

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL 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: The Professional Staff of the Governmental Oversight and Accountability Committee

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BILL: SB 2078

INTRODUCER: Governmental Oversight and Accountability Committee

SUBJECT: OGSR/U.S. Census Bureau Address Information

DATE: February 14, 2012

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Seay	Roberts	GO	<b>Pre-meeting</b>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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**I. Summary:**

This bill is the result of the Governmental Oversight and Accountability Committee’s Open Government Sunset Review of the public records exemption for United States Census Bureau address information held by an agency pursuant to the Local Update of Census Address (LUCA) Program. This public records exemption will expire October 2, 2012, unless reviewed and saved from repeal through reenactment by the Legislature. The Sunset Review recommended that this public records exemption be repealed as the U.S. Census Bureau has ended the LUCA Program.

This bill repeals section 119.071 of the Florida Statutes.

**II. Present Situation:**

**Public Records Law**

The State of Florida has a long history of providing public access to governmental records and meetings. The Florida Legislature enacted the first public records law in 1892.<sup>1</sup> One-hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.<sup>2</sup> Article I, s. 24, of the State Constitution, provides that:

(a) 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,

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<sup>1</sup> Section 1390, 1391 F.S. (Rev. 1892).

<sup>2</sup> FLA. CONST. art. I, s. 24.

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. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the State Constitution, the Public Records Act,<sup>3</sup> which pre-dates the State Constitution's public records provisions, specifies conditions under which public access must be provided to records of an agency.<sup>4</sup> Section 119.07(1)(a), F.S., states:

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.

Unless specifically exempted, all agency records are available for public inspection. The term "public record" is broadly defined to mean:

all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.<sup>5</sup>

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge.<sup>6</sup> All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.<sup>7</sup>

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. 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>8</sup> If a record is simply made exempt from

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<sup>3</sup> Chapter 119, F.S.

<sup>4</sup> The word "agency" is defined in s. 119.011(2), F.S., to mean "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." The Florida Constitution also establishes a right of access to 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 those records exempted by law or the State Constitution. *See supra* fn. 3.

<sup>5</sup> Section 119.011(12), F.S.

<sup>6</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

<sup>7</sup> *Wait v. Florida Power & Light Co.*, 372 So. 2d 420 (Fla. 1979).

<sup>8</sup> Florida Attorney General Opinion 85-62.

disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.<sup>9</sup>

Only the Legislature is authorized to create exemptions to open government requirements.<sup>10</sup> Exemptions must be created by general law, and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.<sup>11</sup> A bill enacting an exemption<sup>12</sup> may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.<sup>13</sup>

### **Open Government Sunset Review Act**

The Open Government Sunset Review Act (Act)<sup>14</sup> provides for the systematic review, through a 5-year cycle ending October 2 of the fifth year following enactment, of an exemption from the Public Records Act or the Public Meetings Law.

The Act states that an exemption may be created, revised, or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves.<sup>15</sup> An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An exemption meets the three statutory criteria if it:

- 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 information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; 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 that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.<sup>16</sup>

The Act also requires the Legislature to consider the following:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?

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<sup>9</sup> *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5<sup>th</sup> DCA 1991), *review denied*, 589 So. 2d 289 (Fla. 1991).

<sup>10</sup> *Supra* fn. 1.

<sup>11</sup> *Memorial Hospital-West Volusia v. News-Journal Corporation*, 784 So. 2d 438 (Fla. 2001); *Halifax Hospital Medical Center v. News-Journal Corp.*, 724 So. 2d 567, 569 (Fla. 1999).

<sup>12</sup> Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

<sup>13</sup> *Supra* fn. 1.

<sup>14</sup> Section 119.15, F.S.

<sup>15</sup> Section 119.15(6)(b), F.S.

<sup>16</sup> *Id.*

- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

While the standards in the Open Government Sunset Review Act may appear to limit the Legislature in the exemption review process, those aspects of the act that are only statutory, as opposed to constitutional, do not limit the Legislature because one session of the Legislature cannot bind another.<sup>17</sup> The Legislature is only limited in its review process by constitutional requirements.

Further, s. 119.15(8), F.S., makes explicit that:

notwithstanding s. 768.28 or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of an exemption under this section. The failure of the Legislature to comply strictly with this section does not invalidate an otherwise valid reenactment.

