

STORAGE NAME: h0511a.ca

DATE: March 30, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
COMMUNITY AFFAIRS
ANALYSIS**

BILL #: HB 511

RELATING TO: Public Records

SPONSOR(S): Representative Logan

COMPANION BILL(S): SB 180 (s), HB 499 (c), HB 621 (c), SB 178 (c)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) UTILITIES AND COMMUNICATIONS YEAS 10 NAYS 0
- (2) COMMUNITY AFFAIRS YEAS 10 NAYS 0
- (3) GOVERNMENTAL OPERATIONS
- (4) GENERAL GOVERNMENT APPROPRIATIONS
- (5)

I. SUMMARY:

The bill provides that specified forms of information obtained by a public agency, public safety agency, or county for the purposes of providing services in an emergency is confidential and exempt from the public records law. Specifically, information (or a portion thereof) is confidential and exempt if it would reveal the name, address, or telephone number of, or personal information about, or may identify any person who requests emergency service, or who reports an emergency by accessing an enhanced 911 (E911) telephone system. However, such information may be disclosed to a public safety agency and the exemption applies only while such information is in the custody of the public agency, public safety agency, or public service answering point (PSAP) that receives the initial E911 telephone call.

The bill provides that all proprietary and confidential information submitted by a wireless telecommunications provider to the board (created by HB 621) or to the Department of Management Services, is exempt from the provisions of law. This exemption includes names and addresses of wireless service subscribers and trade secrets. Statistical abstracts may be released but only in a manner that does not identify or allow identification of subscribers, their service numbers, or revenues attributable to any wireless provider.

The bill defines "proprietary information" to mean customer lists and related information, technology descriptions, technical information, trade secrets, and the actual or developmental costs of E911 systems that are developed, produced, or received internally by a provider or its employees, directors, officers, or agents.

The bill provides that the exemptions are subject to the Open Government Sunset Review Act of 1995 and will stand repealed on October 1, 2004, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill provides that the exemption from public records law provided by the act "promotes the unrestrained use of E911 services to provide expedited medical and law enforcement services to persons in need of emergency assistance" and that the proprietary information exemption is necessary "to foster competition in the wireless telecommunications services industry and to protect the competitive interests of the providers of such information."

The bill is to take effect on the same date that HB 621 or similar legislation relating to wireless E911 service takes effect if such legislation is adopted this session or during an extension of this session.

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

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Public Records Law

Article I, section 24(a), Florida Constitution, expresses Florida's public policy regarding access to government records. This section provides that:

Every person has the right to inspect or copy any public records made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Article I, section 24, Florida Constitution, also provides that the Legislature may, by general law, exempt public records from the requirements of section 24(a). Such a general law exempting records from public disclosure must state with specificity the public necessity justifying the exemption and can be no broader than necessary to accomplish the stated purpose of the law.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07, F.S., provides:

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at a reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, states that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than necessary to meet that public purpose. An identifiable public purpose is served if the exemption meets one of the following purposes, and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and that such purpose cannot be accomplished without the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted;
or
3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

Exemptions are analyzed using the following definition of public necessity: A public necessity justifying an exemption exists when, after considering the public good served by access to the record or meeting and the public or private harm that could be caused by allowing or denying access to the record or meeting, it is determined that the presumption in favor of open records and meetings is overcome because the public's interests are best served by denying access in whole or in part to the record or meeting; and, access is denied to as little of the record or meeting as is practicable.

Emergency 911 Services

Existing subsection 365.171(15), F.S., provides that specified information about any person requesting emergency service or reporting an emergency by calling "911" is confidential.

HB 621 has been filed to address the funding of wireless E911 service within Florida in compliance with Federal Communications Commission (FCC) standards adopted in FCC Docket Number 94-102. HB 621 anticipates the collection of information about wireless providers and their customers that is necessary to fund E911 service. HB 621 also anticipates the electronic delivery of information about customers necessary to provide E911. Because this information will be collected and processed by government entities, absent a public records exemption, it will subject to be public disclosed pursuant to s. 24, art. I of the Florida Constitution and s. 119.07, F.S.

B. EFFECT OF PROPOSED CHANGES:

The bill provides that information obtained by a public agency, public safety agency, or county for the purposes of providing services in an emergency will be confidential and exempt from subsection 119.07(1), F.S., and s. 24(a), art. I of the Florida Constitution .

Specifically, any record, recording, or information or portion thereof is confidential and exempt if it would reveal the name, address, telephone number, personal information, or information that may identify the person who requests emergency service or who reports an emergency by accessing an enhanced 911 telephone system.

However, such information may be disclosed to a public safety agency. The exemption applies only while such information is in the custody of the public agency, public safety agency, or PSAP that receives the initial E911 telephone call.

All proprietary and confidential information submitted by a wireless provider to the board (created by HB 621) or to the Department of Management Services will be confidential and exempt from the disclosure requirements of subsection 119.07 (1), F.S. and s. 24(a), art. I of the Florida Constitution. The exemption will include names and addresses of subscribers, and trade secrets. Statistical abstracts may be released but only in a manner that does not identify or allow identification of subscribers, their service numbers, or revenues attributable to any wireless provider.

Proprietary information will mean customer lists and related information, technology descriptions, technical information, trade secrets, and the actual or developmental costs of E911 systems that are developed, produced, or received internally by a provider or its employees, directors, officers, or agents.

The exemption will be subject to the Open Government Sunset Review Act of 1995, and will stand repealed on October 1, 2004, unless reviewed and saved from repeal through reenactment by the Legislature.

