1989

Session Law 89-047

Florida Senate & House of Representatives

89-47

BILL HISTORY

H 293 GENERAL BILL/1ST ENG by Governmental Operations; Martin (Similar S 42)

Security Systems/State Property; (OPEN GOVERNMENT SUNSET REVIEW) amends provision which provides exemption from public records & meetings requirements for security systems for property owned or leased by state or its subdivisions; saves such exemption from repeal; provides for future review & repeal. Amends 281.301. Effective Date: 10/01/89.

02/13/89	HOUSE	Prefiled
02/15/89	HOUSE	Placed on Calendar
04/04/89	HOUSE	Introduced, placed on Calendar -HJ 36
04/06/89	HOUSE	Placed on Special Order Calendar; Read second time; Amendment adopted -HJ 163
04/11/89	HOUSE	Read third time -HJ 190; Passed as amended; YEAS 116 NAYS 0 -HJ 191
04/12/89	SENATE	In Messages
04/19/89	SENATE	Received, referred to Governmental Operations -SJ 194
04/28/89	SENATE	Extension of time granted Committee Governmental Operations
05/02/89	SENATE	Withdrawn from Governmental Operations -SJ 255; Placed on Calendar
05/31/89	SENATE	Placed on Special Order Calendar -SJ 618; Passed; YEAS 36 NAYS 0 -SJ 658
05/31/89		Ordered enrolled
06/13/89		Signed by Officers and presented to Governor
06/15/89		Approved by Governor; Chapter No. 89-47

89-47

****AS PASSED BY THE 1989 LEGISLATURE****

STORAGE NAME: h0293-f.go
DATE: June 20, 1989

HOUSE OF REPRESENTATIVES
COMMITTEE ON GOVERNMENTAL OPERATIONS
FINAL STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: HB 293 (PCB GO 89-25)

RELATING TO: Confidentiality of State's Security Systems

SPONSOR(S): Committee on Governmental Operations and Martin

EFFECTIVE DATE: October 1, 1989

DATE BECAME LAW: June 15, 1989

CHAPTER #: 89-47, Laws of Florida

COMPANION BILL(S): SB 42 (similar)

OTHER COMMITTEES OF REFERENCE: (1)

(2)

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I. SHORT SUMMARY:

Section 281.301, Florida Statutes, provides for the confidentiality of all records and meetings relating to security systems for any property owned or leased by the state or any of its political subdivisions. Based on the findings in this analysis and the recommendations of all state agencies, staff finds that the exemption serves an identifiable public purpose by allowing the state to effectively administer governmental programs by ensuring that the state's security systems are not violated. For this reason, staff recommends that this exemption be reenacted.

A. INTRODUCTION:

Public policy of Florida has greatly favored public access to governmental records and meetings. In fact, the "Sunshine State" has been a national leader in the area of open government. The law embodying the public's right of access to records is codified at s. 119.01, Florida Statutes:

> It is the policy of this state that all state, county, and municipal records shall at all times be open for a personal inspection by any person.

This provision is mandatory and any public official with custody of a nonexempt public record is required to disclose it to any member of the public. Records are exempt from public disclosure pursuant to chapter 119, Florida Statutes, only if it is provided

by law that the public records are confidential or are expressly exempted from disclosure by general or special law. Exemptions are found in s. 119.07(3), Florida Statutes, and in various special acts. The provision requiring meetings to be public does not identify specific exemptions within that section, but various exemptions are included throughout the statutes.

In 1984, the Legislature enacted the Open Government Sunset Review Act to prevent the erosion of Florida's open government policy caused by unjustified exemptions to the Act. As amended by chapter 85-301, Laws of Florida, the Act provides specific criteria for the evaluation of exemptions subject to repeal. The law provides for a two-pronged test. First, it requires consideration of four factors:

- 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 information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?

Second, the law requires that the exemption will be maintained only if it serves an identifiable purpose. An identifiable public purpose is served when the exemption meets one of the following purposes and such purpose is considered significant enough to override the strong public policy of open government. To qualify as meeting a public purpose, an exemption must:

- allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; or

- protect information of a sensitive personal nature concerning individuals if its release would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals, or its release would jeopardize the safety of such individuals; or

- protect information of a confidential nature concerning entities which include formulas, patterns, devices, 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 if its disclosure would injure the affected entity in the marketplace.

The review included in this report examines the following exemption(s):

s. 281.301, Florida Statutes

B. PRESENT SITUATION:

Section 281.301, Florida Statutes, provides for the confidentiality of all records and meetings relating to security systems for any property owned by or leased to the state or any of its political subdivisions.

