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CS/HB 7057, Engrossed 1

2022 Legislature

1
2 An act relating to public records and public meetings;
3 creating s. 119.0725, F.S.; providing definitions;
4 providing an exemption from public records
5 requirements for certain cybersecurity insurance
6 information, critical infrastructure information,
7 cybersecurity incident information, and certain
8 cybersecurity-related information held by an agency;
9 providing an exemption from public meetings
10 requirements for portions of a meeting that would
11 reveal certain cybersecurity-related information held
12 by an agency; requiring the recording and
13 transcription of exempt portions of such meetings;
14 providing an exemption from public records
15 requirements for such recordings and transcripts;
16 providing retroactive application; authorizing the
17 disclosure of confidential and exempt information
18 under certain circumstances; authorizing agencies to
19 report certain cybersecurity information in the
20 aggregate; providing for future legislative review and
21 repeal of the exemptions; amending ss. 98.015 and
22 282.318, F.S.; conforming provisions to changes made
23 by the act; providing a statement of public necessity;
24 providing a contingent effective date.
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26 | Be It Enacted by the Legislature of the State of Florida:

27 |
 28 | Section 1. Section 119.0725, Florida Statutes, is created
 29 | to read:

30 | 119.0725 Agency cybersecurity information; public records
 31 | exemption; public meetings exemption.-

32 | (1) As used in this section, the term:

33 | (a) "Breach" means unauthorized access of data in
 34 | electronic form containing personal information. Good faith
 35 | access of personal information by an employee or agent of an
 36 | agency does not constitute a breach, provided that the
 37 | information is not used for a purpose unrelated to the business
 38 | or subject to further unauthorized use.

39 | (b) "Critical infrastructure" means existing and proposed
 40 | information technology and operational technology systems and
 41 | assets, whether physical or virtual, the incapacity or
 42 | destruction of which would negatively affect security, economic
 43 | security, public health, or public safety.

44 | (c) "Cybersecurity" has the same meaning as in s.
 45 | 282.0041.

46 | (d) "Data" has the same meaning as in s. 282.0041.

47 | (e) "Incident" means a violation or imminent threat of
 48 | violation, whether such violation is accidental or deliberate,
 49 | of information technology resources, security, policies, or
 50 | practices. As used in this paragraph, the term "imminent threat

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51 of violation" means a situation in which the agency has a
 52 factual basis for believing that a specific incident is about to
 53 occur.

54 (f) "Information technology" has the same meaning as in s.
 55 282.0041.

56 (g) "Operational technology" means the hardware and
 57 software that cause or detect a change through the direct
 58 monitoring or control of physical devices, systems, processes,
 59 or events.

60 (2) The following information held by an agency is
 61 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 62 of the State Constitution:

63 (a) Coverage limits and deductible or self-insurance
 64 amounts of insurance or other risk mitigation coverages acquired
 65 for the protection of information technology systems,
 66 operational technology systems, or data of an agency.

67 (b) Information relating to critical infrastructure.

68 (c) Cybersecurity incident information reported pursuant
 69 to s. 282.318 or s. 282.3185.

70 (d) Network schematics, hardware and software
 71 configurations, or encryption information or information that
 72 identifies detection, investigation, or response practices for
 73 suspected or confirmed cybersecurity incidents, including
 74 suspected or confirmed breaches, if the disclosure of such

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75 information would facilitate unauthorized access to or
 76 unauthorized modification, disclosure, or destruction of:
 77 1. Data or information, whether physical or virtual; or
 78 2. Information technology resources, which include an
 79 agency's existing or proposed information technology systems.
 80 (3) Any portion of a meeting that would reveal information
 81 made confidential and exempt under subsection (2) is exempt from
 82 s. 286.011 and s. 24(b), Art. I of the State Constitution. An
 83 exempt portion of a meeting may not be off the record and must
 84 be recorded and transcribed. The recording and transcript are
 85 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 86 of the State Constitution.
 87 (4) The public records exemptions contained in this
 88 section apply to information held by an agency before, on, or
 89 after July 1, 2022.
 90 (5)(a) Information made confidential and exempt pursuant
 91 to this section shall be made available to a law enforcement
 92 agency, the Auditor General, the Cybercrime Office of the
 93 Department of Law Enforcement, the Florida Digital Service
 94 within the Department of Management Services, and, for agencies
 95 under the jurisdiction of the Governor, the Chief Inspector
 96 General.
 97 (b) Such confidential and exempt information may be
 98 disclosed by an agency in the furtherance of its official duties
 99 and responsibilities or to another agency or governmental entity

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100 in the furtherance of its statutory duties and responsibilities.

101 (6) Agencies may report information about cybersecurity
 102 incidents in the aggregate.

103 (7) This section is subject to the Open Government Sunset
 104 Review Act in accordance with s. 119.15 and shall stand repealed
 105 on October 2, 2027, unless reviewed and saved from repeal
 106 through reenactment by the Legislature.

