SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: January 22, 1998 Revised: _____ _____ _____ _____

Subject: Public Records

	Analyst	Staff Director	Reference	Action
1.	Cooper	Yeatman	CA	Favorable/CS
2.				
3.				
4.				
5.				

I. Summary:

CS for Senate Bill 140 exempts specified personal information furnished by an individual to any agency pursuant to federal, state, and local housing assistance programs from the public access provisions of the Public Records Law and s. 24(a), Article I, of the State Constitution.

This bill amends section 119.07(3) of the Florida Statutes.

II. Present Situation:

The Department of Community Affairs (DCA), is created in s. 20.18, F.S. Among its other duties, DCA is designated as the agency responsible for housing and urban development in the state. As such, DCA coordinates the state and federal efforts designed to improve, rehabilitate, and build more affordable housing in the state.

There are several federal and state programs designed to provide affordable housing to families. The federal agency primarily responsible for oversight of housing initiatives is the Department of Housing and Urban Development (HUD). DCA authorizes units of local government to administer the housing programs in their respective locales. Many local governments contract with private and not-for-profit entities to screen applications and determine individual eligibility for low-interest loans and other programs that promote home ownership. Typically, the application for such programs requires personal information of applicants, e.g., bank account numbers, creditors and account numbers, employment history, etc. Under state law, such information is available for public inspection.

Florida has a long history of providing public access to the meetings and records of governmental and other public entities. The first law affording access to public records was enacted by the

Florida Legislature 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.

The Public Records Law states that, unless specifically exempted, all agency records are to be available for public inspection. The word "agency" is defined in the Public Records Law 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, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

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. The amendment had the effect of including in the Florida Constitution provisions similar to those of the Public Meetings Law and the Public Records Law and of applying those provisions to all three branches of government.

The State Constitution, in s. 24(c), Art. I, authorizes the Legislature to provide exemptions from the public access provisions of the law and constitution by general law. The constitution requires any law that creates an exemption to state with specificity the public necessity that justifies the exemption; a law creating an exemption may be no broader than necessary to comport with the public necessity. A law that creates a public records or public meetings exemption is required by the constitution to relate only to exemptions and their enforcement.

The Open Government Sunset Review Act of 1995, ss. 119.15 and 286.0111, F.S., provides for the systematic repeal of exemptions to the Public Records Law and Public Meetings Law five years after creation of, or substantial modification to, the exemption. The repeal cycle begins in 2001.

The Open Government Sunset Review Act of 1995 provides criteria for the Legislature to consider prior to creating or reenacting an exemption. By law, an exemption may be created only if it meets at least one of the following criteria:

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 would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; 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 that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace. (See s. 119.15(4)(b), F.S.)

Section 119.07, F.S., provides for the inspection, examination, and duplication of public records. The same law also provides numerous exemptions for specified records and types of information.

III. Effect of Proposed Changes:

The committee substitute for SB 140 would create a public records exemption for the medical history records, bank account numbers, credit card numbers, telephone numbers, and information related to health or property insurance furnished by an individual to any agency pursuant to federal, state, or local housing assistance programs. However, other records made or received by such entities, unless declared exempt by the federal or state law, would be subject to the public inspection pursuant to s. 119.07(1), F.S.

Government entities and their agents would be authorized by the bill to review the exempt records for the purposes of auditing federal, state, or local housing programs or housing assistance programs. In addition, these records may be used by an agency in any administrative or judicial proceeding if needed.

Legislative findings are provided by the bill to justify the exemptions. The Legislature determines that affording confidentiality to an applicant's personal information could prevent fraud and unnecessary intrusion into the personal affairs of the program participants.

This public records exemption would be repealed effective October 2, 2002, and must be reviewed by the Legislature before that date in accordance with s. 119.15, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Several public records exemptions would be created by the bill for personal information submitted to an agency relating to federal, state, or local housing assistance programs. A statement of the public necessity justifying the exemptions are provided. The bill would relate only to exemptions. For these reasons, the bill would comply with the constitutional provisions in s. 24(c), Art. I, Fla. Const.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.