

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 943 Pub. Rec./My Safe Florida Home Program

**SPONSOR(S):** Commerce Committee, Ethics, Elections & Open Government Subcommittee, LaMarca

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 988

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	16 Y, 0 N	Fortenberry	Lloyd
2) Ethics, Elections & Open Government Subcommittee	14 Y, 0 N, As CS	Rando	Toliver
3) Commerce Committee	21 Y, 0 N, As CS	Fortenberry	Hamon

### SUMMARY ANALYSIS

In 2006, the Legislature created the My Safe Florida Home Program (MSFH Program) within the Department of Financial Services (DFS), with the intent that the MSFH Program provide licensed inspectors to perform inspections for owners of site-built, single-family, residential properties and grants to eligible applicants, subject to the availability of funds.

Under the MSFH Program, licensed inspectors must provide home inspections of site-built, single-family, residential properties for which a homestead exemption has been granted, to determine what mitigation measures are needed, what insurance premium discounts may be available, and what improvements to existing residential properties are needed to reduce the property's vulnerability to hurricane damage. The inspections provided to homeowners under the MSFH Program must include, at a minimum, certain information. Further, the inspection reports provide detailed information to the MSFH Program regarding the applicant's home.

Similarly, financial grants under the MSFH Program are intended to encourage single-family, site-built, owner-occupied, residential property owners to retrofit their properties to make them less vulnerable to hurricane damage. For a homeowner to be eligible for a grant, the following criteria must be met:

- The homeowner must have been granted a homestead exemption on the home;
- The home must be a dwelling with an insured value of \$700,000 or less;
- The home must undergo an acceptable hurricane mitigation inspection under the MSFH Program;
- The building permit application for initial construction of the home must have been made before January 1, 2008; and
- The homeowner must agree to make his or her home available for inspection once a mitigation project is completed.

The bill creates a public record exemption for information contained in applications and inspection reports submitted under the MSFH Program. The exemption applies retroactively to such reports submitted before, on, or after the effective date of the bill.

The bill provides for repeal of the exemption on October 2, 2029, 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 an indeterminate negative fiscal impact on state government expenditures, no fiscal impact on state government revenues, no fiscal impact on local government revenues or expenditures, and an indeterminate positive fiscal impact on the private sector.

The bill provides an effective date of upon becoming a law.

**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.**

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### My Safe Florida Home Program

In 2006, the Legislature created the My Safe Florida Home Program (MSFH Program) within the Department of Financial Services (DFS), with the intent that the MSFH Program provide licensed inspectors to perform inspections for owners of site-built, single-family, residential properties and grants to eligible applicants, subject to the availability of funds.<sup>1</sup> Under the MSFH Program, DFS must develop and implement a comprehensive and coordinated approach for hurricane damage mitigation that may include hurricane mitigation inspections,<sup>2</sup> mitigation grants,<sup>3</sup> and education, consumer awareness, and outreach.<sup>4</sup>

##### HURRICANE MITIGATION INSPECTIONS

Under the MSFH Program, licensed inspectors must provide home inspections of site-built, single-family, residential properties for which a homestead exemption has been granted, to determine:

- What mitigation measures are needed,
- What insurance premium discounts may be available, and
- What improvements to existing residential properties are needed to reduce the property's vulnerability to hurricane damage.<sup>5</sup>

DFS must also contract with wind certification entities to provide hurricane mitigation inspections. To qualify for selection by DFS as a wind certification entity to provide hurricane mitigation inspections, the entity must meet certain requirements.<sup>6</sup> The inspections provided to homeowners by such entities, at a minimum, must include:

- A home inspection and report that summarizes the results and identifies recommended improvements a homeowner may take to mitigate hurricane damage;
- A range of cost estimates regarding the recommended mitigation improvements; and
- Information regarding estimated premium discounts, which are correlated to the current mitigation features and the recommended mitigation improvements identified by the inspection.<sup>7</sup>

The inspection report provides information to the MSFH Program regarding the applicant's home, such as detailed descriptions of the premises, pictures of the interior and exterior of the structure, including private areas, entry points, and possible vulnerabilities to its security.

An application for an inspection must contain a signed or electronically verified statement, made under penalty of perjury, that the applicant has submitted only a single application for that home.<sup>8</sup>

##### MITIGATION GRANTS

Financial grants under the MSFH Program are intended to encourage single-family, site-built, owner-occupied, residential property owners to retrofit their properties to make them less vulnerable to hurricane damage.<sup>9</sup>

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<sup>1</sup> S. 215.5586, F.S.

<sup>2</sup> See s. 215.5586(1), F.S.

<sup>3</sup> See s. 215.5586(2), F.S.

<sup>4</sup> See s. 215.5586(3), F.S.

<sup>5</sup> S. 215.5586(2)(a), F.S.

<sup>6</sup> See s. 215.5586(2)(c), F.S.

<sup>7</sup> S. 215.5586(1)(b), F.S.

<sup>8</sup> S. 215.5586(1)(d), F.S.

