

Tab 4	SPB 7032 by IS ; OGSR/Emergency Planning Assistance/Division of Emergency Management
Tab 5	SPB 7034 by IS ; OGSR/Automated License Plate Recognition System
Tab 6	SPB 7036 by IS ; OGSR/Payment of Toll on Toll Facilities/Identifying Information
Tab 7	SPB 7038 by IS ; Department of Law Enforcement

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

INFRASTRUCTURE AND SECURITY

Senator Lee, Chair
Senator Perry, Vice Chair

MEETING DATE: Wednesday, February 13, 2019
TIME: 1:30—3:00 p.m.
PLACE: *Toni Jennings Committee Room*, 110 Senate Building

MEMBERS: Senator Lee, Chair; Senator Perry, Vice Chair; Senators Bean, Cruz, Hooper, Hutson, Stewart, and Taddeo

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	Opening Comments		Presented
2	Workshop - Discussion and testimony on Innovation in Infrastructure: Multi-Use Corridors		
3	Consideration of proposed bills:		
4	SPB 7032	OGSR/Emergency Planning Assistance/Division of Emergency Management; Amending provisions which provides an exemption from public records requirements for information furnished by a person or a business to the Division of Emergency Management for emergency planning assistance; removing the scheduled repeal of the exemption, etc.	Submitted and Reported Favorably as Committee Bill Yeas 7 Nays 0
5	SPB 7034	OGSR/Automated License Plate Recognition System; Amending provisions which provides a public records exemption for certain images and data obtained through the use of an automated license plate recognition system and for personal identifying information of an individual in data generated from such images; removing the scheduled repeal of the exemption, etc.	Submitted and Reported Favorably as Committee Bill Yeas 7 Nays 0
6	SPB 7036	OGSR/Payment of Toll on Toll Facilities/Identifying Information; Amending provisions which provides an exemption from public records requirements for personal identifying information held by the Department of Transportation, a county, a municipality, or an expressway authority for certain purposes; deleting the scheduled repeal of the exemption, etc.	Submitted and Reported Favorably as Committee Bill Yeas 7 Nays 0
7	SPB 7038	Department of Law Enforcement; Renaming the Florida Domestic Security and Counter-Terrorism Intelligence Center as the Office of Domestic Security and Counterterrorism; renaming the Florida Domestic Security and Counter-Terrorism Database as the Domestic Security and Counterterrorism Database, etc.	Submitted and Reported Favorably as Committee Bill Yeas 7 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Infrastructure and Security

Wednesday, February 13, 2019, 1:30—3:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
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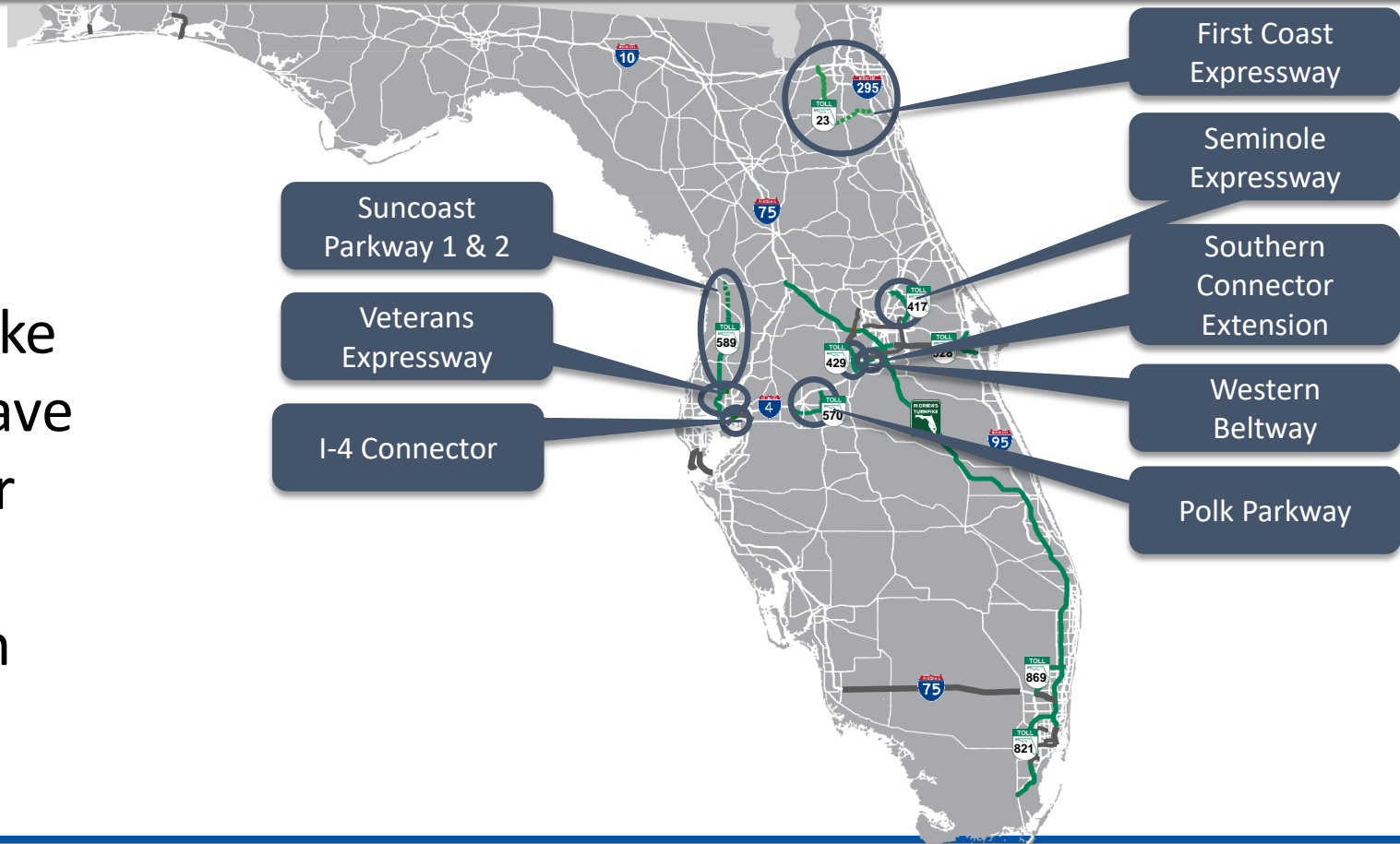
Other Related Meeting Documents



Project Development Process of New Turnpike Facilities

Streamlining from “Concept to Concrete”

Since 1994,
162 miles
of new Turnpike
toll facilities have
been built or
are under
construction



From Concept to Concrete

Planning Phase



Project Development & Environment (PD&E) Study



Design & Right-of-Way Phase



Construction Phase



Planning Study Questions

- 1.) Is there a **Transportation Need** that can be met by this project?
- 2.) Can this project be built in an Environmentally Sound manner?
- 3.) Does the Local Community support this project?
- 4.) Will this project be Economically Feasible as a toll facility?

Planning Study Questions

1.) Is there a Transportation Need that can be met by this project?

2.) Can this project be built in an **Environmentally Sound** manner?

3.) Does the Local Community support this project?

4.) Will this project be Economically Feasible as a toll facility?

