

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #: HB 7035

FINAL HOUSE FLOOR ACTION:

SPONSOR(S): Government Operations
Subcommittee; Fant

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**COMPANION
BILLS:** SB 7032

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

HB 7035 passed the House on January 27, 2016, and subsequently passed the Senate on February 2, 2016.

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.

The Office of Financial Regulation (office) has regulatory oversight of banks, credit unions, trust companies, securities brokers, investment advisers, mortgage loan originators, money services businesses, retail installment sellers, consumer finance companies, debt collectors, and other financial service providers. The office has licensing authority and the authority to conduct examinations and investigations.

Other states and federal agencies also have regulatory oversight of many of these entities. In addition, many of the regulated entities operate in multiple states, making interstate cooperation essential to achieving comprehensive, efficient, and effective regulatory oversight.

Current law provides a public record exemption for the following information held by the office before, on, or after July 1, 2011:

- Information received from another state or federal regulatory, administrative, or criminal justice agency that is otherwise confidential or exempt pursuant to the laws of that state or pursuant to federal law.
- Information that is received or developed by the office as part of a joint or multiagency examination or investigation with another state or federal regulatory, administrative, or criminal justice agency.

The bill reenacts the public record exemption, which will repeal on October 2, 2016, if this bill does not become law.

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

The bill was approved by the Governor on March 8, 2016, ch. 2016-28, L.O.F., and will become effective on October 1, 2016.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)¹ 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.²

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:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect 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.
- Protect trade or business secrets.³

If, and only if, in reenacting an exemption that will repeal and the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.⁴ 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 created⁵ then a public necessity statement and a two-thirds vote for passage are not required.

Office of Financial Regulation

The Office of Financial Regulation (office) has regulatory oversight of banks, credit unions, trust companies, securities brokers, investment advisers, mortgage loan originators, money services businesses, retail installment sellers, consumer finance companies, debt collectors, and other financial service providers. The office has licensing authority and the authority to conduct examinations and investigations.

Other states and federal agencies also have regulatory oversight of many of these entities. In addition, many of the regulated entities operate in multiple states, making interstate cooperation essential to achieving comprehensive, efficient, and effective regulatory oversight. According to the office, it interacts frequently with the following federal agencies:

- Financial Crimes Enforcement Network;
- Federal Trade Commission;
- Florida Fusion Center;⁶
- Commodities Futures Trading Commission;
- Federal Deposit Insurance Corporation;
- National Credit Union Association; and
- Securities Exchange Commission.⁷

¹ Section 119.15, F.S.

² Section 119.15(3), F.S.

³ Section 119.15(6)(b), F.S.

⁴ Section 24(c), Art. I, Fla. Const.

⁵ An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.

⁶ The Florida Fusion Center is a collaboration of state and federal agencies led by the Florida Department of Law Enforcement.

Public Record Exemption under Review

In 2011, the Legislature created a public record exemption for certain information held by the office before, on, or after July 1, 2011.⁸ Specifically, the following information held by the office is confidential and exempt⁹ from public record requirements:

- Any information received from another state or federal regulatory, administrative, or criminal justice agency that is otherwise confidential or exempt pursuant to the laws of that state or pursuant to federal law.
- Any information received or developed by the office as part of a joint or multiagency examination or investigation with another state or federal regulatory, administrative, or criminal justice agency.¹⁰

The office may obtain and use the information received or developed as part of a joint or multiagency examination or investigation in accordance with the conditions imposed by the joint or multiagency agreement. However, the exemption does not apply to information obtained or developed by the office that would otherwise be available for public inspection if the office had conducted an independent examination or investigation.¹¹

Section 2 of chapter 2011-88, L.O.F., which is the public necessity statement for the exemption, provides that:

...Without the exemption, the office will be unable to obtain information that could assist it in pursuing violations of law under its jurisdiction. Without this exemption, the effective and efficient administration of the regulatory programs administered by the Office of Financial Regulation would be significantly impaired...The exemption is necessary to enable the office to participate in joint or multiagency investigations and examinations. Without the exemption, the office will be unable to participate in these activities, which impairs its ability to leverage its limited resources.

Pursuant to the Open Government Sunset Review Act, the public record exemption will repeal on October 2, 2016, unless reenacted by the Legislature.¹²

During the 2015 interim, subcommittee staff met with staff from the office as part of the Open Government Sunset Review process. Office staff indicated it is critical for the office to have this exemption, and its ability to obtain information from state and federal agencies is predicated on the office's ability to keep the information confidential.¹³ According to the office, repeal of the exemption would negatively affect its ability to coordinate with other state or federal agencies. As such, the office recommended reenactment of the exemption without changes.

⁷ Information provided by the office at a meeting with staff of the Government Operations Subcommittee on August 3, 2015 (on file with the Government Operations Subcommittee).

⁸ In 2001, the Florida Supreme Court ruled that a public record exemption does not apply retroactively unless the legislation clearly expresses such intent. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d 373 (Fla. 2001).

⁹ 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 statute. *See* Attorney General Opinion 85-62 (August 1, 1985).

¹⁰ Chapter 2011-88, L.O.F.; codified as s. 119.0712(3), F.S.

¹¹ Section 119.0712(3)(a)2., F.S.

¹² Section 119.0712(3)(b), F.S.

¹³ Information provided by the office at a meeting with staff of the Government Operations Subcommittee on August 3, 2015 (on file with the Government Operations Subcommittee).

Effect of the Bill

The bill removes the repeal date thereby reenacting the public record exemption for the following information held by the office before, on, or after July 1, 2011:

- Information received from another state or federal regulatory, administrative, or criminal justice agency that is otherwise confidential or exempt pursuant to the laws of that state or pursuant to federal law.
- Information received or developed by the office as part of a joint or multiagency examination or investigation with another state or federal regulatory, administrative, or criminal justice agency.

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.