



Energy & Utilities Subcommittee

Monday, January 25, 2016

4:00 PM

Webster Hall (212 Knott)

MEETING PACKET

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Energy & Utilities Subcommittee

Start Date and Time: Monday, January 25, 2016 04:00 pm
End Date and Time: Monday, January 25, 2016 06:00 pm
Location: Webster Hall (212 Knott)
Duration: 2.00 hrs

Consideration of the following bill(s):

HB 1025 Public Records/Security of Utility Agency Technology by Antone, Cortes, B.

Pursuant to rule 7.12, the filing deadline for amendments to bills on the agenda by a member who is not a member of the committee or subcommittee considering the bill is 6:00 p.m., Friday, January 22, 2016.

By request of the Chair, all Energy & Utilities Subcommittee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Friday, January 22, 2016.

NOTICE FINALIZED on 01/21/2016 4:14PM by McCloskey.Michele



The Florida House of Representatives

Regulatory Affairs Committee Energy & Utilities Subcommittee

**Steve Crisafulli
Speaker**

**Dane Eagle
Chair**

AGENDA

**Monday, January 25, 2016
212 Knott
4:00 pm – 6:00 pm**

- I. Call to Order
- II. Roll Call
- III. Consideration of the following bill(s):
 - a. HB 1025 Public Records/Security of Utility Agency Technology by Antone, Cortes, B.
- IV. Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1025 Public Records/Security of Utility Agency Technology
SPONSOR(S): Antone and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 776

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee		Whittier <i>JW</i>	Keating <i>CK</i>
2) Government Operations Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

This bill creates a public records exemption for the following:

- Information related to the security of a utility agency's technology, processes, and practices designed to protect data and information technology resources from attack, damage, or unauthorized access which, if disclosed, would facilitate the alteration, disclosure, or destruction of data or information technology resources.
- Security information related to a utility agency's existing or proposed information or industrial control technology systems or assets, whether physical or virtual, which, if disclosed, would affect:
 - Security,
 - Economic security,
 - Public health or safety, or
 - Any combination thereof.
- Security systems and information that would disclose the identity of security firms used by a utility agency to secure and store data or provide any information technology to the utility agency.

The bill provides that this public records exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

The bill provides that the act shall take effect upon becoming law.

Article I, section 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Public Records

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of article I, section 24(a) of the Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.¹

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1)(a), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act² provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- 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 sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

The Act also requires the automatic repeal of a public record or public meeting exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.³

Section 119.0713, F.S., provides specified exemptions from inspection or copying of public records for local government agencies.

Local Government Utilities

Pursuant to article VIII, section 2(b) of the Florida Constitution, municipalities have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law.

Municipalities are authorized by general law to provide water and sewer utility services.⁴ A recent informal survey of municipalities in Florida indicates that 254 municipalities provide water services and 222 municipalities provide wastewater service.⁵

¹ FLA. CONST. art. I, s. 24(c).

² s. 119.15, F.S.

³ s. 119.15(3), F.S.

⁴ Pursuant to s. 180.06, F.S., a municipality may "provide water and alternative water supplies;" "provide for the collection and disposal of sewage, including wastewater reuse, and other liquid wastes;" and "construct reservoirs, sewerage

Public power utilities in the state are composed of 34 municipally-owned electric utilities⁶ and serve approximately 15 percent of the state's population (3.0 million consumers).⁷ Collectively, they are the third largest source of power in the state.⁸

The Florida Municipal Electric Association reports that, "Each month, the Orlando Utilities Commission sees about 2 million 'hits' from foreign countries, mostly from the Middle East and Asia. These 'hits' are described as an attempt to connect to any resource on the utility's cyber network."⁹ The chief information officer for the Orlando Utilities Commission states that, "Attacks are daily, they are unrelenting and they are evolving... [There are] a bunch of rogue nations that are attacking our system on a daily basis in what used to be in the neighborhood of 30,000 probes into our firewalls and now has gone into the millions."¹⁰

Recent events have illuminated the threat to the electric power grid. For example:

