

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 755 Pub. Rec./Nationwide Public Safety Broadband Network  
**SPONSOR(S):** Oversight, Transparency & Administration Subcommittee, Williamson  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 988

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee	14 Y, 0 N, As CS	Moore	Harrington
2) Energy & Utilities Subcommittee	12 Y, 0 N	Keating	Keating
3) Government Accountability Committee			

### SUMMARY ANALYSIS

The First Responder Network Authority (FirstNet) is an independent authority established by Congress within the Department of Commerce to deliver a nationwide broadband network dedicated to public safety (Network). FirstNet is the last remaining recommendation of the National Commission on Terrorist Attacks upon the United States (also known as the 9-11 Commission) to be addressed. The goal of the Network is to strengthen public safety users' communications capabilities, enabling them to respond more quickly and effectively to accidents, disasters, and emergencies.

The bill creates a public record exemption for information relating to the Network that is held by an agency if release of such information would reveal:

- The design, development, construction, deployment, and operation of Network facilities;
- Network coverage, including geographical maps indicating actual or proposed locations of Network infrastructure or facilities;
- The features, functions, and capabilities of Network infrastructure and facilities;
- The features, functions, and capabilities of Network services provided to first responders and other Network users;
- The design, features, functions, and capabilities of Network devices provided to first responders and other Network users; and
- Security, including cybersecurity, of the design, construction, and operation of the Network and associated services and products.

The bill provides for repeal of the exemption on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature. The bill provides a public necessity statement as required by the State Constitution.

The bill may have a minimal fiscal impact on the state and local governments. See Fiscal Comments section.

**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 record or public meeting exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

###### 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.<sup>1</sup> The general law must state with specificity the public necessity justifying the exemption<sup>2</sup> and must be no more broad than necessary to accomplish its purpose.<sup>3</sup>

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. Furthermore, the Open Government Sunset Review Act<sup>4</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:<sup>5</sup>

- 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.

The Act also requires the automatic repeal of a public record exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>6</sup> Specified questions must be considered by the Legislature during the review process.<sup>7</sup>

###### First Responder Network Authority

The First Responder Network Authority (FirstNet) is an independent authority established by Congress within the Department of Commerce to deliver a nationwide broadband network dedicated to public safety (Network).<sup>8</sup> FirstNet is the last remaining recommendation of the National Commission on Terrorist Attacks upon the United States (also known as the 9/11 Commission) to be addressed. The goal of the Network is to strengthen public safety users' communications capabilities, enabling them to respond more quickly and effectively to accidents, disasters, and emergencies.<sup>9</sup>

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<sup>1</sup> FLA. CONST. art. I, s. 24(c).

<sup>2</sup> This portion of a public record exemption is commonly referred to as a "public necessity statement."

<sup>3</sup> FLA. CONST. art. I, s. 24(c).

<sup>4</sup> s. 119.15, F.S.

<sup>5</sup> s. 119.15(6)(b), F.S.

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

<sup>7</sup> Section 119.15(6)(a), F.S., requires the Legislature to consider the following questions as part of the review process: 1) What specific records or meetings are affected by the exemption? 2) What specific parties does the exemption affect? 3) What is the public purpose of the exemption? 4) Can the information contained in the records or meetings be readily obtained by alternative means? If so, how? 5) Is the record or meeting protected by another exemption? 6) Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

<sup>8</sup> Middle Class Tax Relief and Job Creation Act of 2012, Pub. Law No. 112-96 (2012).

<sup>9</sup> FirstNet Top 10 Frequently Asked Questions, [https://www.firstnet.gov/sites/default/files/TopTenFAQs\\_180107.pdf](https://www.firstnet.gov/sites/default/files/TopTenFAQs_180107.pdf) (last visited Jan. 19, 2018).

In January 2016, FirstNet issued a request for proposals for deployment of the Network. After evaluating all proposals, FirstNet and the Department of Interior awarded the 25-year contract for building, deploying, and operating the Network to AT&T. All 50 states and Washington, D.C., have “opted in,” to FirstNet, meaning each has accepted its individual State Plan detailing how the network will be deployed in their state/territory.<sup>10</sup>

### **Effect of the Bill**

The bill creates a public record exemption for information relating to the Network that is held by an agency if release of such information would reveal:

- The design, development, construction, deployment, and operation of Network facilities;
- Network coverage, including geographical maps indicating actual or proposed locations of Network infrastructure or facilities;
- The features, functions, and capabilities of Network infrastructure and facilities;
- The features, functions, and capabilities of Network services provided to first responders<sup>11</sup> and other Network users;
- The design, features, functions, and capabilities of Network devices provided to first responders and other Network users; and
- Security, including cybersecurity, of the design, construction, and operation of the Network and associated services and products.

The bill provides a public necessity statement as required by the State Constitution, specifying that disclosure of the above-described information would adversely affect the business interests of communications service providers and compromise the network security of such providers and their networks.

The bill provides for repeal of the exemption on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature

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

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

Section 2. Provides a public necessity statement.

Section 3. Provides an effective date of July 1, 2018.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

The bill does not appear to impact state government revenues.

##### **2. Expenditures:**

See Fiscal Comments.

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<sup>10</sup> *Id.*

<sup>11</sup> The term “first responder” means a law enforcement officer as defined in s. 943.10, F.S., a firefighter as defined in s. 633.102, F.S., or an emergency medical technician or paramedic as defined in s. 401.23, F.S., employed by state or local government. The term also includes a volunteer law enforcement officer, firefighter, or emergency medical technician or paramedic engaged by the state or a local government. Section 112.1815(1), F.S.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The bill does not appear to impact local government revenues.

2. Expenditures:

See Fiscal Comments.

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

None.

**D. FISCAL COMMENTS:**

The bill could have a minimal fiscal impact on agencies because agency staff responsible for complying with public record requests may require training related to creation of the public record exemption. In addition, agencies 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 agencies.

**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:

Vote Requirement

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

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption and includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for information relating to the Network that is held by an agency if release of the information would reveal specified security or proprietary information. As such, the exemption does not appear to be in conflict with the constitutional requirement that it be no broader than necessary to accomplish its purpose.

**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 17, 2018, the Oversight, Transparency & Administration Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Clarified that the bill applies to records held by an agency;
- Clarified that the bill applies to certain security and proprietary information relating to the Network, rather than “any” information relating to the Network; and
- Revised the public necessity statement to reflect the intent of the bill.

This analysis is drafted to the committee substitute as approved by the Oversight, Transparency & Administration Subcommittee