

**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 Governmental Oversight and Accountability

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BILL: SB 1166

INTRODUCER: Senator Collins

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

DATE: April 4, 2023

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Burse</u>	<u>Becker</u>	<u>AG</u>	<b>Favorable</b>
2.	<u>Limonos-Borja</u>	<u>McVaney</u>	<u>GO</u>	<b>Pre-meeting</b>
3.	_____	_____	<u>RC</u>	_____

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**I. Summary:**

SB 1166 exempts from public records copying and inspection requirements certain personal identifying information of current or former inspectors or investigators of the Florida Department of Agriculture and Consumer Services. Personal Identifying information relating to their spouses and children is likewise exempt. The specific information made exempt from public records disclosure requirements includes:

- Home addresses, telephone numbers, dates of birth, and photographs of current and former inspectors and investigators;
- Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children; and
- Names and locations of schools and day care facilities attended by the children.

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

This public records exemption would be repealed on October 2, 2024, consistent with other agency personnel exemptions in s. 119.071(4)(d), F.S., unless reviewed and saved from repeal through reenactment by the Legislature.

Because this bill creates a public records exemption, it will require two-thirds vote of each house in order to pass.

This act shall take effect July 1, 2023.

## 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.<sup>1</sup> 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.<sup>2</sup>

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, 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.<sup>3</sup> Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.<sup>4</sup> Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

### Executive Agency Records – The Public Records Act

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.<sup>5</sup>

Section 119.011(12), F.S., defines “public records” to include:

[a]ll 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 connections with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business that are used to “perpetuate, communicate, or formalize knowledge of some type.”<sup>6</sup>

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

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

<sup>3</sup> See Rule 1.48, *Rules and Manual of the Florida Senate*, (2022-2024) and Rule 14.1, *Rules of the Florida House of Representatives*, (2022-2024).

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

<sup>5</sup> 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.”

<sup>6</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

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 custodian of the public record.<sup>7</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>8</sup>

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.<sup>9</sup> 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.<sup>10</sup>

General exemptions from the public records requirements are contained in the Public Records Act.<sup>11</sup> Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.<sup>12</sup>

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.<sup>13</sup> Custodians of records designated as "confidential and exempt" may not disclose the record except under circumstances specifically defined by the Legislature.<sup>14</sup>

### **Open Government Sunset Review Act**

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act<sup>15</sup> (the Act), prescribe a legislative review process for newly created or substantially amended<sup>16</sup> public records or open meetings exemptions, with specified exceptions.<sup>17</sup> The Act requires the repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>18</sup>

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<sup>7</sup> Section 119.07(1)(a), F.S.

<sup>8</sup> Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

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

<sup>10</sup> *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).

<sup>11</sup> *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).

<sup>12</sup> *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).

<sup>13</sup> *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

<sup>14</sup> *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

<sup>15</sup> Section 119.15, F.S.

<sup>16</sup> 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.

<sup>17</sup> Section 119.15(2)(a) and (b), F.S., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

<sup>18</sup> Section 119.15(3), F.S.

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.<sup>19</sup>

- An exemption serves an identifiable purpose if the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption *and* it meets one of the following purposes: 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;<sup>20</sup>
- 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;<sup>21</sup> or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.<sup>22</sup>

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

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If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>24</sup> 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.<sup>25</sup>

### **Public Records Exemptions for Specified Personnel and their Families**

Provisions in s. 119.071(4)(d), F.S., exempt from public disclosure certain personal identification and location information of specified state and local government agency personnel and their spouses and children. Personnel covered by these exemptions include:

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<sup>19</sup> Section 119.15(6)(b), F.S.

<sup>20</sup> Section 119.15(6)(b)1., F.S.

<sup>21</sup> Section 119.15(6)(b)2., F.S.

<sup>22</sup> Section 119.15(6)(b)3., F.S.

<sup>23</sup> 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?

<sup>24</sup> See *generally* s. 119.15, F.S.

<sup>25</sup> Section 119.15(7), F.S.

- Active or former sworn or civilian law enforcement personnel employed by a law enforcement agency;<sup>26</sup>
- Certain current or former nonsworn investigative personnel of the Department of Financial Services;<sup>27</sup>
- Certain current or former nonsworn investigative personnel of the Office of Financial Regulation's Bureau of Financial Investigations;<sup>28</sup>
- Current or former certified firefighters;<sup>29</sup>
- Current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges;<sup>30</sup>
- Current or former state attorneys, assistant state attorneys, statewide prosecutors, and assistant statewide prosecutors;<sup>31</sup>
- Current or former code enforcement officers;<sup>32</sup>
- Current or former guardians ad litem;<sup>33</sup>
- Current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel;<sup>34</sup>
- Current or former investigators or inspectors of the Department of Business and Professional Regulation;<sup>35</sup>
- County tax collectors;<sup>36</sup>
- Current or former certified emergency medical technicians and paramedics;<sup>37</sup>
- Current or former directors, managers, supervisors, nurses, and clinical employees of an addiction treatment facility;<sup>38</sup>
- Current or former directors, managers, supervisors, and clinical employees of certain child advocacy centers;<sup>39</sup> and
- Current or former staff of domestic violence centers, including domestic violence advocates.<sup>40</sup>

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<sup>26</sup> Section 119.071(4)(d)2.a., F.S.

