

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: CS/CS/SB 1230

SPONSOR: Health, Aging and Long-Term Care Committee, Governmental Oversight & Productivity Committee and Senator Argenziano

SUBJECT: Public Records/Food Safety Investigations

DATE: April 14, 2003

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Akhavein</u>	<u>Poole</u>	<u>AG</u>	<u>Favorable</u>
2.	<u>Rhea</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/CS</u>
3.	<u>Wilson</u>	<u>Wilson</u>	<u>HC</u>	<u>Fav/CS</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:

CS/CS/SB 1230 makes information that is confidential under federal law confidential and exempt from Article I, s. 24 of the State Constitution and s. 119.07(1), F.S., when it is provided to the Department of Agriculture and Consumer Services (department) for assistance during a joint food safety or food-borne 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 and a statement of public necessity.

This bill amends section 500.148 of the Florida Statutes.

II. Present Situation:

Public Records

Florida has a long history of providing public access to the records and meetings of governmental and other public entities. The first law affording access to public records was enacted by the Florida Legislature in 1909. In 1992, Floridians voted to adopt an amendment to the Florida Constitution that raised the statutory right of public access to public records to a constitutional level.

The Public Records Law, chapter 119, F.S., specifies the conditions under which public access must be provided to governmental records. While the state constitution provides that records are to be open to the public, it also provides that the Legislature may create exemptions to these requirements by general law if a public need exists and certain procedural requirements are met. Article I, s. 24, Fla. Const., governs the creation and expansion of exemptions to provide, in

effect, that any legislation that creates a new exemption or that substantially amends an existing exemption must also contain a statement of the public necessity that justifies the exemption. Article I, s. 24, Fla. Const., provides that any bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions.

Chapter 95-217, Laws of Florida, repealed the Open Government Sunset Review Act, contained in s. 119.14, F. S., and enacted in its place s. 119.15, F.S., the Open Government Sunset Review Act of 1995. This Act provides for the repeal and prior review of any public records exemptions that are created or substantially amended in 1996 and subsequently. The review cycle began in 2001. The chapter defines the term “substantial amendment” for purposes of triggering a repeal and prior review of an exemption to include an amendment that expands the scope of the exemption to include more records or information or to include meetings as well as records. The law clarifies that an exemption is not substantially amended if an amendment limits or narrows the scope of an existing exemption.

Food Safety and Food-Borne Illnesses

Investigations of food safety and 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 its 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.

Federal Public Information Exemptions

Part 20.61 of Title 21 of the Code of Federal Regulations provides that data and information submitted or divulged to the Food and Drug Administration which fall within the definitions of a trade secret or confidential commercial or financial information are not available for public disclosure. A trade secret may consist of any commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities

and that can be said to be the end product of either innovation or substantial effort. Commercial or financial information means valuable data or information which is used in one's business and is of a type customarily held in strict confidence or regarded as privileged and not disclosed to any member of the public by the person to whom it belongs.

Part 20.62 of Title 21 of the Code of Federal Regulations provides that all communications within the Executive Branch of the Federal government which are in written form or which are subsequently reduced to writing may be withheld from public disclosure except that factual information which is reasonably segregable is available for public disclosure.

Part 20.64 of Title 21 of the Code of Federal Regulations provides for withholding records or information compiled for law enforcement purposes from the public. The information may be withheld from the public to the extent that disclosure of such records or information: 1) could reasonably be expected to interfere with enforcement proceedings; 2) would deprive a person to a right to a fair trial or an impartial adjudication; 3) could reasonably be expected to constitute an unwarranted invasion of personal privacy; 4) could reasonably be expected to disclose the identity of a confidential source which furnished information on a confidential basis; 5) would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions; or 6) could reasonably be expected to endanger the life or physical safety of any individual.

Part 20.88 of Title 21 of the Code of Federal Regulations provides exemptions from public disclosure of certain communications between the Food and Drug Administration and State and local government officials. The Food and Drug Administration may disclose confidential commercial information to State government officials as part of cooperative law enforcement or regulatory efforts, provided that: 1) the State government agency has provided both a written statement establishing its authority to protect confidential commercial information from public disclosure and a written commitment not to disclose such information; and 2) the Commissioner of Food and Drugs makes certain specified determinations.

Section 552 of the United States Code Annotated Title 5 provides general public information requirements for federal agencies. Section 552(b) exempts the following information from public access: 1) information established by an Executive order to be kept secret in the interest of national defense or foreign policy; 2) internal personnel rules and practices of an agency; 3) information exempted by statute; 4) trade secrets and commercial or financial information obtained from a person and privileged or confidential; 5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency; 6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; 7) records or information compiled for law enforcement purposes under certain circumstances; 8) certain information used in the regulation or supervision of financial institutions; and 9) geological and geophysical information and data, including maps, concerning wells.

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. 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 bill 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 information concerning investigations of food safety and 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:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The bill creates a public records exemption in conformance with the requirements of Art. I, s. 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

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.
