

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 327 Public Records and Public Meetings/Local Government Utilities  
**SPONSOR(S):** Oversight, Transparency & Public Management Subcommittee; Energy & Utilities Subcommittee; Davis and others  
**TIED BILLS:**           **IDEN./SIM. BILLS:** CS/SB 450

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	12 Y, 0 N, As CS	Keating	Keating
2) Oversight, Transparency & Public Management Subcommittee	14 Y, 0 N, As CS	Moehrle	Harrington
3) Commerce Committee	24 Y, 0 N	Keating	Hamon

### SUMMARY ANALYSIS

Current law provides a public record exemption for the following information held by a utility owned or operated by a unit of local government ("local government utility"):

- Information related to the security of a local government utility's technology, processes, and practices designed to protect the utility's networks, computers, programs, and data from attack, damage, or unauthorized access that, if disclosed, would facilitate the alteration, disclosure, or destruction of such data or information technology resources.
- Information related to the security of a local government utility's existing or proposed information technology systems or industrial control technology systems that, if disclosed, would facilitate unauthorized access to, and alteration or destruction of, such systems in a manner that would adversely impact the safe and reliable operations of the systems and the utility

This bill creates a public meeting exemption for that portion of a meeting held by a local government utility that would reveal the above information, which is confidential and exempt from disclosure as a public record. The bill requires that all portions of a local government utility meeting exempted by the bill be recorded and transcribed. The bill provides that such recordings and transcripts are confidential and exempt from disclosure as public records except to the extent that any portion of the recording or transcript is determined by a court of competent jurisdiction, after an in camera review, to reveal nonexempt data.

The bill provides that the public meeting and public record exemptions are subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

The bill does not appear to have a fiscal impact on the state; however, it may have a minimal fiscal impact on local government utilities.

The bill provides an effective date of July 1, 2019.

**Article I, section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public meeting or public record exemption. The bill creates a new public meeting and 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, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, section 24(a).<sup>1</sup> The general law must state with specificity the public necessity justifying the exemption<sup>2</sup> and must be no more broad than necessary to accomplish its purpose.<sup>3</sup>

###### Public Meetings

Article I, section 24(b) of the Florida Constitution sets forth the state's public policy regarding access to government meetings. The section requires that all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, 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.

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., known as the "Government in the Sunshine Law" or "Sunshine Law," further requires that all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, at which official acts are to be taken be open to the public at all times.<sup>4</sup> The board or commission must provide reasonable notice of all public meetings.<sup>5</sup> Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin, or economic status or that operates in a manner that unreasonably restricts the public's access to the facility.<sup>6</sup> Minutes of a public meeting must be promptly recorded and open to public inspection.<sup>7</sup>

The Legislature may provide by general law for the exemption of meetings from the requirements of article I, section 24(b) of the Florida Constitution.<sup>8</sup> The general law must state with specificity the public necessity justifying the exemption<sup>9</sup> and must be no more broad than necessary to accomplish its purpose.<sup>10</sup>

###### Open Government Sunset Review

The Open Government Sunset Review Act<sup>11</sup> provides that a public meeting and public record exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no more broad than necessary to meet one of the following purposes:

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<sup>1</sup> FLA. CONST. art. I, s. 24(c).

<sup>2</sup> This portion of a public record exemption is commonly referred to as a "public necessity statement."

<sup>3</sup> FLA. CONST. art. I, s. 24(c).

<sup>4</sup> S. 286.011(1), F.S.

<sup>5</sup> *Id.*

<sup>6</sup> S. 286.011(6), F.S.

<sup>7</sup> S. 286.011(2), F.S.

<sup>8</sup> FLA. CONST. art. I, s. 24(c).

<sup>9</sup> This portion of a public meeting exemption is commonly referred to as a "public necessity statement."

<sup>10</sup> FLA. CONST. art. I, s. 24(c).

<sup>11</sup> S. 119.15, F.S.

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- 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.
- Protect trade or business secrets.<sup>12</sup>

The Act requires the automatic repeal of a public meeting or public record exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>13</sup>

### Local Government Utilities

Pursuant to article VIII, s. 2(b) of the Florida Constitution, municipalities have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law.

Municipalities are authorized by general law to provide water and sewer utility services.<sup>14</sup> According to a 2014 staff analysis, 254 municipalities provided water services and 222 municipalities provided wastewater service at that time.<sup>15</sup> Municipalities also are authorized by general law to provide natural gas services.<sup>16</sup> As of December 31, 2017, 27 municipally owned natural gas utilities provided service in the state.<sup>17</sup> With respect to electricity service, 33 municipally owned electric utilities serve approximately 14 percent of the state's population.<sup>18</sup>

Pursuant to article VIII, s. 1 of the Florida Constitution, counties not operating under a charter have the power of self-government as provided by general or special law, while charter counties have all powers of self-government not inconsistent with general law or with special law approved by the county electors. Counties are authorized by general law to provide water and sewer utility services both within their individual boundaries and in adjoining counties.<sup>19</sup>

### Public Record Exemption for Information related to Security of Local Government Utility Systems

In 2016, the Legislature created a public record exemption, codified at s. 119.0713(5), F.S., for the following information held by a utility owned or operated by a unit of local government ("local government utility"):

- Information related to the security of a local government utility's technology, processes, and practices designed to protect the utility's networks, computers, programs, and data from attack, damage, or unauthorized access that, if disclosed, would facilitate the alteration, disclosure, or destruction of such data or information technology resources.
- Information related to the security of a local government utility's existing or proposed information technology systems or industrial control technology systems that, if disclosed, would facilitate unauthorized access to, and alteration or destruction of, such systems in a manner that would adversely impact the safe and reliable operations of the systems and the utility.<sup>20</sup>

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

<sup>13</sup> S. 119.15(3), F.S.

