

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1437 Pub. Rec./Broadband Opportunity Program Information/DEO
SPONSOR(S): Energy, Communications & Cybersecurity Subcommittee, Esposito and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 552

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy, Communications & Cybersecurity Subcommittee	18 Y, 0 N, As CS	Mortellaro	Keating
2) Ethics, Elections & Open Government Subcommittee	17 Y, 0 N	Poreda	Toliver
3) Commerce Committee	17 Y, 0 N	Mortellaro	Hamon

SUMMARY ANALYSIS

In 2021, the Legislature created the Broadband Opportunity Program to award grants to applicants who seek to expand access to broadband Internet service in unserved areas of the state. The grant program is administered by the Florida Office of Broadband within the Department of Economic Opportunity (DEO). The grant process requires that certain information about existing and proposed telecommunications facilities be submitted to DEO.

This bill creates a public record exemption for information relating to communications service locations, project proposals, and challenges submitted to and held by DEO under s. 288.9962, F.S. Under the bill, such information is confidential and exempt from public record requirements if it is not otherwise publicly available and would reveal:

- The location and capacity of communications network facilities;
- Communications network areas, including geographical maps;
- Features, functions, and capabilities of communications network infrastructure and facilities;
- Security, including cybersecurity, of the design, construction, and operation of the communications network and associated services and products;
- Specific customer locations; or
- Sources of funding or in-kind contributions for a project.

The bill provides that the exemption does not to apply to any required functions of DEO under s. 288.9962, F.S., relating to publishing a description of the proposed unserved areas to be served and the proposed broadband Internet speeds for those areas that are provided by each applicant.

The bill provides a statement of public necessity for this exemption. The statement provides that disclosing this information could result in identification of vulnerabilities in networks, thus allowing security breaches that may damage and disrupt their safe and reliable operation. This would adversely impact the public health and safety of the state and affect business interests through such compromise of network security.

The public record exemption created by the bill is subject to the Open Government Sunset Review Act and will repeal on October 2, 2028, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill provides an effective date of July 1, 2023.

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 public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current 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 the right to inspect or copy any public record from the legislative, executive, and judicial branches of government.¹ The Legislature, however, may provide by general law for exemption from public record requirements provided the exemption passes by two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption, and is no broader than necessary to meet its public purpose.²

The Florida Statutes also address the public policy regarding access to government records. Section 119.07(1), F.S., guarantees every person the right to inspect and copy any state, county, or municipal record, unless the record is exempt.³ Furthermore, the Open Government Sunset Review Act⁴ provides that a public record exemption may be created, revised, 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."⁵ An identifiable public purpose is served if the exemption meets 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.⁶

Pursuant to the Open Government Sunset Review Act, a new public record exemption or substantial amendment of an existing public record exemption is repealed on October 2nd of the fifth year following enactment, unless the Legislature reenacts the exemption.

Florida's Office of Broadband

In 2020, the Legislature designated the Department of Economic Opportunity (DEO) as the lead state agency to facilitate the expansion of broadband Internet service in the state.⁷ The Florida Office of Broadband (Office) was created within DEO's Division of Community Development for purposes of developing, marketing, and promoting broadband Internet service in the state.⁸

In 2021, the Legislature appropriated \$1.5 million to DEO to develop geographic information system maps of broadband Internet service availability, including transmission speeds, consistent with the Federal Communications Commission's data collection program standards.⁹ DEO must collaborate with

¹ Article I, s. 24(a), FLA. CONST.

² Article I, s. 24(c), FLA. CONST.

³ A public record exemption means a provision of general law which provides that a specified record, or portion thereof, is not subject to the access requirements of s. 119.07(1), F.S., or s. 24, Art. I of the State Constitution. S. 119.011(8), F.S.

⁴ S. 119.15, F.S.

⁵ S. 119.15(6)(b), F.S.

⁶ *Id.*

⁷ Ch. 2002-26, Laws of Fla.

⁸ *Id.*

⁹ Ch. 2021-24, Laws of Fla.

broadband service providers, state agencies, local government entities, private businesses, educational institutions, and community organizations to develop these maps.¹⁰ Through its website, DEO allows for public input concerning the speed, connectivity, and access to broadband Internet service in areas throughout the state to help identify unserved and underserved areas.

Broadband Opportunity Program

In 2021, the Legislature also created the Broadband Opportunity Program¹¹ to award grants to applicants who seek to expand access to broadband Internet service¹² in unserved¹³ areas of the state, regardless of the technology to be used. Grant funds may not be used to provide broadband Internet service to a geographic area where broadband Internet is already deployed by at least one provider.¹⁴ Applicants eligible for grant awards include corporations, limited liability companies, general partnerships, limited partnerships, political subdivisions, and Indian tribes.¹⁵

In support of a grant application, an applicant must provide specified information, including, among other things:

- A description of the project area;
- A description of the kind and amount of broadband Internet service infrastructure that is proposed; and
- Evidence demonstrating the unserved nature of the project area.¹⁶

After the close of the grant application process, the Office must publish on its website, from each grant application submitted, the proposed unserved areas to be served and the proposed broadband internet speeds of the areas to be served.¹⁷

If a broadband Internet service provider provides service in or adjacent to a proposed project area, it can submit a written challenge to the Office within 45 days of the information's publication. The challenge must demonstrate:

- The provider currently has deployed broadband Internet service to retail customers within the project area;
- The provider has begun construction to provide broadband Internet service to retail customers within the proposed project area within the timeframe proposed by the applicant; or
- The provider commits to providing broadband Internet service to retail customers within the proposed project area within the timeframe proposed by the applicant.

