

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

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

FINAL HOUSE FLOOR ACTION: 114 Y's 1 N's **GOVERNOR'S ACTION:** Pending

SUMMARY ANALYSIS

CS/HB 1215 passed the House on April 26, 2023, and subsequently passed the Senate on April 26, 2023.

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The exemption is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2028, unless reviewed and saved from repeal through reenactment by the Legislature.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 does not appear to have a fiscal impact on state or local government.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2023.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF 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 wholesomeness⁷ of food and other consumer products.⁸ 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

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 The USDA defines "wholesomeness" as promoting the health of the body. U.S. Department of Agriculture, *Ask USDA*, <https://ask.usda.gov/s/article/What-is-meant-by-wholesome-in-regards-to-foods> (last visited Mar. 27, 2023).

⁸ 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).

state's \$100 billion-dollar agricultural industry.⁹ OALE investigates crimes, helps maintain domestic security, and partners with local law enforcement to help coordinate the Domestic Marijuana Eradication Task Force.¹⁰

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 exempt¹¹ 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.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

⁹ *Id.*

¹⁰ *Id.*

¹¹ 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).

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.