

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 749 Pub. Rec. and Meetings/Fraud, Identity Theft, Skimmer Advisory Task Force  
**SPONSOR(S):** Criminal Justice Subcommittee, Goff-Marcil  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 756

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 1 N, As CS	Padgett	Hall
2) Oversight, Transparency & Public Management Subcommittee			
3) Judiciary Committee			

### SUMMARY ANALYSIS

Card skimmers are electronic devices that are illegally installed on the credit card reader on gas pumps that collect information contained on the magnetic strip of a credit card. The information, which includes a credit card number or bank account information, is transmitted and used by criminals to make fraudulent transactions. Card skimmers were initially installed on the outside of the card reader on gas pumps, but recently, scammers have become more sophisticated and are installing them on the inside of the pump so they are visually undetectable. Possessing, selling, or delivering a card skimming device is a third degree felony.

The Commissioner of Agriculture intends to create a Fraud, Identity Theft, Skimmer Advisory Task Force (Task Force) as an advisory committee within the Department of Agriculture (Department) to research issues involving financial crimes at Florida gas stations. Often, a task force is created by the legislature. However, the Commissioner is authorized by s. 570.232, F.S., to create advisory committees to research any topic within the Department's purview and make recommendations to the Commissioner. The Task Force is expected to receive and discuss certain criminal intelligence and investigative information during the course of its work. This information is currently exempt from disclosure as a public record while in the possession of a law enforcement agency. However, the exemption does not apply if the information is transmitted to another entity.

CS/HB 749 provides a public records exemption for criminal intelligence and investigative information obtained by the Task Force. The bill also provides an open meetings exemption for portions of Task Force meetings where such information is discussed. The bill requires the Task Force to record and transcribe all portions of a meeting which are closed to the public. The bill provides a process for a court, after reviewing a recording or transcript, to determine if the content of the closed portion of a meeting is exempt from disclosure.

Per the Open Government Sunset Review Act, this exemption will be automatically repealed on October 2, 2025 unless reenacted by the Legislature.

The bill provides an effective date of July 1, 2020.

**Article I, s. 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 record or public meeting exemption. The bill creates a new public record and public meeting exemption; thus, it requires a two-thirds vote for final passage.**

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Public Records

Article I, section 24(a) of the Florida 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. The Legislature, however, may provide by general law for exemption from public records requirements provided the exemption passes by two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption (public necessity statement), and is no broader than necessary to meet its public purpose.<sup>1</sup>

The Florida Statutes also address the public policy regarding access to government records. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt. Furthermore, the Open Government Sunset Review Act<sup>2</sup> provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose and 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."<sup>3</sup> In addition, the exemption may be no broader than is necessary to meet one of the following purposes:

- 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; or
- Protect trade or business secrets.<sup>4</sup>

Section 119.15, F.S., also requires the automatic repeal of a public record exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>5</sup>

##### Law Enforcement Records

Section 119.071(2), F.S., exempts various records and information held by law enforcement agencies from public inspection, including the following information:

- Active criminal intelligence information;<sup>6</sup>
- Active criminal investigative information;<sup>7</sup>
- Surveillance techniques, procedures, or personnel;
- Information that reveals the identity, telephone number, address, or personal assets of a victim of a crime and that also identifies that person as the victim of a crime; and
- The personal assets of a victim of a crime, other than the property that was stolen or destroyed during the criminal activity.<sup>8</sup>

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<sup>1</sup> Art. I, s. 24(c), Fla. Const.

<sup>2</sup> S. 119.15, F.S.

<sup>3</sup> S. 119.15(6)(b), F.S.

<sup>4</sup> *Id.*

<sup>5</sup> S. 119.15(3), F.S.

<sup>6</sup> "Criminal intelligence information" includes information concerning "an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity." S. 119.011(3)(a), F.S.

<sup>7</sup> "Criminal investigative information" is information relating 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 test reports of investigators or informants, or any type of surveillance." S. 119.011(3)(b), F.S.

<sup>8</sup> S. 119.071(2), F.S.

## Public Meetings

The Florida Constitution provides that the public has a right to access governmental meetings.<sup>9</sup> Each collegial public body must provide notice of its meetings to the public and permit the public to attend any meeting where official acts are taken or public business is transacted or discussed.<sup>10</sup> This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts, or special districts.<sup>11</sup>

Section 286.011, F.S., requires all meetings of any board or commission of any state or local agency or authority where official acts are to be taken be open to the public.<sup>12</sup> The board or commission must provide the public reasonable notice of such meetings.<sup>13</sup> Minutes of a public meeting must be promptly recorded and open to public inspection.<sup>14</sup> A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.<sup>15</sup>

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of the House and the Senate.<sup>16</sup> 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.<sup>17</sup>

## Credit Card Skimmers

Card skimmers are electronic devices that are illegally installed on the credit card reader on gas pumps that collect information contained on the magnetic strip of a credit card.<sup>18</sup> The information, which includes a credit card number or bank account information, is transmitted and used by criminals to make fraudulent transactions. Card skimmers were initially installed on the outside of card readers, but recently, scammers have become more sophisticated and are installing them on the inside of the gas pump so they are visually undetectable.<sup>19</sup> The Department, which inspects gas pumps for safety and accuracy, has removed over 3,400 skimmers since 2015, with the number of skimming devices found increasing each year.<sup>20</sup> Possessing, selling, or delivering a card skimming device is a third degree felony.<sup>21</sup>

