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**HOUSE OF REPRESENTATIVES
COUNCIL FOR SMARTER GOVERNMENT
ANALYSIS**

BILL #: CS/HB 1673 (PCB SA 02-11)
RELATING TO: Public Records / Social Security
SPONSOR(S): Council for Smarter Government, Committee on State Administration and Representative(s) Brummer

TIED BILL(S):

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

- (1) STATE ADMINISTRATION YEAS 5 NAYS 0
 - (2) COUNCIL FOR SMARTER GOVERNMENT YEAS 11 NAYS 0
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

Agencies collect and use social security numbers (SSNs). Concerns arise regarding public dissemination of SSNs because of identity theft and personal privacy reasons. Currently, there are 23 exemptions that explicitly exempt a person's SSN from public disclosure in certain circumstances, but they do not cover all situations.

This council substitute creates a public records exemption for all SSNs held by any agency. However, another governmental entity can receive SSNs if it is necessary to the performance of its duties. The receiving entity must maintain the exempt status of SSNs. Furthermore, a commercial entity may gain access to SSNs, provided the agency receives in writing the identity of such entity and the purposes for which such entity needs the SSNs, and agrees that such numbers will be used in the normal course of business for legitimate business purposes. Any person who falsely represents him or herself in order to obtain SSNs, or who discloses such numbers in violation of this exemption, is guilty of a third degree felony.

This council substitute requires each agency to file a report that lists the identity of all commercial entities having requested SSNs during the preceding calendar year and why they needed the SSNs.

This council substitute provides that an agency must not collect an individual's SSN unless authorized by law to collect such number, or unless the collection of such number is imperative for the performance of that agency's duties and responsibilities. Agencies collecting SSNs must provide individuals, upon their request, with a statement of the purposes for which the SSN is collected and used.

This council substitute provides a public necessity statement, as required by the Florida Constitution, and makes the exemption retroactive.

Recently, the 16th Statewide Grand Jury issued a report containing recommendations for maintaining the security of personal information contained in public records. Recommendations included exempting SSNs; prohibiting industry from selling SSNs without customer permission; and requiring government and businesses to only collect SSNs if its is absolutely necessary in the furtherance of their duties and responsibilities.

The fiscal impact on state and local governments is indeterminate, but should be insignificant. See "Fiscal Comments" section for further details.

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II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1. Less Government Yes No N/A

This council substitute creates more government by creating a third degree felony penalty for violating certain provisions regarding the release of SSNs. However, because agencies will be limited as to whom they can give a person's SSN, there is less government intrusion into that person's private life.

2. Lower Taxes Yes No N/A

3. Individual Freedom Yes No N/A

Because government will not be widely disseminating SSNs, individuals then have greater control and freedom in regards to who receives their SSNs.

4. Personal Responsibility Yes No N/A

Personal responsibility increases because agencies and businesses have to be more careful when deciding whether to disseminate SSNs.

5. Family Empowerment Yes No N/A

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Interim Study

The House Committee on State Administration, in conjunction with the House Committee on Information Technology, conducted a survey regarding the collection, use, and dissemination of SSNs.¹ All state agencies, universities, community colleges, and junior colleges completed the survey.²

Every agency and educational institution collects SSNs for various purposes.³ Survey participants were asked to cite any statutory authority⁴ or Florida Administrative Code (FAC) rule that specifically authorizes the collection of SSNs. Approximately 600 statutory or FAC rule citations were given as providing authority to collect SSNs. *Of those citations, only 120 were categorized as "applicable".*⁵

¹ The SSN was selected because it is the only nationwide, unique numeric form of identification, and because government entities routinely collect and often disclose SSNs.

² The Committee on State Administration and the Committee on Information Technology compiled all survey results into the November 2001 "Draft Interim Project Report".

³ For example, SSNs are collected for personnel functions (e.g., applications for employment, tax purposes), for registration purposes (e.g., agency examinations, training classes), and permitting purposes (e.g., The Florida Fish and Wildlife Commission issues permits for the possession, exhibition, or sale of wildlife).

⁴ "Statutory authority" was not limited to Florida Statutes but was intended to include both federal and state law.

