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DATE: February 20, 2001

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE
COUNCIL FOR SMARTER GOVERNMENT
ANALYSIS**

BILL #: HB 383 (PCB SA 01-01)
RELATING TO: Public Records Exemption for Certain Information Obtained by Agencies
SPONSOR(S): Committee on State Administration and Representative(s) Brummer
TIED BILL(S): None

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

- (1) STATE ADMINISTRATION YEAS 5 NAYS 0
 - (2) COUNCIL FOR SMARTER GOVERNMENT YEAS 10 NAYS 0
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

The Open Government Sunset Review Act of 1995 provides that an exemption from the requirements of the public records or public meetings laws 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.

Further, the Open Government Sunset Review Act of 1995 sets forth a review process which requires that on October 2nd in the fifth year after enactment of a new exemption or "substantial amendment" of an existing exemption, the exemption is to repeal, unless the Legislature reenacts the exemption. By June, of the year before the repeal of an exemption, the Division of Statutory Revision of the Office of Legislative Services must certify, to the President of the Senate and the Speaker of the House of Representatives, the language that will repeal and the statutory citation for each exemption scheduled for repeal.

Section 119.07(3)(z), F.S., provides that bank account numbers or debit, charge, or credit card numbers given to an agency for payment of any fee or debt are confidential and exempt from public disclosure. This section was certified by the Division of Statutory Revision and will repeal on October 2, 2001, unless otherwise reenacted by the Legislature.

This bill reenacts s. 119.07(3)(z), F.S., because the release of the bank account numbers or debit, charge, or credit card numbers could allow others to utilize, without permission, someone else's account, which would jeopardize the financial safety of that individual.

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

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.

Section 119.15, F.S., sets forth a review process which requires that on October 2nd in the fifth year after enactment of a new exemption or "substantial amendment"¹ of an existing exemption, the exemption is to repeal, unless the Legislature reenacts the exemption. By June, of the year before the repeal of an exemption, the Division of Statutory Revision of the Office of Legislative Services must certify, to the President of the Senate and the Speaker of the House of Representatives, the language that will repeal and the statutory citation for each exemption scheduled for repeal. s. 119.15(3)(d), F.S.

Section 119.07(3)(z), F.S., was certified by the Division of Statutory Revision and will repeal on October 2, 2001, unless otherwise reenacted by the Legislature.

Analytical Framework

The Florida Constitution does not require the repeal, review, or reenactment of exemptions; the Open Government Sunset Review Act (s. 119.15, F.S.) does. However, the Open Government Sunset Review Act is a Florida statutory provision created by the Legislature. Accordingly, because one Legislature cannot bind another, the requirements of s. 119.15, F.S., do not have to be met.² Nonetheless, because the certified exemption as found in the Florida Statutes actually contains language that repeals the exemption as of October 2nd, 2001, that exemption *will* repeal unless the legislature reenacts the exemption.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 is required, as a result of the requirements of Article 1, s. 24, Florida Constitution. 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 (e.g., allowing another agency access to the exempt records), then a public necessity statement is not required.

¹ 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. s. 119.15(3)(b), F.S.

² The requirements of Article 1, s. 24(c), Florida Constitution, must, however, be met with regard to any exemption created on or after July 1, 1993. See *infra* [Florida Constitution](#).

³ Please note that the effective date of this bill is prior to the repeal date of October 2, 2001.

Article 1, s. 24, Florida Constitution, only requires a public necessity statement when creating an exemption, and also requires that the exemption be in a separate bill.⁴

Section 119.07(3)(z), F. S.

Section 119.07(3)(z), F.S., was enacted in 1995. The section states:

Bank account numbers or debit, charge, or credit card numbers given to an agency for the purpose of payment of any fee or debt owing are confidential and exempt from subsection (1) and s. 24(a), Art. I of the State Constitution. However, such numbers may be used by an agency, as needed, in any administrative or judicial proceeding, provided such numbers are kept confidential and exempt, unless otherwise ordered by the court. This paragraph is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, F.S., and shall stand repealed on October 2, 2001, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 119.011, F.S., defines the term agency for purposes of chapter 119, F.S., to mean

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, for the purposes of this chapter, 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.

In Interim Project Report 2001-041, Confidentiality of Bank Account, Charge, Debit or Credit Card Numbers, the Senate Committee on Governmental Oversight and Productivity determined that the use of electronic and other indirect payment options is necessary for the effective and efficient administration of modern governmental programs. Agencies that permit payment of fees or debts by debit or credit can reduce the time in which payment to the state is made, minimize paperwork through direct transfer of funds, as well as make payment more convenient for the person or entity who owes the fee or debt. Furthermore, as e-commerce increases, and as the State of Florida continues to computerize and link various state systems, the use of alternative payment options is expected to grow. Failure to protect financial account information would disrupt these programs. *Id.* at 4.

The agencies, surveyed by the Senate, indicated the exemption permits the efficient administration of a governmental program. Of the agencies surveyed, 41 percent of respondents obtain bank account numbers, 18.2 percent obtain debit account numbers, 20.5 percent obtain charge account numbers, and 41 percent obtain credit card numbers. When agencies were queried whether the exemption permits the efficient administration of a governmental program, 63.6 percent indicated that the exemption did. Fifty percent of responding agencies stated that the administration of a program would be significantly impaired without the exemption. Seventy-five percent of responding agencies recommended that the exemption be retained. *Id.*

Section 119.15(4)(b), F.S., of the Open Government Sunset Review Act, requires an exemption to be no broader than is necessary to meet its public purpose. The exemption under review is very limited in scope. Only bank account numbers or debit, charge, or credit card numbers given to an agency for the purpose of payment of a fee or debt are made confidential and exempt. Other information about the payer and the debt or fee being paid, remains open to the public. Release of the bank account numbers or debit, charge, or credit card numbers could allow others to utilize,

⁴ If various exemptions are reenacted that do not expand the exemption, then there is no requirement that the exemptions be in separate bills; provided however, that the bill containing the reenactments meets the single subject requirement.

without permission, someone else's account, which would jeopardize the financial safety of that individual.

Finally, under the Open Government Sunset Review Act, the Legislature must find that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. While state government has, in the past, operated without use of the payment options protected under the exemption, the state is increasingly utilizing modern means of payment transactions. As noted in the survey responses, increasing numbers of state agencies are relying upon alternative payment options for their operations and an exemption that protects financial account numbers must be in place for these programs to be viable. Alternative payment methods would be severely restricted if the financial information required to be collected were to be released to the public because, in the absence of a statutory exemption, financial information that is prepared or received by an agency typically is subject to open records requirements. See *Wallace v. Guzman*, 687 So.2d 1351 (Fla. 3d DCA 1997). As a result, it can be concluded that these payment options would be jeopardized without the continuation of the exemption. *Id.* at 5.

C. EFFECT OF PROPOSED CHANGES:

This bill amends s. 119.07(3)(z), F.S., to remove the sentence that requires its repeal. This bill, further, reenacts verbatim the public records exemption in s. 119.07(3)(z), F.S., which provides that bank account numbers or debit, charge, or credit card numbers given to an agency for payment of any fee or debt are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.

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.

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 bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that counties or municipalities 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 a 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:

None.

VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

Jennifer D. Krell, J.D.

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