

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 171 Pub. Rec./Emergency Information Gathering Systems

SPONSOR(S): Economic Development and Tourism Subcommittee and Edwards

TIED BILLS: **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|---------------------|---------|--|
| 1) Economic Development & Tourism Subcommittee | 12 Y, 0 N, As CS | Lukis | Duncan |
| 2) Government Operations Subcommittee | | | |
| 3) Economic Affairs Committee | | | |

SUMMARY ANALYSIS

Certain state and local governments throughout the country use emergency information gathering systems to collect voluntarily provided information about persons within the government's jurisdiction to assist first responders in helping such persons in time of an emergency.

This bill creates a public record exemption for information furnished by a person to a Florida state, county, or municipal government agency for the purpose of registering emergency information for the agency's emergency information gathering system. The information includes the person's name, address, telephone number, e-mail address or other electronic communication address, and health and other personal information.

The bill also specifies that a state, county, or municipal government agency or other political subdivision of the state that uses an emergency information gathering system may not require disclosure of, or request or accept voluntary disclosure of, any information concerning firearms or ammunition. The penalties provided in s. 790.335(4), F.S., will apply to a person or entity that participates in the gathering of such information.

In addition, the bill provides that the public record exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature. Lastly, the bill provides a statement of public necessity for the exemption as required by the State Constitution.

The bill has no fiscal impact on state or local government revenues.

The bill has an effective date of July 1, 2015.

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Public Records

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.

Public policy regarding access to government records is also addressed in Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record.

Public Record Exemptions

The Legislature may provide by general law for the exemption of records and meetings from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.¹

The Open Government Sunset Review Act² 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:

- to allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- to protect 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; or
- to protect trade or business secrets.³

Emergency Information Gathering Systems

Certain state and local governments throughout the country use emergency information gathering systems to collect information about a person to assist first responders in helping such person in time of an emergency.⁴ The information is voluntarily provided and varies in detail. For example, the information may include details about certain allergies, a disability, a previous medical condition, or even the floor plans of one's home. Once a person's information is in the emergency information gathering system, the information is integrated with the government's 9-1-1 system and is automatically displayed to a 9-1-1 operator or administrator during emergency calls.⁵

Various companies exist throughout the United States that enter into public private partnerships with state and local governments to provide the technology and administration necessary to successfully implement emergency information gathering systems.⁶

¹ Art. I, s. 24(c), Fla. Const.

² Section 119.15, F.S.

³ Section 119.15(6), F.S.

⁴ Article regarding Arkansas using an emergency gathering system statewide at: <http://safety.smart911.com/arkansas-becomes-first-state-deploy-smart911-enhance-public-safety/> (last visited Feb. 17, 2015).

⁵ Information obtained from websites of two companies that contract with state and local governments to implement emergency gathering systems at: <http://safety.smart911.com/smart911/>; and <http://www.savingminutes.com/> (both websites last visited on Feb. 17, 2015).

⁶ *Id.*

Prohibition from Collecting Firearm Data

Section 790.335, F.S., provides, with certain exceptions, that: “[n]o state governmental agency or local government, special district, or other political subdivision . . . shall knowingly and willfully keep or cause to be kept, any list, record, or registry of privately owned firearms” or their owners.⁷ Any person who, or entity that, violates such provision commits a felony of the third degree, punishable as provided in ss. 775.082 or 775.083, F.S.⁸

The stated purpose of such law is to protect the right of individuals to keep and bear arms as guaranteed under both the United States Constitution and State Constitution and to protect the privacy rights of law-abiding firearm owners.⁹

Effect of Proposed Changes

The bill creates a public record exemption for information furnished by a person to a state, county, or municipal government agency for the purpose of registering emergency information for the agency’s emergency information gathering system. The information includes the person’s name, address, telephone number, e-mail address or other electronic communication address, and health and other personal information.

The bill also specifies that a state, county, or municipal government agency or other political subdivision of the state that uses an emergency information gathering system may not require disclosure of, or request or accept voluntary disclosure of, any information concerning firearms or ammunition. The penalties provided in s. 790.335(4), F.S., will apply to a person or entity that participates in the gathering of such information.

The bill provides that the exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill provides a statement of public necessity for the exemption as required by the State Constitution.

The bill has an effective date of July 1, 2015.

B. SECTION DIRECTORY:

Section 1: Adds paragraph (k) to subsection (5) of s. 119.071, F.S., creating a public records exemption for certain personal information obtained by an agency’s emergency information gathering system.

Section 2: Provides public necessity statements.

Section 3: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

⁷ Section 790.335(1)(c), F.S.

⁸ Section 790.335(4), F.S.

⁹ Section 790.335(1)(b), F.S.

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:

The bill does not require a municipality or county to expend funds or take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not require a reduction of the percentage of state tax shared with municipalities or counties.

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for information furnished by a person to a state, county, or municipal government agency for the purpose of registering emergency information for the agency's emergency information gathering system. The exemption does not appear to be in conflict with the constitutional requirement that the exemptions be no broader than necessary to accomplish the stated purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 10, 2015, the Economic Development and Tourism Subcommittee adopted one amendment to the bill. The amendment specifies that a state, county, or municipal government agency or other political subdivision of the state that uses an emergency information gathering system may not require disclosure of, or request or accept voluntary disclosure of, any information concerning firearms or ammunition. The penalties provided in s. 790.335(4), F.S., will apply to a person or entity that participates in the gathering of such information.

This analysis has been updated to reflect the adoption of the amendment.