⁵ Staff analyzed the responses from survey participants to determine the extent to which the cited statute or rule actually related to the collection of SSNs. The responses were categorized using the following terminology: "applicable", "possibly applicable", "not

Survey participants were asked if they ever disclose SSNs pursuant to a public records request. Sixty-three percent of the agencies responded that they either “always” disclose SSNs or “sometimes” disclose SSNs when a public records request is made; 37 percent responded that SSNs are never disclosed pursuant to a public records request. Sixty-six percent of the educational institutions never release SSNs pursuant to a public records request, while 34 percent of such institutions either “always” or “sometimes” release such numbers pursuant to a public records request.⁶

Approximately 50 percent of the agencies disclose SSNs to individuals, private entities, contractors, or any additional entities, by means other than through public records requests.⁷ Educational institutions also disclose SSNs to individuals, private entities, contractors, and additional entities other than pursuant to a public records request. Seventy-one percent of the educational institutions disclose SSNs to various contractors, compared to 44 percent of the state agencies.⁸ Fifty-nine percent of the state agencies have a contract with a non-governmental entity to provide information through which SSNs are disclosed.⁹ Sixty-one percent of the educational institutions have contracts with non-governmental entities to provide information through which SSNs are disclosed.¹⁰ According to the survey, no educational institution, pursuant to a contractual agreement, receives payment for the disclosure of records containing SSNs.

Social Security Numbers

Agencies often use the SSN as a person's primary identifier in order to locate records on that person. There is, however, concern regarding public dissemination of the SSN. By knowing a person's SSN, other information is more readily accessible through governmental agencies and private entities. Much of the information available through the use of the SSN is private and personal information including financial and health information. With this number, and the information one can gain from its use, it is easier to perpetrate a fraud against someone, as well as to otherwise cause unwarranted harm to that person. Accordingly, over the years a number of public records exemptions have been created which prohibit or restrict the disclosure of the SSN. Currently, there are 23 statutory exemptions that explicitly exempt a person's SSN from public disclosure in certain situations.¹¹ There is no all-encompassing exemption for SSNs.

applicable”, “overly broad”, “no cite”, “no such statute or rule”, and “non responsive”. Applicable means that the cited statute explicitly authorizes the collection of SSNs.

⁶ Survey results demonstrate that SSNs are consistently and routinely provided to other Florida state agencies, federal agencies, local governments, and other state governments.

⁷ The Agency for Health Care Administration discloses SSNs to the University of South Florida's Mental Health Institute and employee training contractors; the Department of Banking and Finance discloses SSNs to various collection agencies; and the Florida Fish and Wildlife Commission discloses SSNs to an appeals board for the issuance of lobster and stone crab trap certificates.

⁸ Hillsborough Community College discloses records that contain SSNs to “numerous collection agencies”. Florida Agricultural and Mechanical University discloses SSNs to the National Student Loan Clearinghouse and various collection agencies.

⁹ The Department of Revenue has contracts with the following entities: Florida Association of Court Clerks and Comptrollers, private legal service providers (25 different private attorney contracts), credit reporting agencies, financial institutions, genetic testing companies, BSWA (Internet software), and Deloitte and Touche Consulting. Electronic file transmission is the most popular means used by agencies for providing information containing SSNs to non-governmental entities when a contract exists. The Agency for Health Care Administration uses the following methods when distributing such documents to non-governmental entities: data dumps, direct remote access to agency data base, direct magnetic media, hard copies, and CD-ROMS.

¹⁰ Miami-Dade Community College has contracts with Cigna Health Insurance, MetLife Dental Insurance, the National Student Loan Clearinghouse, Academic Financial Service Association Inc., NSO Financial Systems, Inc., and Enterprise Recovery System, Inc. Electronic file transmission is the most popular means used by educational institutions for providing information containing SSNs to non-governmental entities when a contract exists. St. Johns River Community College uses electronic files, which are uploaded and downloaded via the Internet; data dumps; direct remote access to a database; Internet access; hard copies; and disk copies.

¹¹ Current SSN exemptions: s. 61.052(8), F.S. – SSN of each party to dissolution of marriage held by the court; s. 61.13(9)(b), F.S. – SSN of each party to any paternity or child support proceeding held by the tribunal and the State Case Registry; s. 97.0585(2), F.S. – Registered voters' SSNs held by voter registration agencies; s. 119.07(3)(i), F.S. – SSNs held by the employing agency of certain law

Laws in Other States

Florida is the only state that has a constitutional provision requiring public access to records.¹² Many states do, however, have statutory provisions governing access to records as well as provisions governing the collection of personal identifying information by agencies.

