

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB OTA 18-07 Public Records/United States Census Bureau
SPONSOR(S): Oversight, Transparency & Administration Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:** SB 1078

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Oversight, Transparency & Administration Subcommittee	12 Y, 0 N	Toliver	Harrington

SUMMARY ANALYSIS

The U.S. Constitution requires a census be taken every 10 years to determine the number of seats apportioned to each state in the U.S. House of Representatives. The United States Census Bureau (USCB) conducts the decennial census. The Local Update of Census Addresses Program (LUCA) is a program administered by the USCB offered once every 10 years to state and local governments in preparation for the census. Specifically, LUCA enables states and local entities to update address information on a master list maintained by the LUCA program to make the census as accurate as possible. Participants are required to maintain the confidentiality of the information and must sign a confidentiality agreement.

The bill creates 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 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.

The bill authorizes release of the information to another agency or governmental entity in furtherance of its duties and responsibilities under the program. Additionally, the bill authorizes agencies operating at the direction of the program to access any other confidential or exempt information held by another agency if necessary for the agency to perform its program duties and responsibilities.

The public necessity statement provides that without the exemption agencies would be denied participation in the program, which could result in a negative fiscal impact for the state.

The bill provides that the exemption is subject to the Open Government Sunset Review Act and will repeal October 2, 2023, unless the Legislature reviews and reenacts the exemption by that date.

The bill may have a minimal fiscal impact on the state and local governments.

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

The Florida Constitution guarantees every person the right to inspect or copy any public record made or received in connection with the official business of the legislative, executive, or judicial branches of government.¹ The Legislature, however, may provide by general law for the exemption of records from the constitutional requirement.² The general law must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the law.³ A bill enacting an exemption must pass by a two-thirds vote of the members present and voting.⁴

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act⁵ provides that a public record 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 government program, which administration would be significantly impaired without the exemption;
- Protect personal identifying information that, if released, would be defamatory or would jeopardize an individual's safety; or
- Protect trade or business secrets.⁶

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October 2 of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.⁷

United States Census Bureau

The U.S. Constitution requires a census be taken every 10 years to determine the number of seats apportioned to each state in the U.S. House of Representatives⁸ and, additionally, is relied upon in drawing congressional and state legislative districts. The United States Census Bureau (USCB), amongst other research duties, conducts the decennial census. The decennial census is the comprehensive population and housing count of all 50 states, the District of Columbia, Puerto Rico, and the U.S. islands. The census is critical to the annual distribution of more than \$675 billion in federal funds.⁹ Moreover, information collected during the census is used not only by all levels of government, but also by businesses, non-profits, and policy makers.¹⁰

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(c).

³ *Id.*

⁴ *Id.*

⁵ Section 119.15, F.S.

⁶ Section 119.15(6)(b), F.S.

⁷ Section 119.15(3), F.S.

⁸ U.S. CONST., art. I, s. 2.

⁹ U.S. Census Bureau, *About the Bureau, U.S. Census Bureau at a Glance*, available at: <https://www.census.gov/about/what/census-at-a-glance.html#censuses> (last visited Jan. 17, 2018).

¹⁰ Patrick R. Potyondy, National Conference of State Legislatures, *LegisBrief: The 2020 Census, What You Need to Know About the 2020 Census* (Nov. 2017), available at: <http://www.ncsl.org/research/redistricting/what-you-need-to-know-about-the-2020-census.aspx> (last visited Jan. 17, 2018).

Federal law protects the confidentiality of all information collected during the census.¹¹

Local Update of Census Addresses Program (LUCA)

LUCA is a program offered once every 10 years to state and local governments by the USCB in preparation for the decennial census.¹² 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. Participants are required to maintain the confidentiality of the information¹³ and must sign a confidentiality agreement.¹⁴

Entities eligible to participate in LUCA are:

- States;
- Counties;
- Cities;
- Townships; and
- Federally recognized tribes with a reservation or off-reservation trust lands.¹⁵

Census 2000 provided the first opportunity for tribal and local governments to access individual residential addresses, rather than block address lists, provided they signed the confidentiality agreement.¹⁶

On June 29, 2017, the United States Census Bureau announced that starting in July of 2017, governments across the country could initiate the process of sharing address information through the 2020 Census Local Update of Census Addresses operation.¹⁷ All entities intending to participate must sign the Confidentiality Agreement Form provided by the LUCA.¹⁸

Public Records Law on United States Census Bureau Address Information

The 2007 Legislature passed a public records exemption¹⁹ for USCB address information.²⁰ The bill made confidential and exempt from disclosure USCB address information held by an agency pursuant to LUCA. Included in the bill was a provision that made the exemption subject to the Open Government Sunset Review Act. As such, the exemption was scheduled to repeal on October 2, 2012, unless the Legislature reviewed and reenacted the exemption by that date. In 2012, the Legislature voted to repeal the public records exemption. The bill analyses of the OGSR stated that the LUCA program, upon which the exemption was based, expired March 31, 2010.²¹ Staff recommended that the exemption be allowed to repeal as there was no longer a need for the exemption. Therefore, the public records exemption repealed on May 4, 2012.²²

¹¹ U.S. Census Bureau, *supra* note 9.

