

# 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.)

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Prepared By: Domestic Security Committee

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BILL: SPB 7014

SPONSOR: For consideration by Domestic Security Committee

SUBJECT: Open Government Sunset Review/Security System Plans

DATE: October 28, 2005

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Pardue</u>	<u>Skelton</u>	_____	<b>Pre-meeting</b>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

This proposed committee bill reenacts the public records and the public meetings exemption provisions for security system plans. The bill provides for the exemption of security system plans of any property owned by or leased to the state or any of its political subdivisions or any privately owned or leased property security system plans which are held by any agency as defined in s. 119.011, F.S. Security system plans include all records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations relating directly to the physical security of a facility. The exemption also applies to threat assessments, threat response plans, emergency evacuation plans, sheltering arrangements, or manuals for security personnel, emergency equipment, or security training. The bill deletes the provisions that repeal the exemptions.

This bill reenacts and amends s. 119.071(3)(a), F.S. and s. 285.0113, F.S.

## II. Present Situation:

### Public Records

Florida has a long history of providing public access to the records and meetings of governmental and other public entities. The Florida Legislature enacted the first law affording access to public records in 1909. In 1992, Floridians voted to adopt an amendment to the Florida Constitution that raised the statutory right of public access to public records to a constitutional level.

The Public Records Law, ch. 119, F.S., specifies the conditions under which public access must be provided to governmental records. Section 286.011, F.S., the Public Meetings Law, specifies

the requirements for meetings of public bodies to be open to the public. While the State Constitution provides that records and meetings are to be open to the public, it also provides that the Legislature may create exemptions to these requirements by general law if a public need exists and certain procedural requirements are met. Article I, s. 24, of the Florida Constitution, governs the creation and expansion of exemptions to provide, in effect, that any legislation that creates a new exemption or that substantially amends an existing exemption must also contain a statement of the public necessity that justifies the exemption. Article I, s. 24, of the Florida Constitution, provides that any bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions.

The Open Government Sunset Review Act (s. 119.15, F.S.), provides for the repeal and prior review of any public records or meetings exemptions that are created or substantially amended in 1996 and subsequently. The chapter defines the term “substantial amendment” for purposes of triggering a repeal and prior review of an exemption to include an amendment that expands the scope of the exemption to include more records or information or to include meetings as well as records. The law clarifies that an exemption is not substantially amended if an amendment limits or narrows the scope of an existing exemption. The law was amended by ch. 2005-251, Laws of Florida, to modify the criteria under the Open Government Sunset Review Act so that consideration will be given to reducing the number of exemptions by creating a uniform exemption during the review of an exemption subject to sunset.

Under the Open Government Sunset Review Act, an exemption may be created or maintained only if it serves an identifiable public purpose. An identifiable public purpose is served if the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, the administration of which 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; 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.

Section 119.15(6)(a), F.S., requires, as part of the review process, the consideration of the following questions:

- 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?

Further, the exemption must be no broader than is necessary to meet the public purpose it serves. In addition, the Legislature must find that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption.

Under s. 119.15(8), F.S., notwithstanding s. 768.28, F.S., or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of an exemption under the section. The failure of the Legislature to comply strictly with the section does not invalidate an otherwise valid reenactment. Further, one session of the Legislature may not bind a future Legislature. As a result, a new session of the Legislature could maintain an exemption that does not meet the standards set forth in the Open Government Sunset Review Act of 1995.

### **2001 Legislative Findings**

In creating ss. 119.071(3)(a) and 286.0113, F.S., the Legislature found the public necessity to exempt security plans because they 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.<sup>1</sup> The finding further stated that 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. Although some skill would be required to use such information to further an act of terrorism, ample evidence exists of the capabilities of terrorists to conduct complicated acts of terrorism.

### **2005 Open Government Sunset Reviews**

The Senate Domestic Security Committee, in its review of Senate Interim Project Reports 2006-210 and 206-211, accepted the recommendation that the exemptions provided for security system plans continue to be sufficiently compelling to override the strong public policy of open government.

International terrorists continue to demonstrate the ability to plan and carry out sophisticated acts of terrorism. Their capability appears to be no less today than at the time of the Legislature's original findings in 2001.

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<sup>1</sup> Chapter 2001-361, Laws of Florida.

### III. Effect of Proposed Changes:

Section 119.071(3)(a), F.S., provides for a public records exemption for security system plans. Section 286.0113, F.S., provides for a public meetings exemption for security systems plans. These sections provide for the exemption of security system plans of any property owned by or leased to the state or any of its political subdivisions or any privately owned or leased property security system plans which are held by any agency as defined in s. 119.011, F.S. Security system plans include all records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations relating directly to the physical security of a facility. The exemption also applies to threat assessments, threat response plans, emergency evacuation plans, sheltering arrangements, or manuals for security personnel, emergency equipment, or security training.

This SPB reenacts ss. 119.071(3)(a) and 286.0113, F.S. These sections are also amended to delete the provisions that repeal the exemptions.

This SPB provides an effective date of October 1, 2006.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

Article I, s. 24 of the State Constitution, permits the Legislature to provide by general law for the exemption of open meetings and for the exemption of records. A law that exempts a record must state with specificity the public necessity justifying the exemption and the exemption must be no broader than necessary to accomplish the stated purpose of the law.<sup>2</sup> This requirement was met by Chapter 2001-361, L.O.F.

Additionally, a bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.<sup>3</sup> This SPB is in compliance with the provision.

#### C. Trust Funds Restrictions:

None.

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<sup>2</sup> See, *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So.2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999)

<sup>3</sup> Art. I, s.24(c) of the State Constitution

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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

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## **VIII. Summary of Amendments:**

None.

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