SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 348

SPONSOR: Judiciary Committee and Senator Peaden

SUBJECT: Personal ID Information/Public Record

DATE: December 09, 2003 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Greenbaum	Lang	JU	Fav/CS
2.			GO	
3.			RC	
4.				
5.				
6.				

I. Summary:

This bill creates an exemption from the Public Records Law for identifying and locating information for the following current and former federal officials, their spouses and children:

- United States Attorneys;
- Assistant United States Attorneys;
- Judges of the United States Courts of Appeal;
- Judges of the United States District Courts; and
- federal magistrates.

This information includes the home addresses, telephone numbers, social security numbers, photographs of these officials, their spouses and children as well as the places of employment of these officials' spouses and the names and locations of schools and daycare facilities attended by these officials' children.

This bill creates s. 119.07(3)(i)3 and 4, Florida Statutes.

II. Present Situation:

Public Records

Florida has a long history of providing public access to the records of governmental and other public entities. The first law affording access to public records was enacted by the Florida Legislature in 1909.[1] In 1992, Floridians voted to adopt an amendment to the State Constitution that raised the statutory right of public access to public records to a constitutional level.[2]

[1] Ch. 5942, L.O.F. (1909).
[2] Article I, s. 24 of the State Constitution

Article I, s. 24 of the State Constitution, expresses Florida's public policy regarding access to public records by 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.

In addition to the State Constitution, the Public Records Law[3] specifies conditions under which public access must be provided to governmental records of the executive branch and other governmental agencies. Section 119.07(1)(a), F.S., requires:

"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 any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee. . . ."

The Public Records Law states that, unless specifically exempted, all agency[4] records are to be available for public inspection. The term "public record" is broadly defined to mean:
All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.[5]

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate or formalize knowledge.[6] All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.[7]

The State Constitution permits only the Legislature the authority to create exemptions to public records requirements.[8] Article I, s. 24 of the State Constitution, permits the Legislature to provide by general law for the exemption of records. A law that exempts a record must state with specificity the public necessity justifying the exemption and the exemption must be no broader than necessary to accomplish the stated purpose of the law. Additionally, a bill that contains an

[3] Chapter 119, F.S.
[4] The word "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." The Florida Constitution also establishes a right of access to any public record 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 those records exempted by law or the state constitution.
[5] Section 119.011(1), F.S.
[6] *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).
[7] *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).
[8] Article I, s. 24(c) of the State Constitution.

exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.[9]

There is a difference between records that the Legislature has made exempt from public inspection and those that are exempt and confidential. If the Legislature makes certain records confidential, with no provision for its release such that its confidential status will be maintained, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.[10] If a record is not made confidential but is simply exempt from mandatory disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.[11]

The Open Government Sunset Review Act of 1995[12] states that an exemption may be created or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three specified criteria and if 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. The three statutory criteria are if 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 would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or

3) protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.[13]

The Open Government Sunset Review Act of 1995 provides for the systematic review, through a 5-year cycle ending October 2nd of the 5th year following enactment, of an exemption from the Public Records Act or the Public Meetings Law. Each year, by June 1, the Division of Statutory Revision of the Joint Legislative Management Committee is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

While the standards in the Open Government Sunset Review Act appear to limit the Legislature in the process of review of exemption, one session of the Legislature cannot bind another.[14] The Legislature is only limited in its review process by constitutional requirements. In other words, if

[9] Art. I, s. 24(c) of the State Constitution.
[10] Attorney General Opinion 85-62.
[11] *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).
[12] Section 119.15, F.S.
[13] Section 119.15(4)(b), F.S.
[14] *Straughn v. Camp,* 293 So.2d 689, 694 (Fla. 1974)

an exemption does not explicitly meet the requirements of the act, but falls within constitutional requirements, the Legislature cannot be bound by the terms of the Open Government Sunset Review Act. Further, s. 119.15(4)(e), F.S., makes explicit that:

> …notwithstanding s. 768.28 or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of any exemption under this section. The failure of the Legislature to comply strictly with this section does not invalidate an otherwise valid reenactment.

