

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 16-C

SPONSOR: Criminal Justice Committee and Senators Brown-Waite and Smith

SUBJECT: Public Records - Security Plans

DATE: November 27, 2001      REVISED: \_\_\_\_\_

|    | ANALYST              | STAFF DIRECTOR | REFERENCE | ACTION              |
|----|----------------------|----------------|-----------|---------------------|
| 1. | <u>Erickson/Rhea</u> | <u>Cannon</u>  | <u>CJ</u> | <u>Favorable/CS</u> |
| 2. | _____                | _____          | _____     | _____               |
| 3. | _____                | _____          | _____     | _____               |
| 4. | _____                | _____          | _____     | _____               |
| 5. | _____                | _____          | _____     | _____               |
| 6. | _____                | _____          | _____     | _____               |

**I. Summary:**

The committee substitute creates in a new s. 119.071, F.S., an exemption currently contained in s. 281.301, F.S., that security system plans of a public or private entity, which *plans* are in the possession of an agency, are exempt. Additionally, the committee substitute specifically defines the phrase “security system plan.” The committee substitute also creates a public meetings exemption in a new s. 286.0113 for meetings at which these plans are discussed.

The committee substitute creates sections 119.071 and 286.0113, Florida Statutes.

**II. Present Situation:**

Florida has a long history of providing public access to the meetings and records of governmental and other public entities. The first law affording access to public records was enacted by the Florida Legislature in 1909. The Public Records Law<sup>1</sup> and the Public Meetings Law<sup>2</sup> specify the conditions under which public access must be provided to governmental records and meetings of the executive branch and other governmental agencies.

The Public Records Law states that, unless specifically exempted, all agency records are to be available for public inspection.<sup>3</sup> Section 119.011(1), F.S., defines “public records” to mean:

All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form,

<sup>1</sup> Chapter 119, F.S.

<sup>2</sup> Section 286.011, F.S.

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

characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

An “agency” is defined as “. . . any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”<sup>4</sup>

In November 1992, the public affirmed its approval of Florida’s tradition of “government in the sunshine” by enacting a constitutional amendment to guarantee the practice.<sup>5</sup> The amendment had the effect of including in the State Constitution provisions similar to those of the Public Meetings Law and the Public Records Law and of applying those provisions to all three branches of government.

The constitution authorizes the Legislature to create exemptions from public access requirements by general law. Any law that creates an exemption must state with specificity the public necessity that justifies the exemption and may be no broader than necessary to comport with the public necessity. A law that creates a public records or public meetings exemption is required by the constitution to relate only to exemptions and their enforcement.

Under the Public Records Act, provision is made for an accelerated hearing to enforce public access requirements. Whenever an action is filed to enforce the act, a court is required to set an immediate hearing, giving the case priority over other pending cases.<sup>6</sup> A court may not issue a stay unless it determines that there is a “substantial probability” that opening the records for inspection will result in significant damage.<sup>7</sup>

The Open Government Sunset Review Act of 1995,<sup>8</sup> ss. 119.15 and 286.0111, F.S., provides for the systematic repeal of exemptions to the Public Records Law and Public Meetings Law five years after creation of, or substantial modification to, the exemption. The 1995 law also provides criteria for the Legislature to consider prior to creating or reenacting an exemption. The act authorizes the creation or expansion of an exemption only if<sup>9</sup> the exemption:

- allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or

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<sup>4</sup> Section 119.011(2), F.S.

<sup>5</sup> Section 24, Art. I of the State Constitution.

<sup>6</sup> Section 119.11, F.S.

<sup>7</sup> Section 119.11(3), F.S.

<sup>8</sup> Sections 119.15 and 286.011, F.S.

<sup>9</sup> While s. 119.15, F.S., establishes standards for the creation, expansion or continuation of an exemption, the provision cannot limit the authority of the Legislature to create, expand or continue an exemption because one session of the Legislature may not bind a future session of the Legislature.

- protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.<sup>10</sup>

Section 281.301, F.S., currently provides that:

Information relating to the security plans for any property owned or leased by the state or any of its political subdivisions and information relating to the security systems for any privately owned or leased property which is in the possession of any agency as defined in s. 119.011(2), including. . . .

### III. Effect of Proposed Changes:

The committee substitute creates in a new s. 119.071, F.S., an exemption currently contained in s. 281.301, F.S., that security system plans of a public or private entity, which *plans* are in the possession of an agency, are exempt. Additionally, the committee substitute specifically defines the phrase “security system plan.” Much of the definition is contained in 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 committee substitute provides that the exemption is remedial and that it applies to all security system plans filed with an agency before, on, or after, the effective date of the committee substitute. The committee substitute also makes explicit that the confidential and exempt status travels with the record.

The committee substitute also creates in a new s. 286.0113, F.S., a public meetings exemption for those portions of a meeting that would reveal security-system plans or portions of those plans.

Both the public records exemption and the public meetings exemption must be reviewed by the Legislature and reenacted prior to October 2, 2006, or they will automatically be repealed.

The committee substitute also contains a statement of public necessity as required by the State Constitution. That statement notes that security plans are a vital component of public safety, whether public or private. It is noted that public safety does not include only physical safety, but many types of services on which the public relies, e.g., radio and television towers, power plants and grids, and so forth. Further, the statement explains the need for coordination of public and private plans to protect the public from terrorism and notes that public agencies need plans of private entities in order to review and coordinate security.

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<sup>10</sup> Section 119.15(4)(b), F.S.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.