

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1563 CS Public Records
SPONSOR(S): Kendrick and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 2366

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Governmental Operations Committee</u>	<u>6 Y, 0 N, w/CS</u>	<u>Mitchell</u>	<u>Williamson</u>
2) <u>Judiciary Appropriations Committee</u>	<u></u>	<u></u>	<u></u>
3) <u>State Administration Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

The bill further delays, until January 1, 2008, the requirement for the clerk of the circuit court and the county recorder to keep complete bank account, debit, charge, and credit card numbers exempt and to keep social security numbers confidential and exempt, without any person having to request redaction.

The bill shields the clerk of the circuit court and county recorders from liability for the inadvertent release of confidential and exempt social security numbers or exempt bank account, debit, charge, or credit card numbers, in certain records filed on or before January 1, 2008.

The bill requires any county recorder who accepts or stores official records in an electronic format to use his or her best efforts to redact all social security numbers or complete bank account, debit, charge, or credit card numbers from electronic copies of the official record. The bill declares that the use of an automated program for redaction constitutes the best effort and complies with the public records exemption requirements.

The bill makes a number of stylistic, but not substantive changes to the social security number exemption.

The bill does not appear to create, modify, or eliminate rulemaking authority.

The bill does not appear to have an impact on state or local government revenues, but may have a minimal fiscal impact on the expenditures of state and local governments for implementation.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill shields the clerk of the circuit court or county recorder from liability for the inadvertent release of certain confidential and exempt information.

B. EFFECT OF PROPOSED CHANGES:

Access to Public Records

Access to the public records of any public body is a right provided by Article 1, section 24(a) of the Florida Constitution:

Every person has the right to inspect or copy 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 with respect to records exempted pursuant to this section or specifically made confidential by this Constitution

Section 119.07(1), Florida Statutes, provides further implementation of this right:

Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.¹

Requirements for Public Records Exemptions

The Legislature may limit the right of the public to inspect or copy any public record by creating an exemption by general law.² This general law must “state with specificity the public necessity justifying the exemption” and be “no broader than necessary to accomplish the stated purpose of the law.”³ The Legislature has created numerous public records exemptions.

Public Records Exemptions for Social Security Numbers and Account Information

In 2002, the Legislature created a public records exemption for all social security numbers held by an agency⁴ that did not have an agency-specific exemption for social security numbers.⁵ In 2002, the Legislature also recreated⁶ a public records exemption for bank account numbers, debit, charge and credit card numbers held by an agency.⁷ The Legislature also created a number of exceptions for these exemptions. One of those exceptions related to court records; another exception related to documents presented to the county recorder for recording in the official records of the county.

¹ Fla. Stat. § 119.07(1)(a) (2005).

² Fla. Const. art. 1, § 24.

³ *Id.*

⁴ Fla. Stat. § 119.011(2) (2005) (defining “agency” as 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”).

⁵ Ch. 2002-256, Laws of Fla.

⁶ A previously existing exemption repealed on October 1, 2001. See Fla. Stat. § 119.07(3)(z) (2000).

⁷ Ch. 2002-257, Laws of Fla.

Court Records and Official Records Exceptions

In 2002, the Legislature allowed social security numbers and complete bank account, debit, charge, or credit card numbers, which were included in a court file, to continue to be included as part of the court record that is available for public inspection and copying until January 1, 2006.⁸ The Legislature provided the ability for a person to request the redaction of this information.⁹

In 2002, the Legislature also permitted social security numbers and complete bank account, debit, charge, or credit card numbers, which were included in a document presented to the county recorder for recording in the official records of the county, to continue to be included as part of the court record that is available for public inspection and copying until January 1, 2006.¹⁰ The Legislature also prohibited any person who prepares or files a document to be recorded in the official records by the county recorder from including a person's social security number or complete bank account, debit, charge, or credit card number in that document unless expressly required by law.¹¹

In 2005, the Legislature delayed until January 1, 2007, the requirements for the clerk of the circuit court and the county recorder to keep complete bank account, debit, charge, and credit card numbers exempt and to keep social security numbers confidential and exempt, without any person having to request redaction.¹²

Further Delay

The bill further delays, until January 1, 2008, the requirement for the clerk of the circuit court and the county recorder to keep complete bank account, debit, charge, and credit card numbers exempt and to keep social security numbers confidential and exempt, without any person having to request redaction.