107 Section 2. Subsection (13) of section 98.015, Florida
 108 Statutes, is amended to read:

109 98.015 Supervisor of elections; election, tenure of
 110 office, compensation, custody of registration-related documents,
 111 office hours, successor, seal; appointment of deputy
 112 supervisors; duties; ~~public records exemption.~~

113 ~~(13) (a) Portions of records held by a supervisor of~~
 114 ~~elections which contain network schematics, hardware and~~
 115 ~~software configurations, or encryption, or which identify~~
 116 ~~detection, investigation, or response practices for suspected or~~
 117 ~~confirmed information technology security incidents, including~~
 118 ~~suspected or confirmed breaches, are confidential and exempt~~
 119 ~~from s. 119.07(1) and s. 24(a), Art. I of the State~~
 120 ~~Constitution, if the disclosure of such records would facilitate~~
 121 ~~unauthorized access to or the unauthorized modification,~~
 122 ~~disclosure, or destruction of:~~

- 123 1. ~~Data or information, whether physical or virtual; or~~
 124 2. ~~Information technology resources as defined in s.~~

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125 ~~119.011(9), which includes:~~

126 ~~a. Information relating to the security of a supervisor of~~
 127 ~~elections' technology, processes, and practices designed to~~
 128 ~~protect networks, computers, data processing software, and data~~
 129 ~~from attack, damage, or unauthorized access; or~~

130 ~~b. Security information, whether physical or virtual,~~
 131 ~~which relates to a supervisor of elections' existing or proposed~~
 132 ~~information technology systems.~~

133 ~~(b) The portions of records made confidential and exempt~~
 134 ~~in paragraph (a) shall be available to the Auditor General and~~
 135 ~~may be made available to another governmental entity for~~
 136 ~~information technology security purposes or in the furtherance~~
 137 ~~of the entity's official duties.~~

138 ~~(c) The public record exemption in paragraph (a) applies~~
 139 ~~to records held by a supervisor of elections before, on, or~~
 140 ~~after the effective date of the exemption.~~

141 ~~(d) This subsection is subject to the Open Government~~
 142 ~~Sunset Review Act in accordance with s. 119.15 and shall stand~~
 143 ~~repealed on October 2, 2026, unless reviewed and saved from~~
 144 ~~repeal through reenactment by the Legislature.~~

145 Section 3. Subsections (6) and (11) of section 282.318,
 146 Florida Statutes, are renumbered as subsections (5) and (10),
 147 respectively, and present subsections (5), (7), (8), (9), and
 148 (10) of that section are amended to read:

149 282.318 Cybersecurity.—

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150 ~~(5) Portions of records held by a state agency which~~
 151 ~~contain network schematics, hardware and software~~
 152 ~~configurations, or encryption, or which identify detection,~~
 153 ~~investigation, or response practices for suspected or confirmed~~
 154 ~~cybersecurity incidents, including suspected or confirmed~~
 155 ~~breaches, are confidential and exempt from s. 119.07(1) and s.~~
 156 ~~24(a), Art. I of the State Constitution, if the disclosure of~~
 157 ~~such records would facilitate unauthorized access to or the~~
 158 ~~unauthorized modification, disclosure, or destruction of:~~

159 ~~(a) Data or information, whether physical or virtual; or~~
 160 ~~(b) Information technology resources, which includes:~~

161 ~~1. Information relating to the security of the agency's~~
 162 ~~technologies, processes, and practices designed to protect~~
 163 ~~networks, computers, data processing software, and data from~~
 164 ~~attack, damage, or unauthorized access; or~~

165 ~~2. Security information, whether physical or virtual,~~
 166 ~~which relates to the agency's existing or proposed information~~
 167 ~~technology systems.~~

168 (6)~~(7)~~ Those portions of a public meeting as specified in
 169 s. 286.011 which would reveal records which are confidential and
 170 exempt under subsection (5) ~~or subsection (6)~~ are exempt from s.
 171 286.011 and s. 24(b), Art. I of the State Constitution. No
 172 exempt portion of an exempt meeting may be off the record. All
 173 exempt portions of such meeting shall be recorded and
 174 transcribed. Such recordings and transcripts are confidential

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175 and exempt from disclosure under s. 119.07(1) and s. 24(a), Art.
 176 I of the State Constitution unless a court of competent
 177 jurisdiction, after an in camera review, determines that the
 178 meeting was not restricted to the discussion of data and
 179 information made confidential and exempt by this section. In the
 180 event of such a judicial determination, only that portion of the
 181 recording and transcript which reveals nonexempt data and
 182 information may be disclosed to a third party.

183 (7)~~(8)~~ The portions of records made confidential and
 184 exempt in subsections (5) and~~(6)~~~~and (7)~~ shall be available
 185 to the Auditor General, the Cybercrime Office of the Department
 186 of Law Enforcement, the Florida Digital Service within the
 187 department, and, for agencies under the jurisdiction of the
 188 Governor, the Chief Inspector General. Such portions of records
 189 may be made available to a local government, another state
 190 agency, or a federal agency for cybersecurity purposes or in
 191 furtherance of the state agency's official duties.

