

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7197 PCB GEAC 07-08 OGSR/Social Security Numbers and Financial Account Numbers

SPONSOR(S): Government Efficiency & Accountability Council and Attkisson

TIED BILLS: **IDEN./SIM. BILLS:** SB 1468

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Government Efficiency & Accountability Council	13 Y, 0 N	Williamson	Cooper
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public records and each public meetings exemption five years after enactment. If the Legislature does not reenact the exemption, it is automatically repealed on October 2nd of the fifth year after enactment.

Current law provides a general public records exemption for social security numbers and bank account, debit, charge, and credit card numbers, held by an agency. Such numbers also are protected in court records and official records if redaction has been requested.

The bill saves from repeal those public records exemptions. It repeals a duplicative exemption for credit card numbers. In addition, the bill transfers to a new section of law those provisions related to court records and official records.

The exemptions will repeal on October 2, 2007, if this bill does not become law.

The bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill requires agencies to certify to the President of the Senate and the Speaker of the House of Representatives their compliance with its provisions.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

OPEN GOVERNMENT SUNSET REVIEW ACT

The Open Government Sunset Review Act¹ sets forth a legislative review process for newly created or substantially amended public records or public meetings exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or,
- Protecting trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required because of the requirements of s. 24(c), Article I of the State Constitution. If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.

SOCIAL SECURITY NUMBERS

SOCIAL SECURITY ACT

The Social Security Act² created a federal program designed to pay retired workers age 65 or older a continuing income after retirement. It created programs for unemployment insurance, old-age assistance, aid to dependent children and grants to the states to provide various forms of medical care.³ The act also authorized the establishment of a record-keeping system to manage the social security program. As a result, the social security number (SSN) was created to assist in the administration of social security laws by tracking earnings to determine social security withholdings.

¹ Section 119.15, F.S.

² H.R. 7260 (1935).

³ *Historical Background and Development of Social Security*, Social Security Administration webpage,

<http://www.ssa.gov/history/briefhistory3.html>.

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THE NUMBER AND WHAT IT REPRESENTS

The SSN is a nine-digit number assigned by the Social Security Administration. The SSN can provide some information about the person assigned the number. For example, the area numbers (the first three numbers of a SSN) reflect the state in which the number was issued. The group numbers (the middle two numbers) indicate the order in which the SSN was issued in each area. The serial numbers (the last four numbers) are randomly generated. As a result, a SSN may reveal the holder's place of origin and relative age.

USES OF THE SOCIAL SECURITY NUMBER

Although the original intended use of the SSN was limited, it has become the personal identifier of choice for governmental and private entities. For example, agencies use SSNs to ensure that benefit recipients do not receive multiple benefits and that tax registrants do not obtain multiple homestead tax exemptions. Commercial entities use SSNs to identify individuals for credit bureaus, credit card companies, and mortgage companies. Additionally, SSNs are used in the insurance industry and for medical services.

COLLECTION OF SOCIAL SECURITY NUMBERS

The Florida Statutes contain numerous requirements for the collection of SSNs. A few examples include: death certificate;⁴ written judgment finding a defendant guilty of a felony;⁵ application for funeral-related personnel;⁶ pleadings for dissolution of marriage;⁷ application for a fishing or hunting license;⁸ and marriage license application.⁹

GENERAL EXEMPTION FOR SOCIAL SECURITY NUMBERS

While there are numerous statutory provisions authorizing or requiring collection of SSNs, there also are numerous public records exemptions for SSNs.¹⁰ The exemption under review, which is found in s. 119.071(5)(a), F.S., is the *general* exemption for SSNs. It provides that all SSNs held by an agency¹¹ are confidential and exempt from public records requirements.¹² This exemption does not supersede any other SSN exemption existing prior to May 13, 2002, or created thereafter.¹³

An agency may release a SSN to another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities.¹⁴ The exemption also authorizes disclosure of SSNs to a commercial entity engaged in the performance of a commercial activity,¹⁵ provided the SSNs will be used only in the normal course of business for legitimate business purposes.¹⁶ A verified,¹⁷

⁴ Section 382.008, F.S.

⁵ Section 921.241, F.S.

⁶ Section 497.141, F.S.

⁷ Section 61.052, F.S.

⁸ Section 372.561, F.S.

⁹ Section 741.04, F.S.

¹⁰ SSN exemptions include ss. 97.0585, 119.071(4)(a) and (d), 409.175, and 717.117, F.S.

¹¹ Section 119.011, F.S., defines "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.

¹² Section 119.071(5)(a)3., F.S.

¹³ Section 119.071(5)(a)10., F.S.

¹⁴ Section 119.071(5)(a)4., F.S.

¹⁵ A "commercial activity" means an activity that provides a product or service that is available from a private source, or its agents, employees, or contractors. Section 119.071(5)9a)5., F.S.

