

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.)

Prepared By: The Professional Staff of the Committee on Agriculture

BILL: CS/SB 1594

INTRODUCER: Agriculture Committee and Senator Cruz

SUBJECT: Public Records/Inspector of the Department of Agriculture and Consumer Services

DATE: March 10, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Argote	Becker	AG	Fav/CS
2.			GO	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1594 expands the public records exemption for agency personnel information to include the home addresses, telephone numbers, dates of birth, and photographs of current or former inspectors of the Department of Agriculture and Consumer Services.

The bill exempts the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former inspectors of the Department of Agriculture and Consumer Services. The names and locations of schools and day care facilities attended by the children of current or former inspectors are also exempt.

This exemption is subject to the Open Government Sunset Review Act and shall stand repealed on October 2, 2024, unless reviewed and saved from repeal by the Legislature.

The bill provides a statement of public necessity as required by the State Constitution.

Because the 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.

The bill takes effect July 1, 2021.

II. Present Situation:

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, section 11.0431, Florida Statutes (F.S.), provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, chapter 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020).

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” 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.”

⁶ Section 119.011(12), F.S., defines “public record” 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.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ (the Act) prescribes a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ It 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.¹⁹

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.²⁰

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹² *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁶ Section 119.15, F.S.

¹⁷ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹⁸ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

An exemption serves an identifiable purpose if it meets one of the following purposes and the Legislature finds that the purpose of the exemption outweighs open government policy *and* cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²² or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

The Act also requires specified questions to be considered during the review process.²⁴ In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²⁶

Agency Personnel Information

Currently, under s. 119.071(4), F.S., specified personal information relating to the employees of agencies is protected from disclosure. For example, for current or former code enforcement officers, s. 119.071(4), F.S., provides a public records exemption for:

- Their home addresses, telephone numbers, and photographs;
- The home addresses, telephone numbers, and places of employment of their spouses and children; and
- The names and locations of schools and day care facilities attended by their children.²⁷

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

²⁴ Section 119.15(6)(a), F.S. The specified questions are:

- 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?

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ Section 119.071(4), F.S.

Section 119.071(4), F.S., provides similar records exemptions for the following agency personnel:

- Active or former law enforcement personnel;
- Department of Children and Family Services;
- Department of Health;
- Department of Revenue;
- Florida Supreme Court justices;
- Former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors;
- General magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support hearing officers;
- Current or former human resource, labor relations, or employee relations directors, assistant directors, managers, or assistant managers of any local government agency;
- Current or former United States attorneys and assistant United States attorneys;
- Former judges of the United States of Appeal, United States district judges, and United States magistrate judges;
- Current or former code enforcement officers;
- Current or former guardians ad litem;
- Current or former juvenile probation officers; and
- Supervisors, group treatment leaders, group treatment leader supervisors, rehabilitation therapists, and social service counselors of the Department of Juvenile Justice.

The Department of Agriculture and Consumer Services

The Department of Agriculture and Consumer Services (department) safeguards the public and supports Florida's agricultural economy by ensuring the safety and wholesomeness of food and other consumer products through inspection and testing programs.

Under s. 570.07, F.S, the department employs inspectors to enforce the state laws and rules relating to:

- Fruit and vegetable inspection and grading;
- Pesticide spray, residue inspection, and removal;
- 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;
- Classification, inspection, and sale of poultry and eggs;
- Registration, inspection, and analysis of gasolines and oils;
- Registration, labeling, inspection, and analysis of pesticides;
- Registration, labeling, inspection, germination testing, and sale of seeds, both common and certified;
- Foods, as set forth in the Florida Food Safety Act;
- Inspection and certification of honey;
- Recordation and inspection of marks and brands of livestock; and
- Inspection of apiaries for diseases inimical to bees and beekeeping.²⁸

²⁸ See generally s. 570.07, F.S.

According to the department, 397 inspectors are currently employed and qualify under the provisions set forth within this bill.²⁹ 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).³⁰

III. Effect of Proposed Changes:

Section 1 amends s. 119.071, F.S., providing that the home addresses, telephone numbers, dates of birth, and photographs of current or former inspectors of the Department of Agriculture and Consumer Services are exempt from public records requirements.

The bill also exempts the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former inspectors of the Department of Agriculture and Consumer Services. The names and locations of schools and day care facilities attended by the children of current or former inspectors are also exempt.

This section is subject to the Open Government Sunset Review Act and shall stand repealed on October 2, 2024, unless reviewed and saved from repeal by the Legislature.

Section 2 provides a public necessity statement as required by the State Constitution.

Section 3 provides that this act takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

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 bill creating or expanding an exemption to the public records requirements. This bill enacts a new exemption for personal information of current or former inspectors of the Department of Agriculture and Consumer Services, thus, the bill requires a two-thirds vote to be enacted.

²⁹ 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).

³⁰ *Id.*

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemption.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect current or former inspectors of the Department of Agriculture and Consumer Services and their spouses and children from the danger of physical and emotional harm from disgruntled individuals who have contentious reactions to the duties carried out by the inspectors.

This bill exempts only current or former inspectors of the Department of Agriculture and Consumer Services and their spouses and children from the public records requirements. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Indeterminate. The private sector will be subject to the cost associated with an agency making redactions in response to a public records request.

C. Government Sector Impact:

Indeterminate. The department will incur minor costs relating to the redaction of exempt records.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.071 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Agriculture on March 10, 2021:

The committee substitute rectifies a technical error to clarify that only current or former inspectors of the Department of Agriculture and Consumer Services and their family members are in danger of physical and emotional harm from disgruntled individuals.

- B. **Amendments:**

None.