

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.)

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: SPB 7010

INTRODUCER: For consideration by the Governmental Oversight and Accountability Committee

SUBJECT: OGSR/United States Census Bureau

DATE: February 20, 2023

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Limones-Borja</u>	<u>McVaney</u>	_____	Pre-meeting

I. Summary:

SPB 7010 repeals the current exemption from public inspection and copying requirements for United States Census Bureau (USCB) address information held by an agency pursuant to the Local Update of Census Addresses (LUCA) program.

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption 5 years after initial enactment. If the Legislature does not reenact the exemption, the exemption automatically repeals on October 2nd of the fifth year after enactment.

The LUCA program was a decennial census geographic partnership program that allowed the USCB to benefit from local knowledge in developing its master address file for the census. Current law provides a public record exemption for USCB address information held by an agency pursuant to the LUCA program. The LUCA program officially ended as of October 15, 2022.¹ As such, there is no need to continue the public record exemption.

The bill is not expected to impact state or local government revenue or expenditures.

The bill takes effect upon becoming a law.

¹ U.S. Census Bureau, *Census Bureau Statement on 2020 Census Data Collection Ending*, available at: <https://www.census.gov/newsroom/press-releases/2020/2020-census-data-collection-ending.html#:~:text=Census%20Bureau%20Statement%20on%202020%20Census%20Data%20Collection%20Ending,-October%2013%2C%202020&text=OCT.,conclude%20on%20October%2015%2C%202020>. (last visited January 5, 2023).

II. Present Situation:

Public Records Law

The State Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.² This applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person who acts on behalf of the government.³

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.⁴ The Public Records Act states that:

[i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁵

The Public Records Act contains general exemptions that apply across agencies. Agency- or program-specific exemptions often are placed in the substantive statutes that relate to that particular agency or program.

The Public Records Act does not apply to legislative or judicial records.⁶ Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the legislature.

Section 119.011(12), F.S., defines “public records” to include:

[a]ll 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 connections with the transaction of official business by any agency.

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 of some type.”⁷

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and

² FLA. CONST., art. I, s. 24(a).

³ *Id.*

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ *Locke v. Hawkes*, 595 So. 2d 32, 34 (Fla. 1992); *see also, Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

under supervision by the custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

Only the Legislature may create an exemption to public records requirements.¹⁰ An exemption must be created by general law and must specifically state the public necessity which justifies the exemption.¹¹ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill that enacts an exemption may not contain other substantive provisions¹² and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹³

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.¹⁴ Records designated as “confidential and exempt” are not subject to inspection by the public and may only be released under the circumstances defined by statute.¹⁵ Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.¹⁶

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act (the Act), prescribe a legislative review process for newly created or substantially amended public records or open meetings exemptions,¹⁷ with specified exceptions.¹⁸ The Act requires the repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption or repeal the sunset date.¹⁹ In practice, many exemptions are continued by repealing the sunset date, rather than reenacting the exemption.

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.²⁰ An exemption serves an identifiable purpose if the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption *and* it meets one of the following purposes:

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ *Id.*

¹² The bill may, however, contain multiple exemptions that relate to one subject.

¹³ FLA. CONST., art. I, s. 24(c).

¹⁴ *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁵ *Id.*

¹⁶ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁷ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings.

¹⁸ Section 119.15(2)(a) and (b), F.S., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;²¹
- The release of sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²² or
- It protects trade or business secrets.²³

The Act also requires specified questions to be considered during the review process.²⁴ In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption or repealing the sunset date, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ If the exemption is reenacted or saved from repeal without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to expire, the previously exempt records will remain exempt unless otherwise provided by law.²⁶

United States Census Bureau

The United States Census Bureau (USCB) is part of the United States Department of Commerce.²⁷ Amongst its research duties, the USCB conducts the decennial census. The decennial census is a comprehensive population and housing count of all 50 states, the District of Columbia, and the U.S. island areas. Results of the decennial census determine the number of seats for each state in the U.S. House of Representatives. The results are also relied upon in drawing congressional and state legislative districts. The census is critical to the annual distribution of hundreds of billions of dollars in federal funds.²⁸ Moreover, information collected during the census is used not only by all levels of government but also by businesses, non-profits, and policy makers.²⁹

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

²⁴ Section 119.15(6)(a), F.S. The specific questions are:

- 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?
- 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?

²⁵ FLA. CONST. art. I, s. 24(c).

²⁶ Section 119.15(7), F.S.

²⁷ U.S. Census Bureau, *Who We Are*, available at: <https://www.census.gov/about/who.html> (last visited November 21, 2022).

