

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1539 Pub. Rec./Department of Agriculture and Consumer Services

SPONSOR(S): Jenne

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1594

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	14 Y, 0 N	Roth	Smith
2) Commerce Committee			
3) State Affairs Committee			

SUMMARY ANALYSIS

The Department of Agriculture and Consumer Services (DACS) is tasked with safeguarding the public and supporting Florida’s agricultural economy by ensuring the safety and wholesomeness of food and other consumer products through inspection and testing programs. DACS employs inspectors to enforce the state laws and rules.

The bill creates a public record exemption for the home address, telephone numbers, dates of birth, and photographs of current or former DACS inspectors, as well as, the names, home address, telephone numbers, dates of birth, and places of employment of their spouses, and children. Additionally, the bill exempts the names and locations of schools and day care facilities attended by the children of current or former DACS inspectors.

The bill provides that the exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2026, unless the Legislature reviews and reenacts the exemption by that date. The bill provides a statement of public necessity as required by the Florida Constitution.

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

Article I, s. 24(c) of the Florida 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 creates a public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

Article I, s. 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This 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, section 24(a) of the Florida Constitution.¹ The general law must state with specificity the public necessity justifying the exemption² and must be no more broad than necessary to accomplish its purpose.³

Public policy regarding access to government records is addressed further in s. 119.07(1)(a), F.S., which guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act⁴ 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.⁵

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.⁶

Department of Agriculture and Consumer Services

The Department of Agriculture and Consumer Services (DACS) is tasked with safeguarding the public and supporting Florida's agricultural economy by ensuring the safety and wholesomeness of food and other consumer products through inspection and testing programs.⁷

DACS employs inspectors to enforce the state laws and rules relating to:

- Fruit and vegetable inspection and grading;⁸
- Pesticide spray, residue inspection, and removal;⁹
- Registration, labeling, inspection, sale, use, composition, formulation, wholesale and retail distribution, and analysis of commercial stock feeds and registration, labeling, inspection, and analysis of commercial fertilizers;¹⁰
- Classification, inspection, and sale of poultry and eggs;¹¹
- Registration, inspection, and analysis of gasolines and oils;¹²

¹ Art. I, s. 24(c), FLA. CONST.

² This portion of a public record exemption is commonly referred to as a "public necessity statement."

³ Art. I, s. 24(c), FLA. CONST.

⁴ Section 119.15, F.S.

⁵ Section 119.15(6)(b), F.S.

⁶ Section 119.15(3), F.S.

⁷ Chapter 570, F.S.

⁸ Section 570.07(16)(a), F.S.

⁹ Section 570.07(16)(b), F.S.

¹⁰ Section 570.07(16)(c), F.S.

¹¹ Section 570.07(16)(d), F.S.

- Registration, labeling, inspection, and analysis of pesticides;¹³
- Registration, labeling, inspection, germination testing, and sale of seeds, both common and certified;¹⁴
- Foods, as set forth in the Florida Food Safety Act;¹⁵
- Inspection and certification of honey;¹⁶
- Recordation and inspection of marks and brands of livestock;¹⁷ and
- Inspection of apiaries¹⁸ for diseases inimical to bees and beekeeping.¹⁹

According to DACS, 397 inspectors are currently employed and qualify under the provisions set forth within this bill.²⁰ The areas in which these inspectors preside are classified as: Animal Industry (36 inspectors), Consumer Services (98 inspectors), Fruit and Vegetable (155 inspectors), Plant Industry (24 inspectors), and Food and Safety (84 inspectors).²¹

Effect of the Bill

The bill creates a public records exemption for the home address, telephone numbers, dates of birth, and photographs of current or former inspectors of DACS, as well as, the names, home address, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former inspectors. Additionally, the bill exempts the names and locations of schools and day care facilities attended by the children of current or former inspectors.

The bill provides that the exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2026, unless the Legislature reviews and reenacts the exemption by that date.

The bill includes a statement of public necessity as required by the Florida Constitution, stating that the exemption is necessary to protect DACS inspectors and their immediate family members from physical and emotional harm from disgruntled individuals whose business or professional practices have come under the scrutiny of DACS.

B. SECTION DIRECTORY:

Section 1: Amends s. 119.071, F.S., relating to general exemptions from inspection or copying of public records.

Section 2: Provides a statement of public necessity.

Section 3: Provides an effective date of July 1, 2021.

¹² Section 570.07(16)(e), F.S.

¹³ Section 570.07(16)(f), F.S.

¹⁴ Section 570.07(16)(g), F.S.

¹⁵ Section 570.07(16)(i), F.S.

¹⁶ Section 570.07(16)(j), F.S.

¹⁷ Section 570.07(16)(n), F.S.

¹⁸ An apiary is a collection of beehives.

¹⁹ Section 570.07(14), F.S.

²⁰ E-mail from Carlos J. Nathan, Deputy Legislative Affairs Director, Florida Department of Agriculture and Consumer Services, Office of the Commissioner, to Katherine Becker, Staff Director, The Florida Senate Committee on Agriculture (March 8, 2021) (on file with the Senate Committee on Agriculture).

²¹ *Id.*

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have a minimal fiscal impact on agencies because agency staff responsible for complying with public records requests may require training related to the creation of the public record exemption. Agencies could incur costs associated with redacting the exempt information prior to releasing a record. The costs, however, would be absorbed by existing resources, as they are part of the day-to-day responsibilities of agencies.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote Requirement

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

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record exemption. The bill creates a public record exemption; therefore, it includes a public necessity statement.

Breadth of Exemption

Article I, section 24(c) of the Florida Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. This bill creates a public record exemption for certain personal information of current or former DACS inspectors, their spouses, and children. The purpose of the exemption is to protect current or former DACS inspectors, their spouses, and children from disgruntled individuals whose business or professional practices have come under the scrutiny of DACS.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.