

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB EEG 23-05 OGSR/Security and Firesafety System Plans

**SPONSOR(S):** Ethics, Elections & Open Government Subcommittee

**TIED BILLS:**                   **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Ethics, Elections & Open Government Subcommittee		Skinner	Toliver

### SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record exemption and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2<sup>nd</sup> of the fifth year after enactment.

Current law provides public record exemptions for security or firesafety system plans for any property owned by or leased to the state or any of its political subdivisions or for any privately owned or leased property held by an agency, as well as information related to such systems. A "security or firesafety system plan" means:

- 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.

Additionally, current law provides public meeting exemptions for portions of a meeting relating directly to, or that would reveal such systems, plans, or information.

The bill saves from repeal the public record and public meeting exemption for security or firesafety system plans for any property owned by or leased to the state or any of its political subdivisions or for any privately owned or leased property held by an agency, information related to such systems, as well as any portion of a meeting relating directly to, or that would reveal such systems, plans, or information. The exemptions will repeal on October 2, 2023, if this bill does not become law. The bill also repeals a duplicative public record and public meeting exemption as the information and meetings protected under those exemptions appear to be protected under the two statutes that will be reenacted if this bill becomes law.

The bill does not appear to have a fiscal impact on state government or local governments.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSR Act)<sup>1</sup> sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2<sup>nd</sup> of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>2</sup>

The OGSR Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it 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.
- Protect trade or business secrets.<sup>3</sup>

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded then a public necessity statement and a two-thirds vote for passage are required.<sup>4</sup> If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created, then a public necessity statement and a two-thirds vote for passage are not required.

##### Physical Building Security-related Public Record Exemptions

Several public record exemptions exist in current law that protect various aspects of the physical security of buildings or facilities from public disclosure:

- Section 119.071(3)(b), F.S., provides a public record exemption for building plans, blueprints, schematic drawings, and diagrams, which depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure owned or operated by an agency.
- Section 119.071(3)(c), F.S., provides a public record exemption for building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout or structural elements of attractions and recreation facilities, entertainment or resort complexes, industrial complexes, retail and service developments, office developments, health care facilities, or hotel or motel developments.
- Section 311.13, F.S., provides a public record exemption for certain seaport security plans. A public record exemption is also provided for photographs, maps, blueprints, drawings, and similar materials that depict critical seaport operating facilities to the extent that a seaport reasonably determines that such items contain information that is not generally known and could jeopardize the seaport's security.
- Section 331.22, F.S., provides a public record exemption for airport security plans of certain aviation authorities or certain aviation departments. Photographs, maps, blueprints, drawings, and similar materials that depict critical airport operating facilities are also exempt to the extent

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<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Section 119.15(3), F.S.

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

<sup>4</sup> Article I, s. 24(c), FLA. CONST.

that such aviation authority or department reasonably determines that the security plan contains information that is not generally known and could jeopardize airport security.

- Section 1004.0962(2), F.S., provides a public record exemption for any portion of a campus emergency response held by a public postsecondary educational institution.

Public Record and Public Meeting Exemptions Related to Security and Firesafety Systems and Plans  
Current law provides public record and public meeting exemptions for certain information related to security and firesafety systems and plans held by an agency.<sup>5</sup> The law specifies the circumstances under which the information may be disclosed and to whom it may be disclosed.

#### *Security and 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.

A security or firesafety system plan or portion thereof that is held by an agency<sup>6</sup> is confidential and exempt<sup>7</sup> 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.<sup>8</sup> An 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
- Upon a showing of good cause before a court of competent jurisdiction.<sup>9</sup>

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.<sup>10</sup>

#### *Other Information Related to Security and Firesafety System and Plans*

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

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

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<sup>5</sup> Section 119.071(3)(a), F.S.

<sup>6</sup> “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. Section 119.011(2), F.S.

<sup>7</sup> 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).

<sup>8</sup> Section 119.071(3)(a)2., F.S.

<sup>9</sup> Section 119.071(3)(a)3., F.S.

<sup>10</sup> Section 286.0113(1), F.S.

