

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 537 Pub. Rec./Community Development District Surveillance Recordings

SPONSOR(S): Burgess, Jr. and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 962

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Government Affairs Subcommittee	11 Y, 0 N	Zaborske	Miller
2) Government Operations Subcommittee	9 Y, 3 N	Williamson	Williamson
3) Local & Federal Affairs Committee	15 Y, 2 N	Zaborske	Kiner

SUMMARY ANALYSIS

Community development districts (CDDs) are special districts that are local units of special purpose government, created pursuant to ch. 190, F.S., and limited to the authority provided in that act. CDDs are governed by a five-member board of supervisors, and have governmental authority to manage and finance infrastructure for planned developments.

Some CDDs utilize video cameras to provide security and surveillance within their community. The security cameras are set up at fixed locations in public areas such as community roadway entrances, pool areas, and clubhouses. The video is used to provide leads in the event of a crime on CDD property, or violations regarding misuse of CDD property or rules.

A CDD is considered an "agency" pursuant to the state's public policy regarding access to government records; thus, its records are subject to Florida's public record requirements. Currently, a public record exemption does not exist that would specifically protect CDD surveillance recordings from public record disclosure requirements. As a result, CDD surveillance recordings must be disclosed to anyone who makes a request.

The bill creates a public record exemption for CDD surveillance recordings. Specifically, the bill provides that any surveillance recording created to monitor activities occurring inside or outside of a public building or on public property that is held by a CDD is confidential and exempt from public record requirements.

The bill allows a CDD to disclose surveillance recordings to a law enforcement agency in the furtherance of its official duties and responsibilities, or pursuant to a court order.

The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

The bill may have a minimal fiscal impact on CDDs.

The bill has an effective date of July 1, 2015.

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records Law

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record.

Public Records Exemptions

The Legislature may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.¹

The Open Government Sunset Review Act² provides that a public record 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:³

- 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.

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.⁴

Exempt versus Confidential and Exempt

There is a difference between records the Legislature has determined to be exempt and those which have been determined to be confidential and exempt.⁵ If the Legislature has determined the information to be confidential then the information is not subject to inspection by the public.⁶ In addition, if the information is deemed to be confidential it may be released only to those persons and entities

¹ Art I, s. 24(c), Fla. Const.

² See s. 119.15, F.S.

³ S. 119.15(6)(b), F.S.

⁴ S. 119.15(3), F.S.

⁵ *WFTV, Inc. v. Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review den.*, 892 So. 2d 1015 (Fla. 2004).

⁶ *Id.*

designated in statute.⁷ However, the agency is not prohibited from disclosing the records in all circumstances where the records are exempt only.⁸

Community Development Districts

Community development districts (CDDs) are special districts that are local units of special purpose government, created pursuant to ch. 190, F.S., the “Uniform Community Development District Act of 1980,” and limited to the authority provided in that act. CDDs are governed by a five-member board of supervisors,⁹ and have governmental authority to manage and finance infrastructure for planned developments.¹⁰ They are, in effect, a means by which private entities secure development capital through bond sales repaid by assessments on public improvements and community facilities.

Some CDDs utilize video cameras to provide security and surveillance within their community.¹¹ The security cameras are set up at fixed locations in public areas such as community roadway entrances, pool areas, and clubhouses. The video is used to provide a CDD board or law enforcement with leads in the event of a crime on CDD property, or violations regarding the misuse of CDD property or rules.¹²

The Florida Department of State’s record retention schedule for state and local agencies requires surveillance recordings to be retained for at least 30 days.¹³ After 30 days, the recordings may be deleted or written over, or stored for longer periods. This includes CDD surveillance recordings.

A CDD is considered an “agency”¹⁴ pursuant to Florida’s public record requirements, and unless a specific public record exemption exists that would protect the recordings from public access, a CDD is required to allow access to the records to anyone for inspection or copying.¹⁵

Currently, a public record exemption does not exist that would specifically protect CDD surveillance recordings from public record requirements. As a result, unless a CDD chooses to discard or record over the recordings after 30 days, they must be disclosed to anyone who makes a request.

Proposed Changes

The bill creates a public record exemption for CDD surveillance recordings. Specifically, the bill provides that any surveillance recording created to monitor activities occurring inside or outside of a public building or on public property that is held by a CDD is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.

The bill provides that a CDD may disclose such recording to a law enforcement agency in the furtherance of its official duties and responsibilities, or pursuant to a court order.

⁷ *Id.*

⁸ See *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991), *review den.*, 589 So. 2d 289 (Fla. 1991).

⁹ See s. 190.006, F.S.

¹⁰ See s. 190.002(1)(a), F.S.

¹¹ Pursuant to s. 190.012(2)(d), F.S., CDDs have “the power to plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain . . . systems and facilities for: . . . [s]ecurity, including, but not limited to, guard-houses, fences and gates, electronic intrusion-detection systems, and patrol cars....”

¹² For more information on CDD surveillance cameras, see Jim Flateau, “Let’s increase residents’ privacy,” *The Ballantrae Communicator*, Vol. 6, No. 4 (April-June 2014), p. 4, at ballantraecdd.org/other_docs/communicator/apr-jun-2014.pdf (last visited 2/20/2015).

¹³ According to the State of Florida General Records Schedule GS1-SL for State and Local Government Agencies, effective February 19, 2015, at page 37 Item #302, surveillance recordings are only required to be maintained for 30 days. This document can be viewed at <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/> (Last viewed 2/19/15).

¹⁴ Section 119.011(2), F.S., defines agency 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 including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

¹⁵ S. 119.07(1), F.S.

The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

B. SECTION DIRECTORY:

Section 1: Creates s. 190.0121, F.S., relating to the creation of a public record exemption for surveillance recordings held by a community development district.

Section 2: Provides a public necessity statement.

Section 3: Provides an effective date of July 1, 2015.

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:

The bill could create a minimal fiscal impact on CDDs because staff responsible for complying with public record requests could require training related to the new public record exemption. These costs, however, would be absorbed, as they are part of the day-to-day responsibilities of CDDs.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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.

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created or expanded public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates the public record exemption to protect from public disclosure surveillance recordings captured by a community development district.

B. RULE-MAKING AUTHORITY:

The bill does not authorize or require agency rulemaking for implementation.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Retroactive Application

The Supreme Court of Florida ruled that a public record exemption does not apply retroactively unless the legislation clearly expresses such intent.¹⁶ The bill does not contain a provision requiring retroactive application. According to reports, CDDs have been utilizing surveillance cameras for several years. Even though the Florida Department of State's record retention schedule for state and local agencies requires retention of surveillance recordings for at least 30 days, after 30 days the recordings can be written over or deleted. However, surveillance recordings also may be stored for longer periods.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

¹⁶ *Memorial Hospital-West Volusia, Inc. v. News-Journal Corp.*, 729 So. 2d 373 (Fla. 2001).