

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB EEG 23-01 OGSR/Nationwide Public Safety Broadband Network

SPONSOR(S): Ethics, Elections & Open Government Subcommittee

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Ethics, Elections & Open Government Subcommittee		Villa	Toliver

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record exemption and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

In 2012, Congress created the Nationwide Public Safety Broadband Network (FirstNet) overseen by a newly-created First Responder Network Authority (FirstNet Authority), an independent agency established within the U.S. Department of Commerce. FirstNet was one of the National Commission on Terrorist Attacks upon the United States (also known as the 9/11 Commission) recommendations to prevent the incidents of communication disruption that occurred between first responders during the 9/11 terrorist attacks. In 2017, the U.S. Department of Commerce announced that the FirstNet Authority had entered into a 25-year public-private partnership with AT&T to build the first nationwide wireless broadband network dedicated to America's first responders. Today, FirstNet is operational and delivers specialized features to first responders – such as priority access, preemption, more network capacity, and a resilient, hardened connection.

Current law provides a public record exemption for information held by an agency relating to FirstNet if release of such information would reveal:

- The design, development, construction, deployment, and operation of network facilities;
- Network coverage, including geographical maps indicating actual or proposed locations of network infrastructure or facilities;
- The features, functions, and capabilities of network infrastructure and facilities;
- The features, functions, and capabilities of network services provided to first responders, and other network users;
- The design, features, functions, and capabilities of network devices provided to first responders and other network users; or
- Security, including cybersecurity, of the design, construction, and operation of the network and associated services and products.

The bill saves from repeal the public record exemption, which will repeal on October 2, 2023, if this bill does not become law.

The bill does not appear to have a fiscal impact on state government or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.²

The Act 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:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect 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.
- Protect trade or business secrets.³

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.⁴ If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created, then a public necessity statement and a two-thirds vote for passage are not required.

Nationwide Public Safety Broadband Network

Following the 9/11 terrorist attacks, Congress created the National Commission on Terrorist Attacks upon the United States (9/11 Commission) and tasked that body with investigating and reporting to the President and Congress its findings, conclusions, and recommendations of corrective measures that can be taken to prevent acts of terrorism.⁵ One of the 9/11 Commission's recommendations to prevent the incidents of communication disruption that occurred between first responders during the terrorist attacks was to "support pending legislation which provides for the expedited and increased assignment of radio spectrum for public safety purposes."⁶ In 2012, Congress created the Nationwide Public Safety Broadband Network (FirstNet) overseen by a newly-created First Responder Network Authority (FirstNet Authority), an independent agency established within the U.S. Department of Commerce.⁷ In 2017, the U.S. Department of Commerce announced that the FirstNet Authority had entered into a 25-year public-private partnership with AT&T to "build the first nationwide wireless broadband network dedicated to America's first responders."⁸ Today, FirstNet is operational and delivers specialized

¹ Section 119.15, F.S.

² Section 119.15(3), F.S.

³ Section 119.15(6)(b), F.S.

⁴ Article I, s. 24(c), FLA. CONST.

⁵ Intelligence Authorization Act, Pub. Law No. 107-306 (2002).

⁶ 9/11 Commission, The 9/11 Commission Report 396-397 (2004), available at <https://govinfo.library.unt.edu/911/report/911Report.pdf> (last visited January 17, 2023).

⁷ Middle Class Tax Relief and Job Creation Act of 2012, Pub. Law No. 112-96 (2012).

⁸ FirstNet Partners with AT&T to Build \$46.5 Billion Wireless Broadband Network for America's First Responders, U.S. Department of Commerce, available at <https://2017-2021.commerce.gov/news/press-releases/2017/03/firstnet-partners-att-build-465-billion-wireless-broadband-network.html> (last visited January 17, 2023).

features to first responders – such as priority access, preemption, more network capacity, and a resilient, hardened connection.⁹

FirstNet’s enabling legislation requires each Governor to determine whether to:

- Participate in the deployment of FirstNet as proposed by the FirstNet Authority’s state plan; or
- Conduct its own deployment of a radio access network that is interoperable with FirstNet.¹⁰

