HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7035 PCB EEG 23-07 OGSR/Citizens Property Insurance Corporation/Cybersecurity Data and Information
SPONSOR(S): Ethics, Elections & Open Government Subcommittee, Griffitts
TIED BILLS: **IDEN./SIM. BILLS:** SB 7042

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Ethics, Elections & Open Government Subcommittee	18 Y, 0 N	Villa	Toliver
1) Insurance & Banking Subcommittee	14 Y, 0 N	Fortenberry	Lloyd
2) State Affairs Committee	19 Y, 0 N	Villa	Williamson

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record exemption 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 information held by Citizens Property Insurance Corporation (Citizens) that identifies detection, investigation, or response practices for suspected or confirmed cybersecurity incidents, including suspected or confirmed breaches, and for portions of risk assessments, evaluations, audits, and other reports of Citizens' cybersecurity program for its data, information, and information technology (I.T.) resources. Additionally, portions of public meetings that would reveal such information are exempt from public meeting requirements.

The bill removes a redundant public record exemption for information held by Citizens, which identifies detection, investigation, or response practices for suspected or confirmed cybersecurity incidents, including suspected or confirmed breaches. The bill removes the scheduled repeal date, thereby maintaining the public record and public meeting exemption for those portions of risk assessments, evaluations, audits, and other reports of Citizen's cybersecurity program for its data, information, and I.T. resources and portions of public meetings that would reveal such information. The information protected by current public record exemption specific to Citizens remains confidential and exempt under the general public record exemption for cybersecurity that was enacted in 2022.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

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, the exemption is expanded, 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 created, then a public necessity statement and a two-thirds vote for passage are not required.

General Public Record Exemption for Cybersecurity Information

In 2022, the Legislature created a general public record exemption[5] for the following cybersecurity[6] related information held by an agency:[7]

- Coverage limits and deductible or self-insurance amounts of insurance or other risk mitigation coverages acquired for the protection of information technology[8] (I.T.) systems, operational technology[9] (O.T.) systems, or data of an agency.
- Information relating to critical infrastructure.[10]

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[1] Section 119.15, F.S.
[2] Section 119.15(3), F.S.
[3] Section 119.15(6)(b), F.S.
[4] Article I, s. 24(c), FLA. CONST.
[5] Section 119.0725, F.S.
[6] "Cybersecurity" means the protection afforded to an automated information system in order to attain the applicable objectives of preserving the confidentiality, integrity, and availability of data, information, and information technology resources. Section 119.0725(1)(c), F.S.
[7] "Agency" means 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, 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. Section 119.011(2), F.S.
[8] "Information technology" means equipment, hardware, software, firmware, programs, systems, networks, infrastructure, media, and related material used to automatically, electronically, and wirelessly collect, receive, access, transmit, display, store, record, retrieve, analyze, evaluate, process, classify, manipulate, manage, assimilate, control, communicate, exchange, convert, converge, interface, switch, or disseminate information of any kind or form. Section 119.0725(1)(f), F.S.
[9] "Operational technology" means the hardware and software that cause or detect a change through the direct monitoring or control of physical devices, systems, processes, or events. Section 119.0725(1)(g), F.S.
[10] "Critical infrastructure" means existing and proposed I.T. and O.T. systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health, or public safety. Section 119.0725(1)(b), F.S.

- Certain cybersecurity incident information required to be reported pursuant to law.
- Network schematics, hardware and software configurations, or encryption information or information that identifies detection, investigation, or response practices for suspected or confirmed cybersecurity incidents, including suspected or confirmed breaches,[11] if the disclosure of such information would facilitate unauthorized access to or unauthorized modification, disclosure, or destruction of:
    - Data[12] or information, whether physical or virtual; or
    - I.T. resources, which include an agency's existing or proposed I.T. systems.

The Legislature also created a public meeting exemption for any portion of a meeting that would reveal the confidential and exempt information; however, all portions of an exempt meeting must be recorded and transcribed. The recording and transcript are confidential and exempt from public record requirements.[13]

The confidential and exempt information must be made available to a law enforcement agency, the Auditor General, the Cybercrime Office within the Florida Department of Law Enforcement (FDLE), the Florida Digital Service within the Department of Management Services, and for agencies under the jurisdiction of the Governor, the Chief Inspector General. In addition, the confidential and exempt information may be released in the furtherance of the custodial agency's duties and responsibilities, to another governmental entity in the furtherance of its statutory duties and responsibilities, and cybersecurity incident information may be reported in an aggregate format.[14]

Citizens Property Insurance Corporation

Citizens Property Insurance Corporation (Citizens) is a statutorily-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted[15] market. It is not a private insurance company.[16] Citizens was statutorily created in 2002 when the Legislature combined the state's two insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association and the Florida Windstorm Underwriting Association.[17]

Citizens is governed by a nine-member board of governors that administers its plan of operations. The plan of operations is reviewed and approved by the Financial Services Commission.[18] The Governor, President of the Senate, Speaker of the House of Representatives, and Chief Financial Officer each appoint two members to the board.[19] The Governor appoints one additional member to advocate solely on behalf of the consumer.[20] Citizens is subject to regulation by the Office of Insurance Regulation.

Public Record and Public Meeting Exemptions under Review

In 2018, the Legislature created public record exemptions for records held by Citizens that identify detection, investigation, or response practices for suspected or confirmed cybersecurity incidents, including suspected or confirmed breaches, and for portions of risk assessments, evaluations, audits, and other reports of Citizens' cybersecurity program for its data, information, and I.T. resources. Such records, and portions thereof, are confidential and exempt[21] from public record requirements if

[11] "Breach" means unauthorized access of data in electronic form containing personal information. Good faith access of personal information by an employee or agent of an agency does not constitute a breach, provided that the information is not used for a purpose unrelated to the business or subject to further unauthorized use. Section 119.0725(1)(a), F.S.

