

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: CS/CS/SB 1802

INTRODUCER: Governmental Oversight and Accountability Committee; Criminal Justice Committee and Senator Pizzo

SUBJECT: Public Meetings/Urban Core Gun Violence Task Force

DATE: February 10, 2020 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Jones</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Ponder</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

<p>Please see Section IX. for Additional Information:</p> <p>COMMITTEE SUBSTITUTE - Substantial Changes</p>
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I. Summary:

CS/CS/SB 1802 creates a narrowly tailored public meetings exemption from the requirements of s. 286.011, F.S., and s. 24(b), Article I of the State Constitution for the portions of the meetings of the Urban Core Gun Violence Task Force (Task Force) during which exempt or confidential and exempt information is discussed. The bill provides for the recordation and transcription of any portion of an exempt meeting and makes such recordings and transcripts confidential and exempt from disclosure under s. 119.07(1), F.S., s. 24(a), Art. I of the State Constitution

CS/SB 652, which creates the Task Force, grants authority to the Task Force to request and be provided with access to any information or records pertaining to crime and gun violence in urban core neighborhoods and communities in order to fulfill its duties. It is likely that at least some of the information and records to which the Task Force has access may be otherwise exempt or confidential and exempt, including confidential investigative files.

CS/SB 652 provides that information or records that the Task Force receives shall retain such exempt or confidential and exempt status, and that the Task Force may not disclose any such information or records. The public meetings exemption will allow the Task Force to discuss the exempt or confidential and exempt information while maintaining the protected status of that information.

This bill provides a statement of the public necessity for the exemption. It is narrowly tailored to include only the portions of meetings at which the protected information is discussed. The bill requires a two-thirds vote of the members present and voting for final passage.

There is no anticipated fiscal impact from this bill.

The bill becomes effective on the same date that CS/SB 652 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law. At this point, CS/SB 652, if enacted, takes effect July 1, 2020.

II. Present Situation:

Open Meetings Laws

The Florida Constitution provides that the public has a right to access governmental meetings.¹ Each collegial body must provide notice of its meetings to the public and permit the public to attend any meeting at which official acts are taken or at which public business is transacted or discussed.² This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts, or special districts.³

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,”⁴ or the “Sunshine Law,”⁵ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be open to the public.⁶ The board or commission must provide the public reasonable notice of such meetings.⁷ 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 which operates in a manner that unreasonably restricts the public’s access to the facility.⁸ Minutes of a public meeting must be promptly recorded and open to public inspection.⁹ Failure to abide by open meetings requirements will invalidate any resolution, rule, or formal action adopted at a meeting.¹⁰ A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.¹¹

¹ FLA. CONST., art. I, s. 24(b).

² *Id.*

³ FLA. CONST., art. I, s. 24(b). Meetings of the Legislature are governed by Article III, section 4(e) of the Florida Constitution, which states: “The rules of procedure of each house shall further provide that all prearranged gatherings, between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public.”

⁴ *Times Pub. Co. v. Williams*, 222 So. 2d 470, 472 (Fla. 2d DCA 1969).

⁵ *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).

⁶ Section 286.011(1)-(2), F.S.

⁷ *Id.*

⁸ Section 286.011(6), F.S.

⁹ Section 286.011(2), F.S.

¹⁰ Section 286.011(1), F.S.

¹¹ Section 286.011(3), F.S.

The Legislature may create an exemption to open meetings requirements by passing a general law by at least a two-thirds vote of each house of the Legislature.¹² The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.¹³ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.¹⁴

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records exemptions,¹⁵ with specified exceptions.¹⁶ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁷ The Act provides that a public records exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.¹⁸

Urban Core Gun Violence

In American urban centers with significant minority populations, like New Orleans, Detroit, and Baltimore, the homicide rate is up to 10 times higher than the national average—between 30 and 40 murders per 100,000 people.¹⁹ One study calculated that young black men living in a high-crime area of Rochester, NY, had a murder rate of 520 per 100,00, over 100 times higher than the national average.²⁰ Firearm homicide is the leading cause of death for black males ages 15–34.²¹

Urban cores can be defined as areas that have high population densities (7,500 or more per square mile or 2,900 per square kilometer or more) and high transit, walking and cycling work trip market shares (20 percent or more). Urban cores also include non-exurban sectors with median house construction dates of 1945 or before.²²

¹² FLA. CONST., art. I, s. 24(c).

¹³ *Id.*

¹⁴ *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a public records statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

¹⁵ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

¹⁶ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁷ Section 119.15(3), F.S.

¹⁸ Section 119.15(6)(b), F.S.

¹⁹ Giffords Law Center to Prevent Gun Violence, *Healing Communities in Crisis, Lifesaving Solutions to the Urban Gun Violence Epidemic*, p. 11, available at <https://lawcenter.giffords.org/wp-content/uploads/2019/01/Healing-Communities-in-Crisis.pdf> (last visited January 23, 2020).

²⁰ *Id.* at 12.