<sup>27</sup> Section 119.071(4)(d)2.b., F.S.

<sup>28</sup> Section 119.071(4)(d)2.c., F.S.

<sup>29</sup> Section 119.071(4)(d)2.d., F.S.

<sup>30</sup> Section 119.071(4)(d)2.e., F.S.

<sup>31</sup> Section 119.071(4)(d)2.f., F.S.

<sup>32</sup> Section 119.071(4)(d)2.i., F.S.

<sup>33</sup> Section 119.071(4)(d)2.j., F.S.

<sup>34</sup> Section 119.071(4)(d)2.l., F.S.

<sup>35</sup> Section 119.071(4)(d)2.m., F.S.

<sup>36</sup> Section 119.071(4)(d)2.n., F.S.

<sup>37</sup> Section 119.071(4)(d)2.q., F.S.

<sup>38</sup> Section 119.071(4)(d)2.s., F.S.

<sup>39</sup> Section 119.071(4)(d)2.t., F.S.

<sup>40</sup> Section 119.071(4)(d)2.u., F.S.

The specified exempt information for each profession provided in s. 119.071(4)(d), F.S., varies among the professions. Generally, the home addresses,<sup>41</sup> telephone numbers,<sup>42</sup> dates of birth of the specified personnel are exempt, as are the identifying information of their spouse and children, including place of employment, school and/or daycare facility. For many of the professions, photographs of the employee are exempt,<sup>43</sup> and in some instances, the photographs of the employee's spouse and children are exempt as well.<sup>44</sup>

The employing agency or the employee must assert the right to the exemption by submitting a written and notarized request to each non-employer agency that holds the employee's information.<sup>45</sup> Further, all of these exemptions have retroactive application, applying to information held by an agency before, on, or after the effective date of the exemption.<sup>46</sup>

The exemptions for specified agency personnel in s. 119.071(4)(d), F.S., are subject to the Open Government Sunset Review Act and stand repealed on October 2, 2024, unless reviewed and saved from repeal by the Legislature.

### **Office of Agricultural Law Enforcement**

The Office of Agricultural Law Enforcement (OALE) enforces laws governing businesses regulated by the Florida Department of Agriculture and Consumer Services (Department). The OALE protects consumers from unfair and deceptive trade practices, protects Florida's agriculture industry from theft and other crimes, and safeguards the wholesomeness of food and other consumer products.<sup>47</sup>

The OALE operates 23 agricultural inspection stations on 19 highways going into and out of the State. Officers conduct vehicle inspections 24 hours a day, 365 days a year to ensure the safety of State's food supply. Officers are on the lookout for unsafe or unwholesome food that could make people sick, and plant and animal pests and diseases that could harm the state's \$100 billion agriculture industry.<sup>48</sup>

The OALE investigates crimes involving agriculture and those occurring on property owned or operated by the department. They help maintain domestic security, participating in all seven regional Domestic Security Task Forces statewide. The OALE partners with federal, state and

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<sup>41</sup> Section 119.071(4)(d)1.a., F.S., defines "home addresses" to mean "the dwelling location at which an individual resides and includes the physical address, mailing address, street address, parcel identification number, plot identification number, legal property description, neighborhood name and lot number, GPS coordinates, and any other descriptive property information that may reveal the home address."

<sup>42</sup> Section 119.071(4)(d)1.b., F.S., defines "telephone numbers" to include "home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices."

<sup>43</sup> See, e.g., s. 119.071(4)(d)2.1., F.S.

<sup>44</sup> See, e.g., s. 119.071(4)(d)2.a., F.S.

<sup>45</sup> Section 119.071(4)(d)3. and 4., F.S.

<sup>46</sup> Section 119.071(4)(d)6., F.S.

<sup>47</sup> Florida Department of Agriculture and Consumer Services, *Office of Agricultural Law Enforcement* <https://www.fdacs.gov/Divisions-Offices/Agricultural-Law-Enforcement>, (last visited April 2, 2023).

