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DATE: April 15, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
GOVERNMENTAL OPERATIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 1613

RELATING TO: Public Records/Housing Assistance Program

SPONSOR(S): Committee on Governmental Operations & Representative Dawson-White

STATUTE(S) AFFECTED: s. 119.07(3)

COMPANION BILL(S): SB 240 (s)

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

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I. SUMMARY:

CS/HB 1613 makes 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 confidential and exempt from public disclosure. However, CS/HB 1613 expressly provides that any other information produced or received by any private or public entity in direct connection with federal, state, or local housing assistance programs is subject to public disclosure, unless otherwise subject to another federal or state exemption.

CS/HB 1613 authorizes access to the confidential and exempt records by governmental agencies or their agents for the purposes of auditing federal, state, or local housing programs or housing assistance programs. Furthermore, this bill also provides that such records may be used by an agency, as needed, in any administrative or judicial proceeding, provided such records are kept confidential and exempt, unless otherwise ordered by a court.

CS/HB 1613 is made subject to the Open Government Sunset Review Act of 1995 and will repeal on October 2, 2002, unless reviewed and reenacted by the Legislature. CS/HB 1613 provides a public necessity statement for the exemption as is required by Article I, s. 24, of the State Constitution.

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

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Housing Assistance Programs

The Department of Community Affairs (DCA), is created in s. 20.18, F.S. Among its other duties, the DCA is designated as the agency responsible for housing and urban development in the state. As such, the 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. See Chapter 420, F.S., Housing. The federal agency primarily responsible for oversight of housing initiatives is the Department of Housing and Urban Development. The 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, credit card account numbers, telephone numbers, and employment history. Under state law, such information is available for public inspection, except as otherwise discussed below in the "Existing Exemptions" section.

More particularly, s. 420.504, F.S., creates the "Florida Housing Finance Agency" (Agency) within the Department of Community Affairs. Some of the Agency's duties are to participate in federal housing assistance and federal community development, insurance, and guarantee programs; set standards for residential housing financed by the agency; provide conditions respecting the grant of loans or mortgage loans; and, to contract as necessary in order to administer its duties.

The Florida Housing Finance Agency and the Department of Community Affairs are also involved with county and municipalities with regard to local housing assistance programs and are governed by the requirements of the "State Housing Initiative Partnership Act", ss. 420.907-420.9079, F.S. Each county and each eligible municipality participating in the State Housing Initiatives Partnership Program encourages the involvement of appropriate public sector and private sector entities as partners in order to combine resources to reduce housing costs for the targeted population. This partnership process involves lending institutions, housing developers, nonprofit and other community-based housing and service organizations, providers of professional services relating to affordable housing, and other persons or entities who can assist in providing housing or related support services. Accordingly, both public and private sector entities are involved with this program and may be in receipt of housing assistance application information. Such public entities are considered "agencies" and are governed by the public records laws in Chapter 119, F.S., and Article I, s. 24, Florida Constitution. Certain private entities may also be governed by the public records law if they meet the definition of "agency". "Agency" is defined in s. 119.011(2), F.S., 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 including, for the purposes of this chapter, the Commission

on Ethics, the Public Service Commission, and the Office of Public Counsel, and *any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.* (emphasis added)

Existing Exemptions

Section 215.322, F.S., currently already makes confidential and exempt any credit card account numbers in the possession of a state agency, a unit of local government, or the judicial branch.

Section 119.03(z), F.S., makes “[b]ank account numbers or debit, charge, or credit card numbers given to an agency for the purpose of payment of any fee or debt owing” confidential and exempt. This exemption further provides that such numbers may be used by an agency, as needed, in any administrative or judicial proceeding, provided such numbers are kept confidential and exempt, unless otherwise ordered by the court. This exemption was added to the law in 1996, pursuant to the passage of CS/SB 426 (Ch. 96-178, L.O.F.). This exemption will be broadened if HB 1939, by the Committee on Governmental Operations and Representative Posey, passes. If HB 1939 becomes law, then the exemption in s. 119.03(z), F.S., would be broadened to include bank account numbers or debit, charge, or credit card numbers in the “possession of” an agency (not just given to an agency), irrespective of whether it was for the payment of any fee or debt owing.