[12] "Data" means a subset of structured information in a format that allows such information to be electronically retrieved and transmitted. Section 119.0725(1)(d), F.S.

[13] Section 119.0725(3), F.S.

[14] Section 119.0725(5), F.S.

[15] Admitted market means insurance companies licensed to transact insurance in Florida.

[16] Section 627.351(6)(a)1., F.S.

[17] *See* ch. 2002-240, L.O.F.

[18] Section 627.351(6)(a)2., F.S.

[19] Section 627.351(6)(c)4.a., F.S.

[20] Section 627.351(6)(c)4., F.S.

[21] There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems 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, 53 (Fla. 5th DCA 2004), review denied 892 So. 2d

disclosure would facilitate unauthorized access to or unauthorized modification, disclosure, or destruction of:

- Data or information, whether physical or virtual; or
- I.T. resources, including:
  - Information relating to the security of Citizens' technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or
  - Physical or virtual security information that relates to Citizens' existing or proposed I.T. systems.[22]

The Legislature also created a public meeting exemption for any portion of a meeting that would reveal the confidential and exempt information; however, all portions of an exempt meeting must be recorded and transcribed. The recording and transcript are confidential and exempt from public record requirements unless a court of competent jurisdiction, following an in camera review, determines that the meeting was not restricted to the discussion of confidential and exempt data and information. If such a judicial determination occurs, only the portion of the recording or transcript that reveals nonexempt data may be disclosed.[23]

The exemptions provide that the recording and transcript of public meetings that would reveal the confidential and exempt information must be made available to the Auditor General, the Cybercrime Office of FDLE, and the Office of Insurance Regulation (OIR). Such records may also be available to a state or federal agency for security purposes or in furtherance of the agency's official duties.[24]

The 2018 public necessity statement[25] for the exemptions provides that:

> The disclosure of such records could potentially compromise the confidentiality, integrity, and availability of the corporation's data and information technology resources. It is a public necessity that this information be made confidential in order to protect the technology systems, resources, and data of the corporation.

Pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2023, unless reenacted by the Legislature.

During the 2022 interim, subcommittee staff met with Citizens' staff as part of its review under the OGSR Act. Citizens' staff indicated they had not had any issues interpreting or applying the exemption and that they were unaware of the existence of any litigation concerning the exemption. Further, Citizens' staff indicated they had not received any complaints concerning the exemption.

In accordance with the OGSR Act's review directive requiring the Legislature to review whether a protected record is protected by another exemption,[26] subcommittee staff asked Citizens' staff whether the newly-created general cybersecurity exemption in s. 119.0725, F.S., protected the same records as the exemptions under review and whether it provided ample protection so that the exemptions under review could be repealed.[27] Citizens' staff responded that the exemptions should not be repealed and cited the ability to release information to OIR and specific protections in the exemption for I.T. risk

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1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *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, 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* Attorney General Opinion 85-62 (August 1, 1985).

[22] Section 627.352(1), F.S.

[23] Section 627.352(2), F.S.

[24] Section 627.352(3), F.S.

[25] Article I, s. 24(c), FLA. CONST., requires each public record exemption and each public meeting exemption state with specificity the public necessity justifying the exemption.

[26] Section 119.15(6)(a)5., F.S.

[27] Initially, Citizens' staff indicated they were unfamiliar with the general exemption for cybersecurity and critical infrastructure information so staff followed up with an email. Email received from Citizens' Staff on September 20, 2022, on file with the House Ethics, Elections & Open Government Subcommittee.

assessments, evaluations, audits, and other reports; however, Citizens did not indicate whether the current general exemption provided ample protections.[28]

Subcommittee staff also mentioned to Citizens' staff a possible error in current law regarding the ability of Citizens to share certain protected records. Section 627.325(3), F.S. — the provision that allows Citizens' to share confidential and exempt information — only allows the release of records *relating to the public meeting exemption* to specified entities and not the other records protected under the exemptions. When asked about this issue, Citizens' staff indicated that the statute should be revised to allow Citizens' to share all protected records with the specified entities.[29]

Effect of the Bill

The bill removes a redundant public record exemption for information held by Citizens that identifies detection, investigation, or response practices for suspected or confirmed cybersecurity incidents, including suspected or confirmed breaches. The general cybersecurity exemption created by the Legislature in 2022 protects the same records from disclosure and is applicable to all agencies subject to public record requirements, including Citizens.

The bill removes the scheduled repeal date of the public record exemption, thereby maintaining the exemption, for those portions of risk assessments, evaluations, audits, and other reports of Citizen's cybersecurity program for its data, information, and I.T. resources if disclosure would facilitate unauthorized access to or unauthorized modification, disclosure, or destruction of data or information, whether physical or virtual; or I.T. resources, including:

- Information relating to the security of Citizens' technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or
- Physical or virtual security information that relates to Citizens' existing or proposed I.T. systems.

The bill also maintains the public meeting exemption for portions of a public meeting that would reveal such information. The bill specifically allows the Auditor General, the Cybercrime Office of FDLE, and OIR to access records relating to risk assessments, evaluations, audits, and other reports of Citizen's cybersecurity program for its data, information, and I.T. resources.

Lastly, the bill removes the scheduled repeal of the public record exemption.

B. SECTION DIRECTORY:

Section 1 amends s. 627.352, F.S., relating to security of data and information technology of Citizens Property Insurance Corporation.

Section 2 provides an effective date of October 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

[28] *Id.*
[29] *Id.*

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not require rulemaking nor confer or alter an agency's rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.