

**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.)

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Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

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BILL: SB 1650

INTRODUCER: Senator Hays

SUBJECT: Public Records/Nonpublished Reports or Data/Department of Citrus

DATE: February 2, 2012      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Akhvein	Buford	AG	<b>Favorable</b>
2.	Seay	Roberts	GO	<b>Pre-meeting</b>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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**I. Summary:**

This bill creates a public records exemption for information contained in nonpublished reports or data related to certain studies or research related to citrus fruit, citrus fruit juices, and the products and byproducts thereof that is conducted, caused to be conducted, or funded by the Department of Citrus. The exemption is subject to legislative review and repeal under the provisions of the Open Government Sunset Review Act.

Because this bill creates a new public records exemption, it requires a two-thirds vote of each house of the Legislature for passage.

This bill substantially amends section 601.10 of the Florida Statutes.

**II. Present Situation:**

**Public Records Law**

The State of Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.<sup>1</sup> One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.<sup>2</sup> Article I, s. 24 of the State Constitution, provides that:

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<sup>1</sup> Section 1390, 1391 F.S. (Rev. 1892).

<sup>2</sup> Article I, s. 24 of the State Constitution.

Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the State Constitution, the Public Records Act,<sup>3</sup> which pre-dates public records provision of the State Constitution, specifies conditions under which public access must be provided to records of an agency.<sup>4</sup> Section 119.07(1)(a), F.S., states:

- (a) Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.

Unless specifically exempted, all agency records are available for public inspection. The term “public record” is broadly defined to mean:

. . . all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.<sup>5</sup>

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge.<sup>6</sup> All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.<sup>7</sup>

Only the Legislature is authorized to create exemptions to open government requirements.<sup>8</sup> Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to

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<sup>3</sup> Chapter 119, F.S.

<sup>4</sup> The word “agency” is defined in s. 119.011(2), F.S., to mean “. . . any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.” The Florida Constitution also establishes a right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted by law or the state constitution.

<sup>5</sup> Section 119.011(11), F.S.

<sup>6</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

<sup>7</sup> *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

<sup>8</sup> Article I, s. 24(c), Fla. Constitution.

accomplish the stated purpose of the law.<sup>9</sup> A bill enacting an exemption<sup>10</sup> may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.<sup>11</sup>

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.<sup>12</sup> If a record is simply made exempt from disclosure requirements then an agency is not prohibited from disclosing the record in all circumstances.<sup>13</sup>

### **Open Government Sunset Review Act**

The Open Government Sunset Review Act (Act)<sup>14</sup> provides for the systematic review, through a 5-year cycle ending October 2 of the 5th year following enactment, of an exemption from the Public Records Act or the Public Meetings Law. Each year, by June 1, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.<sup>15</sup>

The Act states that an exemption may be created or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An exemption meets the three statutory criteria if it:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, whose administration would be significantly impaired without the exemption;
- Protects information of a sensitive, personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.<sup>16</sup>

The Act also requires consideration of the following:

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<sup>9</sup> *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So. 2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

<sup>10</sup> Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

<sup>11</sup> Art. I, s. 24(c), Fla. Constitution.

<sup>12</sup> Attorney General Opinion 85-62.

<sup>13</sup> *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5<sup>th</sup> DCA), review denied, 589 So.2d 289 (Fla. 1991).

<sup>14</sup> Section 119.15, F.S.

<sup>15</sup> Section 119.15(5)(a), F.S.

<sup>16</sup> Section 119.15(4)(b), F.S.

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

### **Department of Citrus**

The Florida Citrus Commission acts as the head of the Department of Citrus (the department).<sup>17</sup> The department carries out commission policy and acts as the commission's staff by conducting a wide variety of programs involving regulation, scientific, market, and economic research, advertising, merchandising, public and industry relations, and consumer promotion. The purpose of the department is to protect and enhance the quality and reputation of Florida citrus fruit and processed citrus products in both domestic and foreign markets. It also acts to protect public health and welfare and to stabilize and protect the state's citrus industry.

Current law provides that the powers of the 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 secret is confidential and exempt from public records requirements and must not be disclosed.<sup>18</sup>

### **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;
- 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

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<sup>17</sup> See generally section 601.04, F.S.

<sup>18</sup> Section 601.10(8), F.S.

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.<sup>19</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 601.10, F.S., providing a public records exemption for any nonpublished reports or data related to studies or research conducted, caused to be conducted, or funded by the Department of Citrus under s. 601.13, F.S. It provides that this public records exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.

**Section 2** of the bill expresses legislative findings that this public records exemption is a public necessity in order to:

- Achieve the cooperation of the citrus industry in the state to obtain access to samples of such citrus fruit, citrus fruit juices, and the products and byproducts thereof, trade secrets, and proprietary business information.
- Assure the citrus industry that any nonpublished reports or data related to studies or research will not be disclosed until the analysis of such data and until the reports of such studies or research are complete and approved for publication.
- Avoid a chilling effect that reduces access by the Department of Citrus to the necessary samples and information provided by the industry.

**Section 3** provides a contingent effective date.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

##### **Vote Requirement**

Section 24(c), art. I of the State Constitution requires a two-thirds vote of each house of the Legislature for passage of a newly-created or expanded public records or public

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<sup>19</sup> Section 601.13, F.S.

meetings exemption. Because this bill creates a new public records exemption, it requires a two-thirds vote for passage.

**Public Necessity Statement**

Section 24(c), art. I of the State Constitution requires a public necessity statement for a newly created or expanded public records or public meetings exemption. Because this bill creates a new public records exemption, it includes a public necessity statement.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

The contingent effective date contained in section 3 of this bill needs to be amended to provide that this bill takes effect on the same date that Senate Bill 1648 or similar legislation takes effect, if such legislation is adopted in the 2012 legislative session or an extension thereof and becomes law.

**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.