

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** CS/HB 7037      PCB GOS 21-05      OGSR/State-funded Infrastructure Bank

**SPONSOR(S):** State Affairs Committee; Government Operations Subcommittee; McClure

**TIED BILLS:**                    **IDEN./SIM. BILLS:**    SB 1004, HB 6099, CS/SB 7004

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**FINAL HOUSE FLOOR ACTION:**    118 Y's            0 N's                    **GOVERNOR'S ACTION:**    Approved

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### SUMMARY ANALYSIS

HB 7037 passed the House on April 15, 2021, and subsequently passed the Senate on April 21, 2021.

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.

The State-funded Infrastructure Bank (SIB) administered by the Department of Transportation is a revolving loan and credit enhancement program to help fund transportation projects that otherwise might be delayed or not built.

Current law provides a public record exemption for financial information submitted by a private entity as part of the SIB application process. However, the public record exemption does not apply to records of an applicant who is in default of a loan issued by the SIB.

The bill saves from repeal the public record exemption, which will repeal on October 2, 2021, if this bill does not become law.

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

The bill was approved by the Governor on May 7, 2021, ch. 2021-26, L.O.F., and will become effective on October 1, 2021.

# I. SUBSTANTIVE INFORMATION

## A. EFFECT OF CHANGES:

### Background

#### Open Government Sunset Review Act

The Open Government Sunset Review Act<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup>

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.<sup>4</sup> 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.

#### State-funded Infrastructure Bank

The State-funded Infrastructure Bank (SIB) administered by the Department of Transportation (DOT) is a revolving loan and credit enhancement program to help fund transportation projects that otherwise might be delayed or not built.<sup>5</sup> 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. Projects eligible for assistance from the former account include those that meet all federal requirements under the Transportation Equity Act for the 21<sup>st</sup> Century and that are eligible for assistance under Title 23, U.S.C.,<sup>6</sup> or capital projects as defined in s. 5302 of Title 49, U.S.C.<sup>7</sup> and other applicable federal guidelines.<sup>8</sup> 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 that 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;

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<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Section 119.15(3), F.S.

<sup>3</sup> Section 119.15(6)(b), F.S.

<sup>4</sup> Section 24(c), Art. I, FLA. CONST.

<sup>5</sup> Section 339.55, F.S.

<sup>6</sup> See 23 U.S.C. s. 119. Generally, projects on the National Highway System.

<sup>7</sup> Generally, public transportation projects.

<sup>8</sup> 23 U.S.C. s. 610.

- 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 Program projects, provided the project receives at least a 25 percent match<sup>9</sup> from non-SIB loan funds;<sup>10</sup> and
- 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.<sup>11</sup>

A public or private entity seeking financial assistance from the SIB is required to submit an application,<sup>12</sup> based on published advertisement periods via DOT's on-line advertised process, which DOT reviews to ensure any potential project meets eligibility, financial, and production criteria.<sup>13</sup> If the criteria are met, DOT will determine an indicative interest rate for the application based on current market conditions, financial strength of the borrower, term, and risk of the loan.<sup>14</sup>

Examples of financial information items required in an SIB loan application include, but are not limited to, providing details of the proposed finance plan, funding sources, information regarding any anticipated bond issue or other debt instrument, loan term and amount, and primary and secondary repayment sources.<sup>15</sup>

Loans from the SIB may bear interest at or below market interest rates, as determined by DOT. Repayment of any SIB loan must begin no later than five 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.<sup>16</sup>

#### Public Record Exemption under Review

In 2016, the Legislature created a public record exemption for certain information submitted by a private entity as part of the SIB application.<sup>17</sup> Specifically, financial information of a private entity applicant that DOT requires as part of the application process for loans or credit enhancements from the SIB is exempt from public record requirements.<sup>18</sup> However, the public record exemption does not

<sup>9</sup> See s. 339.55(6), F.S.