Some states do not have specific statutory exemptions for SSNs and therefore release such numbers to the public if the numbers are contained in a requested public record.¹³ On the other

enforcement personnel, certain personnel of the Department of Children and Families, certain personnel of the Department of Health, and certain personnel of the Department of Revenue or local governments, SSNs of the spouse and child of such personnel; SSNs of state attorney, assistant state attorney, statewide prosecutor, or assistant statewide prosecutor, SSNs of the spouse and child of such attorneys and prosecutors, SSNs of certain human resource, labor relations, or employee relations directors and managers, SSNs of the spouse and child of such directors and managers, SSNs of certain code enforcement officer and such officer's spouse and child; s. 193.114(6), F.S. – SSNs in an application for homestead tax exemption; s. 231.17(1), F.S. – SSNs of applicants seeking teacher certification held by the Department of Education; s. 288.99(16), F.S. – SSNs of customers of a certified capital company, complainant, or person associated with a certified capital company or qualified business; s. 372.561(2), F.S. – SSNs of applicants, for a license, permit, or authorization to take wild animal life or freshwater aquatic life, held by the Fish and Wildlife Conservation Commission; s. 372.57, F.S. – SSNs of applicants, for a license, permit, or authorization to take game, freshwater fish, or fur-bearing animals, held by the Fish and Wildlife Conservation Commission; s. 372.574(4), F.S. – SSNs provided for a license, permit, or authorization to take wild animal life or freshwater aquatic life, or for a license, permit, or authorization to take game, freshwater fish, or fur-bearing animals contained in records held by any subagent appointed by the county tax collector; s. 395.3025(11), F.S. – SSNs of employees of a licensed facility who have a reasonable belief that release of such number may be used to threaten, intimidate, harass, inflict violence upon, or defraud the employee or any member of the employee's family, the SSNs of the spouses and children of such persons; s. 411.011, F.S. – SSNs contained in records of children enrolled in school readiness programs, held by the school readiness coalition or the Florida Partnership for School Readiness; s. 455.213(9), F.S. – SSNs of applicants desiring a license held by the Department of Business and Professional Regulation (DBPR); s. 456.013(11), F.S. – SSNs of applicants desiring to take the licensure examination held by DBPR; s. 434.00125(1)(b), F.S. – Except as necessary for the Department of Banking and Finance (DBF) to enforce the provisions of chapter 434, F.S., a consumer complaint and other information relative to an investigation or examination must remain confidential and exempt after the investigation or examination is completed or ceases to be active to the extent disclosure would reveal the SSN of a complainant, customer, or account holder; s. 498.047(8)(b), F.S. – Except as necessary for the Division of Florida Land Sales, Condominiums, and Mobile Homes to enforce the provisions of chapter 498, F.S., a consumer complaint and other information relative to an investigation must remain confidential and exempt after the filing of a notice to show cause or the investigation is completed or ceases to be active to the extent disclosure would reveal the SSN of a purchaser, account holder, or complainant; ss. 517.2015(1)(b) and 520.9965(1)(b), F.S. – Except as necessary for DBF to enforce the provisions of chapters 517 and 520, F.S., a consumer complaint and other information relative to an investigation or examination must remain confidential and exempt after the investigation or examination is completed or ceases to be active to the extent disclosure would reveal the SSN of a complainant, customer, or account holder; s. 548.021(4), F.S. – SSNs of applicants for licenses and permits associated with boxing and boxing matches held by Florida State Boxing Commission or DBPR; s. 741.04(1), F.S. – SSN of each party to a marriage held by the court; s. 742.031(3), F.S. – SSN of each party to any paternity hearing held by the court; s. 742.032(3), F.S. – SSN of each party to any paternity or child support proceeding held by the tribunal and the State Case Registry; s. 742.10(2), F.S. – SSN of each parent listed on any acknowledgement of paternity, consent affidavit, or stipulation of paternity held by the Office of Vital Statistics and the court.

¹² Article I, s. 24, Florida Constitution.