- Any privately owned or leased property.<sup>11</sup>

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.<sup>12</sup>

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
- Upon a showing of good cause before a court of competent jurisdiction.<sup>13</sup>

#### Public Record and Public Meeting Exemptions under Review

In 1987, the Legislature initially created<sup>14</sup> the public record and public meeting exemption found in s. 281.301(1), F.S., for such 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 amended<sup>15</sup> 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 under the exemptions.<sup>16</sup> It also exempted information related to the security systems for any privately owned or leased property which is held by an agency, specifying that protected information, in addition to records, includes information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations.<sup>17</sup> It further provided that the protected information was not only exempt from public record and public meeting requirements, but confidential and exempt.<sup>18</sup>

In 2001, the Legislature created<sup>19</sup> 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 statement<sup>20</sup> for the public record and public meeting exemptions cite safety issues as the required public necessity for the exemptions.<sup>21</sup>

In 2018, the Legislature amended<sup>22</sup> all three of these exemptions, creating public record and public meeting exemptions for firesafety system plans and information relating to firesafety systems that are identical to the exemptions under those statutes for security system plans and information relating to security systems, as well as providing that portions of public meetings in which such information is discussed is 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 exemption.<sup>23</sup>

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<sup>11</sup> Section 286.301(1), F.S.

<sup>12</sup> *Id.*

<sup>13</sup> Section 281.301(2), F.S.

<sup>14</sup> Chapter 87-355, L.O.F.

<sup>15</sup> Chapter 90-360, L.O.F.

<sup>16</sup> *Id.*

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

<sup>18</sup> *Id.*

<sup>19</sup> Chapter 2001-361, L.O.F.

<sup>20</sup> Article I, s. 24(c), FLA. CONST., requires each public record exemption to “state with specificity the public necessity justifying the exemption.”

<sup>21</sup> 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.”

<sup>22</sup> Chapter 2018-146, L.O.F.

<sup>23</sup> 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 systems and disrupt

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

During the 2022 interim, subcommittee staff sent questionnaires to city governments, county governments, and state agencies. In total, staff received 66 responses from those entities.<sup>24</sup> The vast majority of respondents<sup>25</sup> indicated that the exemptions are functioning well. No respondent recommended eliminating the public record exemptions for security and firesafety system plans or the related public meeting exemptions altogether. Regarding the substantive similarities between, and possible duplicative nature of the public record exemptions - ss. 119.071(3)(a) and 281.301(1), F.S. - and the public meeting exemptions - ss. 281.301(1), F.S., and 286.0113(1), F.S. - the responses varied in scope. For the public record exemptions, some respondents indicated these two public records exemptions are duplicative and one could be eliminated, some respondents thought this redundancy beneficial, and yet other respondents indicated these two exemptions were not duplicative. Regarding the question of the whether the public meeting exemptions were redundant or duplicative, respondents provided some of the same indications.

### **Effect of the Bill**

The bill removes the scheduled repeal date of the public record and public meeting exemptions for security and firesafety system plans under ss. 119.071(3)(a) and 286.0113(1), F.S., thereby maintaining the public record and public meeting exemptions for such information held by an agency. The bill repeals s. 281.301, F.S., as the information and meetings protected under this section of law appears to be duplicative of the two exemptions being reenacted.

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

Section 1 amends s. 119.071, F.S., relating to general exemptions from inspection or copying of public records.

Section 2 repeals s. 281.301, F.S., relating to security and firesafety systems; records and meetings exempt from public access or disclosure.

Section 3 amends s. 286.0113, F.S., relating to general exemptions from public meetings.

Section 4 provides an effective date of October 1, 2023.

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

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

1. Revenues:

None.

2. Expenditures:

None.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

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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.”

<sup>24</sup> Open Government Sunset Review Questionnaire, Public Records and Public Meetings Related to Security and Firesafety Systems, Plans, and Information, responses on file with the Ethics, Elections & Open Government Subcommittee.

<sup>25</sup> Six responses recommended changes to the public record exemptions and two responses recommended changes to the public meeting exemptions.

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:

None.

B. RULE-MAKING AUTHORITY:

The bill does not require rulemaking nor confer or alter an agency's rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Not applicable.