

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	HB 7109 (SB 2080)	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Government Operations Subcommittee; Mayfield (Governmental Oversight and Accountability)	116 Y's	0 N's
COMPANION BILLS:	SB 2080	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

HB 7109 passed the House on February 23, 2012, and subsequently passed the Senate on March 9, 2012.

The bill saves from repeal the public record exemption for personal identifying information of a participant in the Lifeline Assistance Plan (Lifeline) held by the Public Service Commission (PSC).

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.

Lifeline is part of a federal program designed to provide telecommunications services to low-income customers at affordable rates. Eligible persons may enroll in Lifeline by submitting an application to the PSC that requires personal identifying information. In addition, the Department of Children and Family Services, the Department of Education, the PSC, and the Office of Public Counsel are authorized to exchange personal identifying information of eligible customers with eligible telecommunications carriers and commercial mobile radio service providers.

Current law provides that personal identifying information of a participant in Lifeline held by the PSC is confidential and exempt from public record requirements. The information may be released as provided by law. An officer or employee of a telecommunications carrier who intentionally discloses the confidential and exempt information commits a misdemeanor of the second degree.

The bill reenacts this public record exemption, which will repeal on October 2, 2012, if this bill does not become law. In addition, it expands the list of entities subject to penalties for disclosing such information to include officers or employees of the PSC.

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

The bill was approved by the Governor on May 4, 2012, ch. 2012-226, Laws of Florida. The effective date of the bill is October 1, 2012.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF 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.

Lifeline Assistance Plan

The Lifeline Assistance Plan (Lifeline) is a component of the federal Low Income Program,⁴ which is designed to ensure that quality telecommunications services are available to low-income customers at just, reasonable, and affordable rates.⁵ Lifeline participants in Florida are given a \$13.50 credit per month on local phone bills.⁶

Current law provides oversight of Lifeline by the Public Service Commission (PSC).⁷ A customer's eligibility for Lifeline is determined by the customer's enrollment in any one of the following programs:

- Temporary Assistance for Needy Families;
- Supplemental Security Income;
- Food Stamps;
- Medicaid;
- Federal Public Housing Assistance;
- Low-Income Home Energy Assistance Plan;

¹ See s. 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 Public Law 104-104, the Federal Telecommunications Act of 1996, created the Universal Service Program, in which the Low Income Program is a part.

⁵ The Universal Service Administrative Company (USAC), at <http://www.usac.org/li/about/default.aspx> (last visited January 23, 2012).

⁶ Florida Public Service Commission, Link-Up Florida and Lifeline Assistance Programs, at <http://www.floridapsc.com/utilities/telecomm/lifeline/engbrochure.aspx> (last visited January 23, 2012).

⁷ See s. 364.10, F.S.

- National School Lunch Program's Free Lunch Program; and
- Bureau of Indian Affairs Programs.⁸

Each local exchange telecommunications company⁹ that has more than one million access lines is required to provide Lifeline service to any otherwise eligible customer or potential customer.¹⁰ The PSC, Office of Public Counsel certifies eligibility for Lifeline on income-based criteria, which is 150 percent of the federal poverty guidelines.^{11,12}

Eligible persons may enroll in Lifeline by submitting an application to the PSC that requires the name, address, telephone number, service provider, and the last four digits of the applicant's social security number.¹³

Current law also provides for automatic enrollment. The Department of Children and Family Services (DCF), the Department of Education, the PSC, and the Office of Public Counsel are authorized to exchange information such as a person's name, date of birth, service address, and telephone number with eligible telecommunications carriers and commercial mobile radio service providers so that the carriers can identify and enroll an eligible person in Lifeline.¹⁴ If any state agency determines that a person is eligible for Lifeline services, the person's information must be immediately forwarded to the PSC for automatic enrollment with the appropriate eligible telecommunications carrier. In addition, the PSC and DCF are granted rulemaking authority to create procedures for automatic enrollment of eligible customers in Lifeline.¹⁵

The number of eligible customers participating in Lifeline in Florida grew 47 percent during the July 2010 and June 2011 annual review period. As of June 30, 2011, 943,854 eligible customers participated in Lifeline.¹⁶

Public Record Exemption under Review

Current law provides that personal identifying information of a participant in a telecommunications

⁸ Rule 25-4.0665, F.A.C.