The exemption from public records law is determined to be necessary to promote "the unrestrained use of E911 services to provide expedited medical and law enforcement services to persons in need of emergency assistance." The proprietary information exemption is determined to be necessary "to foster competition in the wireless telecommunications services industry and to protect the competitive interests of the providers of such information."

The exemption will take effect on the same day that HB 621 or other substantive legislation on wireless E911 takes effect, provided such legislation passes this session or in an extension of this session.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

Yes. Individuals will not have access to certain public records.

b. If an agency or program is eliminated or reduced:

An agency or program is not eliminated or reduced.

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

Yes. Individuals will not have access to certain public records.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes. By exempting certain information from public records laws, the bill will promote the unrestrained use of E911 services to provide expedited medical and law enforcement services to persons in need of emergency assistance; and would foster competition in the wireless telecommunications services industry and protect the competitive interests of the providers of such information.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes. Individuals will not have access to certain public records.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

The bill does not purport to provide services to families or children.

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

The bill does not create or change a program providing services to families or children.

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Creates s. 365.174, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Refer to section B. EFFECT OF PROPOSED CHANGES.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of state tax shared with counties or municipalities.

V. COMMENTS:

Comments by the Committee on Utilities and Communications

Article I, section 24(c) of the Florida Constitution requires that exemptions to the constitutional right to inspect public records may be created by general law provided that the "law must state with specificity the public necessity justifying the exemption" and that the exemption must "be no broader than necessary to accomplish the stated purpose of the law." Based on a literal reading, the "necessity" language in the bill applies to proprietary information about providers but not to information about those calling E911 for emergency assistance.

The bill exempts proprietary and confidential information submitted by a provider to the board administering the program. The bill defines "proprietary" but does not define "confidential." Because the Florida Constitution requires that exemptions be no broader than required to accomplish the legislative finding of necessity, failure to define "confidential" may be viewed by a court as resulting in an overly broad exemption. See e.g., *Halifax Hospital Medical Center v. News-Journal Corporation*, Case No. 92,047 (January 21, 1999, Fla.) (Holding a statute containing an exemption to be unconstitutional for failure to define "critical and confidential" when those terms were used to describe information that was to be protected from public disclosure. In reaching its decision the Florida Supreme Court reasoned that "in enacting exemptions to Florida's public disclosure laws, the legislature has an express constitutional obligation to tailor such an exemption so that is it no broader than necessary to accomplish the exemptions stated purpose.")

The bill has a blank reference to the substantive Wireless E911 bill that should be amended to reference HB 621.

Comments by the Committee on Community Affairs

Subsection 365.171(15), F.S., already provides a public records exemption for certain information about any person who requests emergency 911 services. Nothing in that subsection, nor in the entire Florida Emergency Telephone Act, makes a distinction between callers using traditional landlines and callers using wireless technology. Consequently, the provision in the bill regarding a public record exemption for wireless emergency 911 callers seems unnecessary.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 17, 1999, the Committee on Utilities and Communications adopted a title amendment which made a cross-reference to HB 621, the substantive bill upon which this bill's effective date is contingent. This reference was included in the substitute amendment adopted by the Community Affairs Committee.

At its meeting on March 30, 1999, the Committee on Community Affairs adopted a substitute amendment. The amendment differs from the bill as introduced, as follows:

Section 1: Creates section 365.174, creating a public records exception for proprietary confidential business information, as follows:

- Provides that all proprietary confidential business information submitted by a provider to the board or the department, including the name and billing or service addresses of service subscribers, and trade secrets, as defined by statute, is confidential and exempt from certain public records law and the State Constitution.
- Provides that statistical abstracts of information collected by the board or the department may be released or published, but only in a manner that does not identify or allow identification of subscribers or their service numbers or of revenues attributable to any provider.
- Provides that "proprietary confidential business information", as used in this section, means customer lists, customer numbers, and other related information, technology descriptions, technical information, or trade secrets, including trade secrets, as defined in law, and the actual or development costs of E911 systems that are developed, produced, or received internally by a provider or by a provider's employees, directors, officers, or agents.
- Provides that this section is subject to the Open Government Sunset Review Act of 1995, in accordance with certain public records law, and must stand repealed on October 1, 2004, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2: States, as follows:

- States that it is a public necessity that trade secret information and proprietary confidential business information be kept confidential when held by the board or the department pursuant to their authority under certain laws.
- States that disclosure of trade secret or proprietary confidential business information in an agency's possession would negatively impact the business interest of those providing an agency such information by damaging them in the marketplace, and those entities and individuals disclosing such trade secret or proprietary confidential business information would hesitate to cooperate with that agency, which would impair the effective and efficient administration of governmental functions.
- States that disclosure of trade secret or proprietary confidential business information would impair competition in the wireless telecommunications service industry.
- States that the public and private harm in disclosing trade secret or proprietary confidential business information significantly outweighs any public benefit derived from disclosure, and the

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public's ability to scrutinize and monitor agency action is not diminished by nondisclosure of trade secret or proprietary confidential business information.

Section 3: Provides that this act takes effect on the same date as House Bill 621 or similar legislation, relating to wireless emergency 911 telephone service, takes effect, if such legislation is adopted in the same legislative session or extension of the legislative session.

VII. SIGNATURES:

COMMITTEE ON UTILITIES AND COMMUNICATIONS:

Prepared by:

Staff Director:

Charles Murphy

Patrick L. "Booter" Imhof

AS REVISED BY THE COMMITTEE ON COMMUNITY AFFAIRS:

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