

Tab 1	SB 628 by Rouson ; (Identical to H 01013) Urban Agriculture					
Tab 2	SB 650 by Taddeo (CO-INTRODUCERS) Book, Rouson, Polsky, Cruz, Jones, Farmer, Stewart ; (Identical to H 00177) Tethering of Domestic Dogs and Cats					
188208	A	S	FAV	AG, Perry	Delete L.26 - 42:	03/03 02:03 PM
611878	A	S	RCS	AG, Taddeo	Delete L.45 - 58:	03/04 05:50 PM
Tab 3	SB 1018 by Boyd ; (Similar to H 00669) Sale of Aquaculture Products					
Tab 4	SPB 7036 by AG ; OGSR/Department of Agriculture and Consumer Services					
Tab 5	SPB 7038 by AG ; OGSR/Division of Fruit and Vegetables/Trade Secrets					
Tab 6	SPB 7040 by AG ; OGSR/Department of Agriculture and Consumer Services					
Tab 7	SPB 7042 by AG ; OGSR/Trade Secret/Department of Citrus					
Tab 8	SPB 7044 by AG ; OGSR/Noncommodity Advertising and Promotional Program Participants/Department of Citrus					
Tab 9	SPB 7046 by AG ; OGSR/Trade Secret/Marketing Order/Department of Citrus					
Tab 10	SPB 7048 by AG ; OGSR/Manufacturer's Formula/Department of Agriculture and Consumer Services					

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

AGRICULTURE
Senator Rouson, Chair
Senator Bradley, Vice Chair

MEETING DATE: Wednesday, March 3, 2021
TIME: 12:00 noon—2:00 p.m.
PLACE: Toni Jennings Committee Room, 110 Senate Building

MEMBERS: Senator Rouson, Chair; Senator Bradley, Vice Chair; Senators Ausley, Boyd, Burgess, Perry, Polsky, Rodriguez, and Thurston

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
PUBLIC TESTIMONY WILL BE RECEIVED FROM ROOM A1 AT THE DONALD L. TUCKER CIVIC CENTER, 505 W PENSACOLA STREET, TALLAHASSEE, FL 32301			
1	SB 628 Rouson (Identical H 1013)	Urban Agriculture; Exempting farm equipment used in urban agriculture from certain provisions requiring farm equipment to be located a specified distance from a public road; providing that nonresidential farm buildings, fences, or signs located on lands used for urban agriculture are not exempt from the Florida Building Code or local governmental regulations; creating the "Florida Urban Agriculture Act"; expressly preserving local governmental authority to regulate urban agriculture under certain circumstances, etc. AG 03/03/2021 Favorable CA RC	Favorable Yeas 9 Nays 0
2	SB 650 Taddeo (Identical H 177)	Tethering of Domestic Dogs and Cats; Providing requirements for tethering domestic dogs and cats; providing applicability; providing penalties; providing for enforcement, etc. AG 03/03/2021 Fav/CS CA RC	Fav/CS Yeas 9 Nays 0
3	SB 1018 Boyd (Similar H 669, S 1098)	Sale of Aquaculture Products; Authorizing certified aquaculture producers and certain licensed dealers to sell largemouth bass without restriction under certain circumstances; making technical changes, etc. AG 03/03/2021 Favorable EN RC	Favorable Yeas 9 Nays 0

Consideration of proposed bill:

COMMITTEE MEETING EXPANDED AGENDA

Agriculture

Wednesday, March 3, 2021, 12:00 noon—2:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SPB 7036	OGSR/Department of Agriculture and Consumer Services; Amending a provision which provides an exemption from public records requirements for criminal or civil intelligence or investigative information or any other information held by the Department of Agriculture and Consumer Services as part of an examination or investigation with another state or federal regulatory, administrative, or criminal justice agency; removing the scheduled repeal of the exemption, etc.	Submitted and Reported Favorably as Committee Bill Yeas 9 Nays 0
Consideration of proposed bill:			
5	SPB 7038	OGSR/Division of Fruit and Vegetables/Trade Secrets; Amending a provision which provides an exemption from public records requirements for information related to trade secrets held by the Division of Fruit and Vegetables of the Department of Agriculture and Consumer Services; removing the scheduled repeal of the exemption, etc.	Submitted and Reported Favorably as Committee Bill Yeas 9 Nays 0
Consideration of proposed bill:			
6	SPB 7040	OGSR/Department of Agriculture and Consumer Services; Amending a provision which relates to an exemption from public records requirements for trade secret information of a person subject to a marketing order held by the Department of Agriculture and Consumer Services; removing the scheduled repeal of the exemption, etc.	Submitted and Reported Favorably as Committee Bill Yeas 9 Nays 0
Consideration of proposed bill:			
7	SPB 7042	OGSR/Trade Secret/Department of Citrus; Amending a provision which relates to a public records exemption for trade secret information provided to the Department of Citrus; removing the scheduled repeal of the exemption, etc.	Submitted and Reported Favorably as Committee Bill Yeas 9 Nays 0
Consideration of proposed bill:			
8	SPB 7044	OGSR/Noncommodity Advertising and Promotional Program Participants/Department of Citrus; Amending a provision which relates to an exemption from public records requirements for the trade secret information of noncommodity advertising and promotional program participants held by the Department of Citrus; deleting the scheduled repeal of the exemption, etc.	Submitted and Reported Favorably as Committee Bill Yeas 9 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Agriculture

Wednesday, March 3, 2021, 12:00 noon—2:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
Consideration of proposed bill:			
9	SPB 7046	OGSR/Trade Secret/Marketing Order/Department of Citrus; Amending a provision which provides an exemption from public records requirements for the trade secret information of a person subject to a marketing order held by the Department of Citrus; removing the scheduled repeal of the exemption, etc.	Submitted and Reported Favorably as Committee Bill Yeas 9 Nays 0
Consideration of proposed bill:			
10	SPB 7048	OGSR/Manufacturer's Formula/Department of Agriculture and Consumer Services; Amending a provision which provides an exemption from public records requirements for a manufacturer's formula filed with the Department of Agriculture and Consumer Services; removing the scheduled repeal of the exemption, etc.	Submitted and Reported Favorably as Committee Bill Yeas 9 Nays 0
11	Presentation by Thomas Brown, Vice President of Business Development, TrueAlgae		Presented
Other Related Meeting Documents			

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: SB 628

INTRODUCER: Senator Rouson

SUBJECT: Urban Agriculture

DATE: March 4, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Argote	Becker	AG	Favorable
2. _____	_____	CA	_____
3. _____	_____	RC	_____

I. Summary:

SB 628 exempts farm equipment used in urban agriculture from certain provisions requiring farm equipment to be located at least 50 feet away from a public road. The bill does not exempt nonresidential farm buildings, fences, or signs located on lands used for urban agriculture from the Florida Building Code or local governmental regulations.

The bill defines “urban agriculture” and provides applicability.

The bill expressly preserves local governmental authority to regulate urban agriculture under certain circumstances.

The bill takes effect July 1, 2021.

II. Present Situation:

Urban Agriculture

Over the past decade, food policy in the United States has responded to ongoing shifts in consumer preferences and producer trends that favor local and regional food systems while also supporting traditional farm enterprises.¹ This support for local and regional farming has helped to increase agricultural production in urban areas within and surrounding major U.S. cities.

Urban farming operations represent a diverse range of systems and practices. They encompass large-scale innovative systems and capital-intensive operations, vertical and rooftop farms, hydroponic greenhouses (e.g., soilless systems), and aquaponic facilities (e.g., growing fish and plants together in an integrated system).² Urban farming also includes a variety of operations such as vacant city lots, city parks, churchyards, schoolyards, backyards, and community

¹ Congressional Research Service, The Library of Congress, *2018 Farm Bill Primer: Support for Urban Agriculture* (2019), available at <https://fas.org/sgp/crs/misc/IF11210.pdf> (last visited March 2, 2021).

² *Id.*

gardens. Urban farming and gardening is often presented as a potential solution for improving health outcomes, increasing self-reliance, strengthening community, and achieving social goals.

Types of Urban Agriculture

The many forms of urban agriculture can be categorized as either commercial or community-based.³ Commercial urban farms typically frame their business model on creating economically viable businesses that provide employment, food, and education opportunities to serve local needs.⁴

The primary objective of community-based urban gardens is to create spaces for local residents to engage in individual and neighborhood development and empowerment while growing, sharing, or selling fresh fruits and vegetables with each other.⁵ Profitability is not necessarily the goal of community-based urban agriculture;⁶ instead, these efforts seek dedicated outside funding to realize urban agriculture's promises of increased healthy food access, food justice, education, job training, ecological literacy, and community empowerment and development.⁷

“Right to Farm” Laws; Generally

In the 1970s, states began to identify the potential conflicts between farmers and developers as urban sprawl crept into rural, agricultural areas. One of the initial concerns was that the relocation of city dwellers into agricultural areas would result in a rash of very expensive nuisance lawsuits once the new neighbors were confronted with the sensory nature of farm life, complete with an inescapable array of odors, loud noises, dust, and other side-effects.⁸

In an effort to protect farms and agricultural operations from the encroaching sprawl, states passed anti-nuisance laws that are referred to as “Right to Farm” laws. These laws, enacted in all 50 states, protect agricultural production against some nuisance lawsuits. The laws do not grant absolute immunity but generally provide protections for defendants based upon a “coming to the nuisance” defense theory. These laws provide a liability shield for pre-existing agricultural operations when changes are made to the use of nearby parcels, such that the plaintiffs are described as “coming to the nuisance.”⁹ The Florida Right to Farm Act was enacted in 1979.¹⁰

³ Hodgson, K., Caton Campbell, M., & Bailkey, M, *Urban agriculture: Growing healthy, sustainable places*, (2011) Chicago, IL: American Planning Association Planning Advisory Service.

⁴ Rangarajan, A., & Riordan, M., *The Promise of Urban Agriculture: National Study of Commercial Farming in Urban Areas* (2019), United States Department of Agriculture/Agricultural Marketing Service and Cornell University Small Farms Program.

⁵ *Id.*

⁶ Hodgson, K., Caton Campbell, M., & Bailkey, M, *Urban agriculture: Growing healthy, sustainable places*, (2011) Chicago, IL: American Planning Association Planning Advisory Service.

⁷ Vitiello, D. and Wolf-Powers, L, *Growing food to grow cities: The potential of agriculture for economic and community development in the urban United States*, *Community Development Journal*, (2014), p. 508-523.

⁸ Alexia B. Borden and Thomas R. Head, III, *The “Right To Farm” In The Southeast – Does it Go Too Far?* (2007).

⁹ *Id.*

¹⁰ Chapter 79-61, ss. 1-2, Laws of Fla.

Nuisance

A nuisance is described as an activity, condition, or situation created by someone that significantly interferes with another person's use or enjoyment of their property. A private nuisance affects a person's private right that is not common to the public while a public nuisance is an interference that affects the general public, for example, a condition that is dangerous to health or community standards.¹¹

The Florida Right to Farm Act

The Florida Right to Farm Act protects farm operations from nuisance lawsuits if the operations comply with generally accepted agricultural and management practices.¹²

The Florida Right to Farm Act states that a farm operation cannot be classified as a public or private nuisance if the farm:

- Has been in operation for 1 year or more since its established date of operation;
- Was not a nuisance when it was established; and
- Conforms to generally accepted agricultural and management practices.¹³

However, the following four unsanitary conditions constitute evidence of a nuisance:

- The presence of untreated or improperly treated human waste, garbage, offal, dead animals, dangerous waste materials, or gases which are harmful to human or animal life.
- The presence of improperly built or improperly maintained septic tanks, water closets, or privies.
- The keeping of diseased animals which are dangerous to human health, unless the animals are kept in accordance with a current state or federal disease control program.
- The presence of unsanitary places where animals are slaughtered, which may give rise to diseases which are harmful to human or animal life.¹⁴

Additionally, a farm operation cannot be classified as a public or private nuisance due to a change:

- In ownership,
- In the type of farm product that is produced,
- In conditions in or around the locality of the farm, or
- Made in compliance with Best Management Practices adopted by local, state, or federal agencies.¹⁵

The Florida Right to Farm Act, however, may not be construed to permit an existing farm operation to increase to a more excessive farm operation with regard to noise, odor, dust, or fumes where the existing operation is adjacent to an established homestead or business.^{16,17}

¹¹ BLACK'S LAW DICTIONARY (11th ed. 2019).

¹² Section 823.14, F.S.

¹³ Section 823.14(4)(a), F.S.

¹⁴ *Id.*

¹⁵ Section 823.14(4)(b), F.S.

¹⁶ Section 823.14(5), F.S.

¹⁷ In an effort to eliminate duplication of regulatory authority over farm operations, local governments may not adopt an

III. Effect of Proposed Changes:

Section 1 amends s. 604.40, F.S., to exempt farm equipment used in urban agriculture from the requirement that farm equipment be stored, maintained, or repaired within the boundaries of the owner's farm and kept at least 50 feet away from any public road without limitation.

Section 2 amends s. 604.50, F.S., to provide that nonresidential farm buildings, fences, or signs located on lands used for urban agriculture are not exempt from the Florida Building Code or local governmental regulations.

Section 3 creates s. 604.73, F.S., to be known as the "Florida Urban Agriculture Act."

The bill specifies the following legislative findings and intent related to urban agriculture:

- It is necessary to distinguish between farms on traditional rural farm land and those of urban agriculture due to the application of laws related to agricultural activities.
- It is acknowledged that the "coming to the nuisance" defense is reversed when residents bring agricultural uses to already-established, dense urbanized areas, and that municipalities should retain the right to reasonably regulate urban agriculture to protect existing urban land uses.
- It is recognized that urban agriculture has the ability to spur economic development by providing for fresh foods in city centers, community revitalization, and the adaptive reuse of vacant lands.
- It is intended that local governments retain authority to regulate urban agriculture under certain conditions in order to further the growth of farmland and promote the establishment of new farms and agricultural uses within dense urbanized land areas.

The bill defines "urban agriculture." The term applies to urban land that is not designated or zoned for agriculture as a principal use. The term does not apply to vegetable gardens for personal consumption on residential properties.

The bill provides that urban agriculture is subject to the land use, building, and other regulations of a county, municipality, or other political subdivision of the state, regardless of the property's agricultural classification where:

- There is a land use or zoning regulation duly enacted to allow for urban agriculture; and
- The regulation designates existing farm operations as legally nonconforming before the regulation's adoption.

Section 4 provides that this bill shall take effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

ordinance or similar policy to prohibit or limit an activity of a bona fide farm operation on land that is classified as agricultural land in accordance with statute, where the activity is regulated through implemented best management practices or certain interim measures. The full text of this prohibition is contained in s. 823.14(6), F.S.

B. Public Records/Open Meetings Issues:

None.

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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 604.40 and 604.50 of the Florida Statutes.
This bill creates section 604.73 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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Rouson

19-00815-21

2021628__

A bill to be entitled

An act relating to urban agriculture; amending s. 604.40, F.S.; exempting farm equipment used in urban agriculture from certain provisions requiring farm equipment to be located a specified distance from a public road; amending s. 604.50, F.S.; providing that nonresidential farm buildings, fences, or signs located on lands used for urban agriculture are not exempt from the Florida Building Code or local governmental regulations; defining the term "urban agriculture"; creating s. 604.73, F.S.; providing a short title; providing legislative findings and intent; defining the term "urban agriculture"; expressly preserving local governmental authority to regulate urban agriculture under certain circumstances; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 604.40, Florida Statutes, is amended to read:

604.40 Farm equipment.—

(1) Notwithstanding any other law, ordinance, rule, or policy to the contrary, all power-drawn, power-driven, or self-propelled equipment used on a farm may be stored, maintained, or repaired by the owner within the boundaries of the owner's farm and at least 50 feet away from any public road without limitation.

(2) This section does not apply to farm equipment that is

Page 1 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

19-00815-21

2021628__

used in urban agriculture, as defined in s. 604.73.