¹³ Massachusetts does not have a statutory exemption for SSNs. (Telephone conversation, Massachusetts Joint Committee on State Administration, January 2, 2002). SSNs are not specifically exempted from public disclosure under Maryland law. (Telephone conversation, Policy Analyst, House Committee on Commerce and Government, January 10, 2002). Illinois has an exemption for information that if disclosed would constitute "a clearly unwarranted invasion of personal privacy" unless each person who is the subject of that information provides written consent allowing the release of such information. The exemption does not specifically include SSNs in the list of exempt information. Current House Bill 71 would amend the Illinois Freedom of Information Act to add SSNs to the list of exempt information because the disclosure of a person's SSN is an "unwarranted invasion of personal privacy". (Telephone conversation, Research Associate, Agency of Legislative Research Unit, January 3, 2002; *see also* 5 Illinois Compiled Statutes 140/7(1)(b)). New Hampshire does not have a public records exemption for SSNs. Such numbers are not redacted when contained in public records. (Telephone conversation, Clerk Interviewer, Department of Justice, January 3, 2002). Nevada has no specific statutory exemption for SSNs. (Telephone conversation, Law Indexer, House of Representatives, January 7, 2002). Pennsylvania does not have a public records exemption for SSNs. (Telephone conversation, Research Analyst, House State Government Committee, January 4, 2002).

hand, some states might not need specific exemptions for SSNs in order to keep such numbers from being disclosed. For example, New Jersey has a common law right to access records that is very different from Florida's Public Records Act. Under their common law right, a person requesting information must demonstrate their interest in the information. This interest is then weighed against the interest of keeping the requested information private. If the person is granted access to the requested information and such information contains a SSN, then such number is not redacted from the document. However, New Jersey has pending legislation¹⁴ that will change that common law right to a public records act similar to Florida's. The pending legislation creates an exemption for SSNs, but provides exceptions for groups such as creditors and credit reporting agencies.¹⁵

Some states have exemptions for SSNs contained in specified records.¹⁶ In Texas, some state agencies redact SSNs from records prior to release of those records to the public, even though there is not a specific exemption for SSNs under Texas state law.¹⁷

Certain states redact SSNs from all public records whether there is a specific public records exemption for such numbers or not.¹⁸ For example, Ohio does not have a statutory exemption for SSNs, but such numbers are still redacted, prior to public disclosure, pursuant to a 1994 Ohio Supreme Court case ruling. In *State ex rel. Beacon Journal Publishing company et al. vs. City of Akron*¹⁹, the Ohio Supreme Court held that employees' SSNs were "records" for purposes of the Public Records Act, but that disclosure of city employees' SSNs would violate their federal constitutional right to privacy. The court found that the harm caused by the invasion of an employee's privacy as a result of the release of that employee's SSN outweighed the public's

¹⁴ Assembly Bill 1309 (A 1309, 4th reprint)

¹⁵ Telephone conversation, Principal Council, Office of Legislative Services State Government Section, January 2, 2002.

¹⁶ Missouri has specific exemptions for SSNs under certain circumstances. (Telephone conversation, Legislative Analyst, House Research, January 3, 2002). Virginia has specific exemptions for SSNs under certain circumstances. (Telephone conversation, Virginia Freedom of Information Joint Advisory Council, January 10, 2002). New York's "Personal Privacy Protection Law" addresses the responsibility of state agencies in the collection of personal information. That law requires each agency that maintains a system of records to "maintain in its records only such personal information that is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order, or to implement a program specifically authorized by law." (New York State Consolidated Laws, Article 6-A, section 94(a), Personal Privacy Protection Law). In addition, the law, in regards to the disclosure of personal information, provides that no agency may disclose any records or personal information unless that disclosure is pursuant to a written request by or the voluntary written consent of the person for which the records or personal information pertain. The written request or consent must specifically describe the personal information which is requested to be disclosed, the person or entity to whom such personal information is requested to be disclosed, and the uses which will be made of such personal information by the person or entity receiving it. (New York State Consolidated Laws, Article 6-A, section 96(a), Personal Privacy Protection Law). Finally, "personal information" is defined in New York's Personal Privacy Protection Law as "any information concerning a data subject which, because of name, number, symbol, mark or other identifier, can be used to identify that data subject." This definition clearly includes an identifier such as the SSN. Oklahoma has specific language relating to the collection and usage of SSNs. Oklahoma law provides that no state agency, board, commission or other unit or subdivision of state government can request or require, unless otherwise required by law, that any person reveal their SSN in order to obtain services or assistance. Additionally, no state agency, board, commission or other unit or subdivision of state government can use, for any purpose, numbers which correspond to the SSN of any person, unless otherwise required by law. (Section 74-3111, Oklahoma Statutes. Use of SSNs by state or subdivisions prohibited – Exceptions). Oklahoma law also addresses the indexing of databases that include the SSN. Such law provides that "[n]o state agency, board, commission or other unit or subdivision of state government may furnish any information indexed by social security number unless required by law or specifically authorized to do so by the holder of said social security number. Provided that this section shall not apply to a report produced by a state agency of monetary payments made to any state official or employee from State Treasury funds or accounts." (Section 74-3113. Disclosure of information indexed by SSNs prohibited – Exceptions).