Within three business days after the submission of a written challenge, the Office is to notify the applicant of the challenge. The Office must evaluate each challenge submitted. If the Office determines that the provider currently has deployed, has begun construction to provide, or commits to provide broadband Internet service in the proposed project area, the Office may not fund the challenged project.¹⁸

¹⁰ *Id.*

¹¹ S. 288.9962, F.S.

¹² S. 288.9961(2)(a), F.S., defines the term “broadband Internet service” to mean any service that provides access to the Internet with a capacity for transmission at a consistent speed of at least 25 megabits per second download and 3 megabits per second upload.

¹³ S. 288.9961(2)(g), F.S., defines the term “unserved” to mean a geographic area of the state without access to broadband Internet service.

¹⁴ S. 288.9962(2), F.S.

¹⁵ S. 288.9962(3), F.S.

¹⁶ S. 288.9962(5), F.S.

¹⁷ S. 288.9962(6)(b), F.S.

¹⁸ S. 288.9962(e), F.S.

Effect of the Bill

The bill creates a public record exemption by providing that information relating to communications services locations, project proposals, and challenges submitted to and held by DEO under s. 288.9962, F.S., are confidential and exempt¹⁹ from public record requirements if the information is not otherwise publicly available and would reveal:

- The location and capacity of communications network facilities;
- Communications network areas, including geographical maps indicating actual or proposed locations of network infrastructure, facilities, or coverage;
- Features, functions, and capabilities of communications network infrastructure and facilities;
- Security, including cybersecurity, of the design, construction, and operation of the communications network and associated services and products;
- Specific customer locations;
- Sources of funding or in-kind contributions for a project.

The bill states the exemption does not apply to any required functions of DEO under s. 288.9962, F.S., relating to publishing a description of the proposed unserved areas to be served and the proposed broadband Internet speeds for those areas that are provided by each applicant.

The bill provides that there is a public necessity for this exemption because the information at issue contains security information and propriety business information of communications services providers. The bill states that disclosing sensitive information relating to locations, capacities, features, functions, and security of these networks, aids in identifying vulnerabilities which could result in a breach. A breach may damage and disrupt the safe and reliable operation of such networks, adversely impacting the public health and safety of the state and affecting business interests through such compromise of the network security for communications services providers.

The public record exemption created by the bill is subject to the Open Government Sunset Review Act and will automatically repeal on October 2, 2028, unless reviewed and saved from repeal by the Legislature.

The bill provides an effective date of July 1, 2023.

B. SECTION DIRECTORY:

Section 1. Amends s. 119.0712, F.S., to create a public records exemption for certain information held by the Department of Economic Opportunity.

Section 2. Provides a public necessity statement.

Section 3. Provides an effective date.

¹⁹ There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), *review denied* 892 So.2d 1015 (Fla. 2004); *City of Rivera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records, to anyone other than the persons or entities specifically designated in statute. *See Op. Att’y Gen. Fla.* (1985).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have an insignificant negative fiscal impact on DEO as agency staff responsible for complying with public record requests may require training related to the newly created public record exemption. These costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the agency.

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. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties and municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties and 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 or expanded 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, section 24(c) of the Florida 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. The public necessity statement provides, in part, that the information at issue contains security information and propriety business information of communications services providers and disclosing such sensitive information could aid in identifying vulnerabilities which could result in a breach.

Breadth of Exemption

Article I, section 24(c) of the Florida Constitution requires a newly created or expanded 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 records exemption for information relating to communications service locations, project proposals, and challenges submitted to and held by DEO under s. 288.9962, F.S, which does not appear to be 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 March 21, 2023, the Energy, Communications & Cybersecurity Subcommittee adopted one amendment to the bill and reported the bill favorably as a committee substitute. The amendment:

- Removes information that reveals communication network coverage areas from the public record exemption created by this bill.
- Clarifies that the exemption does not apply to publication of information by the Department of Economic Opportunity that identifies specified areas proposed to be served, and the broadband Internet speeds in those areas, under the requirements of the state's Broadband Opportunity Program.
- Modifies the public necessity statement to state specifically that communications services providers are at risk and identify information that if exposed without the exemption would lead to harm.

The analysis is drafted to the committee substitute as passed by the Energy, Communications & Cybersecurity Subcommittee.