- In December 2015, cyber hackers remotely attacked the power grid in western Ukraine and caused a blackout that left over 80,000 customers without power for six hours.¹¹
- In October 2015, CNN Money reported that ISIS hackers have been attempting to penetrate the U.S. energy grid through cyberattacks to take down parts of the country's energy supply.¹²
- Also in October 2015, Iranian attackers hacked into a University of California housing system and from there, opened a pathway into the utility networks that run into the U.S. power grid. The hackers stole passwords and engineering drawings of dozens of power plants that were so detailed that, had the attackers been more skilled, could have been used to knock out electricity flowing to millions of homes.¹³

Effects of Proposed Changes

The bill exempts the following from s. 119.07(1), F.S., and article I, section 24(a) of the Florida Constitution:

- Information related to the security of a utility agency's technology, processes, and practices designed to protect data and information technology resources from attack, damage, or unauthorized access which, if disclosed, would facilitate the alteration, disclosure, or destruction of data or information technology resources.
- Security information related to a utility agency's existing or proposed information or industrial control technology systems or assets, whether physical or virtual, which, if disclosed, would affect:
 - Security,

systems, trunk sewers, intercepting sewers, pumping stations, wells, siphons, intakes, pipelines, distribution systems, purification works, collection systems, treatment and disposal works" to accomplish these purposes.

⁵ Florida House of Representatives Staff Analysis of HB 813, p. 3 (Mar. 18, 2014).

⁶ Florida Public Service Commission, *Facts & Figures of the Florida Utility Industry*, p. 1 (Mar. 2015)

⁷ Florida Municipal Electric Association, *Who is FMEA?*, <http://publicpower.com/who-is-fmea/> (last visited Jan. 22, 2016).

⁸ *Id.*

⁹ Email from Joseph Salzverg, representative of the Florida Municipal Electric Association, RE: the public records exemption for cyber security systems of municipal utilities (Jan. 21, 2016).

¹⁰ Orlando Sentinel, *Orlando's electric utility fights cyber war*, <http://www.orlandosentinel.com/news/os-cyber-war-ouc-20140927-story.html> (last visited Jan. 23, 2016).

¹¹ CBCnews, *Cyberattack that crippled Ukrainian power grid was highly coordinated*, <http://www.cbc.ca/news/technology/ukraine-cyberattack-1.3398492> (last visited Jan. 23, 2016).

¹² CNN Money, *ISIS is attacking the U.S. energy grid (and failing)*, <http://money.cnn.com/2015/10/15/technology/isis-energy-grid/index.html> (last accessed Jan. 23, 2016).

¹³ The Journal, *Investigation finds U.S. power grid vulnerable to foreign hacks*, http://journal-news.net/page/content_detail/id/648485/Investigation-finds-US-power-grid-vulnerable-to-foreign-hacks.html?nav=5006 (last visited Jan. 23, 2016).

- Economic security,
- Public health or safety, or
- Any combination thereof.
- Security systems and information that would disclose the identity of security firms used by a utility agency to secure and store data or provide any information technology to the utility agency.

The bill provides that the exemption applies to such information obtained before, on, or after the effective date of this exemption.

The bill provides a statement of public necessity which restates the information listed in the above bullets. It provides Legislative findings that the public and private harm in disclosing the information made exempt by this act outweighs any public benefit derived from disclosure of such information, given the increased interconnection among utility agencies and between utility agencies and other sectors of the economy leading to the risk of cyberattacks.

Critical infrastructure for utility agencies is vital to personal safety, economic growth, and national security. The release of sensitive information relating to the administration of a utility agency's information technology security measures could result in the identification of vulnerabilities that could result in a security breach or otherwise negatively impact personal safety, economic growth, and national security.

In accordance with s. 119.15, F.S, the exemption is subject to the Open Government Sunset Review Act and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

B. SECTION DIRECTORY:

Section 1. Amends s. 119.0713, F.S., relating to local government agency public records exemptions; providing a public records exemption for information related to the security of a utility agency's technology; providing for future legislative review and repeal of the exemption.

Section 2. Provides a statement of public necessity.

Section 3. Provides that the act shall take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

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, and 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 exempts certain "security information" that, if disclosed, would affect "security, economic security, public health or safety, or any combination of the above." This language could result in a broader interpretation than intended.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The First Amendment Foundation has expressed concern with a portion of the bill that creates a public records exemption for security systems and information that would disclose the identity of security firms used by a utility agency to secure and store data or provide any information technology to the utility agency.

