

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7009 PCB EEG 23-04 OGSR/Building Plans, Blueprints, Schematic Drawings, and Diagrams

**SPONSOR(S):** Ethics, Elections & Open Government Subcommittee, Holcomb

**TIED BILLS:** IDEN./SIM. BILLS: SB 7008

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Ethics, Elections & Open Government Subcommittee	16 Y, 0 N	Skinner	Toliver
1) State Affairs Committee	19 Y, 0 N	Skinner	Williamson

### SUMMARY ANALYSIS

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

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

The bill saves from repeal the public record exemption, which will repeal on October 2, 2023, if the bill does not become law.

The bill does not appear to have 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 (OGSR 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 2<sup>nd</sup> of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>2</sup>

The OGSR 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, 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.

##### Physical Building Security-related Public Record Exemptions

Several public record exemptions exist in current law that protect various aspects of the physical security of buildings or facilities from public disclosure:

- Section 119.071(3)(a), F.S., provides a public record exemption for security or firesafety system plans for any property owned by or leased to the state or any of its political subdivisions, or for any privately owned or leased property, held by an agency.<sup>5</sup>
- Section 119.071(3)(b), F.S., provides a public record exemption for building plans, blueprints, schematic drawings, and diagrams, which depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure owned or operated by an agency.<sup>6</sup>
- Section 311.13, F.S., provides a public record exemption for certain seaport security plans. A public record exemption is also provided for photographs, maps, blueprints, drawings, and similar materials that depict critical seaport operating facilities to the extent that a seaport reasonably determines that such items contain information that is not generally known and could jeopardize the seaport's security.<sup>7</sup>
- Section 331.22, F.S., provides a public record exemption for the airport security plans of certain aviation authorities or certain aviation departments. Photographs, maps, blueprints, drawings, and similar materials that depict critical airport operating facilities are also exempt to the extent

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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> Article I, s. 24(c), FLA. CONST.

<sup>5</sup> Section 119.071(3)(a), F.S.

<sup>6</sup> Section 119.071(3)(b), F.S.

<sup>7</sup> Section 311.13, F.S.

that such aviation authority or department reasonably determines that the security plan contains information that is not generally known and could jeopardize airport security.<sup>8</sup>

- Section 1004.0962(2), F.S., provides a public record exemption for any portion of a campus emergency response held by a public postsecondary educational institution.<sup>9</sup>

### Public Record Exemption under Review

In 2004, the Legislature created<sup>10</sup> 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,<sup>11</sup> an entertainment or resort complex,<sup>12</sup> an industrial complex,<sup>13</sup> a retail and service development,<sup>14</sup> an office development,<sup>15</sup> or a hotel or motel development.<sup>16</sup> Such records held by an agency<sup>17</sup> are exempt<sup>18</sup> from public record requirements.

The 2004 public necessity statement<sup>19</sup> cited public safety as the required public necessity for the exemption and provides that:

Such exempt information is a vital component of public safety and, if the building plans, blueprints, schematic drawings, and diagrams were made publicly available, the ability of persons who desire to harm individuals located in or using those structures would be increased. In addition, terrorists would have easy access to the exempt information and could use the information to inflict harm on the public. Although skill would be required to use such information to further an act of

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<sup>8</sup> Section 331.22, F.S.

<sup>9</sup> Section 1004.0962(2)(a), F.S.

<sup>10</sup> Chapter 2004-9, L.O.F., codified as s. 119.071(3)(c), F.S.

<sup>11</sup> “Attractions and recreation facility” means any sports, entertainment, amusement, or recreation facility, including, but not limited to, a sports arena, stadium, racetrack, tourist attraction, amusement park, or pari-mutuel facility that, for single-performance facilities, provides single-performance facilities or provides more than 10,000 permanent seats for spectators, or for serial-performance facilities, provides parking spaces for more than 1,000 motor vehicles or provides more than 4,000 permanent seats for spectators. Section 119.071(3)(c)5.a., F.S.

<sup>12</sup> “Entertainment or resort complex” means a theme park comprised of at least 25 acres of land with permanent exhibitions and a variety of recreational activities, which has at least 1 million visitors annually who pay admission fees thereto, together with any lodging, dining, and recreational facilities located adjacent to, contiguous to, or in close proximity to the theme park, as long as the owners or operators of the theme park, or a parent or related company or subsidiary thereof, has an equity interest in the lodging, dining, or recreational facilities or is in privity therewith. Close proximity includes an area within a 5-mile radius of the theme park complex. Section 119.071(3)(c)5.b., F.S.

