

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: SPB 7008

INTRODUCER: For consideration by the Governmental Oversight and Accountability Committee

SUBJECT: Public Records/Building Plans, Blueprints, Schematic Drawings, and Diagrams

DATE: February 20, 2023

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Limonés-Borja</u>	<u>McVaney</u>	_____	Pre-meeting

I. Summary:

SPB 7008 saves from repeal the current public records 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, health care facility, or hotel or motel development. The bill removes language related to the disclosure of information.

The Open Government Sunset Review Act requires the Legislature to review each public record exemption 5 years after enactment. The exemption is scheduled to repeal on October 2, 2023. This bill removes the scheduled repeal to continue the exempt status.

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

The bill takes effect October 1, 2023.

II. Present Situation:

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 who acts on behalf of the government.²

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:

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Public records laws are found throughout the Florida Statutes.

[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 contains general exemptions that apply across agencies. Agency- or program-specific exemptions often are placed in the substantive statutes that relate 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 which justifies the exemption.¹⁰ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill that enacts an exemption may not contain other substantive provisions¹¹ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹²

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.

¹² FLA. CONST., art. I, s. 24(c).

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

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act (the Act), prescribe a legislative review process for newly created or substantially amended public records or open meetings exemptions,¹⁶ with specified exceptions.¹⁷ The Act requires the repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption or repeal the sunset date.¹⁸ In practice, many exemptions are continued by repealing the sunset date, rather than reenacting the exemption.

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. 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 subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁹
- The release of sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²⁰ or
- It protects trade or business secrets.²¹

The Act also requires specified questions to be considered during the review process.²² In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

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 Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings.

¹⁷ 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.

¹⁸ Section 119.15(3), F.S.

¹⁹ Section 119.15(6)(b)1., F.S.

²⁰ Section 119.15(6)(b)2., F.S.

²¹ Section 119.15(6)(b)3., F.S.

²² Section 119.15(6)(a), F.S. The specific 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?

If, in reenacting an exemption or repealing the sunset date, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²³ If the exemption is reenacted or saved from repeal without substantive changes or if the exemption is 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.²⁴

Public Records Law on Building Plans, Blueprints, Schematic Drawings and Diagrams

In 2002, the Legislature created a public records exemption for building plans, blueprints, schematic drawings, and diagrams of specified facilities and structures *owned* or *operated* by an agency. The release of such information was authorized under the following circumstances:

- To a licensed architect, engineer, or contractor who is performing work on or related to the building, arena, stadium, water treatment facility, or other structure owned or operated by an agency;
- Upon a showing of good cause before a court of competent jurisdiction; or
- To another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities.²⁵

In 2004, the law was amended to include documents *held* by an agency. The law was also amended to include the following structures and buildings:

- Attractions and recreation facility;
- Entertainment or resort complex;
- Industrial complexes;
- Retail and service development;
- Office development; and
- Hotel or motel developments.²⁶

The following are related public records exemptions that exist in current law:

- 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.
- 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.

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- 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?

²³ FLA. CONST. art. I, s. 24(c).

²⁴ Section 119.15(7), F.S.

²⁵ Ch. 2002-67, Laws of Fla.; HB 735 (2002).

²⁶ Ch. 2004-9, Laws of Fla.; HB 317 (2004).

- 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.
- 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 that such aviation authority or department reasonably determines that the security plan contains information that is not generally known and could jeopardize airport security.
- 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.

Open Government Sunset Review of the Public Records Exemption for Building Plans, Blueprints, Schematic Drawings and Diagrams

Current law exempts from public inspection and copying requirements 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, entertainment or resort complex, industrial complex, retail and service development, office development, health care facility, or hotel or motel development. Current law allows an agency to disclose of this 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 the showing of good cause before a court of competent jurisdiction.

In the public necessity statement adopted in the initial enacting legislation²⁷ and subsequent legislation^{28,29,30} expanding the exemption, the Legislature specified the exemption is necessary because security system plans are a vital component of public safety. Such plans contain components that address safety issues for public and private property on which public business is conducted and address the security of private property on which a large segment of the public relies. Allowing public access could increase the ability of persons to inflict harm on persons located in or utilizing those facilities, developments, or structures.

The staff of the Senate Governmental Oversight and Accountability Committee and the House Government Operations Subcommittee surveyed multiple agencies to ascertain whether the public records exemption in s. 119.071(3)(c)1., F.S., remains necessary. A majority of the agencies recommend that the Legislature reenact the public records exemption without any changes. However, committee staff recommends the removal of language relating to the disclosure of information. Records designated as "exempt" may be released at the discretion of

²⁷ See supra note 25.

²⁸ See supra note 26.

²⁹ Ch. 2009-235, Laws of Fla.; HB 7017 (2009).

³⁰ Ch. 2018-53, Laws of Fla.; SB 551 (2018).

the records custodian under certain circumstances.³¹ Current law limits the discretion of the custodian, thus making it inconsistent with these public records being treated similarly to other exempt records.

III. Effect of Proposed Changes:

Section 1 amends s. 119.071(3)(c)1., F.S., to save from repeal the public records exemption for information relating to the following information held by an agency:

- 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, health care facility, or hotel or motel development.

The bill removes superfluous language regarding the release of the exempt information.

Section 2 provides that the bill take effect October 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor 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 requirements. This bill does not create or expand an exemption, 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 requirements to state with specificity the public necessity justifying the exemption. This bill does not create or expand an exemption, thus, a statement of public necessity is not required.

³¹ See supra note 15.

Breadth of Exemption

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

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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.
