

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/SB 7006

INTRODUCER: Governmental Oversight and Accountability Committee and Regulated Industries Committee

SUBJECT: OGSR/Utility Owned or Operated by a Unit of Local Government

DATE: January 23, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Schrader</u>	<u>Imhof</u>		RI Submitted as Committee Bill
1.	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	Fav/CS
2.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 7006 saves from repeal the current public records exemptions making exempt from public inspection and copying requirements the following information held by a utility owned or operated by a unit of local government (municipal utility):

- Information related to the security of the technology, processes, or practices that are designed to protect the utility’s networks, computers, programs, and data from attack, damage, or unauthorized access, which information, if disclosed, would facilitate the alteration, disclosure, or destruction of such data or information technology resources.
- Information related to the security of existing or proposed information technology systems or industrial control technology systems, which, if disclosed, would facilitate unauthorized access to, and alteration or destruction of, such systems in a manner that would adversely impact the safe and reliable operation of the systems and the utility.
- Customer meter-derived data and billing information in increments less than one billing cycle.

The bill also saves from repeal the current public meetings exemption for any portion of a meeting that would reveal the information described above.

The exemptions are necessary to protect the security of business and residential municipal utility customers, and to protect sensitive information regarding security measures in place to protect

technologies, processes, and practices designed to secure data, information technology systems, and industrial control technology systems.

Unless saved from repeal by the Legislature, these exemptions are scheduled to repeal on October 2, 2024. The bill removes the scheduled repeals to continue the exempt status of the information and relevant portions of the meetings. However, the public records and public meetings exemptions relating to cybersecurity will be subject to a new repeal date of October 2, 2027.

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

The bill takes effect October 1, 2024.

II. Present Situation:

Access to Public Records - Generally

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 The right to inspect or copy 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 acting on behalf of the government.²

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, ch. 119, F.S., known as the Public Records Act, provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

The Public Records Act provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

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

¹ FLA. CONST. art. I, s. 24(a).

² *Id.* See also, *Sarasota Citizens for Responsible Gov’t v. City of Sarasota*, 48 So. 3d 755, 762-763 (Fla. 2010).

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2022-2024) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2022-2024).

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “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.”

all 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 that are used to “perpetuate, communicate, or formalize knowledge of some type.”⁶

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any 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

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.⁹ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹⁰

General exemptions from the public records requirements are contained in the Public Records Act.¹¹ Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹²

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

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 violating those laws.

⁹ FLA. CONST. art. I, s. 24(c).

¹⁰ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding 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); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹¹ *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹² *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

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

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 Meetings Laws

The State Constitution provides that the public has a right to access governmental meetings.¹⁶ 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.¹⁷ This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts, or special districts.¹⁸

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., which is also known as the “Government in the Sunshine Law”¹⁹ or the “Sunshine Law,”²⁰ 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.²¹ The board or commission must provide the public reasonable notice of such meetings.²² 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.²³ Minutes of a public meeting must be promptly recorded and open to public inspection.²⁴ Failure to abide by open meetings requirements will invalidate any resolution, rule, or formal action adopted at a meeting.²⁵ A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.²⁶

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of the House and the Senate.²⁷ 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.²⁸ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.²⁹

¹⁴ *Id.*

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

¹⁶ FLA. CONST., art. I, s. 24(b).

¹⁷ *Id.*

¹⁸ 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.”

¹⁹ *Times Pub. Co. v. Williams*, 222 So.2d 470, 472 (Fla. 2d DCA 1969).

²⁰ *Board of Public Instruction of Broward County v. Doran*, 224 So.2d 693, 695 (Fla. 1969).

²¹ Section 286.011(1)-(2), F.S.

²² *Id.*

²³ Section 286.011(6), F.S.

²⁴ Section 286.011(2), F.S.

²⁵ Section 286.011(1), F.S.

²⁶ Section 286.011(3), F.S.

²⁷ FLA. CONST., art. I, s. 24(c).

²⁸ *Id.*

²⁹ *See supra* note 10.

