

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: CS/CS/SB 962

INTRODUCER: Governmental Oversight and Accountability Committee; Community Affairs Committee; and Senator Legg

SUBJECT: Public Records/Surveillance Recordings

DATE: April 1, 2015

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|--------------|----------------|-----------|---------------|
| 1. | <u>White</u> | <u>Yeatman</u> | <u>CA</u> | <u>Fav/CS</u> |
| 2. | <u>Kim</u> | <u>McVaney</u> | <u>GO</u> | <u>Fav/CS</u> |
| 3. | _____ | _____ | <u>RC</u> | _____ |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 962 creates a public records exemption for community development district (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 records requirements. The bill allows a CDD to disclose surveillance recordings to a law enforcement agency in the furtherance of its official duties and responsibilities, pursuant to a court order, to a person who owns property in the CDD but does not reside there, or to specified residents of the CDD who can establish proof of residency in certain enumerated ways.

The bill provides that the public records exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.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 has an effective date of July 1, 2015.

The bill creates a new public records exemption. Thus, it requires a two-thirds vote for final passage, in accordance with Article I, section 24(c) of the Florida Constitution.

II. Present Situation:

Public Records and Open Meetings Requirements

The Florida Constitution provides that the public has the right to access government records and meetings. The public may inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.¹ The public also has a right to be afforded notice and access to meetings of any collegial public body of the executive branch of state government or of any local government.² The Legislature's meetings must also be open and noticed to the public, unless there is an exception provided for by the Constitution.³

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. The Public Records Act⁴ guarantees every person's right to inspect and copy any state or local government public record.⁵ The Sunshine Law⁶ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken to be noticed and open to the public.⁷

The Legislature may create an exemption to public records or open meetings requirements.⁸ An exemption must specifically state the public necessity justifying the exemption⁹ and must be tailored to accomplish the stated purpose of the law.¹⁰

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(b).

³ *Id.*

⁴ Chapter 119, F.S.

⁵ Section 119.011(12), F.S., defines "public record" 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." Section 119.011(2), F.S., defines "agency" to mean 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." The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992). The Legislature's records are public pursuant to section 11.0431, F.S.

⁶ Section 286.011, F.S.

⁷ Section 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in the Florida Constitution. Article III, section 4(e) of the Florida Constitution provide that legislative committee meetings must be open and noticed to the public. In addition, prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.

⁸ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential* and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential, such record may not be released, to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ *Id.*

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹¹ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹²

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹³ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁴
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹⁵ or
- It protects trade or business secrets.¹⁶

The OGSR also requires specified questions to be considered during the review process.¹⁷ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.¹⁸ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.¹⁹

¹¹ Section 119.15, F.S. Section 119.15(4)(b), F.S. provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

¹² Section 119.15(3), F.S.

¹³ Section 119.15(6)(b), F.S.

¹⁴ Section 119.15(6)(b)1., F.S.

¹⁵ Section 119.15(6)(b)2., F.S.

¹⁶ Section 119.15(6)(b)3., F.S.

¹⁷ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means?
If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

¹⁸ FLA. CONST., art. I, s. 24(c).

¹⁹ Section 119.15(7), F.S.

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,²⁰ and have governmental authority to manage and finance infrastructure for planned developments.²¹ 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.²² 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.²³

The Florida Department of State records retention schedule for state and local agencies requires surveillance recordings to be retained for at least 30 days.²⁴ 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”²⁵ pursuant to Florida’s public records requirements, and unless a specific public records 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.²⁶

Currently, a public records exemption does not exist that would specifically protect CDD surveillance recordings from public records 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.

²⁰ See s. 190.006, F.S.

²¹ See s. 190.002(1)(a), F.S.

²² 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”

²³ 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 Mar. 13, 2015).

²⁴ 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 Mar. 13, 2015).

²⁵ 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.

²⁶ Section 119.07(1), F.S.

III. Effect of Proposed Changes:

Section 1 creates s. 190.0121, F.S., to create a public records exemption for surveillance recordings held by a community development district. 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 recordings to a law enforcement agency in the furtherance of its official duties and responsibilities or pursuant to a court order.²⁷ The CDD may release a recording to a nonresident owner of real property in the CDD. Additionally, the CDD may disclose such recordings to a resident of the CDD. A resident is defined as:

- A member of the United States Armed Forces stationed in the CDD;
- A family member residing with a member of the United States Armed Forces stationed in the CDD; or
- A person who has declared the CDD as his or her only residence as evidenced by:
 - A valid state driver license or identification card that has both an address within the CDD and a residence verified by the Department of Highway Safety and Motor Vehicles;
 - A current voter information card registered with an address within the CDD;
 - A sworn statement manifesting and evidencing domicile in the CDD;
 - Proof of a current homestead exemption with an address in the CDD; or
 - For a child under 18 years of age, a student identification card from a school zoned to include the CDD, or their parent's proof of residency within the CDD.

The bill provides that the public records 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.

Section 2 provides a statement of public necessity as required by the State Constitution. The statement of public necessity states that CDDs provide surveillance of public areas in order to monitor activities and ensure the security of its residents. The public necessity statement also provides that the exemption allows a CDD to effectively and efficiently provide security and surveillance while maintaining the privacy of the residents and guest who use community facilities. However, there are no privacy interests in a public place. In addition, privacy rights may not override public access to records. Article I, section 23 of the Florida Constitution provides that:

Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.

Finally, the public necessity statement states that the exemption is necessary so that the coverage and technical aspect of the surveillance system would be revealed and make it easier for people

²⁷ This provision may be unnecessary since courts already have the power to order the release of exempt or confidential and exempt records.

to evade detection. In current law, there are two exemptions which protect information relating to security systems for property.²⁸ This exemption may be overly broad in that the necessity of protecting the technical aspects of a security system are already protected by public records exemptions.

Section 3 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

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

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution, requires a public necessity statement for a newly created or expanded public records or public meeting exemption. The bill creates a

²⁸ Section 281.301, F.S., titled "Security systems; records and meetings exempt from public access or disclosure" provides that "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. In addition s. 119.071(3)(a), F.S., provides in pertinent part: (a)1. As used in this paragraph, the term "security system plan" includes all:

- a. Records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to the physical security of the facility or revealing security systems;
- b. Threat assessments conducted by any agency or any private entity;
- c. Threat response plans;
- d. Emergency evacuation plans;
- e. Sheltering arrangements; or
- f. Manuals for security personnel, emergency equipment, or security training.

2. A security system plan or portion thereof for:

- a. Any property owned by or leased to the state or any of its political subdivisions; or
- b. Any privately owned or leased property held by an agency is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption is remedial in nature, and it is the intent of the Legislature that this exemption apply to security system plans held by an agency before, on, or after the effective date of this paragraph.

new public records exemption; thus, it includes a public necessity statement. The public necessity statement may not support the breadth of the exemption.

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a newly created or expanded public records or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates the public records exemption to protect from public disclosure surveillance recordings captured by a CDD. The exemption may be overly broad in scope.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

CDD staff responsible for complying with public records requests may require training related to the new public records exemption. Any associated cost, however, should be absorbed as part of the day-to-day responsibilities of CDDs.

VI. Technical Deficiencies:

The bill does not include a statement of retroactivity, therefore, any videos which are in existence prior to the effect date of this act will not be protected by this exemption.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 190.0121 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Governmental Oversight and Accountability on March 31, 2015:

The CS permits a recording to be given to a nonresident who owns property in the CDD.

CS by Community Affairs on March 17, 2015:

Allows a CDD to disclose recordings to CDD residents who have proof of residency.

B. Amendments:

None.