Section 2. Subsection (1) of section 604.50, Florida Statutes, is amended, and paragraph (e) is added to subsection (2) of that section, to read:

604.50 Nonresidential farm buildings; farm fences; farm signs.—

(1) Notwithstanding any provision of law to the contrary, any nonresidential farm building, farm fence, or farm sign that is located on lands used for bona fide agricultural purposes, not including those lands used for urban agriculture, is exempt from the Florida Building Code and any county or municipal code or fee, except for code provisions implementing local, state, or federal floodplain management regulations. A farm sign located on a public road may not be erected, used, operated, or maintained in a manner that violates any of the standards provided in s. 479.11(4), (5) (a), and (6)-(8).

(2) As used in this section, the term:

(e) "Urban agriculture" has the same meaning as in s. 604.73.

Section 3. Section 604.73, Florida Statutes, is created to read:

604.73 Local regulation of urban agriculture.—

(1) SHORT TITLE.—This section shall be known and may be cited as the "Florida Urban Agriculture Act."

(2) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds that, due to the application of laws relating to agricultural activities, it is necessary to distinguish between farms on traditional rural farm land and the emerging trends towards urban agriculture. The Legislature acknowledges that the "coming

Page 2 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

19-00815-21 2021628__
 59 to the nuisance” defense is reversed when residents bring
 60 agricultural uses to already-established, dense urbanized areas,
 61 and that municipalities should retain the right to reasonably
 62 regulate urban agriculture to protect existing urban land uses.
 63 The Legislature recognizes the ability of urban agriculture to
 64 spur economic development by providing for fresh foods in city
 65 centers, community revitalization, and the adaptive reuse of
 66 vacant lands. It is the intent of the Legislature that local
 67 governments retain authority to regulate urban agriculture under
 68 certain conditions, which will further the growth of farmland
 69 and promote the establishment of new farms and agricultural uses
 70 within dense urbanized land areas of this state.

71 (3) DEFINITION.—As used in this section, the term “urban
 72 agriculture” means any new or existing food cultivation on a
 73 piece of land within a dense urban land area, as described in s.
 74 380.0651(3)(a), for recreational, residential, community,
 75 commercial, or not-for-profit gardening or farming purposes. The
 76 term applies to urban land that is not designated or zoned for
 77 agriculture as a principal use. The term does not include
 78 vegetable gardens, as defined in s. 604.71(4), for personal
 79 consumption on residential properties.

80 (4) LOCAL REGULATION.—Notwithstanding s. 823.14 or any
 81 other law to the contrary, urban agriculture is subject to the
 82 land use, building, and other regulations of a county,
 83 municipality, or other political subdivision of the state,
 84 regardless of the property’s agricultural classification
 85 pursuant to s. 193.461, where:

86 (a) There is a land use or zoning regulation duly enacted
 87 to allow for urban agriculture; and

19-00815-21 2021628__
 88 (b) The regulation designates existing farm operations, as
 89 defined in s. 823.14(3)(b), as legally nonconforming before the
 90 regulation’s adoption.

91 Section 4. This act shall take effect July 1, 2021.

From: [Heere, Robert](#)
To: [Becker, Katherine](#)
Cc: [Zaugg, Laureen](#)
Subject: Agenda Request for SB 628
Date: Thursday, February 4, 2021 5:19:33 PM

Katherine,

This email serves as the official request for SB 628 to be placed on the agenda.

Thank you,

Robbie

Robert Heere

Legislative Assistant

State Senator Darryl Rouson- District 19

St. Petersburg- 727-822-6828

Tallahassee- 850-487-5019

Heere.robert@flsenate.gov

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

3-3-21

Meeting Date

628

Bill Number (if applicable)

Topic URBAN AGRICULTURE Amendment Barcode (if applicable)

Name TAYLOR PATRICK BIEHL

Job Title DIRECTOR GOVERNMENT AFFAIRS

Address 166 E. COLLEGE SUITE 1110

Phone 850-224-1660

Street

TRUMAN

City

FL

State

32308

Zip

Email TAYLORPATRICK@CITYOFSTPETERSBURG.COM

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing CITY OF ST. PETERSBURG

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

March 3 2021
Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 620
Bill Number (if applicable)

Topic URBAN Agriculture

Amendment Barcode (if applicable)

Name David Sardan

Job Title Service Retired Now Resident

Address 66 Wintergreen Drive Phone 352 805 6597

Street

City

State

State

Zip

Email

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Self & my wife

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

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 650

INTRODUCER: Agriculture Committee and Senator Taddeo and others

SUBJECT: Tethering of Domestic Dogs and Cats

DATE: March 4, 2021

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

SB 650 prohibits the tethering of a domestic dog or a domestic cat to a stationary or inanimate object with a rope, chain, or other means to restrict, confine, or restrain its movement. The bill provides criteria for lawful attended tethering and prohibits the tethering of a dog or cat outdoors during severe weather conditions.

The bill provides for additional and increasing noncriminal penalties for a person who is found to be in violation of the bill's provisions. The bill allows for enforcement under s. 828.073, F.S.

The bill takes effect July 1, 2021.

II. Present Situation:

Animal Cruelty; Generally

Section 828.12, F.S., prohibits criminal offenses involving cruelty to animals.¹

Specifically, a person commits animal cruelty if he or she unnecessarily overloads, overdrives, torments, deprives of necessary sustenance or shelter, or unnecessarily mutilates, or kills any animal, or causes the same to be done, or carries in or upon any vehicle, or otherwise, any animal

¹ Section 828.12, F.S.

in a cruel or inhumane manner. Animal cruelty is a first degree misdemeanor, punishable by up to 1 year in jail and a fine of up to \$5,000.²

A person commits aggravated animal cruelty if he or she intentionally commits an act to any animal, or a person who owns or has the custody or control of any animal and fails to act, which results in the cruel death, or excessive or repeated infliction of unnecessary pain or suffering, or causes the same to be done. Aggravated animal cruelty is a third degree felony, punishable by up to 5 years in jail and a fine of up to \$10,000.³

A person who commits multiple acts of animal cruelty or aggravated animal cruelty against one animal may be charged with a separate offense for each act, or against more than one animal may be charged with a separate offense for each animal such cruelty was committed upon.

In addition, s. 828.13, F.S., provides that animal owners who abandon their animal to suffer injury or malnutrition or abandons any animal in a street, road, or public place without providing for the care, sustenance, protection, and shelter of such animal is guilty of a first degree misdemeanor.⁴

Further, s. 828.27, F.S., provides that the governing body of a county or municipality may enact ordinances relating to animal control or cruelty.⁵ Violation of such county ordinance is a civil infraction, with a maximum civil penalty not to exceed \$500. Twenty-three counties have ordinances in place prohibiting a dog from being outside or tethered during periods of extreme weather conditions, such as extreme heat, freezing or near-freezing temperatures, during thunderstorms, lightning storms, tornado watches or warnings, or during tropical storm or hurricane watches or warnings.⁶

Dog and Cat Safety During Extreme Weather Conditions

As a dangerous storm approaches, many residents flee to safer areas, and some leave their pets behind. During Hurricane Irma, the Palm Beach County Animal Care and Control director reported that many pets had been left chained to trees and parked cars, as their owner left them behind to “ride out the storm” on their own. At the time of the reporting, 49 dogs and two cats had been rescued by animal control officers.⁷

² A first degree misdemeanor is punishable by up to 1 year in jail and a fine of up to \$1,000, or any higher amount specifically authorized by statute. See sections 775.082 and 775.083, F.S.

³ A third degree felony is punishable by up to 5 years imprisonment and up to a \$5,000 fine, or any higher amount specifically authorized by statute. See sections 775.082 and 775.083, F.S.

⁴ Section 828.13, F.S.

⁵ Section 828.27, F.S.

⁶ Alachua, Brevard, Broward, Charlotte, Citrus, Clay, Collier, Escambia, Franklin, Gilchrist, Hernando, Hillsborough, Lake, Leon, Manatee, Martin, Miami-Dade, Monroe, Nassau, Palm Beach, St. Lucie, Sarasota, and Wakulla County.

⁷ See DML NEWS, Pets Abandoned, Chained on Leashes, as Owners Flee Hurricane Irma, September 9, 2017, *available at* <https://dmlnews.com/pets-abandoned-chained-leashes-owners-flee-hurricane-irma/> (last visited March 2, 2021).

Animals Found In Distress

Under s. 828.073, F.S.,⁸ animals found in distress may be removed from its present custody or made the subject of an order to provide care, issued to its owner by the county court, any law enforcement officer, any animal control officer certified pursuant to s. 828.27, F.S.,⁹ or any agent of any county or of any society or association for the prevention of cruelty to animals appointed under s. 828.03, F.S.,¹⁰ and protected and disposed of appropriately and humanely.

Any law enforcement officer, any animal control officer, or any agent of any county or of any society or association for the prevention of cruelty to animals pursuant to s. 828.27, F.S., may lawfully take custody of any animal found neglected or cruelly treated by removing the animal from its present location or may order the owner of any animal found neglected or cruelly treated to provide certain care to the animal at the owner's expense without removal of the animal from its present location.

Subsequently, a petition seeking relief under this section shall be filed in the county court of the county in which the animal is found within 10 days after the animal is seized or an order to provide care is issued. The court is then required to schedule and commence a hearing on the petition within 30 days after the petition is filed to determine whether the owner, if known, is able to adequately provide for the animal and is fit to have custody of the animal. The hearing shall be concluded and the court order entered thereon within 60 days after the date the hearing is commenced.

If the court determines that the owner is able to provide adequately for, and have custody of, the animal, the order shall provide that the animal be claimed and removed by the owner within 7 days after the date of the order. Upon the court's judgment that the owner of the animal is unable or unfit to adequately provide for the animal, the court may follow guidelines pursuant to s. 828.073, F.S.¹¹

Hunting Dogs

Under s. 767.10, F.S., the Legislature finds that dangerous dogs are an increasingly serious and widespread threat to the safety and welfare of the people of this state because of unprovoked attacks which cause injury to persons and domestic animals, and such attacks are in part attributable to the failure of owners to confine and properly train and control their dogs.¹² Because of this growing problem, uniform requirements for the owners of dangerous dogs were imposed.¹³

Under s. 767.12(6), F.S., hunting dogs are exempt from the regulations imposed by s. 767.10, F.S., when engaged in any legal hunt or training procedure.¹⁴ Dogs engaged in training or

⁸ Section 828.073, F.S.

⁹ Section 828.27, F.S.

¹⁰ Section 828.03, F.S.

¹¹ Section 828.073, F.S.

¹² Section 767.10, F.S.

¹³ *Id.*

¹⁴ Section 767.12(6), F.S.

exhibiting in legal sports such as obedience trials, conformation shows, field trials, hunting/retrieving trials, and herding trials are exempt when engaged in any legal procedures.¹⁵ However, such dogs at all other times in all other respects are subject to both s. 767.10, F.S., and local laws. Dogs that have been classified as dangerous may not be used for hunting purposes.¹⁶

Noncriminal Violations

The term “noncriminal violation” is defined as any offense that is punishable under the laws of this state, or that would be punishable if committed in the state, by no other penalty than a fine, forfeiture, or other civil penalty. A noncriminal violation does not constitute a crime, and conviction for a noncriminal violation shall not give rise to any legal disability based on a criminal offense.¹⁷

III. Effect of Proposed Changes:

Section 1 creates s. 828.132, F.S., to prohibit the tethering of a domestic dog or a domestic cat to a stationary or inanimate object with a rope, chain, or other means to restrict, confine, or restrain its movement.

The bill prohibits the tethering of a domestic dog or a domestic cat unless the person is physically present with and attending to the dog or cat. The dog or cat must remain visible to the person at all times while tethered. This section does not apply when a dog or cat is tethered in a manner that does not jeopardize its health, safety, or well-being when:

- Attending, or participating in, a legal, organized public event in which the dog or cat and the person are permitted attendees or participants;
- Actively engaging in conduct that is directly related to the business of shepherding or herding cattle or livestock or related to the business of cultivating agricultural products and tethering is reasonably necessary for its safety;
- Being treated by a veterinarian or serviced by a groomer;
- Being trained for or actively serving in a law enforcement capacity;
- Being cared for as part of a rescue operation during a natural or manmade disaster;
- Temporarily tethered by any of the following entities for the period of time necessary to accomplish a task such as bathing, medical care, or any other short-term valid purpose for the safety of the animal, other animals, staff, or the public:
 - A public or private animal shelter.
 - A humane organization.
 - An animal control agency operated by a humane organization; by a county, municipality, or other incorporated political subdivision; or by a licensed commercial boarding facility.
- Temporarily tethered while being kept in a bona fide humane shelter or at a licensed commercial boarding facility; or
- Tethered in accordance with the regulations of a camping or recreational area.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Section 775.08(3), F.S.

The bill also provides that a person may not tether a domestic dog or cat outdoors during severe weather conditions. The bill does not apply to hunting dogs.

A person who tethers a dog or cat in violation of the provisions set forth within this bill commits a noncriminal violation as defined in s. 775.08(3), F.S., and is subject to the following penalties:

- For a first offense, a written warning and notice to comply;
- For a second offense, a fine of \$250; and
- For a third and every subsequent offense, a fine of \$500.

Section 2 provides that this act shall take effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

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:

None.

C. Government Sector Impact:

The bill creates a noncriminal penalty of up to \$500, which may increase revenue if the provisions set forth by this bill are violated.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 828.132 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 3, 2021:

The committee substitute specifies the entities that are authorized to temporarily tether a domestic dog or domestic cat for the period of time necessary to accomplish a task such as bathing, medical care, or any other short-term valid purpose for the safety of the animal, other animals, staff, or the public. These entities include: a public or private animal shelter; a humane organization; or an animal control agency operated by a humane organization, a county, municipality, or other incorporated political subdivision.

The committee substitute removes the requirement that compliance must be met within 30 days for a first offense. It also clarifies that the bill does not apply to hunting dogs. It specifies that the bill may not be construed to limit the authority of any local governmental entity to adopt or enforce an ordinance that is more restrictive or that imposes greater penalties than what is outlined in this bill.

- B. **Amendments:**

None.



188208

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/03/2021	.	
	.	
	.	
	.	

The Committee on Agriculture (Perry) recommended the following:

Senate Amendment

Delete lines 26 - 42
and insert:

(3) This act does not apply to hunting dogs.

(4) Paragraph (2)(a) does not apply to tethering a domestic
dog or domestic cat in a manner that does not jeopardize its
health, safety, or well-being when:

(a) Attending, or participating in, a legal, organized
public event in which the dog or cat and the person are
permitted attendees or participants;



188208

12 (b) Actively engaging in conduct that is directly related
13 to the business of shepherding or herding cattle or livestock or
14 related to the business of cultivating agricultural products and
15 tethering is reasonably necessary for its safety;

16 (c) Being treated by a veterinarian or serviced by a
17 groomer;

18 (d) Being trained for or actively serving in a law
19 enforcement capacity;



611878

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/04/2021	.	
	.	
	.	
	.	

The Committee on Agriculture (Taddeo) recommended the following:

Senate Amendment (with title amendment)

Delete lines 45 - 58

and insert:

(g) Temporarily tethered by any of the following entities
for a period of time which is no longer than necessary to
accomplish a task such as bathing, medical care, or any other
short-term valid purpose for the safety of the animal, other
animals, staff, or the public:

1. A public or private animal shelter.

2. A humane organization.



611878

3. An animal control agency operated by a humane organization; by a county, municipality, or other incorporated political subdivision; or by a licensed commercial boarding facility;

(h) Temporarily tethered while being kept in a bona fide humane shelter or at a licensed commercial boarding facility; or

(i) Tethered in accordance with the regulations of a camping or recreational area.

(4) A person who tethers a domestic dog or domestic cat in violation of this section commits a noncriminal violation as defined in s. 775.08(3) and is subject to the following penalties:

(a) For a first offense, a written warning and notice to comply.

(b) For a second offense, a fine of \$250.

(c) For a third and every subsequent offense, a fine of \$500.

(5) This section may be enforced pursuant to s. 828.073.

(6) This section may not be construed to limit the authority of any local governmental entity to adopt or enforce an ordinance that is more restrictive or that imposes greater penalties than this section.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete line 6

and insert:

providing penalties; authorizing enforcement according to specified provisions; providing construction;

By Senator Taddeo

40-00675-21

2021650__

A bill to be entitled

An act relating to tethering of domestic dogs and cats; creating s. 828.132, F.S.; defining the term "tether"; providing requirements for tethering domestic dogs and cats; providing applicability; providing penalties; providing for enforcement; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 828.132, Florida Statutes, is created to read:

828.132 Tethering of domestic dogs and cats.—

(1) As used in this section, the term "tether" means to tie a domestic dog or domestic cat to a stationary or inanimate object with a rope, chain, or other means to restrict, confine, or restrain its movement.

