

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 591 Pub. Rec./Public Utility Held Customer Information and Data  
**SPONSOR(S):** Energy & Utilities Subcommittee, Yarborough and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 600

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	12 Y, 0 N, As CS	Keating	Keating
2) Oversight, Transparency & Public Management Subcommittee	13 Y, 0 N	Moehrle	Harrington
3) Commerce Committee			

### SUMMARY ANALYSIS

The deployment of utility “smart meter” technology allows utility customer usage to be measured on a more frequent basis than traditional monthly meter reading and allows this data to be automatically and wirelessly transmitted to the utility. The utility uses this data for billing purposes and to monitor its system and quickly identify and locate problems. Individual customers may use this data to better understand their usage habits and, in turn, adjust those habits to reduce their utility bills. Depending on the capabilities of the various types of utility meters in use and the data collection practices of individual local government utilities, this data may include detailed information about the consumption of electric, natural gas, water, or wastewater services by individual homeowners and businesses on an hourly or even minute-by-minute basis.

Florida’s investor-owned utilities treat individual customer data as confidential, except as required for regulated business purposes and to comply with court orders. Local government utilities, however, are subject to Florida’s public records laws and, upon request, are required to produce their customer-specific data.

The bill creates a public record exemption for customer meter-derived data and billing information in increments of less than one billing cycle held by a local government utility. This exemption applies to such information held by a local government utility before, on, or after the effective date of the 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The bill provides that this public record exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2024, unless reviewed and saved from repeal by the Legislature. The bill provides a statement of public necessity as required by the Florida Constitution.

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 provides an effective date of July 1, 2019.

**Article I, section 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:

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

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 Act<sup>2</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 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.<sup>3</sup>

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>4</sup>

##### 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.<sup>5</sup> According to a 2014 staff analysis, 254 municipalities provided water services and 222 municipalities provided wastewater service at that time.<sup>6</sup> Municipalities also are authorized by general law to provide natural

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

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

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

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

<sup>5</sup> 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.

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

gas services.<sup>7</sup> As of December 31, 2017, 27 municipally owned natural gas utilities provided service in the state.<sup>8</sup> With respect to electricity service, 33 municipally owned electric utilities serve approximately 14 percent of the state's population.<sup>9</sup>

Pursuant to article VIII, section 1 of the Florida Constitution, counties not operating under a charter have the power of self-government as provided by general or special law, while charter counties have all powers of self-government not inconsistent with general law or with special law approved by the county electors. Counties are authorized by general law to provide water and sewer utility services both within their individual boundaries and in adjoining counties.<sup>10</sup>

### Utility Customer Consumption Data

Traditional, analog utility meters record consumption at a utility customer's premises. On a regular, periodic basis, the meter is "read" in person by a utility employee to determine how much of the utility's service – electric, natural gas, or water/wastewater – was used at the premises since the last meter reading. This data is used by the utility for purposes of customer billing.

In recent years, utilities have deployed, to varying degrees, newer "smart meter" technologies that measure a utility customer's consumption on a more frequent basis (e.g., hourly) and transmit this data automatically and wirelessly to the utility. The utility still uses this data for billing purposes but also can use it to monitor its system and identify and locate problems more quickly. This more detailed consumption data may also be shared with individual utility customers, who may use it to better understand their usage habits and, in turn, adjust those habits to reduce their utility bills.

Florida's investor-owned utilities treat individual customer data as confidential, except as required for regulated business purposes and to comply with court orders.<sup>11</sup> Local government utilities, however, are subject to Florida's public records laws and, upon request, are required to produce their customer-specific data.

### **Effect of Proposed Changes**

The bill creates a public record exemption for customer meter-derived data and billing information in increments of less than one billing cycle held by a local government utility.<sup>12</sup> Depending on the capabilities of the various types of utility meters in use and the data collection practices of individual local government utilities, this data may include detailed information about the consumption of electric, natural gas, water, or wastewater services by individual homeowners and businesses on an hourly or even minute-by-minute basis. This exemption applies to such information held by a local government utility before, on, or after the effective date of the exemption.<sup>13</sup>

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

- Safeguarding customer meter-derived data and billing information in increments less than one billing cycle is of the utmost importance.

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<sup>7</sup> S. 180.06(8), F.S.

<sup>8</sup> Florida Public Service Commission, *Facts & Figures of the Florida Utility Industry*, p.13 (May 2018).

<sup>9</sup> Florida Municipal Electric Association, *Who is FMEA*, <https://www.publicpower.com/about-us> (last visited Feb. 15, 2019).

<sup>10</sup> S. 125.01(1)(k)1., F.S. and s. 153.03, F.S.

<sup>11</sup> See Florida Public Service Commission, *Smart Meters*, <http://www.psc.state.fl.us/ElectricNaturalGas/SmartMeters> (last visited Feb. 16, 2019).

<sup>12</sup> For purposes of this exemption, "utility" means an entity that provides electricity, natural gas, telecommunications, water, chilled water, reuse water, or wastewater. S. 119.011(15), F.S.

<sup>13</sup> S. 119.0713(5)(b), F.S. 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).

- Smart meters can record and transmit detailed data on a customer's use of utility services, presenting unique security concerns. A 2010 report by the United States Department of Energy recognized these concerns and recommended that this data be protected from release to third parties.
- This detailed customer data can be used specifically to identify minute-by-minute usage patterns, including the exact appliance or service being used, creating significant security issues for businesses and homeowners.

In accordance with s. 119.15, F.S, the exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

**B. SECTION DIRECTORY:**

**Section 1.** Amends s. 119.0713, F.S., relating to local government agency public records exemptions.

**Section 2.** Provides a statement of public necessity.

**Section 3.** Provides an effective date of July 1, 2019.

**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:

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 the new 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.

### 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 spend funds or to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, or reduce the percentage of a state tax shared with counties or municipalities.

##### 2. Other:

###### Vote Requirement

Article I, section 24(c) of the Florida 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 public record exemption; thus, it requires a two-thirds vote for final passage.

###### Public Necessity Statement

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

###### Breadth of Exemption

Article I, section 24(c) of the Florida 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 specifically for customer meter-derived data and billing information in increments of less than one billing cycle to protect local government utility customers from having their detailed personal usage data shared publicly. 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:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 20, 2019, the Energy & Utilities Subcommittee adopted one amendment to the bill and reported the bill favorably as a committee substitute. The amendment clarifies the statement of public necessity for the public records exemption created by the bill.

This analysis is drafted to the committee substitute as approved by the Energy & Utilities Subcommittee.