

**HOUSE OF REPRESENTATIVES  
FINAL BILL ANALYSIS**

<b>BILL #:</b>	CS/CS/HB 551	<b>FINAL HOUSE FLOOR ACTION:</b>		
<b>SUBJECT/SHORT TITLE</b>	Pub. Rec./Health Care Facilities	110	<b>Y's</b> 0	<b>N's</b>
<b>SPONSOR(S):</b>	Oversight, Transparency & Administration Subcommittee; Health Innovation Subcommittee; Burton and others	<b>GOVERNOR'S ACTION:</b>	Approved	
<b>COMPANION BILLS:</b>	CS/SB 906			

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**SUMMARY ANALYSIS**

CS/CS/HB 551 passed the House on February 14, 2018, and subsequently passed the Senate on March 7, 2018.

Current law provides 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, entertainment or resort complex, industrial complex, retail and service development, office development, or hotel or motel development held by an agency. Although health care facilities are required to submit similar building plans and related documents to agencies, there does not appear to be a public record exemption for these building plans.

The bill expands the public record exemption for building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final forms, which depict the internal layout and structural elements to include health care facilities. Specifically, the bills provides that such plans for a hospital, ambulatory surgical center, nursing home, hospice, or intermediate care facility for the developmentally disabled are exempt from public disclosure.

The bill provides for repeal of the exemption on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature. The bill provides a statement of public necessity as required by the Florida Constitution.

The bill may have a minimal fiscal impact on the state and local governments. See Fiscal Comments.

The bill was approved by the Governor on March 21, 2018, ch. 2018-53, L.O.F., and became effective on that date.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### Background

##### Public Records

The Florida Constitution guarantees every person the right to inspect or copy any public record made or received in connection with the official business of the legislative, executive, or judicial branches of government.<sup>1</sup> The Legislature, however, may provide by general law for the exemption of records from the constitutional requirement.<sup>2</sup> The general law must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the law.<sup>3</sup> A bill enacting an exemption must pass by a two-thirds vote of the members present and voting.<sup>4</sup>

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose.<sup>5</sup> 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 government program, which administration would be significantly impaired without the exemption;
- Protect personal identifying information that, if released, would be defamatory or would jeopardize an individual's safety; or
- Protect trade or business secrets.<sup>6</sup>

##### Public Record Exemption for Building Plans and Related Documents

Current law provides a public record exemption for building plans, blueprints, schematic drawings, and diagrams that 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>7</sup>

Current law also provides 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, entertainment or resort complex, industrial complex, retail and service development, office development, or hotel or motel development held by an agency.<sup>8</sup> Such information is exempt from public disclosure.<sup>9</sup> This exemption does not apply to comprehensive plans or site plans which are submitted for approval or which have been approved

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<sup>1</sup> FLA. CONST., art. I, s. 24(a).

<sup>2</sup> FLA. CONST., art. I, s. 24(c).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Section 119.15, F.S.

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

<sup>7</sup> Section 119.071(3)(b), F.S.

<sup>8</sup> Section 119.071(3)(c), F.S.

<sup>9</sup> There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates as confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004), review denied 892 So. 2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, the record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See 85-62 Fla. Op. Att'y Gen. (1985).

under local land development regulations, local zoning regulations, or development-of-regional-impact review.<sup>10</sup>

### Health Care Facilities

Health care facilities require review of methods of proposed construction by the Agency for Health Care Administration.<sup>11</sup> The Agency ensures compliance with health care rules, codes and standards to provide protection of public health and safety.<sup>12</sup> Schematics, preliminary plans, and construction documents received by the Agency and other government agencies for hospitals, ambulatory surgical centers, nursing homes, and intermediate care facilities for the developmentally disabled are public record and subject to release upon request.<sup>13</sup> These plans include building floor plans, communication systems, medical gas systems, electrical systems, emergency generators, and other physical plant and security details.<sup>14</sup>

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.<sup>15</sup> 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 others to examine the physical plant for vulnerabilities and aid in the planning, training, and execution of criminal or terrorist activities.<sup>16</sup>

### **Effect of the Bill**

This bill expands the public record exemption for building plans and other related documents for an attractions and recreation facility, entertainment or resort complex, industrial complex, retail and service development, office development, or hotel or motel development held by an agency. Specifically, this bill expands this exemption to include health care facilities and provides that the public record exemption applies to building plans and other related documents held by an agency before, on, or after the effective date of this bill.

For purposes of the public record exemption, the term “health care facility” means a hospital, ambulatory surgical center, nursing home, hospice, or intermediate care facility for the developmentally disabled.

The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2023, unless saved from repeal through reenactment by the Legislature.

This bill provides a public necessity statement as required by the Florida Constitution, which states building plans could be used by criminals or terrorists to examine the physical plant for vulnerabilities. In addition, information contained in the documents could aid in the planning, training, and execution of criminal actions including infant abduction, cyber-crime, arson, and terrorism.

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<sup>10</sup> Section 119.071(3)(c)4., F.S.

<sup>11</sup> Section 408.035(h), F.S.

<sup>12</sup> Agency for Health Care Administration, Agency Analysis of 2018 House Bill 551, p. 2 (Nov. 16, 2017).

<sup>13</sup> *Id.*

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

<sup>15</sup> *Id.*; Department of Homeland Security, *Terrorists Call for Attacks on Hospitals, Healthcare Facilities* (Feb. 8, 2017) available at: <http://www.arkhospitals.org/Misc.%20Files/AttacksHospitalsHCFacilities.pdf>.

<sup>16</sup> Agency for Health Care Administration, Agency Analysis of 2018 House Bill 551, p. 2 (Nov. 16, 2017).

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill does not appear to impact state revenues.

#### 2. Expenditures:

See Fiscal Comments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill does not appear to impact local government revenues.

#### 2. Expenditures:

See Fiscal Comments.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

The bill could have a minimal fiscal impact on agencies because agency staff responsible for complying with public record requests may require training related to the expansion of the public record exemption. In addition, agencies could incur costs associated with redacting the exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of agencies.