

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #: HB 7033

FINAL HOUSE FLOOR ACTION:

SPONSOR(S): Government Operations
Subcommittee; Taylor

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**COMPANION
BILLS:** CS/SB 7004

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

HB 7033 passed the House on January 27, 2016, and subsequently passed the Senate on February 2, 2016.

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.

Current law provides a public record exemption for any information furnished by a person to an agency for the purpose of being provided with emergency notification by the agency, including the person's name, address, telephone number, e-mail address, or other electronic communication address.

The bill reenacts the public record exemption, which will repeal on October 2, 2016, if this bill does not become law. Additionally, the bill removes superfluous language.

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

The bill was approved by the Governor on March 8, 2016, ch. 2016-27, L.O.F., and will become effective on October 1, 2016.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)¹ 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.²

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.³

If, and only if, in reenacting an exemption that will repeal and the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.⁴ 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 created⁵ then a public necessity statement and a two-thirds vote for passage are not required.

Emergency Notification Systems

The Division of Emergency Management (division) within the Executive Office of the Governor is responsible for maintaining a comprehensive statewide program of emergency management.⁶ As part of the statewide program, the division must establish a system of communications and warning to ensure that the state's population and emergency management agencies are warned of developing emergency situations and to communicate emergency response decisions.⁷ To that end, the division has issued a request for proposals for a Florida Statewide Emergency Alert and Notification System, which will be a mass notification system that will provide statewide alerts for imminent or sudden hazards through various methods.

State agencies are also required to have emergency plans in place in case of a natural disaster.⁸ The emergency plans, called continuity of operations plans, are not required to have any sort of associated notification system.⁹ However, many agencies have developed emergency notification methods or systems that allow their employees and others to receive a notification in the event of an emergency.

¹ Section 119.15, F.S.

² Section 119.15(3), F.S.

³ Section 119.15(6)(b), F.S.

⁴ Section 24(c), Art. I, FLA. CONST.

⁵ An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.

⁶ Section 252.35(1), F.S.

⁷ Section 252.35(2)(a)6., F.S.

⁸ Section 252.365(3), F.S.

⁹ *Id.*

Some universities have an emergency notification system to provide alerts to their students and faculty. For example, Florida State University has an emergency notification system called FSU Alert.¹⁰ It utilizes over 30 different delivery methods ranging from voice calls to social media posts in order to alert students and faculty to any situation that poses an immediate threat to their health or safety.¹¹

Many local governments have in place emergency notification systems to alert their residents of weather conditions or other dangers. For example, many counties and municipalities use the CodeRED Emergency Notification System, a third-party, high-speed telephone communication service that provides emergency alerts to persons who voluntarily sign up for the service.¹²

Public Record Exemption under Review

In 2011, the Legislature created a public record exemption for any information furnished by a person to an agency¹³ for the purpose of receiving emergency notification by the agency, including the person's name, address, telephone number, e-mail address, or other electronic communication address.¹⁴ The exemption applies retroactively¹⁵ to the exempt¹⁶ information held by an agency.

The 2011 public necessity statement for the public record exemption provides that:

Public safety is significantly enhanced through the use of...emergency notification programs, and expansion of such programs further increases public safety. A public records exemption for information furnished to an agency for this purpose will encourage greater participation in emergency notification programs by alleviating concerns about disclosure of information that could be used for criminal purposes...the public records exemption...is necessary for the effective implementation of and broad participation in emergency notification programs conducted by agencies.¹⁷

Pursuant to the Open Government Sunset Review Act, the public record exemption will repeal on October 2, 2016, unless reenacted by the Legislature.¹⁸

During the 2015 interim, subcommittee staff sent questionnaires to state agencies, counties, and municipalities as part of the Open Government Sunset Review process.¹⁹ The respondents recommended reenactment of the public record exemption and indicated that without the exemption

¹⁰ See FSU Alert, available at <https://emergency.fsu.edu/services/FSUAlert> (last accessed Nov. 23, 2015).

¹¹ *Id.*

¹² See Broward County Emergency Management, available at <http://www.brevardcounty.us/EmergencyManagement/AlertSignUp> (last accessed Nov. 23, 2015); see also St. Petersburg CodeRED Emergency Notification System, available at <http://police.stpete.org/community/code-red.html> (last accessed Nov. 23, 2015).

¹³ Section 119.011(2), F.S., defines the term "agency" to mean 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.

¹⁴ Chapter 2011-85, L.O.F.; codified as s. 119.071(5)(j)1., F.S.

¹⁵ In 2001, the Florida Supreme Court ruled that a public record exemption does not apply retroactively unless the legislation clearly expresses such intent. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d 373 (Fla. 2001).

¹⁶ There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991) *review denied*, 589 So. 2d 289 (Fla. 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 *WFTV, Inc. v. Sch. Bd. of Seminole Cnty*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 2004); Op. Att'y Gen. Fla. 85-692 (1985).

¹⁷ Section 2, ch. 2011-85, L.O.F.

¹⁸ Section 119.071(5)(j)2., F.S.

¹⁹ Open Government Sunset Review of s. 119.071(5)(j), F.S., relating to emergency notification, questionnaire by House and Senate staff. Responses are on file with the Government Operations Subcommittee.

people would be less likely to join an emergency notification system if their information was made publicly available.²⁰

Effect of the Bill

The bill removes the repeal date, thereby reenacting the public record exemption for any information furnished by a person to an agency for the purpose of being provided with emergency notification by the agency. Additionally, the bill removes the list of specified information included in the public record exemption because it is redundant. The public record exemption already provides that *any information* furnished by a person is exempt from public record requirements.

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.

²⁰ *Id.* at question 10.