

**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.)

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Prepared By: The Professional Staff of the Committee on Community Affairs

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BILL: SB 962

INTRODUCER: Senator Legg

SUBJECT: Public Records/Surveillance Recordings

DATE: March 17, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	White	Yeatman	CA	<b>Pre-meeting</b>
2.			GO	
3.			RC	

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**I. Summary:**

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, or pursuant to a court order.

The bill provides that the public records exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.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 Law**

Article I, section 24(a) of the Florida 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 records 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 records.

### **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.<sup>1</sup>

The Open Government Sunset Review Act<sup>2</sup> provides that a public records 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:<sup>3</sup>

- 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 2, of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>4</sup>

### **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.<sup>5</sup> If the Legislature has determined the information to be confidential then the information is not subject to inspection by the public.<sup>6</sup> In addition, if the information is deemed to be confidential it may be released only to those persons and entities designated in statute.<sup>7</sup> However, the agency is not prohibited from disclosing the records in all circumstances where the records are exempt only.<sup>8</sup>

### **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

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<sup>1</sup> Art. I, s. 24(c), Fla. Const.

<sup>2</sup> See s. 119.15, F.S.

<sup>3</sup> Section 119.15(6)(b), F.S.

<sup>4</sup> Section 119.15(3), F.S.

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

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

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

District Act of 1980, and limited to the authority provided in that act. CDDs are governed by a five-member board of supervisors,<sup>9</sup> and have governmental authority to manage and finance infrastructure for planned developments.<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup>

The Florida Department of State records retention schedule for state and local agencies requires surveillance recordings to be retained for at least 30 days.<sup>13</sup> 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”<sup>14</sup> 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.<sup>15</sup>

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.

### III. Effect of Proposed Changes:

**Section 1** creates s. 190.0121, F.S., relating to the creation of 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.

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<sup>9</sup> See s. 190.006, F.S.

<sup>10</sup> See s. 190.002(1)(a), F.S.

<sup>11</sup> 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. . . .”

<sup>12</sup> 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](http://ballantraecdd.org/other_docs/communicator/apr-jun-2014.pdf) (last visited Mar. 13, 2015).

<sup>13</sup> 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).

<sup>14</sup> 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.

<sup>15</sup> Section 119.07(1), F.S.

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.

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.

**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:**

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.

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 new public records exemption; thus, it includes a public necessity statement.

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.

##### **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 could require training related to the new public records exemption. Any associated cost, however, would be absorbed, as they are part of the day-to-day responsibilities of CDDs.

The Department of Economic Opportunity has reviewed the bill and determined it has no impact on their operations.

**VI. Technical Deficiencies:**

None.

**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 Changes:**

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

None.

**B. Amendments:**

None.