

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/CS/HB 1025	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	State Affairs Committee; Energy & Utilities Subcommittee; Antone; Cortes, B.	113 Y's	0 N's
COMPANION BILLS:	CS/CS/SB 776	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

CS/CS/HB 1025 passed the House on March 4, 2016, and subsequently passed the Senate on March 4, 2016.

The bill creates a public record exemption for the following information held by a local government utility:

- Information related to the security of the utility's technology, processes, and practices designed to protect the utility's networks, computers, programs, and data from attack, damage, or unauthorized access that, if disclosed, would facilitate the alteration, disclosure, or destruction of such data or information technology resources.
- Information related to the security of the utility's existing or proposed information technology systems or industrial control technology systems that, if disclosed, would facilitate unauthorized access to, and alteration or destruction of, such systems in a manner that would adversely impact the safe and reliable operation of the systems and the utility.

The bill provides for retroactive application of the public record exemption. The bill provides that this public record exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

For purposes of the Public Records Act, the bill defines the term "utility" to mean a person or entity that provides electricity, natural gas, telecommunications, water, chilled water, reuse water, or wastewater.

The bill does not appear to have a fiscal impact on the state; however, it may have a minimal fiscal impact on local government utilities.

The bill was approved by the Governor on March 24, 2016, ch. 2016-95, L.O.F., and became effective on that date.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

Public Records

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 record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of article I, section 24(a) of the Florida 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

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1)(a), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act² 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.³

The Act also requires the automatic repeal of a public record or public meeting exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.⁴

Local Government Utilities

Pursuant to article VIII, section 2(b) of the Florida Constitution, municipalities have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law.

Municipalities are authorized by general law to provide water and sewer utility services.⁵ According to a 2014 staff analysis, 254 municipalities provide water service and 222 municipalities provide wastewater service.⁶

¹ FLA. CONST. art. I, s. 24(c).

² s. 119.15, F.S.

³ s. 119.15(6)(b), F.S.

⁴ s. 119.15(3), F.S.

⁵ Pursuant to s. 180.06, F.S., a municipality may "provide water and alternative water supplies;" "provide for the collection and disposal of sewage, including wastewater reuse, and other liquid wastes;" and "construct reservoirs, sewerage systems, trunk sewers, intercepting sewers, pumping stations, wells, siphons, intakes, pipelines, distribution systems, purification works, collection systems, treatment and disposal works" to accomplish these purposes.

⁶ Florida House of Representatives Staff Analysis of HB 813 (2014), p. 3 (Mar. 18, 2014).

Public power utilities in the state are composed of 34 municipally owned electric utilities⁷ that serve approximately 15 percent of the state's population (3.0 million consumers).⁸ Collectively, they are the third largest source of power in the state.⁹

According to the Florida Municipal Electric Association, "Each month, the Orlando Utilities Commission sees about 2 million 'hits' from foreign countries, mostly from the Middle East and Asia. These 'hits' are described as an attempt to connect to any resource on the utility's cyber network."¹⁰ The chief information officer for the Orlando Utilities Commission states that, "[a]ttacks are daily, they are unrelenting and they are evolving...[There are] a bunch of rogue nations that are attacking our system on a daily basis in what used to be in the neighborhood of 30,000 probes into our firewalls and now has gone into the millions."¹¹

Recent events have illuminated the threat to the electric power grid. For example:

- In December 2015, cyber hackers remotely attacked the power grid in western Ukraine and caused a blackout that left over 80,000 customers without power for six hours.¹²
- In October 2015, CNN Money reported that ISIS hackers had been attempting to penetrate the U.S. energy grid through cyberattacks to take down parts of the country's energy supply.¹³
- In October 2015, Iranian attackers hacked into a University of California housing system and opened a pathway into the utility networks that run into the U.S. power grid. The hackers stole passwords and engineering drawings of dozens of power plants that could have been used to knock out electricity flowing to millions of homes.¹⁴

Public Record and Public Meeting Exemptions Related to Security Systems

Current law provides public record and public meeting exemptions for certain information related to security systems. The law specifies the circumstances under which the information may be disclosed and to whom it may be disclosed.

Security System Plans

Section 119.071(3)(a)1., F.S., defines "security system plan" to include all:

- 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;
- Threat assessments conducted by any agency or any private entity;
- Threat response plans;
- Emergency evacuation plans;
- Sheltering arrangements; or
- Manuals for security personnel, emergency equipment, or security training.

⁷ Florida Public Service Commission, *Facts & Figures of the Florida Utility Industry*, p.1 (Mar. 2015).

⁸ Florida Municipal Electric Association, *Who is FMEA?*, <http://publicpower.com/who-is-fmea/> (last visited Feb. 14, 2016).

