

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1061                      Public records  
**SPONSOR(S):** Bowen  
**TIED BILLS:** HB 339                      **IDEN./SIM. BILLS:** SB 1218, SB 1230

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture		Kaiser	Reese
2) State Administration			
3)			
4)			
5)			

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**SUMMARY ANALYSIS**

HB 1061 authorizes records that are confidential under federal law to be confidential and exempt from public records requirements when they are provided to the Department of Agriculture and Consumer Services (department) for assistance during a joint food safety or food illness investigation. The bill prohibits the disclosure of such information unless a federal agency has found that the record is no longer entitled to protection or unless ordered by a court.

The public records exemption created by this legislation will be repealed on October 2, 2008, under the Open Government Sunset Review Act of 1995, unless the Legislature reenacts the exemption.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.

HB 1061 does not appear to have a fiscal impact on state or local government and shall become effective on the same date that HB 339 takes effect.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h1061.ag.doc  
**DATE:** March 10, 2003

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |   |                             |   |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government?                | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. Lower taxes?                      | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 5. Empower families?                 | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |

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

#### B. EFFECT OF PROPOSED CHANGES:

Investigations of food borne illnesses require close collaboration and cooperation among multiple state and federal agencies. In addition to the basic obligation to maintain a safe and wholesome food supply, the Department of Agriculture and Consumer Services' (department's) responsibilities include assisting state and federal governments with food borne illness outbreaks that involve Florida firms or farms. The data gathered by these federal agencies are considered confidential under the federal Freedom of Information Act (FOIA) and are not shared with the department because of Florida's "government in the sunshine" laws. As a result, the department is not able to provide timely assistance in evaluating this information, or to provide as much meaningful input as might be needed while an outbreak is unfolding or during trace-back investigations. Given the ability to review these documents, the department can ensure that outbreaks are resolved as efficiently as possible.

Additionally, in carrying out contract and partnership agreements to conduct federal Food and Drug Administration (FDA) inspections, the department is obligated to review Hazard Analysis Critical Control Point (HACCP) plans that are required under federal regulations, and are considered confidential under the FOIA. Currently, these reviews must be carried out on-site, resulting in less efficient use of an inspector's time. Such documents carried off-site become public records, and are potentially available to the firm's competitors.

Further, some aspects of federal rule-making are not subject to disclosure under the FOIA, and as such, draft proposed rules are confidential under federal law. Many times federal agencies would offer the department the opportunity to review and comment on these proposed rules. However, for fear that the proposed rules would become public records under Florida law; the federal agencies are reluctant to do so. Therefore, the department is at a disadvantage of participating in the early stages of federal rule-making regarding important food safety issues unless an exemption is provided by statute.

#### C. SECTION DIRECTORY:

**Section 1:** Amends section 500.148, F.S.; providing an exemption from public records for federal records deemed confidential under 21 C.F.R. part 20.61, part 20.62, or part 20.88, or U.S.C. s. 552(b), which are provided to the Department of Agriculture and Consumer Services for assistance during a joint food safety or food illness investigation; and, provides for repeal on October 2, 2008, unless reenacted by the Legislature.

**Section 2:** Provides a statement of public necessity.

**Section 3:** Provides an effective date of upon passage of HB 339.

## 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.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This legislation does not appear to affect municipal or county government.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

N/A