²¹ *Id.*

²² Wendell Cox, *Urban Cores, Core Cities and Principal Cities*, *Newgeography*, August 1, 2014, available at <http://www.newgeography.com/content/004453-urban-cores-core-cities-and-principal-cities> (last visited January 23, 2020).

CS/SB 652 - the creation of the Urban Core Gun Violence Task Force

CS/SB 652 creates the Urban Core Gun Violence Task Force within the Florida Department of Law Enforcement (FDLE), which is tasked with investigating system failures and the causes of high crime rates and gun violence incidents in urban core neighborhoods and communities. The Task Force is expected to develop recommendations for solutions, programs, services, and strategies for improved interagency communications between local and state government agencies which will help facilitate the reduction of crime and gun violence in urban core neighborhoods and communities.

The Task Force will convene no later than September 1, 2020, and will be comprised of 10 members who will serve at the pleasure of the officer who appointed him or her. At least five of the members shall be women and at least six of the members shall be members of racial minority groups. The appointments will be made as follows:

- Two members will be appointed by the President of the Senate;
- Two members will be appointed by the Minority Leader of the Senate;
- Two members will be appointed by the Speaker of the House of Representatives;
- Two members will be appointed by the Minority Leader of the House of Representatives; and
- Two members will be appointed by the Governor.

The Governor will appoint the Chair from among the 10 members. Additionally, the chair of the Task Force will assign staff from the FDLE and the Department of Juvenile Justice (DJJ) to assist the Task Force in performing its duties.

The General Counsel of the FDLE will serve as the general counsel for the task force.

The Task Force has the authority to request and be provided with access to *any* information or records pertaining to crime and gun violence in urban core neighborhoods and communities. Because of the nature of the Task Force's responsibilities it is likely that at least some of the information and records to which the Task Force has access may be otherwise exempt or confidential and exempt.

CS/SB 652 provides that any information or records obtained by the Task Force which are exempt or confidential and exempt will retain such exempt or confidential and exempt status. Additionally, the Task Force may not disclose any such information or records. Any discussion at an open meeting of the Task Force related to the protected information or records would violate the exempt or confidential and exempt status of the information or records. Therefore, an exemption from the public meetings laws is necessary in order to maintain the exempt or confidential and exempt status of certain information or records the Task Force receives and discusses during the fulfillment of its duties.

III. Effect of Proposed Changes:

The bill creates a public meetings exemption from the requirements of s. 286.011, F.S., and s. 24(b), Article I of the State Constitution for the portions of the meetings of the Urban Core

Gun Violence Task Force during which exempt or confidential and exempt information is discussed.

The bill provides that all exempt portions of a meeting of the Urban Core Gun Violence Task Force must be recorded and transcribed. The recordings and transcripts are confidential and exempt from disclosure under s. 119.01(1), F.S. and s. 24(a), Art. I of the State Constitution unless a court of competent, after an in camera review, determines that the meeting was not restricted to the discussion of exempt or confidential and exempt information as obtained by the Urban Core Gun violence Task Force.

The bill sets forth the public necessity for the exemption by stating the following Legislative findings:

- The purpose of the Task Force is to investigate system failures and the causes of high crime rates and gun violence incidents in urban core neighborhoods and communities;
- The Task Force shall develop recommendations for solutions, programs, services, and strategies for improved interagency communications between local and state government agencies which will help facilitate the reduction of crime and gun violence in urban core neighborhoods and communities;
- In order to fulfill its directive, the Task Force must be able to discuss exempt or confidential and exempt information that it receives as part of its investigation;
- The public meetings exemption will allow the task force to review and discuss exempt or confidential and exempt information that will be useful in forming meaningful recommendations for system improvements and improved interagency communications;
- As such, it is necessary that those portions of meetings wherein exempt or confidential and exempt information is discussed be made exempt from public meetings requirements;
- If such portions of the meeting were not closed, the public records exemptions would be negated;
- Thus, the Legislature finds that the public meeting exemption is a public necessity in order to ensure the effective and efficient administration of the Urban Core Gun Violence Task Force.

The bill is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill becomes effective on the same date that CS/SB 652 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not 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.

B. Public Records/Open Meetings Issues:***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 bill creating or expanding an exemption to the open meeting requirements. This bill enacts a new exemption for the portions of the meetings of the Urban Core Gun Violence Task Force during which exempt or confidential and exempt information is discussed, thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the open meeting requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemption.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the open meetings requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect exempt or confidential and exempt information to which the Urban Core Gun Violence Task Force has access. This bill exempts only the portions of the meetings of the Task Force during which the exempt or confidential and exempt information is discussed by the Task Force from the open meetings requirements. The exemption does not appear to be broader than necessary to accomplish the purpose of the law

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 943.6872 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Governmental Oversight and Accountability on February 10, 2020:

The committee substitute adds language to provide for the recordation and transcription of those portions of the Task Force meetings that are made exempt under the bill.

CS by Criminal Justice on January 28, 2020:

The committee substitute amends the directory clause of the bill to redesignate certain subsections and to add a subsection to the language contained in s. 943.6872, F.S., as created by CS/SB 652.

B. Amendments:

None.