

STORAGE NAME: h1701.sa.doc
DATE: April 19, 2001

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

BILL #: HB 1701
RELATING TO: Public Records/County/Municipal Code
SPONSOR(S): 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
 - (3) COUNCIL FOR SMARTER GOVERNMENT
 - (4)
 - (5)
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I. SUMMARY:

This bill provides exemptions from public records requirements for the social security numbers and photographs of county and municipal code enforcement officers and for information relating to the spouses and children of those officers.

This bill has no fiscal impact on state government. Local governments will incur costs associated with keeping the records exempt.

See "Other Comments" section for comments by the Committee on State Administration.

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 (public necessity statement) and must be no broader than necessary to accomplish its purpose.

Article I, s. 24, Florida Constitution, does not set forth any repeal or review requirements.

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.

The act also establishes a review and repeal process for exemptions to public records or meetings requirements. Under s. 119.15(3)(a), F.S., a law that enacts a new exemption or substantially amends an existing exemption must state that the exemption is repealed at the end of 5 years. Further, a law that enacts or substantially amends an exemption must state that the exemption must be reviewed by the Legislature before the scheduled repeal date. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. An exemption is not substantially amended if the amendment narrows the scope of the exemption.

In the fifth year after enactment of a new exemption or the substantial amendment of an existing exemption, the exemption is repealed on October 2nd of the 5th year, unless the Legislature acts to reenact the exemption.

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 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.

Currently, s. 119.07(3)(i)1., F.S., provides that home addresses and home telephone numbers of county and municipal code inspectors and code enforcement officers is confidential and exempt

from public disclosure. 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. (pp. 112-114)

C. EFFECT OF PROPOSED CHANGES:

This bill provides exemptions from public records requirements for the social security numbers and photographs of county and municipal code enforcement officers and for information relating to the spouses and children of those officers.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Section 119.07(3)(i)1., F.S., is amended to expand the scope of information concerning code enforcement officers that is exempt from public records requirements of s. 24(a), Art. I of the State Constitution. Currently, home addresses and home telephone numbers of code enforcement inspectors and officers are exempt and confidential. This bill continues to exempt this information and expands the scope of exempt information to include:

- Code enforcement officers' social security numbers, and photographs;
- The home addresses, telephone numbers, social security numbers, photographs and places of employment of the code enforcement officers' spouse and children; and
- The names and locations of schools and day care facilities attended by the code enforcement officers' children.

However, this section strikes the provision specifying that code enforcement officers' home addresses and home telephone numbers are "confidential and exempt," which provides a greater degree of protection.

Section 2. This section specifies that this new exemption is subject to the Open Government Sunset Review Act of 1995, and will be repealed on October 2, 2006, unless reviewed and re-enacted by the Legislature.

Section 3. This section provides a statement of public necessity, stating that the exemption is necessary because the current exemption has not completely shielded the identities of code enforcement officers, which has led to threats, acts of violence, and unwarranted risk to the officers and their families.

Section 4. An effective date of July 1, 2001, is provided.

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.

2. Expenditures:

Local governments will incur costs associated with keeping the records exempt.

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 bill 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 bill 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 bill 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:

Committee on State Administration

Section two of the bill is the standard form repeal language required by s. 119.15, F.S., the Open Government Sunset Review Act of 1995, with regard to newly created or expanded exemptions. Because of the location of the exemption in existing law, it will be difficult five years from now when the exemption must be certified for review, pursuant to the Open Government Sunset Review Act of 1995, to determine what language to review because the placement of the expanded exemption does not meet House standard-form drafting conventions. It is highly likely that the entire subparagraph, which includes preexisting exemptions, would be certified. Additionally, the exemption is not clear as to whether it includes just current code enforcement officers or current and former officers.

The sponsor of the bill has filed an amendment that addresses these issues.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

Prepared by:

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Joan Highsmith-Smith

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