

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Judiciary Committee

BILL: SPB 7026

INTRODUCER: For consideration by the Judiciary Committee

SUBJECT: Open Government Sunset Review Act

DATE: February 3, 2009

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Maclure		Pre-meeting
2.				
3.				
4.				
5.				
6.				

I. Summary:

This bill is the result of the Judiciary Committee’s Open Government Sunset Review of the public-records exemptions for specified personal information relating to current or former U.S. attorneys and assistant U.S. attorneys and current or former federal judges and magistrates found in s. 119.071(4)(d) 3. and 4., F.S. The exemptions will sunset on October 2, 2009, unless saved from repeal through reenactment by the Legislature.

The bill reenacts the exemptions and makes amendments to s. 119.071, F.S., that include:

- relocating, revising, and combining the public-records exemptions provided for identification and location information concerning federal attorneys, judges, and magistrates;
- defining the term “identification and location information”;
- eliminating social security numbers from the scope of information covered by the combined public-records exemption;
- requiring a federal attorney, judge, or magistrate to provide a written statement that efforts have been made to protect the information from disclosure through other means; and
- providing for future legislative review and repeal of the exemption.

This bill substantially amends section 119.071, Florida Statutes.

II. Present Situation:

Florida Public Records Law

Florida has a long history of providing public access to government records. The Legislature enacted the first public records law in 1892.¹ In 1992, Floridians adopted an amendment, article I, section 24, to the State Constitution that raised the statutory right of access to public records to a constitutional level.

The Public Records Act² specifies conditions under which public access must be provided to records of the executive branch and other agencies. Unless specifically exempted, all agency³ records are available for public inspection. Section 119.011(12), F.S., defines *public record* very broadly to include “all documents, . . . tapes, photographs, films, sounds recordings, . . . made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Unless made exempt, all such materials are open for public inspection.⁴

Only the Legislature is authorized to create exemptions to open government requirements. Exemptions must be created by general law, and the law must specifically state the public necessity justifying the exemption.⁵ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.⁶ A bill enacting an exemption or substantially amending an existing exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.⁷

Open Government Sunset Review Act

The Open Government Sunset Review Act⁸ provides for the systematic review of an exemption from the Public Records Act in the fifth year after its enactment. 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.⁹ An identifiable public purpose is served if the 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.¹⁰ An exemption meets the statutory criteria if it:

¹ Sections 1390, 1391, F.S. (Rev. 1892).

² Chapter 119, F.S.

³ Section 119.011(2), F.S., defines *agency* as “any state, county, . . . or municipal officer, department, . . . or other separate unit of government created or established by law . . . and any other public or private agency, person, . . . acting on behalf of any public agency.”

⁴ *Tribune Co. v. Cannella*, 458 So. 2d 1075, 1077 (Fla. 1984).

⁵ Art. I, § 24(c), Fla. Const.

⁶ *Id.*

⁷ *Id.*

⁸ Section 119.15, F.S.

⁹ Section 119.15(6)(b), F.S.

¹⁰ *Id.*

- 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 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 the safety of such individuals; or
- 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 ... would injure the affected entity in the marketplace.¹¹

The act also requires the Legislature to consider six questions that go to the scope, public purpose, and necessity of the exemption.¹²

Public-Records Exemptions for Federal Justice Officials

In 2004, the Legislature amended s. 119.071, F.S., to create public-records exemptions for information relating to current or former U.S. attorneys and assistant attorneys, current or former federal judges and magistrates, and their spouses and children. The information covered by the public-records exemptions includes:

- The home addresses, telephone numbers, social security numbers, and photographs of these officials;
- The home addresses, telephone numbers, social security numbers, photographs, and places of employment of their spouses and children; and
- The names and locations of schools and day care facilities attended by their children.¹³

The statement of public necessity for making this information exempt was based on the Legislature's finding that U.S. attorneys, federal judges, and federal magistrates:

interact with accused and convicted criminals every day of their careers. The capacity in which they deal with the accused and the convicted does not create good will among the accused, the convicted, their associates, or their families....Further, their duties make their spouses and children potential targets for acts of revenge....Accordingly, it is a public necessity that identifying and personal information be made exempt.¹⁴

The U.S. attorneys, judges and magistrates must make a request to the custodial agency to keep the information exempt. Some state agencies have forms online or available upon request that allow authorized government employees listed under s. 119.071, F.S., to request the exemption. The forms generally request personal data, the record the person wishes to be exempt, and an

¹¹ *Id.*

¹² Section 119.15(6)(a), F.S.

¹³ Section 119.071(4)(d)3. and 4., F.S.

¹⁴ Section 2, ch. 2004-95, L.O.F.

attestation of identity or notarized signature of the government employee making the request. The Department of Highway Safety and Motor Vehicles (DHSMV) requires a form or a request on letterhead (which can include requests on behalf of spouses and children) asking that driver's license information not be released under the list of exceptions found in s. 119.0712(2), F.S. This request also automatically blocks driver registration information from being released.¹⁵

The public-records exemptions for federal attorneys, judges, and magistrates expires on October 2, 2009, unless saved from repeal by the Legislature after review under the Open Government Sunset Review Act in accordance with s. 119.15, F.S.

