

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 384

SPONSOR: Comprehensive Planning, Local and Military Affairs Committee

SUBJECT: Public Records; Open Government Sunset Review; 911 Telephone Calls

DATE: March 5, 2001 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|-----------------|
| 1. | Cooper | Yeatman | CA | Favorable |
| 2. | Rhea | Wilson | GO | Fav/1 amendment |
| 3. | | | RC | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

I. Summary:

The public records exemption for “911” emergency telephone system caller records, as provided in s. 365.171, F.S., is scheduled for repeal on October 2, 2001, unless reviewed and reenacted by the Legislature following the criteria specified in the Open Government Sunset Review Act.¹ The purpose of the exemption is to shield the identity of any person requesting emergency service or reporting an emergency by accessing the emergency telephone number “911.”

This bill amends s. 365.171, F.S., to remove the language scheduling the exemption for repeal.

II. Present Situation:

Open Government Sunset Review Act of 1995

Florida has a long history of providing public access to the meetings and records of governmental and other public entities. The Florida Legislature enacted the first law affording access to public records in 1909. The Public Records Law, ch. 119, F.S., and the Public Meetings Law, s. 286.011, F.S., specify the conditions under which public access must be provided to governmental records and meetings of the executive branch and other governmental agencies.

In November 1992, the public affirmed its approval of Florida’s tradition of “government in the sunshine” by enacting a constitutional amendment to guarantee the practice.² The amendment had the effect of including in the Florida Constitution provisions similar to those of the Public

¹Section 119.15, F.S.

²Art. 1, s. 24 of the State Constitution.

Meetings Law and the Public Records Law and of applying those provisions to all three branches of government.

The term *public records* has been defined by the Legislature in s. 119.011(1), F.S., 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 the official business by any agency.

This definition of *public records* has been interpreted by the Florida Supreme Court to include all materials made or received by an agency in connection with official business which are used to perpetuate, communicate or formalize knowledge.³ Unless these materials have been made exempt by the Legislature, they are open for public inspection, regardless of whether they are in final form.⁴

The State Constitution permits exemptions to open government requirements and establishes the means by which these exemptions are to be established. Under Article I, s. 24(c) of the State Constitution, the Legislature may provide by general law for the exemption of records provided that: (1) the law creating the exemption states with specificity the public necessity justifying the exemption; and (2) the exemption is no broader than necessary to accomplish the stated purpose of the law. A law creating an exemption is permitted to contain only exemptions to public records or meetings requirements and must relate to one subject.

The Legislature enacted s. 119.15, F.S., the Open Government Sunset Review Act of 1995. Essentially, the law provides that exemptions to the public meetings and public records law be repealed in the 5th year after the exemption was enacted or substantially amended, unless the Legislature acts to reenact the exemption. The law stipulates that the public has a right to have access to records unless there is significant enough reason to override the strong public policy of open government and restrict such access.

The law requires the Legislature to review the exemption before its scheduled repeal and consider as part of the review process the following:

- The specific records or meetings affected by the exemption;
- The identifiable public purpose or goal of the exemption;
- Whom the exemption uniquely affects, as opposed to the general public; and
- Whether the information contained in the records can be readily obtained by alternative means, and if so, how.

The law specifies that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. The public purpose test is satisfied if the exemption:

³*Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

⁴*Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

- Is necessary for the effective and efficient administration of a governmental program, which administration would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, only information that would identify the individuals may be exempted; or
- Protects information of a confidential nature concerning an entity.

The President of the Senate assigned the Committee on Comprehensive Planning, Local and Military Affairs the responsibility for reviewing the "911" telephone records exemption and recommending whether it should be allowed to repeal, be modified, or reenacted in its present form.

Confidentiality of "911" Records

Section 365.171, F.S., is the Florida Emergency Telephone Act. The purpose of the act is "to establish and implement a cohesive statewide emergency telephone number "911" plan which will provide citizens with rapid direct access to public safety agencies by dialing the telephone number "911" with the objective of reducing the response time to situations requiring law enforcement, fire, medical, rescue, and other emergency services."

Section 365.171(15), F.S., provides:

(15) Confidentiality of records.--Any record, recording, or information, or portions thereof, obtained by a public agency or a public safety agency for the purpose of providing services in an emergency and which reveals the name, address, telephone number, or personal information about, or information which may identify any person requesting emergency service or reporting an emergency by accessing an emergency telephone number "911" system is confidential and exempt from the provisions of s. 119.07(1), except that such record or information may be disclosed to a public safety agency. The exemption applies only to the name, address, telephone number or personal information about, or information which may identify any person requesting emergency services or reporting an emergency while such information is in the custody of the public agency or public safety agency providing emergency services. A telephone company or commercial mobile radio service provider shall not be liable for damages to any person resulting from or in connection with such telephone company's or commercial mobile radio service provider's provision of any lawful assistance to any investigative or law enforcement officer of the State of Florida or political subdivisions thereof, of the United States, or of any other state or political subdivision thereof, in connection with any lawful investigation or other law enforcement activity by such law enforcement officer unless the telephone company or commercial mobile radio service provider acted in a wanton and willful manner. The exemptions in this section are subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15 and shall stand repealed on October 2, 2001, unless reviewed and saved from repeal through reenactment by the Legislature.

