

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.)

Prepared By: Judiciary Committee

BILL: SPB 7034

INTRODUCER: For consideration by Judiciary Committee

SUBJECT: Open Government Sunset Review/SS and Financial Account Numbers

DATE: February 5, 2007

REVISED: _____

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

I. Summary:

Senate Proposed Bill 7034 emanates from Senate Interim Project Report 2007-211 of the Committee on Judiciary.¹ The bill reenacts the public records exemption under s. 119.071(5)(a), F.S., relating to social security numbers (SSNs) and the public records exemption under s. 119.071(5)(b), F.S., relating to bank account, credit, debit, and charge numbers (financial account numbers).

The bill accomplishes the following:

- combines duplicate provisions related to exceptions for the exemption for social security and financial account numbers;
- revises the provision requiring that the county recorder use his or her best efforts to redact SSNs or financial account numbers to clarify that such best efforts are required as of January 1, 2008;
- deletes the provisions that provide for the repeal of the exemptions under review;
- merges a redundant exemption for credit card numbers and conforms the definition of “agency” for the merger; and
- deletes the public records exemption for credit card numbers, under s. 215.322, F.S., that is redundant with the exemption for financial account numbers under s. 119.071(5)(b), F.S.

¹ See Comm. on Judiciary, Fla. Senate, *Open Government Sunset Review of Section 119.071(5)(a) and (b), F.S., Relating to Social Security Numbers and Financial Account Numbers Held by Court Clerks and County Recordors* (Interim Project Report 2007-211) (Nov. 2006).

This bill substantially amends section 119.071(5), Florida Statutes, reenacts section 119.071(5)(a) and (b), Florida Statutes, and deletes section 215.322(6), Florida Statutes.

II. Present Situation:

Public Records

Florida has a long history of providing public access to government records. The Legislature enacted the first public records law in 1892.² The Florida Supreme Court has noted that chapter 119, Florida Statutes, the Public Records Act, was enacted:

. . . to promote public awareness and knowledge of governmental actions in order to ensure that governmental officials and agencies remain accountable to the people.³

In 1992, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level applicable to all three branches of government.⁴ Article I, section 24(a) of the Florida Constitution provides that:

Every person has the right to inspect or copy any public record 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 . . .

Public records may be made exempt or confidential and exempt by law or made confidential by the State Constitution. Additionally, access to records may be limited by court rule in effect as of November 3, 1992. Section 119.011(11), F.S., defines *public records* very broadly to include “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, . . . made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

Only the Legislature is authorized to create new exemptions to open government requirements.⁵ Exemptions must be created by general law, and such law must specifically state the public necessity justifying the exemption. Furthermore, the exemption must be no broader than necessary to accomplish the stated purpose of the law.⁶ A bill enacting an exemption⁷ may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.⁸ The Legislature must pass a bill creating an exemption by a two-thirds vote of both houses.

² Sections 1390, 1391, F.S. (Rev. 1892).

³ *Forsberg v. Hous. Auth. of Miami Beach*, 455 So. 2d 373, 378 (Fla. 1984).

⁴ Art. I, § 24, Fla. Const.

⁵ Art. I, § 24(c), Fla. Const.

⁶ *Mem'l Hosp.-W. Volusia v. News-Journal Corp.*, 729 So. 2d 373, 380 & 380 n.14 (Fla. 1999); *Halifax Hosp. Med. Ctr v. News-Journal Corp.*, 724 So. 2d 567, 569 (Fla. 1999).

⁷ Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

⁸ Art. I, § 24(c), Fla. Const.

There is a difference between records that the Legislature has made *exempt* from public inspection and those that are *confidential and exempt*.⁹ If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.¹⁰ If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.¹¹

In *Ragsdale v. State*,¹² the Florida Supreme Court held that the applicability of a particular exemption is determined by the document being withheld, not by the identity of the agency possessing the record. Quoting from *City of Riviera Beach v. Barfield*,¹³ a case in which documents were given from one agency to another during an active criminal investigation, the *Ragsdale* court refuted the proposition that inter-agency transfer of a document nullifies the exempt status of a record:

“We conclude that when a criminal justice agency transfers protected information to another criminal justice agency, the information retains its exempt status. We believe that such a conclusion fosters the underlying purpose of section 119.07(3)(d), which is to prevent premature *public* disclosure of criminal investigative information since disclosure could impede an ongoing investigation or allow a suspect to avoid apprehension or escape detection. In determining whether or not to compel disclosure of active criminal investigative or intelligence information, *the primary focus must be on the statutory classification of the information sought rather than upon in whose hands the information rests*. Had the legislature intended the exemption for active criminal investigative information to evaporate upon the sharing of that information with another criminal justice agency, it would have expressly provided so in the statute.” Although the information sought in this case is not information currently being used in an active criminal investigation, the rationale is the same; that is, that the focus in determining whether a document has lost its status as a public record must be on the policy behind the exemption and not on the simple fact that the information has changed agency hands. Thus, if the State has access to information that is exempt from public records disclosure due to confidentiality or other public policy concerns, that information does not lose its exempt status simply because it was provided to the State during the course of its criminal investigation.¹⁴

Open Government Sunset Review Act

The Open Government Sunset Review Act provides for the systematic review of an exemption in the fifth year after its enactment.¹⁵ The act states that an exemption may be created, revised, or maintained only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves. An identifiable public purpose is served if the

⁹ *WFTV, Inc., v. Sch. Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁰ *Id.*; see also 90-50 Fla. Op. Att’y Gen. 2 (1990).

¹¹ *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹² 720 So. 2d 203, 205 (Fla. 1998).

¹³ 642 So. 2d 1135, 1137 (Fla. 4th DCA 1994).