(2) (a) A person may not tether a domestic dog or domestic cat unless the person is physically present with and attending to the dog or cat and the dog or cat remains visible to the person at all times while tethered.

(b) A person may not tether a domestic dog or domestic cat outdoors during severe weather, including, but not limited to, extreme heat or cold, thunderstorms, lightning, tornadoes, tropical storms, or hurricanes.

(3) Paragraph (2) (a) does not apply to tethering a domestic dog or domestic cat in a manner that does not jeopardize its health, safety, or well-being when:

(a) Attending, or participating in, a legal, organized

Page 1 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

40-00675-21

2021650__

public event in which the dog or cat and the person are permitted attendees or participants;

(b) Actively engaging in conduct that is directly related to the business of shepherding or herding cattle or livestock or related to the business of cultivating agricultural products and tethering is reasonably necessary for its safety;

(c) Being treated by a veterinarian or serviced by a groomer;

(d) Being trained for or actively serving in a law enforcement capacity;

(e) Being lawfully used to actively hunt a species of wildlife in the state during the hunting season for that species of wildlife;

(f) Being cared for as part of a rescue operation during a natural or manmade disaster;

(g) Temporarily tethered while being kept in a bona fide humane shelter or at a licensed commercial boarding facility; or

(h) Tethered in accordance with the regulations of a camping or recreational area.

(4) A person who tethers a domestic dog or domestic cat in violation of this section commits a noncriminal violation as defined in s. 775.08(3) and is subject to the following penalties:

(a) For a first offense, a written warning and notice to comply within 30 calendar days.

(b) For a second offense, a fine of \$250.

(c) For a third and every subsequent offense, a fine of \$500.

(5) This section shall be enforced pursuant to s. 828.073.

Page 2 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

40-00675-21

2021650__

59

Section 2. This act shall take effect July 1, 2021.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Ethics and Elections, Vice Chair
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Banking and Insurance
Commerce and Tourism
Criminal Justice

SENATOR ANNETTE TADDEO
40th District

MEMORANDUM

To: Senator Rouson Chair of the Agriculture Committee
From: Senator Annette Taddeo
Subject: Committee Agenda Request
Date: February 16, 2021

Senate Bill 650 (HB 177), entitled Tethering of Domestic Dogs and Cats, would provide requirements for tethering domestic dogs and cats. This bill states a person may not tether a domestic dog or cat unless they are physically present with and attending to the dog or cat or the dog or cat are visible to the person at all times. This bill also requires the tethering to not jeopardize the health, safety, and well-being of the dog or cat. I respectfully request that **Senate Bill 650** be placed on the next committee agenda.

A handwritten signature in black ink, appearing to be "Annette Taddeo", written over a horizontal line.

Senator Annette Taddeo
Florida Senate, District 40

REPLY TO:

- ☐ 9100 South Dadeland Boulevard, Suite 1500, Miami, Florida 33156 (305) 596-3003
- ☐ 224 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5040

Senate's Website: www.flsenate.gov

WILTON SIMPSON **AARON BEAN**
President of the Senate President Pro Tempore

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

3/3/21

Meeting Date

SB 650

Bill Number (if applicable)

188208 by Perry

Amendment Barcode (if applicable)

Topic Dog tethering, Hunting Dog Exemption

Name Lane Stephens

Job Title _____

Address 111 N. Calhoun St., Suite 6

Street

Tallahassee

City

FL

State

32301

Zip

Phone 850-513-0004

Email lane@scggov.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Southeast Dog Hunters Association, Florida Dog Hunters Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

March 3rd 2021
Meeting Date

SB 650
Bill Number (if applicable)

Topic Gathering of Domestic Dogs & Cats
Amendment Barcode (if applicable)

Name David Serdan

Job Title Retired Senior Past Labrador Retriever Owner of Two

Address 66 Wintergreen Dr
Street
Portland Park FL 34781
City State Zip
Phone 352 805 6509
Email goltendave1955@gmail.com

Speaking: ☐ For ☐ Against ☒ Information
Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Self & Wife

Appearing at request of Chair: ☐ Yes ☒ No
Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

03/03/2021

Meeting Date

SB 650

Bill Number (if applicable)

Topic Tethering of Dogs and Cats

Amendment Barcode (if applicable)

Name Judith Seltrecht

Job Title President Florida Association of Kenn

Address 2701 Centerview Place

Phone 813-843-5145

Street

Brandon

FL

33511

Email jseltrecht123@gmail.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing Florida Association of Kennel Clubs

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

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3/3/2021

Meeting Date

THE FLORIDA SENATE

APPEARANCE RECORD

SB-650

Bill Number (if applicable)

Topic Tethering Dogs and Cats

Name Marion P. Hammer

Job Title _____

Address P.O. Box 1387

Street

Tallahassee

City

FL

State

32302

Zip

Phone 850-222-9518

Email _____

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against
(The Chair will read this information into the record.)

Representing NRA and Unified Sportsmen of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

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: SB 1018

INTRODUCER: Senator Boyd

SUBJECT: Sale of Aquaculture Products

DATE: March 4, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Becker	Becker	AG	Favorable
2.			EN	
3.			RC	

I. Summary:

SB 1018 allows for largemouth bass to be sold by an aquaculture producer or a dealer with a nonrecreational license from the Fish and Wildlife Conservation Commission. Largemouth bass may be sold without restriction so long as the product origin can be identified.

The bill takes effect July 1, 2021.

II. Present Situation:

The Department of Agriculture and Consumer Services (department) Division of Aquaculture (division) is Florida's lead aquaculture agency. The division coordinates and assists in the development of aquaculture and regulates aquafarms to protect and conserve Florida's natural resources.¹

The department issues certificates of registration to aquaculture producers under s. 597.004, F.S.² Certified aquaculture producers and dealers licensed pursuant to part VII of ch. 379, F.S., are permitted to sell aquaculture products except those otherwise prohibited by law and those for which the origin of the product is unknown.³ Specifically prohibited species include shellfish, snook, and any fish of the genus *Microperterus*, and prohibited restricted freshwater and marine species identified by the Fish and Wildlife Conservation Commission.⁴

¹ Florida Department of Agriculture and Consumer Services, *Division of Aquaculture*, <https://www.fdacs.gov/Divisions-Offices/Aquaculture> (last visited Mar. 1, 2021).

² Section 597.004, F.S.

³ Section 597.004(5), F.S.

⁴ *Id.*

III. Effect of Proposed Changes:

SB 1018 amends s. 597.004, F.S., to remove the species *Micropterus salmoides* (largemouth bass) and the subspecies and hybrids thereof from species which are prohibited to be sold by certified aquaculture producers and dealers with a nonrecreational license from the Florida Fish and Wildlife Conservation Commission.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

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:

Certified aquaculture producers and dealers with a nonrecreational license from the Florida Fish and Wildlife Conservation Commission could see a financial benefit from the ability to offer largemouth bass for sale.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 601.10 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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Boyd

21-00867-21

20211018__

A bill to be entitled

An act relating to the sale of aquaculture products;
amending s. 597.004, F.S.; authorizing certified
aquaculture producers and certain licensed dealers to
sell largemouth bass without restriction under certain
circumstances; making technical changes; providing an
effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (5) of section
597.004, Florida Statutes, is amended to read:

597.004 Aquaculture certificate of registration.—

(5) SALE OF AQUACULTURE PRODUCTS.—

(a) An aquaculture producer certified pursuant to this
section or a dealer licensed pursuant to part VII of chapter 379
may sell aquaculture products, except shellfish, snook, and
any fish of the genus *Micropterus*, excluding the species
Micropterus salmoides (largemouth bass) and the subspecies and
hybrids thereof; and prohibited and restricted freshwater and
marine species identified by rules of the Fish and Wildlife
Conservation Commission, ~~may be sold by an aquaculture producer~~
~~certified pursuant to this section or by a dealer licensed~~
~~pursuant to part VII of chapter 379~~ without restriction so long
as the product origin can be identified.

Section 2. This act shall take effect July 1, 2021.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Banking and Insurance, *Chair*
Agriculture
Appropriations Subcommittee on Agriculture,
Environment, and General Government
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Criminal Justice
Judiciary

JOINT COMMITTEE:

Joint Legislative Auditing Committee

SENATOR JIM BOYD

21st District

February 10, 2021

Senator Darryl Rouson
Committee on Agriculture
335 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chairman Rouson:

I respectfully request that SB 1018: Sale of Aquaculture Products, be scheduled for a hearing in the Committee on Agriculture at your earliest convenience.

If I may be of assistance to you on this or any other matter, please do not hesitate to contact me.

Thank you for your consideration of this matter.

Best regards,

A handwritten signature in blue ink, appearing to read "Jim Boyd".

Jim Boyd

cc: Katherine Becker
Laureen Zaugg

REPLY TO:

- ☐ 717 Manatee Avenue West, Bradenton, Florida 34205 (941) 742-6445
- ☐ 312 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5021

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

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THE FLORIDA SENATE

APPEARANCE RECORD

03/03/21

Meeting Date

1018

Bill Number (if applicable)

Topic Sale of Aquaculture Products

Amendment Barcode (if applicable)

Name Emily Duda Buckley

Job Title Director of Legislative Affairs

Address 400 S Monroe St

Phone 8506177700

Street

Tallahassee

FL

32399

Email emily.buckley@fdacs.gov

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FDACS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/3/21

Meeting Date

1018

Bill Number (if applicable)

Topic Aquaculture

Amendment Barcode (if applicable)

Name Sim Spratt

Job Title _____

Address 1195 Monroe St.

Street

Phone 850-228-1296

TALLAHASSEE

City

State

FL

Zip

Email sim@magnumstrategiesllc.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FLORIDA Aquaculture Association

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/3/21
Meeting Date

SB 1018
Bill Number (if applicable)

Topic SB 1018, Sale of Aquaculture Amendment Barcode (if applicable)
Name Landon Hoffman Products

Job Title legislative Affairs

Address _____ Phone 850 508-1236
Street

City _____ State _____ Zip _____ Email _____

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Farm Bureau

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

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: SPB 7036

INTRODUCER: Agriculture Committee

SUBJECT: OGSR/Department of Agriculture and Consumer Services

DATE: March 4, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Becker	Becker	AG	Submitted as Comm. Bill/Fav

I. Summary:

SPB 7036 amends s. 570.077, F.S., to remove the scheduled repeal of a public records exemption for criminal or civil intelligence or investigative information or any other information held by the Department of Agriculture and Consumer services as part of a joint or multiagency examination or investigation with another state or federal regulatory, administrative, or criminal justice agency which is confidential and exempt under the laws or regulations of that state or federal agency.

The public records exemption would stand repealed on October 2, 2021, unless it is reenacted by the Legislature under the Open Government Sunset Review Act.

The bill takes effect October 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, 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

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, ch. 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 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

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2020-2022) and Rule 14.1, *Rules of the Florida House of Representatives*, (2020-2022).

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

⁵ Section 119.01(1), F.S. Section 119.01(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 119.01(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).

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).

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

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

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.

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

In examining an exemption, the act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption. The act requires the Legislature to consider the following specific questions in such a review:²⁴

- 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?

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

The Department of Agriculture and Consumer Services

The Department of Agriculture and Consumer Services (department) safeguards the public from unsafe or defective products and deceptive business practices. The Division of Consumer Services (division) within the department is the clearinghouse for consumer complaints, information, and protection. The division regulates various businesses, such as motor vehicle repair shops, charitable organizations, pawnbrokers, health studios, sellers of travel, intrastate movers, professional surveyors and mappers, sweepstakes/game promotions, and telemarketers.²⁷

Until 2016 Florida's public record laws made any information obtained by the department in administrative and civil investigations open to the public. According to the department, this presented a hurdle to partnering with other state and federal agencies, such as the Federal Trade Commission (FTC) or Internal Revenue Service (IRS), because the department could not maintain the same level of privacy adopted and required by those federal and other state agencies.²⁸ As a result, investigations by the department were hindered because it was often unable to gather pertinent information from, enter into confidentiality agreements with, or participate in multi-jurisdiction task forces with other state and federal agencies.

²³ Section 119.15(6)(b)3., F.S.

²⁴ Section 119.15(6)(a), F.S.

²⁵ See *generally* s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ See <https://www.fdacs.gov/Divisions-Offices/Consumer-Services>, (last visited March 3, 2021).

²⁸ Florida Department of Agriculture and Consumer Services, *SB 754 Agency Analysis*, (November 12, 2015) (on file with the Senate Committee on Agriculture).

The FTC operates a Consumer Sentinel database that is protected from public record disclosure. Information from this database can only be provided to a state agency that agrees not to disseminate the information.²⁹ This database contains information on subjects relating to:

- Identity Theft,
- Do-Not-Call Registry Violations,
- Computers, the Internet, and Online Auctions,
- Telemarketing Scams,
- Advance-fee loans and credit scams,
- Immigration Services,
- Sweepstakes, Lotteries, and Prizes,
- Business Opportunities and Work-at-home Schemes,
- Health and Weight Loss Products, and
- Debt Collection, Credit Reports, and Financial Matters.

Open Government Sunset Review Questionnaire

In February 2021, the Professional Staff of the Senate Agriculture Committee sent an Open Government Sunset Review Questionnaire to the department. The department reported that between 2017 and 2020 it received a total of ten requests for information held under s. 570.077, F.S. Information for active cases was not released but information was eventually released once investigations ceased to be active or were adjudicated by the courts.³⁰

The department stated that all federal, state, county, and local law enforcement information and intelligence products generated by agencies across the nation are shared with the Office of Agricultural Law Enforcement (OALE) staff via multi-agency portals, email, and physical transmission and are shared with the expectation and belief that active intelligence and law enforcement investigative information is confidential and exempt. Should these protections be withdrawn from department documents it would substantially change the mechanisms by which information would be shared with the OALE. This would increase the manpower and subsequent effort required to obtain such documentation and would also risk officer safety.³¹

The department recommended that the exemption in s. 570.077, F.S., should be reenacted.³²

III. Effect of Proposed Changes:

SPB 7036 amends s. 570.077, F.S., to remove the scheduled repeal of a public records exemption for criminal or civil intelligence or investigative information or any other information held by the Department of Agriculture and Consumer services as part of a joint or multiagency examination or investigation with another state or federal regulatory, administrative, or criminal justice agency which is confidential and exempt under the laws or regulations of that state or federal

²⁹ *Id.* See also, Federal Trade Commission, *Consumer Sentinel Network*, available at: <https://www.ftc.gov/enforcement/consumer-sentinel-network>, (last visited March 1, 2021).

³⁰ See *Open Government Sunset Review Questionnaire* response from the Florida Department of Agriculture and Consumer Services on file with the Senate Committee on Agriculture.

³¹ *Id.*

³² *Id.*

agency.

The public records exemption would stand repealed on October 2, 2021, unless it is reenacted by the Legislature under the Open Government Sunset Review Act.

The bill takes effect October 1, 2021.

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 requirements. This bill does not create or expand an exemption, 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 requirements to state with specificity the public necessity justifying the exemption. This bill does not create or expand an exemption, thus, the bill does not require 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 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.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 570.077 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.

FOR CONSIDERATION By the Committee on Agriculture

575-02230-21

20217036pb

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 570.077, F.S., which provides an exemption from public records requirements for criminal or civil intelligence or investigative information or any other information held by the Department of Agriculture and Consumer Services as part of an examination or investigation with another state or federal regulatory, administrative, or criminal justice agency; removing the scheduled repeal of the exemption; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 570.077, Florida Statutes, is amended to read:

570.077 Confidentiality of intelligence or investigative information.—

(1) Criminal or civil intelligence or investigative information or any other information held by the department as part of a joint or multiagency examination or investigation with another state or federal regulatory, administrative, or criminal justice agency which is confidential or exempt under the laws or regulations of that state or federal agency is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. The department may obtain, use, and release the information in accordance with the conditions imposed by the joint or multiagency agreement.

