

# 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.)

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Prepared By: Judiciary Committee

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BILL: SPB 7036

INTRODUCER: For consideration by Judiciary Committee

SUBJECT: Public Records

DATE: February 5, 2007

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Luczynski</u>	<u>Maclure</u>	_____	<b>Pre-meeting</b>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

Senate Proposed Bill 7036 emanates from Senate Interim Project Report 2007-211 of the Committee on Judiciary.<sup>1</sup> The bill revises the language of the general state policy on public records, under s. 119.01, F.S., to be consistent with article I, section 24 of the Florida Constitution. The bill adds definitions for the terms *confidential and exempt* and *exempt* to the definitions section of s. 119.011, F.S. The bill amends the list of public records exemptions, in chapter 119, Florida Statutes, that are valid for public records made part of court files, under s. 119.07(6), F.S., to include the exemptions for social security numbers and bank account, debit, charge, and credit account numbers (financial account numbers), under s. 119.071(5)(a) and (b), F.S. Finally, the bill creates and moves the aforementioned list to a new section, s. 119.0714, F.S.

The bill's effective date is contingent upon the passage of Senate Proposed Bill 7034 or similar legislation reenacting and saving paragraphs 119.071(5)(a) and (b), F.S., from repeal.

This bill amends the following sections of the Florida Statutes: 119.01, 119.011, 119.07, 257.34, 257.35, 383.402, 943.031, and 943.0313.

This bill creates section 119.0714, Florida Statutes.

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<sup>1</sup> See Comm. on Judiciary, Fla. Senate, *Open Government Sunset Review of Section 119.071(5)(a) and (b), F.S., Relating to Social Security Numbers and Financial Account Numbers Held by Court Clerks and County Recordors* (Interim Project Report 2007-211) (Nov. 2006).

## II. Present Situation:

### Public Records

Florida has a long history of providing public access to government records. The Legislature enacted the first public records law in 1892.<sup>2</sup> The Florida Supreme Court has noted that chapter 119, Florida Statutes, the Public Records Act, was enacted:

. . . to promote public awareness and knowledge of governmental actions in order to ensure that governmental officials and agencies remain accountable to the people.<sup>3</sup>

In 1992, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level applicable to all three branches of government.<sup>4</sup> Article I, section 24(a) of the Florida Constitution (public records amendment) provides that:

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 . . .

The general state policy on public records, s. 119.01, F.S., does not fully reflect the scope of authority or responsibility of the Legislature respecting public records after the adoption of article I, section 24 of the Florida Constitution. The public records amendment authorizes only the Legislature to create new public records exemptions.<sup>5</sup> Moreover, the public records amendment provides that “[t]he [L]egislature shall enact laws governing the enforcement of [the right to access public records], including the maintenance, control, destruction, disposal, and disposition of [public] records.”<sup>6</sup>

There is a difference between records that the Legislature has made *exempt* from public inspection and those that are *confidential and exempt*.<sup>7</sup> However, respondents to a survey conducted in conjunction with the Open Government Sunset Review of the exemptions for social security and financial account numbers<sup>8</sup> indicated that the difference in terms is not well understood. Although chapter 119, Florida Statutes, does not provide a definition for either term, Florida case law has defined both terms. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.<sup>9</sup> If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.<sup>10</sup>

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<sup>2</sup> Sections 1390, 1391, F.S. (Rev. 1892).

<sup>3</sup> *Forsberg v. Hous. Auth. of Miami Beach*, 455 So. 2d 373, 378 (Fla. 1984).

<sup>4</sup> Art. I, § 24, Fla. Const.

<sup>5</sup> Art. I, § 24(c), Fla. Const.

<sup>6</sup> *Id.*

<sup>7</sup> *WFTV, Inc., v. Sch. Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

<sup>8</sup> See Comm. on Judiciary, Fla. Senate, *Open Government Sunset Review of Section 119.071(5)(a) and (b), F.S., Relating to Social Security Numbers and Financial Account Numbers Held by Court Clerks and County Recordors* (Interim Project Report 2007-211) (Nov. 2006).