⁹ Section 364.02(13), F.S., defines "telecommunications company" to include every corporation, partnership, and person and their lessees, trustees, or receivers appointed by any court whatsoever, and every political subdivision in the state, offering two-way telecommunications service to the public for hire within this state by the use of a telecommunications facility. The term "telecommunications company" does not include:

- An entity that provides a telecommunications facility exclusively to a certificated telecommunications company;
- An entity that provides a telecommunications facility exclusively to a company which is excluded from the definition of a telecommunications company under this subsection;
- A commercial mobile radio service provider;
- A facsimile transmission service;
- A private computer data network company not offering service to the public for hire;
- A cable television company providing cable service as defined in 47 U.S.C. s. 522;
- An intrastate interexchange telecommunications company;
- An operator services provider; or
- An airport that provides communications services within the confines of its airport layout plan.

¹⁰ Section 364.10(2)(a), F.S.

¹¹ Section 364.10(2)(a), F.S.

¹² The Office of Public Counsel website provides that the household income level for a family of four for the 150 percent threshold would be \$33,525. See <http://www.floridaopc.gov/lifeline.cfm> (last visited March 9, 2012).

¹³ Rule 25-4.0665, F.A.C., requires eligible telecommunications carriers to accept Form PSC/RAD 157 for hard copies submittals and Form PSC/RAD 158 for electronic submittals.

¹⁴ Section 364.10(2)(g)1., F.S.

¹⁵ Section 364.10(2)(g)2., F.S.

¹⁶ Link-Up Florida Lifeline Assistance, Number of Customers Subscribing to Lifeline Service and the Effectiveness of Procedures to Promote Participation, Annual Report to the Governor, President of the Senate, and Speaker of the House of Representatives, Executive Summary, page 1, at <http://www.psc.state.fl.us/publications/pdf/telecomm/tele-lifelinereport2011.pdf>, last visited, January 25, 2012.

carrier's Lifeline plan held by the Public Service Commission is confidential and exempt¹⁷ from public record requirements.¹⁸

Such information may be released to the applicable telecommunications carrier for purposes directly connected with eligibility for, verification related to, or auditing of a Lifeline plan.¹⁹ In addition, an officer or employee of a telecommunications carrier may disclose the information only as:

- Authorized by a customer;
- Necessary for billing purposes;
- Required by subpoena, court order, or other process of court;
- Necessary to an agency or a governmental entity for purposes directly connected with implementing service for, or verifying eligibility of, a participant in a Lifeline plan or auditing a Lifeline plan; or
- Otherwise authorized by law.²⁰

Nothing precludes a telecommunications carrier from disclosing the confidential and exempt information to the extent such information is otherwise publicly available, or from disclosing to a customer his or her own account record through telephonic means.²¹

An officer or employee of a telecommunications carrier who intentionally discloses confidential and exempt information in violation of the exemption commits a misdemeanor of the second degree, punishable as provided in ss. 775.082 or 775.083, F.S.²²

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2012, unless reenacted by the Legislature.²³

Effect of Bill

The bill removes the repeal date, thereby reenacting the public record exemption for information of a participant in a telecommunications carrier's Lifeline Assistance Plan held by the Public Service Commission (PSC). The bill also adds officers or employees of the PSC to the list of entities who are subject to penalties for violating the exemption.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.
2. Expenditures: None.

¹⁷ 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).

¹⁸ Section 364.107(1), F.S.

¹⁹ Section 364.107(2), F.S.

²⁰ Section 364.107(3)(a), F.S.

²¹ Section 364.107(3)(b), F.S.

²² Section 364.107(3)(c), F.S.

²³ Section 364.107(4), F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.
2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.