Information and material protected by the security systems exempted by s. 281.301, Florida Statutes, include treasury notes, bonds, and securities at the Department of Insurance and Treasury, student records and research activities at the state university system, driver's license files and records at the Department of Highway Safety and Motor Vehicles, bid analysis management data and financial records of contractors at the Department of Transportation, and adoption records at social welfare agencies. Other agencies such as the Department of Corrections, the Department of Agriculture, the Department of Natural Resources and the Department of Law Enforcement all responded that the exemptions should be readopted. No respondents opposed reenactment.

Based on the evidence reported, staff has concluded that the public records exemption in s. 281.301, Florida Statutes, serves an identifiable public purpose significant enough to override the state's open government policy. The exemption allows the state to effectively administer government programs by ensuring that the state's security systems will not be violated. State security systems protect information of a sensitive personal nature concerning individuals and information of a confidential nature concerning entities. For these reasons, staff recommends that the exemption be reenacted.

C. EFFECT OF PROPOSED CHANGES:

This bill would revive and readopt the public records exemption provided by s. 281.301, Florida Statutes, effective October 1, 1989, and would require Sunset Review of the exemption ten years later, as provided by s. 119.14, Florida Statutes.

D. SECTION-BY-SECTION ANALYSIS:

None.

II. <u>FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:</u>

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. <u>Non-recurring or First Year Start-Up Effects:</u>

Not applicable.

2. <u>Recurring or Annualized Continuation Effects:</u>

Not applicable.

3. Long Run Effects Other Than Normal Growth:

Not applicable.

4. Appropriations Consequences:

Not applicable.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

Not applicable.

2. Recurring or Annualized Continuation Effects:

Not applicable.

3. Long Run Effects Other Than Normal Growth:

Not applicable.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Not applicable.

2. Direct Private Sector Benefits:

Not applicable.

3. Effects on Competition, Private Enterprise, and Employment Markets:

Not applicable.

D. FISCAL COMMENTS:

Not applicable.

III. LONG RANGE CONSEQUENCES:

Not applicable.

IV. COMMENTS:

None.

V. SIGNATURES:

SUBSTANTIVE COMMITTEE:
Prepared by:

Bill Barzee

Staff Director:

Barry Kling

SECOND COMMITTEE OF REFERENCE:
Prepared by:

Staff Director:

APPROPRIATIONS:
Prepared by:

Staff Director:

REVISED: _____ BILL NO. SB 42

DATE: January 10, 1989 Page 1

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Tinney	Stengle	GO	Favorable
2.				
3.				
4.				

SUBJECT:

Open Government;
Government Security
Records and Meetings

BILL NO. AND SPONSOR:

SB 42 by
Governmental Operations

I. SUMMARY:

A. Present Situation:

The Open Government Sunset Review Act provides for the repeal of public meetings and public records exemptions over the 10-year period from 1986-1995, unless the Legislature acts to revive an exemption prior to its scheduled repeal date. Section 281.301, F.S., provides that the security systems for any property owned by or leased to the state or any of its political subdivisions, all records containing information relating to the security systems, and all meetings relating directly to or revealing such systems, are exempt from the public record requirements of ch. 119, F.S., and from the public meeting requirements of s. 286.011, F.S.

During the course of the review of these exemptions, a questionnaire was sent to 13 executive department heads, to the chancellor of the state university system, and to the executive director of the Division of Community Colleges of the Department of Education, in order to gather information relative to the security systems currently in use by state agencies. All agencies responded to the questionnaire. In addition to the questionnaire, a telephone survey of various city and county officials throughout the state was conducted in order to understand the building security systems of the state's political subdivisions. Letters were also sent to the Florida Association of Counties and to the Florida League of Cities to solicit their opinions regarding the exemptions contained in s. 281.301, F.S.

Chapter 119, F.S., the Public Records Law, requires government records to be open to public inspection and copying, except as otherwise specifically exempted by law. Section 286.011, F.S., the Public Meetings Law, requires that the meetings of any board or commission of any state agency or authority of any county, municipal corporation, or political subdivision, at which official acts are to be taken, are open to the public at all times. The minutes of any such meeting are required to be open to public inspection, as well. Therefore, the exemptions contained in s. 281.301, F.S., allow the state and its political subdivisions to keep the records and other pertinent data relating to their security systems confidential. Likewise, meetings relating directly to, or that would reveal such security systems, are closed to the public.

