

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB OTA 18-10 Pub. Rec./Disaster Response
SPONSOR(S): Oversight, Transparency & Administration Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Oversight, Transparency & Administration Subcommittee	13 Y, 0 N	Toliver	Harrington

SUMMARY ANALYSIS

The Division of Emergency Management (DEM) is established in the Executive Office of the Governor to serve as the state's emergency management agency. The State Emergency Management Act directs DEM to oversee and manage emergency preparedness, response, recovery, and mitigation programs in Florida. DEM is required to prepare a state comprehensive emergency management plan (CEMP) that must be integrated into, and coordinated with, the emergency management plans of the Federal Government. The CEMP must include a shelter component with specific planning provisions and the CEMP must promote shelter activity coordination between the public, private, and nonprofit sectors. Public shelters are not required to gather personal information on shelter residents, however, nothing in law prevents the collection of such information. Shelters that collect personal information on their residents may do so to have an accurate accounting of all persons staying within or to locate family members for the purpose of family reunification. Current law does not provide a public record exemption for the identification and location information for persons staying in a shelter during an emergency.

The Robert T. Stafford Disaster Relief and Emergency Assistance Act allows a state to collect monetary assistance from the federal government in the event that an emergency "situation is of such severity and magnitude that [an] effective response is beyond the capabilities of the State and the affected local governments." To receive funding, the Governor must request from the President of the United States a declaration that an emergency exists (Stafford declaration). As a part of the request, the Governor must submit information that describes the state and local efforts and resources which have been or will have to be used to alleviate the emergency as well as define the type and extent of federal aid required. The request for a Stafford declaration also must include preliminary damage assessment information obtained by the state or local government. The damage assessment information could include such personal information as the name, address, and telephone number of the residents of a damaged structure. Current law does not provide a public record exemption for damage assessment information submitted to a state or local agency.

The bill creates a public record exemption for certain personal information collected by public shelters during emergencies. Specifically, the bill provides that the name, address, and telephone number of a person using a public shelter during an emergency is exempt from public records requirements. The bill also creates a public record exemption for the name, address, and telephone number of a homeowner or tenant held by an agency for the purpose of providing damage assessment data following a disaster. The information remains exempt from disclosure for one year following the date of the disaster.

The bill provides that the exemptions are subject to the Open Government Sunset Review Act and will repeal October 2, 2023, unless the Legislature reviews and reenacts the exemptions by that date.

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

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates public record exemptions; thus, it requires a two-thirds vote for final passage

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED 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.¹ The Legislature, however, may provide by general law for the exemption of records from the constitutional requirement.² 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.³ A bill enacting an exemption must pass by a two-thirds vote of the members present and voting.⁴

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 Act⁵ provides that a public record 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 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.⁶

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October 2 of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.⁷

Public Shelters

The Division of Emergency Management (DEM) is established in the Executive Office of the Governor to serve as the state's emergency management agency.⁸ The State Emergency Management Act⁹ directs DEM to oversee and manage emergency preparedness, response, recovery, and mitigation programs in Florida.

DEM currently manages a program for surveying existing public and private buildings, with the owner's written agreement, to identify which facilities are appropriately designed and located to serve as shelters in the event of an emergency.¹⁰ Public facilities, including schools, post-secondary education facilities, and other facilities owned or leased by the state or local governments, but excluding hospitals

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(c).

³ *Id.*

⁴ *Id.*

⁵ Section 119.15, F.S.

⁶ Section 119.15(6)(b), F.S.

⁷ Section 119.15(3), F.S.

⁸ Section 14.2016, F.S.

⁹ Section 252.31, F.S., through s. 252.60, F.S., are known as the State Emergency Management Act. Section 252.31, F.S.

¹⁰ Section 252.385(2)(a), F.S.

or nursing homes, which are suitable for use as public hurricane evacuation shelters must be made available at the request of the local emergency management agencies.¹¹

DEM is required to prepare a state comprehensive emergency management plan (CEMP) that must be integrated into, and coordinated with, the emergency management plans of the Federal Government.¹² The CEMP¹³ must include a shelter component, the Statewide Emergency Shelter Plan (plan),¹⁴ with specific planning provisions and the CEMP must promote shelter activity coordination between the public, private, and nonprofit sectors.¹⁵ The plan must include the following:

- Contain strategies to ensure the availability of adequate shelter space in each region of the state;
- Establish strategies for refuge-of-last-resort programs;
- Provide strategies to assist local emergency management efforts to ensure that adequate staffing plans exist for all shelters, including medical and security personnel;
- Provide for a postdisaster communications system for public shelters;
- Establish model shelter guidelines for operations, registration, inventory, power generation capability, information management, and staffing; and
- Set forth policy guidance for sheltering people with special needs.¹⁶

The plan must be prepared and submitted to the Governor and Cabinet each even-numbered year.¹⁷ The plan, among other requirements, must identify the location and square footage of existing shelters as well as shelters needed in the next five years.¹⁸ The plan must also identify the types of public facilities that should be constructed to comply with emergency-shelter criteria and must recommend an appropriate and available source of funding for the additional cost of constructing emergency shelters within these public facilities.¹⁹

Public shelters are not required to gather personal information on shelter residents, however, nothing in law prevents the collection of such information. Shelters that collect personal information on their residents may do so to have an accurate accounting of all persons staying within or to locate family members for the purpose of family reunification. While no public record exemption for this information exists, the plan states that shelter staff members should “abide by principles of confidentiality.”²⁰

Damage Assessments

Congress, in order “to provide an orderly and continuing means of assistance by the Federal Government to State and local governments in carrying out their responsibilities to alleviate the suffering and damage which result from ... disasters,”²¹ passed the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act).²² The Stafford Act allows the Federal Emergency

¹¹ Section 252.385(4)(a), F.S.

¹² Section 252.35(2)(a), F.S. ; *see also* s. 1013.372, F.S.

¹³ FLA. ADMIN. CODE R. 27P-2.002, incorporates the CEMP by reference; *See* Comprehensive Emergency Management Plan, Division of Emergency Management, available at <https://www.floridadisaster.org/globalassets/importedpdfs/2014-state-cemp-basic-plan.pdf> (last visited February 2, 2018).

¹⁴ 2018 Statewide Emergency Shelter Plan, DIVISION OF EMERGENCY MANAGEMENT, available at <https://www.floridadisaster.org/globalassets/dem/response/sesp/2018/2018-sesp-entire-document.pdf> (last visited February, 4, 2018).

¹⁵ Section 252.35(2)(a)2., F.S.

¹⁶ *Id.*

¹⁷ Section 1013.372(2), F.S.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ 2018 Statewide Emergency Shelter Plan, DIVISION OF EMERGENCY MANAGEMENT, App’x F., pg. F-2, available at <https://www.floridadisaster.org/globalassets/dem/response/sesp/2018/2018-sesp-entire-document.pdf> (last visited February, 4, 2018).

²¹ 42 U.S.C. s. 5121(b).

²² P.L. 100-707 (1988).

Management Agency (FEMA) to promulgate rules and regulations to carry out its provisions.²³ FEMA regulations under the Stafford Act, for instance, require that each state create an emergency plan.²⁴

The Stafford Act allows a state to collect monetary assistance from the federal government in the event that an emergency “situation is of such severity and magnitude that [an] effective response is beyond the capabilities of the State and the affected local governments.”²⁵ To receive funding, the Governor, on behalf of the state or on behalf of certain localities, must request from the President of the United States a declaration that an emergency exists (Stafford declaration).²⁶ As a part of the request, and as a prerequisite to emergency assistance, the Governor is required to take appropriate action under state law and direct execution of the State’s emergency plan.²⁷ The Governor must submit information that describes the state and local efforts and resources which have been or will have to be used to alleviate the emergency as well as define the type and extent of federal aid required.²⁸ FEMA has created a detailed process by which the information that must accompany a Governors’ request for a Stafford declaration is obtained and verified.²⁹

In brief, the process for obtaining and verifying the information that must accompany a request for a Stafford declaration is as follows:

- *Preassessment*: The local government collects preliminary damage assessment (PDA) information within its jurisdiction and then submits the information to the State;³⁰
- *Verification by the State*: The information provided by the local government is verified by the State to ensure that it “is complete and consistent with programmatic assessment criteria”;³¹
- *Joint PDA*: The Director of the State Emergency Management Agency³² requests a joint PDA and state officials work jointly with FEMA officials on damage assessment field teams to validate the state’s PDA information;³³
- *Recommendation to the Governor*: Once the Joint PDA is completed, the State’s emergency managers review the validated information and then make a recommendation to the Governor on whether a request for a Stafford declaration is necessary.³⁴

If the Governor decides to request a Stafford declaration from the President, he or she must submit the request through the FEMA Regional Administrator.³⁵ Based upon the Governor’s request, the President may declare that an emergency exists in a state or a region of a state.³⁶ Once a Stafford declaration is signed by the President, FEMA may then begin allocating funds to the state or local governments.

