



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |                                         |
|--------------------------------------|------------------------------|-----------------------------|-----------------------------------------|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

Not applicable.

#### B. EFFECT OF PROPOSED CHANGES:

##### Background

Current law provides a public records exemption for building plans, blueprints, schematic drawings, and diagrams of buildings or other structures that depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure owned or operated by a government agency. Exceptions to the exemption are provided.<sup>1</sup> Current law does not, however, provide a public records exemption for such information regarding a privately owned building or structure when such information is held by an agency.

State and local governments often times have copies of such information regarding privately owned buildings and structures. A local government might have such information for purposes of issuing a building permit. The Department of Environmental Protection might have such information if a company maintains hazardous chemicals on its property.

##### Effect of Bill

HB 317 with CS creates a public records exemption for building plans, blueprints, schematic drawings, and diagrams depicting the internal layout or structural elements of:

- Attractions and recreation facilities,
- Entertainment/resort complexes,
- Industrial complexes,
- Retail and service developments,
- Office developments, or
- Hotel or motel developments.

Drafts, preliminary, and final formats are included within the exemption.

HB 317 with CS provides for exceptions to the exemption. Such information may be released:

- To another governmental entity if disclosure is necessary for such entity to perform its duties and responsibilities;
- The owner of the structure in question or the owner's legal representative; or
- Upon a showing of good cause before a court of competent jurisdiction.

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<sup>1</sup> Section 119.07(3)(ee), F.S.

This exemption does not apply to comprehensive plans or site plans, or amendments thereto, submitted for approval or that have been approved under local land development regulations, local zoning regulations, or development-of-regional-impact review.

HB 317 with CS provides definitions of “attractions and recreation facility”, “entertainment/resort complex”, “industrial complex”, “retail and service development”, “office development”, and “hotel or motel development”. It provides for future review and repeal and retroactive application of the exemption, and provides a statement of public necessity.

This exemption is necessary for purposes of ensuring public safety. Such information is a vital component of public safety and allowing public access could increase the ability of persons to inflict harm on persons located in or utilizing those facilities, developments, or structures.

C. SECTION DIRECTORY:

Section 1 amends s. 119.07(3)(ff), F.S., creating a public records exemption for building plans, blueprints, schematic drawings, and diagrams of certain privately owned facilities; provides exceptions to the exemption; and provides definitions of certain facilities.

Section 2 provides for future review and repeal of the exemption.

Section 3 provides a statement of public necessity.

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. HB 317 with CS does not create, modify, or eliminate a revenue source.

2. Expenditures:

Unknown and likely minimal. See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. HB 317 with CS does not create, modify, or eliminate a revenue source.

2. Expenditures:

Unknown and likely minimal. See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None. HB 317 with CS does not regulate the conduct of persons in the private sector.

D. FISCAL COMMENTS:

The public records law in general creates a significant, although unquantifiable, increase in government spending. Government employees must locate requested records, and must examine every requested record to determine if a public records exemption prohibits release of the record. There is likely no

marginal fiscal impact to a single public records exemption; the location and examination process remains whether or not a particular public records exemption exists.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

HB 317 with CS does not appear to be a mandate requiring a supermajority vote.

##### 2. Other:

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. Thus, HB 317 with CS requires a two-thirds vote for passage.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

##### **Public Records Law**

Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature may, however, provide by general law for the exemption of records from the requirements of Article I, s. 24(a), Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act of 1995<sup>2</sup> provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. Protecting 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; or, 3. Protecting trade or business secrets.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 16, 2004, the Committee on State Administration reported HB 317 favorably with CS. HB 317 created a public records exemption for the internal and external layout of a building plan, blueprint, schematic drawing, or diagram of an attractions and recreation facility, entertainment/resort complex, industrial complex, retail and service development, office development, or hotel or motel development. HB 317 with CS only exempts the internal layout of such structures. Additionally, HB 317 with CS provides that the exemption does not apply to comprehensive plans or site plans, or amendments thereto, which are submitted for approval or which have been approved under local land development regulations, local zoning regulations, or development-of-regional-impact review.

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<sup>2</sup> Section 119.15, F.S.