(2) The department may release information that is made

Page 1 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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confidential and exempt under subsection (1):

(a) In the furtherance of its official duties and responsibilities.

(b) To another governmental agency in the furtherance of its official duties and responsibilities.

(3) The public records exemption provided in subsection (1) does not apply to information held by the department as part of an independent examination or investigation conducted by the department.

~~(4) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2021.

Page 2 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

03/03/21

Meeting Date

7036

Bill Number (if applicable)

Topic OGSR/Department of Agriculture and Consumer Services

Amendment Barcode (if applicable)

Name Emily Duda Buckley

Job Title Director of Legislative Affairs

Address 400 S Monroe St

Phone 8506177700

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Email emily.buckley@fdacs.gov

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FDACS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

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: SPB 7038

INTRODUCER: Agriculture Committee

SUBJECT: OGSR/Division of Fruit and Vegetables/Trade Secrets

DATE: March 4, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Becker	Becker		Submitted as Comm. Bill/Fav

I. Summary:

SPB 7036 amends s. 570.48(3), F.S., to remove the scheduled repeal of a public records exemption for records of the Department of Agriculture and Consumer Services Division of Fruit and Vegetables that are considered trade secrets as defined in s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.

The public records exemption would stand repealed on October 2, 2021, unless it is reenacted by the Legislature under the Open Government Sunset Review Act.

The bill takes effect October 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, 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.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2020-2022) and Rule 14.1, *Rules of the Florida House of Representatives*, (2020-2022).

branch records.⁴ Lastly, ch. 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 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

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).

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).

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

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

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.

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.

In examining an exemption, the act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption. The act requires the Legislature to consider the following specific questions in such a review:²⁴

- 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?

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

Trade Secrets Public Records Exemptions

Criminal Prohibition

Section 812.081(2), F.S., prohibits the intentional misappropriation of a trade secret from its owner, including stealing or embezzling an article representing a trade secret or without authority making or causing to be made a copy of an article representing a trade secret. A violation is a felony of the third degree.²⁷

Section 812.081(1)(c), F.S., defines a “trade secret” to mean:

...the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. The term includes any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

- 1. Secret;
- 2. Of value;
- 3. For use or in use by the business; and

²⁴ Section 119.15(6)(a), F.S.

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed \$5,000.

- 4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it

When the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

The following sections of the Florida Statutes exempt from public disclosure trade secrets, as defined by s. 812.081(1)(c), F.S.:

- Section 125.0104(9)(d), F.S., exempts trade secrets held by a county tourism promotion agency.
- Section 288.1226(8), F.S., exempts trade secrets relating to projects conducted by the Florida Tourism Industry Marketing Corporation (Visit Florida).
- Section 331.326, F.S., makes trade secrets held by Space Florida confidential and exempt; makes portions of meetings in which trade secrets are discussed exempt from open meetings requirements; recordings of closed meetings are confidential and exempt.²⁸
- Section 365.174, F.S., makes trade secret business information submitted to the E911 Board or the Technology Program under Department of Management Services confidential and exempt.
- Section 381.83, F.S., makes trade secret information obtained by the Department of Health confidential and exempt.
- Sections 403.7046(2) and (3)(b) and 403.73, F.S., make trade secret information reported to the Department of Environmental Protection pursuant to specified regulations confidential and exempt.
- Section 499.012(8)(g) and (m), F.S., provides that trade secret information provided to the Department of Business and Professional Regulation (DBPR) in a prescription drug permit application is confidential and exempt pursuant to its inspection authority under s. 499.051, F.S.
- Section 499.0121(7), F.S., provides that trade secret information reported to DBPR in a list of prescription drug wholesalers is confidential and exempt pursuant to its inspection authority under s. 499.051, F.S.
- Section 499.051(7), F.S., makes trade secret information contained in a complaint and obtained by DBPR during an investigation of a permit holder under the Florida Drug and Cosmetic Act confidential and exempt.
- Section 499.931, F.S., makes trade secrets related to the regulation of medical gases that are submitted to DBPR by an applicant or permit holder confidential and exempt.
- Section 502.222, F.S., makes trade secret information of a dairy industry business held by the Department of Agriculture and Consumer Services (DACS) confidential and exempt.
- Section 570.48(3), F.S., makes records containing trade secrets held by DACS Division of Fruit and Vegetables confidential and exempt.

²⁸ Records designated as exempt from public record requirements by the Legislature are distinct from those deemed confidential and exempt. Exempt records 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). Confidential and exempt records may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See Op. Att’y Gen. Fla. 85-62 (1985).

- Section 573.123(2), F.S., makes records containing trade secrets provided to DACS by specified persons under a marking order confidential and exempt.
- Section 601.10(8)(a), F.S., makes any information held by the Department of Citrus that contains trade secrets confidential and exempt.
- Section 601.15(7)(d), F.S., makes trade secret information that is provided by noncommodity advertising and promotional program participants to Department of Citrus confidential and exempt.
- Section 601.152(8)(c), F.S., makes trade secret information provided by citrus handlers to Department of Citrus confidential and exempt.
- Section 601.76, F.S., makes formulas containing trade secrets that are submitted to DACS confidential and exempt.
- Section 815.04(3), F.S., makes data, programs, and supporting documentation held by an agency and that exists internal or external to a computer, computer system, computer network, or electronic device confidential and exempt.

Uniform Trade Secrets Act

Florida's Uniform Trade Secrets Act in ch. 688, F.S., provides a separate civil process for the protection of trade secrets, including injunctive relief to preserve a trade secret,²⁹ and the right to recover damages for the misappropriation of a trade secret.³⁰ Chapter 688, F.S., does not provide criminal prohibitions or penalties to preserve trade secrets. The trade secret protections in ch. 688, F.S., are for civil remedies by private persons seeking to preserve a trade secret.³¹

Section 688.002(4), F.S., defines the term "trade secret" to mean:

- ...information, including a formula, pattern, compilation, program, device, method, technique, or process that:
- (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
- (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The definition in s. 812.081(1)(c), F.S., may be considered a broader definition than that provided in s. 688.002(4), F.S. For example, the definition of "trade secret" in s. 812.081(1)(c), F.S., expressly includes financial information and that the subject of the trade secret be of advantage to the business, or provide an opportunity to obtain an advantage, over those who do not know or use it. Section 688.002(4), F.S., does not explicitly reference financial information or reference the issue business advantage. The definition in s. 688.002(4), F.S., may also be interpreted as less clear. For example, s. 688.002(4), F.S., requires that the information has "independent economic value," rather than just be "of value," as required under s. 812.081(1)(c), F.S.

²⁹ Section 688.003, F.S.

³⁰ Section 688.004, F.S. Federal law provides comparable remedy for the preservation of trade secrets under 18 U.S.C. § 1831, *et seq.*

³¹ See Section 688.008, F.S.

Protection of a Trade Secret by its Owner

The trade secret owner must label a trade secret as such or specify in writing upon delivery to a state agency that the information provided to the agency is a trade secret in order for the information to be considered confidential and exempt under the public records law.³² In *Sepro v. Department of Environmental Protection*, the court held that information provided to the agency by the appellant was subject to disclosure because the appellant had failed to actively protect the information or label information as a trade secret.³³

Department of Agriculture and Consumer Services Division of Fruit and Vegetables

The Department of Agriculture and Consumer Services (department) Division of Fruit and Vegetables (division) inspects and certifies all fresh shipments of vegetables, fruit, and nuts covered by state and federal marketing orders.³⁴

The duties of the division include, but are not limited to:

- Performing duties relating to the inspection and certification of fresh citrus fruit shipments for maturity and grade required by rules promulgated under the Florida Citrus Code;
- Performing the inspection and certification duties assigned in connection with regulations issued under federal or state marketing agreements or orders; and
- Performing the other inspection and certification assignments requested by and agreed upon with the applicant.³⁵

Marketing Orders and Agreements

Marketing agreements and orders are initiated by industry to help provide stable markets for dairy products, fruits, vegetables and specialty crops. Each order and agreement is tailored to the individual industry's needs. Marketing Orders are a binding regulation for the entire industry in the specified geographical area, once it is approved by the producers and the Secretary of Agriculture. Marketing Agreements are only binding for those handlers that sign the agreement.³⁶

Open Government Sunset Review Findings and Recommendations

In February 2021, the Professional Staff of the Senate Committee on Agriculture sent an Open Government Sunset Review Questionnaire to the department. The department reported that it rarely receives a public record request for the information exempt under s. 570.48(3), F.S., as the exemption is well known within the industry and producers rely on it to protect their trade secret information provided to the department during its regulatory inspections.³⁷

³² *Sepro v. Department of Environmental Protection*, 839 So. 2d 781 (Fla. 1st DCA 2003).

³³ *Id.*

³⁴ See <https://www.fdacs.gov/Divisions-Offices/Fruit-and-Vegetables>, (last visited March 3, 2021).

³⁵ S. 570.48(1), F.S.

³⁶ See <https://www.ams.usda.gov/rules-regulations/moa> (last visited March 3, 2021).

³⁷ See *Open Government Sunset Review Questionnaire* response from the Florida Department of Agriculture and Consumer Services on file with the Senate Committee on Agriculture.

The department recommended that the exemption in s 570.48(3), F.S., should be reenacted.³⁸

III. Effect of Proposed Changes:

SPB 7036 amends s. 570.48(3), F.S., to remove the scheduled repeal of a public records exemption for records of the Department of Agriculture and Consumer Services Division of Fruit and Vegetables that are considered trade secrets as defined in s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.

The public records exemption would stand repealed on October 2, 2021, unless it is reenacted by the Legislature under the Open Government Sunset Review Act.

The bill takes effect October 1, 2021.

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 requirements. This bill does not create or expand an exemption, 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 requirements to state with specificity the public necessity justifying the exemption. This bill does not create or expand an exemption, thus, the bill does not require 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 exemption in the bill does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

³⁸ *Id.*

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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 570.48 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.

FOR CONSIDERATION By the Committee on Agriculture

575-02232-21

20217038pb

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 570.48, F.S., which provides an exemption from public records requirements for information related to trade secrets held by the Division of Fruit and Vegetables of the Department of Agriculture and Consumer Services; removing the scheduled repeal of the exemption; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (3) of section 570.48, Florida Statutes, is amended to read:

570.48 Division of Fruit and Vegetables; powers and duties; records.—The duties of the Division of Fruit and Vegetables include, but are not limited to:

(3) Maintaining the records of the division. The records of the division are public records; however, trade secrets as defined in s. 812.081 are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. ~~This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.~~ This section may not be construed to prohibit:

(a) A disclosure necessary to enforcement procedures.

(b) The department from releasing information to other governmental agencies. Other governmental agencies that receive

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575-02232-21

20217038pb

confidential information from the department under this subsection shall maintain the confidentiality of that information.

(c) The department or other agencies from compiling and publishing appropriate data regarding procedures, yield, recovery, quality, and related matters, provided such released data do not reveal by whom the activity to which the data relate was conducted.

Section 2. This act shall take effect October 1, 2021.

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YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

03/03/21

Meeting Date

7038

Bill Number (if applicable)

Topic OGSR/Division of Fruit and Vegetables/Trade Secrets

Amendment Barcode (if applicable)

Name Emily Duda Buckley

Job Title Director of Legislative Affairs

Address 400 S Monroe St

Phone 8506177700

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Tallahassee

FL

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Email emily.buckley@fdacs.gov

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FDACS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

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: SPB 7040

INTRODUCER: Agriculture Committee

SUBJECT: OGSR/Department of Agriculture and Consumer Services

DATE: March 4, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Becker	Becker		Submitted as Comm. Bill/Fav

I. Summary:

SPB 7040 amends s. 573.123(3), F.S., to remove the scheduled repeal of a public records exemption for information held by the Department of Agriculture and Consumer Services that, if disclosed, would reveal a trade secret as defined in Section 812.081, F.S., of any person subject to a marketing order.

The public records exemption would stand repealed on October 2, 2021, unless it is reenacted by the Legislature under the Open Government Sunset Review Act.

The bill takes effect October 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, 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.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2020-2022) and Rule 14.1, *Rules of the Florida House of Representatives*, (2020-2022).

branch records.⁴ Lastly, ch. 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 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

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).

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).

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

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

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.

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

In examining an exemption, the act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption. The act requires the Legislature to consider the following specific questions in such a review:²⁴

- 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?

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

Trade Secrets Public Records Exemptions

Trade Secrets

The term “trade secrets,” as defined in Section 812.081(1)(c), F.S., means information for which an owner “takes measures to prevent the information from becoming available to persons other than those selected by the owner to have access for limited purposes.” Such information may include formulas, patterns, devices, compilations of information, or any portion thereof, which is used in a business and provides the business an advantage, or the opportunity to do so, over those who do not know or use such information.²⁷

Under Section 812.081(1)(c), F.S., the term “trade secret” includes:

- Any scientific, technical, or commercial information, including financial information; and
- Any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof.

Criminal Prohibition

Section 812.081(2), F.S., prohibits the intentional misappropriation of a trade secret from its owner, including stealing or embezzling an article representing a trade secret or without authority

²³ Section 119.15(6)(b)3., F.S.

²⁴ Section 119.15(6)(a), F.S.

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ Section 812.081(1)(c), F.S.

making or causing to be made a copy of an article representing a trade secret. A violation is a felony of the third degree.²⁸

Section 812.081(1)(c), F.S., defines a “trade secret” to mean:

...the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. The term includes any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

- 1. Secret;
- 2. Of value;
- 3. For use or in use by the business; and
- 4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it

When the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

The following sections of the Florida Statutes exempt from public disclosure trade secrets, as defined by s. 812.081(1)(c), F.S.:

- Section 125.0104(9)(d), F.S., exempts trade secrets held by a county tourism promotion agency.
- Section 288.1226(8), F.S., exempts trade secrets relating to projects conducted by the Florida Tourism Industry Marketing Corporation (Visit Florida).
- Section 331.326, F.S., makes trade secrets held by Space Florida confidential and exempt; makes portions of meetings in which trade secrets are discussed exempt from open meetings requirements; recordings of closed meetings are confidential and exempt.²⁹
- Section 365.174, F.S., makes trade secret business information submitted to the E911 Board or the Technology Program under Department of Management Services confidential and exempt.
- Section 381.83, F.S., makes trade secret information obtained by the Department of Health confidential and exempt.

²⁸ Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed \$5,000.

²⁹ Records designated as exempt from public record requirements by the Legislature are distinct from those deemed confidential and exempt. Exempt records 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). Confidential and exempt records may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See Op. Att’y Gen. Fla. 85-62 (1985).

- Sections 403.7046(2) and (3)(b) and 403.73, F.S., make trade secret information reported to the Department of Environmental Protection pursuant to specified regulations confidential and exempt.
- Section 499.012(8)(g) and (m), F.S., provides that trade secret information provided to the Department of Business and Professional Regulation (DBPR) in a prescription drug permit application is confidential and exempt pursuant to its inspection authority under s. 499.051, F.S.
- Section 499.0121(7), F.S., provides that trade secret information reported to DBPR in a list of prescription drug wholesalers is confidential and exempt pursuant to its inspection authority under s. 499.051, F.S.
- Section 499.051(7), F.S., makes trade secret information contained in a complaint and obtained by DBPR during an investigation of a permit holder under the Florida Drug and Cosmetic Act confidential and exempt.
- Section 499.931, F.S., makes trade secrets related to the regulation of medical gases that are submitted to DBPR by an applicant or permit holder confidential and exempt.
- Section 502.222, F.S., makes trade secret information of a dairy industry business held by the Department of Agriculture and Consumer Services (DACS) confidential and exempt.
- Section 570.48(3), F.S., makes records containing trade secrets held by DACS Division of Fruit and Vegetables confidential and exempt.
- Section 573.123(2), F.S., makes records containing trade secrets provided to DACS by specified persons under a marking order confidential and exempt.
- Section 601.10(8)(a), F.S., makes any information held by the Department of Citrus that contains trade secrets confidential and exempt.
- Section 601.15(7)(d), F.S., makes trade secret information that is provided by noncommodity advertising and promotional program participants to Department of Citrus confidential and exempt.
- Section 601.152(8)(c), F.S., makes trade secret information provided by citrus handlers to Department of Citrus confidential and exempt.
- Section 601.76, F.S., makes formulas containing trade secrets that are submitted to DACS confidential and exempt.
- Section 815.04(3), F.S., makes data, programs, and supporting documentation held by an agency and that exists internal or external to a computer, computer system, computer network, or electronic device confidential and exempt.

