

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: SB 7004

INTRODUCER: Community Affairs Committee

SUBJECT: OGSR/Applicants or Participants in Certain Federal, State, or Local Housing Assistance Programs

DATE: March 10, 2025 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Hunter</u>	<u>Fleming</u>		CA Submitted as Comm. Bill/Fav
1.	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	Pre-meeting
2.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 7004 saves from repeal the current public records exemption making property photographs and personal identifying information of applicants or participants in presidentially declared disaster-related federal, state, or local housing assistance programs confidential and exempt from public records inspection and copying requirements. The exemption covers records held by the Department of Commerce, the Florida Housing Finance Corporation, a county, a municipality, or a local housing finance agency.

The exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2025, unless reenacted by the Legislature. The bill saves the exemption from repeal by deleting the scheduled repeal date, thereby maintaining the confidential and exempt status of the information.

The bill is not expected to affect state and local government revenues and expenditures.

The bill takes effect October 1, 2025.

II. Present Situation:

Florida Public Records Law

The State Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

¹ FLA. CONST. art. I, s. 24(a).

² *Id.* See also, *Sarasota Citizens for Responsible Gov't v. City of Sarasota*, 48 So. 3d 755, 762-763 (Fla. 2010).

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.³ The Public Records Act states that:

[i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁴

The Public Records Act typically contains general exemptions that apply across agencies. Agency- or program-specific exemptions often are placed in the substantive statutes relating to that particular agency or program.

The Public Records Act does not apply to legislative or judicial records.⁵ Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the legislature.

Section 119.011(12), F.S., defines “public records” to include:

[a]ll documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connections with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to “perpetuate, communicate, or formalize knowledge of some type.”⁶

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

Only the Legislature may create an exemption to public records requirements.⁹ An exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹⁰ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions¹¹

³ Public records laws are found throughout the Florida Statutes.

⁴ Section 119.01(1), F.S.

⁵ *Locke v. Hawkes*, 595 So. 2d 32, 34 (Fla. 1992); *see also Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁷ Section 119.07(1)(a), F.S.

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST. art. I, s. 24(c).

¹⁰ *Id.*

¹¹ The bill may, however, contain multiple exemptions that relate to one subject.

and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹²

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.¹³ Records designated as “confidential and exempt” are not subject to inspection by the public and may only be released under the circumstances defined by statute.¹⁴ Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.¹⁵

Department of Commerce

The Department of Commerce (department) was created in 2011 by combining the Agency for Workforce Innovation, the Department of Community Affairs, and the Governor’s Office of Tourism, Trade, and Economic Development.¹⁶ The purpose of the department is to assist the Governor in working with the Legislature, state agencies, business leaders, and economic development professionals to formulate and implement policies and strategies designed to promote economic opportunities for all Floridians.¹⁷ Within the department, the Office of Long-Term Resiliency supports communities following disasters by addressing long-term recovery needs for housing, infrastructure, and economic development.¹⁸ The department is also the state authority responsible for administering all United States Department of Housing and Urban Development (HUD) long-term disaster recovery funds awarded to the state.¹⁹

Florida Housing Finance Corporation

The Florida Housing Finance Corporation Act provides that the Florida Housing Finance Corporation (FHFC) is created within the Department of Commerce and is a public corporation.²⁰ The 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, the FHFC uses federal and state resources to finance the development of safe, affordable homes and rental housing and to assist first-time homebuyers.²¹

¹² FLA. CONST. art. I, s. 24(c)

¹³ *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁴ *Id.*

¹⁵ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁶ See ch. 2011-142, Laws of Fla.

¹⁷ Section 20.60(4), F.S.

¹⁸ Dep’t of Commerce, *Office of Long-Term Resiliency*, <https://floridajobs.org/community-planning-and-development/assistance-for-governments-and-organizations/disaster-recovery-initiative> (last visited Mar. 4, 2025).

¹⁹ *Id.*

²⁰ Section 420.504(1), F.S.

²¹ See sections. 420.502 and 420.507, F.S.

Local Housing Finance Agencies

Local Housing Finance Agencies (HFAs), also known as Local Housing Finance Authorities, are dependent²² special districts of a local government. A “special district” is a unit of local government created for a particular purpose, with jurisdiction to operate within a limited geographic boundary.²³ HFAs are set up to sell bonds to finance affordable apartments, provide loans with HFA funds for gap financing, sell bonds or administer other programs to provide low-rate mortgages, and provide down payment assistance to homebuyers.²⁴

Disaster Recovery Housing Assistance Programs

The Department, FHFC, counties, municipalities, and local housing finance agencies have various housing programs that are designed to assist those who have been impacted by a disaster. While counties and municipalities have broad discretion to allocate local funds and create programs that meet the disaster housing needs within their communities, the primary programs which allocate significant funds to the state and local governments for such purposes are described below.