¹² See Census Address List Improvement Act of 1994, Pub. L. No. 103-430 (1994).

¹³ 13 U.S.C. s. 9.

¹⁴ United States Census Bureau, *2020 Census Local Update of Census Addresses Operation (LUCA)*, Confidentiality and Security Guidelines, available at <https://www2.census.gov/geo/pdfs/partnerships/luca/D-2004.pdf> (last visited Jan. 17, 2018).

¹⁵ United States Census Bureau, *2020 Census Local Update of Census Addresses Operation (LUCA)*, available at <https://www.census.gov/geo/partnerships/luca.html> (last visited Jan. 17, 2018); see also 13 U.S.C. s. 184.

¹⁶ United States Census Bureau, *The Census Address List Improvement Act of 1994 (P.L. 103-430)(LUCA)*, available at: <https://www.census.gov/geo/partnerships/luca-pl-103-430.html> (last visited Jan. 17, 2018).

¹⁷ United States Census Bureau, *2020 Census Local Update of Census Addresses Operation to Begin* (June 29, 2017), available at: <https://www.census.gov/newsroom/press-releases/2017/cb17-109-luca.html> (last visited Jan. 17, 2018).

¹⁸ The Confidentiality Agreement Form requires signators to agree to keep confidential all information provided through LUCA, including maps that contain structure points showing the location of living quarters. A signature on the form acknowledges recognition that the penalty for a wrongful disclosure is punishable by up to five years in prison and a \$250,000 fine. Further, the signator must agree to destroy or return all materials received from the Census Bureau at the conclusion of LUCA. United States Census 2020, Form D-2005, *Confidentiality Agreement Form, 2020 Census Local Update of Census Addresses Operation (LUCA)* available at <https://www2.census.gov/geo/pdfs/partnerships/luca/D-2005.pdf> (last visited Jan. 17, 2018).

¹⁹ House Bill 7193 (2007).

²⁰ Chapter 2007-250, L.O.F.

²¹ Florida House of Representatives, *Staff Analysis for HB 7013* (2012); Florida Senate, *Staff Analysis for SB 2078* (2012).

²² Chapter 2012-216, L.O.F.; House Bill 7013 (2012).

Effect of the Bill

This bill creates a public records exemption for certain address information maintained by the USCB and held by an agency. Specifically, the bill makes confidential and exempt²³ the following information held by an agency pursuant to LUCA:

- United States Census Bureau address information, including maps showing structure location points;
- Agency records that verify addresses; and
- Agency records that identify address errors or omissions.

The bill authorizes release of the information to another agency or governmental entity in furtherance of its duties and responsibilities under the program. Additionally, the bill authorizes agencies operating at the direction of the program to access any other confidential or exempt information held by another agency if necessary for the agency to perform its program duties and responsibilities.

The bill provides a public necessity statement as required by the Florida Constitution. The statement affirms that the LUCA program requires this address information to be kept confidential. As such, all individuals directly involved in reviewing the information or who otherwise have access to the information must sign a confidentiality agreement. Without the exemption, agencies would be denied participation in the program, which could result in a negative fiscal impact for the state.

The bill provides that the exemption is subject to the Open Government Sunset Review Act and will repeal October 2, 2023, unless the Legislature reviews and reenacts the exemption by that date.

B. SECTION DIRECTORY:

Section 1 amends s. 119.071, F.S., relating to general exemptions from inspection or copying of public records.

Section 2 provides a public necessity statement as required by the Florida Constitution.

Section 3 provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

²³ There is a difference between records the Legislature designates exempt from public records requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991) *review denied*, 589 So. 2d 289 (Fla. 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 WFTV, Inc. v. Sch. Bd. of Seminole Cnty*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 2004); *Op. Att’y Gen. Fla. 85-692* (1985).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have a minimal fiscal impact on agencies because agency staff responsible for complying with public records requests may require training related to the creation of the public records exemption. Agencies could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed by existing resources, as they are part of the day-to-day responsibilities of agencies.

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:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record exemption. The bill creates a public record exemption; thus it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record exemption. The bill creates a public record exemption; therefore, it includes a public necessity statement.

Breadth of Exemption

Article I, section 24(c) of the Florida Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. This bill creates a public record exemption for certain address information maintained by the USCB so that agencies may participate in the LUCA program to make the census as accurate as possible. As such the exemption is not broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.