<sup>13</sup> “Industrial complex” means any industrial, manufacturing, processing, distribution, warehousing, or wholesale facility or plant, as well as accessory uses and structures, under common ownership which provides onsite parking for more than 250 motor vehicles, encompasses 500,000 square feet or more of gross floor area, or occupies a site of 100 acres or more, but excluding wholesale facilities or plants that primarily serve or deal onsite with the general public. Section 119.071(3)(c)5.c., F.S.

<sup>14</sup> “Retail and service development” means any retail, service, or wholesale business establishment or group of establishments which deals primarily with the general public onsite and is operated under one common property ownership, development plan, or management that encompasses more than 400,000 square feet of gross floor area or provides parking spaces for more than 2,500 motor vehicles. Section 119.071(3)(c)5.d., F.S.

<sup>15</sup> “Office development” means any office building or park operated under common ownership, development plan, or management that encompasses 300,000 or more square feet of gross floor area. Section 119.071(3)(c)5.e., F.S.

<sup>16</sup> “Hotel or motel development” means any hotel or motel development that accommodates 350 or more units. Section 119.071(3)(c)5.g., F.S.

<sup>17</sup> “Agency” means any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of the Public Records Act, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency. Section 119.011(2), 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*. If a record is classified as exempt from public disclosure, a custodian of public records is not prohibited from disclosing the information in all 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. 04- 09* (2004).

<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.”

terrorism, ample evidence exists of the capabilities of terrorists to conduct complicated acts of terrorism.

In 2018, the Legislature expanded<sup>20</sup> the public record exemption for these records to include health care facilities.<sup>21</sup> The 2018 public necessity statement for the expanded exemption provided that:

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. 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. Information contained in these documents could aid in the planning, training, and execution of criminal actions including infant abduction, cyber-crime, arson, and terrorism.

The exemption does not apply to comprehensive plans or site plans, or amendments thereto, which are submitted for approval or which have been approved under local land development regulations, local zoning regulations, or development-of-regional-impact review.<sup>22</sup>

Current law also authorizes agencies to disclose the exempt information:

- To another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities;
- To the owner or owners of the structure in question or the owner's legal representative; or
- Upon a showing of good cause before a court of competent jurisdiction.<sup>23</sup>

However, this authorization appears to limit the discretion of the custodial agency because records designated as "exempt" may be released at the discretion of the records custodian under certain circumstances.<sup>24</sup>

Pursuant to the OGSR Act, the exemption for building plans, blueprints, schematic drawings, and diagrams, held by an agency, that depict the internal layout or structural elements of these specified entities will repeal on October 2, 2023, unless reenacted by the Legislature.<sup>25</sup>

During the 2022 interim, subcommittee staff sent questionnaires<sup>26</sup> to cities, counties, and state agencies. All respondents recommending action requested that the exemption be retained, with an overwhelming majority requesting to enact the exemption as it.<sup>27</sup> No responses indicated litigation specific to this exemption. The vast majority of responses did not indicate any issues interpreting or applying the exemption.

## Effect of the Bill

The bill removes the scheduled repeal of the public record exemption, thereby maintaining the public record exemption for these records held by an agency. The bill also removes the provision authorizing

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<sup>20</sup> Chapter 2018-53, L.O.F.

<sup>21</sup> "Health care facility" means a hospital, ambulatory surgical center, nursing home, hospice, or intermediate care facility for the developmentally disabled. Section 119.071(3)(c)5.f., F.S.

<sup>22</sup> Section 119.071(3)(c)4., F.S.

<sup>23</sup> Section 119.071(3)(c)3., F.S.

<sup>24</sup> *Supra* note 18.

<sup>25</sup> Section 119.071(3)(c)6., F.S.

<sup>26</sup> Open Government Sunset Review Questionnaire, Internal Layout and Structural Documents of Certain Entities, responses on file with the Ethics, Elections, & Open Government Subcommittee.

<sup>27</sup> One response recommended a definition be provided for security and firesafety system plans in relation to building plans, as well as allowing records to be released to certified contractors, design professionals, fire safety professionals, and property managers.

agencies to release the exempt information in certain instances because it limits the authority of the custodial agency to release such information at its discretion under certain circumstances.

**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 an effective date of October 1, 2023.

**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 require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties and municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties and municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill does not require rulemaking nor confer or alter an agency's rulemaking authority.

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

None.

#### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.