Planning Study Questions

- 1.) Is there a Transportation Need that can be met by this project?
- 2.) Can this project be built in an Environmentally Sound manner?
- 3.) Does the **Local Community** support this project?**
- 4.) Will this project be Economically Feasible as a toll facility?

Planning Study Questions

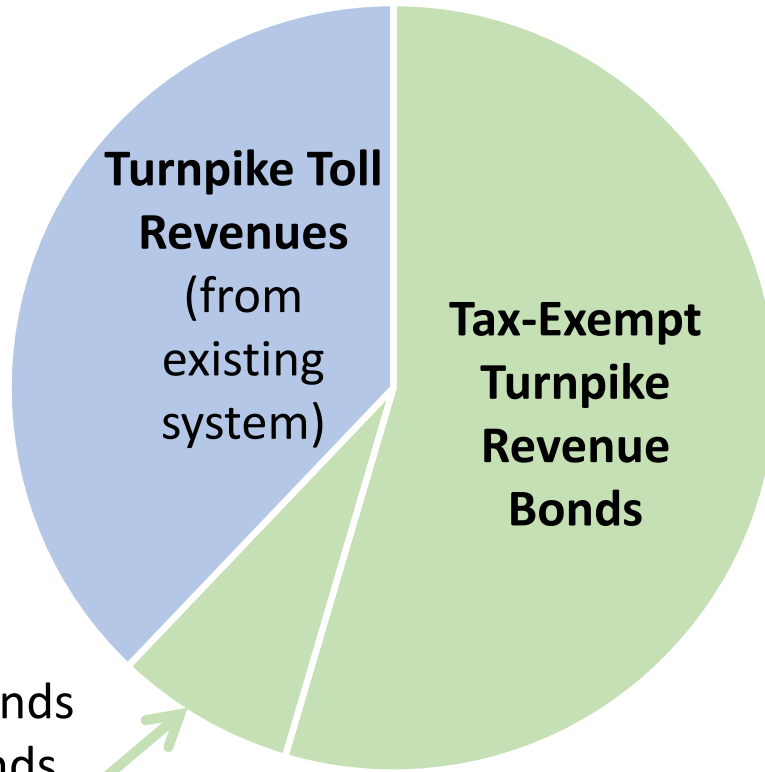
- 1.) Is there a Transportation Need that can be met by this project?
- 2.) Can this project be built in an Environmentally Sound manner?
- 3.) Does the Local Community support this project?
- 4.) Will this project be **Economically Feasible** as a toll facility?

- Funding (tolls or other revenue sources)
- Partnerships are key
- Alternative Options
 - Reduced right-of-way costs
 - Private funding contributions
 - Other state funds
- What will the bond market accept?



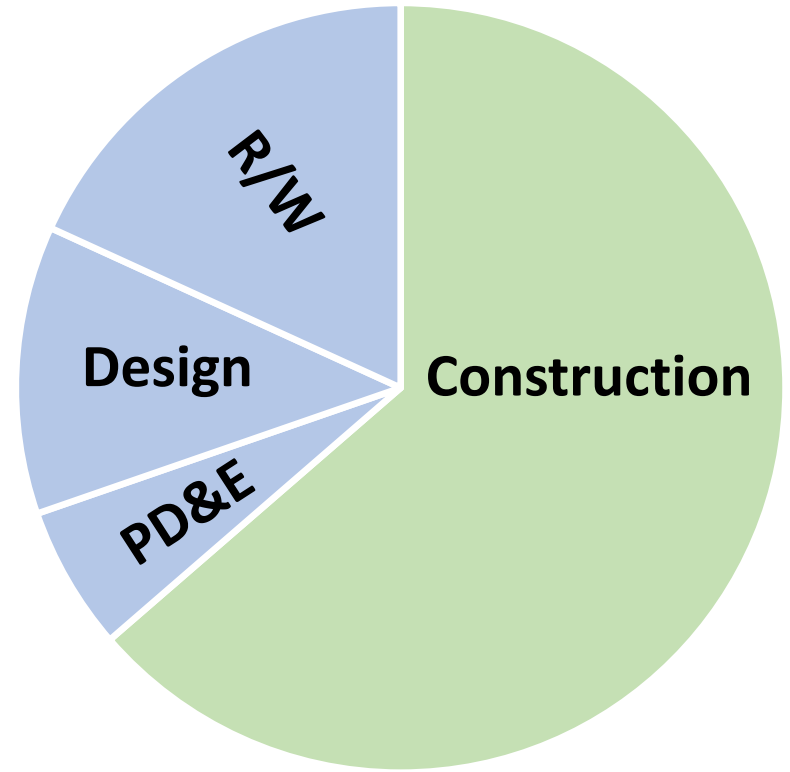
Typical Financing Approach – New Facility

Funding Sources

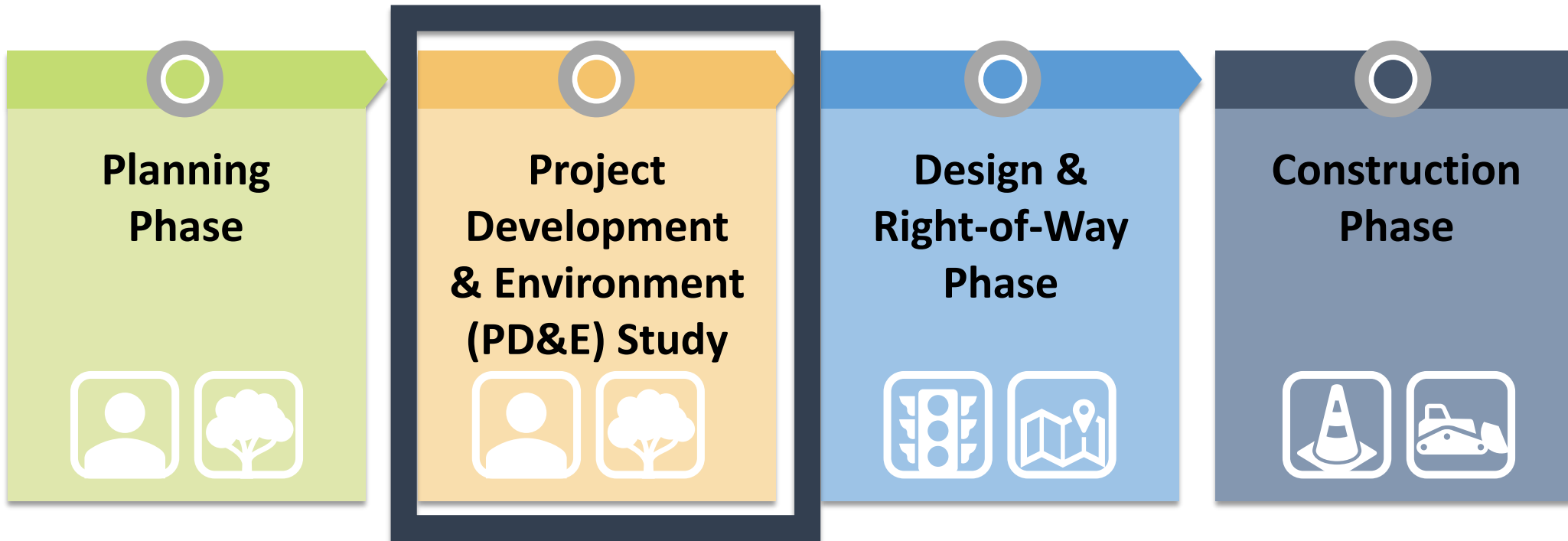


- State Grants
- Local Gov't Funds
- Developer Funds
- Federal Funds

Project Phases



From Concept to Concrete



Engineering

Traffic

Multi-use Corridor

Interchange Location & Layout

Right-of-Way Needs

Environmental

Social and Economic

Cultural

Physical

Natural

Public Engagement

Meetings and Hearings

MPO Presentations


Local Government Presentations

Social/Multi Media



From Concept to Concrete




**Planning
Phase**



**Project
Development
& Environment
(PD&E) Study**



**Design &
Right-of-Way
Phase**



**Construction
Phase**



Initial Design

Notice to Proceed (NTP)

