

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: SPB 7006

INTRODUCER: For consideration by the Governmental Oversight and Accountability Committee

SUBJECT: OGSR/Nationwide Public Safety Broadband Network

DATE: February 20, 2023 REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Limonas-Borja</u>	<u>McVaney</u>		Pre-meeting

I. Summary:

SPB 7006 saves from repeal the current public records exemption which makes information relating to the Nationwide Public Safety Broadband Network (FirstNet) held by an agency confidential and exempt from public inspection and copying requirements. FirstNet is a nationwide broadband network dedicated to emergency responders and the public safety community.

Unless saved from repeal by the Legislature, the exemption for information relating to FirstNet is scheduled to repeal on October 2, 2023. This bill removes the scheduled repeal to continue the confidential and exempt status of information held by an agency that relates to FirstNet.

The bill is not expected to impact state and local revenues and expenditures.

The bill takes effect October 1, 2023.

II. Present Situation:

Public Records Law

The State Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person who acts on behalf of the government.²

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.³ The Public Records Act states that:

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Public records laws are found throughout the Florida Statutes.

[i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁴

The Public Records Act typically contains general exemptions that apply across agencies. Agency- or program-specific exemptions often are placed in the substantive statutes that relate to that particular agency or program.

The Public Records Act does not apply to legislative or judicial records.⁵ Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the legislature.

Section 119.011(12), F.S., defines “public records” to include:

[a]ll documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connections with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to “perpetuate, communicate, or formalize knowledge of some type.”⁶

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

Only the Legislature may create an exemption to public records requirements.⁹ An exemption must be created by general law and must specifically state the public necessity which justifies the exemption.¹⁰ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill that enacts an exemption may not contain other substantive provisions¹¹ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹²

⁴ Section 119.01(1), F.S.

⁵ *Locke v. Hawkes*, 595 So. 2d 32, 34 (Fla. 1992); *see also Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁷ Section 119.07(1)(a), F.S.

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violations of those laws.

⁹ FLA CONST., art. I, s. 24(c).

¹⁰ *Id.*

¹¹ The bill may, however, contain multiple exemptions that relate to one subject.

¹² FLA. CONST., art. I, s. 24(c)

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.¹³ Records designated as “confidential and exempt” are not subject to inspection by the public and may only be released under the circumstances defined by statute.¹⁴ Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.¹⁵

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act (the Act), prescribe a legislative review process for newly created or substantially amended public records or open meetings exemptions,¹⁶ with specified exceptions.¹⁷ The Act requires the repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption or repeal the sunset date.¹⁸ In practice, many exemptions are continued by repealing the sunset date, rather than reenacting the exemption.

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹⁹ An exemption serves an identifiable purpose if the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption *and* it meets one of the following purposes:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;²⁰
- The release of sensitive personal information would be defamatory or jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²¹ or
- It protects trade or business secrets.²²

The Act also requires specified questions to be considered during the review process.²³ In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

¹³ *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁴ *Id.*

¹⁵ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁶ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings.

¹⁷ Section 119.15(2)(a) and (b), F.S., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁸ Section 119.15(3), F.S.

¹⁹ Section 119.15(6)(b), F.S.

²⁰ Section 119.15(6)(b)1., F.S.

²¹ Section 119.15(6)(b)2., F.S.

²² Section 119.15(6)(b)3., F.S.

²³ Section 119.15(6)(a), F.S. The specific questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?

If, in reenacting an exemption or repealing the sunset date, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁴ If the exemption is reenacted or saved from repeal without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to expire, the previously exempt records will remain exempt unless otherwise provided by law.²⁵

First Responder Network Authority

Following the 9/11 terrorist attacks, Congress created the National Commission on Terrorist Attacks Upon the United States (Commission). The Commission was tasked with preparing a full and complete account of the circumstances surrounding the September 11, 2001 terrorist attacks, along with recommendations designed to guard against future attacks.²⁶ One of the Commission's recommendations to prevent the incidents of communication disruption that occurred between first responders during the terrorist attacks was to "support pending legislation which provides for the expedited and increased assignment of radio spectrum for public safety purposes."²⁷

The federal Middle Class Tax Relief and Job Creation Act of 2012²⁸ created the First Responder Network Authority (FirstNet Authority) as an independent authority within the Department of Commerce to oversee the Nationwide Public Safety Broadband Network (FirstNet). FirstNet is designed to provide emergency responders with a nationwide, high-speed, broadband network dedicated to public safety.²⁹ FirstNet commenced operations in 2018.

FirstNet's public-private partnership with AT&T provides first responders with immediate access to mission-critical capabilities over the FirstNet network.³⁰ This includes priority and preemption features³¹ that give first responders their own 'fast lane' on the public safety network to communicate and share information during emergencies, large events or other situations when

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- What is the identifiable public purpose or goal of the exemption?
 - Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
 - Is the record or meeting protected by another exemption?
 - Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²⁴ FLA. CONST. art. I, s. 24(c).

²⁵ Section 119.15(7), F.S.

²⁶ National Commission on Terrorist Attacks Upon the United States, *About the Commission*, available at <https://govinfo.library.unt.edu/911/about/index.htm> (last visited January 20, 2023).

