

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 755 Pub. Rec. and Meetings/911 and E911 Communication Systems

SPONSOR(S): Energy & Utilities Subcommittee; DuBose

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1060

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|------------------|---------|--|
| 1) Energy & Utilities Subcommittee | 14 Y, 0 N, As CS | Keating | Keating |
| 2) Oversight, Transparency & Public Management Subcommittee | 15 Y, 0 N | Villa | Smith |
| 3) Commerce Committee | | | |

SUMMARY ANALYSIS

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of the legislative, executive, or judicial branches of government. However, the Legislature may provide by general law for the exemption of records from the constitutional requirements.

Current law provides public record exemptions for various records related to the physical security of certain structures and for certain information related to the Nationwide Public Safety Broadband Network. There is not a specific public record exemption for records related to infrastructure used to provide 911 or E911 communication service.

The bill creates a public record exemption for specific records that identify the design, scope, and location of 911 or E911 communication system infrastructure owned and operated by an agency before, on, or after the effective date of the bill. The bill also creates a public meeting exemption for any portion of a meeting that would reveal these records. Specifically, the bill creates a public record exemption for:

- Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the structural elements of 911 or E911 communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911 or E911 communication services, or other 911 or E911 communication structures or facilities owned and operated by an agency; and
- Geographical maps indicating the actual or proposed locations of 911 or E911 communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911 or E911 services, or other 911 or E911 communication structures or facilities owned and operated by an agency.

The bill identifies specific circumstances in which these records may be disclosed. Further, the bill requires that all portions of a public meeting exempted by the bill be recorded and transcribed. The bill provides that such recordings and transcripts are confidential and exempt from disclosure as public records except to the extent that any portion of the recording or transcript is determined by a court of competent jurisdiction, after an in camera review, to reveal nonexempt data.

The bill provides for repeal of the exemptions on October 2, 2025, 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 does not appear to have a fiscal impact on state or local government.

The bill provides that it will take effect upon becoming law.

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 meeting or public record exemption. The bill creates a new public meeting and 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).¹ The general law must state with specificity the public necessity justifying the exemption² and must be no more broad than necessary to accomplish its purpose.³

Public Meetings

Article I, section 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.⁴ The board or commission must provide reasonable notice of all public meetings.⁵ 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.⁶ Minutes of a public meeting must be promptly recorded and open to public inspection.⁷

The Legislature may provide by general law for the exemption of meetings from the requirements of article I, section 24(b) of the Florida Constitution.⁸ The general law must state with specificity the public necessity justifying the exemption⁹ and must be no more broad than necessary to accomplish its purpose.¹⁰

Open Government Sunset Review

¹ FLA. CONST. art. I, s. 24(c).

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

³ FLA. CONST. art. I, s. 24(c).

⁴ S. 286.011(1), F.S.

⁵ *Id.*

⁶ S. 286.011(6), F.S.

⁷ S. 286.011(2), F.S.

⁸ FLA. CONST. art. I, s. 24(c).

⁹ This portion of a public meeting exemption is commonly referred to as a "public necessity statement."

¹⁰ FLA. CONST. art. I, s. 24(c).

The Open Government Sunset Review Act¹¹ provides that a public meeting and public record 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.¹²

The Act requires the automatic repeal of a public meeting or public record exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.¹³

Public Record and Public Meeting Exemptions for Building Security and Public Safety Communications System Information

Current law provides a public record exemption for various records related to the physical security of certain structures. For example, building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure owned or operated by an agency¹⁴ are exempt from disclosure as a public record.¹⁵ This information may be disclosed to another governmental entity if necessary in the performance of its duties and responsibilities or to a licensed architect, contractor, or engineer who is performing work on or related to the structure at issue. If disclosed, the entity that receives the information must maintain its exempt status.

In addition, current law provides a public record exemption for certain information related to the Nationwide Public Safety Broadband Network¹⁶ that is held by an agency. This information, which includes geographical maps indicating actual or proposed locations of network infrastructure or facilities, among other things, is confidential and exempt from disclosure as a public record.¹⁷

Effect of Proposed Changes

The bill creates a public record exemption for specific records that identify the design, scope, and location of 911 or E911 communication system infrastructure owned and operated by an agency before, on, or after the effective date of the bill. The bill also creates a public meeting exemption for any portion of a meeting that would reveal these records.

Specifically, the bill provides the following records are exempt¹⁸ from public record requirements:

¹¹ S. 119.15, F.S.