15% Line and Grade

Phase I Plans
(30% Design)

Public Information
Meeting

Preliminary Design

Phase II Plans
(60% Design)

Begin Right of Way
Acquisition

Apply for Environmental
Permits

Coordinate with Utilities

Final Design

Phase III Plans
(90% Design)


Phase IV Plans
(100% Design)

Advertise, Let, Award
for Construction

- Valuation Services
 - Cost Estimates
 - Appraisals
 - Fair Market Value
- Right of Way Acquisition
 - Voluntary/Advance Acquisition
 - Eminent Domain
 - Full Compensation to affected property owners
 - Relocation Assistance (residential and commercial)
- Property Management
 - Property clearing/demolition
 - Asbestos removal/remediation
 - Secure properties



From Concept to Concrete



**Planning
Phase**



**Project
Development
& Environment
(PD&E) Study**



**Design &
Right-of-Way
Phase**



**Construction
Phase**



- Emphasis placed on safety and local access, including access for police and fire
- Coordination with local stakeholders
 - Elected officials, home owners associations, etc.
 - Construction updates through Public Information Office
- Environmental compliance
 - Protected areas (e.g. wetlands)
 - Protected species
- Utility Relocation
- Contractor oversight and project management
- Construction schedules and commitments



Questions?

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/13/19

Meeting Date

Bill Number (if applicable)

Topic Innovations in Transportation/Infrastructure

Amendment Barcode (if applicable)

Name Kevin Thibault

Job Title Secretary

Address 605 Suwanee St.

Phone 250-414-5200

Street

Tallahassee

FL

32399

Email

City

State

Zip

Speaking: [] For [] Against [X] Information

Waive Speaking: [] In Support [] Against (The Chair will read this information into the record.)

Representing FL DEPT. OF TRANSPORTATION

Appearing at request of Chair: [X] Yes [] No

Lobbyist registered with Legislature: [X] Yes [] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

2/13/2019

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Bill Number (if applicable)

Topic Multi-Use Corridors

Amendment Barcode (if applicable)

Name Thomas Hawkins

Job Title Policy & Planning Director

Address 308 N Monroe St

Phone (352) 377-3141

Tallahassee, FL 32301

Email thawkins@1000ff.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing 1000 Friends of Florida, Inc

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

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 Infrastructure and Security

BILL: SPB 7032

INTRODUCER: The Infrastructure and Security Committee

SUBJECT: OGSR/Emergency Planning Assistance/Division of Emergency Management

DATE: February 13, 2019

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Miller	Miller		IS Submitted as Comm. Bill/Fav

I. Summary:

SPB 7032 removes the scheduled repeal of the public records exemption for any information provided by individuals and businesses to the Division of Emergency Management for the purposes of being provided assistance with emergency planning, thus continuing the exemption from disclosure requirements under the public records laws.

The proposed bill takes effect on October 1, 2019.

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:

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(a).

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. 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.

[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 open meetings requirements by passing a general law by a two-thirds vote 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

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

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open

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 FLA. CONST., art. I, s. 24(c).

¹¹ *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a 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).

meetings exemptions.¹⁴ 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.¹⁵ 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.¹⁶ 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;¹⁷
- 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;¹⁸ or
- It protects trade or business secrets.¹⁹

The OGSR also requires specified questions to be considered during the review process.²⁰ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²¹ If the exemption is reenacted 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.²²

¹⁴ 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 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 section 119.15(2), F.S.

¹⁵ Section 119.15(3), F.S.

¹⁶ Section 119.15(6)(b), F.S.

¹⁷ Section 119.15(6)(b)1., F.S.

¹⁸ Section 119.15(6)(b)2., F.S.

¹⁹ Section 119.15(6)(b)3., F.S.

²⁰ 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?

²¹ FLA. CONST. art. I, s. 24(c).

²² Section 119.15(7), F.S.

Emergency Preparedness Plans for Individuals and Businesses

The Florida Division of Emergency Management (FDEM), established in the Executive Office of the Governor,²³ is the state's emergency management agency. The State Emergency Management Act directs the FDEM to oversee and manage emergency preparedness, response, recovery and mitigation programs in Florida.²⁴ Among the FDEM's statutorily required duties is the requirement to institute a multifaceted public educational campaign on emergency preparedness.²⁵ The campaign must promote the personal responsibility of individual citizens to be self-sufficient for up to 72 hours following a natural or manmade disaster.²⁶ In 2006, the FDEM launched its "Get a Plan" campaign to encourage individuals, families, and businesses to develop disaster plans in preparation for and in response to natural or manmade disasters.

The "Get a Plan" campaign includes an online preparedness tool to allow individuals, families, and businesses to create an emergency plan tailored to the specific needs of the user.²⁷ The tool allows users to establish a profile with a user name and password to access the online tool at their convenience to adjust or update any aspect of their emergency response plan. Users may also create an emergency plan without saving a profile.

Emergency plans may include sensitive information such as alternative locations for families to meet or business relocation in the event of building damage; business contacts, including suppliers and employees; backup suppliers for key materials and services depended upon by businesses; and important software, records, and documents a business needs to operate.

Since July 2014, 2,774 users have created a profile on the "Get a Plan" website and 55,186 emergency plans have been created. Of the total plans created, 51,612 plans were created by users who chose not to save a profile and 3,574 plans were created by users who created a profile. One profile can contain both a family plan as well as a business plan.²⁸

Open Government Sunset Review of the Public Record Exemption for Emergency Planning Information

In 2014, the Legislature created s. 252.905, F.S., to exempt from the public record requirements information furnished by a person or business to the FDEM for the purpose of being provided assistance with emergency planning.²⁹ Under this exemption, information input by individuals and businesses in an emergency plan on FDEM's "Get a Plan" website is exempt from disclosure requirements under public records law. This public record exemption would also apply to any future FDEM programs or applications created to assist individuals and businesses with emergency planning.

²³ Section 14.2016, F.S.

²⁴ Section 252.31, F.S.

²⁵ Section 252.35(2)(i), F.S.

²⁶ Id.

²⁷ FDEM's "Get a Plan" online emergency preparedness tool available at: <https://apps.floridadisaster.org/getaplan/> (last visited January 8, 2019).

²⁸ E-mail correspondence with FDEM staff. August 29, 2018, on file with the Committee on Infrastructure and Security.