Applicants seeking assistance from many of these programs are required to provide personal information and supporting documentation.²⁵ For example, damage assessment data collected during property inspections to determine remaining needed repairs may include the applicant’s name, address, telephone numbers, photo identification, and interior and exterior photographs of their residence.²⁶ Other commonly needed personal identifying information includes, proof of home ownership, tax returns, and salary or wage statements. The Department must maintain all files containing such personally identifiable information, making them public records.²⁷

Community Development Block Grant - Disaster Recovery

The primary program utilizing the public records exemption is the Community Development Block Grant - Disaster Recovery (CDBG-DR) Program administered in Florida by the Department. CDBG-DR is funded by the HUD and supports communities following disasters by addressing long-term recovery needs.²⁸ In response to a presidentially declared disaster, Congress may appropriate supplemental funding for the CDBG-DR Program as “grants to rebuild disaster impacted areas and provide crucial seed money to start the recovery process.”²⁹

²² A special district is classified as “dependent” if the governing body of a single county or municipality: serves as governing body of the district; appoints the governing body of the district; may remove members of the district’s governing body at-will during their unexpired terms; or approves or can veto the budget of the district.

²³ See *Halifax Hospital Medical Center v. State of Fla., et al.*, 278 So. 3d 545, 547 (Fla. 2019).

²⁴ Presentation to Senate Community Affairs Committee 12-1-2021 on file with Senate Community Affairs Committee.

²⁵ Sarasota County, *Housing Recovery Program*, available at <https://www.resilientsrq.net/housing-recovery> (last visited Feb. 16, 2025)

²⁶ Department of Commerce, *Eligibility Requirements*, available at <https://ian.rebuildflorida.gov/eligibility/> (last visited Feb. 14, 2025)

²⁷*Id.*

²⁸ Dep’t of Commerce, *Office of Long-Term Resiliency*, <https://floridajobs.org/community-planning-and-development/assistance-for-governments-and-organizations/disaster-recovery-initiative> (last visited Mar. 4, 2025).

²⁹ U.S. Department of Housing and Urban Development, *Community Development Block Grant Disaster Recovery Program*, https://www.hud.gov/program_offices/comm_planning/cdbg-dr/ (last visited Mar. 4, 2025).

These flexible grants help cities, counties, and states recover from presidentially declared disasters, especially in low-income areas.³⁰

CDBG-DR funds must be used for “...necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, economic revitalization, and mitigation...”³¹ The funds are intended to address unmet needs that other resources—including Federal Emergency Management (FEMA) funds or homeowner’s insurance—aren’t likely to address.³² CDBG-DR funds cannot duplicate funding available from federal, state, or local governments; private and non-profit organizations; insurance proceeds; or any other source of assistance.³³ The timeframe between the occurrence of a disaster and project implementation can be lengthy and vary widely.³⁴ While disasters may be quickly declared—often within 1 day—congressional appropriations may not happen until a year after the declaration date.³⁵ The process from HUD notice publication to action plan development and approval, and through first expenditure may take months, while execution of the activity and final completion may take years.³⁶ For example, Hurricane Michael struck on October 10, 2018, HUD published its notice about CDBG-DR funds in the Federal Register in January of 2020, and Florida received HUD’s approval of the State Action Plan in June of 2020.³⁷

The Department has received more than \$4.3 billion since 2017 to administer CDBG-DR and Mitigation funds to communities impacted by tropical storms and hurricanes.³⁸

Rebuild Florida

Rebuild Florida is a program within the Department that focuses on distributing CDBG-DR funding to long-term recovery efforts for homeowners, small businesses, and communities after all other assistance has been exhausted, including insurance and other forms of federal assistance.³⁹

³⁰ *Id.*

³¹ U.S. Dep’t of Housing & Urban Development, *Community Development Block Grant Disaster Recovery: CDBG-DR Overview*, p. 18, <https://www.hud.gov/sites/dfiles/CPD/documents/CDBG-Disaster-Recovery-Overview.pdf> (last visited Mar. 4, 2025).

³² U.S. Dep’t of Housing & Urban Development, *Fact Sheet*, <https://www.hud.gov/sites/dfiles/CPD/documents/CDBG-DR-Fact-Sheet.pdf> (last visited Feb. 16, 2025).

³³ *Id.*

³⁴ U.S. Department of Housing and Urban Development, *Housing Recovery and CDBG-DR at 10*, available at https://www.huduser.gov/portal/sites/default/files/pdf/HousingRecovery_CDBG-DR.pdf (last visited Feb. 16, 2025)

³⁵ *Id.* at 11-12.

³⁶ *Id.*

³⁷ Department of Commerce, *Hurricane Michael*, <https://www.floridajobs.org/community-planning-and-development/assistance-for-governments-and-organizations/disaster-recovery-initiative/hurricane-michael> (last visited Feb. 16, 2025).

