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.)

Prepared By: Domestic Security Committee

BILL:	CS/SB 1416
SPONSOR:	Domestic Security Committee
SUBJECT:	Domestic Security Oversight/Pub. Rec.
DATE:	March 22, 2005 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Pardue	Skelton	DS	**Fav/CS**
2.			CJ	
3.			GO	
4.			RC	
5.				
6.				

I. Summary:

This bill provides for the exemption of portions of meetings and records of the Domestic Security Oversight Council from public-meetings and public records laws. This bill provides criteria for determining when a portion of the council meeting may be closed, how the council chair shall declare closing a portion of the meeting, who may attend a closed council meeting, and what records must be kept of the proceedings of the council during a closed meeting.

This bill creates the following section of the Florida Statutes: 943.0314

II. Present Situation:

Government in the Sunshine

The "Sunshine Law" was first enacted in 1967. [1] As codified in s. 286.011, F.S., the provision states:

(1) All meetings of any board or commission of any state agency or authority or of any agency or authority of 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.

[1] Section 1, ch. 67-356, L.O.F.

(2) The minutes of a meeting of any such board or commission of any such state agency or authority shall be promptly recorded, and such records shall be open to public inspection. The circuit courts of this state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizen of this state.

In effect, the sunshine law requires:

1. meetings of public boards or commissions to be open to the public;
2. reasonable notice for meetings;
3. minutes to be taken.

In 1992, the electorate approved an amendment to the state Constitution that raised the statutory requirement of open meetings to a constitutional mandate. Article I, s. 24(b) of the State Constitution, provides:

All 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 and meetings of the legislature shall be open and noticed as provided in Article II, Section 4(e), except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution.

Collegial bodies within the state, including state and local bodies, are subject to open meeting requirements, whether the members are appointed or elected.[2] Further, advisory boards without the authority to take action or to bind a decision-making entity, must comply with open meeting requirements.[3] Fact-finding committees that function solely to find facts and to report them, however, have an exception under open meetings requirements.[4]

Given the increasing reliance of government upon legislatively-created corporations, as well as private service-providers, to perform governmental services, the applicability of open meetings requirements to these entities may arise. The judiciary has found that the Sunshine Law is to be construed liberally in order to give the full effect of its purpose.[5] The sunshine law has been held to apply to private entities created by law or a public agency. It also applies to private entities that provide services to governmental agencies on behalf of those agencies in the performance of their public duties. Generally, a private organization is not subject to the sunshine law unless it has been delegated the authority to perform a governmental function.[6]

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[2] *City of Miami Beach v. Berns*, 245 So. 2d 38 (Fla. 1971).
[3] *Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974). *Accord, Spillis Candela & Partners, Inc. v. Centrust Savings Bank*, 535 So. 2d 694 (Fla. 3d DCA 1988); *Monroe County v. Pigeon Key Historical Park, Inc.*, 647 So. 2d 857, 869 (Fla. 3d DCA 1994); *Lyon v. Lake County*, 765 So. 2d 785 (Fla. 5th DCA 2000).
[4] *Cape Publications, Inc. v. City of Palm Bay*, 473 So.2d 222 (Fla. 5th DCA 1985).
[5] *Wood v. Marston*, 442 So. 29 934 (Fla. 1983); *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693 (Fla. 1969).
[6] *See, eg.*, Inf. Op. to Fasano, June 7, 1996, where the Attorney General opined that the Sunshine Law does not apply to meetings of a homeowners' association board.

Florida also 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.[7] In 1992, Floridians voted to adopt an amendment to the Florida Constitution that raised the statutory right of public access to public records to a constitutional level.

The Public Records Law, ch. 119, F.S., specifies the conditions under which public access must be provided to governmental records. While the state constitution provides that records are to be open to the public, it also provides that the Legislature may create exemptions to these requirements by general law if a public need exists and certain procedural requirements are met. Article I, s. 24, of the State Constitution, governs the creation and expansion of exemptions to provide, in effect, that any legislation that creates a new exemption or that substantially amends an existing exemption must also contain a statement of the public necessity that justifies the exemption. Article I, s. 24, of the State Constitution, provides that any bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions.