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act³⁰ (the Act), prescribe a legislative review process for newly created or substantially amended³¹ public records or open meetings exemptions, with specified exceptions.³² The Act requires the repeal of such exemption on October 2 of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.³³

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.³⁴ 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 subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;³⁵
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;³⁶ or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.³⁷

The Act also requires specified questions to be considered during the review process.³⁸ In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are again required.³⁹ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds

³⁰ Section 119.15, F.S.

³¹ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

³² 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.

³³ Section 119.15(3), F.S.

³⁴ Section 119.15(6)(b), F.S.

³⁵ Section 119.15(6)(b)1., F.S.

³⁶ Section 119.15(6)(b)2., F.S.

³⁷ Section 119.15(6)(b)3., F.S.

³⁸ Section 119.15(6)(a), F.S. The specified questions are:

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

³⁹ See generally s. 119.15, F.S.

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.⁴⁰

Security and Privacy Concerns with Customer Consumption Data and Smart Meters

Smart meters are digital devices that measure and transmit data on electricity, water, and gas usage to utility companies.⁴¹ These devices generally eliminate the need for traditional manual reading of utility consumer meters. Smart meters can provide much more granular data regarding customer consumption patterns and usage. While these devices do offer significant benefits in increasing utility reliability,⁴² the information they produce can raise some privacy and security concerns. These may include:

- The data generated may provide insight into a particular customer’s daily routine, habits, and lifestyle which could be used for criminal activity or unwanted marketing.
- Unauthorized sale of consumption data to third parties.
- Risk of hacking and cyberattacks to either the meter itself or utilizing a compromised meter as a pathway to attack other devices connected to the smart meter.⁴³

Florida Public Service Commission

The Florida Public Service Commission (PSC) is an arm of the legislative branch of government.⁴⁴ The role of the PSC is to ensure that Florida’s consumers receive utility services, including electric, natural gas, telephone, water, and wastewater, in a safe, affordable, and reliable manner.⁴⁵ In order to do so, the PSC exercises authority over public utilities⁴⁶ in one or more of the following areas: rate base or economic regulation; competitive market oversight; and monitoring of safety, reliability, and service issues.⁴⁷ PSC authority over municipal utilities is more limited, however.

⁴⁰ Section 119.15(7), F.S.

⁴¹ IBM, *What are smart meters?* <https://www.ibm.com/topics/smart-meter#:~:text=A%20key%20component%20of%20advanced,the%20information%20to%20utility%20companies>. (last visited Jan. 17, 2024).

⁴² United States Department of Energy, *Electric Meters*, <https://www.energy.gov/energysaver/electric-meters> (last visited Jan. 17, 2024).

⁴³ Shradda Tupe, *Mitigating Smart Meter Security Risk: A Privacy-Preserving Approach*, EE POWER, Mar 23, 2023, <https://eepower.com/technical-articles/mitigating-smart-meter-security-risk-a-privacy-preserving-approach/#> (last visited Jan. 17, 2024).

⁴⁴ Section 350.001, F.S.

⁴⁵ See Florida Public Service Commission, *Florida Public Service Commission Homepage*, <http://www.psc.state.fl.us> (last visited Jan. 17, 2024).

⁴⁶ Under s. 366.02, F.S., a “public utility” is defined “as every person, corporation, partnership, association, or other legal entity and their lessees, trustees, or receivers supplying electricity or gas (natural, manufactured, or similar gaseous substance) to or for the public within this state.” There are, however, several exceptions to this definition, which include, “a cooperative now or hereafter organized and existing under the Rural Electric Cooperative Law of the state; a municipality or any agency thereof; [and] any dependent or independent special natural gas district.” Generally, “public utility” means investor-owned utilities.

⁴⁷ Florida Public Service Commission, *About the PSC*, <https://www.psc.state.fl.us/about> (last visited Jan. 17, 2024).

Electric and Gas Utilities

The PSC monitors the safety and reliability of the electric power grid⁴⁸ and may order the addition or repair of infrastructure as necessary.⁴⁹ The PSC has broad jurisdiction over the rates and service of investor-owned electric and gas utilities.⁵⁰ However, the PSC does not fully regulate municipal electric utilities (utilities owned or operated on behalf of a municipality) or rural electric cooperatives. The PSC has jurisdiction over these types of utilities with regard to rate structure, territorial boundaries, bulk power supply operations, and planning.⁵¹ Rates and revenues of a municipally-owned or operated utility are regulated by its governing body of the local government or a local utility board. Rates and revenues for a cooperative utility are regulated by the governing body elected by the cooperative's membership.

