

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 Innovation, Industry, and Technology

BILL: CS/SB 1060

INTRODUCER: Innovation, Industry, and Technology Committee and Senator Thurston

SUBJECT: Public Records and Meetings/911 or E911 Communication System

DATE: January 13, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Imhof	IT	Fav/CS
2.			GO	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1060 exempts certain documents and maps relative to 911 or E911 communication system infrastructure, structures, or facilities, which are owned and operated by a state agency from public records requirements. It also exempts the discussion of those records from public meetings requirements, but as a safeguard, requires that these discussions be recorded and transcribed; makes these recordings and transcripts confidential and exempt from disclosure; and provides a process for limited disclosure. The bill contains legislative findings of public necessity for the exemptions.

II. Present Situation:

Access to Public Records - Generally

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 The right to inspect or copy 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

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, section 11.0431, Florida Statutes (F.S.), provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, chapter 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

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 the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020)

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. 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.”

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.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *Id.* See, e.g., *Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding 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); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Meetings Law

The Florida Constitution provides that the public has a right to access governmental meetings.¹⁶ Each collegial body must provide notice of its meetings to the public and permit the public to attend any meeting at which official acts are taken or at which public business is transacted or discussed.¹⁷ This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts or special districts.¹⁸

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., which is also known as the “Government in the Sunshine Law,”¹⁹ or the “Sunshine Law,”²⁰ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be open to the public.²¹ The board or commission must provide the public reasonable notice of such meetings.²² 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 which operates in a manner that unreasonably restricts the public’s access to the facility.²³ Minutes of a public meeting must be promptly recorded and open to public inspection.²⁴ Failure to abide by public meetings requirements will invalidate any resolution, rule

(Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹² See, e.g., s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ See, e.g., s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ See *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁶ FLA CONST., art. I, s. 24(b).

¹⁷ *Id.*

¹⁸ FLA CONST., art. I, s. 24(b). Meetings of the Legislature are governed by Article III, section 4(e) of the Florida Constitution, which states: “The rules of procedure of each house shall further provide that all prearranged gatherings, between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public.”

¹⁹ *Times Pub. Co. v. Williams*, 222 So. 2d 470, 472 (Fla. 2d DCA 1969).

²⁰ *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).

²¹ Section 286.011(1)-(2), F.S.

²² *Id.*

²³ Section 286.011(6), F.S.

²⁴ Section 286.011(2), F.S.

or formal action adopted at a meeting.²⁵ A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.²⁶

The Legislature may create an exemption to public meetings requirements by passing a general law by at least a two-thirds vote of both the Senate and the House of Representatives.²⁷ 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.²⁸ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.²⁹

The following are general exemptions from the requirement that all meetings of any state agency or authority be open to the public:

- That portion of a meeting that would reveal a security or fire safety system plan; and
- Any portion of a team meeting at which negotiation strategies are discussed.³⁰

Open Government Sunset Review Act

The Open Government Sunset Review Act³¹ (the act) prescribes a legislative review process for newly created or substantially amended³² public records or open meetings exemptions, with specified exceptions.³³ It 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.³⁴

The act 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.³⁵ 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:

²⁵ Section 286.011(1), F.S.

²⁶ Section 286.011(3), F.S.

²⁷ FLA CONST., art. I, s. 24(c).

²⁸ *Id.*

²⁹ *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 public records 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.

³⁰ Section 286.0113, F.S.

³¹ Section 119.15, F.S.

³² An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

³³ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

³⁴ Section 119.15(3), F.S.

³⁵ Section 119.15(6)(b), F.S.

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;³⁶
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;³⁷ or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.³⁸

The act also requires specified questions to be considered during the review process.³⁹ In examining an exemption, the act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.⁴⁰ If the exemption is continued without substantive changes or if the exemption is continued and 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.⁴¹

The 911 System

The purpose of the 911 system is to improve public safety by establishing one number to call to contact a nationwide, seamless communications infrastructure for all emergency services. 911 service is a vital part of our nation's emergency response and disaster preparedness system.⁴² While 911 operates nationwide, it is not a single, nationwide system. Instead, all voice communications service providers are required to route 911 calls to the nearest public safety answering point (PSAP), which is operated by local government, answers all 911 calls, and dispatches the appropriate local emergency first responders.⁴³ These locally owned and operated PSAPs and their infrastructure are the heart of the 911 emergency reporting system.

³⁶ Section 119.15(6)(b)1., F.S.

³⁷ Section 119.15(6)(b)2., F.S.

³⁸ Section 119.15(6)(b)3., F.S.

³⁹ 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?

⁴⁰ See generally s. 119.15, F.S.

⁴¹ Section 119.15(7), F.S.

⁴² Federal Communications Commission, *911 and E911 Services*, <https://www.fcc.gov/general/9-1-1-and-e9-1-1-services> (last visited December 20, 2019).

⁴³ Julie Layton, *How 9-1-1 Works*, <https://people.howstuffworks.com/9-1-1.htm> (last visited December 20, 2019).

