

STORAGE NAME: h0127Ba.sec.doc

DATE: October 30, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
SELECT COMMITTEE ON SECURITY
ANALYSIS**

BILL #: HB 127-B

RELATING TO: Public Records/Law Enforcement/Cell Phones

SPONSOR(S): Representative(s) Gelber & others

TIED BILL(S):

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

- (1) SELECT COMMITTEE ON SECURITY YEAS 12 NAYS 0
 - (2)
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

This bill creates a specific public record exemption in Chapter 119.07(3), F.S., to clarify that the cellular telephone number of a law enforcement officer or former law enforcement officer is exempt from disclosure.

The bill contains a statement of public necessity for the exemption. The bill provides that the exemption would stand repealed on October 2, 2003, unless saved through reenactment.

The bill does not appear to have a fiscal impact.

The bill takes effect upon becoming law.

The committee adopted a strike-everything amendment at its October 29, 2001, meeting. That amendment is traveling with the bill. Please see section V. of this bill analysis for details.

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"/> |

B. PRESENT SITUATION:

Public Records Law

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.

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.

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.

Law enforcement officers. Section 119.07(3)(j)1., F.S., currently provides an exemption for the "...home addresses, *telephone numbers*, social security numbers, and photographs of active or former law enforcement personnel. . . ." As such, it could be argued that all telephone numbers (plural) of law enforcement officers are exempt. This exemption, however, does not explicitly state that cellular telephone numbers are exempt, nor does it limit that exemption to cellular telephone numbers used in the course of employment in the state.

C. EFFECT OF PROPOSED CHANGES:

The bill creates an exemption to public records requirements in s. 119.07(3), F.S. The bill creates a new paragraph (ee), which makes the cellular telephone numbers of law enforcement officers or former law enforcement officers used in the course of employment in Florida exempt.

As provided for in the Open Government Sunset Review Act of 1995, this exemption would stand repealed unless reviewed and saved from repeal through reenactment. However, the repeal would occur in 2 years, on October 2, 2003, instead of the statutorily required 5 years.

The bill includes a legislative statement of public necessity for the creation of this public record exemption.

The bill takes effect upon becoming law.

D. SECTION-BY-SECTION ANALYSIS:

Please see section II.c., above.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The 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:

The bill does not reduce the percentage of a state tax shared with counties or municipalities.

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The committee adopted without objection a strike-everything amendment at its October 29, 2001 meeting. That amendment is traveling with the bill. The substantive change made by the strike-everything amendment is to include the billing records of cellular telephone numbers used by active or former law enforcement officers in the exemption, and to update the public necessity statement and the bill title to reflect that inclusion.

VI. SIGNATURES:

COMMITTEE ON SELECT COMMITTEE ON SECURITY:

Prepared by:

Staff Director:

David M. Greenbaum

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