

**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 Agriculture

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BILL: SPB 7020

INTRODUCER: For consideration by the Agriculture Committee

SUBJECT: OGSR/Aquaculture Records Held by the Department of Agriculture and Consumer Services

DATE: January 12, 2026

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

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Becker</u>	<u>Becker</u>	<u>AG</u>	<u>Favorable</u>

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**I. Summary:**

SPB 7020 saves from repeal the current public record exemption for certain aquaculture records held by the Department of Agriculture and Consumer Services (department). The confidential and exempt records include shellfish receiving and production records generated by shellfish processing facilities, audit records and supporting documentation required for submerged land leases, and aquaculture production records and receipts generated by aquaculture facilities. A record may be disclosed to another governmental entity in the performance of its duties and responsibilities. This exemption applies to aquaculture records held before, on, or after July 1, 2021.

The bill takes effect upon becoming a law.

**II. Present Situation:**

**Public Records Law**

The State 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> This 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>

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.<sup>3</sup> The Public Records Act states that:

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

<sup>2</sup> *Id.* See also, *Sarasota Citizens for Responsible Gov't v. City of Sarasota*, 48 So. 3d 755, 762-763 (Fla. 2010).

<sup>3</sup> Public records laws are found throughout the Florida Statutes.

[i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.<sup>4</sup>

The Public Records Act typically contains general exemptions that apply across agencies. Agency- or program-specific exemptions often are placed in the substantive statutes relating to that particular agency or program.

The Public Records Act does not apply to legislative or judicial records.<sup>5</sup> Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the legislature.

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 connection 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 which are used to “perpetuate, communicate, or formalize knowledge of some type.”<sup>6</sup>

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any state or local government 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>

Only the Legislature may create an exemption to public records requirements.<sup>9</sup> An exemption must be created by general law and must specifically state the public necessity justifying the exemption.<sup>10</sup> Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions<sup>11</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>12</sup>

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” There is a difference between records the Legislature has

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<sup>4</sup> Section 119.01(1), F.S.

<sup>5</sup> *Locke v. Hawkes*, 595 So. 2d 32, 34 (Fla. 1992); *see also Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).

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

<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.*

<sup>11</sup> The bill may, however, contain multiple exemptions that relate to one subject.

<sup>12</sup> FLA. CONST. art. I, s. 24(c).

determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.<sup>13</sup> Records designated as “confidential and exempt” are not subject to inspection by the public and may only be released under the circumstances defined by statute.<sup>14</sup> Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.<sup>15</sup>

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

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act (the Act), prescribe a legislative review process for newly created or substantially amended public records or open meetings exemptions,<sup>16</sup> 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; in order to save an exemption from repeal, the Legislature must reenact the exemption or repeal the sunset date.<sup>18</sup> In practice, many exemptions are continued by repealing the sunset date, rather than reenacting the exemption.

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 subdivision to effectively and efficiently administer a 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 or would jeopardize an 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.<sup>23</sup> In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

<sup>13</sup> *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5<sup>th</sup> DCA 2004).

<sup>14</sup> *Id.*

<sup>15</sup> *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5<sup>th</sup> DCA 1991).

<sup>16</sup> Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings.

<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.

<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?

If, in reenacting an exemption or repealing the sunset date, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are again required.<sup>24</sup> If the exemption is reenacted or saved from repeal without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to expire, the previously exempt records will remain exempt unless otherwise provided by law.<sup>25</sup>

### **Aquaculture Records Held by the Department of Agriculture and Consumer Services**

The Department of Agriculture and Consumer Services (department) is Florida's lead aquaculture agency. The department coordinates and assists in the development of aquaculture and regulates aquafarms to protect and conserve Florida's natural resources. There are an estimated 1,500 species or varieties of fish, plants, mollusks, crustaceans, and reptiles grown in the state.<sup>26</sup>

Aquaculture producers are required to provide the department with receiving logs, production volume records, inventories, and receipts and invoices related to their aquaculture facilities to ensure compliance with the terms and conditions of sovereign submerged land lease agreements and aquaculture best management practices. These records include information, such as quantity and price of seed stock purchased and harvest times which, if released, could be detrimental to their businesses. Information regarding products, harvest times, and locations make aquaculture businesses susceptible to theft, particularly with respect to sovereign submerged land leases in remote locations.

In 2021, the Legislature created a public records exemption for certain aquaculture records held by the department.<sup>27</sup> The public necessity statement provided legislative intent that it is a public necessity that certain production records related to aquaculture and shellfish facilities held by the department are exempt from Florida's public records laws. Without this exemption, the department may be hindered from obtaining valuable and accurate information. With this exemption, the department can protect the aquaculture industry and its facilities while maintaining compliance with federal partners and documenting the compliance of aquaculture producers with statutory requirements.

Since 2021 the department has received three public records requests for information deemed confidential and exempt under s. 597.0042, F.S.<sup>28</sup> Senate and House staff met with department staff in 2025 to discuss the public record exemption and department staff indicated no knowledge of litigation regarding the exemption or any concerns with applying the exemption. Department staff recommended the exemption be reenacted.

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- 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> FLA. CONST. art. I, s. 24(c).

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

<sup>26</sup> See <https://www.fdacs.gov/Divisions-Offices/Aquaculture> (Last visited January 12, 2026).

<sup>27</sup> Ch. 2021-59, L.O.F.

<sup>28</sup> Email on file with Senate Agriculture Committee

### III. Effect of Proposed Changes:

The bill removes the scheduled repeal of the current public record exemption for certain aquaculture records held by the department. The confidential and exempt records include:

- Shellfish receiving and production records generated by shellfish processing facilities,
- Audit records and supporting documentation required for submerged land leases, and
- Aquaculture production records and receipts generated by aquaculture facilities.

A record may be disclosed to another governmental entity in the performance of its duties and responsibilities. This exemption applies to aquaculture records held before, on, or after July 1, 2021.

The bill takes effect upon becoming law.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### 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 disclosure requirements. This bill does not create or expand an exemption, and thus, the bill does not require 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 disclosure requirements to state with specificity the public necessity justifying the exemption. This bill does not create or expand an exemption and thus, a statement of public necessity is not required.

##### **Breadth of Exemption**

Article I, s. 24(c) of the State Constitution requires an exemption to the public records disclosure requirements to be no broader than necessary to accomplish the stated purpose of the law. The exemptions in the bill do not appear to be broader than necessary to accomplish the purposes of the laws.

#### 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:

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:

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 597.0042 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.