III. Effect of Proposed Changes:

The bill amends s. 119.071(3), F.S., which provides exemptions relating to security and firesafety from public records law requirements, to add exemptions for the following records:

- Building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the structural elements of 911 or E911 communication system infrastructure owned and operated by an agency, including towers and antennae; and
- Geographical maps indicating the actual or proposed locations of 911 or E911 communication system infrastructure owned and operated by an agency.

These exemptions apply to building plans, blueprints, schematic drawings, and diagrams depicting the structural elements of 911 or E911 communication system infrastructure owned and operated by an agency, and geographical maps indicating actual or proposed locations of 911 or E911 communication system infrastructure owned and operated by a state agency, before, on, or after the effective date of this act.

Information made exempt by the bill may be disclosed:

- To another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities;
- To a licensed architect, engineer, or contractor who is performing work on or related to the 911 or E911 communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911 or E911 communication services, or other 911 or E911 communication structures or facilities owned and operated by an agency; or
- Upon a showing of good cause before a court of competent jurisdiction.

The entities or persons receiving such information must maintain the exempt status of the information.

The exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill also amends s. 286.0113, F.S., on general exemptions from public meetings law, to add an exemption for:

- Any portion of a meeting that would reveal building plans, blueprints, schematic drawings, or diagrams, including draft, preliminary, and final formats, which depict the structural elements of 911 or E911 communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911 or E911 communication services, or other 911 and E911 communication structures or facilities; and
- Any portion of a meeting that would reveal geographical maps indicating the actual or proposed locations of 911 or E911 communication system infrastructure, including towers, antennae, equipment or facilities used to provide 911 or E911 communication services, or other 911 or E911 communication structures or facilities.
- No portion of an exempt meeting may be off the record, and all exempt portions of such a meeting must be recorded and transcribed. The recordings and transcripts are confidential and exempt from disclosure unless a court of competent jurisdiction, after an in-camera review, determines that the meeting was not restricted to the discussion of the exempt information made exempt. If such a judicial determination is made, only that portion of the

recording and transcript which reveals nonexempt information may be disclosed to a third party.

This exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill sets out legislative findings that it is a public necessity that the records and information referred to in the bill be made exempt from public records law to ensure the security of emergency communication infrastructure, structures, and facilities. In addition, it finds that it is a public necessity that any portion of a meeting revealing such records and information, and the recordings and transcripts of that portion of the meeting, be made exempt from public meetings law to protect this information.

These records include location, design, and security details depicting the structural elements of emergency communication facilities and structures which are a vital link in the chain of survival. Such critical infrastructure must be protected as any disruption during an active shooter or other terror event is very likely to result in greater loss of life and property damage. To function properly, towers and antennae need to be visible, increasing the security risk of such facilities. Because architectural and engineering plans reviewed and held by counties, municipalities and other government agencies include information about towers, equipment, ancillary facilities, critical systems, and restricted areas, these plans could be used by criminals or terrorists to examine the physical plant for vulnerabilities.

Information contained in these documents could aid in the planning of, training for, and execution of criminal actions including cybercrime, arson, and terrorism. Consequently, the Legislature finds that it is a public necessity to exempt such information from public records requirements to reduce exposure to security threats and protect the public.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

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 bill creating or expanding an exemption to the public records or public meetings requirements. This bill enacts a new public records exemption for building plans, blueprints, schematic drawings, and diagrams depicting the structural elements of 911 or E911 communication system infrastructure, and for geographical maps indicating the location of 911 or E911 communication system infrastructure, owned and operated by an agency. It also enacts a new public meetings

records exemption for that portion of a public meeting where these records are discussed. Thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 3 of the bill contains a statement of public necessity for the exemptions.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect 911 or E911 communication system infrastructure from any disruption during an active shooter or other terror event, including cybercrime, arson, and terrorism. This bill exempts only building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the structural elements of 911 or E911 communication system infrastructure, and geographic maps indicating the actual or proposed locations of such infrastructure from public records requirements, and only the discussion of those records from the public meetings requirements. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

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:

On lines 39, 45, 52, 56, 68, and 108, the bill refers to documents relating to 911 or E911 communication infrastructure, structures, or facilities “owned and operated by an agency.” But in these contexts the bill also refers to some of these documents as draft, preliminary, and proposed, which suggests some of the relevant records will be prepared and held at a time when the infrastructure, etc., does not yet exist to be owned or operated.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 119.071, 286.0113.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

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

CS by Innovation, Industry, and Technology on January 13, 2020:

The committee substitute:

- Provides for recording and transcribing exempt portions of a meeting, makes these recordings and transcripts confidential and exempt from disclosure, and provides a process for limited disclosure; and
- Sets out legislative findings of public necessity that the recordings and transcripts of that portion of the meeting discussing the exempt records also be confidential and exempt from disclosure.

B. Amendments:

None.