²⁷ 9/11 Commission, *The 9/11 Commission Report*, pgs. 396-397, (2004), available at <https://govinfo.library.unt.edu/911/report/911Report.pdf> (last visited January 20, 2023).

²⁸ Pub. Law No. 112-96, H.R. 3630, 112th Cong. (2012).

²⁹ FirstNet Authority, *About Us*, available at: <https://www.firstnet.gov/about> (last visited December 5, 2022).

³⁰ FirstNet Authority, *History*, available at: <https://www.firstnet.gov/about/history> (last visited December 5, 2022).

³¹ FirstNet Authority, *Experience FirstNet: How priority and preemption help public safety connect when they need it most*, available at: <https://www.firstnet.gov/newsroom/blog/experience-firstnet-how-priority-and-preemption-help-public-safety-connect-when-they> (last visited December 5, 2022).

commercial networks could become congested. FirstNet is the only broadband network to provide preemption for public safety.³²

FirstNet's enabling federal legislation³³ requires each Governor to determine whether to:

- Opt-in, by choosing to participate in the deployment of the nationwide, interoperable network as proposed by the FirstNet State Plan, or
- Opt-out, by choosing to deploy, maintain, operate, and improve a Radio Access Network that interoperates with the FirstNet network.³⁴

Public safety agencies who opt-in to FirstNet are eligible to contract with FirstNet, to provide first responders immediate access to AT&T's commercial network on a priority basis, and preemptive access within the year. Additionally, AT&T will install the FirstNet Radio Access Network at no cost to opt-in jurisdictions.³⁵

FirstNet in Florida

All fifty states, five U.S. territories, and Washington D.C., have opted to participate in FirstNet. Each state has an individualized state plan detailing how FirstNet will be deployed in its state.³⁶ FirstNet has worked with Florida public safety officials since 2014 to ensure the design of the Florida FirstNet met all of Florida's specific needs.³⁷ In 2017, Governor Scott elected to opt-in to the nationwide broadband network as proposed by the FirstNet State Plan.³⁸

Open Government Sunset Review of the Public Records Exemption for Information Relating to FirstNet

In 2018 the Legislature created the public records exemption for information held by an agency that relates to FirstNet 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;

³² AT&T, *FirstNet Launches Ruthless Preemption for First Responders*, available at:

https://about.att.com/story/preemption_for_first_responders.html (last visited December 5, 2022).

³³ 47 U.S.C. s. 1442(e)(2).

³⁴ *Id.*

³⁵ IWCE, *FirstNet hits 50% 'opt-in' threshold as Indiana makes announcement*, available at:

<https://urgentcomm.com/2017/10/11/firstnet-hits-50-opt-in-threshold-as-indiana-makes-announcement/> (last visited December 5, 2022).

³⁶ FirstNet, *The Network*,

<https://www.firstnet.gov/network#:~:text=Delivering%20on%20the%20FirstNet%20promise,deployed%20in%20their%20state%2Fterritory> (last visited December 7, 2022).

³⁷ FirstNet, *Florida*, <https://www.firstnet.gov/public-safety/firstnet-for/florida> (last visited December 7, 2022).

³⁸ Letter from Rick Scott, Governor, State of Florida, to Mike Poth, Chief Executive Officer, First Responder Network Authority (December 28, 2017) available at: <https://www.flgov.com/wp-content/uploads/2017/12/122817.pdf> (last visited December 7, 2022).

- The design, features, functions, and capabilities of network devices provided to first responders and other network users; or
- Security, including cybersecurity, of the design, construction, and operation of the network and associated services and products.

The public necessity statement, as required by the State Constitution, specified that it is a public necessity to protect such information because disclosure of this information would adversely affect the business interests and network security of these providers and its networks. Additionally, the public necessity statement provides that without the exemption, competitors could appropriate the information in such a way as to impede full and fair competition, therefore disadvantaging consumers of communications services as they relate to FirstNet.

The staff of the Senate Governmental Oversight and Accountability Committee and the House Government Operations Subcommittee surveyed multiple Florida sheriff offices and police departments to ascertain whether the public records exemption in s. 119.071(3)(d), F.S., remains necessary. Staff reviewed the agencies' responses and a majority of those agencies recommend that the Legislature reenact the public records exemption without any changes.

III. Effect of Proposed Changes:

Section 1 amends s. 119.071(3)(d), F.S., to save from repeal the public records exemption for information relating to FirstNet held by an agency. The bill deletes the scheduled repeal date of October 2, 2023, to maintain the confidential and exempt status of the information.

Section 2 provides that the bill takes effect October 1, 2023.

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 public records requirements. This bill does not create or expand an exemption, thus, the bill does not require 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 public records requirements to state with specificity the public necessity

justifying the exemption. This bill does not create or expand an exemption, thus, a statement of public necessity is not required.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The exemption in the bill 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:

The private sector will continue to be subject to the cost associated with an agency's review and redactions of exempt records in response to a public records request.

C. Government Sector Impact:

The government sector will continue to incur costs related to the review and redaction of exempt records associated with responding to public records requests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.071 of the Florida Statutes.

IX. Additional Information:

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

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