<sup>10</sup> See s. 339.2819, F.S. Projects identified under the Transportation Regional Incentive Program are eligible for assistance from the state-funded account. DOT is authorized to match up to 50 percent of the cost for projects that, at a minimum:

- Serve national, statewide, or regional functions and function as part of an integrated regional transportation system;
- Are identified in the capital improvements element of a comprehensive plan and are in compliance with local government plan policies relative to corridor management;
- Are consistent with the Strategic Intermodal System Plan developed under s. 339.64, F.S.; and
- Have a commitment for local, regional, or private financial matching funds as a percentage of the overall project cost.

<sup>11</sup> Section 339.55(2), F.S.

<sup>12</sup> To review an application form, see DOT, *SIB Application and Awards*, available at <https://www.fdot.gov/comptroller/pfo/sib-application-and-awards.shtm> (last visited March 30, 2021).

<sup>13</sup> See DOT's *SIB Guidelines for Federal/State*, available at [https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/comptroller/pfo/sib/sib---guidelines-federal-state\\_07-12-18\\_final.pdf?sfvrsn=56f7082f\\_2](https://fdotwww.blob.core.windows.net/sitefinity/docs/default-source/comptroller/pfo/sib/sib---guidelines-federal-state_07-12-18_final.pdf?sfvrsn=56f7082f_2) (last visited March 30, 2021).

<sup>14</sup> DOT, *State Infrastructure Bank*, available at <https://www.fdot.gov/comptroller/pfo/sib.shtm> (last visited March 30, 2021).

<sup>15</sup> DOT, *SIB Application and Awards*, supra at FN 12.

<sup>16</sup> Section 339.55(4), F.S.

<sup>17</sup> Chapter 2016-38, L.O.F., codified as s. 339.55(10), F.S.

<sup>18</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. 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, Aug. 1, 1985).

apply to records of an applicant who is in default of a loan issued by the SIB. The 2016 public necessity statement<sup>19</sup> for the exemption provides that the Legislature finds that:

The disclosure of such information could harm a private entity in the marketplace by giving the private entity's competitors insights into its financial status and business plan, thereby putting the private entity at a competitive disadvantage. Additionally, the disclosure of sensitive financial information regarding a private entity could create the opportunity for theft, fraud, and other illegal activity, thereby jeopardizing the financial security of the private entity and placing it at risk for substantial financial harm. If an individual is required to provide his or her personal financial information to the department as part of the application process for his or her business, the individual could be subject to identity theft and other criminal activity. Without an exemption from public records requirements under s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution, some private entities might be unwilling to submit an application to the state-funded infrastructure bank. This unwillingness to submit applications could, in turn, limit opportunities the department might otherwise have for providing loans or credit enhancements to private entities who could propose cost-effective or strategic solutions for constructing and improving transportation facilities. The Legislature finds that the benefit to the public of more private entities applying for loans or credit enhancements outweighs any public benefit that may be derived from the disclosure of the financial information of a private entity.<sup>20</sup>

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2021, unless reenacted by the Legislature.<sup>21</sup>

During the 2020 interim, subcommittee staff sent a questionnaire to DOT regarding the public records exemption.<sup>22</sup> As of the date of the questionnaire, the SIB had approved 107 transportation facility projects, 36 regional incentive program projects, and seven emergency loan projects.<sup>23</sup> DOT recommends that the public record exemption be reenacted to protect the financial information submitted by private entities as part of the SIB application process.

### **Effect of the Bill**

The bill removes the scheduled repeal date of the public record exemption, thereby maintaining the exemption for financial information submitted by a private entity as part of the SIB application process.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

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<sup>19</sup> Article I, s. 24(c), FLA. CONST., requires each public record exemption to “state with specificity the public necessity justifying the exemption.”

<sup>20</sup> Section 2, ch. 2016-38, L.O.F.

<sup>21</sup> Section 119.071(5)(k)4., F.S.

<sup>22</sup> Open Government Sunset Review Questionnaire, DOT Response, September 10, 2020, on file with the House Government Operations Subcommittee.

<sup>23</sup> *Id.* at p. 2.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.