²⁸ U.S. Census Bureau, *U.S. Census Bureau at a Glance*, available at: <https://www.census.gov/about/what/census-at-a-glance.html#censuses> (last visited November 22, 2022).

²⁹ Patrick R. Potyondy, National Conference of State Legislatures, *LegisBrief: The 2020 Census, What You Need to Know About the 2020 Census* (November 2017), available at: <http://www.ncsl.org/research/redistricting/what-you-need-to-know-aboutthe-2020-census.aspx> (last visited November 22, 2022).

Local Update of Census Addresses Program

Local Update of Census Addresses (LUCA) is a program offered once every 10 years to state and local governments by the USCB in preparation for the decennial census. Specifically, LUCA enables states and local entities to update address information on a master list maintained by the LUCA, to make the decennial census as accurate as possible.

Entities eligible to participate in LUCA are:

- States;
- Counties;
- Cities;
- Townships; and
- Federally recognized tribes with a reservation on or off-reservation trust lands.³⁰

On June 29, 2017, the USCB announced that starting in July 2017, governments across the country could initiate the process of sharing address information through the 2020 Census LUCA program.³¹ Entities that chose to participate were required to sign the Confidentiality Agreement Form provided by the LUCA.³²

Public Records Law on United States Census Bureau Address Information

Federal law protects the confidentiality of any and all information collected during the census.³³ After the conclusion of the LUCA Feedback Phase, LUCA participants must destroy or return to the Census Bureau all of its Title 13 protected materials. Following the destruction or return of the Title 13 protected materials LUCA participants must certify that they no longer have any Title 13 protected materials.³⁴

Open Government Sunset Review of the Public Records Exemption for USCB address information

In 2018, the Legislature created a public records exemption for certain address information maintained by the USCB and held by an agency. Specifically, the bill makes confidential and exempt the following information held by an agency pursuant to the federal LUCA program:

- USCB address information, including maps showing structure location points;
- Agency records that verify addresses; and
- Agency records that identify address errors or omissions.³⁵

³⁰ United States Census Bureau, *Local Update of Census Addresses (LUCA) Operation*, available at: https://www.census.gov/programs-surveys/decennial-census/about/luca.html#par_textimage_216831044 (last visited November 22, 2022).

³¹ United States Census Bureau, *2020 Census Local Update of Census Addresses Operation to Begin*, available at: <https://www.census.gov/newsroom/press-releases/2017/cb17-109-luca.html> (last visited December 2, 2022).

³² U.S. Census Bureau, *2020 Census LUCA FAQs*, 3 (August 6, 2019), available at: [2020 Census Local Update of Census Addresses Operation \(LUCA\) Frequently Asked Questions \(FAQs\)](https://www.census.gov/programs-surveys/decennial-census/about/luca.html#closeout) (last visited January 10, 2023).

³³ 13 U.S.C. §§ 9, 214 (1997).

³⁴ U.S. Census Bureau, *Local Update of Census Addresses (LUCA) Operation*, available at: <https://www.census.gov/programs-surveys/decennial-census/about/luca.html#closeout> (last visited January 5, 2023).

³⁵ Ch. 2018-77, Laws of Fla.; HB 7053 (2018).

The public necessity statement, as required by the State Constitution, specified that without the exemption, agencies would be denied participation into the LUCA program. As such, the effective and efficient administration of the LUCA program would be hindered, which could result in a negative fiscal impact on the state.

The staff of the Senate Governmental Oversight and Accountability Committee and the House Government Operations Subcommittee surveyed multiple agencies to ascertain whether the public records exemption in s. 119.071(1)(g)1., F.S., remains necessary. A majority of the agencies recommend that the Legislature reenact the public records exemption without any changes. However, since the LUCA program officially ended as of October 15, 2022,³⁶ legislative staff recommends that there is no need to continue the public record exemption at this time.

III. Effect of Proposed Changes:

Section 1 repeals the public records exemption for United States Census Bureau address information held by an agency pursuant to the Local Update of Census Addresses program.

Section 2 provides that the bill take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not 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.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

³⁶ U.S. Census Bureau, *Census Bureau Statement on 2020 Census Data Collection Ending*, available at: <https://www.census.gov/newsroom/press-releases/2020/2020-census-data-collection-ending.html#:~:text=Census%20Bureau%20Statement%20on%202020%20Census%20Data%20Collection%20Ending,-October%2013%2C%202020&text=OCT.,conclude%20on%20October%2015%2C%202020>. (last visited January 5, 2023).

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. Statutes Affected:

This bill substantially amends section 119.071 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.