

**BILL #:** HB 7093      PCB GAP 10-18      OGSR/Domestic Security Oversight Council  
**SPONSOR(S):** Governmental Affairs Policy Committee and Mayfield  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 618

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Governmental Affairs Policy Committee	12 Y, 0 N	Williamson	Williamson
1)				
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4)				
5)				

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The Domestic Security Oversight Council (council) was created to serve as an advisory council to provide guidance to the state's regional domestic security task forces and other domestic security working groups. It also was created to make recommendations to the Governor and the Legislature regarding the expenditure of funds and allocation of resources related to counterterrorism and domestic security efforts. The council must meet at least semiannually.

Current law provides a public meeting exemption for those portions of council meetings wherein the council hears or discusses active criminal investigative information or active criminal intelligence information. The exemption applies only if: the chair of the council announces at a public meeting that, in connection with the performance of the council's duties, it is necessary that such information be discussed; the chair declares the specific reasons it is necessary to close the meeting, or portion thereof, in a document that is a public record and filed with the official records of the council; and the entire closed meeting is recorded.

An audio or video recording of, and any minutes and notes generated during, a closed portion of a council meeting is exempt from public records requirements. However, the public record exemption expires at such time as the criminal investigative information or criminal intelligence information discussed therein is no longer active.

The bill reenacts the public record and public meeting exemptions, which will repeal on October 2, 2010, if this bill does not become law.

The bill does not appear to have a fiscal impact on state or local governments.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### BACKGROUND

##### Open Government Sunset Review Act

The Open Government Sunset Review Act<sup>1</sup> sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.<sup>2</sup> If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created<sup>3</sup> then a public necessity statement and a two-thirds vote for passage are not required.

##### Domestic Security Oversight Council

The Domestic Security Oversight Council (council) was created to serve as an advisory council to provide guidance to the state's regional domestic security task forces and other domestic security working groups. It also was created to make recommendations to the Governor and the Legislature

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<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Section 24(c), Art. I of the State Constitution.

<sup>3</sup> An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

regarding the expenditure of funds and allocation of resources related to counterterrorism and domestic security efforts.<sup>4</sup> The council must meet at least semiannually.<sup>5</sup> Its duties include, in part, reviewing:

- The development, maintenance, and operation of a comprehensive multidisciplinary domestic security strategy that will guide the state's prevention, preparedness, protection, response, and recovery efforts against terrorist attacks and make appropriate recommendations to ensure the implementation of that strategy.
- The development of integrated funding plans to support specific projects, goals, and objectives necessary to the state's domestic security strategy and make appropriate recommendations to implement those plans.
- The overall statewide effectiveness of domestic security and counter-terrorism efforts in order to provide suggestions to improve or enhance those efforts.
- The efforts of any agency or entity involved in state or local domestic security and counter-terrorism efforts that requests assistance or that appears to need such review in order to provide suggestions to improve or enhance those efforts.
- Efforts within the state to better secure state and local infrastructure against terrorist attack and make recommendations to enhance the effectiveness of such efforts.
- Statewide or multiagency mobilizations and responses to major domestic security incidents and recommend suggestions for training, improvement of response efforts, or improvement of coordination or for other strategies that may be derived as necessary from such reviews.<sup>6</sup>

#### Exemptions under Review

Current law provides a public meeting exemption for those portions of council meetings wherein the council hears or discusses active criminal investigative information or active criminal intelligence information.<sup>7</sup> The exemption applies only if:

- The chair of the council announces at a public meeting that, in connection with the performance of the council's duties, it is necessary that active criminal investigative information or active criminal intelligence information be discussed.
- The chair declares the specific reasons that it is necessary to close the meeting, or portion thereof, in a document that is a public record and filed with the official records of the council.
- The entire closed meeting is recorded. The recording must include the times of commencement and termination of the closed meeting or portion thereof, all discussion and proceedings, and the names of the persons present. No portion of the closed meeting may be off the record. The recording must be maintained by the council.<sup>8</sup>

An audio or video recording of, and any minutes and notes generated during, a closed council meeting are exempt from public records requirements. However, the public record exemption expires at such time as the criminal investigative information or criminal intelligence information discussed therein is no longer active.<sup>9</sup>

Only members of the council, staff supporting the council, and other persons whose presence has been authorized by the chair are allowed to attend closed portions of council meetings.<sup>10</sup>

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<sup>4</sup> Section 943.0313, F.S.

<sup>5</sup> Section 943.0313(3), F.S.

<sup>6</sup> Section 943.0313(5)(a), F.S.

<sup>7</sup> Section 119.011(3), F.S., defines "criminal intelligence information," "criminal investigative information," and "active." Criminal intelligence information means "information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity." It is considered "active" as long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities. Criminal investigative information means "information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance." Criminal investigative information is considered "active" as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.

<sup>8</sup> Section 943.0314(1)(a), F.S.

<sup>9</sup> Section 943.0314(1)(b), F.S.

<sup>10</sup> Section 943.0314(2), F.S.

Pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2010, unless reenacted by the Legislature.

## **EFFECT OF BILL**

The bill removes the repeal date, thereby reenacting the public record and public meeting exemptions.

### **B. SECTION DIRECTORY:**

Section 1 amends s. 943.0314, F.S., to reenact the public record and public meeting exemptions for the Domestic Security Oversight Council.

Section 2 provides an effective date of October 1, 2010.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

### **D. FISCAL COMMENTS:**

None.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

#### **1. Applicability of Municipality/County Mandates Provision:**

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

#### **2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

None.