

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.)

BILL: CS/SB 378

SPONSOR: Comprehensive Planning, Local and Military Affairs and Senator Wise

SUBJECT: Public Records Exemption/ Publicly Owned Utilities

DATE: January 29, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cooper	Yeatman	CA	Favorable/CS
2.	_____	_____	GO	_____
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill exempts from public records requirements specified personal information held by publicly held water, wastewater, natural gas, electric, cable television, or telecommunications utilities, which information would identify a utility customer if released.

This bill amends s. 119.07 of the Florida Statutes.

II. Present Situation:

Constitutional Access to Public Records and Meetings

Florida has a long history of providing public access to the meetings and records of governmental and other public entities. The Florida Legislature enacted the first law affording access to public records in 1909. The Public Records Law, ch. 119, F.S., and the Public Meetings Law, s. 286.011, F.S., specify the conditions under which public access must be provided to governmental records and meetings of the executive branch and other governmental agencies.

In November 1992, the public affirmed its approval of Florida’s tradition of “government in the sunshine” by enacting a constitutional amendment to guarantee the practice. Article I, s. 24 of the State Constitution provides every person with 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. The section specifically includes the legislative, executive and judicial branches and each agency or department created under them. It also includes counties, municipalities, and special districts, as well as constitutional officers, boards, and commissioners or entities created pursuant to law or the State Constitution.

The term public records has been defined by the Legislature in s. 119.011(1), F.S., to include:

. . . all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of the official business by any agency.

This definition of *public records* has been interpreted by the Florida Supreme Court to include all materials made or received by an agency in connection with official business that are used to perpetuate, communicate or formalize knowledge. *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980). Unless these materials have been made exempt by the Legislature, they are open for public inspection, regardless of whether they are in final form. *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

The State Constitution permits exemptions to open government requirements and establishes the means by which these exemptions are to be established. Under Article I, s. 24(c) of the State Constitution, the Legislature may provide by general law for the exemption of records provided that: (1) the law creating the exemption states with specificity the public necessity justifying the exemption; and (2) the exemption is no broader than necessary to accomplish the stated purpose of the law. A law creating an exemption is permitted to contain only exemptions to public records or meetings requirements and must relate to one subject.

The 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:

- 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 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
- 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.

Public Utility Customer Records

Current law does not provide a public records exemption for a customer's personal identifying information held by a water, wastewater, natural gas, electric, cable television, or telecommunications utility owned by a public entity.

III. Effect of Proposed Changes:

Section 1 amends s. 119.07, F.S., to exempt from public records requirements of subsection (1) and s. 24(a), Art. I of the State Constitution, information held by a water, wastewater, natural gas, electric, cable television, or telecommunications utility which is owned or operated by a agency, which information would identify a customer of such utility if released. The exempt information includes the name, social security number, taxpayer identification number, address, telephone number, bank account number, debit, charge, or credit card numbers, or driver identification number of the customer. The exemption is to be applied retroactively. The exemption is subject to the Open Government Sunset Review Act of 1995, in accordance with s. 119.15, F.S., and is repealed on October 2, 2007, unless reviewed and reenacted by the Legislature.

Section 2 contains the statement of public necessity, as required by s. 24, Art. I of the State Constitution. The statement is as follows:

The Legislature finds that it is a public necessity that a customer's social security number; taxpayer identification number; bank account number; and debit, charge, and credit card numbers made exempt by this act be held exempt from public disclosure because such numbers are sensitive, personal information which if released creates the opportunity for identity theft and fraud. Additionally, the social security number is the only nationwide, unique numeric form of identification. Release of a customer's social security number is of concern due to the amount of information such number can provide on an individual. A social security number is often the link to an individual's personal records, whether such records are financial, educational, medical, or familial in nature. Furthermore, the Legislature finds that it is a public necessity that personal identifying information regarding a customer of such utility be held exempt because release of such identifying information creates a competitive disadvantage for an agency owned or operated utility. A private utility is not required by law to disclose any of its customer records to the public.

Section 3 provides that the CS takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

This bill creates a single exemption from public records requirements of s. 24(a), Art. I of the State Constitution. The bill contains a statement of public necessity.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Agencies will incur costs associated with keeping the records or information exempt.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.