

STORAGE NAME: h1767s1.sgc.doc
DATE: February 27, 2002

HOUSE OF REPRESENTATIVES
COUNCIL FOR SMARTER GOVERNMENT
ANALYSIS

BILL #: CS/HB 1767
RELATING TO: Public Records / Personal ID Information
SPONSOR(S): Council for Smarter Government and Representative(s) Allen

TIED BILL(S):

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

- (1) COUNCIL FOR SMARTER GOVERNMENT YEAS 13 NAYS 0
 - (2)
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

The council substitute creates a public records exemption for all bank account numbers and debit, charge, and credit card numbers; medical records; and personal identifying information contained in records that disclose personal financial or health information held by the Department of Insurance or its service providers. The council substitute provides for exceptions to the public records exemption.

The council substitute provides a public necessity statement, as required by the Florida Constitution, which states that such exemption is necessary in order to protect a person's financial interests as well as their personal medical information. Disclosure of such information could cause unwarranted damage to the good name or reputation of individuals and could jeopardize their health and safety.

The council substitute provides for retroactive application of the public records exemption. The council substitute provides for future review and repeal of the exemption.

The council substitute does not appear to have a fiscal impact on state or local governments.

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | 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. PRESENT SITUATION:

Public Records Law

Florida Constitution

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.

At present, the Department of Insurance does not have a public records exemption for all bank account numbers and debit, charge, and credit card numbers; medical records; and personal identifying information contained in records that disclose personal financial or health information held by the department.

C. EFFECT OF PROPOSED CHANGES:

The council substitute creates a public records exemption for all bank account numbers and debit, charge, and credit card numbers; medical records; and personal identifying information contained in records that disclose personal financial or health information held by the Department of Insurance or its service providers. The council substitute provides for exceptions to the public records exemption. Such confidential and exempt information and records may be disclosed to another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities, and may be disclosed to the National Association of Insurance Commissioners. The receiving governmental entity and the association must maintain the confidential and exempt status of such information and records. Additionally, such confidential and exempt information and records may be used in a criminal, civil, or administrative proceeding so long as the confidential and exempt status of the information and records is maintained.

The council substitute provides a public necessity statement, as required by s. 24, Art. I of the State Constitution, which states that such exemption is necessary in order to protect a persons financial interest as well as their personal medical information. Disclosure of such information could cause unwarranted damage to the good name or reputation of individuals and could jeopardize their health and safety.

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. Additionally, the council substitute provides for retroactive application of the public records exemption.

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.

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.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The 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:

The 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:

The 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.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 26, 2002, the Council for Smarter Government heard HB 1767 by Representative Allen and adopted a strike-all amendment. The bill was reported favorably as a council substitute.

The council substitute maintains the public records exemption contained in the bill for all bank account numbers and debit, charge, and credit card numbers. The council substitute expands the exemption contained in the bill by making confidential and exempt medical records held by the Department of Insurance or its service providers. It also makes confidential and exempt personal identifying information contained in records that disclose personal financial or health information held by the department or its service providers.

The council substitute maintains the exception to the exemption for other governmental entities. The council substitute also allows the National Association of Insurance Commissioners access to such confidential and exempt information and records. The council substitute also allows such confidential and exempt information and records to be used in a criminal, civil, or administrative proceeding so long as the confidential and exempt status of such information and records is maintained.

The council substitute, unlike the bill, provides for retroactive application of the public records exemption¹.

VII. SIGNATURES:

COUNCIL FOR SMARTER GOVERNMENT:

Prepared by:

Council Director:

Heather A. Williamson, M.S.W.

Don Rubottom

¹ 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.

STORAGE NAME: h1767s1.sgc.doc

DATE: February 27, 2002

PAGE: 6