The bill applies to security information held by local government utilities. As filed, the bill uses the term "utility agency" to describe these entities, but this term is not defined.

As noted under *Constitutional Issues*, the bill exempts certain security information that, if disclosed, would affect “security, economic security, public health or safety, or any combination of the above.” This language could result in a broader interpretation than intended.

The sponsor has filed an amendment to address the issues mentioned above.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 119.0713, F.S.; providing an exemption from public
 4 records requirements for information related to the
 5 security of a utility agency's technology; providing
 6 for future legislative review and repeal of the
 7 exemption; providing a statement of public necessity;
 8 providing an effective date.

9
 10 Be It Enacted by the Legislature of the State of Florida:

11
 12 Section 1. Subsection (5) is added to section 119.0713,
 13 Florida Statutes, to read:

14 119.0713 Local government agency exemptions from
 15 inspection or copying of public records.—

16 (5) (a) The following information is exempt from s.
 17 119.07(1) and s. 24(a), Art. I of the State Constitution:

18 1. Information related to the security of a utility
 19 agency's technology, processes, and practices designed to
 20 protect networks, computers, programs, and data from attack,
 21 damage, or unauthorized access which, if disclosed, would
 22 facilitate the alteration, disclosure, or destruction of data or
 23 information technology resources.

24 2. Security information related to a utility agency's
 25 existing or proposed information or industrial control
 26 technology systems or assets, whether physical or virtual,

27 which, if disclosed, would affect security, economic security,
 28 public health or safety, or any combination thereof.

29 3. Security systems and information that would disclose
 30 the identity of security firms used by a utility agency to
 31 secure and store data or provide any information technology to
 32 the utility agency.

33 (b) This exemption applies to such information obtained
 34 before, on, or after the effective date of this exemption.

35 (c) This subsection is subject to the Open Government
 36 Sunset Review Act in accordance with s. 119.15 and shall stand
 37 repealed on October 2, 2021, unless reviewed and saved from
 38 repeal through reenactment by the Legislature.

39 Section 2. (1) The Legislature finds that it is a public
 40 necessity that the following information relating to a utility
 41 agency subject to chapter 119, Florida Statutes, be exempt from
 42 public records requirements:

43 (a) Information relating to the security of the utility
 44 agency's technologies, processes, and practices designed to
 45 protect networks, computers, programs, and data from attack,
 46 damage, or unauthorized access which, if disclosed, would
 47 facilitate the alteration, disclosure, or destruction of data or
 48 information technology resources.

49 (b) Security information, whether in physical or virtual
 50 form, relating to the utility agency's existing or proposed
 51 information technology systems or industrial control systems
 52 which, if disclosed, would affect security, economic security,

53 public health or safety, or any combination thereof.

54 (c) Information that would disclose the identity of
 55 security firms used by a utility agency to secure and store data
 56 or provide information technology services.

57 (2) The cybersecurity of utility agencies has grown in
 58 importance as utilities have moved toward a more connected and
 59 integrated infrastructure. As more utility agency systems become
 60 interconnected with each other and with other sectors of the
 61 economy, the risk of cyberattacks continues to grow. Critical
 62 infrastructure for utility agencies is vital to personal safety,
 63 economic growth, and national security. The release of sensitive
 64 information relating to the administration of a utility agency's
 65 information technology security measures could result in the
 66 identification of vulnerabilities that could result in a
 67 security breach or otherwise negatively impact personal safety,
 68 economic growth, and national security. As a result, the
 69 Legislature finds that the public and private harm in disclosing
 70 the information made exempt by this act outweighs any public
 71 benefit derived from disclosure of such information. The
 72 protection of the information made exempt by this act will
 73 ensure that utility agencies have greater safeguards to protect
 74 against security threats and will bolster efforts to develop
 75 more resilient information technology systems.

76 Section 3. This act shall take effect upon becoming a law.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Energy & Utilities

2 Subcommittee

3 Representative Antone offered the following:

4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Subsection (15) is added to section 119.011,
8 Florida Statutes, to read:

9 (15) "Utility" means any person or entity of whatever form
10 that provides electricity, natural gas, telecommunications,
11 water, chilled water, reuse water, or wastewater.

