

**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.)

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Prepared By: The Professional Staff of the Committee on Criminal Justice

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BILL: SB 1042

INTRODUCER: Senator Abruzzo

SUBJECT: Public Meetings/Criminal Justice Commissions

DATE: March 5, 2013

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	<b>Favorable</b>
2.			GO	
3.			RC	
4.				
5.				
6.				

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**I. Summary:**

SB 1042 creates an exemption from public meetings requirements for that portion of a meeting of a duly constituted criminal justice commission (a local commission) at which public and private sector members of the commission discuss active criminal intelligence information or active criminal investigative information currently being considered by, or which may, foreseeably come before the commission, provided that at any public meeting at which such matter is being considered the commission members publicly disclose the fact that the matter has been discussed.

The bill specifies that the exemption is subject to the Open Government Sunset Review Act and provides a statement of public necessity for the exemption as required by the Florida Constitution. The bill specifies that the exemption stands repealed October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

*Because the bill creates a new public meetings exemption, the bill requires a two-thirds vote of each house of the Legislature for passage.*

This bill creates a new, and as yet unnumbered, section of the Florida Statutes.

**II. Present Situation:**

**Public Meetings Requirements**

The Florida Constitution, in part, requires that all meetings of any local government at which official acts are to be taken or at which public business of such body is to be transacted or

discussed be open and noticed to the public.<sup>1</sup> Additionally, the Sunshine Law,<sup>2</sup> in part, requires all meetings of any board or commission of any local agency<sup>3</sup> or authority at which official acts are to be taken to be noticed and open to the public.<sup>4</sup>

Only the Legislature may create an exemption to public meetings requirements.<sup>5</sup> The Legislature may provide by general law passed by two-thirds vote of each chamber for the exemption of meetings from the requirements of Article I, Section 24, of the Florida Constitution, provided the exemption:

- States with specificity the public necessity justifying the exemption (public necessity statement); and
- Is no broader than necessary to meet that public purpose.<sup>6</sup>

The Open Government Sunset Review Act (Act)<sup>7</sup> provides for the systematic review, through a 5-year cycle ending October 2 of the 5th year following enactment, of an exemption from the Public Records Act or the Sunshine Law. Each year, by June 1, the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.<sup>8</sup> The Act requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>9</sup>

The Act provides that a public meetings exemption may be created, revised, or maintained only if it serves an identifiable public purpose and is no broader than necessary to meet the public purpose it serves.<sup>10</sup> An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;

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<sup>1</sup> Article I, Section 24(b), of the Florida Constitution.

<sup>2</sup> Section 286.011, F.S. Section 286.011, F.S., has been construed to apply to any gathering, formal or informal, of two or more members of the same board or commission to discuss some matter on which foreseeable action will be taken by that board or commission. *See generally Hough v. Stembridge*, 278 So.2d 288 (Fla. 3rd DCA 1973).

<sup>3</sup> Section 119.01(2), F.S., defines an ‘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.

<sup>4</sup> Section 286.011(1)-(2), F.S. The intent of the Legislature is to “extend application of the ‘open meeting’ concept so as to bind every ‘board or commission’ of the state, or of any county or political subdivision over which it has dominion or control.” *City of Miami Beach v. Berns*, 245 So.2d 38, 40 (Fla. 1971).

<sup>5</sup> Article I, Section 24(c), of the Florida Constitution.

<sup>6</sup> *Id.*

<sup>7</sup> Section 119.15, F.S.

<sup>8</sup> Section 119.15(5)(a), F.S.

<sup>9</sup> Section 119.15(3), F.S.

<sup>10</sup> Section 119.15(6)(b), F.S.

- Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals, cause unwarranted damage to their good name or reputation, or jeopardize their safety. (Only information that would identify such individuals may be exempted under this provision).
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.<sup>11</sup>

The Act also requires, as part of the review process, that the Legislature consider the following:

- 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?<sup>12</sup>

### **Criminal Justice Commissions**

Staff is aware of only two counties in Florida that currently have a “criminal justice commission”: the Sarasota County Criminal Justice Commission and the Palm Beach County Criminal Justice Commission.<sup>13</sup> Membership of these commissions is comprised of members of both the public<sup>14</sup> and private sectors. These members collaborate to improve the criminal justice system in their community.<sup>15</sup> The commissions discuss a multitude of issues relating to local criminal justice practices, policies, and program developments.<sup>16</sup> Other issues discussed at commission meetings include jail population and overcrowding, tracking crimes in the community, and matters of general policing.<sup>17</sup>

Because a criminal justice commission is an appointed commission that is not specifically exempted, they are currently covered under the Sunshine Law. Therefore, any meetings of a commission are subject to the Sunshine Law. Consequently, discussions that occur among members of a commission, such as those involving a sheriff, a public defender, or a state attorney, which involve matters that may foreseeably come before or are currently being

<sup>11</sup> *Id.*

<sup>12</sup> Section 119.15(6)(a), F.S.

<sup>13</sup> In 2004, the Board of County Commissioners of Sarasota County passed Resolution number 2004-251, creating the Sarasota County Criminal Justice Commission. The ordinance is available at: [http://www.co.sarasota.fl.us/HumanServices/documents/Resolution\\_CJC\\_Revised\\_112004.pdf](http://www.co.sarasota.fl.us/HumanServices/documents/Resolution_CJC_Revised_112004.pdf). In 1988, Palm Beach County enacted Ordinance No. 88-16, creating the Palm Beach County Criminal Justice Commission. The ordinance is available under the “CJC Directory” tab at <http://www.co.palm-beach.fl.us/criminaljustice/youth/>.