## Fraud, Identity Theft, Skimmer Advisory Task Force

Section 570.232, F.S., authorizes the Commissioner of Agriculture (Commissioner) to establish advisory committees to study a designated subject matter, suggest policies and practices for the Department of Agriculture (Department), and propose rules and legislation.<sup>22</sup> An advisory committee created under s. 570.232, F.S., is required to keep records of its meetings and meet at least once per year.<sup>23</sup> Members appointed to an advisory committee are not eligible for per diem or travel expenses.<sup>24</sup>

The Commissioner intends to create a Fraud, Identity Theft, Skimmer Advisory Task Force (Task Force) to study the issues of identity theft, credit card fraud, and consumer financial fraud at Florida gas stations. The Commissioner will appoint the members of the Task Force, whose membership is

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<sup>9</sup> Art. I, s. 24(b), Fla. Const.

<sup>10</sup> *Id.*

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

<sup>12</sup> S. 286.011(1), F.S.

<sup>13</sup> S. 286.011(2), F.S.

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

<sup>15</sup> S. 286.011(3), F.S.

<sup>16</sup> Art. I, s. 24(c), Fla. Const.

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

<sup>18</sup> Florida Department of Agriculture and Consumer Services, *Card Skimmers*, <https://www.fdacs.gov/Consumer-Resources/Scams-and-Fraud/Card-Skimmers> (last visited Jan. 28, 2020).

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

<sup>20</sup> *Id.*

<sup>21</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Ss. 775.082 and 775.083, F.S.

<sup>22</sup> S. 570.232, F.S.

<sup>23</sup> *Id.*

<sup>24</sup> S. 570.232(9), F.S.

expected to include representatives from the Department, the Attorney General's Office, the Department of Financial Services, the Department of Law Enforcement, an assistant state attorney, and credit card companies.<sup>25</sup> As part of its research, the Task Force is expected to receive from law enforcement agencies certain criminal intelligence and investigative information, which is exempt from disclosure under the public records laws, and discuss such information at its meetings.<sup>26</sup> Without an exemption from the public records and open meetings laws, the criminal intelligence and investigative information, which would otherwise be exempt from disclosure, would be subject to a public records request. Dissemination of sensitive criminal intelligence and investigative information could jeopardize ongoing criminal investigations and reveal law enforcement tactics to criminals.

### Effect of Proposed Changes

CS/HB 749 provides that any criminal intelligence information, investigative information, and surveillance techniques, procedures, or personnel, and any other intelligence information held by a law enforcement agency which is confidential and exempt from public records and is obtained by the Task Force remains confidential and exempt while held by the Task Force. The bill also provides an exemption to the open meetings law for portions of Task Force meetings where criminal intelligence information is discussed. The bill requires the Task Force to record and transcribe all portions of a meeting which are closed to the public. The bill provides a process for a court, after reviewing a recording or transcript, to determine if the content of the closed portion of a meeting is exempt from disclosure.

As required by article I, section 24(c) of the Florida Constitution, the bill provides a public necessity statement specifying the exemption is necessary because release of criminal intelligence information could compromise ongoing criminal investigations, reveal personal information of victims of financial crimes, hamper communication between members of the Task Force, and undermine the existing statutory records exemption for criminal intelligence information. The bill also provides a public necessity statement specifying the public meetings exemption is necessary because discussing criminal intelligence information in an open meeting would defeat the purpose of the public records exemption for criminal intelligence information.

Per the Open Government Sunset Review Act, this exemption will be automatically repealed on October 2, 2025 unless reenacted by the Legislature.

The bill provides an effective date of July 1, 2020.

#### B. SECTION DIRECTORY:

**Section 1:** Creates s. 570.233, F.S., related to fraud, identity theft, skimmer advisory task force; public records exemption.

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

**Section 3:** Provides an effective date of July 1, 2020.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

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

##### 1. Revenues:

None.

##### 2. Expenditures:

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<sup>25</sup> Emilee Speck, *Florida lawmakers want future skimmer, identity fraud task force to have public records exemption*, News 6 (Dec. 17, 2019), <https://www.clickorlando.com/news/local/2019/12/17/florida-lawmakers-want-future-skimmer-identity-fraud-task-force-to-have-public-records-exemption/> (last visited Jan. 28, 2020).

<sup>26</sup> *Id.*

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:

Not applicable.

2. Other:

Vote Requirement

Article I, section 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 meetings exemption. The bill creates a new public record and public meetings exemption, thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

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

Breadth of Exemption

Article I, section 24(c) of the State Constitution requires a newly created or expanded public record or public meetings exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill limits the public record exemption to records which are already exempt under current law, and limits the public meetings exemption to the portions of meetings where exempt information is discussed. 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:**

Not applicable.

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

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 28, 2020, the Criminal Justice Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Required the task force to record and transcribe all portions of a meeting which are closed to the public.
- Provided a process for a court, after reviewing a recording or transcript, to determine if the content of the closed portion of a meeting is exempt from disclosure.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.