¹⁷ Telephone conversation, Clerk, House Committee on State Affairs, January 14, 2002.

¹⁸ Michigan redacts SSNs from copies of requested records. (Telephone conversation, House Majority Staff Legal Council, January 7, 2002). Hawaii redacts SSNs from public records. (Telephone conversation, Staff Attorney, Office of Information Practices, January 10, 2002).

¹⁹ 70 Ohio St.3d 605, 640 N.E.2d 164.

interest in obtaining such number. Because of this holding, Ohio state agencies do not release any person's SSNs contained in any public records. Such numbers are redacted.²⁰

Identity Theft

Improper use of personal identification information is becoming both a state and national problem. On July 31, 2000, Governor Bush appointed 17 citizens to serve on a statewide Task Force on Privacy and Technology (Task Force), which was established pursuant to s. 282.3095, F.S.

Identity protection policies became a primary focus of the Task Force. According to the Task Force's report, identity theft is one of the fastest growing crimes in America, affecting nearly half a million people in 1998. Florida accounts for more reported complaints of identity theft to the Federal Trade Commission than any other state, with the exception of California and New York. Of those complaints, 26 percent pertained to an identity thief opening up telephone, cellular, or other utility services in the victim's name, and 54 percent were regarding credit card fraud.²¹

Reports obtained by the Task Force from identity theft victims suggest that the financial toll on victims is highly significant. The Task Force found that, on average, victims spend more than 175 hours to regain their financial health, at a personal cost of almost \$1,000. The Task Force also found that victims of identity theft include nationwide businesses that either absorb or pass on to the consumer annual costs exceeding \$1 billion due to identity theft-related fraud.²²

Statistics collected by Federal offices attest to the growing problem of identity theft. The General Accounting Office reported that consumer inquiries to the Trans Union Credit Bureau's Fraud Victim Assistance Department increased from 35,235 in 1992 to 522,922 in 1997, and that the Social Security Administration's Office of the Inspector General conducted 1153 SSN misuse investigations in 1997 compared with 305 in 1996. In 1999, the telephone hotline established by the Social Security Administration Inspector General received reports of almost 39,000 incidents of misuse of SSNs.²³

Public Records Law

Florida Constitution

²⁰ Telephone conversation, Attorney, Legislative Service Commission, January 15, 2002. *But see* Attorney General Opinion 99-20 ("No federal law has been found that would preclude the release of a social security number by a state or local agency that has properly obtained the number. Moreover, the Social Security Administration has informed this office that the Federal Privacy Act of 1974 relates to the collection of social security numbers and, in the context of controlling the release of such numbers, applies only to the executive branch of the federal government.")

²¹ Task Force on Privacy and Technology: Executive Summary of Policy Recommendations, 2000.

²² *Id.*

²³ Prepared Statement of the Federal Trade Commission (FTC) on Identity Theft. Before the Subcommittee on Technology, Terrorism, and Government Information of the Committee on the Judiciary, United States Senate, July 12, 2000. The following are consumer complaints made to the FTC:

Someone used my social security number to get credit in my name. This has caused a lot of problems. I have been turned down for jobs, credit, and refinancing offers. This is stressful and embarrassing. I want to open my own business, but it may be impossible with this unresolved problem hanging over my head. (May 18, 1999).

Someone is using my name and social security number to open credit card accounts. All the accounts are in collections. I had no idea this was happening until I applied for a mortgage. Because these "bad" accounts showed up on my credit report, I didn't get the mortgage. (July 13, 1999).

Help! Someone is using my social security number to get a job. (September 20, 1999).

Article I, s. 24(a), Florida Constitution, expresses Florida's public policy regarding access to government records as follows:

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(c), 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 must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

Florida Statutes

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07(1)(a), 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.

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:

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.

C. EFFECT OF PROPOSED CHANGES:

This council substitute creates a public records exemption for *all* SSNs held by an agency or its agents, employees, or contractors. However, an agency may disclose SSNs to another governmental entity, or that entity's agents, employees, or contractors, if it is necessary for such entity to perform its duties and responsibilities. The receiving governmental entity, and such entity's agents, employees, and contractors, are required to maintain the exempt status of the SSN.

