

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 Rules

BILL: CS/SB 7040

INTRODUCER: Rules Committee; Banking and Insurance Committee

SUBJECT: OGSR/Security or Firesafety System Plans

DATE: April 20, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Thomas</u>	<u>Knudson</u>		BI Submitted as Committee Bill
1.	<u>Thomas</u>	<u>Twogood</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 7040 saves from repeal the current public records exemptions for security or firesafety systems or plans for any state owned or leased buildings and any privately owned or leased property and information relating to such systems or plans that are held by a state agency. The bill also saves from repeal the current public meetings exemptions for any portion of a meeting that would reveal security or firesafety systems or plans that are exempt from public records requirements. The bill repeals a duplicative public record and public meeting exemption for security or firesafety system plans and related information.

The exemptions are necessitated because it is believed that disclosure of sensitive information relating to the security or firesafety systems or plans could result in identification of vulnerabilities in such systems and allow a security breach that could damage the systems and disrupt their safe and reliable operation.

The Open Government Sunset Review Act requires the Legislature to review each public record and public meeting exemption 5 years after enactment. These exemptions are scheduled to repeal on October 2, 2023. The bill removes the scheduled repeals to continue the exempt status.

The bill is not expected to impact state and local revenues and expenditures.

The bill takes effect October 1, 2023.

II. Present Situation:

Public Records Law

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 This 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 who acts on behalf of the government.²

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ The Public Records Act states that:

It is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁵

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted. Section 119.011(12), F.S., defines “public records” to include:

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.⁶

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to “perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any state or local government 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

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So.2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are primarily located in s. 11.0431(2)-(3), F.S.

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ 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.”

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.

The Public Records Act contains general exemptions that apply across agencies. Agency or program-specific exemptions often are placed in the substantive statutes relating to that particular agency or program. Only the Legislature may create an exemption to public records requirements.¹⁰ An exemption must be created by general law and must specifically state the public necessity which justifies the exemption.¹¹ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill that enacts an exemption may not contain other substantive provisions¹² and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹³

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.¹⁴ Records designated as “confidential and exempt” are not subject to inspection by the public and may only be released under the circumstances defined by statute.¹⁵ Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.¹⁶

Open Meetings Laws

The Florida Constitution provides that the public has a right to access governmental meetings.¹⁷ 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.¹⁸ This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts, or special districts.¹⁹

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”²⁰ or the “Sunshine Law,”²¹ 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.²² The board or commission must provide the public reasonable notice of such meetings.²³ Public meetings may

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ *Id.*

¹² The bill may, however, contain multiple exemptions that relate to one subject.

¹³ FLA. CONST., art. I, s. 24(c).

¹⁴ *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So.2d 48, 53 (Fla. 5th DCA 2004).

¹⁵ *Id.*

¹⁶ *Williams v. City of Minneola*, 575 So.2d 683 (Fla. 5th DCA 1991).

¹⁷ FLA. CONST., art. I, s. 24(b).

¹⁸ *Id.*

¹⁹ 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.”

²⁰ *Times Pub. Co. v. Williams*, 222 So.2d 470, 472 (Fla. 2d DCA 1969).

²¹ *Board of Public Instruction of Broward County v. Doran*, 224 So.2d 693, 695 (Fla. 1969).

²² Section 286.011(1)-(2), F.S.

²³ *Id.*

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.²⁴ Minutes of a public meeting must be promptly recorded and open to public inspection.²⁵ Failure to abide by open meetings requirements will invalidate any resolution, rule, or formal action adopted at a meeting.²⁶ A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.²⁷

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.²⁸ 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.²⁹ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.³⁰

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act (the Act), prescribe a legislative review process for newly created or substantially amended public records or open meetings exemptions,³¹ with specified exceptions.³² The Act requires the repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption or repeal the sunset date.³³ In practice, many exemptions are continued by repealing the sunset date, rather than reenacting the exemption.

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. An exemption serves an identifiable purpose if the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption and it meets one of the following purposes:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;³⁴
- The release of sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;³⁵ or

²⁴ Section 286.011(6), F.S.

²⁵ Section 286.011(2), F.S.