Water and Wastewater Utilities

Florida's Water and Wastewater System Regulatory Law, ch. 367, F.S., regulates water and wastewater systems in the state. Section 367.011, F.S., grants the PSC exclusive jurisdiction over each utility with respect to its authority, service, and rates. For the chapter, a "utility" is defined as "a water or wastewater utility and, except as provided in s. 367.022, F.S., includes every person, lessee, trustee, or receiver owning, operating, managing, or controlling a system, or proposing construction of a system, who is providing, or proposes to provide, water or wastewater service to the public for compensation." In 2022, the PSC had jurisdiction over 149 investor-owned water and/or waste-water utilities in 38 of Florida's 67 counties.⁵²

Section 367.022, F.S., exempts certain types of water and wastewater operations from PSC jurisdiction and the provisions of ch. 367, F.S. (except as expressly provided). Such exempt operations include: municipal water and wastewater systems, public lodging systems that only provide service to their guests, systems with a 100-person or less capacity, landlords that include service to their tenants without specific compensation for such service, and mobile home parks operating both as a mobile home park and a mobile home subdivision that provide "service within the park and subdivision to a combination of both tenants and lot owners, provided that the service to tenants is without specific compensation."⁵³ The PSC also does not regulate utilities in counties exempt from PSC regulation pursuant to s. 367.171, F.S. However, under s. 367.171(7), F.S., the PSC retains exclusive jurisdiction over all utility systems whose service crosses county boundaries, except for utility systems that are subject to interlocal utility agreements.

According to a 2017 research report from the University of North Carolina there were 1,647 community water systems in Florida. Of those, 973 are privately owned. Florida had 371 publicly-owned treatment works facilities. The privately-owned community water systems

⁴⁸ Section 366.04(5) and (6), F.S.

⁴⁹ Section 366.05(1) and (8), F.S.

⁵⁰ Section 366.05, F.S.

⁵¹ Florida Public Service Commission, *About the PSC*, *supra* note 47.

⁵² Florida Public Service Commission, *2023 Facts and Figures of the Florida Utility Industry*, 28 (Apr. 2023) <https://www.floridapsc.com/pscfiles/website-files/PDF/Publications/Reports/General/FactsAndFigures/April%202023.pdf> (last visited Jan. 17, 2024).

⁵³ Section 367.022(2), F.S.

served almost 1.4 million people, the government-owned community water systems served more than 18.4 million people, and the publicly-owned treatment works facilities served just over 13 million people.⁵⁴

Municipal Water and Sewer Utilities in Florida

A municipality⁵⁵ may establish a utility by resolution or ordinance under s. 180.03, F.S. A municipality may establish a service area within its municipal boundary or within five miles of its corporate limits of the municipality.⁵⁶

Under s. 180.19, F.S., a municipality may permit another municipality and the owners or association of owners of lands outside of its corporate limits or within another municipality's corporate limits to connect to its utilities upon such terms and conditions as may be agreed upon.

Municipal Electric and Gas Utilities, and Special Gas Districts, in Florida

A municipal electric or gas utility is an electric or gas utility owned and operated by a unit of local government. Chapter 366, F.S., provides the majority of electric and gas utility regulations for Florida. While ch. 366, F.S., does not provide a definition, *per se*, for a “municipal utility,” variations of this terminology and the concept of these types of utilities appear throughout the chapter. Currently, Florida has 33 municipal electric utilities that serve over 14 percent of the state's electric utility customers.⁵⁷ Florida also has 27 municipally-owned gas utilities and four special gas districts.⁵⁸

Municipal Utility Public Records and Public Meetings

Proprietary Confidential Business Information

Section 119.0713(4), F.S., makes proprietary confidential business information held by a municipal utility in conjunction with a due diligence review of an electric project as defined in s. 163.01(3)(d), F.S., or a project to improve the delivery, cost, or diversification of fuel or renewable energy resources, confidential and exempt from public disclosure. Proprietary confidential business information would include:

- Trade secrets, as defined in s. 688.002, F.S.;
- Internal auditing controls and reports of internal auditors;
- Security measures, systems, or procedures;

⁵⁴ University of North Carolina Environmental Finance Center, *Navigating Legal Pathways to Rate-Funded Customer Assistance Programs, A Guide for Water and Wastewater Utilities* (2017), available at <https://efc.sog.unc.edu/wp-content/uploads/sites/1172/2021/06/Nagivating-Pathways-to-Rate-Funded-CAPs.pdf> (last visited Jan. 17, 2024).