An exemption from disclosure requirements does not render a record automatically privileged for discovery purposes under the Florida Rules of Civil Procedure.[15] For example, the Fourth District Court of Appeal has found that an exemption for active criminal investigative information did not override discovery authorized by the Rules of Juvenile Procedure and permitted a mother *who was a party* to a dependency proceeding involving her daughter to inspect the criminal investigative records relating to the death of her infant.[16] The Second District Court of Appeal also has held that records that are exempt from public inspection may be subject to discovery in a civil action *upon a showing of exceptional circumstances* and if the trial court takes all precautions to ensure the confidentiality of the records.[17]

Under s. 119.10, F.S., any public officer violating any provision of this chapter is guilty of a noncriminal infraction, punishable by a fine not exceeding $500. In addition, any person willfully and knowingly violating any provision of the chapter is guilty of a first degree misdemeanor, punishable by potential imprisonment not exceeding one year and a fine not exceeding $1,000. Section 119.02, F.S., also provides a first degree misdemeanor penalty for public officers who knowingly violate the provisions of s. 119.07(1), F.S., relating to the right to inspect public records, as well as suspension and removal or impeachment from office.

Federal Justice Officials

Federal Courts.[18] There are 89 districts in the 50 states, which are listed with their divisions in Title 28 of the U.S. Code, Sections 81-144. District courts also exist in Puerto Rico, the Virgin Islands, the District of Columbia, Guam, and the Northern Mariana Islands. In total there are 94 U.S. district courts. The number of judgeships allotted to each district is set forth in Title 28 of the U.S. Code, Section 133. Florida is divided into three districts and has 36 district judges.

There are 13 judicial circuits, each with a court of appeals. The smallest court is the First Circuit with six judgeships, and the largest court is the Ninth Circuit, with 28 judgeships. A list of the states that compose each circuit is set forth in Title 28 of the U.S. Code, Section 41. The number of judgeships in each circuit is set forth in Title 28 of the U.S. Code, Section 44. Florida is assigned to the 11th Circuit and there are 12 judges assigned to this circuit.

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[15] *Department of Professional Regulation v. Spiva*, 478 So.2d 382 (Fla. 1st DCA 1985).
[16] *B.B. v. Department of Children and Family Services*, 731 So.2d 30 (Fla. 4th DCA 1999).
[17] *Department of Highway Safety and Motor Vehicles v. Krejci Company Inc.*, 570 So.2d 1322 (Fla. 2d DCA 1990).
[18] U.S. Courts, *Federal Courts Frequently Asked Questions*, http://www.uscourts.gov/faq.html (accessed December 1, 2003).

A U.S. magistrate judge is a judicial officer of the district court and is appointed by majority vote of the active district judges of the court to exercise jurisdiction over matters assigned by statute as well as those delegated by the district judges. The number of magistrate judge positions is determined by the Judicial Conference of the United States, based on recommendations of the respective district courts, the judicial councils of the circuits, and the Director of the Administrative Office of the U.S. Courts. A full-time magistrate judge serves a term of eight years. Duties assigned to magistrate judges by district court judges may vary considerably from court to court. The number of U.S. magistrate judges are assigned to Florida is unknown.

United States Attorneys.[19] The mission statement of the United States Attorneys provides that:

> United States Attorneys serve as the nation's principal litigators under the direction of the Attorney General. There are 93 United States Attorneys stationed throughout the United States, Puerto Rico, the Virgin Islands, Guam, and the Northern Mariana Islands. United States Attorneys are appointed by, and serve at the discretion of, the President of the United States, with advice and consent of the United States Senate. One United States Attorney is assigned to each of the judicial districts, with the exception of Guam and the Northern Mariana Islands where a single United States Attorney serves in both districts. Each United States Attorney is the chief federal law enforcement officer of the United States within his or her particular jurisdiction.

United States Attorneys conduct most of the trial work in which the United States is a party. The United States Attorneys have three statutory responsibilities under Title 28, Section 507 of the United States Code:

- the prosecution of criminal cases brought by the Federal government;
- the prosecution and defense of civil cases in which the United States is a party; and
- the collection of debts owed the Federal government which are administratively uncollectible.

