

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 Community Affairs

BILL: SB 1272

INTRODUCER: Senator Abruzzo

SUBJECT: Public Records/Emergency Information Gathering System

DATE: March 20, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stearns	Yeatman	CA	Pre-meeting
2.			GO	
3.			RC	

I. Summary:

SB 1272 creates a public records exemption for information held by a state, county or municipal government agency for the purpose of operating an emergency information gathering system. The exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature. The bill provides a statement of public necessity for the exemption.

II. Present Situation:

Public Records and Open Meetings Requirements

The Florida Constitution provides that the public has the right to access government records and meetings. The public may inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.¹ The public also has a right to be afforded notice and access to meetings of any collegial public body of the executive branch of state government or of any local government.² The Legislature's meetings must also be open and noticed to the public, unless there is an exemption provided by the Constitution.³

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. The Public Records Act⁴ guarantees every person's right to inspect and copy any state or local government public record.⁵

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(b).

³ FLA. CONST., art. I, s. 24(b).

⁴ Chapter 119, F.S.

⁵ Section 119.011(12), F.S., defines "public record" to mean "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

The Sunshine Law⁶ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken to be noticed and open to the public.⁷

The Legislature may create an exemption to public records or open meetings requirements.⁸ An exemption must specifically state the public necessity justifying the exemption⁹ and must be tailored to accomplish the stated purpose of the law.¹⁰

Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹¹ The OGSR provides that an exemption automatically repeals on October 2 of the fifth year after creation or substantial amendment. In order to save an exemption from repeal, the Legislature must reenact the exemption.¹²

The OGSR 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.¹³ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- Allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁴

of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” to mean “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.” The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992). The Legislature’s records are public pursuant to s. 11.0431, F.S.

⁶ Section 286.011, F.S.

⁷ Section 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in the Florida Constitution. Article III, s. 4(e) of the Florida Constitution provides that legislative committee meetings must be open and noticed to the public. In addition, 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 or to take formal legislative action, must be reasonably open to the public.

⁸ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential* and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ 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 information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

¹² Section 119.15(3), F.S.

¹³ Section 119.15(6)(b), F.S.

¹⁴ Section 119.15(6)(b)1., F.S.

- Protects sensitive personal information that would either be defamatory, jeopardize an individual's safety, or cause unwarranted damage to the good name or reputation of such individual(s) if the information was released. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹⁵ or
- Protects trade or business secrets.¹⁶

The OGSR also requires specified questions to be considered during the review process.¹⁷ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.¹⁸ If the exemption is reenacted 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 sunset, the previously exempt records will remain exempt unless provided for by law.¹⁹

Emergency Information Gathering Systems

Some state and local governments across the country use emergency information gathering systems to collect information about a person to assist first responders in helping the person in an emergency.²⁰ Information used in the system is voluntarily provided by the individual and varies depending on the relevant circumstances or condition. For example, the information may include details about certain allergies, a disability, a previous medical condition, or even the floor plans of the person's home. Once a person's information is in the emergency information gathering system, the information is integrated with the government's 9-1-1 system and is automatically displayed to a 9-1-1 operator or administrator during emergency calls.²¹

Companies have entered into public private partnerships with state and local governments to provide the technology and administration necessary to successfully implement emergency information gathering systems.²²

¹⁵ Section 119.15(6)(b)2., F.S.

¹⁶ Section 119.15(6)(b)3., F.S.

¹⁷ Section 119.15(6)(a), F.S. The specified 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?

¹⁸ FLA. CONST., art. I, s. 24(c).

¹⁹ Section 119.15(7), F.S.

²⁰ Article regarding Arkansas using an emergency gathering system statewide at: <http://safety.smart911.com/arkansas-becomes-first-state-deploy-smart911-enhance-public-safety/> (last visited March 19, 2015).

²¹ Information obtained from websites of two companies that contract with state and local governments to implement emergency gathering systems at: <http://safety.smart911.com/smart911/>; and <http://www.savingminutes.com/> (both websites last visited on March 19, 2015).

²² *Id.*

III. Effect of Proposed Changes:

Section 1 amends s. 119.071, F.S., to create a public records exemption for information held by a state, county or municipal government agency for the purpose of operating an emergency information gathering system. The exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 provides a statement of public necessity for the exemption.

Section 3 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

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 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.

Breadth of Exemption

Article I, Section 24(c) of the Florida Constitution requires a newly created 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 record exemption for information furnished by a person to a state, county, or municipal government agency for the purpose of registering emergency information for the agency's emergency information gathering system. The exemption does not appear to be in conflict with the constitutional requirement that the exemptions be no broader than necessary to accomplish the stated purpose.

C. Trust Funds Restrictions

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:**Prohibition from Collecting Firearm Data**

Section 790.335, F.S., provides, with certain exceptions, that “[n]o state governmental agency or local government, special district, or other political subdivision . . . shall knowingly and willfully keep or cause to be kept, any list, record, or registry of privately owned firearms” or their owners.²³ Any person who, or entity that, violates such provision commits a felony of the third degree, punishable as provided in ss. 775.082 or 775.083, F.S.²⁴

The stated purpose of such law is to protect the right of individuals to keep and bear arms as guaranteed under both the United States Constitution and State Constitution and to protect the privacy rights of law-abiding firearm owners.²⁵

If a person provides information regarding a privately owned firearm to a local government’s emergency information gathering system and that information is catalogued and maintained by the governmental entity, the government’s action may be in violation of s. 790.335, F.S.

VIII. Statutes Affected:

This bill substantially amends section 119.071 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

²³ Section 790.335(1)(c), F.S.

²⁴ Section 790.335(4), F.S.

²⁵ Section 790.335(1)(b), F.S.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