²⁶ Section 286.011(1), F.S.

²⁷ Section 286.011(3), F.S.

²⁸ FLA. CONST., art. I, s. 24(c).

²⁹ *Id.*

³⁰ *See supra* note 11.

³¹ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings.

³² Section 119.15(2)(a) and (b), F.S., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

³³ Section 119.15(3), F.S.

³⁴ Section 119.15(6)(b)1., F.S.

³⁵ Section 119.15(6)(b)2., F.S.

- It protects trade or business secrets.³⁶

The Act also requires specified questions to be considered during the review process.³⁷ In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption or repealing the sunset date, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.³⁸ If the exemption is reenacted or saved from repeal without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to expire, the previously exempt records will remain exempt unless otherwise provided by law.³⁹

Public Record and Public Meeting Exemptions Related to Security or Firesafety Systems or Plans

Current law provides public record and public meeting exemptions for certain information related to security or firesafety systems or plans held by an agency.⁴⁰ The law specifies the circumstances under which the information may be disclosed.⁴¹

Security or Firesafety System Plans

Section 119.071(3)(a), F.S., defines “security or firesafety system plan” to include all:

- Records, information, photographs, audio and visual representations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to the physical security or firesafety of the facility or revealing security or firesafety systems;
- Threat assessments conducted by an agency or any private entity;
- Threat response plans;
- Emergency evacuation plans;
- Sheltering arrangements; or
- Manuals for security or firesafety personnel, emergency equipment, or security or firesafety training.

³⁶ Section 119.15(6)(b)3., F.S.

³⁷ Section 119.15(6)(a), F.S. The specific 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?

³⁸ FLA. CONST. art. I, s. 24(c).

³⁹ Section 119.15(7), F.S.

⁴⁰ Sections 119.071(3)(a), 281.301(1), and 286.0113(1), F.S. “Agency” means 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 chapter 119, F.S., 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. *See* s. 119.011(2), F.S.

⁴¹ Sections 119.071(3)(a) and 281.301(2), F.S.

A security or firesafety system plan, or portion thereof, held by an agency is confidential and exempt⁴² from public record requirements if the plan is for any property owned by or leased to the state or any of its political subdivisions or any privately owned or leased property.⁴³ An agency is authorized, but not required, to disclose such confidential and exempt plan:

- To the property owner or leaseholder;
- In furtherance of the official duties and responsibilities of the agency holding the information;
- To another local, state, or federal agency in furtherance of that agency's official duties and responsibilities; or
- Upon a showing of good cause before a court of competent jurisdiction.⁴⁴

Section 119.071(3)(a), F.S., also provides for retroactive application of the public record exemption.

Pursuant to s. 286.0113(1), F.S., any portion of a meeting that would reveal a security or firesafety system plan or portion thereof is exempt from public meeting requirements.⁴⁵

Other Information Related to Security or Firesafety Systems or Plans

Section 281.301(1), F.S., provides that information relating to security or firesafety systems, or revealing such systems or information, that is in the possession of an agency is confidential and exempt from public record requirements and any portion of a meeting relating directly to or that would reveal such systems or information is exempt from public meeting requirements, if the security or firesafety systems are for:

- Any property owned by or leased to the state or any of its political subdivisions; or
- Any privately owned or leased property.

The law specifies that the protected information includes all records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to or revealing such systems or information.⁴⁶

Any agency is authorized, but not required, to disclose the confidential and exempt information:

- To the property owner or leaseholder;
- In furtherance of the official duties and responsibilities of the agency holding the information;
- To another local, state, or federal agency in furtherance of that agency's official duties and responsibilities; or

⁴² 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. 04- 09 (2004).

⁴³ Section 119.071(3)(a)2., F.S.

⁴⁴ Section 119.071(3)(a)3., F.S.

⁴⁵ Section 286.0113(1), F.S.