<sup>14</sup> Pursuant to s. 180.06, F.S., a municipality may "provide water and alternative water supplies;" "provide for the collection and disposal of sewage, including wastewater reuse, and other liquid wastes;" and "construct reservoirs, sewerage systems, trunk sewers, intercepting sewers, pumping stations, wells, siphons, intakes, pipelines, distribution systems, purification works, collection systems, treatment and disposal works" to accomplish these purposes.

<sup>15</sup> Florida House of Representatives Staff Analysis of HB 813 (2014), p. 3 (Mar. 18, 2014).

<sup>16</sup> S. 180.06(8), F.S.

<sup>17</sup> Florida Public Service Commission, *Facts & Figures of the Florida Utility Industry*, p.13 (May 2018).

<sup>18</sup> Florida Municipal Electric Association, *Who is FMEA*, <https://www.publicpower.com/about-us> (last visited Mar. 12, 2019).

<sup>19</sup> S. 125.01(1)(k)1., F.S. and s. 153.03, F.S.

<sup>20</sup> Ch. 2016-95, Laws of Fla.

For purposes of the exemption, the term “utility” is defined as a person or entity that provides electricity, natural gas, telecommunications, water, chilled water, reuse water, or wastewater.<sup>21</sup>

Similarly, current law provides public record and public meeting exemptions for certain information related to security systems and plans held by an agency.<sup>22</sup>

### **Effect of Proposed Changes**

The bill creates a public meeting exemption for the portion of a meeting held by a local government utility that would reveal the information exempt from disclosure as a public record under s. 119.0713(5), F.S., as described above. The bill requires that all portions of a local government utility meeting exempted by the bill must be recorded and transcribed. The bill provides that such recordings and transcripts are confidential and exempt from disclosure as public records except to the extent that any portion of the recording or transcript is determined by a court of competent jurisdiction, after an in camera review, to reveal nonexempt data.

The bill provides a statement of public necessity as required by the Florida Constitution, which provides the following legislative findings:

- The increased interconnection and integration of utility system infrastructure through information and communications technology exposes such systems to attacks that may result in the disruption of utility services and damage to utility systems.
- Maintaining safe and reliable utility systems is vital to protecting the public health and welfare and ensuring the economic well-being of the state.
- The public and private harm in disclosing information exempted by the bill outweighs any public benefit derived from disclosure of the information.
- The protection of information and communications exempted by the bill will ensure that utilities have greater safeguards to protect against security threats and will bolster efforts to develop more resilient information technology systems and industrial control technology systems.

In accordance with s. 119.15, F.S., the bill provides that the public meeting and public record exemptions are subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

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

**Section 1.** Amends s. 286.0113, F.S., relating to general exemptions from public meetings.

**Section 2.** Provides a public necessity statement.

**Section 3.** Provides an effective date of July 1, 2019.

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

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

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

None.

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<sup>21</sup> *Id.*

<sup>22</sup> *See, e.g.,* s. 119.071(3), F.S. (creating a public record exemption for “security system plans” held by an agency, making such plans confidential and exempt from public record requirements in certain circumstances); and s. 281.301, F.S. (creating a public meeting exemption for discussions that would reveal certain information related to security systems that is held by an agency).

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill could have a minimal fiscal impact on local government utilities because their staff responsible for complying with public meeting and public record requirements may require training related to implementation of the exemption created by the bill. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of these utilities.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities

2. Other:

Vote Requirement

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

Public Necessity Statement

Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public meeting or public record exemption. The bill creates a new public meeting and public record exemption and includes a statement supporting the public necessity for these exemptions.

Breadth of Exemption

Article I, section 24(c) of the Florida Constitution requires a newly created public meeting or public record exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public meeting and public record exemption for only the portion of a meeting held by a local government utility that would reveal information specifically identified as exempt under the existing public record exemption found in s. 119.07132(5), F.S. As such, the exemption does not appear to be in conflict with the constitutional requirement that it be no broader than necessary to accomplish its purpose.

**B. RULE-MAKING AUTHORITY:**

None.

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

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 20, 2019, the Energy & Utilities Subcommittee adopted one amendment to the bill and reported the bill favorably as a committee substitute. The amendment:

- Requires recording and transcription of the portions of a local government utility meeting exempted by the bill from the public meetings law, and provides that such recordings and transcripts are confidential and exempt from the public records law except to the extent that any portion of the recording or transcript is determined by a court of competent jurisdiction to reveal nonexempt data.
- Clarifies the statement of public necessity for the public meetings exemption created by the bill.

On March 6, 2019, the Oversight, Transparency & Public Management Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment conforms the relating to clause and public necessity statement to reflect that the bill creates both a public meeting exemption and a public record exemption.

This analysis addresses the committee substitute as approved by the Oversight, Transparency & Public Management Subcommittee.