Uniform Trade Secrets Act

Florida's Uniform Trade Secrets Act in ch. 688, F.S., provides a separate civil process for the protection of trade secrets, including injunctive relief to preserve a trade secret,³⁰ and the right to recover damages for the misappropriation of a trade secret.³¹ Chapter 688, F.S., does not provide criminal prohibitions or penalties to preserve trade secrets. The trade secret protections in ch. 688, F.S., are for civil remedies by private persons seeking to preserve a trade secret.³²

³⁰ Section 688.003, F.S.

³¹ Section 688.004, F.S. Federal law provides comparable remedy for the preservation of trade secrets under 18 U.S.C. § 1831, *et seq.*

³² See Section 688.008, F.S.

Section 688.002(4), F.S., defines the term “trade secret” to mean:

...information, including a formula, pattern, compilation, program, device, method, technique, or process that:

- (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
- (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The definition in s. 812.081(1)(c), F.S., may be considered a broader definition than that provided in s. 688.002(4), F.S. For example, the definition of “trade secret” in s. 812.081(1)(c), F.S., expressly includes financial information and that the subject of the trade secret be of advantage to the business, or provide an opportunity to obtain an advantage, over those who do not know or use it. Section 688.002(4), F.S., does not explicitly reference financial information or reference the issue business advantage. The definition in s. 688.002(4), F.S., may also be interpreted as less clear. For example, s. 688.002(4), F.S., requires that the information has “independent economic value,” rather than just be “of value,” as required under s. 812.081(1)(c), F.S.

Protection of a Trade Secret by its Owner

The trade secret owner must label a trade secret as such or specify in writing upon delivery to a state agency that the information provided to the agency is a trade secret in order for the information to be considered confidential and exempt under the public records law.³³ In *Sepro v. Department of Environmental Protection*, the court held that information provided to the agency by the appellant was subject to disclosure because the appellant had failed to actively protect the information or label information as a trade secret.³⁴

Department of Agriculture and Consumer Services Division of Fruit and Vegetables

The Department of Agriculture and Consumer Services (department) Division of Fruit and Vegetables (division) inspects and certifies all fresh shipments of vegetables, fruit, and nuts covered by state and federal marketing orders.³⁵

The duties of the division include, but are not limited to:

- Performing duties relating to the inspection and certification of fresh citrus fruit shipments for maturity and grade required by rules promulgated under the Florida Citrus Code;
- Performing the inspection and certification duties assigned in connection with regulations issued under federal or state marketing agreements or orders; and
- Performing the other inspection and certification assignments requested by and agreed upon with the applicant.³⁶

³³ *Sepro v. Department of Environmental Protection*, 839 So. 2d 781 (Fla. 1st DCA 2003).

³⁴ *Id.*

³⁵ See <https://www.fdacs.gov/Divisions-Offices/Fruit-and-Vegetables>, (last visited March 1, 2021).

³⁶ S. 570.48(1), F.S.

Marketing Orders and Agreements

At the federal level, marketing agreements and orders are initiated by industry to help provide stable markets for dairy products, fruits, vegetables and specialty crops. Each order and agreement is tailored to the individual industry's needs. Marketing orders are a binding regulation for the entire industry in the specified geographical area, once it is approved by the producers and the United States Secretary of Agriculture. Marketing agreements are only binding for those handlers that sign the agreement.³⁷

At the state level, marketing agreements are agreements between the department and distributors, producers, handlers, and others engaged in the handling of agricultural commodities which regulate the handling of the commodities.³⁸ Marketing orders are orders issued by the department that prescribe rules governing the distributing, or handling in any manner, of agricultural commodities in the primary channel of trade during any specified period or periods.³⁹

The department may require anyone directly affected by and subject to the provisions of any marketing order to maintain books and records reflecting their operations under the marketing order, to furnish to the department any information related to operations under the marketing order, and to inspect the portions of books and records that relate to operations under the marketing order.⁴⁰ Such information that, if disclosed, would reveal a trade secret as defined in Section 812.081, F.S., is confidential and exempt from public disclosure requirements. This information may be provided to an attorney who provides legal advice to the division about enforcing a marketing order or by court order.⁴¹

Open Government Sunset Review Findings and Recommendations

In February 2021, the Professional Staff of the Senate Committee on Agriculture sent an Open Government Sunset Review Questionnaire to the department. The department reported that it rarely receives a public record request for the information exempt under s 573.123(2), F.S., as the exemption is well known within the industry and producers rely on it to protect their trade secret information provided to the department to administer various marketing orders. The department indicated that such information is minimally requested.⁴²

The department recommended that the exemption in s 573.123(3), F.S., should be reenacted.⁴³

III. Effect of Proposed Changes:

³⁷ See <https://www.ams.usda.gov/rules-regulations/moa> (last visited March 1, 2021).

³⁸ s. 570.103(8), F.S.

³⁹ s. 570.103(9), F.S.

⁴⁰ s. 570.123(1), F.S.

⁴¹ s. 570.123(2), F.S.

⁴² See *Open Government Sunset Review Questionnaire* response from the Florida Department of Agriculture and Consumer Services on file with the Senate Committee on Agriculture.

⁴³ *Id.*

SPB 7040 amends s. 573.123(3), F.S., to remove the scheduled repeal of a public records exemption for information held by the Department of Agriculture and Consumer Services that, if disclosed, would reveal a trade secret as defined in Section 812.081, F.S., of any person subject to a marketing order.

The public records exemption would stand repealed on October 2, 2021, unless it is reenacted by the Legislature under the Open Government Sunset Review Act.

The bill takes effect October 1, 2021.

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 requirements. This bill does not create or expand an exemption, 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 requirements to state with specificity the public necessity justifying the exemption. This bill does not create or expand an exemption, thus, the bill does not require 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 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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 573.123 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.

FOR CONSIDERATION By the Committee on Agriculture

575-02233-21

20217040pb

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 573.123, F.S., which relates to an exemption from public records requirements for trade secret information of a person subject to a marketing order held by the Department of Agriculture and Consumer Services; removing the scheduled repeal of the exemption; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 573.123, Florida Statutes, is amended to read:

573.123 Maintenance and production of records.—

(1) The department may require any and all persons directly affected by and subject to the provisions of any marketing order to maintain books and records reflecting their operations under the marketing order, to furnish to the department or its duly authorized or designated representative or representatives any information as may be from time to time requested by them relating to operations under the marketing order, and to permit the inspection by the department or its duly authorized or designated representative or representatives of such portions of the books and records as relate to operations under the marketing order.

(2) Information that, if disclosed, would reveal a trade secret, as defined in s. 812.081, of any person subject to a marketing order is confidential and exempt from s. 119.07(1) and

Page 1 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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s. 24(a), Art. I of the State Constitution and may not be disclosed except to an attorney who provides legal advice to the division about enforcing a marketing order or by court order. A person who receives confidential information under this subsection shall maintain the confidentiality of that information. ~~This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.~~

(3) The department or its duly authorized or designated representative or representatives may hold hearings, take testimony, administer oaths, subpoena witnesses, and issue subpoenas for the production of books, records, or documents relevant and material to the subject matter of the hearings.

(4) No person shall be excused from attending and testifying or from producing documentary evidence before the department, or its duly authorized or designated representative or representatives, in obedience to the subpoena of the department on the ground or the reason that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate her or him or subject her or him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which she or he may be so required to testify, or to produce evidence, documentary or otherwise, before the department in obedience to a subpoena issued, provided no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

Page 2 of 3

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Section 2. This act shall take effect October 1, 2021.

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

03/03/21

Meeting Date

7040

Bill Number (if applicable)

Topic OGSR/Department of Agriculture and Consumer Services

Amendment Barcode (if applicable)

Name Emily Duda Buckley

Job Title Director of Legislative Affairs

Address 400 S Monroe St

Phone 8506177700

Street

Tallahassee

FL

32399

Email emily.buckley@fdacs.gov

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FDACS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

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: SPB 7042

INTRODUCER: Agriculture Committee

SUBJECT: OGSR/Trade Secret/Department of Citrus

DATE: March 4, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Becker	Becker		Submitted as Comm. Bill/Fav

I. Summary:

SPB 7042 amends s. 601.10(8)(b), F.S., to remove the scheduled repeal of a public records exemption for information provided to the Department of Citrus that is trade secret as defined in Section 812.081, F.S.

The public records exemption would stand repealed on October 2, 2021, unless it is reenacted by the Legislature under the Open Government Sunset Review Act.

The bill takes effect October 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, 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.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2020-2022) and Rule 14.1, *Rules of the Florida House of Representatives*, (2020-2022).

branch records.⁴ Lastly, ch. 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 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

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).

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).

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

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

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.

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

In examining an exemption, the act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption. The act requires the Legislature to consider the following specific questions in such a review:²⁴

- 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?

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

Trade Secrets Public Records Exemptions

Trade Secrets

The term “trade secrets,” as defined in Section 812.081(1)(c), F.S., means information for which an owner “takes measures to prevent the information from becoming available to persons other than those selected by the owner to have access for limited purposes.” Such information may include formulas, patterns, devices, compilations of information, or any portion thereof, which is used in a business and provides the business an advantage, or the opportunity to do so, over those who do not know or use such information.²⁷

Under Section 812.081(1)(c), F.S., the term “trade secret” includes:

- Any scientific, technical, or commercial information, including financial information; and
- Any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof.

Criminal Prohibition

Section 812.081(2), F.S., prohibits the intentional misappropriation of a trade secret from its owner, including stealing or embezzling an article representing a trade secret or without authority

²³ Section 119.15(6)(b)3., F.S.

²⁴ Section 119.15(6)(a), F.S.

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ Section 812.081(1)(c), F.S.

making or causing to be made a copy of an article representing a trade secret. A violation is a felony of the third degree.²⁸

Section 812.081(1)(c), F.S., defines a “trade secret” to mean:

...the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. The term includes any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

- 1. Secret;
- 2. Of value;
- 3. For use or in use by the business; and
- 4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it

When the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

The following sections of the Florida Statutes exempt from public disclosure trade secrets, as defined by s. 812.081(1)(c), F.S.:

- Section 125.0104(9)(d), F.S., exempts trade secrets held by a county tourism promotion agency.
- Section 288.1226(8), F.S., exempts trade secrets relating to projects conducted by the Florida Tourism Industry Marketing Corporation (Visit Florida).
- Section 331.326, F.S., makes trade secrets held by Space Florida confidential and exempt; makes portions of meetings in which trade secrets are discussed exempt from open meetings requirements; recordings of closed meetings are confidential and exempt.²⁹
- Section 365.174, F.S., makes trade secret business information submitted to the E911 Board or the Technology Program under Department of Management Services confidential and exempt.
- Section 381.83, F.S., makes trade secret information obtained by the Department of Health confidential and exempt.

²⁸ Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed \$5,000.

²⁹ Records designated as exempt from public record requirements by the Legislature are distinct from those deemed confidential and exempt. Exempt records 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). Confidential and exempt records may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See Op. Att’y Gen. Fla. 85-62 (1985).

- Sections 403.7046(2) and (3)(b) and 403.73, F.S., make trade secret information reported to the Department of Environmental Protection pursuant to specified regulations confidential and exempt.
- Section 499.012(8)(g) and (m), F.S., provides that trade secret information provided to the Department of Business and Professional Regulation (DBPR) in a prescription drug permit application is confidential and exempt pursuant to its inspection authority under s. 499.051, F.S.
- Section 499.0121(7), F.S., provides that trade secret information reported to DBPR in a list of prescription drug wholesalers is confidential and exempt pursuant to its inspection authority under s. 499.051, F.S.
- Section 499.051(7), F.S., makes trade secret information contained in a complaint and obtained by DBPR during an investigation of a permit holder under the Florida Drug and Cosmetic Act confidential and exempt.
- Section 499.931, F.S., makes trade secrets related to the regulation of medical gases that are submitted to DBPR by an applicant or permit holder confidential and exempt.
- Section 502.222, F.S., makes trade secret information of a dairy industry business held by the Department of Agriculture and Consumer Services (DACS) confidential and exempt.
- Section 570.48(3), F.S., makes records containing trade secrets held by DACS Division of Fruit and Vegetables confidential and exempt.
- Section 573.123(2), F.S., makes records containing trade secrets provided to DACS by specified persons under a marking order confidential and exempt.
- Section 601.10(8)(a), F.S., makes any information held by the Department of Citrus that contains trade secrets confidential and exempt.
- Section 601.15(7)(d), F.S., makes trade secret information that is provided by noncommodity advertising and promotional program participants to Department of Citrus confidential and exempt.
- Section 601.152(8)(c), F.S., makes trade secret information provided by citrus handlers to Department of Citrus confidential and exempt.
- Section 601.76, F.S., makes formulas containing trade secrets that are submitted to DACS confidential and exempt.
- Section 815.04(3), F.S., makes data, programs, and supporting documentation held by an agency and that exists internal or external to a computer, computer system, computer network, or electronic device confidential and exempt.

Uniform Trade Secrets Act

Florida's Uniform Trade Secrets Act in ch. 688, F.S., provides a separate civil process for the protection of trade secrets, including injunctive relief to preserve a trade secret,³⁰ and the right to recover damages for the misappropriation of a trade secret.³¹ Chapter 688, F.S., does not provide criminal prohibitions or penalties to preserve trade secrets. The trade secret protections in ch. 688, F.S., are for civil remedies by private persons seeking to preserve a trade secret.³²

³⁰ Section 688.003, F.S.

³¹ Section 688.004, F.S. Federal law provides comparable remedy for the preservation of trade secrets under 18 U.S.C. § 1831, *et seq.*

³² See Section 688.008, F.S.

Section 688.002(4), F.S., defines the term “trade secret” to mean:

...information, including a formula, pattern, compilation, program, device, method, technique, or process that:

- (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
- (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The definition in s. 812.081(1)(c), F.S., may be considered a broader definition than that provided in s. 688.002(4), F.S. For example, the definition of “trade secret” in s. 812.081(1)(c), F.S., expressly includes financial information and that the subject of the trade secret be of advantage to the business, or provide an opportunity to obtain an advantage, over those who do not know or use it. Section 688.002(4), F.S., does not explicitly reference financial information or reference the issue business advantage. The definition in s. 688.002(4), F.S., may also be interpreted as less clear. For example, s. 688.002(4), F.S., requires that the information has “independent economic value,” rather than just be “of value,” as required under s. 812.081(1)(c), F.S.

Protection of a Trade Secret by its Owner

The trade secret owner must label a trade secret as such or specify in writing upon delivery to a state agency that the information provided to the agency is a trade secret in order for the information to be considered confidential and exempt under the public records law.³³ In *Sepro v. Department of Environmental Protection*, the court held that information provided to the agency by the appellant was subject to disclosure because the appellant had failed to actively protect the information or label information as a trade secret.³⁴

Florida Department of Citrus

The Department of Citrus (department) is an executive agency of Florida government charged with the marketing, research, and regulation of the Florida citrus industry. Activities of the department are funded by an assessment paid by growers on each box of citrus that moves through commercial channels. The industry employs more than 45,000 people, provides an annual economic impact of \$8.6 billion to the state, and contributes hundreds of millions of dollars in tax revenues that help support Florida’s schools, roads, and health care services. The department also has extensive regulatory responsibilities, covering every aspect of the industry, including research, production, maturity standards, licensing, transportation, labeling, packing, and processing.³⁵

³³ *Sepro v. Department of Environmental Protection*, 839 So. 2d 781 (Fla. 1st DCA 2003).

³⁴ *Id.*

³⁵ Florida Department of Citrus, See <https://www.floridacitrus.org/grower/about/florida-department-of-citrus> (Last visited March 3, 2021).

