

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7089      PCB ANRS 13-02      PCB ANRS 13-02      PCB ANRS 13-02      PCB ANRS 13-02      Public Records Exemption/School Food and Nutrition Service Program Participants  
**SPONSOR(S):** Agriculture & Natural Resources Subcommittee, Beshears  
**TIED BILLS:** HB 7087      **IDEN./SIM. BILLS:** SB 1756

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Agriculture & Natural Resources Subcommittee	12 Y, 0 N	Kaiser	Blalock
1) Government Operations Subcommittee	12 Y, 0 N	Harrington	Williamson
2) State Affairs Committee	17 Y, 0 N	Kaiser	Camechis

### SUMMARY ANALYSIS

Current law provides that applicants for or participants in a school food and nutrition service program must provide certain information to the Department of Agriculture and Consumer Services (DACS), the Department of Education (DOE), or the Department of Children and Families (DCF). The DACS Division of Food, Nutrition, and Wellness receives personal identification information on students and student families who receive free or reduced cost meals during the school year and summer period. Some of the information provided for purposes of determining eligibility is considered to be of a sensitive, personal nature.

The bill creates a public record exemption for personal identifying information of an applicant for or a participant in a school food and nutrition service program held by DACS, DCF, or DOE. It also provides that such personal identifying information must be disclosed to another governmental entity in the performance of its official duties and responsibilities, or to any person who has the written consent of the applicant for or participant in such program. This 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 for retroactive application of the public records exemption. It also provides that the public records exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature. Finally, the bill 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 records exemption. The bill creates a new public records 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. A bill enacting an exemption or substantially amending an existing exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.<sup>1</sup>

Public policy regarding access to government records is addressed further in s. 119.07(1), F.S., which guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>2</sup> 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.

##### School Food and Nutrition Service Program

The 2011 Legislature created the Healthy Schools for Healthy Lives Act, which provided for a type two transfer of administration of school food and nutrition programs from the Department of Education (DOE) to the Department of Agriculture and Consumer Services (DACS).<sup>3</sup>

Current law provides that applicants for or participants in a school food and nutrition service program must provide certain information to DACS, DOE, or the Department of Children and Families (DCF). The DACS Division of Food, Nutrition, and Wellness receives personal identification information on students and student families who receive free or reduced cost meals during the school year and summer period. Some of the information provided for purposes of determining eligibility is considered to be of a sensitive, personal nature.

#### **Effect of Proposed Changes**

The bill provides that personal identifying information of an applicant for or a participant in a school food and nutrition service program<sup>4</sup> held by DACS, DCF, or DOE is exempt<sup>5</sup> from public records requirements.

---

<sup>1</sup> Section 24(c), Article I of the State Constitution.

<sup>2</sup> Section 119.15, F.S.

<sup>3</sup> Chapter 2011-217, L.O.F., and ss. 570.98-570.984, F.S.

<sup>4</sup> As defined in s. 595.402, F.S.

<sup>5</sup> 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

The bill provides that such personal identifying information must 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 for or participant in such program. This 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 exemption applies to any information identifying a program applicant or participant held by DACS, DCF, or DOE before, on, or after the effective date of this exemption.

The bill provides that the exemption is subject to the Open Sunset Review Act and stands repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity as required by the State Constitution.<sup>6</sup>

**B. SECTION DIRECTORY:**

**Section 1:** Creates s. 595.409, F.S., providing an exemption from public records requirements for personal identifying information of an applicant for or participant in a school food and nutrition service program held by the Department of Agriculture and Consumer Services, the Department of Children and Families, or the Department of Education; providing for specified disclosure; providing for applicability; and, providing for legislative review and repeal of the exemption under the Open Government Sunset Review Act.

**Section 2:** Provides a statement of public necessity as required by the State Constitution.

**Section 3:** Provides an effective date that is contingent upon the passage of HB 7087 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:**

1. Revenues:

None

2. Expenditures:

None

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None

**D. FISCAL COMMENTS:**

---

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>6</sup> Section 24(c), Art. I of the State Constitution.

This bill likely could create a minimal fiscal impact on DACS, DCF, and DOE, because staff responsible for complying with public records requests could require training related to the public records exemption. In addition, those agencies could incur costs associated with redacting the exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of these agencies.

### 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 records exemption. The bill creates a new public records 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 exemption. The bill creates a new public records exemption; thus, it includes a public necessity statement.

###### Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution, requires that an exemption be no broader than necessary to accomplish its stated purpose. The public necessity statement provides that the purpose for the public record exemption is to foster the security of persons applying for and participating in a school food and nutrition service program and to protect information held by DACS, DCF, and DEP.

#### 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 has ruled that a public records exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied retroactively.<sup>7</sup> The bill expressly provides that the public records exemption applies to identifying information held before, on, or after the effective date of the exemption.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None

---

<sup>7</sup> See *Metropolitan Dade County v. Chase Federal Housing Corporation*, 737 So.2d 494 (Fla. 1999); see also *Memorial Hospital-West Volusia, Inc. v. News-Journal Corp.*, 784 So.2d 438 (Fla. 2001).