¹² S. 119.15(6)(b), F.S.

¹³ S. 119.15(3), F.S.

¹⁴ For purposes of the public record law, an "agency" means "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 this chapter, 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." S. 119.011(2), F.S.

¹⁵ S. 119.071(3)(b), F.S.

¹⁶ In 2012, Federal law mandated the development of a nationwide, interoperable public safety broadband network. The network is based on a single, national network architecture that evolves with technological advances and that initially consists of a core network of national and regional data center that provides connectivity between the radio access network and the public Internet or public switched network, or both. 47 U.S.C. s. 1422. The network was created "to give public safety 21st century communication tools to help save lives, solve crimes and keep our communities and emergency responders safe." FirstNet, *The Network*, <https://firstnet.gov/network> (last visited Jan. 17, 2020).

¹⁷ S. 119.071(3)(d), F.S.

¹⁸ There is a difference between records the Legislature designates 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. Sch. Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), review

- Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the structural elements of 911 or E911 communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911 or E911 communication services, or other 911 or E911 communication structures or facilities owned and operated by an agency; and
- Geographical maps indicating the actual or proposed locations of 911 or E911 communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911 or E911 services, or other 911 or E911 communication structures or facilities owned and operated by an agency.

The bill provides that this information may be disclosed in three circumstances, provided that any entity who receives the information must maintain its exempt status. First, it may be disclosed to another governmental entity if necessary for the receiving entity to perform its duties and responsibilities. Second, it may be disclosed to a licensed architect, contractor, or engineer who is performing work on or related to the 911 or E911 communication system infrastructure. Third, it may be disclosed upon a showing of good cause before a court of competent jurisdiction.

The bill requires that all portions of a public meeting exempted by the bill must be recorded and transcribed. The bill provides that such recordings and transcripts are confidential and exempt from disclosure as public records except to the extent that any portion of the recording or transcript is determined by a court of competent jurisdiction, after an in camera review, to reveal nonexempt data.

The bill provides a statement of public necessity as required by the Florida Constitution. It includes the following legislative findings:

- The records for which the bill creates a public record exemption and public meeting exemption identify information concerning the design, scope, and location of 911 and E911 communication system infrastructure, both within and external to buildings and other structures.
- These records could be used by criminals or terrorists to examine 911 and E911 communication system infrastructure for vulnerabilities and to plan and execute criminal actions including cyber-crime, arson, and terrorism.
- This infrastructure must be protected to avoid disruption during an active shooter or other terror event, as disruption could result in greater loss of life and property damage.
- It is a public necessity to exempt these records from disclosure to reduce exposure to these security threats and to protect the public.

The public record and public meeting exemptions are subject to the Open Government Sunset Review Act and will be repealed on October 2, 2025, 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. Amends s. 286.0113, F.S., relating to general exemptions from public meetings.

Section 3. Provides a public necessity statement as required by the Florida Constitution.

Section 4. Provides for the bill to take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

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 683, 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 Op. Att’y Gen. Fla. 85-62 (1985).

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments, below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill could have a minimal fiscal impact on government entities that handle records that qualify for the exemptions created by the bill. Staff responsible for complying with public meeting and public record requirements may require training related to implementation of the exemptions. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of these entities.

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, 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 meeting or public record exemption. The bill creates a new public meeting and 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 meeting or public record exemption. The bill creates a new public meeting and public record exemption and includes a statement supporting the public necessity for these exemptions.

Breadth of Exemption

Article I, section 24(c) of the Florida Constitution requires a newly created public meeting or public record exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for specified documents that depict structural elements of 911

or E911 communication system infrastructure and the locations of such infrastructure used to provide 911 or E911 services. The bill creates a public meeting exemption for only the portion of a public meeting that would reveal such documents. The bill identifies specific entities to whom the exempt information may be disclosed as necessary. 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 January 21, 2020, the Energy & Utilities Subcommittee adopted one amendment to the bill and reported the bill favorably as a committee substitute. The amendment:

- Requires recording and transcription of the portions of a public meeting exempted by the bill, and provides that these recordings and transcripts are confidential and exempt from the public records law except to the extent that any portion of the recording or transcript is determined by a court of competent jurisdiction to reveal nonexempt data.
- Corrects the date upon which the exemptions created by the bill will stand repealed unless reviewed and saved from repeal through reenactment by the Legislature.

This analysis addresses the committee substitute as approved by the Energy & Utilities Subcommittee.