

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1215 Pub. Rec./Inspectors and Investigators/DACS
SPONSOR(S): Ethics, Elections & Open Government Subcommittee, Maggard
TIED BILLS: IDEN./SIM. **BILLS:** SB 1166

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	14 Y, 0 N	Mortellaro	Anstead
2) Ethics, Elections & Open Government Subcommittee	18 Y, 0 N, As CS	Poreda	Toliver
3) Commerce Committee	16 Y, 0 N	Mortellaro	Hamon

SUMMARY ANALYSIS

The Office of Agricultural Law Enforcement (OALE) is located in the Department of Agriculture and Consumer Services (DACs) and enforces laws governing businesses regulated by DACs. The goal of OALE is to protect consumers from unfair and deceptive trade practices, protect Florida's agriculture industry from theft and other crimes, and safeguard the wholesomeness of food and other consumer products.

The bill provides a public record exemption for the following information of former and current DACs inspectors and investigators as well as their spouses and children:

- Home addresses;
- Telephone numbers;
- Dates of birth; and
- Photographs.

The bill also protects the following information regarding the spouses and children of current and former DACs inspectors and investigators:

- Places of employment; and
- The names and locations of schools and day care facilities attended.

The exemption is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2028, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill takes effect July 1, 2023.

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:

Current Situation

Public Records

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person the right to inspect or copy any public record from the legislative, executive, and judicial branches of government.¹ The Legislature, however, may provide by general law for exemption from public record requirements provided the exemption passes by two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption, and is no broader than necessary to meet its public purpose.²

The Florida Statutes also address the public policy regarding access to government records. Section 119.07(1), F.S., guarantees every person the right to inspect and copy any state, county, or municipal record, unless the record is exempt.³ Furthermore, the Open Government Sunset Review Act⁴ provides that a public record exemption may be created, revised, or maintained only if it serves an identifiable public purpose and the "Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."⁵ An identifiable public purpose is served if the exemption meets 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; or
- Protect trade or business secrets.⁶

Pursuant to the Open Government Sunset Review Act, a new public record exemption or substantial amendment of an existing public record exemption is repealed on October 2nd of the fifth year following enactment, unless the Legislature reenacts the exemption.

DACS Inspectors and Investigators in the Office of Agricultural Law Enforcement

The Office of Agricultural Law Enforcement (OALE) is located in the Department of Agriculture and Consumer Services (DACS) and enforces laws governing businesses regulated by the department. The goal of OALE is to protect consumers from unfair and deceptive trade practices, protect Florida's agriculture industry from theft and other crimes, and safeguard the wholesomeness of food and other consumer products.⁷ OALE operates agricultural inspection stations on the highways and conduct vehicle inspections of food moving in and out of Florida. Officers are on the lookout for unsafe or unwholesome food that could make people sick including pests and diseases that could harm the state's \$100 billion-dollar agricultural industry.⁸ OALE investigates crimes, help maintain domestic

¹ Article I, s. 24(a), FLA. CONST.

² Article I, s. 24(c), FLA. CONST.

³ A public record exemption means a provision of general law which provides that a specified record, or portion thereof, is not subject to the access requirements of s. 119.07(1), F.S., or s. 24, Art. I of the State Constitution. S. 119.011(8), F.S.

⁴ S. 119.15, F.S.

⁵ S. 119.15(6)(b), F.S.

⁶ *Id.*

⁷ Florida Department of Agriculture and Consumer Services, *Office of Agricultural Law Enforcement*, <https://www.fdacs.gov/Divisions-Offices/Agricultural-Law-Enforcement> (last visited March. 17, 2023).

⁸ *Id.*

security, and partner with local law enforcement to help coordinate the Domestic Marijuana Eradication Task Force.⁹

Effect of Proposed Changes

The bill provides that the following information regarding current and former DACS inspectors and investigators and their spouses and children is exempt¹⁰ from public record requirements:

- Home addresses;
- Telephone numbers;
- Dates of birth; and
- Photographs.

The bill also protects the following information concerning the spouses and children of such employees:

- Places of employment; and
- The names and locations of schools and day care facilities attended.

The bill provides a public necessity statement as required by article I, section 24(c) of the Florida Constitution. The public necessity statement provides that revealing the personal information of DACS inspectors and investigators and their family members may place them in danger of physical and emotional harm from disgruntled individuals whose businesses or professional practices have come under the scrutiny of DACS. They may also be subject to threats or acts of revenge due to the duties they perform.

The public record exemption created by the bill is subject to the Open Government Sunset Review Act and will automatically repeal on October 2, 2028, unless reviewed and saved from repeal by the Legislature.

The bill takes effect July 1, 2023.

B. SECTION DIRECTORY:

- Section 1: Creates a public records exemption for information of certain DACS employees, their spouses, and children.
- Section 2: Provides a public necessity statement.
- Section 3: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

⁹ *Id.*

¹⁰ 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).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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 spend funds or take action requiring the expenditure of funds; reduce the authority that counties and municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties and municipalities.

2. Other:

Vote Requirement

Article I, section 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.

Public Necessity Statement

Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it includes a public necessity statement. The public necessity statement provides, in part, that revealing the personal information of DACS inspectors and investigators and their family members may place them in danger of physical and emotional harm from disgruntled individuals whose businesses or professional practices have come under the scrutiny of DACS.

Breadth of Exemption

Article I, section 24(c) of the Florida Constitution requires a newly created or expanded public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public records exemption for sensitive investigative materials and personal information, which does not appear to be broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 22, 2023, the Ethics, Elections & Open Government Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment changes the date the exemption will automatically repeal, pursuant to the Open Government Sunset Review act, from October 2, 2024 to October 2, 2028.

This analysis is drafted to the committee substitute as adopted by the Ethics, Elections & Open Government Subcommittee.