All 50 states, five U.S. territories, and Washington, D.C., have opted to participate in FirstNet, meaning each has accepted the individual state plan proposed by the FirstNet Authority detailing how FirstNet will be deployed in their state/territory.¹¹ Today, FirstNet is operational and delivers specialized features to first responders that are not available to others on wireless networks today, such as priority access, preemption, more network capacity, and a resilient, hardened connection.¹²

Public Record Exemption under Review

In 2018, the Legislature created a public record exemption for specified information held by an agency¹³ relating to FirstNet. The information is kept confidential and exempt¹⁴ from public records requirements if release of the information would reveal any of the following:

- The design, development, construction, deployment, and operation of network facilities;
- Network coverage, including geographical maps indicating actual or proposed locations of network infrastructure or facilities;
- The features, functions, and capabilities of network infrastructure and facilities;
- The features, functions, and capabilities of network services provided to first responders,¹⁵ and other network users;
- The design, features, functions, and capabilities of network devices provided to first responders and other network users; or
- Security, including cybersecurity, of the design, construction, and operation of the network and associated services and products.¹⁶

⁹ FirstNet Authority, *Top 10 Frequently Asked Questions*,

<https://www.firstnet.gov/system/tdf/Top%2010%20FAQs%202022.pdf?file=1&type=node&id=679&force=0> (last visited January 9, 2023).

¹⁰ 47 U.S.C. s. 1442(e)(2).

¹¹ FirstNet Authority, *The Network*, <https://www.firstnet.gov/network> (last visited January 9, 2023).

¹² FirstNet Authority, *Top 10 Frequently Asked Questions*,

<https://www.firstnet.gov/system/tdf/Top%2010%20FAQs%202022.pdf?file=1&type=node&id=679&force=0> (last visited January 9, 2023).

¹³ “Agency” means any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency. Section 119.011(2), F.S.

¹⁴ There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Rivera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See Op. Att’y Gen. Fla. 04-09 (2004).

¹⁵ “First responder” means a law enforcement officer as defined in s. 943.10, F.S., a firefighter as defined in s. 633.102, F.S., or an emergency medical technician or paramedic as defined in s. 401.23, F.S., employed by state or local government. A volunteer law enforcement officer, firefighter, or emergency medical technician or paramedic engaged by the state or a local government is also considered a first responder of the state or local government. Section 112.1815(1), F.S.

¹⁶ Section 119.071(3)(d), F.S.

The 2018 public necessity statement¹⁷ for the exemption provides that:

[The exempt] information contains security information and proprietary business information of communications services providers. The disclosure of sensitive information relating to the Nationwide Public Safety Broadband Network could result in identification of vulnerabilities in such network and allow a security breach that could damage the network or disrupt the network's safe and reliable operation, adversely impacting the public health and safety of the state. Disclosure of such information would adversely affect the business interests and compromise the network security of such providers and their networks.¹⁸

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2023, unless reenacted by the Legislature.

During the 2022 interim, subcommittee staff sent questionnaires to Florida Sheriffs and Police departments. The respondents indicated they had not had any issues interpreting or applying the exemption and that they were unaware of the existence of any litigation concerning the exemption. Further, the respondents indicated they had not received any complaints concerning the exemption. As such, the vast majority of respondents recommended the exemption be reenacted as is.¹⁹

Effect of the Bill

The bill removes the scheduled repeal date of the public record exemption, thereby maintaining the public record exemption for certain information relating to FirstNet that is held by an agency.

B. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., relating to general exemptions from inspection or copying of public records.

Section 2 provides an effective date of October 1, 2023.

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.

¹⁷ Article I, s. 24(c), FLA. CONST., requires each public record exemption state with specificity the public necessity justifying the exemption.

¹⁸ Chapter 2018-60, L.O.F.

¹⁹ Open Government Sunset Review Questionnaire, Nationwide Public Safety Broadband Network, responses on file with the Ethics, Elections & Open Government Subcommittee.

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 take action requiring the expenditure of funds; reduce the authority that counties and municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties and municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not require rulemaking nor confer or alter an agency's rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Not applicable.