

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" 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 type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain: Not applicable.

B. EFFECT OF PROPOSED CHANGES:

Background

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' (DACS) 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 is not shared with DACS because of Florida's public records laws. As a result, DACS 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, DACS 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, DACS 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 DACS 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, DACS 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.

Effect of Bill

This bill creates a public records exemption for information deemed confidential under federal when provided to DACS: during a joint food safety or food illness investigation; as a requirement for conducting a federal-state contract or partnership activity; or for regulatory review of federal regulations. Such information may only be disclosed if a final determination has been made by the appropriate federal agencies that such information is no longer entitled to protection, or pursuant to a court order.

This bill provides for future review and repeal and provides a statement of public necessity.

C. SECTION DIRECTORY:

Section 1: Amends section 500.148, F.S., creating a public records exemption for certain information deemed confidential under federal law.

Section 2: Provides a statement of public necessity.

Section 3: Provides an effective date of upon becoming law.

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: Not applicable. 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:

Public Records Law

Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature may, however, provide by general law for the exemption of records from the requirements of Article I, s. 24(a), Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state,

county, or municipal record. Furthermore, the Open Government Sunset Review Act of 1995¹ provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. Protecting 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; or, 3. Protecting trade or business secrets.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Committee on Agriculture

On March 13, 2003, the Committee on Agriculture adopted a strike-all amendment offered by the bill's sponsor. The amendment aligns the scope of the exemption in the statutory language with that in the statement of public necessity.

Committee on State Administration

On March 31, 2003, the Committee on State Administration adopted an amendment to HB 1061 with CS by Representative Bowen. The bill was reported favorably with CS by the Committee on State Administration. The bill with CS removes the contingent effective date and provides an effective date of upon becoming law.

¹ Section 119.15, F.S.