Open Government Sunset Review Findings and Recommendations

In February 2021, the Professional Staff of the Senate Committee on Agriculture sent an Open Government Sunset Review Questionnaire to the department. The department reported that it has never received a request for the information exempt under s. 601.10(8)(b), F.S. The department indicated that should this exemption be repealed it would be difficult, if not impossible, to effectively facilitate the collection of information, which is utilized by their Economic and Market Research Department to analyze data on behalf of, and for the benefit of, the Florida citrus industry.³⁶

The department recommended that the exemption in s. 601.10(8)(b), F.S., should be reenacted.³⁷

III. Effect of Proposed Changes:

SPB 7042 amends s. 601.10(8)(b), F.S., to remove the scheduled repeal of a public records exemption for information provided to the Department of Citrus that is trade secret as defined in Section 812.081, F.S.

The public records exemption would stand repealed on October 2, 2021, unless it is reenacted by the Legislature under the Open Government Sunset Review Act.

The bill takes effect October 1, 2021.

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 requirements. This bill does not create or expand an exemption, 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 requirements to state with specificity the public necessity

³⁶ See *Open Government Sunset Review Questionnaire* response from the Florida Department of Citrus on file with the Senate Committee on Agriculture.

³⁷ *Id.*

justifying the exemption. This bill does not create or expand an exemption, thus, the bill does not require 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 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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 601.10 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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

FOR CONSIDERATION By the Committee on Agriculture

575-02234-21

20217042pb

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 601.10, F.S., which relates to a public records exemption for trade secret information provided to the Department of Citrus; removing the scheduled repeal of the exemption; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (8) of section 601.10, Florida Statutes, is amended to read:

601.10 Powers of the Department of Citrus.—The department shall have and shall exercise such general and specific powers as are delegated to it by this chapter and other statutes of the state, which powers shall include, but are not limited to, the following:

(8) (a) To prepare and disseminate information of importance to citrus growers, handlers, shippers, processors, and industry-related and interested persons and organizations relating to department activities and the production, handling, shipping, processing, and marketing of citrus fruit and processed citrus products. For referendum and other notice and informational purposes, the department may prepare and maintain, from the best available sources, a citrus grower mailing list. Such list shall be a public record available as other public records but is not subject to the purging provisions of s. 283.55.

(b) Any information provided to the department which constitutes a trade secret as defined in s. 812.081 is

Page 1 of 2

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confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. ~~This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.~~

(c) Any nonpublished reports or data related to studies or research conducted, caused to be conducted, or funded by the department under s. 601.13 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

Section 2. This act shall take effect October 1, 2021.

Page 2 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/3/21
Meeting Date

7042 7044 7046 7048
Bill Number (if applicable)

Topic 7042 7044 7046 7048

Amendment Barcode (if applicable)

Name Shannen Shepp

Job Title Executive Director FL DEPT OF CITRUS

Address 6052 Main St

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33513

Zip

Email sshepp@citrus.myfloridab.com

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Department of Citrus

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

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: SPB 7044

INTRODUCER: Agriculture Committee

SUBJECT: OGSR/Noncommodity Advertising and Promotional Program Participants/Department of Citrus

DATE: March 4, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Becker	Becker		Submitted as Comm. Bill/Fav

I. Summary:

SPB 7044 amends s. 601.15(7)(d), F.S., to remove the scheduled repeal of a public records exemption for information held by the Department of Citrus that, if disclosed, would reveal a trade secret as defined in s. 812.081, F.S., of any participant in a noncommodity advertising and promotional program.

The public records exemption would stand repealed on October 2, 2021, unless it is reenacted by the Legislature under the Open Government Sunset Review Act.

The bill takes effect October 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, 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

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, ch. 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 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

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2020-2022) and Rule 14.1, *Rules of the Florida House of Representatives*, (2020-2022).

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA2018).

⁵ Section 119.01(1), F.S. Section 119.01(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 119.01(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).

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).

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

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

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.

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

In examining an exemption, the act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption. The act requires the Legislature to consider the following specific questions in such a review:²⁴

- 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?

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

Trade Secrets Public Records Exemptions

Trade Secrets

The term “trade secrets,” as defined in Section 812.081(1)(c), F.S., means information for which an owner “takes measures to prevent the information from becoming available to persons other than those selected by the owner to have access for limited purposes.” Such information may include formulas, patterns, devices, compilations of information, or any portion thereof, which is used in a business and provides the business an advantage, or the opportunity to do so, over those who do not know or use such information.²⁷

Under Section 812.081(1)(c), F.S., the term “trade secret” includes:

- Any scientific, technical, or commercial information, including financial information; and
- Any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof.

Criminal Prohibition

Section 812.081(2), F.S., prohibits the intentional misappropriation of a trade secret from its owner, including stealing or embezzling an article representing a trade secret or without authority

²³ Section 119.15(6)(b)3., F.S.

²⁴ Section 119.15(6)(a), F.S.

²⁵ See generally s. 19.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ Section 812.081(1)(c), F.S.

making or causing to be made a copy of an article representing a trade secret. A violation is a felony of the third degree.²⁸

Section 812.081(1)(c), F.S., defines a “trade secret” to mean:

...the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. The term includes any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

- 1. Secret;
- 2. Of value;
- 3. For use or in use by the business; and
- 4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it

When the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

The following sections of the Florida Statutes exempt from public disclosure trade secrets, as defined by s. 812.081(1)(c), F.S.:

- Section 125.0104(9)(d), F.S., exempts trade secrets held by a county tourism promotion agency.
- Section 288.1226(8), F.S., exempts trade secrets relating to projects conducted by the Florida Tourism Industry Marketing Corporation (Visit Florida).
- Section 331.326, F.S., makes trade secrets held by Space Florida confidential and exempt; makes portions of meetings in which trade secrets are discussed exempt from open meetings requirements; recordings of closed meetings are confidential and exempt.²⁹
- Section 365.174, F.S., makes trade secret business information submitted to the E911 Board or the Technology Program under Department of Management Services confidential and exempt.
- Section 381.83, F.S., makes trade secret information obtained by the Department of Health confidential and exempt.

²⁸ Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed \$5,000.

²⁹ Records designated as exempt from public record requirements by the Legislature are distinct from those deemed confidential and exempt. Exempt records 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). Confidential and exempt records may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See Op. Att’y Gen. Fla. 85-62 (1985).

- Sections 403.7046(2) and (3)(b) and 403.73, F.S., make trade secret information reported to the Department of Environmental Protection pursuant to specified regulations confidential and exempt.
- Section 499.012(8)(g) and (m), F.S., provides that trade secret information provided to the Department of Business and Professional Regulation (DBPR) in a prescription drug permit application is confidential and exempt pursuant to its inspection authority under s. 499.051, F.S.
- Section 499.0121(7), F.S., provides that trade secret information reported to DBPR in a list of prescription drug wholesalers is confidential and exempt pursuant to its inspection authority under s. 499.051, F.S.
- Section 499.051(7), F.S., makes trade secret information contained in a complaint and obtained by DBPR during an investigation of a permit holder under the Florida Drug and Cosmetic Act confidential and exempt.
- Section 499.931, F.S., makes trade secrets related to the regulation of medical gases that are submitted to DBPR by an applicant or permit holder confidential and exempt.
- Section 502.222, F.S., makes trade secret information of a dairy industry business held by the Department of Agriculture and Consumer Services (DACS) confidential and exempt.
- Section 570.48(3), F.S., makes records containing trade secrets held by DACS Division of Fruit and Vegetables confidential and exempt.
- Section 573.123(2), F.S., makes records containing trade secrets provided to DACS by specified persons under a marking order confidential and exempt.
- Section 601.10(8)(a), F.S., makes any information held by the Department of Citrus that contains trade secrets confidential and exempt.
- Section 601.15(7)(d), F.S., makes trade secret information that is provided by noncommodity advertising and promotional program participants to Department of Citrus confidential and exempt.
- Section 601.152(8)(c), F.S., makes trade secret information provided by citrus handlers to Department of Citrus confidential and exempt.
- Section 601.76, F.S., makes formulas containing trade secrets that are submitted to DACS confidential and exempt.
- Section 815.04(3), F.S., makes data, programs, and supporting documentation held by an agency and that exists internal or external to a computer, computer system, computer network, or electronic device confidential and exempt.

Uniform Trade Secrets Act

Florida's Uniform Trade Secrets Act in ch. 688, F.S., provides a separate civil process for the protection of trade secrets, including injunctive relief to preserve a trade secret,³⁰ and the right to recover damages for the misappropriation of a trade secret.³¹ Chapter 688, F.S., does not provide criminal prohibitions or penalties to preserve trade secrets. The trade secret protections in ch. 688, F.S., are for civil remedies by private persons seeking to preserve a trade secret.³²

³⁰ Section 688.003, F.S.

³¹ Section 688.004, F.S. Federal law provides comparable remedy for the preservation of trade secrets under 18 U.S.C. § 1831, *et seq.*

³² See Section 688.008, F.S.

Section 688.002(4), F.S., defines the term “trade secret” to mean:

...information, including a formula, pattern, compilation, program, device, method, technique, or process that:

- (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
- (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The definition in s. 812.081(1)(c), F.S., may be considered a broader definition than that provided in s. 688.002(4), F.S. For example, the definition of “trade secret” in s. 812.081(1)(c), F.S., expressly includes financial information and that the subject of the trade secret be of advantage to the business, or provide an opportunity to obtain an advantage, over those who do not know or use it. Section 688.002(4), F.S., does not explicitly reference financial information or reference the issue business advantage. The definition in s. 688.002(4), F.S., may also be interpreted as less clear. For example, s. 688.002(4), F.S., requires that the information has “independent economic value,” rather than just be “of value,” as required under s. 812.081(1)(c), F.S.

Protection of a Trade Secret by its Owner

The trade secret owner must label a trade secret as such or specify in writing upon delivery to a state agency that the information provided to the agency is a trade secret in order for the information to be considered confidential and exempt under the public records law.³³ In *Sepro v. Department of Environmental Protection*, the court held that information provided to the agency by the appellant was subject to disclosure because the appellant had failed to actively protect the information or label information as a trade secret.³⁴

Florida Department of Citrus

The Department of Citrus (department) is an executive agency of Florida government charged with the marketing, research, and regulation of the Florida citrus industry. Activities of the department are funded by an assessment paid by growers on each box of citrus that moves through commercial channels. The industry employs more than 45,000 people, provides an annual economic impact of \$8.6 billion to the state, and contributes hundreds of millions of dollars in tax revenues that help support Florida’s schools, roads, and health care services. The department also has extensive regulatory responsibilities, covering every aspect of the industry, including research, production, maturity standards, licensing, transportation, labeling, packing, and processing.³⁵

The department is responsible for planning and conducting campaigns for commodity advertising, publicity, and sales promotion, and may conduct campaigns to encourage

³³ *Sepro v. Department of Environmental Protection*, 839 So. 2d 781 (Fla. 1st DCA 2003).

³⁴ *Id.*

³⁵ Florida Department of Citrus, See <https://www.floridacitrus.org/grower/about/florida-department-of-citrus> (Last visited March 3, 2021).

noncommodity advertising, to increase the consumption of citrus fruits and may contract for any such advertising, publicity, and sales promotion service.³⁶ The department may require commercial information necessary to determine eligibility for and performance in noncommodity advertising and promotional programs from participants in such programs. Such information that is considered a trade secret as defined in s. 812.081, F.S., is confidential and exempt from public record disclosure.³⁷

Open Government Sunset Review Findings and Recommendations

In February 2021, the Professional Staff of the Senate Committee on Agriculture sent an Open Government Sunset Review Questionnaire to the department. The department reported that it has received one request for the information exempt under s. 601.15(7)(d), F.S. An attorney requested the final 3R-Processed and 4R-Import forms on behalf of a processor owned by a foreign entity. The forms were released with the final totals of fruit handled redacted and the firm did not request additional information. The department indicated that if the packers' and producers' information is not kept confidential and exempt it would expose the industry's trade secrets to improper and financially damaging exposure.³⁸

The department recommended that the exemption in s. 601.15(7)(d), F.S., should be reenacted.³⁹

III. Effect of Proposed Changes:

SPB 7044 amends s. 601.15(7)(d), F.S., to remove the scheduled repeal of a public records exemption for information held by the Department of Citrus that, if disclosed, would reveal a trade secret as defined in s. 812.081, F.S., of any participant in a noncommodity advertising and promotional program.

The public records exemption would stand repealed on October 2, 2021, unless it is reenacted by the Legislature under the Open Government Sunset Review Act.

The bill takes effect October 1, 2021.

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

³⁶ s. 601.15(2), F.S.

³⁷ s. 601.15(7)(d)

³⁸ See *Open Government Sunset Review Questionnaire* response from the Florida Department of Citrus on file with the Senate Committee on Agriculture.

³⁹ *Id.*

present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill does not create or expand an exemption, 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 requirements to state with specificity the public necessity justifying the exemption. This bill does not create or expand an exemption, thus, the bill does not require 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 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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 601.15 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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

FOR CONSIDERATION By the Committee on Agriculture

575-02242-21

20217044pb

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 601.15, F.S., which relates to an exemption from public records requirements for the trade secret information of noncommodity advertising and promotional program participants held by the Department of Citrus; deleting the scheduled repeal of the exemption; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (7) of section 601.15, Florida Statutes, is amended to read:

601.15 Advertising campaign; methods of conducting; assessments; emergency reserve fund; citrus research.—

(7) All assessments levied and collected under this chapter shall be paid into the State Treasury on or before the 15th day of each month. Such moneys shall be accounted for in a special fund to be designated as the Florida Citrus Advertising Trust Fund, and all moneys in such fund are appropriated to the department for the following purposes:

(a) Four percent of all income of a revenue nature deposited in this fund, including transfers from any subsidiary accounts thereof and any interest income, shall be deposited in the General Revenue Fund pursuant to chapter 215.

(b) Moneys in the Florida Citrus Advertising Trust Fund shall be expended for the activities authorized by s. 601.13 and for the cost of those general overhead, research and

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development, maintenance, salaries, professional fees, enforcement costs, and other such expenses that are not related to advertising, merchandising, public relations, trade luncheons, publicity, and other associated activities. The cost of general overhead, maintenance, salaries, professional fees, enforcement costs, and other such expenses that are related to advertising, merchandising, public relations, trade luncheons, publicity, and associated activities shall be paid from the balance of the Florida Citrus Advertising Trust Fund.

(c) Moneys in the Florida Citrus Advertising Trust Fund shall also be used by the department for defraying those expenses not included in paragraph (b). After payment of such expenses, the money levied and collected under subsection (3) shall be used exclusively for commodity and noncommodity advertising, merchandising, publicity, or sales promotion of citrus products in both fresh form and processed form, including citrus cattle feed and all other products of citrus fruits, produced in the state, in such equitable manner and proration as the department may determine, but funds expended for commodity advertising thereunder shall be expended through an established advertising agency. A proration of moneys between commodity programs and noncommodity programs and among types of citrus products shall be made on or before November 1 of each shipping season and may not thereafter be modified for that shipping season unless the department finds such action necessary to preserve the economic welfare of the citrus industry.

(d)1. The pro rata portion of moneys allocated to each type of citrus product in noncommodity programs shall be used by the department to encourage substantial increases in the

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effectiveness, frequency, and volume of noncommodity advertising, merchandising, publicity, and sales promotion of such citrus products through rebates and incentive payments to handlers and trade customers for these activities. The department shall adopt rules providing for the use of such moneys. The rules shall establish alternate incentive programs, including at least one incentive program for product sold under advertised brands, one incentive program for product sold under private label brands, and one incentive program for product sold in bulk. For each incentive program, the rules must establish eligibility and performance requirements and must provide appropriate limitations on amounts payable to a handler or trade customer for a particular season. Such limitations may relate to the amount of citrus assessments levied and collected on the citrus product handled by such handler or trade customer during a 12-month representative period.

2. The department may require from participants in noncommodity advertising and promotional programs commercial information necessary to determine eligibility for and performance in such programs. Any information required which constitutes a trade secret as defined in s. 812.081 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. ~~This subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2021.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

7042
7044
7046 7048

3/3/21
Meeting Date

Bill Number (if applicable)

Topic 7042 7044 7046 7048

Amendment Barcode (if applicable)

Name Shannon Shepp

Job Title Executive Director FL DEPT OF CITRUS

Address 605 E Main St
Street

Phone (863) 537-3950

Bartow FL 33813
City State Zip

Email sshepp@citrus.myflorida.com

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Department of Citrus

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

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: SPB 7046

INTRODUCER: Agriculture Committee

SUBJECT: OGSR/Trade Secret/Marketing Order/Department of Citrus

DATE: March 4, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Becker	Becker		Submitted as Comm. Bill/Fav

I. Summary:

SPB 7046 amends s. 601.152(8)(c), F.S., to remove the scheduled repeal of a public records exemption for information held by the Department of Citrus that, if disclosed, would reveal a trade secret as defined in s. 812.081, F.S., of any person subject to a marketing order.