¹⁴ *Ragsdale*, 720 So. 2d at 206 (quoting *City of Riviera Beach*, 642 So. 2d at 1137).

¹⁵ Section 119.15, F.S.

exemption meets one of three specified criteria and if 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. An identifiable public purpose is served if the exemption:

- [a]llows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- [p]rotects information of a sensitive personal nature concerning individuals, the release of which ... would be defamatory ... or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize [their] safety ...; or
- [p]rotects information of a confidential nature concerning entities, including ... a formula, pattern, device, ... which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which ... would injure the affected entity in the marketplace.¹⁶

Social Security and Financial Account Numbers in Official Records or Court Files

Section 119.071(5)(a) and (b), F.S., prohibits the public disclosure of social security numbers (SSNs) and financial account numbers held by an agency. Section 119.071(5)(a)4., F.S., provides that SSNs “may be disclosed to another governmental entity or its agents, employees, or contractors if disclosure is necessary for the receiving entity to perform its duties and responsibilities.” The receiving entity is required to maintain the confidential and exempt status of the numbers. The social security number exemption is a gap filler because it does not supersede any other applicable public records exemption.¹⁷

Additionally, the exemptions contain provisions and exceptions specific to SSNs and financial account numbers in official records or court files. A provision related to official records places the burden of complying with the requirement that SSNs or financial account numbers are only included if required by law on the person preparing or filing the document to be recorded.

An agency holding SSNs or financial account numbers is currently required to maintain the exempt or confidential status of such numbers. In contrast, until January 1, 2008, if such numbers are held in official records or court files, they may be inspected or copied by the public unless redaction was requested. As to court files, redaction of SSNs or financial account numbers is required only if requested for a specified record by the holder of such a number or the holder’s legal representative. As to official records, redaction of such numbers is required only if requested for a specific record by the owner of such number or the owner’s legal representative and only where such record is publicly available on an Internet website. As of January 1, 2008, the exempt or confidential status of SSNs and financial account numbers in official records or court files must be maintained without any person having to request redaction.

¹⁶ Section 119.15(6)(b), F.S.

¹⁷ Section 119.071(5)(a)10., F.S.

Senate Interim Project Report 2007-211

Staff of the Committee on Judiciary reviewed the exemptions in s. 119.071(5)(a) and (5)(b), F.S., relating to SSNs and financial account numbers held by clerks of the circuit court and county recorders, under the criteria of the Open Government Sunset Review Act.¹⁸ Based on its review of the exemptions, staff recommended that the exemptions contained in s. 119.071(5)(a) and (b), F.S., be reenacted. Staff makes the following recommendations related to the findings of the review:

- Section 119.071(5)(a)7.e., F.S., should be combined with s. 119.071(5)(a)7.a. and b., F.S., to eliminate duplicate provisions.
- The provision requiring that the county recorder use his or her best efforts to redact SSNs or financial account numbers should be clarified to provide that such best efforts are required as of January 1, 2008.
- The public records exemption for credit card numbers, under s. 215.322, F.S., which is redundant with an exemption under s. 119.071(5)(b), F.S., should be deleted.

III. Effect of Proposed Changes:

Senate Proposed Bill 7034 reenacts the public records exemptions for social security numbers and bank account, debit, charge, and credit card numbers (financial account numbers), under s. 119.071(5)(a) and (b), F.S.

Additionally, the bill revises and clarifies several provisions related to the exemptions and merges a duplicate exemption for credit card numbers. Most of the provisions relating to the exceptions to the exemption for social security and financial account numbers are duplicated between s. 119.071(5)(a)7.a. and b., F.S., and s. 119.071(5)(a)7.e., F.S. The bill adds the unique provisions of s. 119.071(5)(a)7.e., F.S., to s. 119.071(5)(a)7.a. and 7.b., F.S., and deletes s. 119.071(5)(a)7.e., F.S. The provision under s. 119.071(5)(a), F.S., requiring that the county recorder use his or her best efforts to redact SSNs or financial account numbers is clarified to provide that such best efforts are required as of January 1, 2008. For the purposes of the exemption for financial account numbers, under s. 119.071(5)(b), F.S., the definition of “agency” is amended to include a unit of local government to facilitate the merger of the redundant exemption for credit card numbers under s. 215.322, F.S. Finally, the bill deletes the redundant public records exemption for credit card numbers under s. 215.322, F.S.

The bill, which stems from an interim project of the Senate Committee on Judiciary, has an effective date of October 1, 2007, one day before the currently scheduled expiration of the relevant statute.¹⁹ The bill saves the exemptions from repeal.

¹⁸ See Comm. on Governmental Operations, Fla. Senate, *Open Government Sunset Review of Section 119.071(5)(a) and (b), F.S., Relating to Social Security Numbers and Financial Account Numbers Held by Agencies* (Interim Project Report 2007-209) (Oct. 2006), for a review of the application of the exemptions by agencies and for more background details on Florida public records law.

¹⁹ See s. 119.071(5)(a)11. and (b), F.S.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

In accordance with a review pursuant to the Open Government Sunset Review Act, this bill amends s. 119.071(5)(a) and (b), F.S., and preserves the public records exemptions in that section. The amendments do not expand the exemptions. The bill complies with the requirements of article I, section 24 of the Florida Constitution.

C. Trust Funds Restrictions:

None.

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:

The interim project from which Senate Proposed Bill 7034 stems also recommends related revisions to the Public Records Act as specified in Senate Proposed Bill 7036. The effective date of Senate Proposed Bill 7036 is contingent upon Senate Proposed Bill 7034 or similar legislation becoming a law.

VIII. Summary of Amendments:

None.

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