<sup>14</sup> *Id.*

<sup>15</sup> See <https://www.scgov.net/CJC/Pages/default.aspx> (Sarasota County) and <http://www.pbcgov.org/criminaljustice/aboutcjc>. (Palm Beach County).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

considered by the commission, must be properly noticed and should be conducted as an open meeting in accordance with the Sunshine Law.<sup>18</sup> Discussions among public officials on issues that do not require action by the commission do not violate the Sunshine Law.<sup>19</sup>

### III. Effect of Proposed Changes:

The bill creates an exemption from public meetings requirements for that portion of a meeting of a duly constituted criminal justice commission (which is a local commission) at which public and private sector members of the commission discuss active criminal intelligence information or active criminal investigative information currently being considered by, or which may, foreseeably come before the commission, provided that at any public meeting at which such matter is being considered the commission members publicly disclose the fact that the matter has been discussed.

The bill defines “duly constituted criminal justice commission” as an advisory commission created by municipal or county ordinance whose membership is comprised of private and public sector persons and whose purpose is to examine local criminal justice issues.

The terms “active,” “criminal intelligence information,” and “criminal investigative information” have the same meaning as provided in s. 119.011, F.S. This section defines these terms as follows:

- “Active” has the following meanings:
  - Criminal intelligence information 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 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.
  - In addition, criminal intelligence and criminal investigative information are considered “active” while such information is directly related to pending prosecutions or appeals. The word “active” does not apply to information in cases which are barred from prosecution under the provisions of s. 775.15, F.S., or other statute of limitation.<sup>20</sup>
- “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.<sup>21</sup>
- “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.<sup>22</sup>
- “Criminal intelligence information” and “criminal investigative information” do not include:

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<sup>18</sup> Attorney General Opinion 93-41.

<sup>19</sup> *Id.*

<sup>20</sup> Section 119.011(3)(d), F.S.

<sup>21</sup> Section 119.011(3)(a), F.S.

<sup>22</sup> Section 119.011(3)(b), F.S.

- The time, date, location, and nature of a reported crime.
- The name, sex, age, and address of a person arrested or of the victim of a crime except as provided in s. 119.071(2)(h), F.S.
- The time, date, and location of the incident and of the arrest.
- The crime charged.
- Documents given or required by law or agency rule to be given to the person arrested, except as provided in s. 119.071(2)(h), F.S., and, except that the court in a criminal case may order that certain information required by law or agency rule to be given to the person arrested be maintained in a confidential manner and exempt from the provisions of s. 119.07(1), F.S., until released at trial if it is found that the release of such information would be defamatory to the good name of a victim or witness or would jeopardize the safety of such victim or witness, and impair the ability of a state attorney to locate or prosecute a codefendant.
- Informations and indictments except as provided in s. 905.26, F.S.<sup>23</sup>

The extent to which such access may be provided to commission members is governed by s. 119.071, F.S. Generally, such information is exempt from public disclosure,<sup>24</sup> meaning that an agency (the custodian of the record with the power to receive or communicate the record) is not prohibited from disclosing the record in all circumstances.<sup>25</sup> Some of this information is confidential and exempt,<sup>26</sup> which means that this information may not be released by an agency to anyone other than to the persons or entities designated in the statute.<sup>27</sup>

The bill specifies that the public meetings exemption is subject to the Open Government Sunset Review Act and provides the following statement of public necessity for the exemption as required by the Florida Constitution:

The Legislature finds that it is a public necessity that the portion of a meeting of a duly constituted criminal justice commission at which members of the commission discuss active criminal intelligence information or active criminal investigative information currently being considered by, or which may foreseeably come before, the criminal justice commission be made exempt from public meeting requirements. If the meetings at which exempt information is discussed were open to the public, the purpose of the exemption from public records requirements found in chapter 119, Florida Statutes, would be defeated. The members of a criminal justice commission must be able to hear and discuss exempt information freely in order to make sound recommendations regarding strategies and activities that are best suited to protect the welfare of the people of this state. The ability to conduct meetings at which members can freely discuss and fully understand the details of active criminal intelligence information and active criminal investigative information is critical to the ability of a criminal justice commission to operate effectively.

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<sup>23</sup> Section 119.011(3)(c), F.S.

<sup>24</sup> Section 119.071(2)(c)1., F.S.

<sup>25</sup> See *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991), review denied, 589 So.2d 289 (Fla. 1991).

<sup>26</sup> Section 119.071(2)(h) and (j)2., F.S.

<sup>27</sup> Attorney General Opinion 85-62.

The bill specifies that the exemption stands repealed October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature.

Because the bill creates a new public meetings exemption, the bill requires a two-thirds vote of each house of the Legislature for passage.

The bill takes effect July 1, 2013.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

**Vote Requirement**

Article I, Section 24(c), of the Florida Constitution requires a two-thirds vote of the members present and voting in each house of the Legislature for passage of a newly created public meetings exemption. Because the bill creates a new public meetings exemption, the bill requires a two-thirds vote of each house of the Legislature for passage.

**Public Necessity Statement**

Article I, Section 24(c), of the Florida Constitution requires a public necessity statement for a newly created public meetings exemption. Because the bill creates a new public meetings exemption, it includes a public necessity statement.

C. Trust Funds Restrictions:

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. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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

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