

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: CS/SB 1762

SPONSOR: Governmental Oversight and Productivity and Senator Posey

SUBJECT: Public Records Exemption/Trunking Radio Communication Systems

DATE: April 19, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Rhea</u>	<u>Wilson</u>	<u>GO</u>	<u>Favorable/CS</u>
2.	<u>Cooper</u>	<u>Yeatman</u>	<u>CA</u>	<u>Favorable</u>
3.	_____	_____	<u>RC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The committee substitute exempts from public records requirements technical information pertaining to trunking radio communications systems and mobile data communications systems used by state, county and local government that would allow unauthorized persons to gain transmit access to, or monitor encrypted or privileged communications over, such systems.

Information that is specifically protected includes system trunking format data, mobile data terminal information, coded radio identification information, information pertaining to internal system structuring, system keys, encryption codes used to facilitate secure communications, and control channel format information.

This committee substitute adds legislative intent language relating to the public necessity for this public records exemption.

This committee substitute amends section 119.07(3) of the Florida Statutes.

II. Present Situation:

Article I, s. 24(a), Florida Constitution, expresses Florida’s public policy regarding access to government records as follows:

Every person has the right to inspect or copy any public records made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency

or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Article I, s. 24(c), Florida Constitution, does, however, permit the Legislature to provide by general law for the exemption of records from the requirements of s. 24. The general law must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish its purpose.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07(1)(a), F.S., provides:

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at a reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

Open Government Sunset Review Act of 1995 - Section 119.15, F.S., the Open Government Sunset Review Act of 1995, provides 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. An identifiable public purpose is served if the exemption meets one of the following purposes, and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

- < Allows the state or its political subdivisions to effectively and efficiently administer 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 information 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, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or
- < Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

Trunking Radio Systems - Trunking radio systems are wireless two-way radio communications systems. 'Trunking' is a technique where more radio users can communicate on fewer frequencies. Rather than having a dedicated frequency for each channel on a radio system, trunked systems can use any frequency in a range for any channel. A range of frequencies usually consists of anywhere from 5 to 30 frequencies. Thus, each time a person communicates on a trunked system, they may be communicating on a different frequency within the specified range.

Law enforcement agencies are the primary user of government trunking radio systems. In order to protect the security of the data that is transmitted by these systems, frequencies are often restricted for use exclusively by law enforcement. Additionally, data transmitted on these frequencies is often encrypted to prevent perpetrators from monitoring law enforcement communications to prevent capture. Presumably, the technical information regarding the makeup and encryption formulae for these trunking radio systems is classified as a public record and capable of being distributed to citizens upon making a proper public records request.

Currently, there is no public records exemption for the disclosure of technical information pertaining to trunking radio communications systems and mobile data communications systems used by governmental agencies. Disclosure of such information as a public record could risk the interception of information carried on these systems. This interception could be used by individuals for the purpose of facilitating crimes or hindering governmental services.

III. Effect of Proposed Changes:

Section 1 amends s. 119.07(3), F.S, to make technical information pertaining to trunking radio communication systems and mobile data communications systems used by governmental entities both confidential and exempt from disclosure as a public record.

The committee substitute defines “technical information” as:

. . . system trunking format data, mobile data terminal information, coded radio identification information, information pertaining to internal system structuring (agency/flee/subfleet structure and identification data), system keys, encryption codes used to facilitate secure communications, and control channel data format information.

Section 2 adds legislative intent language relating to the public necessity for this public records exemption.

Section 3 provides that the act will take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

This committee substitute provides for an exemption to public records laws. The Legislature, by virtue of Article I, Section 24 of the Florida Constitution, has the authority to create exemptions to public records law. Article I, Section 24 of the Constitution provides that any exemption from public records enacted by the legislature must state with specificity the public necessity justifying the exemption. The law is not permitted to be any broader than necessary to accomplish the public purpose.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Under the committee substitute, private parties would not be able to request technical information related to trunking radio communications systems and mobile data communications systems used by state, county and municipal governments. Many private sector entities use trunked radio systems. The committee substitute would only prevent public disclosure of technical information about government trunked radio systems. The committee substitute would not affect the ability of any private entity to use a trunked radio system.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.