¹⁶ A "legitimate business purpose" includes verification of the accuracy of personal information received by a commercial entity in the normal course of its business; use in a civil, criminal, or administrative proceeding; use for insurance purposes; use in law enforcement and investigation of crimes; use in identifying and preventing fraud; use in matching, verifying or retrieving information;

written request signed by an authorized officer, employee, or agent of the commercial entity is required.¹⁸

The exemption also expressly limits agency collection of SSNs.¹⁹ If an agency collects the SSN, it must provide a person with a statement of the purpose for which the SSN is being collected and used upon request. A SSN collected by an agency for a particular purpose may not be used by that agency for any purpose other than the purpose stated.²⁰

FINANCIAL ACCOUNT NUMBERS

Current law authorizes a state agency²¹ or the judicial branch to accept credit cards, charge cards, or debit cards in payment for goods and services with the prior approval of the Chief Financial Officer.²² While this section regulates acceptance of credit, charge, or debit cards, mysteriously, the related public records exemption applies only to credit card numbers.²³ It states:

Credit card numbers in the possession of a state agency, a unit of local government, or the judicial branch are *confidential* and exempt from the provisions of s. 119.07(1), F.S. [*emphasis added*].²⁴

Current law also provides a *general* public records exemption for bank account, debit, charge, and credit card numbers held by an agency.²⁵ Pursuant to the Open Government Sunset Review Act, the general exemption for such numbers will repeal on October 2, 2007, unless reenacted by the Legislature.

SOCIAL SECURITY NUMBERS AND FINANCIAL ACCT NUMBERS IN COURT RECORDS AND OFFICIAL RECORDS

The public records exemptions for SSNs and financial account numbers²⁶ also contain provisions specific to such numbers in court records and official records.

A person preparing a document for recordation may not include any person's SSN or financial account number in that document unless expressly required by law. If such number has been included in a document submitted to the county recorder for recordation in the official records book, then that number may be made available as part of the official record available for public inspection and copying.²⁷ In

and use in research activities. A legitimate business purpose does not include the display or bulk sale of SSNs to the general public or the distribution of such numbers to any customer that is not identifiable by the distributor. *Id.*

¹⁷ The request must be verified as provided in s. 92.525, F.S. The section provides that a request is verified if made under oath or affirmation taken or administered before an officer authorized to administer oaths, or by signing a written declaration. The verified written request must include the name of the business, business mailing and location addresses, business telephone number, and statement of specific purposes for needing access to SSNs and how SSNs will be used in the normal course of business.

¹⁸ Section 119.071(5)(a)5., F.S.

¹⁹ Section 119.071(5)(a)2., F.S.

²⁰ *Id.*

²¹ A "state agency" or "agency" means any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government. For purposes of chapters 215 and 216, F.S., "state agency" or "agency" includes, but is not limited to, state attorneys, public defenders, the capital collateral regional counsels, the Justice Administrative Commission, the Florida Housing Finance Corporation, and the Florida Public Service Commission. Solely for the purposes of implementing s. 19(h), Art. III of the State Constitution, the terms "state agency" and "agency" include the judicial branch. Section 216.011(1)(qq), F.S.

²² Section 215.322(2), F.S.

²³ Section 215.322(6), F.S., makes credit card numbers confidential and exempt from public records requirements.

²⁴ In contrast to the exemption under review, this exemption makes credit card numbers confidential and exempt, not just exempt. Further, this exemption expressly includes the courts. Under *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992), the Florida Supreme Court found that the definition of "agency" in chapter 119, F.S., was intended to apply only to executive branch agencies and officers and to local governmental entities and their officers.

²⁵ Section 119.071(5)(b), F.S.

²⁶ For purposes of this analysis, "financial account numbers" means bank account numbers and debit, charge, and credit card numbers.

²⁷ Section 119.071(5)(a)7.b. and e., F.S.

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addition, if a SSN or financial account number has been included in a court file then such number may be included as part of the court record available for public inspection and copying.²⁸

Any person or his or her attorney or legal guardian may request that his or her SSN or financial account number be redacted²⁹ from an official record or court record provided the request:

- Is written and legibly signed by the requester;
- Is delivered by mail, facsimile, or electronic transmission or delivered in person, to the clerk of the circuit court or the county recorder; and
- Specifies for official records the identification page number and for court records the case name, case number, document heading, and page number.³⁰

The clerk of the circuit or county recorder may not charge a fee for redaction.

Beginning January 1, 2008, the clerk of the circuit court and the county recorder must protect the release of SSNs and financial account numbers without any person having to request redaction.³¹

EFFECT OF BILL

SOCIAL SECURITY NUMBERS

The bill saves from repeal, with changes, the *general* public records exemption for social security numbers (SSN) held by an agency.³² It reorganizes the exemption, defines terms,³³ makes editorial changes, and removes superfluous language.

The bill requires agencies to certify their compliance with its provisions to the President of the Senate and the Speaker of the House of Representatives no later than January 31, 2008.