The Governor and Cabinet, as the Board of Trustees of the Internal Improvement Trust Fund, is designated in s. 253.03, F.S., as the owner of all land held in the name of the state or any of its boards, departments, agencies, or commissions. The Governor and Cabinet is also designated as the head of the Department of General Services in s. 20.22, F.S. Chapter 255,

F.S., generally authorizes DGS to provide office space for state employees by contracting to build new facilities, modify existing buildings, or by negotiating leases for space within privately-owned facilities. Section 255.249, F.S., gives the Division of Facilities Management of DGS the responsibility and authority for the custodial and preventive maintenance, repair, and allocation of space for all state-owned office buildings and adjacent grounds. The term "state-owned office building" is defined in s. 255.248, F.S., to mean any building the title to which is vested in the state and which is used by one or more executive agencies for administrative and support functions. However, DGS is specifically excluded, in s. 255.248, F.S., from custodial authority for the following: district offices used by law enforcement or the military, and facilities used for inspections, road operations, or tourist welcoming functions; all educational facilities and institutions supervised by the Department of Education (including the state universities and community colleges); custodial facilities used for the care, custody, or treatment of wards of the state; legislative facilities; and buildings purchased or constructed from agricultural or citrus funds. Consequently, security of facilities for which DGS is not assigned statutory responsibility typically becomes the responsibility of the department which occupies the building.

The Department of General Services provides security through its Division of Safety and Crime Prevention for state-owned buildings and other properties which are included in the Florida Facilities Pool. Throughout the state, DGS uses closed-circuit television monitors, intercoms, and security guards to secure those facilities under jurisdiction of the department. A computer-activated security system which authorizes entry through the use of photo identification cards was recently installed in the Capitol and in the Senate and House office buildings. A similar security system is also used by DGS in Lakeland and is planned for the buildings under construction in Tallahassee for the Department of Education and the Auditor General. The Department of General Services is currently devising a standardized security system plan to be included in the specifications for all facilities to be built and managed by DGS in the future.

According to questionnaire responses, most offices which are occupied by agencies of the state and its political subdivisions are secured by lock-and-key systems at the entrances to the office. In these cases, typically the supervisor of the office and his designees have keys to the locks. As well, maintenance and janitorial crews and security personnel usually have keys that allow access to offices which are used by the state and its political subdivisions.

All agencies which responded to the questionnaire have at least one type of security system, and many had several types of systems. Several individual departments, including the departments of Corrections, Lottery, Law Enforcement, and Health and Rehabilitative Services, have elaborate security needs, and thus have corresponding security systems in place. In addition, most of the business and cashiers' offices in the state university system and in community colleges use security systems or security personnel. The ranger stations in the state park system generally are protected by burglar alarms. Questionnaire responses also indicated that other state agencies use various combinations of security systems, burglar alarms, and security personnel on a case-by-case basis, depending upon the value of the property and the nature of records at each location, and the risk of their loss or the consequences that would attend breaches of confidentiality. Questionnaire responses indicate that the greater a department's need for security, the more sophisticated the system it uses, and the greater the accountability that surrounds its security system records.

The questionnaire responses revealed that few, if any, requests are made by the public to see the security records and, when such requests are made, they are denied based on the public records and public meetings exemptions provided by s. 281.301, F.S.

Generally, the state's political subdivisions have not received requests for access to their security system records. Typically only the larger and newer local government facilities have security systems other than lock-and-key and security guards. At the local level, it is usually the facilities manager or building-maintenance supervisor who is in charge of security systems and the accompanying records. The types of security systems used by the political subdivisions of the state and the storage of the records are the same at the local level as those used on the state level.

If the exemptions contained in s. 281.301, F.S., are allowed to repeal on October 1, 1989, the security system records for buildings owned by or leased to the state or its political subdivisions would be open for public inspection. As well, meetings relating to security systems in public buildings would also be open to the public. Both of these changes would cause property or records which are currently protected by security systems to be less secure. In some cases, the property and records currently protected by security systems would be vulnerable to theft or breaches of confidentiality, since the records containing the installation plans and schematic drawings of the security systems, and meetings at which these systems, plans, and drawings are discussed, would be open to the public. Likewise, public safety would be negatively affected by disclosure of security systems designed to prevent after-hours access to buildings and other facilities. If this were to occur, the ability of the state and its political subdivisions to efficiently and effectively administer the programs assigned by law would be severely hampered.

B. Effect of Proposed Changes:

No changes to the law would result. The exemptions from the Public Records and Meetings laws for government security systems would be revived and reenacted without modification.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

None.

III. COMMENTS:

All respondents to the questionnaire that was sent to gather information regarding the exemptions in s. 281.301, F.S., urged that the Legislature reenact the exemptions, and thus continue to allow security system records, and meetings at which the security systems are discussed, to be shielded from the public. Most questionnaire respondents stated that the confidentiality of the security systems is directly related to the level of security that the systems offer, and asserted that allowing the exemptions to expire would render the security systems virtually useless.

IV. AMENDMENTS:

None.