

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1035 Pub. Rec./Records and Information Provided to Specified Entities for Disaster Recovery Assistance

**SPONSOR(S):** State Affairs Committee; Oversight, Transparency & Public Management Subcommittee; Raschein

**TIED BILLS:**           **IDEN./SIM. BILLS:** CS/SB 966

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Public Management Subcommittee	15 Y, 0 N, As CS	Toliver	Smith
2) State Affairs Committee	22 Y, 0 N, As CS	Toliver	Williamson

### SUMMARY ANALYSIS

The Department of Economic Opportunity (DEO), the Florida Housing Finance Corporation (FHFC), counties, municipalities, and local housing finance agencies provide various housing programs designed to assist those who have been impacted by a disaster. One such program, the Community Development Block Grant - Disaster Recovery (CDBG-DR) program, supports communities following disasters by addressing long-term recovery needs. The United States Department of Housing and Urban Development (HUD) administers the CDBG-DR program at the federal level and the Office of Disaster Recovery within DEO administers the program at the state level. The CDBG-DR program is designed to address housing, infrastructure, economic development, and mitigation needs that remain after other assistance has been exhausted, including federal assistance and private insurance.

Persons or families that have had their homes damaged or destroyed following a disaster may apply to DEO to receive money to repair, reconstruct, or possibly replace their homes. To receive funding from the CDBG-DR program, an applicant must submit the following types of information:

- Photo identification;
- Proof of ownership;
- Homeowner's insurance information;
- Tax returns; and
- Salary or wage statements, including social security, disability, retirement benefits, and unemployment income.

The bill creates a public record exemption for property photographs and the personal identifying information of an applicant for or a participant in a federal, state, or local housing program provided to DEO, FHFC, a county, a municipality, or a local housing finance agency for the purpose of disaster recovery assistance for presidentially declared disasters. The information is confidential and exempt from public record requirements. The bill provides that the information may be released to a governmental entity for the purpose of auditing a housing program and may be used in any administrative or judicial proceeding provided certain requirements are met.

The bill provides for repeal of the exemptions on October 2, 2025, unless reviewed and saved from repeal by the Legislature. It also provides a public necessity statement as required by the Florida Constitution.

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

**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 public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.**

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Public Records

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, section 24(a).<sup>1</sup> The general law must state with specificity the public necessity justifying the exemption and must be no more broad than necessary to accomplish its purpose.<sup>2</sup>

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<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup>

##### Department of Economic Opportunity

The Department of Economic Opportunity (DEO) was created to assist the Governor in working with the Legislature, state agencies, business leaders, and economic development professionals to formulate and implement coherent and consistent policies and strategies designed to promote economic opportunities for all Floridians.<sup>6</sup> The head of DEO is the executive director, who is appointed by the Governor, subject to confirmation by the Senate. The executive director serves at the pleasure of and reports to the Governor.<sup>7</sup> The executive director manages all activities and responsibilities of DEO, and serves as the manager for the state with respect to contracts with Enterprise Florida Inc., and all applicable direct-support organizations.<sup>8</sup> The Office of Disaster Recovery (ODR) within DEO "supports communities following disasters by addressing long-term recovery needs for housing, infrastructure and economic development."<sup>9</sup>

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<sup>1</sup> Art. I, s. 24(c), FLA. CONST.

<sup>2</sup> Art. I, s. 24(c), FLA. CONST.

<sup>3</sup> Section 119.15, F.S.

<sup>4</sup> Section 119.15(6)(b), F.S.

<sup>5</sup> Section 119.15(3), F.S.

<sup>6</sup> Section 20.60(4), F.S.

<sup>7</sup> Section 20.60(2), F.S.

<sup>8</sup> Section 20.60(9), F.S.

<sup>9</sup> DEO, *Office of Disaster Recovery*, <http://www.floridajobs.org/community-planning-and-development/assistance-for-governments-and-organizations/disaster-recovery-initiative> (last visited Feb. 1, 2020).

