

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7035      PCB OTA 17-01      OGSR/Nonpublished Reports and Data/Dept. of Citrus  
**SPONSOR(S):** Oversight, Transparency & Administration Subcommittee, Roth  
**TIED BILLS:**            **IDEN./SIM. BILLS:** SB 7014

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Oversight, Transparency & Administration Subcommittee	13 Y, 1 N	Whittaker	Harrington
1) Agriculture & Property Rights Subcommittee	14 Y, 0 N	Thompson	Smith
2) Government Accountability Committee	23 Y, 0 N	Whittaker	Williamson

### SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The Department of Citrus prepares and disseminates 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. The Department of Citrus also conducts or causes studies to be conducted concerning citrus fruit, citrus fruit juices, and the products and byproducts of the fruit.

Current law provides that any nonpublished reports or data related to studies or research conducted, caused to be conducted, or funded by the Department of Citrus are confidential and exempt from public record requirements.

The bill reenacts the public record exemption, which will repeal on October 2, 2017, if this bill does not become law.

The bill does not appear to have a fiscal impact on the state or local governments.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Open Government Sunset Review Act

The Open Government Sunset Review Act<sup>1</sup> sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>2</sup>

The Act provides that a public record or public meeting 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:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect 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.
- Protect trade or business secrets.<sup>3</sup>

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.<sup>4</sup> If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created<sup>5</sup> then a public necessity statement and a two-thirds vote for passage are not required.

##### Department of Citrus Research

The Department of Citrus prepares and disseminates 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.

Current law governing citrus research requires the Department of Citrus to conduct or cause to be conducted:

- A thorough and comprehensive study of citrus fruit and citrus fruit juices;
  - With respect to the quality and maturity of fruit and the fruit juices, including proper effort to assemble data and arrive at a proper standard of quality, grade, and maturity with reference to its texture, stability, and general marketability and so far as possible reduce such findings to specific and readily understood chemical, mathematical, or descriptive terms; and
  - With respect to the nutritional and other value or values of such fruit and the fruit juices;
- Such study and research as is necessary to provide all the information and data required to be disseminated pursuant to law; and

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<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Section 119.15(3), F.S.

<sup>3</sup> Section 119.15(6)(b), F.S.

<sup>4</sup> Section 24(c), Art. I of the State Constitution.

<sup>5</sup> An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.

- Any research related to disease and crop efficiency that would advance the purposes of the state's citrus industry and commercialization related to advancing such research.<sup>6</sup>

In addition, the Department of Citrus must:

- Provide suitable and sufficient laboratory facilities and equipment 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 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 and 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 to administer chapter 601, F.S.; and
- Incur and pay such expenses and obligations necessary in connection with and required for the proper carrying out of the provisions of chapter 601, F.S.

#### Public Record Exemption under Review

In 2012, the Legislature created a public record exemption for the Department of Citrus to provide that any nonpublished reports or data related to studies or research conducted, caused to be conducted, or funded by the Department of Citrus are confidential and exempt<sup>7</sup> from public record requirements.<sup>8</sup>

The 2012 public necessity statement for the exemption provided that:

In order to conduct or cause to be conducted studies or research related to citrus fruit, citrus fruit juices, and the products and byproducts thereof, the Department of Citrus must 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. Unless the Department of Citrus can assure the citrus industry that any nonpublished reports or data related to such 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, a chilling effect will arise that reduces access by the Department of Citrus to the necessary samples and information provided by the citrus industry, thereby undermining the validity and value of such studies and research.<sup>9</sup>

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<sup>6</sup> Section 601.13, F.S.

<sup>7</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 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 statute. *See* Attorney General Opinion 85-62 (August 1, 1985).

<sup>8</sup> Chapter 2012-183, L.O.F.; codified as s. 601.10(8)(c), F.S.

<sup>9</sup> Section 2, ch. 2012-183, L.O.F.

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2017, unless reenacted by the Legislature.<sup>10</sup>

During the 2016 interim, subcommittee staff met with staff from the Department of Citrus as part of the Open Government Sunset Review process. Department of Citrus staff indicated that the exemption is critical to the department and its ability to obtain samples and conduct necessary research for the citrus industry. According to the department, repeal of the exemption would negatively affect the department's ability to receive samples and cooperation from the industry. As such, the department recommended reenactment of the exemption without changes.

### **Effect of the Bill**

The bill removes the repeal date thereby reenacting the public record exemption for nonpublished reports and data related to studies or research conducted, caused to be conducted, or funded by the Department of Citrus.

#### **B. SECTION DIRECTORY:**

Section 1. Amends s. 601.10, F.S., to save from repeal the public record exemption for certain information held by the Department of Citrus.

Section 2. Provides an effective date of October 1, 2017.

## **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:**

None.

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<sup>10</sup> Section 610.10(8)(c), F.S.  
**STORAGE NAME:** h7035c.GAC  
**DATE:** 3/16/2017

### **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:**

None.

#### **B. RULE-MAKING AUTHORITY:**

None.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.