Additionally, an agency must not deny a commercial entity engaged in the performance of a commercial activity²⁴ access to SSNs. Access to SSNs must also be provided to such entity's agents, employees, or contractors if such entity provides in writing:

- The identity of such entity;
- The purposes for which such entity needs the SSNs; and
- Agrees that the SSNs will be used in the normal course of business for legitimate business purposes.

An agency may request any additional information that is reasonably necessary to verify the identity of the commercial entity requesting SSNs.

An authorized officer, employee, or agent of the commercial entity must sign such request. A legitimate business purpose includes, but is not limited to:

- Verification of the accuracy of personal information received by a commercial entity in the normal course of its business;
- Use in a civil, criminal, or administrative proceeding;
- Use for insurance purposes;
- Use in law enforcement and investigation of crimes;
- Use in identifying and preventing fraud;
- Use in matching, verifying, or retrieving information; and
- Use in research activities.²⁵

A legitimate business purpose *does not* include the display or bulk sale of SSNs to the general public. This council substitute *does not* prohibit the display of SSNs to a business entity engaged in a legitimate business purpose.²⁶

Any person who falsely represents him or herself in order to obtain SSNs, or who discloses SSNs in violation of this exemption, is guilty of a third degree felony. Such felony is punishable by a term of imprisonment not to exceed five years²⁷ or a fine not to exceed \$5,000²⁸.

This council substitute requires each agency to file a report, by January 31 of each year, with the Secretary of State, the President of the Senate, and the Speaker of the House of Representatives.

²⁴ Section 14.203(1)(a), F.S., defines "commercial activity" as "an activity that provides a product or service that is available from a private source."

²⁵ For example, newspapers can receive a person's SSN in order to verify that person's identity.

²⁶ Bulk sale is the selling (transferring of ownership) of a large number of SSNs to a third party.

²⁷ Section 775.082(3)(d), F.S.

²⁸ Section 775.083(1)(c), F.S.

Such report must list the identity of all commercial entities having requested SSNs during the preceding calendar year and the purpose or purposes stated by each commercial entity regarding such entity's need for SSNs. If no SSNs were requested by a commercial entity, then the agency must so indicate in its report.

This council substitute provides that an agency must not collect an individual's SSN unless authorized by law to collect such number, or unless the collection of such number is imperative for the performance of that agency's duties and responsibilities as set forth in law. The collection of SSNs must be relevant to the purpose for which such number is collected. SSNs must not be collected until and unless the need for such numbers has been clearly documented. This means that an agency must create a written policy regarding the necessity for collecting SSNs. Agencies collecting SSNs must provide individuals, upon their request, with a statement of the purposes for which the SSN is collected and used. Such statement must be provided at or prior to the time the SSN is collected. Agencies are required to ensure that SSNs collected for one purpose are not used for another purpose. Additionally, this council substitute requires that SSNs collected by agencies prior to the effective date of this council substitute²⁹, must be reviewed for compliance with these provisions. SSNs must be removed from an agency's records if prior collection is found to be unwarranted.

This council substitute provides that the Legislature intends to monitor the commercial use of SSNs held by agencies in an effort to maintain a balanced public policy.

This council substitute provides a public necessity statement, as required by Art. I, s. 24 of the Florida Constitution, which states that the public disclosure of a person's SSN is of concern due to the amount of information such number can provide on an individual. The SSN is of a sensitive personal nature and is often the link to an individual's health, medical, and financial records. Such number is the only nationwide, unique numeric form of identification. Disclosure of the SSN provides access to private information about a person, which could be used to perpetrate fraud upon that person and to otherwise cause unwarranted harm to that person. The disclosure of such number constitutes an unwarranted invasion into the life and personal privacy of a person. However, responsible commercial use of the SSN does not result in personal or financial harm to a person but allows more complete identity verification thereby enhancing the mutual benefits of the commercial relationship.

This council substitute provides for retroactive application of the exemption.³⁰ This exemption is made subject to the Open Government Sunset Review Act of 1995 and will repeal on October 2, 2007, unless reviewed and saved from repeal through reenactment by the legislature.

D. SECTION-BY-SECTION ANALYSIS:

See "Effect of Proposed Changes".

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

²⁹ The effective date of CS/HB 1673 is October 1, 2002.

