

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1923 PCB GO 05-01 Review Under the Open Government Sunset Review Act
SPONSOR(S): Governmental Operations Committee, Kottkamp
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 680

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee	6 Y, 0 N	Williamson	Everhart
1) State Administration Council	8 Y, 0 N	Williamson	Bussey
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The Open Government Sunset Review Act of 1995 requires the Legislature to review each public records and each public meetings exemption five years after enactment. If the Legislature does not reenact the exemption, it is automatically repealed on October 2nd of the fifth year after enactment.

The bill reenacts the public records exemption for proprietary confidential business information obtained from a telecommunications company or franchised cable company by a local governmental entity. It also reenacts the public records exemption for certain information relating to the location and capacity of a local government communications services facility. Both exemptions will repeal on October 1, 2005, if this bill does not become law. The bill also makes editorial and clarifying changes.

The bill does not appear to have a fiscal impact on state government. It may have a minimal non-recurring positive fiscal impact on local government expenditures.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Background

A county or municipality may:

- Require a telecommunications company or franchised cable company (company) to register if the company places or seeks to place facilities in its road or rights-of-way;¹
- Impose fees on the company for occupying the public rights-of-way;²
- Assess the local communications services tax.³

Current law provides a public records exemption for proprietary confidential business information obtained by a local governmental entity, from the company, for purposes of imposing fees for occupying the public rights-of-way, assessing the local communications services tax, or regulating the public rights-of-way. The local governmental entity may use the proprietary confidential business information only for those purposes, and may not use the information for commercial or competitive purposes.⁴

In addition, maps, plans, schematics, diagrams, or other engineering data relating to the exact location and capacity of local government communications services facilities are exempt from public records requirements; however, such information is exempt only for 60 days after completion of the construction of the local government facility.⁵

Pursuant to the Open Government Sunset Review Act of 1995, the exemption will repeal on October 1, 2005, unless reenacted by the Legislature.⁶

Effect of Bill

The bill removes the repeal date, thereby reenacting the public records exemption. It also makes editorial and clarifying changes.

C. SECTION DIRECTORY:

Section 1 amends s. 202.195, F.S., to remove the October 1, 2005, repeal date.

Section 2 provides a September 30, 2005, effective date.

¹ Section 337.401(3)(a), F.S.

² Section 202.19(3)(a), F.S.

³ Section 202.19(1), F.S.

⁴ Section 202.195(1), F.S.

⁵ Section 202.195(4), F.S.

⁶ Section 202.195(5), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. The bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

None. The bill does not create, modify, amend, or eliminate a state expenditure.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. The bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

The bill may represent a minimal non-recurring positive impact on local government expenditures. A bill enacting or amending public records law causes a non-recurring negative fiscal impact in the year of enactment for training employees who are responsible for replying to public records requests. In the case of bills being reviewed under the Open Government Sunset Review process, the cost of such training will be incurred if the bill does not pass, as employees would have to be informed that formerly exempt records are now open. Because the bill eliminates the repeal, employee training activities will be avoided, and local governments may recognize a minimal nonrecurring decrease in expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Open Government Sunset Review Act of 1995

The Open Government Sunset Review Act of 1995,⁷ provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or, 3. Protecting trade or business secrets.

Section 119.15, F.S., also sets forth a Legislative review process that requires newly created or expanded exemptions to include an automatic repeal of the exemption on October 2nd of the fifth year after enactment or substantial amendment, unless the Legislature reenacts the exemption.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement is required, as a result of the requirements of Art. 1, s. 24, Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes (that do not expand the exemption), if the exemption is narrowed, or if an exception to the exemption is created (*e.g.*, allowing another agency access to the confidential or exempt records), then a public necessity statement is not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

⁷ Section 119.15, F.S.