

STORAGE NAME: h1437.ric.doc
DATE: April 13, 2001

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE
COUNCIL FOR READY INFRASTRUCTURE
ANALYSIS**

BILL #: HB 1437
RELATING TO: Public Records/Communication Systems
SPONSOR(S): Representative Ball
TIED BILL(S): None

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

- (1) INFORMATION TECHNOLOGY 9 YEAS 0 NAYS
 - (2) STATE ADMINISTRATION 5 YEAS 0 NAYS
 - (3) COUNCIL FOR READY INFRASTRUCTURE
 - (4)
 - (5)
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I. SUMMARY:

The bill amends s. 119.07, F.S. It adds paragraph (dd) to subsection (3) of s. 119.07, F.S., to exempt from public record laws technical information pertaining to trunking radio communications systems and mobile data communications systems used by state, county and local government that would allow unauthorized persons to gain transmit access to, or monitor encrypted or privileged communications over such systems.

Information specifically protected includes system trunking format data, mobile data terminal information, coded radio identification information, information pertaining to internal system structuring, system keys, encryption codes used to facilitate secure communications, and control channel format information.

This bill also adds legislative intent language relating to the public necessity for this public records exemption.

Please see "Other Comments" section for comments by the Committee on State Administration.

On April 12, 2001, the Committee on State Administration reported the bill favorably with one amendment. The amendment is traveling with the bill.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

The bill would decrease the freedom of unauthorized individuals to access certain public communications systems and to monitor encrypted or privileged communications by offices or employees of affected agencies.

B. PRESENT SITUATION:

Trunking radio systems are wireless two-way radio communications systems. 'Trunking' is a technique where more radio users can communicate on fewer frequencies. Rather than having a dedicated frequency for each channel on a radio system, trunked systems can use any frequency in a range for any channel. A range of frequencies usually consists of anywhere from 5 to 30 frequencies. Thus, each time a person communicates on a trunked system, they may be communicating on a different frequency within the specified range.

Law enforcement agencies are the primary user of government trunking radio systems. In order to protect the security of the data that is transmitted by these systems, frequencies are often restricted for use exclusively by law enforcement. Additionally, data transmitted on these frequencies is often encrypted to prevent perpetrators from monitoring law enforcement communications to prevent capture. Presumably, the technical information regarding the makeup and encryption formulae for these trunking radio systems is classified as a public record and capable of being distributed to citizens upon making a proper public records request.

Currently, there is no public records exemption for the disclosure of technical information pertaining to trunking radio communications systems and mobile data communications systems used by governmental agencies. Disclosure of such information as a public record could risk the interception of information carried on these systems. This interception could be used by individuals for the purpose of facilitating crimes or hindering governmental services.

C. EFFECT OF PROPOSED CHANGES:

The bill would make technical information pertaining to trunking radio communication systems and mobile data communications systems used by governmental entities both confidential and exempt from disclosure as a public record.

The bill does not currently define what information would constitute 'technical information.' Presumably, encryption formulae, the devices used and other information about the makeup of the system would be excluded from disclosure as a public record.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: The bill amends s. 119.07, F.S., to exempt from Florida public records laws all technical information relating to trunking radio communications systems and mobile data communications systems used by governmental entities.

Section 2: This section provides legislative intent for the public records exemption detailed in Section 1. Section 2 states that public disclosure of technical information related to trunking radio systems and mobile data communications systems creates a risk that the technical information could be used by persons wishing to use information transmitted over these systems to facilitate the commission of a crime, to evade capture, or to otherwise frustrate essential governmental services.

Section 3: This section provides that the bill shall take effect upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any fiscal impact on state government revenues.

2. Expenditures:

The bill does not require state government to expend any funds.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any fiscal impact on local government revenues.

2. Expenditures:

The bill does not require local governments to expend any funds.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Under this bill, private parties would not be able to request technical information related to trunking radio communications systems and mobile data communications systems used by state, county and municipal governments. Many private sector entities use trunked radio systems. The bill would only prevent public disclosure of technical information about government trunked radio systems. The bill would not affect the ability of any private entity to use a trunked radio system.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill would not require local governments to expend funds or take any action that requires the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill would not reduce the revenue raising authority of any local government.

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

The bill would not reduce the total aggregate county or municipal percentage of state tax revenues.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

This bill provides for an exemption to public records laws. The Legislature, by virtue of Article I, Section 24 of the Florida Constitution, has the authority to create exemptions to public records law. Article I, Section 24 of the Constitution provides that any exemption from public records enacted by the legislature must state with specificity the public necessity justifying the exemption. The law is not permitted to be any broader than necessary to accomplish the public purpose. Section 2 of the bill appears to adequately state Legislative findings related to the public purpose of the exemption to satisfy the constitutional requirements.

B. RULE-MAKING AUTHORITY:

HB 1437 would neither grant rulemaking authority to any government entity nor require that any agency make rules pursuant to the bill.

C. OTHER COMMENTS:

Committee on State Administration

Public Records Law

Florida Constitution

Article I, s. 24(a), Florida Constitution, expresses Florida's public policy regarding access to government records as follows:

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, s. 24(c), Florida Constitution, does, however, permit the Legislature to provide by general law for the exemption of records from the requirements of s. 24. The general law must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish its purpose.

Florida Statutes

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07(1)(a), 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.

Open Government Sunset Review Act of 1995

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, provides that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. 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 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.

This bill raises a few concerns. This bill exempts "technical information" pertaining to trunking radio communications systems and mobile data communications systems used by state, county, and municipal government agencies. Technical information is not defined in the bill, but examples of "information" are provided. The public necessity statement finds that it is a public necessity that technical information be kept both confidential and exempt, whereas the bill only makes such technical information exempt from public disclosure.

The sponsor has filed a strike-everything amendment that appears to remediate these concerns.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The House Committee on Information Technology passed the bill on April 4, 2001 without amendment.

On April 12, 2001, the Committee on State Administration adopted one amendment to HB 1437. The amendment defines "technical information," and restructures and edits the public necessity statement. The bill was reported favorably with one amendment.

VII. SIGNATURES:

COMMITTEE ON HOUSE INFORMATION TECHNOLOGY:

Prepared by:

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Staff Director:

Charles Davidson

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