Section 119.07(3)(l)(2), F.S., provides that correctional and correctional probation officers, certain agency and local government employees, firefighters, state attorneys and prosecutors, and judges, can request, in writing, of any agency, that certain personal information be kept exempt from public disclosure. Such personal information includes home addresses, telephone numbers, social security numbers, and names and locations of schools and day care facilities attended by their children.

Public Records Law

Article I, s. 24, Florida Constitution, expresses Florida’s public policy regarding access to government records in providing that:

- (a) 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, 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 exempting the records must state with specificity the public necessity justifying the exemption and can be no broader than necessary to accomplish the stated purpose of the law.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07, 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., 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.

B. EFFECT OF PROPOSED CHANGES:

CS/HB 1613 makes 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 confidential and exempt from public disclosure. However, CS/HB 1613 expressly provides that any other information produced or received by any private or public entity in direct connection with federal, state, or local housing assistance programs is subject to public disclosure, unless otherwise subject to another federal or state exemption.

Accordingly, any agency, not just the Department of Community Affairs, the Florida Housing Finance Agency, or municipal or county governments, which receive such information must keep it confidential and exempt. This means that if over time, and pursuant to federal, state, or local law, other agencies get involved in housing assistance programs, this exemption will apply to them as well.

CS/HB 1613 also authorizes access to the confidential and exempt records by governmental agencies or their agents for the purposes of auditing federal, state, or local housing programs or housing assistance programs. Furthermore, this bill also provides that such records may be used by an agency, as needed, in any administrative or judicial proceeding, provided such records are kept confidential and exempt, unless otherwise ordered by a court.

CS/HB 1613 is made subject to the Open Government Sunset Review Act of 1995 and will repeal on October 2, 2002, unless reviewed and reenacted by the Legislature. CS/HB 1613 provides a public necessity statement for the exemption as is required by Article I, s. 24, of the State Constitution. The public necessity statement provides that the exemption is necessary because revealing such information could create the opportunity for fraud and is an unnecessary intrusion into the personal affairs of the program participants.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Agencies are required to keep exempt certain information which was not previously kept exempt.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

An agency or program is not eliminated or reduced.

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Although this bill does not increase individual options, it affords some added protection for those who opt to apply for housing assistance by keeping certain application information submitted exempt from public disclosure.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

This bill prohibits public access to certain information that is now available to the public.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

This bill does not purport to provide services to families or children.

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

This bill does not create or change a program providing services to families or children.

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

- (3) government employees/agencies?

N/A

D. SECTION-BY-SECTION RESEARCH:

Section 1 -- Amends s. 119.07(3), F.S.; makes confidential and exempt from public disclosure medical history records, bank account numbers, credit card numbers, telephone numbers, and information related to health or property insurance submitted to any agency pursuant to federal, state, or local housing assistance programs; provides that all other information produced or received pursuant to such housing assistance programs is open to the public, unless otherwise subject to another federal or state exemption; provides that governmental agencies or their agents are entitled to access to such records for the purpose of auditing federal, state, or local housing programs or housing assistance programs; provides that such records may be used by an agency, as needed, in any administrative or judicial proceeding, provided such records are kept confidential and exempt, unless otherwise ordered by a court; and, subjects the exemption to the Open Government Sunset Review Act of 1995, and provides for the repeal of the exemption on October 2, 2002, unless reenacted.

Section 2 -- Provides a public necessity statement for the exemption described in Section 1 above.

Section 3 -- Provides an effective date of July 1, 1997.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take action which requires the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority of counties or municipalities to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of state tax shared with counties and municipalities.

V. COMMENTS:

The Florida Housing Finance Agency supports the bill but recommends that the exemption include "any personal financial information required by any program application".

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

HB 1613 made the affected records "exempt" from public disclosure. The public necessity statement in support of the exemption states that such information is "confidential and exempt". The committee substitute, passed by the Committee on Governmental Operations on April 15, 1997, makes the affected records "confidential and exempt".

The committee substitute also provides that the affected confidential and exempt records may be used by an agency, as needed, in any administrative or judicial proceeding, provided such records are kept confidential and exempt, unless otherwise ordered by a court.

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

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