### **Local Update of Census Address Program**

The Local Update of Census Addresses Program (LUCA Program) was a decennial census geographic partnership program designed to allow the United States Census Bureau to benefit from local knowledge in developing its Master Address File<sup>18</sup> for the 2010 census.<sup>19</sup> The LUCA Program was made possible by the Census Address List Improvement Act of 1994, which authorizes designated representatives of local and tribal governments to review the Master Address File.<sup>20</sup>

The LUCA Program required that participating governments designate a LUCA liaison to review the portion of the census address list covering the area under the participating government's jurisdiction.<sup>21</sup> The LUCA liaison was subject to the same confidentiality requirements as census workers and was prohibited from disclosing census information.<sup>22</sup> LUCA Program participants

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<sup>17</sup> *Straughn v. Camp*, 293 So. 2d 689, 694 (Fla. 1974).

<sup>18</sup> The Master Address File is an inventory of all addresses and physical/location descriptions assembled by the Census Bureau, including their geographic locations, and serves as the source of addresses for mailing and delivering decennial census forms and for physically locating the addresses when necessary. *See* Prepared Statement of Robert M. Groves, Director of the U.S. Census Bureau, *2010 Census: Master Address File, Issues and Concerns*, [http://www.census.gov/newsroom/releases/pdf/Groves\\_House\\_Testimony\\_10-21\\_Final.pdf](http://www.census.gov/newsroom/releases/pdf/Groves_House_Testimony_10-21_Final.pdf) (last viewed Jan. 18, 2012).

<sup>19</sup> U.S. Census Bureau, *2010 Decennial Census Local Update of Census Addresses (LUCA)*, <http://www.census.gov/geo/www/luca2010/luca.html> (last viewed Jan. 18, 2012).

<sup>20</sup> Public Law 103-430.

<sup>21</sup> U.S. Census Bureau, *Overview of the 2010 Decennial Census LUCA Program*, [http://www.census.gov/geo/www/luca2010/luca\\_ov.html](http://www.census.gov/geo/www/luca2010/luca_ov.html) (last viewed Jan. 18, 2012).

<sup>22</sup> Federal law requires the U.S. Census Bureau to maintain the confidentiality of certain information that it collects. This confidentiality helps to ensure that the bureau maintains the most accurate data possible. To uphold the law, the bureau requires that all individuals who work with the confidential information must abide by a confidentiality and security

were required to review a set of security guidelines and to sign a confidentiality agreement promising to protect the confidential address list, which included corresponding maps and address tallies.<sup>23</sup>

The LUCA Program provided clear guidelines for local government participation and confidentiality; however, the federal law was less clear regarding confidentiality at the state level. Therefore, the Legislature created the public records exemption under review.<sup>24</sup>

The LUCA Program officially ended as of March 31, 2010.<sup>25</sup> Therefore, there is no need to continue the associated public-records exemption for United States Census Bureau address information held by an agency pursuant to the LUCA Program. The United States Census Bureau is currently working on a Geographic Support System Initiative in support of the 2020 Census to improve address coverage, continually update spatial features, and enhance quality assessment and measurement.<sup>26</sup>

### III. Effect of Proposed Changes:

**Section 1** repeals s. 119.071, F.S., relating to the public records exemption for U.S. Census Bureau address information held by an agency pursuant to the Local Update of Census Address Program.

**Section 2** provides that this act takes effect immediately upon becoming a law.

### IV. Constitutional Issues:

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

None.

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

None.

#### C. Trust Funds Restrictions:

None.

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agreement. Title 13 of the United States Code provides for the confidential treatment of census-related information. Census information includes: everything on a completed or partially completed questionnaire or obtained in a personal or telephone interview; individual addresses maintained by the LUCA Program liaisons review; and maps that identify the location of individual housing units and/or group quarters.

<sup>23</sup> U.S. Census Bureau, *Overview of the 2010 Decennial Census LUCA Program*, [http://www.census.gov/geo/www/luca2010/luca\\_ov.html](http://www.census.gov/geo/www/luca2010/luca_ov.html) (last viewed Jan. 18, 2012).

<sup>24</sup> Chapter 2007-250, Laws of Florida.

<sup>25</sup> U.S. Census Bureau, *LUCA Closeout Phase*, [http://www.census.gov/geo/www/luca2010/luca\\_co.html](http://www.census.gov/geo/www/luca2010/luca_co.html) (last viewed Jan. 18, 2012).

<sup>26</sup> U.S. Census Bureau, *Geographic Support System (GSS) Initiative*, <http://www.census.gov/geo/www/gss/index.html> (last viewed Jan. 18, 2012).

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

## A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

## B. Amendments:

None.