⁵⁵ Defined by s. 180.01, F.S. “as any city, town, or village duly incorporated under the laws of the state.”

⁵⁶ Section 180.02, F.S.

⁵⁷ Florida Municipal Electric Association, *About Us*, <https://www.flpublicpower.com/about-us> (last visited Jan. 17, 2024).

⁵⁸ Florida Public Service Commission, *2023 Facts and Figures of the Florida Utility Industry*, pg. 13, Apr. 2023 (available at: <https://www.floridapsc.com/pscfiles/website-files/PDF/Publications/Reports/General/FactsAndFigures/April%202023.pdf>) (last visited Jan. 17, 2024). A “special gas district” is a dependent or independent special district, setup pursuant to ch. 189, F.S., to provide natural gas service. Section 189.012(6), F.S., defines a “special district” as “a unit of local government created for a special purpose, as opposed to a general purpose, which has jurisdiction to operate within a limited geographic boundary and is created by general law, special act, local ordinance, or by rule of the Governor and Cabinet.”

- Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the electric utility to contract for goods or services on favorable terms; and
- Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.

Records Used Directly or Solely to Prepare and Submit Bids

Section 119.0713(3), F.S., provides that any data, record, or document used directly or solely by a municipally-owned utility to prepare and submit a bid relative to the sale, distribution, or use of any service, commodity, or tangible personal property to any customer or prospective customer is exempt from public disclosure. This exemption is limited in scope to the period under which such bids are under consideration and terminates upon the execution of the contract for sale.

PSC Public Disclosure Protections

Section 350.121, F.S., protects from public disclosure records, documents, papers, maps, books, tapes, photographs, files, sound recordings, or other business material, regardless of form or characteristics obtained by the PSC through an inquiry. In addition, ss. 366.093, 367.156, and 368.108, F.S., provide processes for public utilities, water and wastewater utilities, and gas transmission and distribution companies, respectively, to protect proprietary confidential business information from public disclosure, provided pursuant to discovery in a PSC docket or proceeding.

However, as municipally-owned or operated utility rates and revenues are primarily regulated by their respective local governments or local utility boards, these PSC protections would not apply those utility records, local meetings, or local regulatory proceedings (except such records maintained by the PSC or obtained through discovery in a PSC docket or proceeding).

Agency Security and Fire Safety Plans

Section 119.071(3)(a), F.S., makes state agency property security and fire safety plans confidential and exempt from public disclosure. The term “security or firesafety system plan” means:

- Records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to the physical security or firesafety of the facility or revealing security or firesafety systems;
- Threat assessments conducted by any agency or any private entity;
- Threat response plans;
- Emergency evacuation plans;
- Sheltering arrangements; or
- Manuals for security or firesafety personnel, emergency equipment, or security or firesafety training.

Relatedly, s. 286.0113(1), F.S., exempts from public meeting requirements, portions of meetings that would reveal such information specified in s. 119.071(3)(a), F.S.

Water Treatment Facilities

Section 119.071(3)(b), F.S., makes 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 agency exempt from public disclosure. However, such may be disclosed:

- To another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities;
- To a licensed architect, engineer, or contractor who is performing work on or related to the building, arena, stadium, water treatment facility, or other structure owned or operated by an agency; or
- Upon a showing of good cause before a court of competent jurisdiction.