There is an United State Attorney for each of the three Florida District Courts. The number of assistant U.S. Attorneys based in Florida is unknown.

III. Effect of Proposed Changes:

This bill creates subparagraphs 3 and 4 of s. 119.07(3)(i) F.S., to exempt from public disclosure identifying and location information for the following current and former federal officials, their spouses and children:

- United States Attorneys;
- Assistant United States Attorneys;
- Judges of the United States Courts of Appeal;
- Judges of the United States District Courts; and

[19] Department of Justice, United States Attorneys. *Mission Statement,* http://www.usdoj.gov/usao/index.html (accessed December 1, 2003).

- federal magistrates.

These exemptions are subject to the review pursuant to s. 119.15, F.S., and stand repealed October 2, 2009, unless reenacted.

This bill provides a statement of public necessity for these exemptions.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

This bill creates an exemption from the Public Records Laws for information locating and identifying certain federal officials, their spouses and children held by state agencies, their contractors, agents and employees.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

It is unclear which agencies are impacted by this exemption. Any impact to governmental operations would most likely be minimal.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Social Security numbers are confidential and exempt from public disclosure pursuant to s. 119.0721, F.S. This section applies to information held by an agency, its agents, contractors and employees, which identifies a social security number, before, on or after May 13, 2002, the effective date of the legislation.

Chapter 94-176, L.O.F., exempted from public disclosure information identifying the location of current and former state attorneys, assistant state attorneys, public defenders, assistant public defenders, statewide prosecutors and assistant statewide prosecutors. The House of Representatives Final Bill Analysis and Economic Impact Statement provided this explanation for the necessity for that exemption:

> State attorneys/prosecutors deal with criminals every day of their career, and in a capacity that wins no friends in the criminal world. Judges do not always convict, law enforcement officers do not always arrest, HRS personnel do not always make unfavorable reports regarding abuse or neglect, and firefighters rarely deal with criminals (they do investigate arsines [sic]). Yet, personal information regarding each of these categories of personnel and their families are exempt from the public records law. The existing exemptions are eminently appropriate; however, even greater justification exists for exempting personal information regarding state attorneys/prosecutors because they bring charges against and prosecute alleged criminals every day, and they are responsible for the severity of the charges brought -- which does not create good will among our criminal community. Additionally, evidence exists to show the dangerous nature of their jobs; for example, they have been stalked, shot, and in one case murdered (News Press, "Shooting grisly reminder of 1982 prosecutor slaying", Norman Langston and Kathleen Finnegan, kidnapped and shot, 1993; Gene Berry stalked and murdered, 1982).
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> Accordingly, it is a public necessity that state attorneys/prosecutors receive such an exemption regarding personal information. Release of this information could seriously jeopardize the safety and welfare of state attorneys/prosecutors and their families in that if, for example, home addresses and telephone numbers and the whereabouts of state attorneys'/prosecutors' children and spouses were readily available to the public, criminals could more readily threaten harm and instill fear among these state employees and their families thereby potentially interfering with the effective and efficient operation of government. Furthermore, little public good can be derived from releasing, for example, home addresses, telephone numbers, and the locations of the state attorneys'/prosecutors' childrens' schools and day care centers, in that such information generally would not help citizens effectively monitor the efficient operation of government. If an accusation were made that a state attorney/prosecutor was spending too much time at home or other allegations arose and a citizen chose to personally investigate, the home address could be found by other means, or the concerned citizen could report alleged misconduct to appropriate authorities for proper investigation. However, considering the possible injury or loss of life that may occur by virtue of criminal behavior levied against our state attorneys/prosecutors and their spouses and children, the minimal public benefit that may occur as a result of release of personal information is far outweighed by the potential harm that could occur as a result of release of such information.[20]

[20] Florida House of Representatives, *Final Bill Analysis and Economic Impact Statement for HB 1633,* at 4 (1994).

VIII. Amendments:

None.