Amendments to s. 365.171, F.S.

In 1989, the Legislature enacted s. 365.171(15), F.S., to exempt from disclosure as a public record pursuant to s. 119.07(1), F.S.,

Any record or information obtained by a public agency or a public safety agency for the purpose of providing services in an emergency and which reveals the name, address, or telephone number of any person requesting emergency service or reporting an emergency by accessing an emergency telephone number “911” system...

While the law allowed the information to be disclosed to a public safety agency, it stipulated that the exemption applied only while in the custody of the agency that received the initial “911” telephone call.

Additionally, Attorney General Opinion 90-43 reiterated that only that portion of the voice recording of a “911” call relating to the name, address, and telephone number of the person calling the emergency telephone number “911” to report an emergency or to request emergency assistance is exempt from the disclosure requirements of chapter 119, F.S. Thus, the voice recording of a “911” call is subject to disclosure once the name, address and telephone number of the caller have been deleted.

In 1990, the Legislature amended the exemption to include recordings of “911” requests and “personal information about, or information which may identify” persons requesting emergency services or reporting an emergency through the “911” system. However, this apparent expansion of the exemption was not included in the second part of subsection (15), which qualifies how the exemption is to be applied, thereby making the change ineffective. The exemption continued to be limited to the period the information is in the custody of the agency that received the initial “911” telephone call.

In 1996, the Legislature amended s. 365.171(15), F.S., to include the expansion of the exemption in the second part of the subsection and to remove the provision that limited the application of the exemption to the agency receiving the initial “911” telephone call. This change required the information remain exempt when in the custody of any public agency providing emergency services.

This 1996 amendment substantially changed the exemption, and “triggered” the repeal and review required by the Open Government Review Act of 1995. The last sentence in s. 365.171 (15), F.S., also enacted in 1996, duplicates this requirement.

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In an effort to obtain information on the operation of the exemption and to assess whether it serves an identifiable public purpose, the committee staff sent surveys to all 67 county “911” coordinators and to a representative in the Bureau of Emergency Medical Services of the Florida Department of Health (DOH). Twenty-one counties, one city, and a representative from DOH responded (31 percent response rate). Staff also interviewed staff of the Information Technology Program of the Department of Management Services.

The following is a summary of responses from the survey.

County Sheriff's Offices, County "911" Coordinators, or "911" Call Centers in the county are primarily responsible for custody and maintenance of "911" records. These entities have adopted a variety of policies and procedures for the temporary maintenance of handwritten, database, and voice recorded information relating to "911" calls. Records are maintained for periods ranging from 30 days to 7 years. Information from these records is made available for authorized purposes.

Specific records or information affected by the exemption include any written, photocopied, or magnetically recorded information that would identify the name, address or telephone number, or personal information about, or information which may identify any person requesting emergency services or reporting an emergency through the "911" system. The volume of records maintained differs by county. For example, Desoto County reports maintaining approximately 900 records per month. Miami-Dade County reports receiving an average of 3,622 calls per day, from which all protected records must be secured.

All respondents indicated that records are secured in areas where access is restricted or in locked facilities.

Respondents identified the following goals or public purpose of the exemption:

- To maintain the privacy of persons accessing emergency telephone service; disclosure of such private information could discourage persons from using the system;
- To protect callers from harassment, intimidation, injury or retribution by third parties interested in knowing who reported the emergency or crime;
- To prevent third parties from benefiting or profiting from such exempt information; and
- To preserve the integrity of investigations.

Respondents indicated that the exemption has been very effective in meeting these goals.

Respondents reported that the following persons or entities, as opposed to the general public, are uniquely affected by the exemption:

- The callers, who have an interest in maintaining their privacy;
- The media, as they seek to obtain information about the crime or emergency;
- Witnesses and victims of the crime or emergency related to the call; and
- The Public Defender's Office, who must subpoena the caller information; this may cause a delay in the preparation of the case.

Two respondents suggested the exempted information could be obtained from other official documents that are available upon request. However, the release of such information can be denied or delayed under other public records exemption statutes if the information relates to active criminal investigations and active criminal intelligence information,⁵ or if the information relates to certain victims of crime.⁶

⁵Section 119.07(3)(b), F.S.