³⁰ On April 26, 2001, the Supreme Court of Florida ruled that a public records exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied retroactively. *Memorial Hospital-West Volusia, Inc. vs. News-Journal Corporation*, 26 Fla. L. Weekly S268.

2. Expenditures:

Indeterminate. See "Fiscal Comments".

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Indeterminate. See "Fiscal Comments".

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

An agency may charge a fee for copying a public record. Section 119.07(a), F.S., sets a fee limit of 15 cents per one-sided copy of not more than 14 by 8.5 inches, or the actual cost of duplication for all other copies, if no other fee is prescribed by law. Section 119.07(1)(a), F.S., defines "actual cost" as the cost of material and supplies only, excluding the costs of labor and overhead. However, a number of agencies that provide access to public records have their own fee schedules prescribed by law, some of which produce significant revenue.

Pursuant to a public records request, an agency must review the documents requested and then redact any exempt³¹ or confidential and exempt³² information. If a public records request is made for a large volume of hard copy records or for a large computer data dump, then an agency must review all records contained therein and redact all exempt or confidential and exempt information. This could require extensive use of technological resources or extensive assistance from personnel.

Section 119.07(b), F.S., provides that agencies may levy a special service charge if a public records request for inspection, examination, or duplication will require extensive use of the agency's technological or personnel resources. This charge must be reasonable and it must be based on the cost to the agency of fulfilling the extensive records request.

With technological advances in computer software, agencies should be sensitive when purchasing new software, or updating their computer systems, of the capabilities and flexibility of the software and systems with regard to storage and retrieval of information as well as with regard to redaction capabilities—that is being able to blacken out various fields or suppress, or segregate, certain information. Furthermore, additional attention may need to be paid to information collection methodologies in order to more easily facilitate nondisclosure of confidential or exempt information. For many years agencies have been affected by a number of exemptions, and have had to deal

³¹ Information and records that are simply made "exempt" from public disclosure are still permitted to be disclosed under certain circumstances. An agency is permitted to share exempt information with another agency if it is necessary for the furtherance of official business. 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).

³² Information and records that are made "confidential and exempt" may not be released to anyone other than to the persons or entities specifically designated in the statutory exemption. See Attorney General Opinion 85-62, August 1, 1985.

with the repeal of old exemptions as well as with the creation of new exemptions. Also, finding and redacting SSNs should be more easily accomplished than keeping certain other more descriptive information exempt because the SSN is a sequenced, numeric piece of information, easily identifiable.

The interim survey³³ asked agencies and educational institutions to detail the effects of holding all SSNs exempt from public disclosure. The Department of Agriculture and Consumer Affairs (DACA) said there would be no impact on the agency, except as to the time and expense it would take to "block out" SSNs in response to a public records request. DACA said there would also be an increased cost for a new system. The Department of Business and Professional Regulation said there would be no effect if SSNs were held exempt from public disclosure, except regarding the time and expense it would take to redact, or "blacken out", SSNs on records provided through public records requests. Central Florida Community College responded that the financial impact would be minimal as long as SSNs continued to serve as primary identifiers. Palm Beach Community College and St. Petersburg Community College responded that such an exemption would have little effect, because SSNs are already protected from disclosure. The University of North Florida responded that if SSNs were exempt from disclosure, extensive changes would be necessary at a significant cost. The University of Florida stated that holding SSNs exempt from disclosure would result in a loss of efficiency, eliminate or reduce many of the services and benefits available from present technology, and increase reliance on manual processes. Expensive modifications to online and batch processes would be required.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This council substitute does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This council substitute does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

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

This council substitute does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

³³ See text *infra* at 2.

C. OTHER COMMENTS:

Members have expressed concern regarding access to SSNs and the availability of such numbers pursuant to a public records request. Several Members have received calls from constituents who have also expressed concern regarding the public's easy access to such a personal and unique identifier. Access to a person's SSN not only creates the opportunity for identity theft or fraud, but also allows access to very sensitive personal information regarding individuals. Access to that information could cause harm or embarrassment to an individual and is an invasion of that individual's privacy.³⁴

Private sector enterprises³⁵ rely upon public records, which sometimes include SSNs, as a means to "uncover fraud and identity theft, make sound credit determinations, and otherwise verify identities in order to conduct a vast amount of business transactions."³⁶ SSNs are considered an integral part of many businesses' verification process. This council substitute allows commercial entities to have access to SSNs for legitimate business purpose.