<sup>48</sup> *Id.*

local law enforcement agencies and help coordinate the Domestic Marijuana Eradication Task Force.<sup>49</sup>

According to the Department, these are the other positions that conduct inspections and investigations other than certified law enforcement officers:

<b>Division</b>	<b>Class Code</b>	<b>Class Title</b>
Division of Agricultural Environmental Services	4823	Environmental Manager - SES
Division of Agricultural Environmental Services	4809	Environmental Specialist II
Division of Agricultural Environmental Services	4812	Environmental Specialist III
Division of Animal Industry	7530	Agriculture & Consumer Protect Inspector
Division of Animal Industry	7539	Agriculture & Consumer Protect Supervisor - SES
Division of Animal Industry	7533	Agriculture & Consumer Protect Specialist
Division of Aquaculture	4809	Environmental Specialist II
Division of Consumer Services	7539	Environmental Specialist III
Division of Consumer Services	7533	Agriculture & Consumer Protect Specialist
Division of Consumer Services	8833	Inspection Specialist
Division of Consumer Services	8830	Liquefied Petroleum Gas Inspector
Division of Food Safety	7533	Agriculture & Consumer Protect Specialist
Division of Food Safety	4809	Environmental Specialist II
Division of Food Safety	4812	Environmental Specialist III
Division of Food Safety	8888	Sanitation and Safety Specialist
Division of Food Safety	8895	Sanitation and Safety Supervisor – SES
Division of Food Safety	8889	Senior Sanitation and Safety Specialist
Division of Fruit and Vegetables	7533	Agriculture & Consumer Protect Specialist
Division of Fruit and Vegetables	7507	Fruit & Vegetable Terminal MKT INSP SUPV - SES
Division of Fruit and Vegetables	7509	Fruit & Vegetable District SUPV - SES
Division of Fruit and Vegetables	7503	Fruit & Vegetable Inspector
Division of Fruit and Vegetables	7506	Fruit & Vegetable Terminal Market INSP
Division of Plant Industry	7530	Agriculture & Consumer Protect Inspector
Division of Plant Industry	7539	Agriculture & Consumer Protect Supervisor - SES
Division of Plant Industry	7533	Agriculture & Consumer Protect Specialist
Division of Plant Industry	7533	Agriculture & Consumer Protect Specialist-SE
Division of Plant Industry	4806	Environmental Specialist I
Division of Plant Industry	4806	Environmental Specialist I - SES
Division of Plant Industry	4809	Environmental Specialist II

<sup>49</sup> *Id.*

Division	Class Code	Class Title
Division of Plant Industry	4812	Environmental Specialist III - SES
Division of Plant Industry	4813	Environmental Specialist I - SES
Division of Plant Industry	4818	Environmental Specialist II - SES

**III. Effect of Proposed Changes:**

**Section 1** amends s. 119.071, F.S. to create a public records exemption for personal identifying information of current or former inspectors or investigators of the Florida Department of Agriculture and Consumer Services. The specific information made exempt from public records disclosure requirements includes:

- Home addresses, telephone numbers, dates of birth, and photographs of current and former inspectors and investigators;
- Names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children; and
- Names and locations of schools and day care facilities attended by the children.

**Section 2** provides a public necessity statement as required by Article I, s. 24(c) of the State Constitution. The public necessity statement provides that it is necessary to shield employees and their families from any potential harm that may come from the scrutiny of businesses or professional practices from the department. The bill also provides that the potential harm from identifying employees outweighs any public benefit from public disclosure.

**Section 3** provides that this act shall take effect July 1, 2023.

The bill is subject to the Open Government Sunset Review Act and is repealed on October 2, 2024, consistent with the other agency personnel exemptions in s. 119.071(4)(d), F.S., unless reviewed and saved from repeal through reenactment by the Legislature.

**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 creates a new exemption, thus, the bill requires a two-thirds vote to be enacted.



**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. This bill creates a new exemption for records pertaining to inspectors and investigators of the Department thus, the bill requires a two-thirds vote to be enacted.

**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 inspectors and investigators of the department along with their family. The bill exempts only records pertaining to inspectors and investigators and their families from the public records requirements. The exemption in the bill 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 identified.

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

None.

**B. Private Sector Impact:**

Any individual or business that currently obtains location information that is covered by the definition of "home addresses" in the bill will not be able to obtain that information from the records custodian without a signed waiver if the employee or the employee's agency requests that the home address information be exempted.

**C. Government Sector Impact:**

This bill may have a minimal negative fiscal impact on agencies holding records that contain personal identifying information of such attorneys because staff responsible for complying with public record requests may require training related to the new public record exemption. Additionally, agencies may experience additional workload associated

with redacting the exempt information prior to releasing a record. However, the additional workload should be absorbed as part of the day-to-day agency responsibilities.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

According to s. 119.15(3), F.S., the Open Government Sunset Review Act, a newly enacted or substantially amended exemption is scheduled for review and repeal by the Legislature in the 5th year after creation, unless the Legislature acts to reenact the exemption. The bill inserts the newly created exemption into an existing paragraph with other exemptions that are scheduled for review and repeal in 2024, which is the first year after enactment instead of the 5th year. However, the deviation from the schedule set forth in the Open Government Sunset Review Act is supported by the reasoning that a previous legislature cannot bind a future legislature.<sup>50</sup>

**VIII. Statutes Affected:**

This bill 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.)

None.

**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>50</sup> *Fla. Carry, Inc. v. Univ. of Fla.*, 180 So.3d 137, 146 (Fla. 1st DCA, 2015), citing *New v. Miami Herald Publ'g Co.*, 462 So.2d 821, 824 (Fla. 1985) and *Scott v. Williams*, 107 So.3d 379, 389 (Fla. 2013).