192 (8)~~(9)~~ The exemptions contained in subsections (5) and~~(6)~~~~and (7)~~
 193 (6)~~and (7)~~ apply to records held by a state agency before, on,
 194 or after the effective date of this exemption.

195 (9)~~(10)~~ Subsections (5) and~~(6)~~~~and (7)~~ are subject to
 196 the Open Government Sunset Review Act in accordance with s.
 197 119.15 and shall stand repealed on October 2, 2025, unless
 198 reviewed and saved from repeal through reenactment by the
 199 Legislature.

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200 Section 4. (1) The Legislature finds that it is a public
 201 necessity that the following information held by an agency be
 202 made confidential and exempt from s. 119.07(1), Florida
 203 Statutes, and s. 24(a), Article I of the State Constitution:
 204 (a) Coverage limits and deductible or self-insurance
 205 amounts of insurance or other risk mitigation coverages acquired
 206 for the protection of information technology systems,
 207 operational technology systems, or data of an agency.
 208 (b) Information relating to critical infrastructure.
 209 (c) Cybersecurity incident information reported pursuant
 210 to s. 282.318, Florida Statutes, or s. 282.3185, Florida
 211 Statutes.
 212 (d) Network schematics, hardware and software
 213 configurations, or encryption information or information that
 214 identifies detection, investigation, or response practices for
 215 suspected or confirmed cybersecurity incidents, including
 216 suspected or confirmed breaches, if the disclosure of such
 217 information would facilitate unauthorized access to or
 218 unauthorized modification, disclosure, or destruction of:
 219 1. Data or information, whether physical or virtual; or
 220 2. Information technology resources, which include an
 221 agency's existing or proposed information technology systems.
 222
 223 Release of such information could place an agency at greater
 224 risk of breaches, cybersecurity incidents, and ransomware

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225 attacks. If information related to the coverage limits and
226 deductible or self-insurance amounts of cybersecurity insurance
227 were disclosed, it could give cybercriminals an understanding of
228 the monetary sum an agency can afford or may be willing to pay
229 as a result of a ransomware attack at the expense of the
230 taxpayer. In addition, critical infrastructure information is a
231 vital component of public safety and, if made publicly
232 available, could aid in the planning of, training for, and
233 execution of cyberattacks, thereby increasing the ability of
234 persons to harm individuals in this state. The recent
235 cybersecurity hacking and shutdown of the Colonial Pipeline by
236 the criminal enterprise DarkSide in 2021 and the infiltration of
237 the Bowman Avenue Dam in Rye Brook, New York, by Iranian hackers
238 in 2013 provide evidence that such criminal capabilities exist.
239 These events also show the crippling effect that cyberattacks on
240 critical infrastructure may have. Further, cybersecurity
241 incident information reported pursuant to s. 282.318, Florida
242 Statutes, or s. 282.3185, Florida Statutes, could be used by
243 criminals to identify vulnerabilities that existed in an
244 agency's cybersecurity systems or protocols, thereby making the
245 agency further susceptible to additional cyberattacks. Lastly,
246 the release of network schematics, hardware and software
247 configurations, or encryption information or information that
248 identifies detection, investigation, or response practices for
249 suspected or confirmed cybersecurity incidents, including

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250 suspected or confirmed breaches, would facilitate unauthorized
251 access to or the unauthorized modification, disclosure, or
252 destruction of data or information, whether physical or virtual,
253 or information technology resources. Such information also
254 includes proprietary information about the security of an
255 agency's system. The disclosure of such information could
256 compromise the integrity of an agency's data, information, or
257 information technology resources, which would significantly
258 impair the administration of vital governmental programs.
259 Therefore, this information should be made confidential and
260 exempt in order to protect the agency's data, information, and
261 information technology resources.

262 (2) The Legislature also finds that it is a public
263 necessity that any portion of a meeting that would reveal the
264 confidential and exempt information be made exempt from s.
265 286.011, Florida Statutes, and s. 24(b), Article I of the State
266 Constitution, and that any recordings and transcripts of the
267 closed portion of a meeting be made confidential and exempt from
268 s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the
269 State Constitution. The failure to close that portion of a
270 meeting at which confidential and exempt information would be
271 revealed, and prevent the disclosure of the recordings and
272 transcripts of those portions of a meeting, would defeat the
273 purpose of the underlying public records exemption and could
274 result in the release of highly sensitive information related to

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275 | the cybersecurity of an agency system.

276 | (3) For these reasons, the Legislature finds that these
277 | public records and public meetings exemptions are of the utmost
278 | importance and are a public necessity.

279 | Section 5. This act shall take effect on the same date
280 | that HB 7055 or similar legislation takes effect, if such
281 | legislation is adopted in the same legislative session or an
282 | extension thereof and becomes law.