⁶Section 119.07 (3)(f) & (s)1., F.S.

In addition, the following related health records are exempt from the public records requirement: records of emergency calls and reports submitted to the DOH;⁷ complaints against medical transportation services submitted to the DOH;⁸ and emergency medical services quality assurance records⁹

In addition, ch. 934, F.S., provides security against interception and recording wire and radio communications by unauthorized personnel or the public.

Most respondents indicated that costs associated with keeping the exempt records or information confidential is minimal. However, a number of respondents indicated that the editing process to remove caller identifying information from these tapes is time consuming. One respondent offered the following information:

“Public record requests for (“911”) material are extremely popular. Because the exemption applies only to the name, address, telephone number or personal information, which may identify the caller, the entire record cannot be considered exempt. Once a specific request is received, the call must be located and copied from the original. This takes expertise in manipulating the equipment. The copy of the call is then reviewed and redacted where necessary to satisfy the exemption. This process is done by hand. Fiscal costs depend on the hourly wage rate and the time spent associated with handling of these records. It is difficult to manipulate magnetic tape recordings and not take out more than is required. Each recording is unique and may have to be played over and over to ensure accuracy in editing.”

All but one of the respondents recommended the exemption be reenacted. This respondent suggested the exemption be retained only for calls that involve criminal acts, thus allowing interested parties to identify witnesses to non-criminal acts, and free the custodian of “911” tapes from the obligation to edit tapes when requested by the media or other interested parties.

The respondent from DOH offered the following additional reasons for maintaining the exemption:

- Persons calling the “911” emergency number system would be reluctant to explain symptoms or health history of a personal sensitive nature if they knew such information was not kept confidential; and
- Persons reporting medical information could mistakenly assume personal information reported to the “911” emergency number system would become part of their medical record and exempt from public access.

Three respondents recommended the exemption be expanded to include the entire audiotape of a “911” call. They suggested that the caller might be identified by anyone known to him or her through voice recognition, as a result of hearing an edited “911” tape on television or radio. Follow-up calls to the respondents indicated that this has happened in two circumstances.

⁷Section 401.30, F.S.

⁸Section 401.414, F.S.

⁹Section 401.425, F.S.

However, it can be argued that if the public agency responsible for maintaining the “911” tape thinks that in releasing an edited version of the tape the identity of the caller will be revealed, the entire tape can be withheld from release.

Respondents to the survey identified the specific records exempted; whom the exemption uniquely affects; the identifiable public purpose or goal of the exemption; and whether the information in the exempted records could be readily obtained by alternative means.

As a condition of creation of a new exemption or the reenactment of an existing exemption, s. 119.15(4)(b), F.S., requires the exemption to satisfy one of three conditions. The “911” call records exemption satisfies two of these conditions.

First, survey respondents indicate that the administration of county “911” programs would be significantly impaired without the exemption. Without the promise of anonymity, callers would be reluctant to seek assistance, or report accidents or criminal activity.

One respondent offered the following supporting comment:

Disclosure of this information could discourage persons from contacting law enforcement to report certain crimes or activity. Fear of retaliation or violence on the part of the caller is frequently a concern, which causes them to hang up before sufficient information is obtained. Allowing criminal or violent activity to go unreported simply because callers fear their personal information will be disclosed could result in unnecessary personal injury or property loss/damage.

Second, respondents indicated that the exemption protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory to such individuals, cause unwarranted damage to their good name or reputation, or would jeopardize their safety. This is especially true in cases involving domestic violence or other types of criminal activity. In addition, respondents noted that the exemption keeps an individual’s medical information or unlisted telephone number out of the public purview.

III. Effect of Proposed Changes:

This bill amends s. 365.171(15), F.S., to remove the language scheduling the repeal of the exemption for “911” emergency telephone system caller records.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The public records exemption for “911” emergency telephone system caller records, as provided in s. 365.171, F.S., is scheduled for repeal on October 2, 2001, unless reviewed and reenacted by the Legislature following the criteria specified in the Open Government Sunset

Review Act.¹⁰ The purpose of the exemption is to shield the identity of any person requesting emergency service or reporting an emergency by accessing the emergency telephone number “911.”

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Access to private information will continue to be restricted to persons or entities seeking information relating to “911” calls.

C. Government Sector Impact:

Counties will continue to incur costs associated with keeping the exempt records or information confidential. Most survey respondents indicated that such costs are minimal.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Governmental Oversight and Productivity:

The constitutional provision was not in effect at the time that the original exemption was created and so the exemption only refers to ch. 119, F.S. This is a technical amendment that adds a reference to s. 24, Art. I of the State Constitution.

This Senate staff analysis does not reflect the intent or official position of the bill’s sponsor or the Florida Senate.

¹⁰Section 119.15, F.S.