³⁸ Florida Commerce Office of Long-Term Resiliency, Dep’t of Commerce, *Presentation to Senate Community Affairs Committee*, February 4, 2025, p.4, https://flsenate.gov/Committees/Show/CA/MeetingPacket/6282/10952_MeetingPacket_6282_2.pdf (last visited Mar. 4, 2025).

³⁹ Dep’t of Commerce, *Rebuild Florida Housing Repair and Replacement Program* (Sept. 10, 2018), <https://www.floridajobs.org/docs/default-source/communicationsfiles/rebuild-florida-document/housing-repair-faqs.pdf?sfvrsn=4> (last visited Mar. 4, 2025).

The Rebuild Florida Housing Repair and Replacement Program (HRRP) addresses remaining unmet housing recovery needs through the repair, rebuild or replacement of damaged homes.⁴⁰ CDBG-DR and Rebuild Florida also fund rebuild and repair programs through local governments, either directly from HUD⁴¹ or through the department. The program offers reconstruction, manufactured housing unit replacement, or rehabilitation with a priority on the most vulnerable populations, including the elderly, those with disabilities, families with children under the age of 18, and families with low household incomes.⁴² The HRRP program manages complete construction on behalf of eligible and awarded homeowners, but payments are not made to the property owner directly. Contractors are selected by the state as a subrecipient of the HUD funding, and homeowners do not directly select or contact the chosen builder.⁴³

Applicants seeking assistance from the Department of Commerce's Rebuild Florida, CDBG-DR funded programs or local rebuild and repair programs, are required to provide personal information and supporting documentation. Applications may be received by the department or the local government.⁴⁴ For example, damage assessment data collected during property inspections to determine remaining needed repairs may include the applicant's name, address, telephone numbers, photo identification, and interior and exterior photographs of their residence.⁴⁵ Other commonly needed personal identifying information includes, proof of home ownership, tax returns, and salary or wage statements. The department maintains all files containing such personally identifiable information in a secure manner.⁴⁶

Rebuild Florida currently has open programs on their website for hurricanes Irma, Michael, and Hurricane Ian, and has forthcoming programs to support those affected by the 2023-2024 storms.⁴⁷

The State Housing Initiatives Partnership

The State Housing Initiatives Partnership (SHIP) Program was created in 1992.⁴⁸ Currently, all 67 counties and 52 municipalities receive funding through the Community Development Block Grant program administered by the SHIP.⁴⁹ Many local government's SHIP programs offer recovery assistance to help those affected by disasters with temporary relocation, rental assistance, mortgage foreclosure prevention, security and utility deposit assistance, debris

⁴⁰ Cf Department of Commerce, *Recovery FAQ for Hurricane Ian*, available at <https://ian.rebuildflorida.gov/resources/frequently-asked-questions/> (last visited Feb. 14 Mar. 4, 2025)

⁴¹ HUD allocated \$201.5 million to Sarasota County through CDBG-DR, \$55 million of which was to provide decent, safe, and sanitary housing for residents affected by Hurricane Ian.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Sarasota County, *Housing Recovery Program*, available at <https://www.resilientsrq.net/housing-recovery> (last visited Feb. 16, 2025)

⁴⁵ Department of Commerce, *Eligibility Requirements*, available at <https://ian.rebuildflorida.gov/eligibility/> (last visited Feb. 14, 2025)

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Chapter 92-317, Laws of Fla.

⁴⁹ Section 420.072(7), F.S.

removal and home repairs.⁵⁰ Examples include Leon County and Osceola County who have leveraged SHIP funds for these disaster recovery related activities.⁵¹ Moreover, the Florida Housing Finance Corporation may hold up to \$5 million each fiscal year from the SHIP Program appropriation for recovery efforts for declared disasters.⁵² These funds have been utilized for disaster recovery efforts that include response to hurricanes, tornadoes, flooding, and wildfires.

The Robert T. Stafford Disaster Relief Act and a Presidential Disaster Declaration

Congress enacted the Robert T. Stafford Disaster Relief and Emergency Assistance Act (“Stafford Act”)⁵³ to provide an orderly and continuing means of assistance by the federal government to state and local governments in carrying out their responsibilities to alleviate the suffering and damage which result from disasters.⁵⁴ Under the Stafford Act, governors request the President for a declaration of a major disaster or an emergency and funds become available if the President does so.⁵⁵ The President's declaration designates the areas that may receive federal assistance and what specific types of assistance that can be.

