

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7037 PCB GVOPS 12-08 OGSR/Sunshine State One-Call of Florida, Inc.

SPONSOR(S): Government Operations Subcommittee, Roberson

TIED BILLS: **IDEN./SIM. BILLS:** SB 844

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	14 Y, 0 N	Thompson	Williamson
1) State Affairs Committee	15 Y, 0 N	Thompson	Hamby

SUMMARY ANALYSIS

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

Current law provides for the Underground Facility Damage Prevention and Safety Act (Act). The intent of the Act is to provide access for excavating contractors and the public to provide notification to the system of their intent to engage in excavation or demolition.

Sunshine State One-Call Of Florida, Inc., (One-Call) is a non-profit corporation created to administer the notification system. Each operator of an underground facility is a member. The membership elects a board of directors to administer the system, which is a free-access notification system established by One-Call. The board is subject to the public records and public meetings laws.

Current law provides for a public record exemption for proprietary confidential business information held by One-Call for the purpose of describing the extent and root cause of damage to an underground facility or using the member ticket management software system.

The bill reenacts this public record exemption, which will repeal on October 2, 2012, if this bill does not become law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- 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 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.
- Protects trade or business secrets.

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 and a two-thirds vote for passage are required.² 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 created³ then a public necessity statement and a two-thirds vote for passage are not required.

Sunshine State One-Call, Inc.

Chapter 556, F.S., is the Underground Facility Damage Prevention and Safety Act (Act).⁴ The intent of the Act is to provide access for excavating contractors and the public to provide notification to the system of their intent to engage in excavation or demolition.⁵

The Act provides for creation of the Sunshine State One-Call Of Florida, Inc. (One-Call), as a not-for-profit corporation.⁶ Each operator of an underground facility⁷ is a member.⁸ The membership elects a board of directors to administer the system,⁹ which is a free-access notification system established by One-Call. The board of directors is subject to public records and public meetings laws.¹⁰

¹ Section 119.15, F.S.

² Section 24(c), Art. I of the State Constitution

³ An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

⁴ Section 556.101(1), F.S.

⁵ Section 556.101(2), F.S.

⁶ Section 556.103(1), F.S.

⁷ Section 556.102(13), F.S., defines "underground facility" as any public or private personal property which is buried, placed below ground, or submerged on any member operators right-of-way, easement, or permitted use which is being used or will be used in connection with the storage or conveyance of water; sewage, electronic, telephonic, or telegraphic communication; electric energy; oil; petroleum products; natural gas; optical signals; or other substances, and includes, but is not limited to pipelines, pipes, sewers, conduits, cables, valves, and lines.

⁸ Section 556.103(1), F.S.

⁹ Section 556.103(2), F.S.

¹⁰ Attorney General Opinion 94-35 provides in sum, "[m]eetings of the Board of Directors of Sunshine State One-Call of Florida, Inc., are subject to the requirements of the Government in the Sunshine Law and records of the corporation and its board of directors come within the scope of the Public Records Law." (April 21, 1994)

The notification system must provide a single toll-free telephone number within Florida that excavators can use to notify member operators of planned excavation or demolition activities.¹¹ When notice of intent to engage in excavation or demolition is filed, the systems managed by One-Call provide notice to the member operators of proposed excavation and give the opportunity for member operators to locate and identify their underground facilities.¹²

One-Call is not required or permitted to locate or mark underground facilities.¹³ However, those member operators who are provided notice of an excavation must locate and mark underground facilities not less than two business days after notification,¹⁴ or not less than 10 business days after notification for facilities located beneath the waters of the state.¹⁵

To initiate an excavation or demolition, an excavator must contact One-Call by phone or electronically to file a "ticket" that provides specific information about the proposed excavation, such as the name of the company or person, intended depth of the excavation, and the location of the intended excavation.¹⁶

In 2002, One-Call invested in a member ticket management software system that allows all excavators the opportunity to file tickets electronically and eliminates the cost of purchasing these systems for individual companies. Prior to this investment, electronic ticket filing was accessible only to member operators who bought ticket management systems.¹⁷

Public Record Exemption under Review

Current law provides a public record exemption for Sunshine State One-Call of Florida, Inc., (One-Call). Proprietary confidential business information held by One-Call, for the purpose of describing the extent and root cause of damage to an underground facility or using the member ticket management software system, is exempt¹⁸ from public records requirements.¹⁹

"Proprietary confidential business information" is defined as information provided by:

- A member operator that is a map, plan, facility location diagram, internal damage investigation report or analysis, dispatch methodology, trade secret, or that describes the exact location of a utility underground facility or the protection, repair, or restoration thereof.²⁰
- An excavator that is an internal damage investigation report or analysis relating to underground utility facilities damages.²¹

¹¹ Section 556.104, F.S.

¹² See s. 556.105, F.S.

¹³ Section 556.101(2), F.S.

¹⁴ Section 556.105(5)(a), F.S.

¹⁵ Section 556.105(5)(b), F.S.

¹⁶ See s. 556.105(1)(a), F.S.

¹⁷ Professional Staff Analysis and Economic Impact Statement for SB 1510, Senate Communications and Public Utilities Committee, March 19, 2007, at 2.

¹⁸ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991) If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (See Attorney General Opinion 85-62, August 1, 1985).

¹⁹ Section 556.113(2), F.S.

²⁰ The definition further provides that the information is intended to be and is treated by the member operator as confidential; the disclosure would be reasonably likely to be used by a competitor to harm the business interests of the member operator or could be used for the purpose of inflicting damage on underground facilities; and is not otherwise readily ascertainable or publicly available by proper means by other persons from another source in the same configuration as provided to One-Call. (Section 556.113(1)(a), F.S.)

²¹ The definition further provides that the information is intended to be and is treated by the excavator as confidential; the disclosure of which would be reasonably likely to be used by a competitor to harm the business interests of the excavator or could be used for the purpose of inflicting damage on underground facilities; and is not otherwise readily ascertainable or publicly available by proper means by other persons from another source in the same configuration as provided to One-Call. (Section 556.113(1)(b), F.S.)

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2012, unless reenacted by the Legislature.²²

Effect of Bill

The bill removes the repeal date, thereby reenacting the public record exemption for proprietary confidential business information held by One-Call for the purpose of describing the extent and root cause of damage to an underground facility or using the member ticket management software system.

B. SECTION DIRECTORY:

Section 1 amends s. 556.113, F.S., to reenact the public record exemption for Sunshine State One-Call of Florida, Inc.

Section 2 provides an effective date of October 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

²² See s. 556.113(3), F.S.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

One-Call has requested that the exemption be reenacted. According to One-Call, its members are not required to report damage information, this is a voluntary function. Also, One-Call uses the extent and root cause data to detect damage patterns, which are used to focus One-Call resources where needed. Such information could be used to disclose the exact location of underground facilities, thereby, compromising competitive trade secrets and public safety.²³

Also according to One-Call, the ticket management software system contains internal business information that if disclosed could compromise trade secrets, thereby, giving an unfair market advantage to its member's competitors. Very few users of the ticket management system existed until the creation of the public records exemption. Currently, there are approximately 127 users of the system. Also, many One-Call members are small utilities that can provide safer, better, and more reasonably priced services using the One-Call ticket management system.²⁴

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

²³ Open Government Sunset Review of s. 556.113, F.S., relating to the public record exemption for Sunshine State One-Call, background information from One-Call, July, 2011, at page 2. (On file with the Government Operations Subcommittee).

²⁴ *Id.* at 2.