

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Agriculture Committee

BILL: SPB 7026

INTRODUCER: For consideration by the Agriculture Committee

SUBJECT: Review under the Open Government Sunset Review Act

DATE: February 6, 2008

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------|----------------|-----------|--------------------|
| 1. | <u>Akhavein</u> | <u>Poole</u> | _____ | Pre-meeting |
| 2. | _____ | _____ | _____ | _____ |
| 3. | _____ | _____ | _____ | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

I. Summary:

Article I, s. 24 of the State Constitution permits any person to inspect or copy public records, but also permits the Legislature to create exemptions to this substantive right. Section 500.148, F.S., exempts from public disclosure certain confidential federal records which are provided to the Department of Agriculture and Consumer Services during a joint food safety or food illness investigation. The goal of this exemption is to allow federal and state agencies to share information and fully participate together to achieve timely resolutions of causal or contributing factors to outbreaks. The result of this exemption has been a safer and more secure food supply for the consuming public. Section 500.148, F.S., was reviewed, as required, and was found to meet the requirements for reenactment. This Senate Proposed Bill deletes the provision providing for repeal of the exemption.

This bill substantially amends s. 500.148, Florida Statutes.

II. Present Situation:

A foodborne disease outbreak is defined as the occurrence of two or more cases of a similar illness resulting from the ingestion of a common food. Outbreak investigations are a critical means of identifying new and emerging pathogens and maintaining awareness about ongoing problems. Prompt and thorough investigations of foodborne outbreaks aid in the timely identification of etiologic agents and lead to appropriate prevention and control measures.

Investigations of food safety and foodborne illnesses require close collaboration and cooperation among multiple state and federal agencies. In addition to the Department of Agriculture and Consumer Services' (department) basic obligation to maintain a safe and wholesome food

supply, its responsibilities include assisting state and federal governments with foodborne illness outbreaks that involve Florida firms or farms. The data gathered by the federal agencies are considered confidential under federal law. In 2003, the Legislature passed SB 1230 which included a statement of public necessity that the harm caused by release of this federal data substantially outweighs any minimal public benefit derived from disclosure of the information. The bill allows confidential federal records which are provided to the department for assistance during a joint food safety or food illness investigation to remain confidential and exempt from public records requirements. The disclosure of such information is prohibited unless a federal agency has found that the record is no longer entitled to protection or unless ordered by a court. With the ability to confidentially review these documents, the department can resolve outbreaks 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. This legislation eliminated the requirement that the review be carried out on site, resulting in more efficient use of inspectors' time. It also eliminated the potential that such documents could be acquired by a 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 want the department to review and comment on these proposed rules, but until the legislation was passed, federal agencies would not provide early drafts to the department for fear that the proposed rules would become public records. The 2003 changes allow the department to participate in the early stages of federal rulemaking concerning important food safety issues.

Senate staff reviewed the exemption in s. 500.148, F.S., pursuant to the Open Government Sunset Review Act, and found that the exemption from the public records law meets the statutory criteria for reenactment. Subparagraph 119.15(6)(b)(1), F.S., allows the state to effectively and efficiently administer a governmental program, which would be significantly impaired without the exemption. Information provided to the department by the federal government allows the department to effectively contribute its expertise relative to Florida food operations and to affect a more timely resolution of causal or contributing factors to foodborne illness outbreaks. This ensures the safest and most secure food supply to the consuming public. Accordingly, staff has recommended that the exemptions in s. 500.148, F.S., be reenacted and thereby saved from repeal.

III. Effect of Proposed Changes:

Section 1. Amends s. 500.148, F.S., to revise and continue an exemption from the public-records law that allows certain information that is provided to the Department of Agriculture and Consumer Services by the federal government during a joint food safety or food illness investigation to remain confidential.

Section 2. Provides that this act shall take effect October 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The public will have a safer and more secure food supply.

C. Government Sector Impact:

Reenactment of s. 500.148, F.S., would allow the Department of Agriculture and Consumer Services to continue participating in the early stages of federal rulemaking concerning important food safety issues and would facilitate more efficient use of food safety inspectors' time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
