HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7031 PCB OTA 18-03 OGSR/Criminal Justice Commission
SPONSOR(S): Oversight, Transparency & Administration Subcommittee, Burgess, Jr.
TIED BILLS: **IDEN./SIM. BILLS:** SB 7002

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Oversight, Transparency & Administration Subcommittee	12 Y, 0 N	Toliver	Harrington
1) Government Accountability Committee	20 Y, 0 N	Toliver	Williamson

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

Currently a municipality or county may create an advisory commission to examine local criminal justice issues. Such a commission, termed a duly constituted criminal justice commission (commission), may have a need to discuss active criminal intelligence or investigative information to develop strategies and offer recommendations regarding the criminal justice activities of its locality. As a governmental entity, each commission meeting is subject to the public meetings requirements of the sunshine law.

Current law provides an exemption from public meetings requirements for those portions of a commission meeting during which active criminal intelligence or investigative information is discussed and that information is being considered by, or which may foreseeably come before, the commission. However, at each commission meeting during which active criminal intelligence or investigative information is being considered, the commission members must publicly disclose it has been discussed.

The bill reenacts the public meeting exemption, which will repeal on October 2, 2018, if this bill does not become law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)[1] sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[2]

The Act 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:

- 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.[3]

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.[4] If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created[5] then a public necessity statement and a two-thirds vote for passage are not required.

Duly Constituted Criminal Justice Commission

Currently a county or municipality may create a duly constituted criminal justice commission (commission) to examine local criminal justice issues.[6] The commission, which serves as an advisory body, must be created by county or municipal ordinance and be composed of individuals from the private and public sectors.[7] Meetings of the commission are subject to s. 286.011, F.S., and s. 24(b), Art. I of the State Constitution. As such, the meetings must be reasonably noticed and open to the public, unless otherwise made exempt.

Public Meeting Exemption under Review

In 2013, the Legislature created a public meeting exemption for portions of a commission meeting during which commission members discuss active criminal intelligence information[8] or active criminal

[1] Section 119.15, F.S.
[2] Section 119.15(3), F.S.
[3] Section 119.15(6)(b), F.S.
[4] Section 24(c), Art. I, FLA. CONST.
[5] An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.
[6] Section 286.01141, F.S.
[7] *Id*.
[8] Section 119.011(3)(a), F.S., defines the term "criminal intelligence information" to mean information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity. Criminal intelligence information is considered "active" so long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities. Section 119.011(3)(d), F.S.

investigative information[9] that is being considered by, or which may foreseeably come before, the commission.[10] However, at any public meeting during which such information is discussed, the members of the commission are required to publicly disclose the fact that the matter has been discussed.[11]

The 2013 public necessity statement for the exemption provides that:

> If the meetings at which exempt information is discussed were open to the public, the purpose of the exemption from public records requirements found in chapter 119, Florida Statutes, would be defeated. The members of a criminal justice commission must be able to hear and discuss exempt information freely in order to make sound recommendations regarding strategies and activities that are best suited to protect the welfare of the people of this state. The ability to conduct meetings at which members can freely discuss and fully understand the details of active criminal intelligence information and active criminal investigative information is critical to the ability of a criminal justice commission to operate effectively.[12]

Pursuant to the Open Government Sunset Review Act, the public meeting exemption will repeal on October 2, 2018, unless reenacted by the Legislature.

Open Government Sunset Review

During the 2017 interim, subcommittee staff sent a questionnaire to each county and city as part of its review under the Open Government Sunset Review Act. In all, 20 questionnaire responses were received.[13] Only two respondents, Miami-Dade County and Palm Beach County, indicated they have a "duly constituted criminal justice commission" as defined in s. 286.01141(1)(a), F.S.

The Dade-Miami Criminal Justice Council "was created in 1978 and was codified via ordinance in February 2014."[14] According to the questionnaire response, "[t]he general purpose of [the council] is to encourage and facilitate the coordination and cooperation among various agencies and municipalities within Miami-Dade County with crime prevention/intervention strategies, criminal and juvenile justice activities and other activities related to criminal justice."[15]

The Palm Beach County Criminal Justice Commission was created in 1988 pursuant to an ordinance adopted in 1988.[16] The commission prioritizes its projects at its annual meeting and its discussions

[9] Section 119.011(3)(b), F.S., defines the term "criminal investigative information" to mean information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance. Criminal investigative information is considered to be "active" so long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future. Section 119.011(3)(d), F.S.

[10] Section 286.01141(2), F.S.

[11] *Id.*

[12] Chapter 2013-196, L.O.F.

[13] Questionnaire and responses are on file with the House Oversight, Transparency & Administration Subcommittee.

[14] Miami-Dade County Response to the OGSR Questionnaire, pg. 2, on file with the House Oversight, Transparency & Administration Subcommittee; *see also* Miami Dade County Ord. No. 14-17, ss. 1-8, adopted February 4, 2014. For purposes of classification, these provisions were included as Miami-Dade County Code of Ordinances, ch. 2, art. CXLIX, ss. 2-2166—2-2173. *See* https://library.municode.com/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTIIICOOR_CH2AD_ARTCXLIXDAAMCRJUCO_S2-2166CRPU (last visited on November 7, 2017).

[15] Miami-Dade County Response to OGSR Questionnaire, pg. 3, on file with the House Oversight, Transparency & Administration Subcommittee.

[16] Palm Beach County Ord. No. 88-16, adopted Aug. 16, 1988, effective Aug. 29, 1988, amended the Palm Beach County Code of Ordinances by adding provisions designated as Palm Beach Code of Ordinances, ch. 2, art. V, div. 5, ss. 2-216—2-221. *See* http://discover.pbcgov.org/criminaljustice/PDF/CJC%20Ordinance.pdf (last visited on November 7, 2017).

"center around the progress on these priorities which in the past few years have been [the commission's] … reentry program, community engagement, behavioral health issues in the system, body worn camera deployment amongst our local law enforcement agencies, the implementation of a validated risk assessment instrument for pretrial detention decision-making, our jail population and efforts to reduce it, law enforcement information sharing systems, and the Batterers' Intervention Program."[17]

The Dade-Miami Criminal Justice Council and the Palm Beach County Criminal Justice Commission have not closed any portion of their meetings to discuss active criminal intelligence information or active criminal investigative information. Because the Dade-Miami Criminal Justice Council has not used the exemption, Miami-Dade County did not render an opinion on whether the exemption should be reenacted. In contrast, Palm Beach County recommended reenactment of the exemption: "While the [Criminal Justice Commission] has never needed to use the exemption, there are always new issues to address. The [Criminal Justice Commission] is committed to data-driven policy-making and may require the exemption for future meetings."[18]

Effect of the Bill

The bill removes the repeal date thereby reenacting the public meetings exemption for portions of a meeting of a duly constituted criminal justice commission at which members of the commission discuss active criminal intelligence information or active criminal investigative information that is currently being considered by, or which may foreseeably come before, the commission.

B. SECTION DIRECTORY:

Section 1 amends s. 286.01141, F.S., to save from repeal the public meetings exemption for portions of a meeting of a duly constituted criminal justice commission.

Section 2 provides an effective date of October 1, 2018.

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:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

[17] Palm Beach County Response to the OGSR Questionnaire, pg. 5, on file with the House Oversight, Transparency & Administration Subcommittee.
[18] *Id*.

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. 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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.