12 Section 2. Subsection (5) is added to section 119.0713,
13 Florida Statutes, to read:

14 119.0713 Local government agency exemptions from inspection
15 or copying of public records.-



Amendment No. 1

16 (5) (a) The following information held by a utility owned
17 or operated by a unit of local government is exempt from s.
18 119.07(1) and s. 24(a), Art. I of the State Constitution:

19 1. Information related to the security of the technology,
20 processes, or practices of a utility owned or operated by a unit
21 of local government that are designed to protect the utility's
22 networks, computers, programs, and data from attack, damage, or
23 unauthorized access which, if disclosed, would facilitate the
24 alteration, disclosure, or destruction of such data or
25 information technology resources.

26 2. Information, whether in physical or virtual form,
27 related to the security of existing or proposed information
28 technology systems or industrial control technology systems of a
29 utility owned or operated by a unit of local government which,
30 if disclosed, would facilitate unauthorized access to, and
31 alteration or destruction of, such systems in a manner that
32 would adversely impact the safe and reliable operation of the
33 systems and the utility.

34 (b) This exemption applies to such information obtained
35 before, on, or after the effective date of this exemption.

36 (c) This subsection is subject to the Open Government
37 Sunset Review Act in accordance with s. 119.15 and shall stand
38 repealed on October 2, 2021, unless reviewed and saved from
39 repeal through reenactment by the Legislature.

40 Section 3. (1) The Legislature finds that, as utility
41 system infrastructure becomes more connected and integrated



Amendment No. 1

42 through information and communications technology, the exposure
43 to damage from attacks through these technologies continues to
44 grow. These attacks may result in the disruption of utility
45 services and damage to utility systems. Maintaining safe and
46 reliable utility systems is vital to protecting the public
47 health and safety and ensuring the economic well-being of the
48 state. Accordingly, many utilities have adopted technologies,
49 processes, and practices designed to secure data, information
50 technology systems, and industrial control technology systems.
51 Disclosure of sensitive information related to these security
52 measures could result in the identification of vulnerabilities
53 that allow a security breach that damages utility systems and
54 disrupts the safe and reliable operation of such systems,
55 adversely impacting the public health and safety and the
56 economic well-being of the state. Because of the interconnected
57 nature of utility systems, a security breach may also impact
58 national security concerns. As a result, the Legislature finds
59 that the public and private harm in disclosing the information
60 made exempt by this act outweighs any public benefit derived
61 from disclosure of such information. The protection of
62 information made exempt by this act will ensure that utilities
63 have greater safeguards to protect against security threats and
64 will bolster efforts to develop more resilient information
65 technology systems and industrial control technology systems.

66 (2) Therefore, the Legislature finds that it is a public
67 necessity that the following information relating to a utility



Amendment No. 1

68 owned or operated by a unit of local government be exempt from
69 public records requirements:

70 (a) Information related to the security of the technology,
71 processes, or practices of a utility owned or operated by a unit
72 of local government that are designed to protect the utility's
73 networks, computers, programs, and data from attack, damage, or
74 unauthorized access which, if disclosed, would facilitate the
75 alteration, disclosure, or destruction of such data or
76 information technology resources.

77 (b) Information, whether in physical or virtual form,
78 related to the security of existing or proposed information
79 technology systems or industrial control technology systems of a
80 utility owned or operated by a unit of local government which,
81 if disclosed, would facilitate unauthorized access to, and
82 alteration or destruction of, such systems in a manner that
83 would adversely impact the safe and reliable operation of the
84 systems and the utility.

85 Section 4. This act shall take effect upon becoming a law.
86
87

88 -----

89 **T I T L E A M E N D M E N T**

90 Remove everything before the enacting clause and insert:
91 An act relating to public records; amending s. 119.011, F.S.;
92 providing a definition; amending s. 119.0713, F.S.; providing an
93 exemption from public records requirements for information



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1025 (2016)

Amendment No. 1

94 related to the security of information technology systems or
95 industrial control technology systems of a utility owned or
96 operated by a unit of local government; providing for future
97 legislative review and repeal of the exemption; providing a
98 statement of public necessity; providing an effective date.