

**STORAGE NAME:** h1701s1.sa.doc  
**DATE:** April 23, 2001

**HOUSE OF REPRESENTATIVES  
AS REVISED BY THE COMMITTEE ON  
STATE ADMINISTRATION  
ANALYSIS**

**BILL #:** CS/HB 1701  
**RELATING TO:** Public Records/County/Municipal Code  
**SPONSOR(S):** Committee on State Administration and Representative Smith  
**TIED BILL(S):** None

**ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:**

- (1) LOCAL GOVERNMENT & VETERANS AFFAIRS (SGC) YEAS 9 NAYS 0
- (2) STATE ADMINISTRATION YEAS 5 NAYS 0
- (3) COUNCIL FOR SMARTER GOVERNMENT
- (4)
- (5)

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I. SUMMARY:

Current law exempts from public disclosure certain personal identifying information associated with various classes of public employees. It provides for the exemption of information that would reveal the home address, telephone number, or photograph of active or former law enforcement personnel, including correctional and correctional probation officers, certain personnel of the Department of Children and Family Services and the Department of Revenue, judges, and state attorneys. Certain identifying information about the spouses and children of these personnel are also exempt. The public records exemption minimizes the possibility that inmates, offenders, or other individuals will be able to threaten, intimidate, harass, or cause physical harm or other injury to these persons or their family members.

At present, only the home addresses and home telephone numbers of county and municipal code inspectors and code enforcement officers are confidential and exempt from public disclosure.

This committee substitute removes from current law, the public records exemption for home addresses and home telephone numbers of county and municipal code inspectors and code enforcement officers.

This committee substitute creates a public records exemption for "home addresses, telephone numbers, social security numbers, and photographs" of a current or former code enforcement officer.<sup>1</sup> It also creates an exemption for the "names, home addresses, telephone numbers, social security numbers, photographs, and places of employment" of the spouse and child of a current or former code enforcement officer. In addition, the names and locations of schools and day care facilities attended by such code enforcement officer's child is exempt from public disclosure.

This exemption is subject to the Open Government Sunset Review Act of 1995, and will stand repealed on October 2, 2006, unless reviewed and saved from repeal through reenactment by the Legislature.

This committee substitute does not appear to have a fiscal impact on state or local governments.

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<sup>1</sup> The newly created exemption only applies to code enforcement officers instead of code enforcement officers and inspectors, because the term inspector is no longer used. The term "code enforcement officer" is all encompassing.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |                              |                             |   |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

**Public Records Law**

Florida Constitution

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.

Florida Statutes

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:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. 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
3. 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.

### Differences Between Confidential and Exempt

According to the Government-In-The-Sunshine Manual, 2000 Edition, there is a difference between those records the Legislature has determined to be exempt from the mandatory public inspection requirements and those which are exempt and confidential. If the Legislature makes certain information confidential, such information may not be released to anyone other than to the persons or entities designated in the statute. In contrast, if records are not made confidential but are simply exempt from the mandatory disclosure requirements, the agency is not prohibited from disclosing the documents in all circumstances. The agency may choose to release the information for legitimate purposes.<sup>2</sup>

### Personal Identifying Information of Public Employees

Section 119.07(3)(i), F.S., exempts certain personal identifying information associated with various classes of public employees from public disclosure. It provides for the exemption of information that would reveal the home address, telephone number, or photograph of an active or former law enforcement employee, including a correctional and a correctional probation officer, an employee of the Department of Children and Family Services or the Department of Revenue, a judge, or a state attorney. Certain identifying information about the spouses and children of such employees, judges, and state attorneys are also exempt from public disclosure. The public records exemption minimizes the possibility that inmates, offenders, or other individuals will be able to threaten, intimidate, harass, or cause physical harm or other injury to these persons or their family members.

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<sup>2</sup> Government-In-The-Sunshine Manual, 2000 edition, pages 112-114.

Currently, s. 119.07(3)(i)1., F.S., provides that the home address and home telephone number of a county or municipal code inspector or a code enforcement officer is confidential and exempt from public disclosure.

**C. EFFECT OF PROPOSED CHANGES:**

This committee substitute removes from current law, the public records exemption for home addresses and home telephone numbers of county and municipal code inspectors and code enforcement officers.

This committee substitute creates a public records exemption for “home addresses, telephone numbers, social security numbers, and photographs” of a current or former code enforcement officer. It also creates an exemption for the “names, home addresses, telephone numbers, social security numbers, photographs, and places of employment” of the spouse and child of a current or former code enforcement officer. In addition, the names and locations of schools and day care facilities attended by such code enforcement officer’s child is exempt from public disclosure.

The newly created exemption only applies to code enforcement officers instead of code enforcement officers and inspectors, because the term inspector is no longer used.<sup>3</sup> The term “code enforcement officer” is all encompassing.<sup>4</sup>

The stated public purpose of this public records exemption is to protect such code enforcement officer and his or her family from threats, acts of violence, and unwarranted risk of code violators.

This exemption is subject to the Open Government Sunset Review Act of 1995, and will stand repealed on October 2, 2006, unless reviewed and saved from repeal through reenactment by the Legislature.

**D. SECTION-BY-SECTION ANALYSIS:**

See “Effect of Proposed Changes.”

**III. 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.

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<sup>3</sup> Summer Pfeiffer, Legislative Advocate, Florida League of Cities, Inc., telephone conversation on April 25, 2001.

<sup>4</sup> *Id.*; Section 162.21(1), F.S., defines “code enforcement officer” as “any designated employee or agent of a county or municipality who se duty is to enforce codes and ordinances enacted by the county or municipality.”

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This committee substitute does not require counties or municipalities to expend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This committee substitute does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This committee substitute does not reduce the percentage of state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 23, 2001, the Committee on State Administration adopted a strike-all amendment to HB 1701. The bill, as amended, was reported out favorably as a committee substitute.

The bill had placed the public records exemption in subparagraph 1. of s. 119.07(3)(i), F.S. This committee substitute creates a separate subparagraph for the public records exemption. By removing the exemption from subparagraph one and creating a separate subparagraph for the exemption, as a result the existing exemptions in subparagraph one are no longer made subject to review and repeal in

**STORAGE NAME:** h1701s1.sa.doc

**DATE:** April 23, 2001

**PAGE:** 6

five years. In addition, the committee substitute applies the exemption to “current or former code enforcement officers,” whereas the bill applies the exemption to “code enforcement officers.”

VII. SIGNATURES:

COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

Prepared by:

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Joan Highsmith-Smith

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