The damage assessment information collected or created by the state or local government to aid in the process of obtaining federal aid could include such personal information as the name, address, and

²³ 42 U.S.C. s. 5164.

²⁴ 44 C.F.R. s. 206.4. Florida has, through its Division of Emergency Management, created a state comprehensive emergency management plan. Section 252.35(2)(a), F.S.; *see also* Comprehensive Emergency Management Plan, DIVISION OF EMERGENCY MANAGEMENT, available at <https://www.floridadisaster.org/globalassets/importedpdfs/2014-state-cemp-basic-plan.pdf> (last visited February 5, 2018).

²⁵ 42 U.S.C. s. 5191(a).

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ 44 C.F.R. ss. 206.31-206.48.

³⁰ 44 C.F.R. s. 206.33(a).

³¹ Damage Assessment Operations Manual, FEMA, pg. 5, available at <https://www.fema.gov/media-library-data/1459972926996-a31eb90a2741e86699ef34ce2069663a/PDAManualFinal6.pdf> (last visited February 5, 2018).

³² In Florida, this would be the Director of the Division of Emergency Management. Section 14.2016(1), F.S.

³³ 44 C.F.R. s. 206.33(b), F.S.

³⁴ Damage Assessment Operations Manual, FEMA, pg. 7, available at <https://www.fema.gov/media-library-data/1459972926996-a31eb90a2741e86699ef34ce2069663a/PDAManualFinal6.pdf> (last visited February 5, 2018).

³⁵ 44 C.F.R. ss. 206.35(a) and 206.36(a).

³⁶ 42 U.S.C. s. 5191(a).

telephone number of the residents of a damaged structure. Current law does not provide a public record exemption for damage assessment information submitted to a state or local agency.

Effect of the Bill

The bill creates a public record exemption for certain personal information collected by public shelters during emergencies. Specifically, the bill provides that the name, address, and telephone number of a person using a public shelter during an emergency is exempt³⁷ from public records requirements. The bill provides a public necessity statement as required by the Florida Constitution. The statement asserts that persons using a shelter, having been displaced from their residences and possessions, are in a vulnerable state. Information given to a shelter could be used by persons seeking to take advantage their vulnerability. In addition, the statement provides that a person seeking shelter for their safety and the safety of their families should not be forced to forfeit their privacy for such safety.

The bill also creates a public record exemption for the name, address, and telephone number of a homeowner or tenant held by an agency for the purpose of providing damage assessment data following a disaster. The information remains exempt from disclosure for one year following the date of the disaster. The bill provides a public necessity statement as required by the Florida Constitution. The statement provides that, in response to a disaster, an agency may ask residents to submit damage assessment data or the agency may itself create such data to ascertain the damage to certain areas. The information could, if released, be used by thieves, predatory lenders, deceptive contractors, or persons otherwise seeking to take advantage of an affected homeowner's or tenant's vulnerability following a disaster.

The bill provides that the exemptions are subject to the Open Government Sunset Review Act and will repeal October 2, 2023, unless the Legislature reviews and reenacts the exemption by that date.

B. SECTION DIRECTORY:

Section 1 amends s. 252.385, F.S., relating to public shelter space.

Section 2 creates s. 252.64, F.S., relating to a public records exemption for damage assessments.

Section 3 provides a public necessity statement as required by the Florida Constitution

Section 4 provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

³⁷ There is a difference between records the Legislature designates 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).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to 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.

2. Other:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record exemption. The bill creates public record exemptions; thus it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record exemption. The bill creates public record exemptions; therefore, it includes a public necessity statement.

Breadth of Exemption

Article I, section 24(c) of the Florida Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. This bill creates a public record exemption for certain personal information collected from residents of a public shelter and its purpose is to protect the vulnerable residents from potential predatory behavior caused by the release of such information. This bill also creates a public record exemption for certain personal information of a person held by an agency for the purpose of providing damage assessment data. The purpose of the exemption is to protect persons made vulnerable due to a disaster from actors who might use the information maliciously. As such, the bill appears to be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.