angela Bonds of DEM, 8/29/18, on file with the House Oversight, Transparency & Public Management Subcommittee.

Effect of the Bill

The bill removes the scheduled repeal date of the public record exemption, thereby reenacting the public record exemption for information furnished by a person or a business to DEM for the purpose of being provided assistance with emergency planning.

B. SECTION DIRECTORY:

Section 1 amends s. 252.905, F.S., to remove the scheduled repeal date of the public record exemption.

Section 2 provides an effective date of October 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

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.

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:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.