### Florida Housing Finance Corporation

The Florida Housing Finance Corporation (FHFC), a public corporation administratively housed within DEO,<sup>10</sup> is the state's affordable housing finance agency. FHFC is responsible for increasing the amount of affordable housing available to individuals and families by stimulating investment of private capital and encouraging public and private sector housing partnerships. To accomplish this mission, FHFC uses federal and state resources to finance the development of safe, affordable homes and rental housing to assist first-time homebuyers.<sup>11</sup>

### Disaster Recovery Housing Assistance Programs

DEO, FHFC, counties, municipalities, and local housing finance agencies have various housing programs designed to assist those who have been impacted by a disaster. One such program, the Community Development Block Grant - Disaster Recovery (CDBG-DR) program, supports communities following disasters by addressing long-term recovery needs. The United States Department of Housing and Urban Development (HUD) administers the CDBG-DR program at the federal level<sup>12</sup> and ODR administers the program at the state level.<sup>13</sup> In response to a presidentially declared disaster, Congress may appropriate additional funding for the CDBG-DR program as "grants to rebuild the affected areas and provide crucial seed money to start the recovery process."<sup>14</sup> The CDBG-DR program is designed to address housing, infrastructure, economic development, and mitigation needs that remain after other assistance has been exhausted, including federal assistance and private insurance.<sup>15</sup>

In September 2018, Florida launched Rebuild Florida, a program housed within ODR, administered in partnership with HUD, and funded through the CDBG-DR program.<sup>16</sup> Rebuild Florida was created to help Florida recover from the devastating impacts of Hurricane Irma by repairing and rebuilding damaged homes across the hardest-hit communities, with priority funding for those low-income residents who were most vulnerable, including the elderly, those with disabilities and families with children under the age of 18.<sup>17</sup> Florida has received \$616 million through the CDBG-DR program.<sup>18</sup>

Persons or families that have had their homes damaged or destroyed following a disaster may apply to DEO to receive money to repair, reconstruct, or possibly replace their home.<sup>19</sup> To receive funding from the CDBG-DR program, an applicant must submit the following information:

- Photo identification;
- Proof of ownership;
- Homeowner's insurance;
- Tax returns; and
- Salary or wage statements, including social security, disability, retirement, and unemployment income.<sup>20</sup>

### Presidential Disaster Declaration

Congress passed the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) "to provide an orderly and continuing means of assistance by the Federal Government to State and

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<sup>10</sup> Section 420.504(1), F.S.

<sup>11</sup> See ss. 420.502 and 420.507, F.S.

<sup>12</sup> HUD, *CDBG-DR Fact Sheet*, available at <https://files.hudexchange.info/resources/documents/CDBG-DR-Fact-Sheet.pdf> (last visited Feb. 1, 2020).

<sup>13</sup> DEO, *Office of Disaster Recovery*, <http://www.floridajobs.org/community-planning-and-development/assistance-for-governments-and-organizations/disaster-recovery-initiative> (last visited Feb. 1, 2020).

<sup>14</sup> HUD, *Community Development Block Grant Disaster Recovery Program*, <https://www.hudexchange.info/programs/cdbg-dr/> (last visited Feb. 1, 2020).

<sup>15</sup> *Supra* note 12.

<sup>16</sup> Rebuild Florida, *Frequently Asked Questions*, <http://floridajobs.org/rebuildflorida/faqs> (last visited Feb. 1, 2020).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*; see also Governor DeSantis, *Governor Ron DeSantis Announces Completion of Rebuild Florida's First Home Repair*, <https://www.flgov.com/2019/05/21/governor-ron-desantis-announces-completion-of-rebuild-floridas-first-home-repair/> (last visited Feb. 1, 2020).

<sup>19</sup> *Supra* note 12.

