

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1021 (PCB SA 03-03) Public Records Exemption/Housing Assistance Programs
SPONSOR(S): State Administration and Mack
TIED BILLS: None **IDEN./SIM. BILLS:** SB 290

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>State Administration</u>	<u>5 Y, 0 N</u>	<u>Williamson</u>	<u>Everhart</u>
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The Open Government Sunset Review Act of 1995 in essence requires the Legislature to review each public records and each public meetings exemption five years after enactment. If the Legislature does not reenact the exemption, it is automatically repealed on October 2nd of the fifth year after enactment.

This bill reenacts and narrows the public records exemption for certain information provided to housing assistance programs, which will repeal on October 2, 2003, if this bill does not become law.

Current law provides a public records exemption for medical history records, bank account numbers, credit card numbers, telephone numbers, and health or property insurance information furnished by an individual to any agency pursuant to federal, state, or local housing assistance programs. This bill narrows that exemption by providing that it only applies to an applicant for or a participant in such programs, instead of *any* individual providing information to an agency regarding such programs. It also narrows the exemption by no longer making telephone numbers of such applicants or participants confidential and exempt from public disclosure. This bill removes a duplicative public records exemption and designates a custodian of the confidential and exempt records and information.

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

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1021.sa.doc
DATE: March 3, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | 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. EFFECT OF PROPOSED CHANGES:

Background

There are numerous federal, state, and local programs designed to provide affordable housing to families. The federal agency primarily responsible for the oversight of housing initiatives is the Department of Housing and Urban Development. At the state level, the Department of Community Affairs (DCA) is designated as the agency responsible for Florida’s housing and urban development.

At the local level, the DCA authorizes units of local government to administer housing programs in their respective locales. Many local governments contract with private and not-for-profit entities to screen applicants and to determine individual eligibility for low-interest loans and other programs that promote home ownership. An application for such programs usually requires personal information regarding applicants, for example, medical history, insurance information, and financial account numbers.

Florida law provides a public records exemption for medical history records, bank account numbers, credit card numbers, telephone numbers, and health or property insurance information furnished by an individual to any agency pursuant to federal, state, or local housing assistance programs. The exemption for housing assistance programs also provides for an exception to the exemption for governmental agencies or their agents for the purpose of auditing federal, state, or local housing programs or housing assistance programs, and for an agency’s use in any administrative or judicial proceeding, provided the confidential and exempt¹ status is maintained.

Based upon a review, it appears that the exemption for housing assistance programs might have some deficiencies. For example, the exemption applies to such records, numbers, and information furnished to an “agency”. Not all agencies, as defined in chapter 119, F.S., provide housing assistance programs. Also, the exemption under review only protects bank account numbers and credit card numbers, whereas current law provides a general exemption for such numbers in addition to charge and debit card numbers.²

¹ There is a difference between information and records that the Legislature has made *exempt* from public disclosure versus those that have been made *confidential and exempt*. Information and records that are simply made exempt from public disclosure are still permitted to be disclosed under certain circumstances. See *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5thDCA 1991), and *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4thDCA 1994). If the Legislature makes certain information and records confidential and exempt from public disclosure, such information and records may not be released by the records custodian to anyone other than to the persons or entities specifically designated in the statutory exemption. See *Attorney General Opinion 85-62*, August 1, 1985.

² Section 119.07(3)(dd), F.S.

The exemption under review also makes telephone numbers of participants in housing assistance programs confidential and exempt from public disclosure. The basis for exempting telephone numbers is unclear as the original public necessity statement does not provide a basis for protecting such numbers. When staff of the Florida Housing Finance Corporation was questioned regarding the need for protecting such numbers, other than a generalized statement regarding the personal privacy of applicants, staff offered that some of its applicants are also victims of domestic violence and their telephone numbers should not be made available. However, current law already provides a public records exemption for the telephone numbers of victims of domestic violence.³ Furthermore, it should be noted that the exemption under review does not make the addresses of program applicants confidential and exempt, thus, the exemption would permit disclosure of the physical location of an applicant, but not permit discovery of less intrusive means of contact, a result that is somewhat incongruous.

Current law provides for future review and repeal of the public records exemption for certain information provided to housing assistance programs. Pursuant to the Open Government Sunset Review Act of 1995 (Act), s. 119.07(3)(bb), F.S., will repeal on October 2, 2003, unless otherwise reenacted by the Legislature.

Effect of Bill

Pursuant to the Act, the Florida House of Representatives Committee on State Administration sent an Open Government Sunset Review Questionnaire to DCA and the Florida Housing Finance Corporation and had meetings with Corporation staff, regarding the public records exemption for housing assistance programs. As a result of those questionnaire responses and meetings, this bill reenacts and narrows the exemption under review.

This bill narrows the exemption by providing that it only applies to an applicant for or a participant in such programs, whereas the original exemption applied to any individual providing information to an agency regarding such programs. It also narrows the exemption by no longer making telephone numbers of such applicants or participants confidential and exempt from public disclosure.

This bill removes the public records exemption for bank account numbers and credit cards numbers because it is redundant, and specifies that the custodian of the confidential and exempt information is the DCA, the Florida Housing Finance Corporation, a county, a municipality, or a local housing finance agency.

This bill expands the exception to the exemption by changing the reference from "governmental agencies" to "governmental entities". This change ensures that federal agencies will also have access to such confidential and exempt records and information for the purpose of auditing such programs.

Finally, this bill makes editorial changes, adds conforming language, removes superfluous language, and removes the sentence that requires the repeal of the exemption.

C. SECTION DIRECTORY:

Section 1. Amends s. 119.07(3)(bb), F.S., by reenacting and narrowing the public records exemption for housing assistance programs.

Section 2. Provides that the act shall take effect October 1, 2003.

³ See s. 119.07(3)(s)1., F.S.

II. 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.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: Not applicable. This bill does not affect municipal or county government.
2. Other: None.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Open Government Sunset Review Act of 1995

The Open Government Sunset Review Act of 1995⁴ provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or, 3. Protecting trade or business secrets.

Section 119.15, F.S., also sets forth a Legislative review process that requires newly created or expanded exemptions to include an automatic repeal of the exemption on October 2nd of the fifth year after enactment or substantial amendment, unless the Legislature reenacts the exemption.

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

⁴ Section 119.15, F.S.

requirements of Art. 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 confidential or exempt records), then a public necessity statement is not required.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.