

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7037 PCB GAP 09-05 OGSR/Identification and Location Information of Federal Attorneys and Judges

SPONSOR(S): Governmental Affairs Policy Committee, McBurney and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1342

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Governmental Affairs Policy Committee	11 Y, 0 N	Williamson	Williamson
1)	Economic Development & Community Affairs Policy Council	15 Y, 0 N	Williamson	Tinker
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

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

Current law provides public record exemptions for identification and location information relating to current or former U.S. attorneys and assistant attorneys and current or former federal judges and magistrates, and their spouses and children. The U.S. attorneys, judges, and magistrates must make a request to the custodial agency to keep the information exempt.

The bill reenacts the public record exemptions, which will repeal on October 2, 2009, if this bill does not become law. It removes social security numbers from the list of exempt information as current law already provides a general public record exemption for such numbers. In addition to the written request to exempt such information, the U.S. attorneys, judges, and magistrates also must submit a written statement verifying that he or she has made reasonable efforts to protect identification and location information from being accessible through other means available to the public.

Finally, the bill creates a definition for "identification and location information" for purposes of the public record exemption.

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

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. 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 record or public meeting 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 record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects 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.
- Protects 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.² 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 created³ then a public necessity statement and a two-thirds vote for passage are not required.

Public Record Exemptions for Federal Attorneys and Judges

Current law provides public record exemptions for information relating to current or former U.S. attorneys and assistant attorneys⁴ and current or former federal judges and magistrates,⁵ and their spouses and children. The exempt⁶ information includes:

¹ Section 119.15, F.S.

² Section 24(c), Art. I of the State Constitution.

³ An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

⁴ Section 119.071(4)(d)3., F.S.

- The home addresses, telephone numbers, social security numbers, and photographs of these officials;
- The home addresses, telephone numbers, social security numbers, photographs, and places of employment of their spouses and children; and
- The names and locations of schools and day care facilities attended by their children.

The U.S. attorneys, judges, and magistrates must make a request to the custodial agency to keep the information exempt.

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2009, unless reenacted by the Legislature.

EFFECT OF BILL

The bill removes the repeal date, thereby reenacting the public record exemptions for identification and location information for U.S. attorneys, judges, and magistrates. It relocates the exemption to s. 119.071(5), F.S., which provides exemptions for personal information.

The bill removes social security numbers from the list of exempt information as current law already provides a general public record exemption for such numbers.⁷ In addition to the written request to exempt such information, the U.S. attorneys, judges, and magistrates also must submit a written statement verifying that he or she has made reasonable efforts to protect identification and location information from being accessible through other means available to the public. To date, only guardians ad litem are required to submit such statement.⁸

Finally, the bill creates a definition for “identification and location information” for purposes of the public record exemption. It means:

- The home address, telephone number, and photograph of a current or former U.S. attorney, assistant U.S. attorney, judge of the U.S. Courts of Appeal, U.S. district judge, or U.S. magistrate;
- The home address, telephone number, photograph, and place of employment of the spouse or child of such attorney, judge, or magistrate; and
- The name and location of the school or and day care facility attended by the child of such attorney, judge, or magistrate.

B. SECTION DIRECTORY:

Section 1 amends s. 119.071(4)(d), F.S., to reorganize the paragraph and to remove the public record exemption for U.S. attorneys and judges.

Section 2 creates s. 119.071(5)(i), F.S., to relocate the public record exemption for identification and location information of U.S. attorneys and judges.

Section 2 provides an effective date of October 1, 2009.

⁵ Section 119.071(4)(d)4., F.S.

⁶ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991) If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (See Attorney General Opinion 85-62, August 1, 1985)

⁷ See s. 119.071(5)(a), F.S.

⁸ See s. 119.071(4)(d)6., F.S.

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.

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:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This 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:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

None.