²⁹ Ch. 2014-188, L.O.F.

In creating the exemption, the Legislature found that exempting information furnished by a person or business to the FDEM for the purpose of being provided assistance with emergency planning is a public necessity. The Legislature recognized emergency plans may contain sensitive information for individuals, families and businesses, and without the exemption, the effective and efficient administration of the FDEM's public awareness program would be significantly impaired. The Legislature further found that the potential disclosure of sensitive information has served as a disincentive for creating a disaster plan, and the harm that may result from the release of personal or business information obtained by the FDEM outweighs any public benefit that may be derived from disclosure of the information.³⁰

Section 252.905, F.S., is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

Based upon a review of this public records exemption under the Open Government Sunset Review Act and discussions with the FDEM, the professional staff of the Senate Infrastructure and Security Committee recommends that the Legislature retain the public records exemption established in s. 252.905, F.S.

III. Effect of Proposed Changes:

The proposed bill is based on an Open Government Sunset Review of a public records exemption for information furnished by a person or business to the Florida Division of Emergency Management for the purpose of being provided assistance with emergency planning. The justification upon which the public records exemption is based remains valid. The proposed bill reenacts the exemption.

The proposed bill amends s. 252.905, F.S., to delete the scheduled repeal of the current public records exemption for individual and business emergency planning information held by the FDEM. If the proposed bill passes, these records will continue to be exempt from public disclosure.

The proposed bill requires a majority vote for passage.

The proposed bill takes effect October 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

³⁰ s. 2, ch. 2014-188, L.O.F.

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 proposed bill substantially amends section 252.905 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.

FOR CONSIDERATION By the Committee on Infrastructure and Security

596-00848-19

20197032pb

1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act; amending s. 252.905, F.S., which
4 provides an exemption from public records requirements
5 for information furnished by a person or a business to
6 the Division of Emergency Management for emergency
7 planning assistance; removing the scheduled repeal of
8 the exemption; providing an effective date.
9
10 Be It Enacted by the Legislature of the State of Florida:
11
12 Section 1. Section 252.905, Florida Statutes, is amended to
13 read:
14 252.905 Emergency planning information; public records
15 exemption.-
16 ~~(1)~~ Any information furnished by a person or a business to
17 the division for the purpose of being provided assistance with
18 emergency planning is exempt from s. 119.07(1) and s. 24(a),
19 Art. I of the State Constitution. This exemption applies to
20 information held by the division before, on, or after the
21 effective date of this exemption.
22 ~~(2) This section is subject to the Open Government Sunset~~
23 ~~Review Act in accordance with s. 119.15, and shall stand~~
24 ~~repealed on October 2, 2019, unless reviewed and saved from~~
25 ~~repeal through reenactment by the Legislature.~~
26 Section 2. This act shall take effect October 1, 2019.

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 Infrastructure and Security

BILL: SPB 7034

INTRODUCER: Infrastructure and Security Committee

SUBJECT: OGSR/Automated License Plate Recognition System

DATE: February 13, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Proctor	Miller	_____	IS Submitted as Comm. Bill/Fav

I. Summary:

SPB 7034 removes the scheduled repeal of the public records exemption for all images obtained from an automatic license plate recognition system as well as any personal identifying information in any data generated from images obtained from such a system, thus continuing the exemption from disclosure requirements under the public records laws.

The proposed bill takes effect on October 1, 2019.

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

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(a).

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. 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.

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 open meetings requirements by passing a general law by a two-thirds vote 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

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

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁴ The OGSR provides that an exemption automatically repeals on

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 FLA. CONST., art. I, s. 24(c).

¹¹ *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a 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 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 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 section 119.15(2), F.S.

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.¹⁵ 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.¹⁶ 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;¹⁷
- 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;¹⁸ or
- It protects trade or business secrets.¹⁹

The OGSR also requires specified questions to be considered during the review process.²⁰ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²¹ If the exemption is reenacted 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.²²

Automated License Plate Recognition System

An automated license plate recognition system (ALPRS) is a system of one or more mobile or fixed high-speed cameras combined with computer algorithms to convert images of license plates into computer-readable data.²³ ALPRS uses computerized optical character recognition to

¹⁵ Section 119.15(3), F.S.

¹⁶ Section 119.15(6)(b), F.S.

¹⁷ Section 119.15(6)(b)1., F.S.

¹⁸ Section 119.15(6)(b)2., F.S.

¹⁹ Section 119.15(6)(b)3., F.S.

²⁰ 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?

²¹ FLA. CONST. art. I, s. 24(c).

²² Section 119.15(7), F.S.

²³ Section 316.0778(1), F.S.

extract vehicle license plate information from an image or a sequence of images. Data files compiled in ALPR systems typically contain the following information:

- Black and white plate image;
- Contextual color image;
- Electronically readable format of plate alphanumeric characters of license plate numbers;
- Location and GPS coordinates;
- Time and date of image capture;
- Camera identification (mobile cameras may capture officer and vehicle/unit number)²⁴

Although the full extent of ALPRS use is unknown, surveys conducted as part of this OGSR provided responses from 19 police departments and five agencies. Of the 24 respondents eight respondents stated they are using an ALPRS.

Data obtained from an ALPRS is generally used to check license plates against law enforcement hot lists. Hot lists contain a list of stolen plates and vehicles entered into the National Crime Information Center database, the Florida Crime Information Center database, Driver and Vehicle Information Database, and any information entered manually by the operating member. Examples of manual entries include: AMBER/SILVER alerts, child abductions, missing or wanted persons, etc.²⁵

Though designed to assist law enforcement with day-to-day vehicle violations, an ALPRS may collect and store extensive location information about each vehicle in its field of vision. Photographs captured by an ALPRS may contain more than simply the license plate, and sometimes include a substantial part of a vehicle, its occupants, and its immediate vicinity. Law enforcement can use captured photographs to verify witness descriptions of vehicles and confirm identifying features. Florida Law requires the Department of State in consultation with the Department of Law Enforcement to establish a retention schedule for records containing images and data generated through the use of an ALPRS. The retention schedule must establish a maximum period that the records may be retained.²⁶

The Department of State specifies the retention of license plate recognition records: “Retain until obsolete, superseded, or administrative value is lost, but no longer than 3 anniversary years unless required to be retained under another record series.”²⁷

Open Government Sunset Review of the Public Record Exemption for the Automatic License Plate Recognition System

In 2014, the Legislature created s. 316.0777, F.S., to exempt from the public record requirements information obtained by an ALPRS. The exemption applies to ALPRS images and data

²⁴ U.S. Department of Justice report on “ALPR Use by Law Enforcement: Policy and Operational Guide, Summary” available at: <https://www.ncjrs.gov/pdffiles1/nij/grants/239605.pdf> (last visited on February 6, 2019).

²⁵ Florida Department of Highway Safety and Motor Vehicles’ “Florida Highway Patrol Policy Manual” on ALPRS available at: <https://www.flhsmv.gov/pdf/fhp/policies/1725.pdf> (last visited on February 6, 2019).

²⁶ Section 316.0778(2), F.S.