Specific Exceptions to Utility Public Records and Public Meetings for Municipal Utilities

In 2016, the Legislature created public record exemptions in s. 119.0713(5), F.S.,⁵⁹ which subsection was further amended in 2019,⁶⁰ for the following information held by a utility owned or operated by a unit of local government:

- Information related to the security of the technology, processes, or practices that are designed to protect the utility's networks, computers, programs, and data from attack, damage, or unauthorized access, which information, if disclosed, would facilitate the alteration, disclosure, or destruction of such data or information technology resources.
- Information related to the security of existing or proposed information technology systems or industrial control technology systems, which, if disclosed, would facilitate unauthorized access to, and alteration or destruction of, such systems in a manner that would adversely impact the safe and reliable operation of the systems and the utility.
- Customer meter-derived data and billing information in increments less than one billing cycle.

In 2019, the Legislature also created a public meeting exemption in s. 286.0113(3), F.S., for any portion of a meeting that would reveal the above information, as well as a public record exemption for any recordings or transcripts of the exempt portions of meetings.⁶¹

In expressing the need for the above public records and public meetings exemptions, the bills' public necessity statements cite to:

- The finding that as utility system infrastructure becomes more connected and integrated through information and communications technology, the exposure to damage from attacks through such technology grows.⁶²
- The risk of releasing customer meter derived data and billing information in increments of less than one billing cycle to third parties. Such data could be used to specifically identify minute-by-minute usage patterns, including the exact appliance or service being used. Such a

⁵⁹ Chapter 2016-95, s. 1-3, Laws of Fla.

⁶⁰ Chapter 2019-38, s. 1-2, Laws of Fla.

⁶¹ Chapter 2019-37, s. 1-2, Laws of Fla.

⁶² Chapter 2016-95, s. 3, Laws of Fla., Chapter 2019-38, s. 2, Laws of Fla., and Chapter 2019-37, s. 2, Laws of Fla.

release of information raises significant security issues for both businesses and homeowners.⁶³

- The risk of releasing sensitive information regarding security measures in place to protect technologies, processes, and practices designed to secure data, information technology systems, and industrial control technology systems. Such protection helps to ensure that municipal utilities have greater safeguards to protect against security threats and will bolster efforts to develop more resilient information technology systems and industrial control technology systems.⁶⁴

The public record and public meeting exemptions stand repealed on October 2, 2024, unless reviewed and saved from repeal by the Legislature under the Open Government Sunset Review Act.

Cybersecurity Public Record and Public Meeting Exemptions

In 2022, the Legislature enacted s. 119.0725(3), F.S., to create a new public records exemption, applicable to all agencies,⁶⁵ for certain information relating to cybersecurity. Specifically, the following information is made confidential and exempt from public inspection and copying requirements:

- Coverage limits and deductible or self-insurance amounts of insurance or other risk mitigation coverages acquired for the protection of information technology systems, operational technology systems, or data of an agency.
- Information related to critical infrastructure.⁶⁶
- Cybersecurity incident information contained in certain reports.
- Network schematics, hardware and software configurations, or encryption information or information that identifies detection, investigation, or response practices for suspected or confirmed cybersecurity incidents, including suspected or confirmed breaches, if the disclosure of such information would facilitate unauthorized access to or unauthorized modification, disclosure, or destruction of:
 - Data or information, whether physical or virtual; or
 - Information technology resources, which include an agency's existing or proposed information technology systems.

Section 119.0725(3), F.S., also creates a public meeting exemption for any portion of a meeting that would reveal the information made confidential and exempt pursuant to s. 119.0725(2), F.S.; however, any portion of an exempt meeting must be recorded and transcribed. The recording and transcript are confidential and exempt from public record inspection and copying requirements.

The exemptions codified in s. 119.0725, F.S., stand repealed on October 2, 2027.

⁶³ Chapter 2019-38, s. 2, Laws of Fla.

⁶⁴ Chapter 2016-95, s. 3, Laws of Fla.

⁶⁵ "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 purposes of ch. 119, F.S., 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. Section 119.011(2), F.S.

⁶⁶ "Critical infrastructure" means existing and proposed information technology and operation technology systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health, or public safety. Section 119.0725(1)(b), F.S.

Open Government Sunset Review Findings and Recommendations

Staff of the Senate Committee on Regulated Industries and the House of Representatives Ethics, Elections & Open Government Subcommittee jointly developed a survey requesting that operators review and provide feedback on the public records exemption in s. 119.0713(5), F.S., and the public meetings exemption in s. 286.0113(3), F.S. These surveys were provided to the Florida Municipal Electric Association and the Florida League of Cities for distribution to their members.