The public records exemption would stand repealed on October 2, 2021, unless it is reenacted by the Legislature under the Open Government Sunset Review Act.

The bill takes effect October 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, 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.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2020-2022) and Rule 14.1, *Rules of the Florida House of Representatives*, (2020-2022).

branch records.⁴ Lastly, ch. 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 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

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).

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).

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

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

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.

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

In examining an exemption, the act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption. The act requires the Legislature to consider the following specific questions in such a review:²⁴

- 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?

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

Trade Secrets Public Records Exemptions

Trade Secrets

The term “trade secrets,” as defined in Section 812.081(1)(c), F.S., means information for which an owner “takes measures to prevent the information from becoming available to persons other than those selected by the owner to have access for limited purposes.” Such information may include formulas, patterns, devices, compilations of information, or any portion thereof, which is used in a business and provides the business an advantage, or the opportunity to do so, over those who do not know or use such information.²⁷

Under Section 812.081(1)(c), F.S., the term “trade secret” includes:

- Any scientific, technical, or commercial information, including financial information; and
- Any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof.

Criminal Prohibition

Section 812.081(2), F.S., prohibits the intentional misappropriation of a trade secret from its owner, including stealing or embezzling an article representing a trade secret or without authority

²³ Section 119.15(6)(b)3., F.S.

²⁴ Section 119.15(6)(a), F.S.

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ Section 812.081(1)(c), F.S.

making or causing to be made a copy of an article representing a trade secret. A violation is a felony of the third degree.²⁸

Section 812.081(1)(c), F.S., defines a “trade secret” to mean:

...the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. The term includes any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

- 1. Secret;
- 2. Of value;
- 3. For use or in use by the business; and
- 4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it

When the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

The following sections of the Florida Statutes exempt from public disclosure trade secrets, as defined by s. 812.081(1)(c), F.S.:

- Section 125.0104(9)(d), F.S., exempts trade secrets held by a county tourism promotion agency.
- Section 288.1226(8), F.S., exempts trade secrets relating to projects conducted by the Florida Tourism Industry Marketing Corporation (Visit Florida).
- Section 331.326, F.S., makes trade secrets held by Space Florida confidential and exempt; makes portions of meetings in which trade secrets are discussed exempt from open meetings requirements; recordings of closed meetings are confidential and exempt.²⁹
- Section 365.174, F.S., makes trade secret business information submitted to the E911 Board or the Technology Program under Department of Management Services confidential and exempt.
- Section 381.83, F.S., makes trade secret information obtained by the Department of Health confidential and exempt.

²⁸ Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed \$5,000.

²⁹ Records designated as exempt from public record requirements by the Legislature are distinct from those deemed confidential and exempt. Exempt records 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). Confidential and exempt records may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See Op. Att’y Gen. Fla. 85-62 (1985).

- Sections 403.7046(2) and (3)(b) and 403.73, F.S., make trade secret information reported to the Department of Environmental Protection pursuant to specified regulations confidential and exempt.
- Section 499.012(8)(g) and (m), F.S., provides that trade secret information provided to the Department of Business and Professional Regulation (DBPR) in a prescription drug permit application is confidential and exempt pursuant to its inspection authority under s. 499.051, F.S.
- Section 499.0121(7), F.S., provides that trade secret information reported to DBPR in a list of prescription drug wholesalers is confidential and exempt pursuant to its inspection authority under s. 499.051, F.S.
- Section 499.051(7), F.S., makes trade secret information contained in a complaint and obtained by DBPR during an investigation of a permit holder under the Florida Drug and Cosmetic Act confidential and exempt.
- Section 499.931, F.S., makes trade secrets related to the regulation of medical gases that are submitted to DBPR by an applicant or permit holder confidential and exempt.
- Section 502.222, F.S., makes trade secret information of a dairy industry business held by the Department of Agriculture and Consumer Services (DACS) confidential and exempt.
- Section 570.48(3), F.S., makes records containing trade secrets held by DACS Division of Fruit and Vegetables confidential and exempt.
- Section 573.123(2), F.S., makes records containing trade secrets provided to DACS by specified persons under a marking order confidential and exempt.
- Section 601.10(8)(a), F.S., makes any information held by the Department of Citrus that contains trade secrets confidential and exempt.
- Section 601.15(7)(d), F.S., makes trade secret information that is provided by noncommodity advertising and promotional program participants to Department of Citrus confidential and exempt.
- Section 601.152(8)(c), F.S., makes trade secret information provided by citrus handlers to Department of Citrus confidential and exempt.
- Section 601.76, F.S., makes formulas containing trade secrets that are submitted to DACS confidential and exempt.
- Section 815.04(3), F.S., makes data, programs, and supporting documentation held by an agency and that exists internal or external to a computer, computer system, computer network, or electronic device confidential and exempt.

Uniform Trade Secrets Act

Florida's Uniform Trade Secrets Act in ch. 688, F.S., provides a separate civil process for the protection of trade secrets, including injunctive relief to preserve a trade secret,³⁰ and the right to recover damages for the misappropriation of a trade secret.³¹ Chapter 688, F.S., does not provide criminal prohibitions or penalties to preserve trade secrets. The trade secret protections in ch. 688, F.S., are for civil remedies by private persons seeking to preserve a trade secret.³²

³⁰ Section 688.003, F.S.

³¹ Section 688.004, F.S. Federal law provides comparable remedy for the preservation of trade secrets under 18 U.S.C. § 1831, *et seq.*

³² See Section 688.008, F.S.

Section 688.002(4), F.S., defines the term “trade secret” to mean:

...information, including a formula, pattern, compilation, program, device, method, technique, or process that:

- (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
- (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The definition in s. 812.081(1)(c), F.S., may be considered a broader definition than that provided in s. 688.002(4), F.S. For example, the definition of “trade secret” in s. 812.081(1)(c), F.S., expressly includes financial information and that the subject of the trade secret be of advantage to the business, or provide an opportunity to obtain an advantage, over those who do not know or use it. Section 688.002(4), F.S., does not explicitly reference financial information or reference the issue business advantage. The definition in s. 688.002(4), F.S., may also be interpreted as less clear. For example, s. 688.002(4), F.S., requires that the information has “independent economic value,” rather than just be “of value,” as required under s. 812.081(1)(c), F.S.

Protection of a Trade Secret by its Owner

The trade secret owner must label a trade secret as such or specify in writing upon delivery to a state agency that the information provided to the agency is a trade secret in order for the information to be considered confidential and exempt under the public records law.³³ In *Sepro v. Department of Environmental Protection*, the court held that information provided to the agency by the appellant was subject to disclosure because the appellant had failed to actively protect the information or label information as a trade secret.³⁴

Florida Department of Citrus

The Department of Citrus (department) is an executive agency of Florida government charged with the marketing, research, and regulation of the Florida citrus industry. Activities of the department are funded by an assessment paid by growers on each box of citrus that moves through commercial channels. The industry employs more than 45,000 people, provides an annual economic impact of \$8.6 billion to the state, and contributes hundreds of millions of dollars in tax revenues that help support Florida’s schools, roads, and health care services. The department also has extensive regulatory responsibilities, covering every aspect of the industry, including research, production, maturity standards, licensing, transportation, labeling, packing, and processing.³⁵

³³ *Sepro v. Department of Environmental Protection*, 839 So. 2d 781 (Fla. 1st DCA 2003).

³⁴ *Id.*

³⁵ Florida Department of Citrus, See <https://www.floridacitrus.org/grower/about/florida-department-of-citrus> (Last visited March 2, 2021).

The Florida Citrus Commission

The Florida Citrus Commission (commission) governs the department.³⁶ The commission is a nine-member board appointed by the governor to represent citrus growers, processors, and packers. The department carries out commission policy and acts as the commission's staff, by conducting a wide variety of programs, involving regulation; scientific, market, and economic research; advertising; merchandising; public and industry relations; and consumer promotions.³⁷

Assessments collected and levied by the department are paid into the State Treasury and accounted for in the Florida Citrus Advertising Trust Fund.³⁸ All money in the State Treasury, including that deposited into the Florida Citrus Advertising Trust Fund, is subject to the legislative appropriations process.³⁹

Marketing Orders and Agreements

At the federal level, marketing agreements and orders are initiated by industry to help provide stable markets for dairy products, fruits, vegetables and specialty crops. Each order and agreement is tailored to the individual industry's needs. Marketing orders are a binding regulation for the entire industry in the specified geographical area, once it is approved by the producers and the United States Secretary of Agriculture. Marketing agreements are only binding for those handlers that sign the agreement.⁴⁰

At the state level, the department shall direct that a proposed marketing order be formulated for a special marketing campaign of advertising and sales promotion, including, but not limited to, brand advertising rebate promotions or the conduct of market and product research and development for such type, variety, or form of citrus fruit or processed citrus product, and shall designate a public hearing to consider adoption and implementation of such proposed marketing order. The department shall direct such orders whenever, upon its own motion or upon petition of any handler or producer or group association of handlers or producers of citrus, when the commission, upon affirmative vote by seven of its members, determines that:

- The conduct of a special advertising and promotional marketing campaign or the conduct of market and product research and development, in addition to the advertising campaign being conducted pursuant to s. [601.15](#) and the research being conducted pursuant to the other provisions of the Florida Citrus Code, may substantially further increase the consumer acceptance and consumption of, and strengthen the market for, any type, variety, or form of citrus fruit or processed citrus product by further increasing the number of families buying such citrus fruit or such processed citrus product or by further increasing the quantity of such citrus fruit or processed citrus product purchased by buying families; and

³⁶ See generally s. 601.04, F.S.

³⁷ Florida Citrus Commission, See <https://www.floridacitrus.org/grower/about/florida-citrus-commission/> (Last visited March 2, 2021).

³⁸ Section 601.15(7), F.S.

³⁹ FLA. CONST. Art. VII, s. 1(d).

⁴⁰ See <https://www.ams.usda.gov/rules-regulations/moa> (last visited March 2, 2021).

- Such substantial further increase and strengthening may be of substantial benefit to handlers thereof, producers thereof, and to the economy and well-being of the state.⁴¹

Open Government Sunset Review Findings and Recommendations

In February 2021, the Professional Staff of the Senate Committee on Agriculture sent an Open Government Sunset Review Questionnaire to the department. The department reported that it has never received a request for the information exempt under s. 601.15(8)(c), F.S. The department indicated that should the commission enact a marketing order, this exemption would be vital to protect the industry's trade secrets.⁴²

The department recommended that the exemption in s. 601.15(8)(c), F.S., should be reenacted.⁴³

III. Effect of Proposed Changes:

SPB 7046 amends s. 601.152(8)(c), F.S., to remove the scheduled repeal of a public records exemption for information held by the Department of Citrus that, if disclosed, would reveal a trade secret as defined in s. 812.081, F.S., of any person subject to a marketing order.

The public records exemption would stand repealed on October 2, 2021, unless it is reenacted by the Legislature under the Open Government Sunset Review Act.

The bill takes effect October 1, 2021.

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 requirements. This bill does not create or expand an exemption, 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 requirements to state with specificity the public necessity justifying the exemption. This bill does not create or expand an exemption, thus, the bill does not require a two-thirds vote to be enacted.

⁴¹Section 601.152(1)(a), F.S.

⁴² See *Open Government Sunset Review Questionnaire* response from the Florida Department of Citrus on file with the Senate Committee on Agriculture.

⁴³ *Id.*

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 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.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 601.152 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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

FOR CONSIDERATION By the Committee on Agriculture

575-02243-21

20217046pb

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 601.152, F.S., which provides an exemption from public records requirements for the trade secret information of a person subject to a marketing order held by the Department of Citrus; removing the scheduled repeal of the exemption; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (8) of section 601.152, Florida Statutes, is amended to read:

601.152 Special marketing orders.—

(8) (a) Each person who, during the period specified in any marketing order implemented under this section, first handles in the primary channel of trade in the state any citrus fruit or processed citrus product of the type, variety, and form specified in such marketing order shall, for the privilege of so handling such citrus fruit or such citrus product, pay to the department such assessments as are levied and imposed thereon by such marketing order, which funds shall be used by the department to defray the necessary expenses incurred in the formation, issuance, administration, and enforcement of such marketing order and in the conduct of the special marketing campaign or market and product research and development provided for in such marketing order. However, such assessments levied and imposed under this section may not exceed 8 cents per standard-packed box on citrus fruits in fresh form, 1.3 cents

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575-02243-21

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per gallon on single strength citrus juices or sections, or 1.3 cents per pound of soluble citrus solids on concentrated citrus juices.

(b) The department shall prescribe procedures for the assessment and collection of such funds to defray the necessary expenses incurred, or expected to be incurred, by the department in the formation, issuance, administration, and enforcement of any marketing order implemented under this section.

(c) 1. Every handler shall, at such times as the department may require, file with the department a return, not under oath, on forms to be prescribed and furnished by the department, certified as true and correct, stating the quantity of the type, variety, and form of citrus fruit or citrus product specified in the marketing order first handled in the primary channels of trade in the state by such handler during the period of time specified in the marketing order. Such returns must contain any further information deemed by the department to be reasonably necessary to properly administer or enforce this section or any marketing order implemented under this section.

2. Information that, if disclosed, would reveal a trade secret, as defined in s. 812.081, of any person subject to a marketing order is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. ~~This subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.~~

(d) All assessments imposed under this section are due and payable and shall be paid by such handlers at such times and in

Page 2 of 3

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59 such installments as the commission prescribes in such marketing
60 order, or the amount thereof shall be provided for and
61 guaranteed by giving a surety bond or cash deposit or as the
62 department otherwise prescribes.

63 Section 2. This act shall take effect October 1, 2021.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

7042
7044
7046
7048

3/3/21
Meeting Date

Bill Number (if applicable)

Topic 7042 7044 7046 7048

Amendment Barcode (if applicable)

Name Shannon Shepp

Job Title Executive Director FL DEPT OF CITRUS

Address 605 E Main St

Phone (863) 537-3950

Street

City Baiton State FL Zip 33513

Email sshepp@citrus.nyflorida.com

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Florida Department of Citrus

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

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: SPB 7048

INTRODUCER: Agriculture Committee

SUBJECT: OGSR/Manufacturer's Formula/Department of Agriculture and Consumer Services

DATE: March 4, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Becker	Becker		Submitted as Comm. Bill/Fav

I. Summary:

SPB amends s. 601.176, F.S., to remove the scheduled repeal of a public records exemption for any formula held by the Department of Citrus which is required to be filed with the Department of Agriculture that, if disclosed, would reveal a trade secret as defined in s. 812.081, F.S.

The public records exemption would stand repealed on October 2, 2021, unless it is reenacted by the Legislature under the Open Government Sunset Review Act.

The bill takes effect October 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, 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.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2020-2022) and Rule 14.1, *Rules of the Florida House of Representatives*, (2020-2022).

branch records.⁴ Lastly, ch. 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 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

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).

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).

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

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

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.

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

In examining an exemption, the act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption. The act requires the Legislature to consider the following specific questions in such a review:²⁴

- 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?

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

Trade Secrets Public Records Exemptions

Trade Secrets

The term “trade secrets,” as defined in Section 812.081(1)(c), F.S., means information for which an owner “takes measures to prevent the information from becoming available to persons other than those selected by the owner to have access for limited purposes.” Such information may include formulas, patterns, devices, compilations of information, or any portion thereof, which is used in a business and provides the business an advantage, or the opportunity to do so, over those who do not know or use such information.²⁷

Under Section 812.081(1)(c), F.S., the term “trade secret” includes:

- Any scientific, technical, or commercial information, including financial information; and
- Any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof.

Criminal Prohibition

Section 812.081(2), F.S., prohibits the intentional misappropriation of a trade secret from its owner, including stealing or embezzling an article representing a trade secret or without authority

²³ Section 119.15(6)(b)3., F.S.

²⁴ Section 119.15(6)(a), F.S.

