

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GAP 09-03 OGSR Building Plans and Blueprints

SPONSOR(S): Governmental Affairs Policy Committee

TIED BILLS: **IDEN./SIM. BILLS:** SB 754

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Governmental Affairs Policy Committee	10 Y, 0 N	Williamson	Williamson
1)	_____	_____	_____	_____
2)	_____	_____	_____	_____
3)	_____	_____	_____	_____
4)	_____	_____	_____	_____
5)	_____	_____	_____	_____

SUMMARY ANALYSIS

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 building plans, blueprints, schematic drawings, and diagrams depicting the internal layout or structural elements of an attractions and recreation facility, an entertainment or resort complex, an industrial complex, a retail and service development, an office development, or a hotel or motel development. The exempt blueprints, plans and drawings may be disclosed under certain circumstances.

The bill reenacts the public record exemption, which will repeal on October 2, 2009, if this bill does not become law. It also reorganizes the exemption and makes editorial changes.

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

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ 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.

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:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects 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.
- Protects trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.² 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 created³ then a public necessity statement and a two-thirds vote for passage are not required.

Public Record Exemption for Agency Buildings

Current law provides a public record exemption for building plans, blueprints, schematic drawings, and diagrams depicting the internal layout and structural elements of a building, arena, stadium, water

¹ Section 119.15, F.S.

² Section 24(c), Art. I of the State Constitution.

³ An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

treatment facility, or other structure owned or operated by an agency^{4,5}. The exemption does not apply to building plans, blueprints, schematic drawings, or diagrams of a privately owned building.

Public Record Exemption under Review

In 2004, the Legislature enacted a public record exemption⁶ for building plans, blueprints, schematic drawings, and diagrams depicting the internal layout or structural elements of:

- An attractions and recreation facility;⁷
- An entertainment or resort complex;⁸
- An industrial complex;⁹
- A retail and service development;¹⁰
- An office development;¹¹ or
- A hotel or motel development.¹²

The exempt¹³ blueprints, plans and drawings may be disclosed to another governmental entity for the performance of its duties and responsibilities, to the owner or owners of the structure or the owner's legal representative, or upon a showing of good cause.

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2009, unless reenacted by the Legislature.

⁴ Section 119.011(2), F.S., defines "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 this chapter, 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."

⁵ Section 119.071(3)(b), F.S.

⁶ Section 119.071(3)(c), F.S.; Chapter 2004-9, L.O.F.

⁷ Section 119.071(3)(c)1., F.S., defines "attractions and recreation facility" to mean:

[A]ny sports, entertainment, amusement, or recreation facility, including, but not limited to, a sports arena, stadium, racetrack, tourist attraction, amusement park, or pari-mutuel facility that:

a. For single-performance facilities:

- (I) Provides single-performance facilities; or
- (II) Provides more than 10,000 permanent seats for spectators.

b. For serial-performance facilities:

- (I) Provides parking spaces for more than 1,000 motor vehicles; or
- (II) Provides more than 4,000 permanent seats for spectators.

⁸ "Entertainment or resort complex" means "a theme park comprised of at least 25 acres of land with permanent exhibitions and a variety of recreational activities, which has at least 1 million visitors annually who pay admission fees thereto, together with any lodging, dining, and recreational facilities located adjacent to, contiguous to, or in close proximity to the theme park, as long as the owners or operators of the theme park, or a parent or related company or subsidiary thereof, has an equity interest in the lodging, dining, or recreational facilities or is in privity therewith. Close proximity includes an area within a 5-mile radius of the theme park complex." Section 119.071(3)(c)2., F.S.

⁹ "Industrial complex" means any industrial, manufacturing, processing, distribution, warehousing, or wholesale facility or plant, as well as accessory uses and structures, under common ownership that provides onsite parking for more than 250 motor vehicles, encompasses 500,000 square feet or more of gross floor area, or occupies a site of 100 acres or more, but excluding wholesale facilities or plants that primarily serve or deal onsite with the general public. Section 119.071(3)(c)3., F.S.

¹⁰ "Retail and service development" means any retail, service, or wholesale business establishment or group of establishments that deals primarily with the general public onsite and is operated under one common property ownership, development plan, or management that encompasses more than 400,000 square feet of gross floor area or provides parking spaces for more than 2,500 motor vehicles. Section 119.071(3)(c)4., F.S.

¹¹ "Office development" means "any office building or park operated under common ownership, development plan, or management that encompasses 300,000 or more square feet of gross floor area." Section 119.071(3)(c)5., F.S.

¹² "Hotel or motel development" means "any hotel or motel development that accommodates 350 or more units." Section 119.071(3)(c)6., F.S.

¹³ 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 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 the statutory exemption. (*See* Attorney General Opinion 85-62, August 1, 1985)

EFFECT OF BILL

The bill removes the repeal date, thereby reenacting the public record exemption. It also reorganizes the exemption and makes editorial changes.

B. SECTION DIRECTORY:

Section 1 amends s. 119.071(3)(c), F.S., to reenact the public record exemption for building plans and blueprints held by an agency.

Section 2 repeals s. 2 of chapter 2004-9, L.O.F., which provides for repeal of the exemption.

Section 3 provides an effective date of October 1, 2009.

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.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

None.