Staff of the Senate Committee on Regulated Industries received a total of 33 responses to this survey. Of the 29 respondents providing feedback regarding the public records exemption in s. 119.0713(5), F.S., all responded that the subsection be reenacted “as is.” Similarly, of the 23 respondents providing feedback regarding public meetings exemption in s. 286.0113(3), F.S., all responded that the subsection be reenacted “as is.”

Legislative staff requested that respondents consider the public records exemption for cybersecurity in s. 119.0725, F.S., to determine if there is any overlap between those provisions and the exemption under review. Some respondents noted that s. 119.0725, F.S., did have some overlap with s. 119.0713(5), F.S.; however, those that gave such feedback noted that s. 119.0725, F.S., did not include the full breadth of the information protected by s. 119.0713, F.S. Further, many respondents noted that, unless several provisions of s. 119.0713(5), F.S., were imported verbatim into s. 119.0725, F.S., there would be a loss in information currently protected if s. 119.0713(5), F.S., were not to be reenacted.

Respondents also noted some additional areas of potential overlap of protection with s. 119.0713(5), F.S., which include:

- Sections 815.045 and 119.0715, F.S., which prohibit public agencies from releasing trade secret information and create a public records exemption for such trade secret information.
- Federal rule 18 C.F.R. s. 388.113(c)(2), which protects Critical Energy Infrastructure Information (CEII) submitted to or generated by the Federal Energy Regulatory Commission.
- Sections 366.093 and 367.156, F.S., which provide processes to protect confidential proprietary business information provided to the PSC from public disclosure.
- Section 119.0713(3), F.S., which provides a public records exemption for any data, record, or document used directly or solely by a municipally-owned utility to prepare and submit a bid relative to the sale, distribution, or use of any service, commodity, or tangible personal property to any customer or prospective customer.
- Section 119.0713(4), F.S., which provides a public records exemption for proprietary confidential business information, held by a municipal electric utility that is subject to this chapter in conjunction with a due diligence review of an electric project as defined in s. 163.01(3)(d), F.S., or a project to improve the delivery, cost, or diversification of fuel or renewable energy resources.

However, the respondents appear to believe these compliment the exemptions under review.

III. Effect of Proposed Changes:

Section 1 amends s. 119.0713(5), F.S., to remove the scheduled repeal date of the public record exemption for the following information held by a utility owned or operated by a unit of local government (municipal utility):

- Information related to the security of the technology, processes, or practices that are designed to protect the utility's networks, computers, programs, and data from attack, damage, or unauthorized access, which information, if disclosed, would facilitate the alteration, disclosure, or destruction of such data or information technology resources.
- Information related to the security of existing or proposed information technology systems or industrial control technology systems, which, if disclosed, would facilitate unauthorized access to, and alteration or destruction of, such systems in a manner that would adversely impact the safe and reliable operation of the systems and the utility.
- Customer meter-derived data and billing information in increments less than one billing cycle.

Thus, the public record exemption established in s. 119.0713(5), F.S., will continue. However, the public records exemptions relating to cybersecurity will be subject to a repeal date of October 2, 2027. This will correspond with the repeal date for the review and repeal date for the general cybersecurity exemptions under chapter 119.

Section 2 amends s. 286.0113(3), F.S., to remove the scheduled repeal date of the exemption from public meeting requirements for any portion of a meeting that would reveal the protected information specified in Section 1. Recordings or transcripts of the exempt portions of meetings will also remain protected pursuant to that subsection. These exemptions will be subject to a repeal date of October 1, 2027.

Section 3 provides that the bill is effective October 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and 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 exemptions in the bill do not appear to be broader than necessary to accomplish the purposes of the laws.

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 sections 119.0713 and 286.0113 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 by Governmental Oversight and Accountability on January 22, 2024:

The CS subjects the public records and public meetings exemptions relating to cybersecurity information to a repeal date of October 2, 2027. This will correspond with the repeal date for the review and repeal date for the general cybersecurity exemptions under chapter 119.

- B. **Amendments:**

None.