

STORAGE NAME: h0721s2.ccc.doc
DATE: April 11, 2001

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE
COUNCIL ON COMPETITIVE COMMERCE
ANALYSIS**

BILL #: CS/CS/HB 721

RELATING TO: Public records

SPONSOR(S): Council for Competitive Commerce, Committee on Agriculture & Consumer Affairs,
Representative(s) Stansel and others

TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) AGRICULTURE & CONSUMER AFFAIRS (CCC) YEAS 7 NAYS 0
 - (2) STATE ADMINISTRATION YEAS 5 NAYS 0
 - (3) COUNCIL ON COMPETITIVE COMMERCE YEAS 12 NAYS 0
 - (4)
 - (5)
-

I. SUMMARY:

This bill provides an exemption from public records laws for agricultural businesses providing certain records to the Department of Agriculture and Consumer Services (DACS) in connection with compliance with best management practices relating to the control of agricultural pollutants to state waters. The bill also guarantees confidentiality in the event the Department of Environmental Protection or a water management district requests these records.

The public records exemption created by this legislation will be repealed on October 2, 2006, under the Open Government Sunset Review Act of 1995, unless the Legislature reenacts the exemption. A statement of public necessity is included in the bill.

CS/CS/HB 721 does not appear to have a fiscal impact on state or local government and shall become effective upon enactment.

See "Other Comments" section for comments by the Committee on State Administration.

Difference between council substitute and HB 721

The council substitute incorporates the committee substitute guaranteeing confidentiality when the Department of Environmental Protection or a water management district requests agricultural records from the Department of Agriculture and Consumer Services. It additionally incorporates the technical amendment by the State Administration Committee that inserts "and exempt" into the public necessity statement.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

During the 1999 Legislative Session, section 403.067, F.S., was enacted establishing total maximum daily loads (TMDLs) for agricultural pollutants of impaired water bodies as required by the federal Clean Water Act. The Department of Agriculture and Consumer Services (DACS) was given the responsibility of adopting best management practices (BMPs) or other suitable measures to achieve the level of agricultural pollution reduction established by the Department of Environmental Protection.

This is a voluntary program and agricultural producers, wishing to comply with the BMPs or other measures implemented by DACS, must provide necessary records relating to production methods, costs of production, and financial information. Disclosure of such records can negatively impact the business interests of the agricultural producers supplying said information, thus acting as a disincentive to participate.

C. EFFECT OF PROPOSED CHANGES:

CS/HB 721 provides an exemption from the public records law for certain information provided by agricultural producers to the Department of Agriculture and Consumer Services (department), as well as agencies requesting said information from the department. Such information, relating to production methods, costs of production, and other financial information, is of a sensitive and proprietary nature and, if released, would give competitors an unfair economic advantage.

The public records exemption created by this bill is subject to the Open Government Sunset Review Act of 1995, s. 119.15, F.S., and will be repealed on October 2, 2006, unless reenacted by the Legislature. The bill also provides an effective date of upon enactment, as well as a statement of public necessity.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 403.067, F.S., providing an exemption from public records laws for agricultural records provided to the Department of Agriculture and Consumer Services in connection with compliance with best management practices relating to the implementation of total maximum daily loads (TMDLs) requirements; guaranteeing confidentiality when records are requested by the Department of Environmental Protection or a water management district; and providing for repeal on October 2, 2006, unless reenacted.

Section 2: Provides a statement of public necessity.

Section 3: Provides an effective date of upon enactment.

III. 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.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenue in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce any state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

Comments by the Committee on State Administration

Florida Constitution

Article I, s. 24(a), Florida Constitution, expresses Florida's public policy regarding access to government records as follows:

Every person has the right to inspect or copy any public records made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Article I, s. 24(c), Florida Constitution, does, however, permit the Legislature to provide by general law for the exemption of records from the requirements of s. 24. The general law must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish its purpose.

Florida Statutes

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07(1)(a), F.S., provides:

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at a reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

Open Government Sunset Review Act of 1995

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, provides that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes, and the Legislature finds that the

purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

1. Allows the state, or its political subdivisions, to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or
3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

Public Necessity Statement

The public necessity statement for CS/HB 721 states the need for confidentiality, but should state that the information is "confidential and exempt."

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 20, 2001, the Committee on Agriculture and Consumer Affairs adopted one amendment and moved to make HB 721 a committee substitute. The amendment guarantees confidentiality when the Department of Environmental Protection or a water management district requests agricultural records from the Department of Agriculture and Consumer Services.

On April 3, 2001, the Committee on State Administration heard CS/HB 721 and adopted one amendment. The amendment is a technical amendment that includes the word "exempt" in the public necessity statement. The amendment is traveling with CS/HB 721.

On April 11, 2001, the Council for Competitive Commerce adopted a council substitute incorporating the committee substitute by the Committee on Agriculture and Consumer Services, as well as the technical amendment by the Committee on State Administration. No additional changes were made.

VII. SIGNATURES:

COMMITTEE ON AGRICULTURE & CONSUMER AFFAIRS :

Prepared by:

Staff Director:

Debbi Kaiser

Susan Reese

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AS REVISED BY THE COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

Staff Director:

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J. Marleen Ahearn, Ph.D., J.D.

AS FURTHER REVISED BY THE COUNCIL ON COMPETITIVE COMMERCE:

Prepared by:

Council Director:

Rebecca R. Everhart

Hubert "Bo" Bohannon