²⁷ Florida Department of State, General Records Schedule GS2 for Law Enforcement, Correctional Facilities and District Medical Examiners, Effective: August 2017 available at: <https://dos.myflorida.com/media/698314/g2-sl-2017-final.pdf> (last visited January 14, 2019).

containing or providing personal identifying information, as well as personal identifying information derived from ALPRS data or images. The information collected from ALPRS and held by an agency is confidential and exempt from s. 119.07(1), F.S. and s. 24(a), Art. I of the State Constitution.²⁸

Such information may be disclosed under the following conditions:

- By or to a criminal justice agency, as defined in s. 119.011(4), F.S. in performance of the agency's official duties.
- To a license plate registrant requesting his or her own information, as long as it is not related to any ongoing criminal investigation, as defined in s. 119.011(3), F.S.²⁹

In creating the exemption, the Legislature found that exempting the release of personal identifying information collected by an ALPRS is a public necessity and could enable a third party to track a person's movements. The Legislature recognized that the disclosure of such information would be an invasion of personal privacy. The Legislature further found that the public disclosure of sensitive personal information could be defamatory or jeopardize an individual's safety and that the harm from public disclosure outweighs any public benefit.³⁰

Section 316.0777, F.S., is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

Based upon a review of this public records exemption under the Open Government Sunset Review Act and discussions with the Florida Department of Highway Safety and Motor Vehicles, the professional staff of the Senate Infrastructure and Security Committee recommends that the Legislature retain the public records exemption established in s. 316.0777, F.S.

III. Effect of Proposed Changes:

The proposed bill is based on an Open Government Sunset Review of a public records exemption for information obtained by an ALPRS. The justification upon which the public records exemption is based remains valid. The proposed bill reenacts the exemption.

The proposed bill amends s. 316.0777, F.S., to delete the scheduled repeal of the current public records exemption for all images obtained from an automatic license plate recognition system as well as any personal identifying information in any data generated from images obtained from ALPRS held by an agency. If the proposed bill passes, these records will continue to be exempt from public disclosure.

The proposed bill requires a majority vote for passage.

The proposed bill takes effect October 1, 2019.

²⁸ Ch. 2014-170, L.O.F.

²⁹ Id.

³⁰ s. 2, ch 2014-170, L.O.F.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

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 proposed bill substantially amends section 316.0777 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.

FOR CONSIDERATION By the Committee on Infrastructure and Security

596-00859-19

20197034pb

1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; amending s. 316.0777, F.S., which
 4 provides a public records exemption for certain images
 5 and data obtained through the use of an automated
 6 license plate recognition system and for personal
 7 identifying information of an individual in data
 8 generated from such images; removing the scheduled
 9 repeal of the exemption; providing an effective date.

10 Be It Enacted by the Legislature of the State of Florida:

11 Section 1. Section 316.0777, Florida Statutes, is amended
 12 to read:
 13 316.0777 Automated license plate recognition systems;
 14 public records exemption.—
 15 (1) As used in this section, the term:
 16 (a) "Active," "criminal intelligence information," and
 17 "criminal investigative information" have the same meanings as
 18 provided in s. 119.011(3).
 19 (b) "Agency" has the same meaning as provided in s.
 20 119.011.
 21 (c) "Automated license plate recognition system" means a
 22 system of one or more mobile or fixed high-speed cameras
 23 combined with computer algorithms to convert images of license
 24 plates into computer-readable data.
 25 (d) "Criminal justice agency" has the same meaning as
 26 provided in s. 119.011.
 27 (2) The following information held by an agency is
 28
 29

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

596-00859-19

20197034pb

30 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 31 of the State Constitution:
 32 (a) Images and data containing or providing personal
 33 identifying information obtained through the use of an automated
 34 license plate recognition system.
 35 (b) Personal identifying information of an individual in
 36 data generated or resulting from images obtained through the use
 37 of an automated license plate recognition system.
 38 (3) Such information may be disclosed as follows:
 39 (a) Any such information may be disclosed by or to a
 40 criminal justice agency in the performance of the criminal
 41 justice agency's official duties.
 42 (b) Any such information relating to a license plate
 43 registered to an individual may be disclosed to the individual,
 44 unless such information constitutes active criminal intelligence
 45 information or active criminal investigative information.
 46 (4) This exemption applies to such information held by an
 47 agency before, on, or after the effective date of this
 48 exemption.
 49 ~~(5) This section is subject to the Open Government Sunset~~
 50 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~
 51 ~~on October 2, 2019, unless reviewed and saved from repeal~~
 52 ~~through reenactment by the Legislature.~~
 53 Section 2. This act shall take effect October 1, 2019.

Page 2 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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 Infrastructure and Security

BILL: SPB 7036

INTRODUCER: Infrastructure and Security Committee

SUBJECT: OGSR/Payment of Toll on Toll Facilities/Identifying Information

DATE: February 13, 2019

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Price	Miller		IS Submitted as Comm. Bill/Fav

I. Summary:

SPB 7036 proposes to remove the scheduled repeal of the public records exemption for personal identifying information held by the Department of Transportation, a county, a municipality, or an expressway authority for the purpose of paying, prepaying, or collecting tolls and associated administrative charges due for the use of toll facilities.

The bill takes effect October 1, 2019.

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

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(a).

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. 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.

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 open meetings requirements by passing a general law by a two-thirds vote 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

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

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁴ The OGSR provides that an exemption automatically repeals on

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 FLA. CONST., art. I, s. 24(c).

¹¹ *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a 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 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 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 section 119.15(2), F.S.

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.¹⁵ 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.¹⁶ 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;¹⁷
- 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;¹⁸ or
- It protects trade or business secrets.¹⁹

The OGSR also requires specified questions to be considered during the review process.²⁰ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²¹ If the exemption is reenacted 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.²²

Payment of Tolls

Subject to limited exemptions, current law prohibits persons from using any toll facility without payment.²³ The Department of Transportation (FDOT) is authorized to adopt rules relating to the

¹⁵ Section 119.15(3), F.S.

¹⁶ Section 119.15(6)(b), F.S.

¹⁷ Section 119.15(6)(b)1., F.S.

¹⁸ Section 119.15(6)(b)2., F.S.

¹⁹ Section 119.15(6)(b)3., F.S.

²⁰ 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?

²¹ FLA. CONST. art. I, s. 24(c).

²² Section 119.15(7), F.S.

²³ Section 338.155(1), F.S. The exemptions generally include toll employees on official state business, state military personnel on official military business, persons exempted by the authorizing resolution for bonds issued to finance the facility, a law enforcement officer operating an official vehicle while on official law enforcement business, a person

payment, collection, and enforcement of tolls, including, but not limited to, rules for the implementation of video or other image billing and variable pricing.²⁴ The FDOT has implemented two programs for electronic toll collection, SunPass and Toll-By-Plate.

