

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 Committee on Rules

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BILL: CS/SB 1756

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Montford

SUBJECT: Public Records/Applicants or Participants in School Food and Nutrition Service Programs

DATE: April 12, 2013

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Akhavein</u>	<u>Halley</u>	<u>AG</u>	<u>Favorable</u>
2.	<u>Naf</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3.	<u>Akhavein</u>	<u>Phelps</u>	<u>RC</u>	<u>Pre-meeting</u>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

- A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes
- B. AMENDMENTS.....  Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

**I. Summary:**

CS/SB 1756 creates a public records exemption for personal identifying information of an applicant for or participant in a school food and nutrition service program that is held by the Department of Agriculture and Consumer Services, the Department of Children and Families, or the Department of Education. The bill specifies circumstances under which the exempt information must be disclosed.

The bill provides that the exemption will repeal on October 2, 2018, pursuant to the Open Government Sunset Review Act, unless reviewed and reenacted by the Legislature. The bill also provides a statement of public necessity as required by the Florida Constitution.

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

This bill creates section 595.409 of the Florida Statutes.

## II. Present Situation:

### Public Records Laws

The Florida Constitution provides every person 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 of persons acting on their behalf.<sup>1</sup> The records of the legislative, executive, and judicial branches are specifically included.<sup>2</sup>

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act<sup>3</sup> guarantees every person's right to inspect and copy any state or local government public record<sup>4</sup> at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>5</sup>

Only the Legislature may create an exemption to public records requirements.<sup>6</sup> Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.<sup>7</sup> Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions<sup>8</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>9</sup>

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.<sup>10</sup> It

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<sup>1</sup> FLA. CONST., art. I, s. 24(a).

<sup>2</sup> *Id.*

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

<sup>4</sup> Section 119.011(12), F.S., defines "public records" 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." Section 119.011(2), F.S., defines "agency" to mean as "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 Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

<sup>5</sup> Section 119.07(1)(a), F.S.

<sup>6</sup> FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *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 (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 2004); and *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).

<sup>7</sup> FLA. CONST., art. I, s. 24(c).

<sup>8</sup> The bill may, however, contain multiple exemptions that relate to one subject.

<sup>9</sup> FLA. CONST., art. I, s. 24(c).

<sup>10</sup> Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>11</sup> The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.<sup>12</sup>

### **School Food and Nutrition Service Programs**

Federal law authorizes federal financial assistance to states for the operation of school food and nutrition service programs.<sup>13</sup> The Secretary of the United States Department of Agriculture annually prescribes income guidelines for determining eligibility for free and reduced price meals.<sup>14</sup> Federal law prohibits disclosure of any information obtained from an application for free or reduced price meals except under specified circumstances.<sup>15</sup>

The state Department of Agriculture and Consumer Services (DACS) is the state administrator of school food and nutrition service programs.<sup>16</sup> The state Department of Children and Families (DCF) receives information from the United States Social Security Administration and determines Medicaid eligibility for the state of Florida. The state Department of Education (DOE) obtains eligibility information from the DCF and provides it to the DACS and local educational agencies for a determination of whether a student is eligible for participation in a school food and nutrition service program.<sup>17</sup>

### **Personal Information of Program Applicants or Participants**

Personal information of applicants for or participants in a school food and nutrition service program appears to be confidential and exempt from public disclosure when held by an educational agency in a K-12 education record.<sup>18</sup> In addition, a public records exemption for personal identifying information of a temporary cash assistance program participant or family member,<sup>19</sup> state confidentiality sharing provisions,<sup>20</sup> and federal confidentiality regulations<sup>21</sup> may provide some level of protection. However, there is currently no clearly defined public records exemption for personal identifying information of an applicant for or participant in a school food and nutrition service program that is held by the DACS, the DCF, or the DOE.

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<sup>11</sup> Section 119.15(3), F.S.

<sup>12</sup> Section 119.15(6)(b), F.S.

<sup>13</sup> See the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.) and the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.).

<sup>14</sup> 42 U.S.C. 1758(b)(1)(A) and 42 U.S.C. 1773(e)(1)(A).

<sup>15</sup> 42 U.S.C. 1758(b)(6).

<sup>16</sup> Section 570.98(1), F.S.

<sup>17</sup> *Memorandum of Understanding between the DCF, DOC, and DACS*, DACS contract no. 018596 (on file with the Senate Governmental Oversight and Accountability Committee) and phone call with DACS staff on April 5, 2013.

<sup>18</sup> See s. 1002.221, F.S.

<sup>19</sup> Section 414.295, F.S. The exemption does not apply to such information when held by the DACS.

<sup>20</sup> See ss. 39.00145(4), 381.0022, and 402.115, F.S.

<sup>21</sup> See 42 U.S.C. 602(a) and 45 C.F.R. 205.50(a) (use or disclosure of Temporary Cash Assistance information), 7 U.S.C. 2020(e)(g) and 7 C.F.R. 272.1(c)(d) (use or disclosure of Food Assistance information), and 42 U.S.C. 1396(a)(7) and 42 C.F.R. 431.302-.306 (use or disclosure of Medicaid information).

### III. Effect of Proposed Changes:

This bill creates a public records exemption for personal identifying information of an applicant for or participant in a school food and nutrition program that is held by the DACS, the DCF, or the DOE.

The bill requires the exempt information to be disclosed to:

- Another governmental entity in the performance of its official duties and responsibilities; or
- Any person who has the written consent of the applicant or participant.

The bill provides that it does not prohibit a participant's legal guardian from obtaining confirmation of acceptance and approval, dates of applicability, or other information the legal guardian may request.

The bill provides that the public records exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2018, unless reviewed and reenacted by the Legislature. The bill also provides a statement of public necessity as required by the Florida Constitution.

The bill will take effect on the same date that SB 1628 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

### IV. Constitutional Issues:

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

Not applicable. The bill does not appear to affect county or municipal governments.

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

##### **Vote Requirement**

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

None.

**VII. Related Issues:**

The 2011 Legislature created the Healthy Schools for Healthy Lives Act, which provided for a transfer of administration of school food and nutrition service programs from the Department of Education (DOE) to the Department of Agriculture and Consumer Services (DACCS).<sup>22</sup> This bill is linked to SB 1628, which, in pertinent part, rearranges and supplements existing law to allow the DACCS to more effectively administer its school food and nutrition service program duties.

**VIII. Additional Information:**

## A. Committee Substitute – Statement of Substantial Changes:

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

**CS by Governmental Oversight and Accountability on April 9, 2013:**

The original bill provided that its effective date is contingent upon enactment of a linked substantive bill, but did not specify a bill number. The CS adds “SB 1628” to this bill’s effective date as the linked substantive bill.

## B. Amendments:

None.

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

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<sup>22</sup> Chapter 2011-217, L.O.F. (codified at ss. 570.98-570.984, F.S.).