Committee on Judiciary's Open Government Sunset Review

Based on an Open Government Sunset Review of this exemption, the professional staff of the Committee on Judiciary recommended in October 2008 that the Legislature retain the public-records exemptions established in subparagraphs 3. and 4. of s. 119.071(4)(d), F.S., which make specified personal information relating to current or former U.S. attorneys and assistant U.S. attorneys and current or former federal judges and magistrates exempt from disclosure.¹⁶ The recommendation was made in light of the information gathered by the staff that indicated that there is a public necessity to continue to protect these officials from potential threats from the accused, the convicted, and the mentally unstable.

Senate professional staff recommended that the Legislature consider amending this section to delete the comparable exemption for social security numbers if the existing general exemption for such numbers in s. 119.071(5), F.S., and its exception for commercial entities are deemed sufficient safeguards for these attorneys and judges. Section 119.071(5)(a)5., F.S. provides that social security numbers held by an agency are confidential and exempt from public records disclosure. An agency may not collect a person's social security number unless the agency states its purpose in writing and unless it is specifically authorized by law to do so or it is imperative for the performance of that agency's duties and responsibilities. The agency may only use the social security numbers for the purpose provided in the written statement.¹⁷

One exception to this exemption is when a commercial entity makes a verified written request to the agency for social security numbers. The commercial entity is permitted to only use the information in the performance of a commercial activity.¹⁸ Commercial activity is defined as the provision of a lawful product or service by a commercial entity. It Includes:

- accuracy verification of personal information received in the normal course of business;
- use for insurance purposes;
- use in identifying and preventing fraud;
- use in matching, verifying, or retrieving information; and

¹⁵ Interview with staff from the Department of Highway Safety and Motor Vehicles, August 5, 2008.

¹⁶ See Comm. on Judiciary, Fla. Senate, *Open Government Sunset Review of Section 119.071(4)(d)3. and 4., F.S., Personal Information Relating to U.S. Attorneys and Federal Judges* (Interim Project Report 2009-214) (October 2008), available at http://www.flsenate.gov/data/Publications/2009/Senate/reports/interim_reports/pdf/2009-214ju.pdf.

¹⁷ Section 119.071(5)(a)2., F.S.

¹⁸ Section 119.071(5)(a)7.b., F.S.

- use in research activities.¹⁹

This exception does not supersede any other applicable public records exemptions existing prior to May 13, 2002, or created thereafter, and therefore the social security number exemptions in s. 119.071(4)(d), F.S., for federal judges, federal magistrates, and U.S. attorneys are not affected.

Senate professional staff also recommended that the Legislature consider adding a provision that requires a written statement that the attorneys and judges have taken steps to protect their personal information from access through other sources available to the public. Comparable exemptions exist for state judicial officers and for guardians ad litem which require, as a condition to an agency granting a request to maintain information as exempt, that the judicial officer or guardian ad litem submit a written statement that reasonable efforts have been made to protect the information from being accessible through other means available to the public.

III. Effect of Proposed Changes:

This bill is the result of the Judiciary Committee's Open Government Sunset Review of the public-records exemptions for specified personal information relating to current or former U.S. attorneys, assistant U.S. attorneys, and current or former federal judges and magistrates found in s. 119.071(4)(d) 3. and 4., F.S.

The bill reenacts the exemptions and makes amendments to s. 119.071, F.S., that include:

- relocating, revising, and combining the public-records exemptions provided for identification and location information concerning federal attorneys, judges, and magistrates;
- defining the term "identification and location information";
- eliminating social security numbers from the scope of information covered by the combined public-records exemption;
- requiring a federal attorney, judge, or magistrate to provide a written statement that efforts have been made to protect the information from disclosure through other means; and
- providing for future legislative review and repeal of the exemption.

As noted in the Present Situation, there already exists a provision in s. 119.071(5), F.S., that requires that an agency may not collect a person's social security number unless the agency states its purpose in writing and unless it is specifically authorized by law to do so or it is imperative for the performance of the agency's duties and responsibilities. Agencies may not release social security numbers except to other agencies and to commercial entities under certain circumstances.

Additionally, comparable public-records exemptions exist for state judicial officers and for guardians ad litem which require, as a condition to an agency granting a request to maintain information as exempt, that the judicial officer or guardian ad litem submit a written statement

¹⁹ Section 119.071(5)(a)7.a.(I), F.S.

that reasonable efforts have been made to protect the information from being accessible through other means available to the public.

The bill provides an effective date of October 2, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill retains, revises, and combines existing public-records exemptions. This bill complies with the requirement of article I, section 24 of the Florida Constitution that the Legislature address public-records exemptions in legislation separate from substantive law changes.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

There may be costs incurred for maintaining the written requests by these officials for the public-records exemption and the written statements that reasonable efforts have been made to protect the information from being accessible through other means available to the public. However, the costs are not expected to be significant.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

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