This public records exemption does not, however, prohibit an agency from providing information retrieved by SSN, provided the person requesting the information already knows the name and SSN of the person. For example, a public records requestor wants all the information an agency has on Bill Smith. There are many Bill Smiths. If the requestor knows Bill Smith's SSN, then the agency can search by name and number. Businesses were concerned, however, that they would no longer be able to receive large data dumps containing SSNs on everybody, thus allowing them to perform their own searches, without being dependent upon the agency to confirm identities. Because of these concerns, this exemption provides an exception for commercial entities.

For persons other than commercial entities, this exemption will still not impede searches by SSN, because a person can still provide an agency with an individual's name and SSN and that agency can then conduct a search using the provided information. This will only prevent individual data dumps containing SSNs, for those other than commercial entities.

On January 10, 2002, the 16th Statewide Grand Jury (Grand Jury) issued a report regarding identity theft in Florida. The Grand Jury's report stated:

We suggest that rather than assuming everything government collects is automatically a public record unless otherwise exempted, we believe the presumption should be reversed. **That is, private information collected from citizens should be presumed confidential and non-disclosable unless there is a statutory ground for its release.** We are not convinced that doing so would violate the spirit and intent of the First Amendment.³⁷

The Grand Jury's recommendations to maintain the security of personal information included:

- Exempting personal identifying information of citizens from public records, including SSNs, birth dates, driver's license numbers, and phone numbers.

³⁴ Testimony taken at the Committee on State Administration meeting, October 23, 2001, and at the Joint Committee on State Administration and Committee on Information Technology meeting, November 27, 2001.

³⁵ Private sector enterprises include banks, insurance companies, security houses, newspapers, and private investigative agencies, to name a few.

³⁶ DiMarco, Anthony, Unintended Consequences of Limits on Public Records, September 21, 2000, at 1.

³⁷ Statewide Grand Jury Report, Identity Theft in Florida, First Interim Report of the 16th Statewide Grand Jury, case number SC 01-1095, January 10, 2002, at 13 (emphasis added).

- Withholding personal information (SSNs) at driver's license offices unless a person specifically asks for his or her own information to be released.
- Prohibiting the financial industry from selling personal information (SSNs) without customer permission.
- Requiring government and businesses to only collect necessary personal information (SSNs).³⁸

Proponents

Proponents of this council substitute include the Governor's Office, First Amendment Foundation, Office of Statewide Prosecution, Florida Chapter of the Council for Retired Officers Association, Auto Data Direct, Inc., and various members of the Business Privacy Coalition³⁹.

On February 4, 2002, the St. Petersburg Times recently published an editorial entitled "Assaults on sunshine". The article discussed the necessity of the public records exemption for SSNs. It said:

The Social Security number is the only unique identifier we have and, as such, it has become the key to unlocking all sorts of personal records, from credit history to medical records. Easy access to Social Security numbers is a significant cause of the growing epidemic of identity theft. Obviously, the state should not be complicit in this. Floridians are forced to give up their Social Security numbers to government agencies for a variety of purposes, from filing for a homestead exemption to employment in a state job. In doing so, they should have confidence that the numbers are held for government purposes only and not made generally available.

Opponents

The only opponent of this council substitute is the Florida Association of Court Clerks. The association first spoke in opposition to the bill at the Council for Smarter Government meeting, February 14, 2002.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 14, 2002, the Council for Smarter Government adopted an amendment to HB 1673. The bill, as amended, was reported favorably as a council substitute. The council substitute more clearly states the examples of a "legitimate business purpose". It clarifies that a legitimate business purpose does not include the display or bulk sale of SSNs to the general public. However, the council substitute does not prohibit the display of such numbers to a business entity engaged in a legitimate business purpose. The council substitute changes the effective date from "upon becoming law" to October 1, 2002.

Various members of the Business Privacy Coalition worked with staff to refine the amendment's provisions and are in support of the amendment, which is now the council substitute. The coalition, at the time the amendment (which is now the council substitute) was adopted expressed no further concerns with the public records exemption language.

³⁸ For example, "health clubs and video rental stores should not require Social Security numbers on applications." *Id* at 22.

³⁹ The Business Privacy Coalition is a group of local and national business entities that are concerned about access to government records.

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VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

Staff Director:

Heather A. Williamson, M.S.W.

J. Marleen Ahearn, Ph.D., J.D.

AS REVISED BY THE COUNCIL FOR SMARTER GOVERNMENT:

Prepared by:

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Heather A. Williamson, M.S.W.

Don Rubottom