

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: Not applicable.

B. EFFECT OF PROPOSED CHANGES:

Background

Current law provides a public records exemption for the home addresses, telephone numbers, social security numbers, and photographs of active or former law enforcement personnel.¹ An agency that is the custodian of such information is only required to maintain the exempt² status of the information if the officer or employing agency submits a written request to the custodial agency.

See Other Comments section.

Effect of Bill

This bill expands the current exemption to also include cellular telephone numbers, electronic pager numbers, and user-specific electronic identification numbers or access codes of such officers, and the identifying numbers contained in the billing records associated with those numbers and codes.

During an audit of a law enforcement agency, the Auditor General must report any apparent misuse of a government issued cellular telephone or electronic pager to the governing body responsible for the law enforcement agency. The Auditor General must maintain the exempt status of any information obtained during the course of the audit, unless the information obtained relates to such misuse.

This bill provides for future review and repeal and provides a statement of public necessity.

C. SECTION DIRECTORY:

Section 1. Amends s. 119.07(3), F.S., creating a public records exemption for an active or former law enforcement officer's cellular telephone number, pager number, and user-specific electronic identification number or access codes for any electronic communications device, and the identifying numbers contained in the billing records of such numbers and devices; requires the Auditor General to report any apparent misuse of a cellular telephone or electronic pager.

¹ Section 119.07(3)(i), F.S.

² 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.

Section 2. Provides a statement of public necessity.

Section 3. Provides an effective date of upon becoming a law.

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:

Public Records Law

Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature may, however, provide by general law for the exemption of records from the requirements of Article I, s. 24(a), Florida Constitution. 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.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act of 1995³ 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

³ Section 119.15, F.S.

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.

Other Comments

A similar exemption was offered during 2002 Special Session C pertaining to security issues and a similar proposed committee bill was drafted and offered during the 2002 Regular Session by the Security Committee. After much discussion, neither bill was brought up for a vote.

Opponents of this bill include the First Amendment Foundation, the Florida Press Association, and the Florida Society of Newspaper Editors. The First Amendment Foundation has argued that such information should not be made exempt from public disclosure because such personnel often place cellular telephone and pager numbers on their business cards. They then distribute their business cards to members of the public, thereby defeating the purpose of the exemption. The First Amendment Foundation also argued that by exempting the identifying numbers contained in the billing records of such numbers, the public no longer has the capability to verify that government cellular telephones and pagers are being used for appropriate purposes. The First Amendment Foundation has, however, suggested narrowing the exemption to only include "user-specific electronic identification numbers or access codes" for electronic communications devices.

NOTE: The amendment adopted by the Committee on Public Safety & Crime Prevention did not assuage the opponents' concerns. According to the President of the First Amendment Foundation, the amendment accomplished nothing in terms of oversight. Although the public will be able to trace how long an officer is on a government-owned cell phone, it will not be possible to tell if the use of the cell phone is appropriate.

Phone numbers of confidential informants are exempted by s. 119.07(3)(c), F.S., and information regarding undercover officers are exempted by s. 119.07(3)(e), F.S.

(c) Any information revealing the identity of a confidential informant or a confidential source is exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution.

(e) Any information revealing undercover personnel of any criminal justice agency is exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution.

An example of potential abuse was reported by the Tampa Tribune on February 15, 2003. In Tampa, a Sheriff's deputy accumulated more than \$6,000 in extra cellular telephone charges over the past two years. Many of the charges were for calls made to his girlfriend. Opponents to this bill argued that this abuse of a government cellular telephone would not have been discovered if this bill was current law.

The Orange County Sheriff's Office (sheriff's office) is a proponent of this bill and has stated that the exemptions are necessary in order to protect the safety of the law enforcement officer. The sheriff's office has also stated that public access to a law enforcement officer's cellular telephone number or pager number could hinder an officer's job performance if the officer is continually telephoned or paged by victims, witnesses, or the press. Regarding the restriction of public access to identifying numbers contained in the billing records, the sheriff's office has stated that oversight can still be maintained due to the fact the sheriff's office conducts its own internal audits of the billing records of the cellular telephones and electronic pagers assigned to its officers.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On April 8, 2003, the Committee on State Administration adopted a strike-all amendment to HB 123 and reported the bill favorably with CS.

The bill as originally filed included email addresses and the billing records of such address. The bill with CS removes such address and billing records from the exemption. The bill as filed applied the exemption to active and former law enforcement officers, correctional and correctional probation officers, certain personnel of the Department of Children and Family Services, certain personnel of the Department of Health, and certain personnel of the Department of Revenue. The bill with CS narrows the exemption to only apply to active or former law enforcement officers. Finally, the bill with CS adds language allowing the Auditor General to conduct audits of a law enforcement agency's cellular telephone and pager billing records. Any discovered misuse of a government issued cellular telephone or electronic pager must be reported to the governing body responsible for the law enforcement agency.

On April 15, 2003, the Subcommittee on Criminal Justice recommended the bill favorably.

On April 15, 2003, the Committee on Public Safety & Crime Prevention adopted an amendment that specified that the *identifying numbers contained in* a billing record would be exempt from the public records laws, rather than the entire billing record. The bill was reported favorably with CS.