Chapter 95-217, Laws of Florida, repealed the Open Government Sunset Review Act, contained in s. 119.14, F.S., and enacted in its place s. 119.15, F.S., the Open Government Sunset Review Act of 1995. The Open Government Sunset Review Act of 1995 provides for the repeal and prior review of any public records exemptions that are created or substantially amended in 1996 and subsequently. The review cycle began in 2001. The chapter defines the term "substantial amendment" for purposes of triggering a repeal and prior review of an exemption to include an amendment that expands the scope of the exemption to include more records or information or to include meetings as well as records. The law clarifies that an exemption is not substantially amended if an amendment limits or narrows the scope of the existing exemption.

Under the Open Government Sunset Review Act of 1995, an exemption may be created or maintained only if it serves an identifiable public purpose. An identifiable public purpose is served if the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, the administration of which would be significantly impaired without the exemption;
- 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 safety of such individuals; 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 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.

[7] Section 1, ch. 5942, 1909; RGS 424: CGL 490.

Meetings of the Domestic Security Oversight Board

In the aftermath of the events of September 11, 2001, a number of initiatives were undertaken to assess Florida's domestic security preparedness and establish an effective organizational structure within state government to meet the emerging terrorist threat.

On September 11, 2001, Governor Jeb Bush issued Executive Order #2001-262, which required increased security, intelligence and investigative operations, activated the State Emergency Operations Center, and assigned specific tasks to the Executive Director of Florida Department of Law Enforcement (FDLE), the Interim Director of the Division of Emergency Management (DEM), and the Florida National Guard.

Subsequently, Governor Bush issued Executive Order #2001-300, on October 11, 2001, incorporating by reference Executive Order #2001-262, which remained in effect, and directing state agencies to take specific actions based on the recommendations made by multi-disciplinary working groups.

The Governor also created the "Florida Domestic Security Advisory Panel," made up of eleven gubernatorially appointed community leaders who were to serve as advisors to the Governor, the Chief of Domestic Security Initiatives, and the Legislature by providing and evaluating recommendations to combat terrorism. This panel met several times before being allowed to disband.

In order to implement the Governor's Executive Orders, FDLE determined that it would need interagency consensus and support to perform the duties related to domestic security, now codified in Chapter 943, Florida Statutes. For this reason, a new oversight panel, generally known as the "State Domestic Security Oversight Board" (DSOB) was called together to assist FDLE in managing the new domestic security function and responsibilities.

This panel has held regular sessions since November 2001 and has served as a "sounding board" for actions recommended by FDLE to the Governor and Legislature, but has never been formally constituted nor recognized as a state board or advisory council. The DSOB brings together many local, state and federal agencies across multiple preparedness and response disciplines and has taken on an increasingly important role regarding the state's domestic security policy. However, it lacks the ability to take definitive action in its current form.

Senate Interim Project Report 2005-143 recommended that the functions of this board be codified as an advisory council and named the Domestic Security Oversight Council.

In conjunction with codification of the Domestic Security Oversight Council, it was recognized that due to the nature of certain subjects brought before the council, there may be a need to exempt portions of meetings of the Domestic Security Oversight Council from public-meetings and public records laws. Hearing or discussion of active criminal investigative information, active criminal intelligence information, or security system plan information needs to be protected.

III. Effect of Proposed Changes:

This bill creates s. 943.0314, F.S., to exempt portions of meetings and records of the Domestic Security Oversight Council from public-meetings and public records laws for the purpose of hearing or discussing information regarding an active criminal investigation or active criminal intelligence. Each of these types of information is exempt from public records law and the open meetings exemption will protect that information from disclosure. A statement of necessity is included in the bill. The bill provides specific guidelines for such closure and for maintenance of records of all closed portions of a council meeting. The bill provides for a review of this exemption in 2010.

This bill takes effect on the same date that the related legislation Senate Bill 1414 or similar legislation that creates the Domestic Security Oversight Council takes effect.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Article I, s. 24 of the State Constitution, permits the Legislature to provide by general law for the exemption of open meetings and for the exemption of records. A law that exempts a record must state with specificity the public necessity justifying the exemption and the exemption must be no broader than necessary to accomplish the stated purpose of the law.[8] Additionally, a bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.[9]

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

[8] See, *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So.2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999)

[9] Art. I, s.24(c) of the State Constitution

C. Government Sector Impact:

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.