

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7143 PCB GVOPS 14-09 OGSR/Social Security Numbers

**SPONSOR(S):** Government Operations Subcommittee, Caldwell

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1678

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	9 Y, 0 N	Williamson	Williamson
1) State Affairs Committee	16 Y, 0 N	Williamson	Camechis

### 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 a public record exemption for social security numbers of current and former agency employees held by the employing agency.

The bill reenacts this public record exemption, which will repeal on October 2, 2014, if this bill does not become law. It also authorizes release of such numbers by the employing agency:

- If disclosure of such number is required by federal or state law or a court order.
- To another agency or governmental entity if disclosure of such number is necessary for the receiving agency or entity to perform its duties and responsibilities.
- If the current or former agency employee consents in writing to the disclosure of his or her social security number.

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

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Open Government Sunset Review Act

The Open Government Sunset Review Act<sup>1</sup> 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.<sup>2</sup> 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<sup>3</sup> then a public necessity statement and a two-thirds vote for passage are not required.

##### Public Record Exemption under Review

Section 119.071(4)(a), F.S., provides a public record exemption for social security numbers of current and former agency<sup>4</sup> employees.<sup>5</sup> The numbers are confidential and exempt<sup>6</sup> from public record requirements when held by the employing agency. Current law does not authorize release of such numbers by the employing agency.

Pursuant to the Open Government Sunset Review Act, the public record exemption will repeal on October 2, 2014, unless reenacted by the Legislature.<sup>7</sup>

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<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Section 24(c), Art. I of the State Constitution.

<sup>3</sup> An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.

<sup>4</sup> Section 119.011(2), F.S., defines "agency" 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 chapter 119, F.S., 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.

<sup>5</sup> Section 119.071(5)(a), F.S., provides a general public record exemption for social security numbers. The general exemption was created in order to provide a general protection for such numbers when a specific exemption for social security numbers does not exist. It does not supersede any other applicable public record exemption for social security numbers.

<sup>6</sup> 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).

<sup>7</sup> Section 119.071(4)(a) F.S.

During the 2013 interim, the House Government Operations Subcommittee and the Senate Governmental Oversight and Accountability Committee sent a joint questionnaire to state agencies as part of the Open Government Sunset Review process.<sup>8</sup> Of the 26 agencies that responded, 24 recommended reenactment of the public record exemption for social security numbers of current and former agency employees.<sup>9</sup> Many cited the potential for identity theft and criminal activity as the rationale for keeping employees' social security numbers confidential and exempt from public disclosure.

### **Effect of the Bill**

The bill removes the repeal date, thereby reenacting the public record exemption for social security numbers of current and former agency employees. It also authorizes release of such numbers in certain circumstances. Social security numbers of current and former agency employees may be disclosed by the employing agency:

- If disclosure of such number is required by federal or state law or a court order.
- To another agency or governmental entity if disclosure of such number is necessary for the receiving agency or entity to perform its duties and responsibilities.
- If the current or former agency employee consents in writing to the disclosure of his or her social security number.

#### **B. SECTION DIRECTORY:**

Section 1 amends s. 119.071, F.S., to save from repeal the public record exemption for social security numbers of current or former agency employees.

Section 2 provides an effective date of October 1, 2014.

## **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:**

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<sup>8</sup> Agency responses to the joint questionnaire are on file with the House Government Operations Subcommittee.

<sup>9</sup> The Department of the Lottery indicated that it utilizes a public record exemption specific to the department. As such, it provided no recommendation regarding the public record exemption under review. The Department of Legal Affairs indicated social security numbers should be confidential and released only as authorized by statute; however, the department did not make an official recommendation regarding reenactment or repeal of the exemption under review.

None.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

None.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.