FINANCIAL ACCOUNT NUMBERS

The bill saves from repeal the *general* public records exemption for bank account numbers and debit, charge, and credit card numbers held by an agency.³⁴ It also repeals the public records exemption for credit card numbers found in s. 215.322(6), F.S., as it is duplicative of the general exemption under review.

COURT FILES, COURT RECORDS, AND OFFICIAL RECORDS

The bill creates a new section of law that relocates provisions related to court files, court records, and official records. Specifically, it transfers the SSN and financial account number provisions related to court records and official records to a new section of law. In addition, it extends from January 1, 2008 to January 1, 2011, the date by which the clerk of the circuit court must protect from release, in court records, SSNs and financial account numbers without any person having to request redaction. It also extends to January 1, 2011, the date by which the county recorder must protect from release SSNs and

²⁸ Section 119.071(5)(a)7.d., F.S.

²⁹ “Redact” means to conceal from a copy of an original public record, or to conceal from an electronic image that is available for public viewing, that portion of the record containing exempt or confidential information. Section 119.011(12), F.S.

³⁰ Section 119.071(5)(a)7.b., d., and e., F.S.

³¹ Section 119.071(5)(a)7.g., F.S.

³² Section 119.071(5)(a), F.S.

³³ The bill defines “commercial activity” to mean the provision of a lawful product or service by a commercial entity. Commercial activity includes verification of the accuracy of personal information received by a commercial entity in the normal course of its business; use for insurance purposes; use in identifying and preventing fraud; use in matching, verifying, or retrieving information; and use in research activities. It does not include the display or bulk sale of SSNs to the public or the distribution of SSNs to any customer that is not identifiable by the commercial entity. The bill also defines “commercial entity” to mean any corporation, partnership, limited partnership, proprietorship, sole proprietorship, firm, enterprise, franchise, or association that performs a commercial activity in this state.

³⁴ Section 119.071(5)(b), F.S.

financial account numbers contained in official records, in an electronic format, without any person having to request redaction. A person must continue to request redaction of such numbers contained in official records in any other format.

The bill also transfers to the newly created section of law exemptions found in s. 119.07(6), F.S., which are applicable to court files.³⁵ These exemptions currently are located in the section of law that provides for access to public records and the copying fees associated with such access. *No substantive changes are made to the list of exemptions*; however, SSNs and financial account numbers are expressly added to the list. SSNs in court records were made confidential and exempt from public records requirements in 2002. Also, financial account numbers in such records were made exempt from public records requirements. Those exemptions, however, were not included in the list provided in s. 119.07(6), F.S. As such, this change merely conforms the current list in s. 119.07(6), F.S., to current law.

C. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., to reorganize and reenact the public records exemption for social security numbers held by an agency.

Section 2 amends s. 119.071, F.S., to reenact the public records exemption for financial account numbers held by an agency.

Section 3 creates s. 119.0714, F.S., to merge public records exemptions applicable to court files, court records, and official records.

Section 4 repeals s. 215.322(6), F.S., which provides a public records exemption for credit card numbers.

Section 5 provides an effective date of October 1, 2007.

II. 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.

³⁵ This subsection protects the following information contained in a court file: a public record that was prepared by an agency attorney or prepared at the attorney's express direction as provided in s. 119.071(1)(d), F.S.; data processing software as provided in s. 119.071(1)(f), F.S.; any information revealing surveillance techniques or procedures or personnel as provided in s. 119.071(2)(d), F.S.; any comprehensive inventory of state and local law enforcement resources, and any comprehensive policies or plans compiled by a criminal justice agency, as provided in s. 119.071(2)(d), F.S.; any information revealing the substance of a confession of a person arrested as provided in s. 119.071(2)(e), F.S.; any information revealing the identity of a confidential informant or confidential source as provided in s. 119.071(2)(f), F.S.; any information revealing undercover personnel of any criminal justice agency as provided in s. 119.071(4)(c), F.S.; and information or records that may reveal the identity of a person who is a victim of a sexual offense as provided in s. 119.071(2)(h), F.S.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

A variety of government agencies appear to be taking steps to eliminate the open display of SSNs, but there does not appear to be a uniform practice or policy at the *federal*, state, or local level to protect them.³⁶ According to a report by the United States Government Accountability Office:

Current federal restrictions on SSNs and other personal information are industry specific and do not apply broadly . . . given the industry specific nature of federal laws, no single federal agency has responsibility for ensuring the protection of individuals' personal information. Consequently, gaps remain at the federal level in protecting individuals' personal information.³⁷

In the past few years, Congress has considered legislation creating SSN restrictions. In many cases, the provisions considered mirrored provisions found in state laws.³⁸

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

None.

³⁶ General Accounting Office (GAO), *Social Security Numbers, Governments Could Do More to Reduce Display in Public Records and on Identity Cards*, November 2004.

³⁷ GAO, *Social Security Numbers, Federal and State Laws Restrict Use of SSNs, yet Gaps Remain*, statement of Barbara D. Bovbjerg, Director, Education, Workforce, and Income Security Issues, September 15, 2005, at 18.

³⁸ *Id.* at 15.