

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1239 Pub. Rec./Department of Citrus

SPONSOR(S): Albritton and others

TIED BILLS: HB 1237 **IDEN./SIM. BILLS:** SB 1650

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	13 Y, 0 N	Kaiser	Blalock
2) Government Operations Subcommittee	15 Y, 0 N	Thompson	Williamson
3) State Affairs Committee	14 Y, 0 N	Kaiser	Hamby

SUMMARY ANALYSIS

Current law provides that the Department of Citrus (department) has the power to prepare and disseminate information important to citrus growers, handlers, shippers, processors and industry-related and interested persons and organizations relating to department activities and the production, handling, shipping, processing, and marketing of citrus fruit and processed citrus products. Any such information described above that constitutes a trade secret is confidential and exempt from public records requirements.

The bill expands the public record exemption described above to include any non-published reports or data related to studies or research conducted, caused to be conducted, or funded by the department.

The bill provides for repeal of the exemption on October 2, 2017, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands a current public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Public Records Law

Article I, s. 24(a) of the State 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, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State 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.¹

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act² provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects 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.
- Protects trade or business secrets.

Powers of the Department of Citrus

Current law provides that the powers of the Department of Citrus (department) include the preparation and dissemination of important information to citrus growers, handlers, shippers, processors and industry-related and interested persons and organizations relating to department activities and the production, handling, shipping, processing, and marketing of citrus fruit and processed citrus products. Any such information described above that constitutes a trade secret³ is confidential and exempt from public records requirements and must not be disclosed.⁴

Citrus Research

Current law governing citrus research requires the department to:

- Conduct or cause to be conducted a thorough and comprehensive study of citrus fruit and citrus fruit juices;
- Provide suitable and sufficient laboratory facilities and equipment, making use of the laboratory facilities and equipment of the University of Florida, for the purpose of conducting thorough and comprehensive study and research to determine all possible new and further uses for citrus fruit and citrus fruit juices and the products and byproducts into which the same can be converted or manufactured, as well as to determine and develop new and profitable methods and instruments of distribution;
- Carry on, or cause to be carried on, suitable experiments in an effort to prove the commercial value of each, and determine and develop new and further use for citrus fruit and citrus fruit juices or the products and byproducts into which the same can be converted or manufactured;

¹ Section 24(c), Article I of the State Constitution.

² Section 119.15, F.S.

³ Section 812.081(1)(c), F.S., defines "trade secret" as the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it.

⁴ Section 601.10(8), F.S.

- Carry on or cause to be carried on suitable experiments in an effort to prove the commercial value of any and all new profitable methods and instruments of distribution of citrus fruit and citrus fruit juices and the products and byproducts into which the same can be converted or manufactured;
- Carry on or cause to be carried on an economic and marketing research program relating to citrus fruits, products or byproducts;
- Enter into any mutually satisfactory contracts or agreements with any person, firm, institution, corporation, or business unit, as well as any state or federal agency, that the department deems wise, necessary, and expedient in the carrying out of any of the provisions of this chapter; and
- Incur and pay such expenses and obligations necessary for the proper carrying out of the provisions of this chapter.⁵

Effect of Proposed Changes

The bill provides that any nonpublished reports or data related to studies or research conducted, caused to be conducted, or funded by the department pursuant to the provisions governing citrus research,⁶ are confidential and exempt⁷ from public records requirements.

The bill provides for repeal of the exemption on October 2, 2017, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.⁸

B. SECTION DIRECTORY:

Section 1: Amends s. 601.10, F.S., providing a public record exemption for certain unpublished reports and data.

Section 2: Provides a public necessity statement.

Section 3: Provides an effective date that is contingent upon the passage of HB 1237 or similar legislation.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

⁵ Section 601.13, F.S.

⁶ *Id.*

⁷ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (*See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (*See* Attorney General Opinion 85-62, August 1, 1985).

⁸ Section 24(c), Art. I of the State Constitution.

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 bill does not appear to affect county or municipal governments.

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands a current public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands a current public record exemption; thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or require additional rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Retroactive Application

The Supreme Court of Florida ruled that a public record exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied retroactively.⁹ The bill does not contain a provision requiring retroactive application. As such, the public record exemption would apply prospectively.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

⁹ *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001).