<sup>20</sup> Rebuild Florida, *Housing Repair and Replacement Program: Applicant Document Checklist*, available at [http://floridajobs.org/docs/default-source/communicationsfiles/rebuildflorida-applicationdocumentchecklist-singlefamily\\_12-29-18.pdf?sfvrsn=4](http://floridajobs.org/docs/default-source/communicationsfiles/rebuildflorida-applicationdocumentchecklist-singlefamily_12-29-18.pdf?sfvrsn=4) (last visited Feb. 12, 2020).

local governments in carrying out their responsibilities to alleviate the suffering and damage which result from ... disasters.”<sup>21</sup> The Stafford Act allows a state to collect monetary assistance from the federal government in the event that an emergency “situation is of such severity and magnitude that [an] effective response is beyond the capabilities of the State and the affected local governments.”<sup>22</sup>

To receive funding, the Governor, on behalf of the state or on behalf of certain localities, must request from the President of the United States a declaration that an emergency exists (Stafford declaration).<sup>23</sup> If the Governor requests a Stafford declaration from the President, he or she must submit the request through the Federal Emergency Management Agency<sup>24</sup> Regional Administrator.<sup>25</sup> Based upon the Governor’s request, the President may declare that an emergency exists in a state or a region of a state.<sup>26</sup> Once a Stafford declaration is signed by the President, Congress may allocate funds for the CDBG-DR program.<sup>27</sup>

## Effect of the Bill

The bill creates a public record exemption for property photographs and the personal identifying information of an applicant for or a participant in a federal, state, or local housing assistance program provided to DEO, FHFC, a county, a municipality, or a local housing finance agency for the purpose of disaster recovery assistance for presidentially declared disasters. The property photographs and applicant financial information is confidential and exempt<sup>28</sup> from public record requirements. The bill provides that the information may be released to a governmental entity for the purpose of auditing a housing program. Further, the bill specifies that the information may be used in any administrative or judicial proceeding, provided such information is kept confidential and exempt unless otherwise ordered by a court.

The bill provides for the repeal of the exemption on October 2, 2025, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

## B. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., relating to general exemptions from inspection or copying of public records.

Section 2 provides a statement of public necessity.

Section 3 provides an effective date of July 1, 2020.

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<sup>21</sup> 42 U.S.C. s. 5121(b); P.L. 100-707 (1988).

<sup>22</sup> 42 U.S.C. s. 5191(a).

<sup>23</sup> *Id.*

<sup>24</sup> The Stafford Act empowers the Federal Emergency Management Agency to promulgate rules and regulations to carry out its provisions. 42 U.S.C. s. 5164.

<sup>25</sup> 44 C.F.R. ss. 206.35(a) and 206.36(a).

<sup>26</sup> 42 U.S.C. s. 5191(a).

<sup>27</sup> *Supra* note 12.

<sup>28</sup> 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. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), *review denied* 892 So.2d 1015 (Fla. 2004); *City of Rivera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 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 Op. Att’y Gen. Fla. 85-62* (1985).

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

The bill may have a minimal fiscal impact on agencies because agency staff responsible for complying with public records requests may require training related to the creation of the public records exemptions. Agencies could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed by existing resources, 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 Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created public record exemption. The bill create a public record exemption; therefore, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the Florida 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. This bill creates a public record exemption for property photographs submitted by, and personal identifying information of, persons applying to receive housing aid in the wake of a disaster. The purpose of the

exemption is to protect persons made vulnerable due to a disaster from actors who might use the information maliciously. As such, the bill appears to be no broader than necessary to accomplish its purpose.

**B. RULE-MAKING AUTHORITY:**

The bill does not confer rulemaking authority nor require the promulgation of rules.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 4, 2020, the Oversight, Transparency & Public Management Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment narrowed the public records exemption, limiting the exemption to only financial documentation and property photographs. In addition, the amendment provided a definition for financial documentation and specified that the exemption only applies to presidentially declared disasters.

On February 27, 2020, the State Affairs Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment narrowed the public record exemption by removing the exemption for applicant financial documentation and instead, creating a public record exemption for personal identifying information of an applicant for or a participant in a federal, state, or local housing assistance program who is seeking disaster recovery assistance for a presidentially declared disaster. The amendment also moved the exemption to a more appropriate paragraph in the same subsection.

The analysis is drafted to the committee substitute as approved by the State Affairs Committee.