Liability Shields

The bill shields the clerk of the circuit court from liability for the inadvertent release of confidential and exempt social security numbers or exempt bank account, debit, charge, or credit card numbers, which were in court records filed with the clerk of the circuit court on or before January 1, 2008, and which were unknown to the clerk of the circuit court.

The bill also shields the county recorder from liability for the inadvertent release of confidential and exempt social security numbers or exempt bank account, debit, charge, or credit card numbers, which were filed with the county recorder on or before January 1, 2008.

County Recorders and Electronic Records

The bill requires any county recorder who accepts or stores official records in an electronic format to use his or her best efforts to redact all social security numbers or complete bank account, debit, charge, or credit card numbers from electronic copies of the official record. The bill declares that the use of an automated program for redaction constitutes the best effort and complies with the public records exemption requirements.

⁸ Ch. 2002-391, Laws of Fla. This exception was originally created as paragraph (ff) of subsection (3) of section 119.07, Florida Statutes. This exception was later paragraph (gg) of subsection (6) of section 119.07, Florida Statutes.

⁹ Fla. Stat. § 119.071(5)(a)7.d. (2005) (requiring the holder of the social security number or complete bank account, debit, charge, or credit card number, or the holder's attorney or legal guardian, to submit a signed, legibly written request that is delivered by mail, facsimile, electronic transmission, or in person to the clerk of the circuit court and specifies the case name, case number, document heading, and page number).

¹⁰ Ch. 2002-391, Laws of Fla., *supra* note 8.

¹¹ *Id.*

¹² Ch. 2005-236, Laws of Fla., § 41. See also ch. 2005-251, Laws of Fla., § 24 (which transferred and redesignated paragraph (gg) of subsection (6) of section 119.07, Florida Statutes, to section 119.071(5)(a), Florida Statutes).

Stylistic Changes

The bill makes a number of stylistic, but not substantive changes to the social security number exemption.¹³

C. SECTION DIRECTORY:

Section 1: Amends section 119.071, Florida Statutes, to limit the liability of the clerk of the circuit court and the county recorder; to require the clerk of the circuit court to make certain notices; and to require best efforts in redaction.

Section 2: Reenacting section 1007.35(8)(b), Florida Statutes, to incorporate amendments.

Section 3: Providing an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

This bill may have a fiscal impact on state government expenditures because staff responsible for complying with public records requests will require training relating to the newly created public records exemption.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

This bill may have a fiscal impact on local government expenditures because the staffs of the clerk of the circuit court or county recorder who are responsible for complying with public records requests will require training relating to the newly created public records exemption. There will also be costs to notify the public of these changes.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

¹³ One example is "shall not" to "may not."

This bill does not appear to reduce the percentage of a state tax shared with counties or municipalities. This bill does not appear to reduce the authority that counties or municipalities have to raise revenue. Although this bill may require counties, through the clerks of the circuit court or county recorders, to spend funds or to take an action requiring the expenditure of funds, the amount of this expenditure is expected to be fiscally insignificant.

2. Other:

There do not appear to be any other constitutional issues.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create, modify, or eliminate rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issue: Unknown to the Clerk of the Circuit Court

Rather than using the phrase “unknown to the Clerk of the Circuit Court,” the sponsor may wish to consider referencing the request for redaction as the basis for whether the Clerk of the Circuit Court has knowledge.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 17, 2006, a proposed committee substitute was adopted by the Governmental Operations Committee and the bill was reported favorably with committee substitute.