SunPass²⁵ is a prepaid electronic system of toll collection that utilizes a prepaid account system and electronic devices called transponders that attach to the inside of a vehicle's windshield. When a vehicle equipped with SunPass goes through a tolling location, the transponder sends a signal and the toll is deducted from the customer's prepaid account. SunPass customers typically fund prepaid accounts using credit cards, debit cards, and checks. SunPass account information includes the license plate number, address, and credit card information.²⁶

The Toll-By-Plate program²⁷ is an image-based system of toll collection. Toll-By-Plate takes a photo of a license plate as a vehicle travels through a tolling location, and the system mails a monthly bill for the tolls, including an administrative charge, to the registered owner of the vehicle. Accounts may be set up as pre-paid or post-paid.²⁸ Accounts may require name, address, email, driver's license number, day time phone number, and credit and debit card numbers.²⁹

SunPass is accepted on all Florida toll roads, including Florida express lanes and most bridges. Travelers may also use the system to pay tolls to certain Florida expressway authorities,³⁰ counties, or municipalities,³¹ and to use toll facilities in Georgia and North Carolina.³² Similarly, expressway authorities, counties, and municipalities may collect tolls through the FDOT's Toll-By-Plate system and, in limited cases, local entities may simply collect tolls through their own collection systems.³³

Regardless of the collection method, customers must provide the required personal identifying information (such as name, address, debit/credit card numbers, checking account numbers, driver license numbers, license plate numbers, etc.) to set up toll payment accounts.

operating a fire vehicle or a rescue vehicle while on official business, a person participating in the funeral procession of a law enforcement officer killed in the line of duty, and a person with a disability.

²⁴ *Id.*

²⁵ See Rule 14-15.0081, F.A.C., for information relating to FDOT's Toll Facilities Description and Toll Rate Schedule.

²⁶ SunPass, *Open A Private Account*, available at

<https://www.sunpass.com/en/signup/tsignupacknowledge.shtml?acttype=private>. (Last visited December 19, 2018.)

²⁷ See Rule 14-100.005, F.A.C., for additional program information.

²⁸ *Id.*

²⁹ For additional information, see Florida's Turnpike Traveler Info, *All Electronic Tolling FAQ, TOLL-BY-PLATE*, available at <http://www.floridasturnpike.com/travelerInfo.html>. (Last visited December 19, 2018.)

³⁰ For example, users of toll facilities of the Central Florida Expressway Authority (CFX) may pay for use of tolls of the FDOT, and vice versa, with either the CFX's E-Pass or the FDOT's SunPass. See Central Florida Expressway Authority, *Differences Between E-Pass & SunPass*, available at: <https://www.cfxway.com/faqs/e-pass-vs-sunpass/>. (Last visited December 18, 2018.)

³¹ For example, users of the Broad Causeway in the Town of Bay Harbor Islands pay the tolls through the SunPass System. See Miami Herald, *Bay Harbor Islands toll booths going electronic*, May 20, 2013, available at: <https://www.miamiherald.com/news/local/community/article1951693.html>. (Last visited December 28, 2018.)

³² Additional information on SunPass is available at: <https://www.sunpass.com/en/about/program.shtml>. (Last visited December 18, 2018.) See also SunSentinel, *SunPass now good in both Georgia, N.C.*, November 12, 2014, available at: <http://www.sun-sentinel.com/local/broward/fl-sunpass-georgia-20141112-story.html>. (Last visited December 18, 2018.)

³³ For both SunPass and Toll-By-Plate systems, the FDOT often performs "back-office" toll collection for other owners of Florida toll facilities through interoperability agreements authorized by s. 338.161(5), F.S.

Open Government Sunset Review of the Public Records Exemption for Personal Identifying Information of Users of Toll Facilities Held by the FDOT, a County, a Municipality, or an Expressway Authority

Originally enacted in 1996,³⁴ the subject exemption was most recently amended in 2014³⁵ to apply the exemption to the specified personal identifying information held by a municipality, in addition to the FDOT, a county, or an expressway authority, for the purpose of paying, prepaying, or collecting tolls and associated administrative charges due for the use of toll facilities. In revising the exemption, the Legislature found that exempting personal identifying information about individuals held by the FDOT, a county, a municipality, or an expressway authority³⁶ for the identified purpose is a public necessity.

The Legislature further found that the exemption:

- Puts individuals who pay for tolls by Toll-By-Plate, which is video billed, on equal footing with individuals who pay for tolls by check, debit card, or credit card, or who pay cash at the toll booth.
- Protects the health and safety of the public by making exempt information regarding the locations, travel patterns, and travel activity of individuals as they use the toll road system.
- Protects the anonymity of all travelers on toll roads, not just cash customers, regardless of the method of payment of tolls.
- Promotes the use of the electronic toll collection system, a more efficient and effective government collection system for tolls, because paying for tolls, regardless of the implemented collection methods, saves individuals time when passing through toll facilities, compared to individuals who pay for tolls with cash, but costs much less to administer.
- Protects the privacy of individuals and promotes their right to be let alone from unreasonable government intrusion by prohibiting the public disclosure of private information about the finances and location of the individual using the toll road system.

Section 338.155(6), F.S., is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

Based upon a review of this public records exemption under the Open Government Sunset Review Act, as well as discussions with and recommendations of the FDOT and various counties, municipalities, and expressway authorities, the professional staff of the Senate Infrastructure and Security Committee recommends that the Legislature retain the public records exemption established in s. 338.155(6), F.S.

III. Effect of Proposed Changes:

SPB 7036 is based on an Open Government Sunset Review of a public records exemption for personal identifying information held by the FDOT, a county, a municipality, or an expressway

³⁴ Ch. 96-178, L.O.F.

³⁵ Ch. 2014-217, L.O.F.

³⁶ Before, on, or after the effective date of the amended exemption.

authority for the purpose of paying, prepaying, or collecting tolls and associated administrative charges due for the use of toll facilities.

The bill proposes to amend s. 338.155(6), F.S., to delete the scheduled repeal of the current public records exemption. Records containing the specified personal identifying information will continue to be exempt from public disclosure.

The bill requires a majority vote for passage.

The bill takes effect October 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

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 section 338.155(6) 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.

FOR CONSIDERATION By the Committee on Infrastructure and Security

596-00792A-19

20197036pb

1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; amending s. 338.155, F.S., which
 4 provides an exemption from public records requirements
 5 for personal identifying information held by the
 6 Department of Transportation, a county, a
 7 municipality, or an expressway authority for certain
 8 purposes; deleting the scheduled repeal of the
 9 exemption; providing an effective date.

10
 11 Be It Enacted by the Legislature of the State of Florida:

12
 13 Section 1. Subsection (6) of section 338.155, Florida
 14 Statutes, is amended to read:

15 338.155 Payment of toll on toll facilities required;
 16 exemptions.—

17 (6) Personal identifying information held by the Department
 18 of Transportation, a county, a municipality, or an expressway
 19 authority for the purpose of paying, prepaying, or collecting
 20 tolls and associated administrative charges due for the use of
 21 toll facilities is exempt from s. 119.07(1) and s. 24(a), Art. I
 22 of the State Constitution. This exemption applies to such
 23 information held by the Department of Transportation, a county,
 24 a municipality, or an expressway authority before, on, or after
 25 the effective date of the exemption. ~~This subsection is subject~~
 26 ~~to the Open Government Sunset Review Act in accordance with s.~~
 27 ~~119.15 and shall stand repealed on October 2, 2019, unless~~
 28 ~~reviewed and saved from repeal through reenactment by the~~
 29 ~~Legislature.~~

Page 1 of 2

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596-00792A-19

20197036pb

30 Section 2. This act shall take effect October 1, 2019.

Page 2 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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 Infrastructure and Security

BILL: SPB 7038

INTRODUCER: Infrastructure and Security Committee

SUBJECT: Department of Law Enforcement

DATE: February 13, 2019

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Price	Miller		IS Submitted as Comm. Bill/Fav

I. Summary:

In November of 2018, Florida voters approved Amendment 10, an amendment to the state constitution that in part creates the Office of Domestic Security and Counterterrorism within the Florida Department of Law Enforcement. SPB 7038 proposes to implement the amendment by conforming the current statutory designation of the existing “Florida Domestic Security and Counter-Terrorism Intelligence Center” to the constitutional designation of the “Office of Domestic Security and Counterterrorism,” and correspondingly revising the name of the existing “Florida Domestic Security and Counter-Terrorism Database” to the “Domestic Security and Counterterrorism Database.”

