

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB OTM 20-07 OGSR/Body Camera Recordings
SPONSOR(S): Oversight, Transparency & Public Management Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Oversight, Transparency & Public Management Subcommittee	12 Y, 0 N	Toliver	Smith

SUMMARY ANALYSIS

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

A body camera is a portable electronic recording device that is worn on a law enforcement officer's body and that records audio and video data in the course of the officer performing his or her official duties and responsibilities. Current law provides that a body camera recording, or a portion thereof, is confidential and exempt from public record disclosure, if the recording is taken:

- Within the interior of a private residence;
- Within the interior of a facility that offers health care, mental health care, or social services; or
- In a place that a reasonable person would expect to be private.

Law enforcement agencies may disclose a confidential and exempt body camera recording, or a portion thereof, in furtherance of its official duties and responsibilities or to another governmental agency. However, law enforcement agencies must disclose a confidential and exempt body camera recording, or a portion thereof, as follows:

- To a person recorded by a body camera; however, a law enforcement agency may disclose only those portions that are relevant to the person's presence in the recording;
- To a personal representative of a person recorded by a body camera; however, a law enforcement agency may disclose only those portions that are relevant to the represented person's presence in the recording;
- To a person not depicted in a body camera recording if the recording depicts a place in which the person lawfully resided, dwelled, or lodged at the time of the recording; however, a law enforcement agency may disclose only those portions that record the interior of such a place;
- Pursuant to a court order.

The bill saves from repeal the public record exemption, which will repeal on October 2, 2020, if this bill does not become law.

The bill does not appear to have a fiscal impact on state 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 (Act)¹ 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 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.²

The 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.³

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.⁴ 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.

Law Enforcement Body Cameras

A body camera is a portable electronic recording device that is worn on a law enforcement officer's body and that records audio and video data in the course of the officer performing his or her official duties and responsibilities.⁵ According to results from the 2018 Criminal Justice Agency Profile Survey compiled by the Florida Department of Law Enforcement (FLDE) there are 102 police departments, 23 sheriffs' offices, and one state attorney's office using body cameras.⁶

¹ Section 119.15, F.S.

² Section 119.15(3), F.S.

³ Section 119.15(6)(b), F.S.

⁴ Article I, s. 24(c), FLA. CONST.

⁵ Section 119.071(2)(1)1.a., F.S.

⁶ *Criminal Justice Agency Profile Survey Results*, FLORIDA DEPARTMENT OF LAW ENFORCEMENT, <http://www.fdle.state.fl.us/CJSTC/Publications/CJAP/CJAP.aspx> (last visited Nov. 27, 2019).

Public Record Exemption under Review

In 2015, the Legislature created a public record exemption that makes a body camera recording, or a portion thereof, confidential and exempt⁷ from public record disclosure, if the recording is taken:

- Within the interior of a private residence;
- Within the interior of a facility that offers health care, mental health care, or social services; or
- In a place that a reasonable person would expect to be private.⁸

However, there are certain instances in which a confidential and exempt body camera recording can be disclosed. Law enforcement agencies may disclose a recording, or a portion thereof, in furtherance of its official duties and responsibilities or disclose a recording to another governmental agency in furtherance of that agency's official duties and responsibilities.⁹ A body camera recording must be disclosed by a law enforcement agency:

- To a person recorded by a body camera; however, a law enforcement agency may disclose only those portions that are relevant to the person's presence in the recording;
- To a personal representative of a person recorded by a body camera; however, a law enforcement agency may disclose only those portions that are relevant to the represented person's presence in the recording;
- To a person not depicted in a body camera recording if the recording depicts a place in which the person lawfully resided, dwelled, or lodged at the time of the recording; however, a law enforcement agency may disclose only those portions that record the interior of such a place;
- Pursuant to a court order.¹⁰

In determining whether to disclose a body camera recording, a court must consider whether:

- Disclosure is necessary to advance a compelling interest;
- The recording contains information that is otherwise exempt or confidential and exempt under the law;
- The person requesting disclosure is seeking to obtain evidence to determine legal issues in a case in which the person is a party;
- Disclosure would reveal information regarding a person that is of a highly sensitive personal nature;
- Disclosure may harm the reputation or jeopardize the safety of a person depicted in the recording;
- Confidentiality is necessary to prevent a serious and imminent threat to the fair, impartial, and orderly administration of justice;
- The recording could be redacted to protect privacy interests; and
- There is good cause to disclose all or portions of a recording.¹¹

Law enforcement agencies are required to maintain body camera recording data for a minimum of 90 days.¹² In any proceeding to determine the disclosure of a body camera recording, the law enforcement agency that made the recording must be given reasonable notice of the hearing and an opportunity to participate.¹³

The 2015 public necessity statement for the exemption provides that:

⁷ 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. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 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 Attorney General Opinion 85-62*, Aug. 1, 1985).

⁸ Section 119.071(2)(1)2., F.S.

⁹ Section 119.071(2)(1)3., F.S.

¹⁰ Section 119.071(2)(1)4., F.S.

¹¹ Section 119.071(2)(1)4.d.(I), F.S.

¹² Section 119.071(2)(1)5., F.S.

¹³ Section 119.071(2)(1)4.d.(II), F.S.

Body cameras preserve information that has the potential to assist both law enforcement officers' and the public's ability to review the circumstances surrounding an event in which law enforcement intervention occurs. . . However, the Legislature also finds that, in certain instances, audio and video recorded by body cameras is significantly more likely to capture highly sensitive personal information than other types of law enforcement recordings or documents. The Legislature finds that public disclosure of these recordings could have an undesirable chilling effect. People who know they are being recorded by a body camera may be unwilling to cooperate fully with law enforcement officers if they know that a body camera recording can be made publicly available to anyone else. People may also be less likely to call a law enforcement agency for services if their sensitive personal information or the circumstances that necessitate a law enforcement agency's involvement are subject to public dissemination as a body camera recording.¹⁴

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2020, unless it is reviewed and saved from repeal through reenactment by the Legislature.

During the 2019 interim, subcommittee staff sent a questionnaire to sheriffs' offices and police departments around the state requesting various information on their experience with the public record exemption under review.¹⁵ The majority of respondents indicated that they have not had any issues with the exemption and would prefer that the exemption be reenacted without changes.¹⁶ No respondent indicated that their office or department would prefer for the exemption to repeal.¹⁷

Effect of the Bill

The bill removes the scheduled repeal date of the public record exemption, thereby maintaining the public record exemption for body camera recordings or portions thereof.

B. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., to save from repeal the public record exemption for body camera recordings.

Section 2 provides an effective date of October 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

¹⁴ Chapter 2015-41, L.O.F.

¹⁵ Open Government Sunset Review Questionnaire, responses on file with the Oversight, Transparency & Public Management Subcommittee.

¹⁶ *Id.*

¹⁷ *Id.*

2. Expenditures:

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. The bill does not appear to 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.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not confer rulemaking authority on an agency nor require the promulgation of rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.