Between 2022 and 2024, the President declared disasters in Florida following hurricanes Milton, Helene, Idalia, Ian, and Nicole.⁵⁶

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act⁵⁷ (the Act), prescribe a legislative review process for newly created or substantially amended⁵⁸ public records or open meetings exemptions, with specified exceptions.⁵⁹ The Act requires the repeal of such exemption on October 2 of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.⁶⁰

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.⁶¹

⁵⁰ Florida Housing, *Disaster Relief Resources and Information*, available at

<https://www.floridahousing.org/programs/special-programs/ship--state-housing-initiatives-partnership-program/disaster-relief> (last visited Feb. 16, 2025)

⁵¹ Leon County, *TEAM Leon Individual Assistance Program*, <https://cms.leoncountyfl.gov/Government/Departments/Human-Services-Community-Partnerships/TEAM-Leon/TEAM-Leon-Individuals>, (last visited Mar. 4, 2025); Osceola County, *State Housing Initiatives Partnership (SHIP) Program*, <https://www.osceola.org/Services/Housing-Programs/SHIP> (last visited Mar. 4, 2025).

⁵² Section 420.9073(5), F.S.

⁵³ 42 U.S.C. ss. 5121, *et seq.*

⁵⁴ 42 U.S.C. s. 5121(b).

⁵⁵ 42 U.S.C. ss. 5170 and 5191.

⁵⁶ Federal Emergency Management Agency, U.S. Dep’t of Homeland Security, *Disasters and Other Declarations*, <https://www.fema.gov/disaster/declarations>, (last visited Mar. 4, 2025)

⁵⁷ Section 119.15, F.S.

⁵⁸ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

⁵⁹ Section 119.15(2)(a) and (b), F.S., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

⁶⁰ Section 119.15(3), F.S.

⁶¹ Section 119.15(6)(b), F.S.

An exemption serves an identifiable purpose if the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption and it meets one of the following purposes:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;⁶²
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;⁶³ or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.⁶⁴

The Act also requires specified questions to be considered during the review process.⁶⁵ In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are again required.⁶⁶ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to expire, the previously exempt records will remain exempt unless otherwise provided by law.⁶⁷

Open Government Sunset Review Findings and Recommendations

The Department recommends the preservation of the public records exemption for records relating to property photographs and personal identifying information of applicants or participants in disaster-related federal, state, or local housing assistance programs. The Department cites the necessity of the exemption, providing that the information obtained in administering these programs to disaster affected Floridians “could be used by fraudulent contractors, predatory lenders, thieves, or individuals seeking to impose on the vulnerability of a distressed homeowner or tenant following a disaster.”⁶⁸

⁶² Section 119.15(6)(b)1., F.S.

⁶³ Section 119.15(6)(b)2., F.S.

⁶⁴ Section 119.15(6)(b)3., F.S.

⁶⁵ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

⁶⁶ See generally s. 119.15, F.S.

⁶⁷ Section 119.15(7), F.S.

⁶⁸ Florida Commerce, *Agency Analysis of SB 966*, (Dec. 2019), on file with the Senate Committee on Community Affairs.

Additionally, the Senate Community Affairs Committee and House Local Administration, Federal Affairs & Special Districts Subcommittee surveyed local governments in regard to the exemption. Of the respondents who provided a recommendation, the overwhelming majority supported reenacting the public records exemption ‘as is.’⁶⁹ Only two local governments statewide recommended repealing the exemption, and those responses indicated non-use as a factor.⁷⁰

III. Effect of Proposed Changes:

Section 1 amends s. 119.071(5)(f), F.S., to remove the scheduled repeal date of the public records exemption, thereby continuing the confidential and exempt status of the property photographs and personal identifying information of applicants or participants in disaster-related federal, state, or local housing assistance programs held by the Department of Commerce, the Florida Housing Finance Corporation, a county, a municipality, or a local housing finance agency.

Section 2 provides an effective date of October 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties and municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records disclosure requirements. This bill does not create or expand an exemption, and thus, the bill does not require a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records disclosure requirements to state with specificity the public necessity justifying the exemption. This bill does not create or expand an exemption and thus, a statement of public necessity is not required.

⁶⁹ Survey of local governments on file with the Senate Committee on Community Affairs.

⁷⁰ The municipalities of Shalimar and Longboat Key both indicated support for repealing the exemption.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records disclosure requirements to be no broader than necessary to accomplish the stated purpose of the law. The exemptions in the bill do not appear to be broader than necessary to accomplish the purposes of the laws.

C. Trust Funds Restrictions:

None identified.

D. State Tax or Fee Increases:

None identified.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None identified.

B. Private Sector Impact:

The private sector will continue to be subject to the cost associated with an agency's review and redactions of exempt records in response to a public records request.

C. Government Sector Impact:

The government sector will continue to incur costs related to the review and redaction of exempt records associated with responding to public records requests.

VI. Technical Deficiencies:

None identified.

VII. Related Issues:

None identified.

VIII. Statutes Affected:

This bill substantially amends section 119.071 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
