

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 869 Public Records/Security Systems Plans and Information

**SPONSOR(S):** Government Operations Subcommittee; Harrison

**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 1004

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	12 Y, 0 N, As CS	Moore	Williamson
2) Criminal Justice Subcommittee	13 Y, 0 N	White	White
3) State Affairs Committee			

### SUMMARY ANALYSIS

Current law provides public record and public meeting exemptions for certain information related to security systems. A security system plan or any portion thereof and any information relating to security systems held by an agency is confidential and exempt from public record requirements if the plan or information is for:

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

Current law authorizes the release of the confidential and exempt security system plans in certain instances, but it does not authorize the release of the confidential and exempt information relating to security systems.

The bill amends the public record exemption for security systems plans to expand the list of authorized releases as follows:

- In furtherance of the official duties and responsibilities of the custodial agency;
- To another local, state, or federal agency in furtherance of that agency's official duties and responsibilities; or
- Upon a showing of good cause before a court of competent jurisdiction.

It also amends the public record exemption for information relating to security systems to authorize release of the confidential and exempt information as follows:

- To the property owner or leaseholder;
- In furtherance of the official duties and responsibilities of the custodial agency;
- To another local, state, or federal agency in the furtherance of that agency's duties and responsibilities; or
- Upon a showing of good cause before a court of competent jurisdiction.

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

The bill takes effect upon becoming a law.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Public Records Law

Article I, s. 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.

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

##### Public Meetings Law

Article I, s. 24(b) of the Florida Constitution sets forth the state's public policy regarding access to government meetings. The section requires that all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, be open and noticed to the public.

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., known as the "Government in the Sunshine Law" or "Sunshine Law," further requires that all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, at which official acts are to be taken be open to the public at all times.<sup>1</sup> The board or commission must provide reasonable notice of all public meetings.<sup>2</sup> Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin, or economic status or that operates in a manner that unreasonably restricts the public's access to the facility.<sup>3</sup> Minutes of a public meeting must be promptly recorded and open to public inspection.<sup>4</sup>

##### Public Record and Public Meeting Exemptions

The Legislature may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) and (b) of the Florida Constitution.<sup>5</sup> The general law must state with specificity the public necessity justifying the exemption<sup>6</sup> and must be no more broad than necessary to accomplish its purpose.<sup>7</sup>

Furthermore, the Open Government Sunset Review Act<sup>8</sup> 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 more broad than necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect 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.
- Protect trade or business secrets.<sup>9</sup>

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<sup>1</sup> Section 286.011(1), F.S.

<sup>2</sup> *Id.*

<sup>3</sup> Section 286.011(6), F.S.

<sup>4</sup> Section 286.011(2), F.S.

<sup>5</sup> FLA. CONST. art. I, s. 24(c).

<sup>6</sup> This portion of a public record exemption is commonly referred to as a "public necessity statement."

<sup>7</sup> FLA. CONST. art. I, s. 24(c).

<sup>8</sup> Section 119.15, F.S.

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.<sup>10</sup>

### 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.

A security system plan or any portion thereof that is held by an agency<sup>11</sup> is confidential and exempt<sup>12</sup> 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.<sup>13</sup>

An agency’s custodian of public records<sup>14</sup> is authorized to 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.<sup>15</sup>

#### *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.

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<sup>9</sup> Section 119.15(6)(b), F.S.

<sup>10</sup> Section 119.15(3), F.S.

<sup>11</sup> Section 119.011(2), F.S., defines “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.

<sup>12</sup> 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).

<sup>13</sup> Section 119.071(3)(a)2., F.S.

<sup>14</sup> Section 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.

<sup>15</sup> Section 119.071(3)(a)3., F.S.

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.

#### *Application of the Exemptions to Security Videos*

In 2015, the Fifth District Court of Appeal (DCA) in *Central Florida Regional Transportation Authority v. Post-Newsweek Stations, Orlando, Inc.*,<sup>16</sup> considered whether security videos from cameras installed on transit authority buses were confidential and exempt from public record requirements under ss. 119.071(3)(a) and 281.301, F.S. The court concluded that the video footage captured by the bus camera “directly relates to and reveals information about a security system,” and is therefore protected under the exemptions. The court found that “the videos, which are records, reveal the capabilities—and as a corollary, the vulnerabilities—of the current system.”

More recently, the Attorney General considered whether surveillance tapes from a security system for a public building are protected under ss. 119.071(3)(a) and 281.301, F.S. Citing the Fifth DCA case, the Attorney General opined that the surveillance tapes at issue constituted information that would reveal the existence of a security system and were therefore confidential and exempt from public record requirements pursuant to the exemptions.<sup>17</sup>

As a result of these interpretations, agencies are limited in the circumstances under which they may release security and surveillance videos.

#### **Effect of the Bill**

The bill amends s. 119.071(3)(a), F.S., which provides a public record exemption for security system plans held by an agency, to expand the list of authorized releases as follows:

- In furtherance of the official duties and responsibilities of the custodial agency;
- To another local, state, or federal agency in furtherance of that agency’s official duties and responsibilities; or
- Upon a showing of good cause before a court of competent jurisdiction.

It removes the provision authorizing release to a state or federal agency for purposes of preventing, detecting, or guarding against an attempted or actual act of terrorism because release for such purposes is encompassed in the newly added, more broad exceptions to the exemption.

The bill also amends s. 281.301, F.S., which provides public record and public meeting exemptions related to security systems, to provide that the confidential and exempt information may be disclosed:

- To the property owner or leaseholder;
- In furtherance of the official duties and responsibilities of the custodial agency;
- To another local, state, or federal agency in furtherance of that agency’s duties and responsibilities; or
- Upon a showing of good cause before a court of competent jurisdiction.

#### **B. SECTION DIRECTORY:**

Section 1 amends s. 119.071, F.S., relating to general exemptions from inspection or copying of public records.

Section 2 amends s. 281.301, F.S., relating to security systems; records and meetings exempt from public access or disclosure.

Section 3 provides an effective date of upon becoming a law.

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<sup>16</sup> 157 So. 3d 401 (Fla. 5th DCA 2015).

<sup>17</sup> 15-06 Fla. Op. Att’y Gen 1 (2015).

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill does not appear to have any impact on state revenues.

#### 2. Expenditures:

The bill does not appear to have any impact on state expenditures.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill does not appear to have any impact on local government revenues.

#### 2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

#### 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:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 20, 2016, the Government Operations Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The proposed committee substitute:

- Removed the public record exemptions for video or audio recordings from a security system camera for any property owned by or leased to the state or any of its political subdivisions, and for any privately owned or leased property that is in the possession of any agency;

- Removed the repeal of s. 281.301, F.S., which provides public record and public meeting exemptions related to security systems;
- Removed the public necessity statement; and
- Provided exceptions to the public records requirements for information relating to security systems in s. 281.301, F.S.

This analysis is drafted to the committee substitute as passed by the Government Operations Subcommittee.