

# 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 1182

SPONSOR: Governmental Oversight & Productivity Committee and Senator Dockery

SUBJECT: Public Records

DATE: April 1, 2003                      REVISED: \_\_\_\_\_

|    | ANALYST       | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|---------------|----------------|-----------|------------------|
| 1. | <u>Dodson</u> | <u>Skelton</u> | <u>HP</u> | <u>Favorable</u> |
| 2. | <u>Rhea</u>   | <u>Wilson</u>  | <u>GO</u> | <u>Fav/CS</u>    |
| 3. | _____         | _____          | <u>RC</u> | _____            |
| 4. | _____         | _____          | _____     | _____            |
| 5. | _____         | _____          | _____     | _____            |
| 6. | _____         | _____          | _____     | _____            |

**I. Summary:**

This committee substitute amends an existing exemption found in s. 119.071, F.S., to clarify that security system plans of a public or private entity, which plans are held by an agency, are confidential and exempt from the public record requirements. The committee substitute also creates an exception to the exemption to allow the disclosure of security system plans by a custodial agency to a property owner or leaseholder.

The bill repeals s. 281.301, F.S.

**II. Present Situation:**

**Public Records Laws**

Florida has a long history of providing public access to the 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> specifies conditions under which public access must be provided to governmental records of the executive branch and other governmental agencies.

Section 119.07(1)(a), F.S., provides that 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 any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

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

The Public Records Law states that, unless specifically exempted, all agency records are to be available for public inspection. Section 119.011, F.S., broadly defines the term “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, 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.

The Public Records Law also defines an “agency” to mean “. . . 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.”

In 1992, Floridians enacted an amendment that raised the statutory right of public access to public records to a constitutional level. Article I, s. 24(a), Florida Constitution, contains provisions similar to those of the Public Records Law and those provisions apply to all three branches of government.

Exemptions to the Public Records Law are permitted by the Florida Constitution and by statute. Article I, s. 24(c), Florida Constitution, permits the Legislature to provide by general law for the exemption of records. The general law must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the law. Additionally, a bill that contains a public records exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.

The Open Government Sunset Review Act of 1995<sup>2</sup> provides for the systematic repeal of exemptions to the Public Records 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 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
- 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

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<sup>2</sup> Sections 119.15 and 286.011, F.S.

know or use it, the disclosure of which would injure the affected entity in the marketplace.<sup>3</sup>

Section 119.071, F.S., currently provides that security system plans of a public or private entity, which plans are in the possession of any agency, are exempt from the public record requirements. The term “security system plan” as defined in this section includes, but is not limited to: information or portions thereof relating directly to the physical security of a facility or revealing security systems, threat assessments, threat-response plans, emergency-evacuation plans, sheltering arrangements, or manuals for security personnel, emergency equipment, or security training.

As provided in s. 119.071(2), F.S., this exemption is remedial and it applies to all security system plans filed with an agency before, on, or after December 10, 2001. Information made confidential and exempt under this section may be disclosed by the custodial agency to another state or federal agency; the confidential and exempt status of the information is retained while in the possession of the receiving agency.

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

### **Chapter 281, Relating to Safety and Security Services**

Section 281.301, F.S., currently provides:

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 which is in the possession of any agency as defined in s. 119.011(2), including all records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to or revealing such systems or information, and all meetings relating directly to or that would reveal such systems or information are confidential and exempt from ss. 119.07(1) and 286.011 and other laws and rules requiring public access or disclosure.

### **III. Effect of Proposed Changes:**

This committee substitute amends an exemption found in s. 119.071, F.S., to clarify that security system plans of a public or private entity, which plan or portion thereof is *held by* an agency, are confidential and exempt from the public record requirements. This change recognizes that information is “held” by an agency rather than “possessed” by an agency, as current law provides.

SB 1182 also creates an exception to the existing exemption to allow the disclosure of security system plans by a custodial agency to a property owner or leaseholder.

This committee substitute takes effect upon becoming a law.

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<sup>3</sup> Section 119.15(4)(b), F.S.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

A public records exemption may be created to be exempt or it may be created to be exempt and confidential. Where an exemption is created to be exempt and confidential, the custodian of that record may not release it to anyone who is not specifically identified in statute, except by court order. This bill specifies that the custodian may release a security system plan to the property owner or leaseholder of the property. Thus, the bill creates another exception to the exemption. The bill does not expand the exemption.

**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.