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DATE: December 4, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
SECURITY, SELECT
ANALYSIS**

BILL #: CS/SB 16-C

RELATING TO: Public Records/State Property/Security System Plans

SPONSOR(S): Senate Committee on Criminal Justice, Brown-Waite, and others

TIED BILL(S):

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

- (1) SECURITY, SELECT YEAS 11 NAYS 0
 - (2)
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

This bill expands and clarifies an existing exemption found in section 281.301, F.S., relating to the information on security systems for public and private property held by public agencies. This bill takes the language now found in section 281.301, F.S., an existing exemption to public record and meeting requirements, and recreates it in part as s. 119.071, relating to the public records exemption, and s. 286.0113, relating to the public meeting exemption.

This bill clarifies that documents relating to security system plans or portions of security system plans for any property owned or leased by the state or for any privately owned or leased property that is in the hands of a public agency are confidential and exempt from the public record requirements. The bill expands the listing of documents that would be included in a security system plan. Meetings relating to security system plans continue to be exempt from public meetings requirements.

As provided in the Open Government Sunset Review Act of 1995, this exemption would stand repealed October 2, 2006, unless reviewed and saved from repeal through reenactment.

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

The bill takes effect upon becoming law.

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 type="checkbox"/> | N/A <input checked="" 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:

B. PRESENT SITUATION:

Public Records and Public Meetings Laws

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.

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.

Regarding public meetings, Article I, s. 24(b), Florida Constitution, provides that

[a]ll meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public . . .

Florida Statutes, in s. 286.011, provide that

[a]ll meetings of any board or commission of any state agency or authority or of any agency or authority or any county, municipal corporation, or political subdivision, except

as otherwise provided in the Constitution at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

Article I, s. 24(c), Florida Constitution, does, however, permit the Legislature to provide by general law for the exemption of records and meetings 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.

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.

Chapter 281, Relating to Safety and Security Services

Section 281.301, F.S., provides that information relating to the security systems for any property owned by or leased to the state or any of its political subdivisions, and information relating to the security systems for any privately owned or leased property that is in the possession of any public agency, is confidential and exempt from the requirements of Chapter 119, F.S. Such information includes photographs, surveys, schematic diagrams, recommendations, or consultations or portions thereof relating directly to or revealing such systems.

C. EFFECT OF PROPOSED CHANGES:

This bill amends the language now found in section 281.301, F.S., an existing exemption to public record and meeting requirements, and recreates it in part as s. 119.071, relating to the public records exemption, and s. 286.0113, relating to the public meeting exemption.

The bill clarifies and makes explicit that security system plans or portions of security system plans of a public or private entity, which plans are in the possession of a public agency, are exempt and confidential. Additionally, the bill specifically defines the phrase "security system plan." Much of the definition is contained in the current law, though additions include: threat assessments, threat-response plans, emergency-evacuation plans, sheltering arrangements, or manuals for security personnel, emergency equipment, or security training. The exemption proposed in this bill is to be

remedial in nature, that is, it is to be applied to information, now in the hands of agencies, for which this exemption would otherwise be applicable. Additionally, the records being made exempt and confidential by this bill may be disclosed by the custodial agency to another state or federal agency to prevent, detect, guard against, respond to, or manage the consequences of any attempted or actual terrorist act or to prosecute persons for such attempts or acts and that the information shall retain its exempt and confidential status in the hands of the receiving agency.

Those portions of a meeting that would reveal a security-system plan or portion thereof made confidential by this bill continue to be exempt from the requirements for public meetings found in chapter 286, F.S.

As provided in the Open Government Sunset Review Act of 1995, this exemption would stand repealed October 2, 2006, unless reviewed and saved from repeal through reenactment.

The bill includes a legislative statement of public necessity for the recreation and expansion of this public record exemption and the recreation of the public meetings exemption.

The effective date of the bill is upon becoming law.

D. SECTION-BY-SECTION ANALYSIS:

Please see section II.c., above.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

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

B. REDUCTION OF REVENUE RAISING AUTHORITY:

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

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

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

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

Legislative History

This issue originated as House Bill 125-B, which was reported favorably with one amendment by the Select Committee on Security on October 29, 2001. The amendment was adopted and the bill passed the House on a 118-1 vote on October 30, 2001. It died in Senate Messages on November 1, 2001. Its companion, Senate Bill 62-B, died on the Senate calendar at the expiration of 2001 Special Session B.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON SECURITY, SELECT:

Prepared by:

Staff Director:

David M. Greenbaum

Thomas Randle/Richard Hixson