

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1230

SPONSOR: Senator Argenziano

SUBJECT: Public Records/Food Safety Investigations

DATE: March 11, 2003

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Akhavein</u>	<u>Poole</u>	<u>AG</u>	<u>Favorable</u>
2.	<u> </u>	<u> </u>	<u>GO</u>	<u> </u>
3.	<u> </u>	<u> </u>	<u>HC</u>	<u> </u>
4.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>
5.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
6.	<u> </u>	<u> </u>	<u> </u>	<u> </u>

I. Summary:

This bill 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. It 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 bill also provides for future legislative review and repeal.

This bill amends section 500.148 of the Florida Statutes.

II. Present Situation:

Investigations of food borne illnesses require close collaboration and cooperation among multiple state and federal agencies. In addition to the department's basic obligation to maintain a safe and wholesome food supply, its 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 federal law and are not shared with the department because of Florida's 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 needed while an outbreak is unfolding or during trace-back investigations. With the ability to review these documents, the department can ensure that outbreaks are resolved as efficiently and quickly as possible. Further, in carrying out our contract and partnership agreements to conduct federal Food and Drug Administration inspections, the department is obligated to review Hazard Analysis Critical Control Point plans that are required under federal regulations and are considered confidential under federal regulations. This review must currently be carried out on site, resulting in less efficient use of inspectors' time. Such

documents carried offsite become public records and are potentially available to the firm's competitors. Additionally, some aspects of federal rulemaking are not subject to disclosure under the Freedom of Information Act and as such, draft proposed rules are confidential under federal law. Many times federal agencies would like the department to review and comment on these proposed rules but federal agencies will not provide early drafts to the department for fear that the proposed rules would become public records. Thus, the department cannot participate in the early stages of federal rulemaking concerning important food safety issues unless an exemption is provided by statute.

III. Effect of Proposed Changes:

Section 1. Amends s. 500.148, F.S., to provide that confidential federal records which are provided to the department for assistance during a joint food safety or food illness investigation are confidential and exempt from public records requirements. 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. Provides that this section is subject to the Open Government Sunset Review Act and shall stand repealed on October 7, 2008, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. Provides a finding of public necessity that records and information concerning investigations of food-borne illness which are otherwise confidential under federal law remain confidential when shared with the department. The Legislature finds that the harm caused by the release of such information substantially outweighs any minimal public benefit derived from disclosure.

Section 3. Provides that this act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
