

STORAGE NAME: h0445s1.sgc.doc
DATE: February 1, 2002

**HOUSE OF REPRESENTATIVES
SMARTER GOVERNMENT COUNCIL
ANALYSIS**

BILL #: CS/HB 445
RELATING TO: Public Records / Utility / Customer Information
SPONSOR(S): Council for Smarter Government and Representative(s) Hogan
TIED BILL(S):

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

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

I. SUMMARY:

Current law does not provide a public records exemption for a customer's personal identifying information, usage records, or payment history held by a water, wastewater, natural gas, electric, cable television, or telecommunications utility owned by a public entity.

This council substitute creates a public records exemption for a customer's personal identifying information held by a water, wastewater, natural gas, electric, cable television, or telecommunications utility owned by a public entity. Such information includes, but is not limited to, the customer's name; social security number; taxpayer identification number; address; telephone number; bank account number; debit, charge, and credit card numbers; and driver identification number. The council substitute provides for retroactive application of the public records exemption.

This council substitute provides a public necessity statement, as required by the Florida Constitution, which states that such information is of a sensitive nature and can be used to locate customers and to create false identities. Additionally, if such information were held by a private utility, the information would not be subject to inspection.

Proponents of the council substitute state that the legislation is needed to protect customers from stalkers, identity thieves and other criminals who might use the records, which often include addresses and sometimes include social security numbers. Opponents of the council substitute state that utilities are trying "to protect wealthy customers from being skewered in news stories." See the "Other Comments" for further details.

This council substitute provides for future review and repeal of the public records exemption.

This 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 type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" 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.

Utility Records

Sections 366.096(3) and 367.156(3), F.S., provide identical public records exemptions for utility records, which are shown and found by the Public Service Commission to be proprietary confidential business information, in the possession the Commission. Those records may include a utility customer's personal identifying information. These exemptions do not, however, protect such information contained in records held by a publicly owned utility. In addition, current law does not provide a public records exemption for such utility customer's personal identifying information.

C. EFFECT OF PROPOSED CHANGES:

This council substitute creates a public records exemption for a customer's personal identifying information held by a water, wastewater, natural gas, electric, cable television, or telecommunications utility owned by a public entity. Such information includes, but is not limited to, the customer's name; social security number; taxpayer identification number; address; telephone number; bank account number; debit, charge, and credit card numbers; and driver identification number. The council substitute provides for retroactive application of the public records exemption.

This council substitute provides a public necessity statement, as required by s. 24, Art. I of the State Constitution, which states that such information is of a sensitive nature and can be used to locate customers and to create false identities. Additionally, if such information were held by a private utility, the information would not be subject to inspection.

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.

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:

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.

C. OTHER COMMENTS:

Proponents of this council substitute include the Florida Municipal Electric Association, the Gainesville Regional Utilities (GRU), and JEA¹. Proponents state that legislation is needed to “protect customers from stalkers, identity thieves and other criminals who might use the records, which often include addresses and sometimes include Social Security numbers.”² The Gainesville Sun interviewed the Executive Director of the Electric Association. The Executive Director could not provide specific examples of utility records being used by identity thieves, violent spouses, or other criminals, but he did say that opponents of domestic violence support the council substitute.³

The spokesman for GRU, said: “There are instances in which this type of access to open utility records could be very damaging.”⁴ The spokesman also said “GRU customers should enjoy the same privacy rights as customers of private utilities, whose records are not public.”⁵ Additionally, he said he knew of “no local examples of utility records leading to crimes.”⁶

Opponents of the council substitute state that utilities are trying “to protect wealthy customers from being skewered in news stories.”⁷ In June 2001, The Tampa Tribune published a similar article detailing Tampa’s largest water users, including the customer names and amount of water used by such customers.⁸ One Tampa city Councilwoman was a water user who topped The Tampa Tribune’s list. When asked what she thought of the proposed public records exemption, the Councilwoman stated that the council substitute was bad public policy, and that she thought it was a “ridiculous law.”⁹ Due to The Tampa Tribune’s article, the Councilwoman was able to reevaluate her water usage and work to cut back on such usage.

In August 2001, The Florida Times-Union published an article detailing Jacksonville’s largest water users. The list provided the names of the top water users and the amount of water used by each person.¹⁰

In September 2001, The Gainesville Sun published a story about the biggest water users in Gainesville.¹¹ A landlord listed in the September article, said he was not proud of what The Gainesville Sun wrote about him, but that “government needs to be wide open.”¹²

¹ JEA is formerly known as the Jacksonville Electric Authority.

² Matus, Ron, The Gainesville Sun, “Bills may seal utility records”, December 6, 2001.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Matus, Ron, The Gainesville Sun, “Bills may seal utility records”, December 6, 2001.

⁸ *See* Byrd, Ted, The Tampa Tribune, “Dry rhetoric”, June 24, 2001.

⁹ Byrd, Ted, The Tampa Tribune, “Legislation would seal utility records”, December 5, 2001.

¹⁰ *See* Filaroski, P. Douglas, The Florida Times-Union, “Top home water users drain JEA resources”, August 13, 2001.

¹¹ *See* Matus, Ron, The Gainesville Sun, “Waterwatch”, September 9, 2001.

¹² Matus, Ron, The Gainesville Sun, “Bills may seal utility records”, December 6, 2001.

The President of the First Amendment Foundation, and opponent of the council substitute, said: "We, as citizens, have not just a right but a need to access this kind of information. Water is a critically important source."¹³

Additionally, the Private Investigators Association and recovery agents are concerned because the council substitute does not provide an exception to the exemption for such persons. Recovery agents and private investigators need access to such information in order to perform their duties and responsibilities.¹⁴ However, such agents and investigators utilize other methods of acquiring personal identifying information on customers of private utility providers because those private utility records are not subject to Florida's public records law.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Committee on State Administration

On January 8, 2002, the Committee on State Administration reported House Bill 445 favorably with one strike-all amendment. The strike-all amendment narrows the public records exemption proposed by this bill by removing a utility customer's usage records and payment records from the exemption. The amendment retains the exemption for a utility customer's personal identifying information and adds to the exemption such customer's taxpayer identification number. The amendment also specifies that the utility must be agency owned or operated instead of simply just owned by a public entity. Additionally, the strike-all amendment provides for retroactive application of the exemption.¹⁵

Council for Smarter Government

On January 30, 2002, the Council for Smarter Government reported House Bill 445 favorably as a council substitute. The council substitute narrows the public records exemption created by the bill by removing a utility customer's usage records and payment records from the exemption. The council substitute retains the exemption for a utility customer's personal identifying information and adds such customer's taxpayer identification number to the public records exemption. The council substitute specifies that the utility must be agency owned or operated instead of simply just owned by a public entity. Additionally, the council substitute provides for retroactive application of the public records exemption.

VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

Heather A. Williamson, M.S.W.

Staff Director:

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

¹³ Byrd, Ted, The Tampa Tribune, "Legislation would seal utility records", December 5, 2001.

¹⁴ Telephone conversation with Charles Barner, Private Investigators Association, January 2, 2002.

¹⁵ 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*.

STORAGE NAME: h0445s1.sgc.doc

DATE: February 1, 2002

PAGE: 7

AS REVISED BY THE SMARTER GOVERNMENT COUNCIL:

Prepared by:

Staff Director:

Heather A. Williamson, M.S.W.

Don Rubottom