⁴⁶ *Id.*

- Upon a showing of good cause before a court of competent jurisdiction.⁴⁷

Public Record and Public Meeting Exemptions under Review

In 1987, the Legislature initially created⁴⁸ the public record and public meeting exemption found in s. 281.301(1), F.S., for security systems and records for any property owned by or leased to the state or any of its political subdivisions, and all meetings relating to or revealing such systems. In 1990, the Legislature amended⁴⁹ the exemptions, specifying that *information* relating to the security systems for any property owned by or leased to the state or any of its political subdivisions is protected.⁵⁰ The Legislature also exempted information related to the security systems for any privately owned or leased property held by an agency and specified that the protected information, in addition to records, includes information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations.⁵¹ The Legislature further provided that the protected information was not only exempt from public record requirements, but confidential and exempt.⁵²

In 2001, the Legislature created⁵³ the public record exemption found in s. 119.071(3)(a), F.S., and the public meeting exemption found in s. 286.0113(1), F.S., for security system plans. The 2001 public necessity statement⁵⁴ for the public record and public meeting exemptions cite safety issues as the required public necessity for the exemptions.⁵⁵

In 2018, the Legislature amended⁵⁶ all three exemptions, creating public record and public meeting exemptions for firesafety system plans and information relating to firesafety systems that were identical to the exemptions under those statutes for security system plans and information relating to such plans. The Legislature also provided that portions of public meetings in which firesafety system plans and information relating to firesafety systems are discussed are exempt from public meeting requirements. The 2018 public necessity statement cites the connectivity and integrated nature of firesafety systems and security systems as necessitating the creation of the exemptions.⁵⁷

⁴⁷ Section 281.301(2), F.S.

⁴⁸ Chapter 87-355, L.O.F.

⁴⁹ Chapter 90-360, L.O.F.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ Chapter 2001-361, L.O.F.

⁵⁴ Article I, s. 24(c), FLA. CONST., requires each public record exemption to “state with specificity the public necessity justifying the exemption.”

⁵⁵ The 2001 public necessity statement provides, in part, “...security-system plans contain components that address safety issues for public and private property on which public business is conducted and address the security of private property on which a large segment of the public relies. The public relies on radio and television towers, telephone and cable lines, power plants and grids, oil and gas pipelines, and many types of privately owned infrastructure to provide necessary services. To coordinate the response of the public sector and the private sector in an emergency, such as an act of terrorism, public agencies must be able to review security-system plans for public and private property. If the information in security-system plans is available for inspection and copying, terrorists could use this information to hamper or disable emergency-response preparedness, thereby increasing injuries and fatalities.”

⁵⁶ Chapter 2018-146, L.O.F.

⁵⁷ The 2018 public necessity statement provides, in part, “[d]isclosure of sensitive information relating to firesafety systems could result in identification of vulnerabilities in such systems and allow a security breach that could damage firesafety

Pursuant to the OGSR Act, these exemptions will repeal on October 2, 2023, unless reenacted by the Legislature.

III. Effect of Proposed Changes:

Section 1 amends s. 119.071(3), F.S., to remove the scheduled repeal date of the public record exemption for security or firesafety system plans, thereby maintaining the public record exemption for such plans.

Section 2 repeals s. 281.301, F.S., relating to a duplicative public record exemption and public meetings exemption for security or firesafety systems.

Section 3 amends s. 286.0113, F.S., to remove the scheduled repeal date from public meeting requirements any portion of a meeting that would reveal a security or firesafety system plan that is exempt from public records requirements.

Section 4 amends s. 1006.1493, F.S., relating to Florida Safe Schools Assessment Tool, to conform a cross-reference.

Section 5 provides that the bill is effective October 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not 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.

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 requirements. This bill does not create or expand an exemption, thus, the bill does not require 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

systems and disrupt their safe and reliable operation, adversely impacting the public health and safety and economic well-being of the state. Because of the interconnected nature of firesafety and security systems, such a security breach may also impact security systems.”

justifying the exemption. This bill does not create or expand an exemption, thus, a statement of public necessity is not required.

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 exemption in the bill 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:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 119.071, 286.0113, and 1006.1493.

This bill repeals the following section of the Florida Statutes: 281.301.

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 Rules on April 19, 2023:

The committee substitute makes the following changes:

- Repeals s. 281.301, F.S., which contains duplicative exemptions to those in ss. 119.071 and s. 286.0113, F.S. – which the bill reenacts.

- B. **Amendments:**

None.