No impact on state or local revenues is expected.

The bill takes effect on July 1, 2019.

II. Present Situation:

Florida Domestic Security and Counter-Terrorism Intelligence Center

Following the terrorist attacks on the United States on September 11, 2001, the Legislature created within the Florida Department of Law Enforcement (FDLE) the Florida Domestic Security and Counter-Terrorism Intelligence Center (Center) and the Florida Domestic Security and Counter-Terrorism Database (Database).¹

The Center is statutorily required² to:

- Gather, document, and analyze active criminal intelligence and criminal investigative information related to terrorism;
- Maintain and operate the Database; and

¹ Ch. 2001-366, L.O.F.

² Section 943.0321(1), F.S.

- Provide support and assistance to federal, state, and local law enforcement agencies and prosecutors that investigate or prosecute terrorism.³

The Database is statutorily required to:

- Include active criminal intelligence information and active criminal investigative information submitted by federal, state, or local law enforcement agencies and prosecutors and information that is available from other law enforcement database.
- Be capable of performing data review and processing that may reveal patterns, trends, and correlations indicative of potential or actual terrorism activity within or affecting this state.⁴

Further, current law requires that the information developed in or through the use of the database be made available to federal, state, and local law enforcement agencies and prosecutors.⁵

According to the Center, it “has many terrorism related responsibilities, including the collection, analysis, and dissemination of domestic security intelligence. [It] produces the FDLE Daily Domestic Security Brief and maintains situational awareness of issues not only occurring in Florida, but globally as well. Among the other duties are strategic assessments on various infrastructure elements and monthly newsletters concerning domestic extremism.”⁶

The Center also maintains an operational relationship with other state law enforcement agencies and with the Federal Bureau of Investigation and the Department of Homeland Security. The Center indicates its role continues to evolve through participation in FDLE’s Florida Fusion Center (FFC), which consists of FDLE members, federal agencies, state multi-disciplinary partners and includes outreach to private sector entities.⁷

Amendment 10

The full text of the portion of Amendment 10 relating to the Office, amending Article IV, Section 4.(g), of the Florida Constitution, is as follows:

(g) The governor as chair, the chief financial officer, the attorney general, and the commissioner of agriculture shall constitute the agency head of the Department of Law Enforcement. The Office of Domestic Security and Counterterrorism is created within the Department of Law Enforcement. The Office of Domestic Security and Counterterrorism shall provide support for prosecutors and federal, state, and local law enforcement agencies that investigate or analyze information relating to attempts or acts

³ Section 943.0321(2), F.S.

⁴ Section 943.0321(3)(a) and (b), F.S.

⁵ Section 943.0321(3)(c), F.S.

⁶ Florida Department of Law Enforcement, Office of Statewide Intelligence, *Counter-Terrorism Intelligence Center (CTIC)*, available at <http://www.fdle.state.fl.us/OSI/OSI-Home.aspx>. (Last visited January 10, 2019.)

⁷ Fusion centers are described as “a collaborative effort of two or more agencies that provide resources, expertise, and/or information with the goal of maximizing the ability to detect, prevent, apprehend and respond to criminal and terrorist activity utilizing an all crimes/all hazards approach.” Additionally, FDLE assigns regional intelligence agents from seven regions in the state to the FFC, who are responsible for maintaining awareness of crimes and crime trends within the respective regions. *Id.*

of terrorism or that prosecute terrorism, and shall perform any other duties that are provided by law.

III. Effect of Proposed Changes:

SPB 7038 proposes to implement a portion of Amendment 10 to the Florida Constitution approved by the electorate in November of 2018.

The bill amends s. 943.0321, F.S., to revise the name of the “Florida Domestic Security and Counter-Terrorism Intelligence Center” to the “Office of Domestic Security and Counterterrorism,” implementing the voter-approved constitutional amendment,⁸ and to correspondingly revise the statutory name of the “Florida Domestic Security and Counter-Terrorism Database” to the “Domestic Security and Counterterrorism Database.”

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

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.

⁸ FDLE staff advises no other language is believed necessary to implement the subject part of Amendment 10. *See* email to Senate Committee staff dated December 19, 2018. (On file in the Senate Infrastructure and Security Committee.)

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends the following section of the Florida Statutes: 943.0321.

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.

FOR CONSIDERATION By the Committee on Infrastructure and Security

596-00840A-19

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1 A bill to be entitled
 2 An act relating to the Department of Law Enforcement;
 3 amending s. 943.0321, F.S.; renaming the Florida
 4 Domestic Security and Counter-Terrorism Intelligence
 5 Center as the Office of Domestic Security and
 6 Counterterrorism; renaming the Florida Domestic
 7 Security and Counter-Terrorism Database as the
 8 Domestic Security and Counterterrorism Database;
 9 providing an effective date.

10
 11 Be It Enacted by the Legislature of the State of Florida:

12
 13 Section 1. Subsections (1), (2), and (4) of section
 14 943.0321, Florida Statutes, are amended to read:

15 943.0321 Office of The Florida Domestic Security and
 16 Counterterrorism ~~Counter-Terrorism Intelligence Center~~ and the
 17 ~~Florida~~ Domestic Security and Counterterrorism ~~Counter-Terrorism~~
 18 Database.—

19 (1) (a) There is created within the Department of Law
 20 Enforcement the Office of Florida Domestic Security and
 21 Counterterrorism ~~Counter-Terrorism Intelligence Center~~.

22 (b) The ~~Florida~~ Domestic Security and Counterterrorism
 23 ~~Counter-Terrorism~~ Database is created within the Office of
 24 ~~Florida~~ Domestic Security and Counterterrorism ~~Counter-Terrorism~~
 25 ~~Intelligence Center~~.

26 (2) The office intelligence center shall:

27 (a) Gather, document, and analyze active criminal
 28 intelligence and criminal investigative information related to
 29 terrorism, as defined in s. 775.30, including information

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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30 related to individuals or groups that plot, plan, or coordinate
 31 acts of terrorism, as defined in s. 775.30, and that operate
 32 within this state or otherwise commit acts affecting this state;

33 (b) Maintain and operate the Domestic Security and
 34 Counterterrorism ~~Counter-Terrorism~~ Database; and

35 (c) Provide support and assistance to federal, state, and
 36 local law enforcement agencies and prosecutors that investigate
 37 or prosecute terrorism, as defined in s. 775.30.

