

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 Regulated Industries

BILL: SPB 7006

INTRODUCER: For consideration by the Regulated Industries Committee

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

DATE: December 5, 2023

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Schrader</u>	<u>Imhof</u>		Pre-meeting

I. Summary:

SPB 7006 saves from repeal the current public records exemptions 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.

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

The exemptions are required 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.

The Open Government Sunset Review Act requires the Legislature to review each public record and public meeting exemption 5 years after enactment. These exemptions are scheduled to repeal on October 2, 2024. The bill removes the scheduled repeals to continue the exempt status.

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

The bill takes effect October 1, 2024.

II. Present Situation:

Public Records Law

The Florida 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 acting on behalf of the government.² In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ The Public Records Act states that:

[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.⁵

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may create an exemption to public records requirements by passing a general law by a two-thirds vote of each of the House and the Senate.⁹ 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.¹⁰ A statutory exemption, which does not meet these two criteria, may be unconstitutional and may not be judicially saved.¹¹

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S., and FLA. CONST. art. I, s. 24(b). Public records exemptions for the Legislature are primarily located in s. 11.0431(2)-(3), F.S.

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ Section 119.011(12), F.S., defines “public record” to mean “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 connection with the transaction of official business by any agency.” 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.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

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.*

¹¹ *Halifax Hosp. Medical Center v. News-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

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”¹² Records designated “confidential and exempt” may be released by the records custodian only under the circumstances defined by statutory exemptions. Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.¹³

Open Meetings Laws

The Florida Constitution provides that the public has a right to access governmental meetings.¹⁴ 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.¹⁵ This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts, or special districts.¹⁶

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”¹⁷ or the “Sunshine Law,”¹⁸ 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.¹⁹ The board or commission must provide the public reasonable notice of such meetings.²⁰ 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.²¹ Minutes of a public meeting must be promptly recorded and open to public inspection.²² Failure to abide by open meetings requirements will invalidate any resolution, rule, or formal action adopted at a meeting.²³ A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.²⁴

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.

¹² If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹³ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁴ FLA. CONST., art. I, s. 24(b).

¹⁵ *Id.*

¹⁶ 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.”

¹⁷ *Times Pub. Co. v. Williams*, 222 So.2d 470, 472 (Fla. 2d DCA 1969).

¹⁸ *Board of Public Instruction of Broward County v. Doran*, 224 So.2d 693, 695 (Fla. 1969).

¹⁹ Section 286.011(1)-(2), F.S.

²⁰ *Id.*

²¹ Section 286.011(6), F.S.

²² Section 286.011(2), F.S.

²³ Section 286.011(1), F.S.

²⁴ Section 286.011(3), F.S.

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.²⁵ 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.²⁶ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.²⁷

Open Government Sunset Review Act

Section 119.15, F.S., the Open Government Sunset Review Act (OGSR), prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.²⁸ The OGSR provides that an exemption automatically repeals 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.²⁹ In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

The OGSR 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.³⁰ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;³¹
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;³² or
- It protects trade or business secrets.³³

The OGSR also requires specified questions to be considered during the review process.³⁴ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

²⁵ FLA. CONST., art. I, s. 24(c).

²⁶ *Id.*

²⁷ *See supra* note 11.

²⁸ 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. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

²⁹ Section 119.15(3), F.S.

³⁰ Section 119.15(6)(b), F.S.

³¹ Section 119.15(6)(b)1., F.S.

³² Section 119.15(6)(b)2., F.S.

³³ Section 119.15(6)(b)3., F.S.

³⁴ 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?

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.³⁵ 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 sunset, the previously exempt records will remain exempt unless provided for by law.³⁶

Security and Privacy Concerns with Customer Consumption Data and Smart Meters

Smart meters are devices that measure and transmit data on electricity, water, and gas usage. 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,³⁷ 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 selling 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.³⁸

Florida Public Service Commission

The Florida Public Service Commission (PSC) is an arm of the legislative branch of government.³⁹ The role of the PSC is to ensure Florida’s consumers receive utility services, including electric, natural gas, telephone, water, and wastewater, in a safe, affordable, and reliable manner.⁴⁰ In order to do so, the PSC exercises authority over public utilities⁴¹ in one or more of the following areas: rate base or economic regulation; competitive market oversight; and monitoring of safety, reliability, and service issues.⁴² PSC authority over municipal utilities is more limited, however.

³⁵ FLA. CONST. art. I, s. 24(c).

³⁶ Section 119.15(7), F.S.

³⁷ United States Department of Energy, *Electric Meters*, <https://www.energy.gov/energysaver/electric-meters> (last visited Dec. 1, 2023).

³⁸ 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 Dec. 4, 2023).

³⁹ Section 350.001, F.S.

⁴⁰ See Florida Public Service Commission, *Florida Public Service Commission Homepage*, <http://www.psc.state.fl.us> (last visited Nov. 30, 2023).

⁴¹ 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.

⁴² Florida Public Service Commission, *About the PSC*, <https://www.psc.state.fl.us/about> (last visited Nov. 30, 2023).

Electric and Gas Utilities

The PSC monitors the safety and reliability of the electric power grid⁴³ and may order the addition or repair of infrastructure as necessary.⁴⁴ The PSC has broad jurisdiction over the rates and service of investor-owned electric and gas utilities.⁴⁵ 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.⁴⁶ Municipally-owned or operated utility rates and revenues are regulated by their respective local governments or local utility boards. 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.⁴⁷

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."⁴⁸ 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

⁴³ Section 366.04(5) and (6), F.S.

⁴⁴ Section 366.05(1) and (8), F.S.

⁴⁵ Section 366.05, F.S.

⁴⁶ Florida Public Service Commission, *About the PSC*, *supra* note 42.

⁴⁷ Florida Public Service Commission, *2023 Facts and Figures of the Florida Utility Industry*, 28 <https://www.floridapsc.com/pscfiles/website-files/PDF/Publications/Reports/General/FactsAndFigures/April%202023.pdf> (last visited Dec. 1, 2023).

⁴⁸ 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.⁴⁹

Municipal Water and Sewer Utilities in Florida

A municipality⁵⁰ 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.⁵¹

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.⁵² Florida also has 27 municipally-owned gas utilities and four special gas districts.⁵³

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,

⁴⁹ 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 Dec. 1, 2023).

⁵⁰ Defined by s. 180.01, F.S. “as any city, town, or village duly incorporated under the laws of the state.”

⁵¹ Section 180.02, F.S.

⁵² Florida Municipal Electric Association, *About Us*, <https://www.flpublicpower.com/about-us> (last visited Nov. 30, 2023).

⁵³ 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 Dec. 4, 2023). 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 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.,⁵⁴ which subsection was further amended in 2019,⁵⁵ 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.⁵⁶

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.⁵⁷
- 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

⁵⁴ Chapter 2016-95, s. 1-3, Laws of Fla.

⁵⁵ Chapter 2019-38, s. 1-2, Laws of Fla.

⁵⁶ Chapter 2019-37, s. 1-2, Laws of Fla.

⁵⁷ 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.⁵⁸

- 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.⁵⁹

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.

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 exception in s. 119.0713(5), F.S., and the public meetings exception 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 exception 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 exception 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., and determine if there was 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.

⁵⁸ Chapter 2019-38, s. 2, Laws of Fla.

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

- 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 exception established in s. 119.0713(5), F.S., would remain in place.

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 would also remain protected pursuant to that subsection.

Section 3 provides that the bill is effective October 1, 2023.

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.

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 the following sections of the Florida Statutes: 119.0713 and 286.0113.

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.