<sup>9</sup> *WFTV*, 874 So. 2d at 53; see also 90-50 Fla. Op. Att’y Gen. 2 (1990).

<sup>10</sup> *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

### **Exemptions for Public Records in Official Records and Court Files**

Section 119.07(6), F.S., provides the list of public records exemptions, in chapter 119, Florida Statutes, that apply to a public record made part of a court file. There are provisions related to the exemptions for social security and financial account numbers exemptions, under s. 119.071(5)(a) and (b), F.S., that directly address public records made part of a court file. However, neither exemption is included in the current list of exemptions that apply to a public record made part of a court file.

The public records exemptions under s. 119.071(5)(a) and (b), F.S., prohibit the public disclosure of social security and financial account numbers held by an agency. Additionally, the exemptions contain provisions and exceptions specific to social security and financial account numbers in official records or court files. Section 119.071(5)(a)7.d., F.S., provides that until January 1, 2008, if social security or financial account numbers are held in official records or court files, they may be inspected or copied by the public unless redaction was requested. As of January 1, 2008, the exempt or confidential status of social security and financial account numbers in official records or court files must be maintained without any person having to request redaction.

### **Senate Interim Project Report 2007-211**

Staff of the Committee on Judiciary reviewed the exemptions in s. 119.071(5)(a) and (5)(b), F.S., relating to social security and financial account numbers held by clerks of the circuit court and county recorders, under the criteria of the Open Government Sunset Review Act. Staff recommended the retention of the exemptions contained in s. 119.071(5)(a) and (b), F.S., and the revision of several related statutory provisions that are the subject of Senate Proposed Bill 7036.<sup>11</sup>

### **III. Effect of Proposed Changes:**

Senate Proposed Bill 7036 revises the general state policy on public records, s. 119.01, F.S., to conform more closely to the public policy embodied in article I, section 24 of the Florida Constitution (public records amendment). The proposed bill provides for the following revisions to the general state policy on public records:

- conforms the language regarding the records open for inspection and copying to the wording of the public records amendment;
- adds language, consistent with the public records amendment, concerning how public records may be exempted; and
- adds language, consistent with the public records amendment, concerning the Legislature's responsibility to provide laws for the enforcement of the right to inspect and copy public records.

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<sup>11</sup> See Comm. on Judiciary, Fla. Senate, *Open Government Sunset Review of Section 119.071(5)(a) and (b), F.S., Relating to Social Security Numbers and Financial Account Numbers Held by Court Clerks and County Recordors* (Interim Project Report 2007-211) (Nov. 2006).

These revisions to the general state policy on public records are consistent with the public records amendment and generally consistent with how the Legislature has already provided for the right to access public records in chapter 119, Florida Statutes.

Although Florida case law has defined the terms *confidential and exempt* and *exempt*, these terms would be better understood if they were defined in Florida Statutes. The bill provides definitions for the terms *confidential and exempt* and *exempt* consistent with their definitions in Florida case law. It also amends several other statutory sections to conform cross references.

Currently, the public records exemptions for social security and financial account numbers, under s. 119.071(5)(a) and (b), F.S., are not in the list of public records exemptions in chapter 119, Florida Statutes, that apply to a public record made part of a court file. The bill amends the list of exemptions, under s. 119.07(6), F.S., to include the exemptions for social security and financial account numbers. Finally, the bill creates and moves the aforementioned list of exemptions to a new section, s. 119.0714, F.S.

The bill's effective date is contingent upon the passage of Senate Proposed Bill 7034 or similar legislation reenacting and saving paragraphs 119.071(5)(a) and (b), F.S., from repeal.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

This bill revises provisions of the Public Records Act, but does not create or expand a public records exemption.

##### **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:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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

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## **VIII. Summary of Amendments:**

None.

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