

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.)

Prepared By: Health Care Committee

BILL: SPB 7006

SPONSOR: For consideration by Health Care Committee

SUBJECT: Review of Public Records Exemption/Personal Identifying Information Held by the Department of Health

DATE: October 11, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Munroe</u>	<u>Wilson</u>	<u>HE</u>	<u>Pre-meeting</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The proposed committee bill reenacts the public records exemption under s. 119.0712(1), F.S., relating to personal identifying information; bank account numbers; and debit, charge, and credit card numbers of clients of the Department of Health (DOH). The bill excludes bank account numbers and debit, charge, and credit card numbers, which are covered by another exemption in ch. 119, F.S. The bill also deletes the provision that repeals the exemption.

This bill reenacts and amends s. 119.0712(1), F.S.

II. Present Situation:

Public Records

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

The Public Records Law, ch. 119, F.S., specifies the conditions under which public access must be provided to governmental records. Section 286.011, F.S., the Public Meetings Law, specifies the requirements for meetings of public bodies to be open to the public. While the State Constitution provides that records and meetings are to be open to the public, it also provides that the Legislature may create exemptions to these requirements by general law if a public need exists and certain procedural requirements are met. Article I, s. 24, of the Florida Constitution,

governs the creation and expansion of exemptions to provide, in effect, that any legislation that creates a new exemption or that substantially amends an existing exemption must also contain a statement of the public necessity that justifies the exemption. Article I, s. 24, of the Florida Constitution, provides that any bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions.

The Open Government Sunset Review Act (s. 119.15, F.S.), provides for the repeal and prior review of any public records or meetings exemptions that are created or substantially amended in 1996 and subsequently. The chapter defines the term “substantial amendment” for purposes of triggering a repeal and prior review of an exemption to include an amendment that expands the scope of the exemption to include more records or information or to include meetings as well as records. The law clarifies that an exemption is not substantially amended if an amendment limits or narrows the scope of an existing exemption. The law was amended by ch. 2005-251, Laws of Florida, to modify the criteria under the Open Government Sunset Review Act so that consideration will be given to reducing the number of exemptions by creating a uniform exemption during the review of an exemption subject to sunset.

Under the Open Government Sunset Review Act, an exemption may be created or maintained only if it serves an identifiable public purpose. An identifiable public purpose is served if the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, the administration of which would be significantly impaired without the exemption;
- 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; or
- 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.

Personal Identifying Information of DOH Clients

Section 119.07(6)(cc), F.S. (2004), makes all personal identifying information; bank account numbers; and debit, charge, and credit card numbers contained in records *relating to an individual's personal health or eligibility for health related services* made or received by DOH confidential and exempt from the Public Records Law. Such information must be disclosed under the following circumstances: with the express written consent of the individual or the individual's legal representative; in a medical emergency, but only to the extent necessary to protect the health or life of the individual; by court order upon a showing of good cause; or to a health research entity, if the entity seeks the records or data pursuant to a research protocol, and enters into a purchase and data-use agreement with DOH. Effective October 1, 2005, s. 119.07(6)(cc), F.S. (2004), was amended and transferred to s. 119.0712(1), F.S., with minor substantive changes to provide that the personal identifying information contained in records

relating to an individual's personal health or eligibility for health related services be *held* by DOH rather than *made or received* by DOH.¹

The department administers a variety of health-related programs and services, some of which are coordinated by designated service providers. The department's client services include medical care and case management. Services are provided to children and adults who live in Florida. The department maintains numerous records that relate to an individual's personal health. The records are held by county health departments, the Children's Medical Services program, the Brain and Spinal Cord Injury Program, Vital Statistics, and the Diabetes Insulin Distribution Program. The department makes or receives information relating to an individual's immunizations; test results for sexually transmissible diseases, hepatitis and infectious diseases, tuberculosis, and communicable diseases; family planning; primary health care; and eligibility for the Special Supplemental Nutritional Program for Women, Infants, and Children. The department collects disease surveillance data and collects personal identifying information and personal health information for individuals affected by specified diseases such as cancer, breast and cervical cancer, sudden infant death syndrome and HIV/AIDS.

Bank Account, Debit, Charge, and Credit Card Numbers

In addition to s. 119.0712(1), F.S., various laws protect the confidentiality of bank account numbers and debit, charge, and credit card numbers held by state agencies. Section 119.071(5)(b), F.S., makes bank account numbers and debit, charge, and credit card numbers held by an agency exempt from the Public Records Law. Section 215.322(6), F.S., makes credit card account numbers in the possession of a state agency, a unit of local government, or the judicial branch confidential and exempt from the Public Records Law.

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Staff reviewed the exemption in s. 119.07(6)(cc), F.S. (2004), under the criteria of the Open Government Sunset Review Act (2004). Based on its review of the exemption, staff recommended that the exemption contained in s. 119.07(6)(cc), F.S. (2004), be preserved. Staff recommended that the exemption under review be amended to exclude bank account numbers and debit, charge, and credit card numbers, because this information as maintained by DOH or its agents is already exempt under other provisions of Florida law. Staff also recommended that the exemption be amended to clarify that the information exempt under the Public Records Law is personal identifying information contained in records relating to an individual's personal health or eligibility for health related services *held* by DOH rather than *made or received* by DOH. The amendment to clarify this latter recommendation is no longer necessary because s. 119.07(6)(cc), F.S. (2004), was amended and transferred in 2005 to s. 119.0712(1), F.S., with minor substantive changes to provide that the personal identifying information contained in records relating to an individual's personal health or eligibility for health related services be *held* by DOH rather than *made or received* by DOH. Staff's findings and recommendations are detailed in *Interim Project Report 2006-221*.

¹ See s. 32, ch. 2005-251, Laws of Florida.

III. Effect of Proposed Changes:

Section 1. Amends s. 119.0712(1), F.S., relating to an exemption from public records requirements for personal identifying information, bank account numbers, and debit, charge, and credit card numbers of DOH clients, to exclude bank account numbers and debit, charge, and credit card numbers. The section is also amended to delete the provision that repeals the exemption.

Section 2. Provides that the bill will take effect October 1, 2006.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirements of Art. VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

In accordance with a review pursuant to the Open Government Sunset Review Act, this bill amends s. 119.0712(1), F.S., and preserves the exemption in that section. The amendments do not expand the exemption. The bill complies with the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Art. III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