⁹ *Id.*

¹⁰ Email from Joseph Salzverg, representative of the Florida Municipal Electric Association, RE: the public records exemption for cyber security systems of municipal utilities (Jan. 21, 2016).

¹¹ Orlando Sentinel, *Orlando's electric utility fights cyber war*, <http://www.orlandosentinel.com/news/os-cyber-war-ouc-20140927-story.html> (last visited Jan. 23, 2016).

¹² CBCnews, *Cyberattack that crippled Ukrainian power grid was highly coordinated*, <http://www.cbc.ca/news/technology/ukraine-cyberattack-1.3398492> (last visited Jan. 23, 2016).

¹³ CNN Money, *ISIS is attacking the U.S. energy grid (and failing)*, <http://money.cnn.com/2015/10/15/technology/isis-energy-grid/index.html> (last visited Jan. 23, 2016).

¹⁴ The Journal, *Investigation finds U.S. power grid vulnerable to foreign hacks*, <http://journal-news.net/page/content.detail/id/648485/Investigation-finds-US-power-grid-vulnerable-to-foreign-hacks.html?nav=5006> (last visited Jan. 23, 2016).

A security system plan or any portion thereof that is held by an agency¹⁵ is confidential and exempt¹⁶ from public record requirements if the plan is for:

- Any property owned by or leased to the state or any of its political subdivisions; or
- Any privately owned or leased property.¹⁷

An agency's custodian of public records¹⁸ may disclose the confidential and exempt information to:

- The property owner or leaseholder; or
- Another state or federal agency to prevent, detect, guard against, respond to, investigate, or manage the consequences of any attempted or actual act of terrorism, or to prosecute those persons who are responsible for such attempts or acts.¹⁹

Other Information Related to Security Systems

Section 281.301, F.S., provides that information relating to security systems that is in the possession of an agency and all meetings relating directly to or that would reveal such security systems or information are confidential and exempt from public record and public meeting requirements if the security systems are for:

- Any property owned by or leased to the state or any of its political subdivisions; or
- Any privately owned or leased property.

The law specifies that the protected information includes 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. There are no exceptions provided to authorize an agency to disclose the information under certain circumstances.

¹⁵ Section 119.011(2), F.S., defines the term "agency" to mean 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 chapter 119, F.S., 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.

¹⁶ 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 statute. See Attorney General Opinion 85-62 (August 1, 1985).

¹⁷ s. 119.071(3)(a)2., F.S.

¹⁸ s. 119.011(5), F.S., defines "custodian of public records" as the elected or appointed state, county, or municipal officer charged with the responsibility of maintaining the office having public records, or his or her designee.

¹⁹ s. 119.071(3)(a)3., F.S.

Effect of Proposed Changes

The bill creates a public record exemption for the following information held by a utility owned or operated by a unit of local government:

- Information related to the security of a local government utility's technology, processes, and practices designed to protect the utility's networks, computers, programs, and data from attack, damage, or unauthorized access that, if disclosed, would facilitate the alteration, disclosure, or destruction of such data or information technology resources.
- Information related to the security of a local government utility's existing or proposed information technology systems or industrial control technology systems that, if disclosed, would facilitate unauthorized access to, and alteration or destruction of, such systems in a manner that would adversely impact the safe and reliable operations of the systems and the utility.

The bill provides for retroactive application of the public record exemption.²⁰

For purposes of the Public Records Act,²¹ the bill defines the term "utility" to mean a person or entity that provides electricity, natural gas, telecommunications, water, chilled water, reuse water, or wastewater.

The bill provides a statement of public necessity as required by the Florida Constitution, which provides the following legislative findings:

- The increased interconnection and integration of utility system infrastructure exposes such systems to attacks that may result in the disruption of utility services and damage to utility systems.
- Maintaining safe and reliable utility systems is vital to protecting the public health and welfare and ensuring the economic well-being of the state.
- Disclosure of sensitive information related to the measures undertaken by utilities to secure their data, information technology systems, and industrial control technology systems could allow a security breach that damages utility systems and disrupts the safe and reliable operations of such systems, adversely impacting the public health and safety and the economic well-being of the state and potentially impacting national security concerns.
- The public and private harm in disclosing information related to such security measures outweighs any public benefit derived from disclosure of the information.

In accordance with s. 119.15, F.S., the exemption is subject to the Open Government Sunset Review Act and it stands repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

²⁰ In 2001, the Florida Supreme Court ruled that a public record exemption does not apply retroactively unless the legislation clearly expresses such intent. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d 373 (Fla. 2001).

²¹ ch. 119, F.S.

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill could have a minimal fiscal impact on local government utilities because staff responsible for complying with public record requests may require training related to creation of the public record exemption. In addition, local government utilities could incur costs associated with redacting the exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the local government utility.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.