38 (4) (a) Information that is exempt from public disclosure
 39 under chapter 119 when in the possession of the office
 40 ~~intelligence center~~ retains its exemption from public disclosure
 41 after such information is revealed to a federal, state, or local
 42 law enforcement agency or prosecutor, except as otherwise
 43 provided by law.

44 (b) Information obtained by the office intelligence center
 45 from a federal, state, or local law enforcement agency or
 46 prosecutor which is exempt from public disclosure under state or
 47 federal law when in the possession of a federal, state, or local
 48 law enforcement agency or prosecutor retains its exemption from
 49 public disclosure after such information is revealed to the
 50 office intelligence center, except as otherwise provided by law.

51 Section 2. This act shall take effect July 1, 2019.

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Military and Veterans Affairs and Space, Vice Chair
Education
Health Policy

Infrastructure and Security

JOINT COMMITTEE:
Joint Administrative Procedures Committee

SENATOR JANET CRUZ

18th District

February 7, 2019

The Honorable Tom Lee
Infrastructure and Security Committee
410 Knott Building
404 S. Monroe Street
Tallahassee, Florida 32399-1100

Dear Chairman Lee:

Due to a scheduling conflict that requires my early return to my district office, I respectfully request to be excused from the Infrastructure and Security Committee meeting on February 13, 2019.

Please let me know if you have any questions or concerns regarding this request.

Thank you,

A handwritten signature in blue ink, appearing to read "Janet Cruz", written over a large, stylized blue flourish that resembles a leaf or a large letter 'C'.

Senator Janet Cruz

CC: Marilyn Hudson, Infrastructure and Security Committee - Administrative Assistant

CourtSmart Tag Report

Room: EL 110

Case No.:

Type:

Caption: Infrastructure and Security Committee Judge:

Started: 2/13/2019 1:33:29 PM

Ends: 2/13/2019 2:35:57 PM

Length: 01:02:29

1:33:27 PM Meeting called to order by Chair Lee
1:33:36 PM Roll call by Administrative Assistant Marilyn Hudson
1:33:50 PM Quorum present
1:33:59 PM Comments from Chair Lee, Senator Cruz is excused
1:34:35 PM Introduction of Tab 3, SPB 7032, OGSR/Emergency Planning Assistance/Division of Emergency Management by Chair Lee
1:34:52 PM Explanation of SPB 7032 by Staff Director, Phillip Miller
1:35:15 PM Comments from Chair Lee
1:35:29 PM Senator Perry moves to have SPB 7032 submitted as a Committee Bill
1:35:46 PM Roll call by Administrative Assistant Marilyn Hudson
1:35:51 PM SPB 7032 favorably reported as a Committee Bill
1:36:01 PM Introduction of Tab 4, SPB 7034, OGSR/Automated License Plate Recognition System by Chair Lee
1:36:08 PM Explanation of SPB 7034 by Phillip Miller
1:36:32 PM Comments from Chair Lee
1:36:41 PM Senator Perry moves that SPB 7034 be submitted as a Committee Bill
1:36:51 PM Roll call by Administrative Assistant Marilyn Hudson
1:36:58 PM SPB 7034 is favorably reported as Committee Bill
1:37:14 PM Introduction Tab 5, SPB 7036, OGSR/Payment of Toll on Toll Facilities/Identifying Information by Chair Lee
1:37:18 PM Explanation of SPB 7036 by Phillip Miller
1:37:40 PM Comments from Chair Lee
1:37:49 PM Senator Perry moves that SPB 7036 be submitted as a Committee Bill
1:37:56 PM Roll call by Administrative Assistant Marilyn Hudson
1:38:02 PM SPB 7036 is favorably reported as a Committee Bill
1:38:21 PM Introduction of SPB 7038, Department of Law Enforcement by Chair Lee
1:38:28 PM Explanation of SPB 7038 by Phillip Miller
1:38:46 PM Comments from Chair Lee
1:39:11 PM Senator Perry moves that SPB 7038 be submitted as a Committee Bill
1:39:21 PM Roll call by Administrative Assistant Marilyn Hudson
1:39:29 PM SPB 7038 is favorably reported as a Committee Bill
1:39:41 PM Introduction of Tab 2, Workshop -Discussion and Testimony on Innovation in Infrastructure
1:42:25 PM Introduction of Secretary Kevin Thibault, Florida Department of Transportation
1:42:50 PM Presentation by Secretary Thibault
1:57:56 PM Comments from Chair Lee
1:58:07 PM Question from Vice Chair Perry
1:58:13 PM Response from Secretary Thibault
1:59:27 PM Follow-up question from Vice Chair Perry
1:59:38 PM Response from Secretary Thibault
2:00:00 PM Additional question from Vice Chair Perry
2:00:09 PM Response from Secretary Thibault
2:01:09 PM Additional question from Vice Chair Perry
2:01:21 PM Comments from Vice Chair Perry
2:04:46 PM Comments from Chair Lee
2:05:38 PM Response from Secretary Thibault
2:05:59 PM Additional comments from Chair Lee
2:06:10 PM Response from Vice Chair Perry
2:07:03 PM Comments from Chair Lee
2:07:11 PM Response from Senator Hutson
2:08:04 PM Response from Secretary Thibault
2:08:59 PM Follow-up question from Senator Hutson
2:09:21 PM Additional question from Senator Hutson
2:09:33 PM Response from Secretary Thibault

2:10:14 PM Follow-up question from Senator Hutson
2:10:22 PM Response from Secretary Thibault
2:11:22 PM Comment/question from Senator Hutson
2:11:47 PM Response from Secretary Thibault
2:12:26 PM Question from Senator Hooper
2:12:40 PM Response from Secretary Thibault
2:13:21 PM Question from Senator Taddeo
2:13:46 PM Response from Secretary Thibault
2:15:07 PM Comments from Senator Taddeo
2:15:52 PM Comments from Chair Lee
2:17:05 PM Question from Chair Lee
2:17:19 PM Response from Secretary Thibault
2:19:11 PM Comments from Chair Lee
2:19:19 PM Question from Chair Lee
2:19:31 PM Response from Secretary Thibault
2:21:12 PM Follow-up question from Chair Lee
2:21:24 PM Response from Secretary Thibault
2:22:21 PM Additional question from Chair Lee
2:22:28 PM Response from Secretary Thibault
2:22:51 PM Comments from Chair Lee
2:23:23 PM Additional question from Chair Lee
2:23:31 PM Response from Secretary Thibault
2:24:07 PM Comments from Chair Lee
2:24:37 PM Speaker Thomas Hawkins, Policy & Planning Director, 1000 Friends of Florida, Inc.
2:25:58 PM Question from Vice Chair Perry
2:26:16 PM Response from Mr. Hawkins
2:27:49 PM Follow-up question from Vice Chair Perry
2:28:01 PM Response from Mr. Hawkins
2:29:59 PM Comments from Vice Chair Perry
2:30:32 PM Comments from Chair Lee
2:32:10 PM Comments from Mr. Hawkins
2:32:25 PM Comments from Chair Lee
2:32:58 PM Question from Senator Hutson
2:33:10 PM Response from Mr. Hutson
2:34:32 PM Follow-up question from Senator Hutson
2:34:48 PM Comments from Chair Lee
2:35:39 PM Senator Hutson moves to adjourn, without objection meeting is adjourned