For a homeowner to be eligible for a grant, the following criteria must be met:

- The homeowner must have been granted a homestead exemption on the home under ch. 196, F.S.;<sup>10</sup>
- The home must be a dwelling with an insured value of \$700,000 or less;<sup>11</sup>
- The home must undergo an acceptable hurricane mitigation inspection under the MSFH Program;
- The building permit application for initial construction of the home must have been made before January 1, 2008; and
- The homeowner must agree to make his or her home available for inspection once a mitigation project is completed.<sup>12</sup>

An application for a grant must contain a signed or electronically verified statement, made under penalty of perjury, that the applicant has submitted only a single application.<sup>13</sup> The application must include attachments that demonstrate the applicant meets the requirements described above.<sup>14</sup>

Under the MSFH Program, DFS must develop a process that ensures the most efficient means to collect and verify grant applications to determine eligibility and may direct hurricane mitigation inspectors to collect and verify grant application information or use the internet or other electronic means to collect information and determine eligibility.<sup>15</sup>

### Public Records

The Florida Constitution sets forth the state's public policy regarding access to government records, guaranteeing every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.<sup>16</sup> The Legislature, however, may provide by general law an exemption<sup>17</sup> from public record requirements provided that the exemption passes by a two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption, and is no broader than necessary to meet its public purpose.<sup>18</sup>

Current law also addresses the public policy regarding access to government records by guaranteeing every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt.<sup>19</sup> Furthermore, the Open Government Sunset Review (OGSR) Act<sup>20</sup> provides that a public record exemption may be created, revised, or maintained only if it serves an identifiable public purpose and the "Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."<sup>21</sup> An identifiable public purpose is served if the exemption meets one of the following purposes:

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<sup>9</sup> S. 215.5586(2), F.S.

<sup>10</sup> Chapter 196, F.S., relates to, among other things, homestead exemptions.

<sup>11</sup> Homeowners who are low-income persons, as defined s. 420.0004(11), F.S., are exempt from this requirement. The term "low-income persons" is defined by s. 420.0004(11), F.S., as one or more natural persons or a family, the total annual adjusted gross household income of which does not exceed 80% of the median annual adjusted gross income for households within the state, or 80% of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater.

<sup>12</sup> S. 215.5586(2)(a), F.S.

<sup>13</sup> S. 215.5586(2), F.S.

<sup>14</sup> *Id.*

<sup>15</sup> S. 215.5586(2)(i), F.S.

<sup>16</sup> Art. I, s. 24(a), FLA. CONST.

<sup>17</sup> A "public record exemption" means a provision of general law which provides that a specified record, or portion thereof, is not subject to the access requirements of s. 119.07(1), F.S., or s. 24, Art. I of the Florida Constitution. See s. 119.011(8), F.S.

<sup>18</sup> Art. I, s. 24(c), FLA. CONST.

<sup>19</sup> See s. 119.01, F.S.

<sup>20</sup> S. 119.15, F.S.

<sup>21</sup> S. 119.15(6)(b), F.S.

- 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; or
- Protect trade or business secrets.<sup>22</sup>

Pursuant to the OGSR Act, a new public record exemption, or the substantial amendment of an existing public record exemption, is repealed on October 2<sup>nd</sup> of the fifth year following enactment, unless the Legislature reenacts the exemption.<sup>23</sup>

### Effect of the Bill

The bill creates a public record exemption for information contained in applications and inspection reports submitted under the MSFH Program, that is limited to:

- The components of the applicant's mailing address other than the city, zip code, and the applicant's name;
- Any phone number or email address provided by the applicant; and
- Detailed descriptions and pictures of the inside and outside of an applicant's home.

The exemption applies retroactively to such reports submitted before, on, or after the effective date of the bill. The bill also provides a statement of public necessity as required by the Florida Constitution.

The exemption is subject to the Open Government Sunset Review Act, and will be repealed on October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature.

#### B. SECTION DIRECTORY:

**Section 1.** Creates s. 215.55861, F.S., relating to My Safe Florida Home Program public records exemption.

**Section 2.** Provides a statement of public necessity.

**Section 3.** Provides that the bill will take effect upon becoming a law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

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

##### 1. Revenues:

None.

##### 2. Expenditures:

Indeterminate. See "Fiscal Comments" section below.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

None.

<sup>22</sup> *Id.*

<sup>23</sup> S. 119.15(3), F.S.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The proposed public record exemption may encourage the submission of applications and inspection reports under the MSFH Program, in which case the bill would have a positive impact on communities affected by natural disasters. However, the impact to the private sector is indeterminate.

D. FISCAL COMMENTS:

The bill may have a minimal negative fiscal impact on state agencies because agency staff responsible for complying with public records requests may require training related to the creation of the public record exemption. Agencies could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would likely be absorbed by existing resources, as they are part of the day-to-day responsibilities of such agencies.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

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 or expanded 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 or expanded public record exemption. The bill creates a public record exemption; therefore, it includes a public necessity statement. The public necessity statement states that the Legislature finds, in part, that the exemption is necessary because public availability of such information can be used for identity theft, consumer scams, unwanted solicitations, or other invasive contact, and put applicants of the My Safe Florida Home Program at increased risk for home invasions and reduced privacy in their homes.

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a newly created public record exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for certain information received by DFS pursuant to an application and inspection reports submitted to the MSFH Program. The purpose of the exemption is to protect sensitive personal information, such as email addresses, mailing addresses, and telephone numbers, that DFS receives in conjunction with its duties related to the review of such applications and inspection reports. 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 January 24, 2024, the Ethics, Elections & Open Government Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment conformed HB 943 to its Senate companion, SB 988. Prior to the adoption of the amendment, the two bills were substantially identical except, SB 988 contained more specific language regarding the bill's retroactive application.

On January 30, 2024, the Commerce Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment limited the public record information exempted by the bill from all information in MSFH applications and inspection reports to:

- The applicant's mailing address, other than the city, zip code, and the applicant's name;
- Any phone number or email address provide by the applicant; and
- Detailed descriptions and pictures of the inside and outside of the applicant's home.

The amendment also updates the public necessity statement in the bill to conform to these changes.

This analysis is drafted to the committee substitute as approved by the Commerce Committee.