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ Section 812.081(1)(c), F.S.

making or causing to be made a copy of an article representing a trade secret. A violation is a felony of the third degree.²⁸

Section 812.081(1)(c), F.S., defines a “trade secret” to mean:

...the whole or any portion or phase of any formula, pattern, device, combination of devices, or compilation of information which is for use, or is used, in the operation of a business and which provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it. The term includes any scientific, technical, or commercial information, including financial information, and includes any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains, a trade secret is considered to be:

- 1. Secret;
- 2. Of value;
- 3. For use or in use by the business; and
- 4. Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it

When the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

The following sections of the Florida Statutes exempt from public disclosure trade secrets, as defined by s. 812.081(1)(c), F.S.:

- Section 125.0104(9)(d), F.S., exempts trade secrets held by a county tourism promotion agency.
- Section 288.1226(8), F.S., exempts trade secrets relating to projects conducted by the Florida Tourism Industry Marketing Corporation (Visit Florida).
- Section 331.326, F.S., makes trade secrets held by Space Florida confidential and exempt; makes portions of meetings in which trade secrets are discussed exempt from open meetings requirements; recordings of closed meetings are confidential and exempt.²⁹
- Section 365.174, F.S., makes trade secret business information submitted to the E911 Board or the Technology Program under Department of Management Services confidential and exempt.
- Section 381.83, F.S., makes trade secret information obtained by the Department of Health confidential and exempt.

²⁸ Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed \$5,000.

²⁹ Records designated as exempt from public record requirements by the Legislature are distinct from those deemed confidential and exempt. Exempt records 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). Confidential and exempt records may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See Op. Att’y Gen. Fla. 85-62 (1985).

- Sections 403.7046(2) and (3)(b) and 403.73, F.S., make trade secret information reported to the Department of Environmental Protection pursuant to specified regulations confidential and exempt.
- Section 499.012(8)(g) and (m), F.S., provides that trade secret information provided to the Department of Business and Professional Regulation (DBPR) in a prescription drug permit application is confidential and exempt pursuant to its inspection authority under s. 499.051, F.S.
- Section 499.0121(7), F.S., provides that trade secret information reported to DBPR in a list of prescription drug wholesalers is confidential and exempt pursuant to its inspection authority under s. 499.051, F.S.
- Section 499.051(7), F.S., makes trade secret information contained in a complaint and obtained by DBPR during an investigation of a permit holder under the Florida Drug and Cosmetic Act confidential and exempt.
- Section 499.931, F.S., makes trade secrets related to the regulation of medical gases that are submitted to DBPR by an applicant or permit holder confidential and exempt.
- Section 502.222, F.S., makes trade secret information of a dairy industry business held by the Department of Agriculture and Consumer Services (DACS) confidential and exempt.
- Section 570.48(3), F.S., makes records containing trade secrets held by DACS Division of Fruit and Vegetables confidential and exempt.
- Section 573.123(2), F.S., makes records containing trade secrets provided to DACS by specified persons under a marking order confidential and exempt.
- Section 601.10(8)(a), F.S., makes any information held by the Department of Citrus that contains trade secrets confidential and exempt.
- Section 601.15(7)(d), F.S., makes trade secret information that is provided by noncommodity advertising and promotional program participants to Department of Citrus confidential and exempt.
- Section 601.152(8)(c), F.S., makes trade secret information provided by citrus handlers to Department of Citrus confidential and exempt.
- Section 601.76, F.S., makes formulas containing trade secrets that are submitted to DACS confidential and exempt.
- Section 815.04(3), F.S., makes data, programs, and supporting documentation held by an agency and that exists internal or external to a computer, computer system, computer network, or electronic device confidential and exempt.

Uniform Trade Secrets Act

Florida's Uniform Trade Secrets Act in ch. 688, F.S., provides a separate civil process for the protection of trade secrets, including injunctive relief to preserve a trade secret,³⁰ and the right to recover damages for the misappropriation of a trade secret.³¹ Chapter 688, F.S., does not provide criminal prohibitions or penalties to preserve trade secrets. The trade secret protections in ch. 688, F.S., are for civil remedies by private persons seeking to preserve a trade secret.³²

³⁰ Section 688.003, F.S.

³¹ Section 688.004, F.S. Federal law provides comparable remedy for the preservation of trade secrets under 18 U.S.C. § 1831, *et seq.*

³² See Section 688.008, F.S.

Section 688.002(4), F.S., defines the term “trade secret” to mean:

...information, including a formula, pattern, compilation, program, device, method, technique, or process that:

- (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
- (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The definition in s. 812.081(1)(c), F.S., may be considered a broader definition than that provided in s. 688.002(4), F.S. For example, the definition of “trade secret” in s. 812.081(1)(c), F.S., expressly includes financial information and that the subject of the trade secret be of advantage to the business, or provide an opportunity to obtain an advantage, over those who do not know or use it. Section 688.002(4), F.S., does not explicitly reference financial information or reference the issue business advantage. The definition in s. 688.002(4), F.S., may also be interpreted as less clear. For example, s. 688.002(4), F.S., requires that the information has “independent economic value,” rather than just be “of value,” as required under s. 812.081(1)(c), F.S.

Protection of a Trade Secret by its Owner

The trade secret owner must label a trade secret as such or specify in writing upon delivery to a state agency that the information provided to the agency is a trade secret in order for the information to be considered confidential and exempt under the public records law.³³ In *Sepro v. Department of Environmental Protection*, the court held that information provided to the agency by the appellant was subject to disclosure because the appellant had failed to actively protect the information or label information as a trade secret.³⁴

Florida Department of Citrus

The Department of Citrus (department) is an executive agency of Florida government charged with the marketing, research, and regulation of the Florida citrus industry. Activities of the department are funded by an assessment paid by growers on each box of citrus that moves through commercial channels. The industry employs more than 45,000 people, provides an annual economic impact of \$8.6 billion to the state, and contributes hundreds of millions of dollars in tax revenues that help support Florida’s schools, roads, and health care services. The department also has extensive regulatory responsibilities, covering every aspect of the industry, including research, production, maturity standards, licensing, transportation, labeling, packing, and processing.³⁵

³³ *Sepro v. Department of Environmental Protection*, 839 So. 2d 781 (Fla. 1st DCA 2003).

³⁴ *Id.*

³⁵ Florida Department of Citrus, See <https://www.floridacitrus.org/grower/about/florida-department-of-citrus> (Last visited March 2, 2021).

Open Government Sunset Review Findings and Recommendations

In February 2021, the Professional Staff of the Senate Committee on Agriculture sent an Open Government Sunset Review Questionnaire to the department. The department reported that it has never received a request for the information exempt under s. 601.76, F.S. The department indicated that without an exemption it is likely that companies would be more reluctant to turn over information regarding their formula, as they would have no protection against those trade secrets from being divulged.³⁶

The department recommended that the exemption in s. 601.76, F.S., should be reenacted.³⁷

III. Effect of Proposed Changes:

SPB 7048 amends s. 601.176, F.S., to remove the scheduled repeal of a public records exemption for any formula held by the Department of Citrus which is required to be filed with the Department of Agriculture that, if disclosed, would reveal a trade secret as defined in s. 812.081, F.S.

The public records exemption would stand repealed on October 2, 2021, unless it is reenacted by the Legislature under the Open Government Sunset Review Act.

The bill takes effect October 1, 2021.

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 requirements. This bill does not create or expand an exemption, 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 requirements to state with specificity the public necessity justifying the exemption. This bill does not create or expand an exemption, thus, the bill does not require a two-thirds vote to be enacted.

³⁶ See *Open Government Sunset Review Questionnaire* response from the Florida Department of Citrus on file with the Senate Committee on Agriculture.

³⁷ *Id.*

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 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.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 601.76 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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

FOR CONSIDERATION By the Committee on Agriculture

575-02244-21

20217048pb

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 601.76, F.S., which provides an exemption from public records requirements for a manufacturer's formula filed with the Department of Agriculture and Consumer Services; removing the scheduled repeal of the exemption; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 601.76, Florida Statutes, is amended to read:

601.76 Manufacturer to furnish formula and other information.—Any formula required to be filed with the Department of Agriculture shall be deemed a trade secret as defined in s. 812.081, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, and may be divulged only to the Department of Agriculture or to its duly authorized representatives or upon court order when necessary in the enforcement of this law. A person who receives such a formula from the Department of Agriculture under this section shall maintain the confidentiality of the formula. ~~This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2021.

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

03/03/21

Meeting Date

7048

Bill Number (if applicable)

Topic OFSR/Manufacturer ' s Formula/Department of Agriculture and Consumer Services Agriculture

Amendment Barcode (if applicable)

Name Emily Duda Buckley

Job Title Director of Legislative Affairs

Address 400 S Monroe St

Phone 8506177700

Street

Tallahassee

FL

32399

Email emily.buckley@fdacs.gov

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)

Representing FDACS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

March 3rd 2021
Meeting Date

SPB 7046
Bill Number (if applicable)

Topic OSR/TNAD Secrets/Marketing Order
Amendment Barcode (if applicable)

Name David Sardan

Job Title Statesman wife farm 4th Girl Family

Address 66 Wintersgreen Dr Phone 352 805 6581
Street
Fruitland Park FL 34731 City State Zip
Email golferdave1955@gmail.com

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing Self & wife

Appearing at request of Chair: ☐ Yes ☒ No

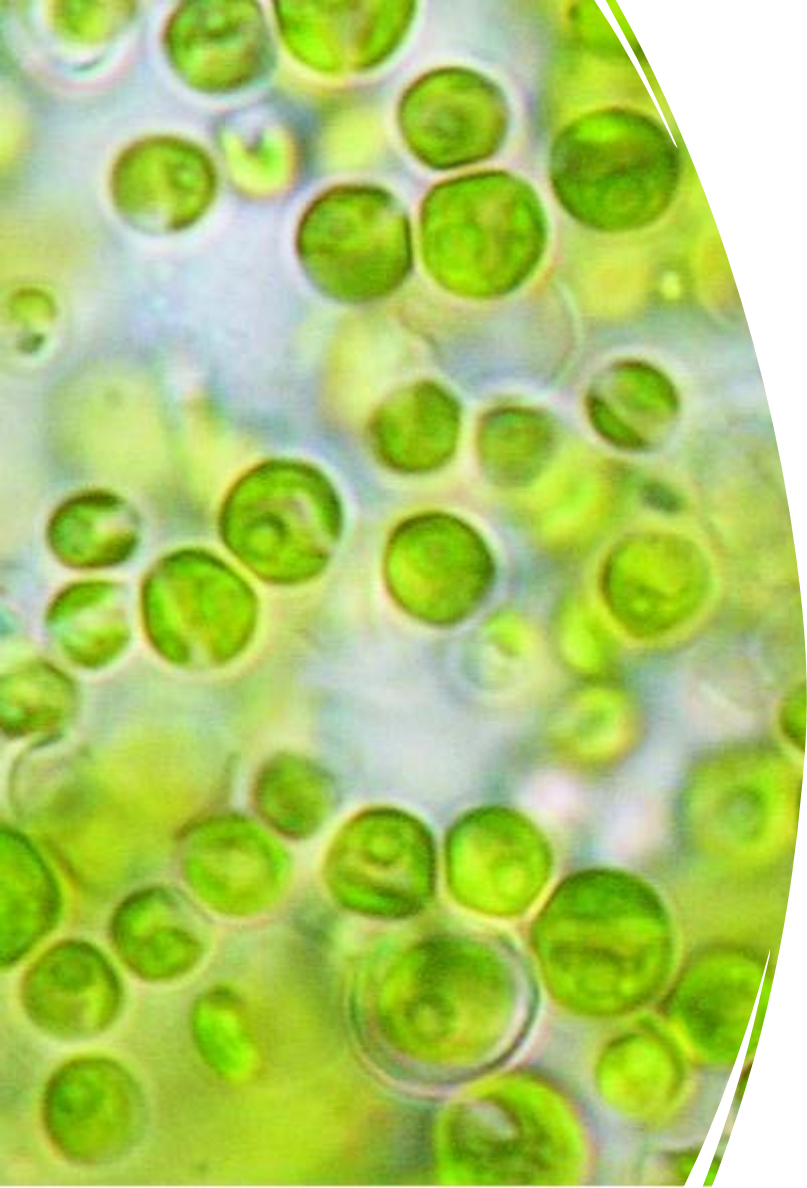
Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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Growing the Future with Algae



The Algae Conundrum

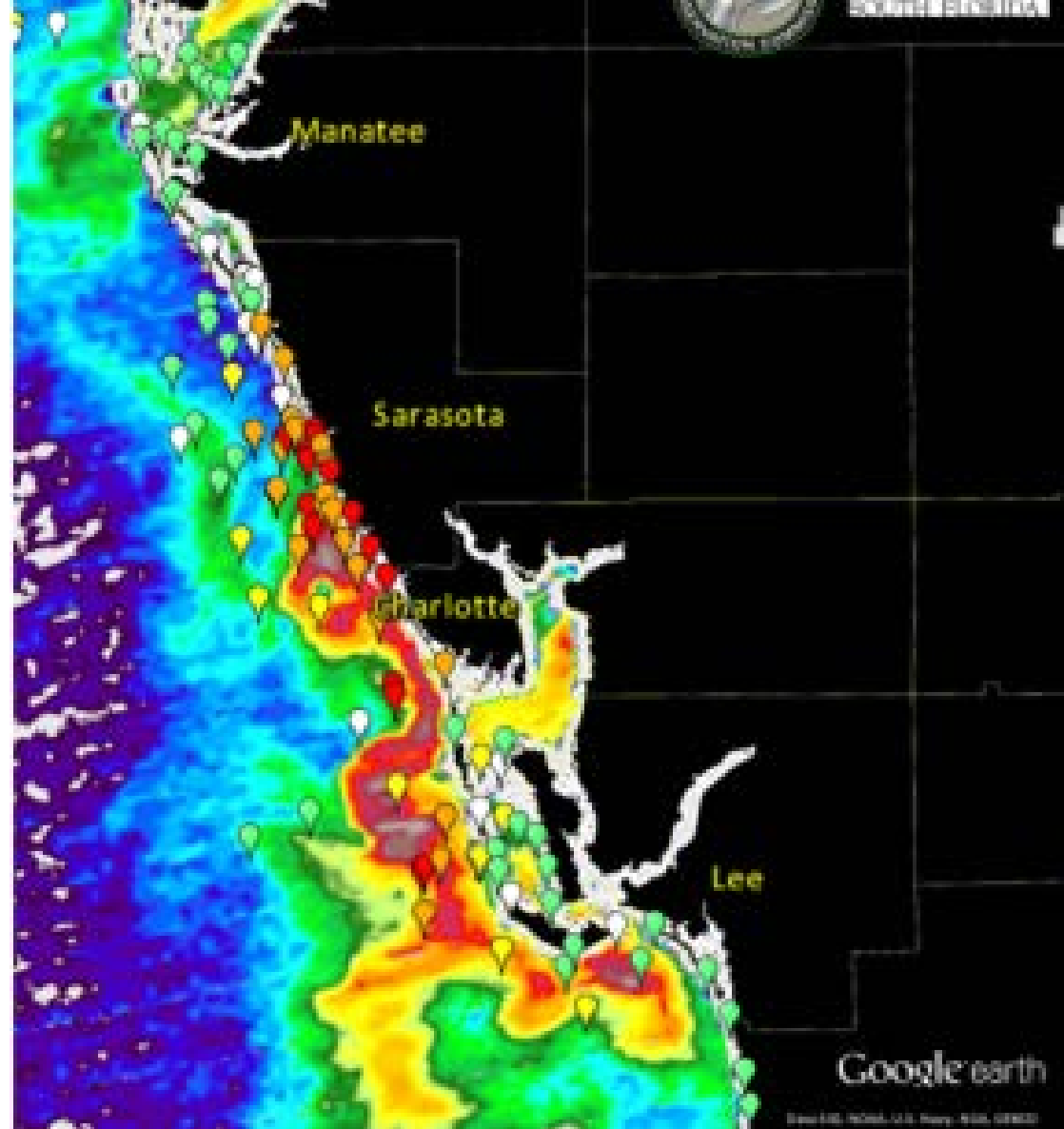
Algae are a valuable part of our ecosystem:

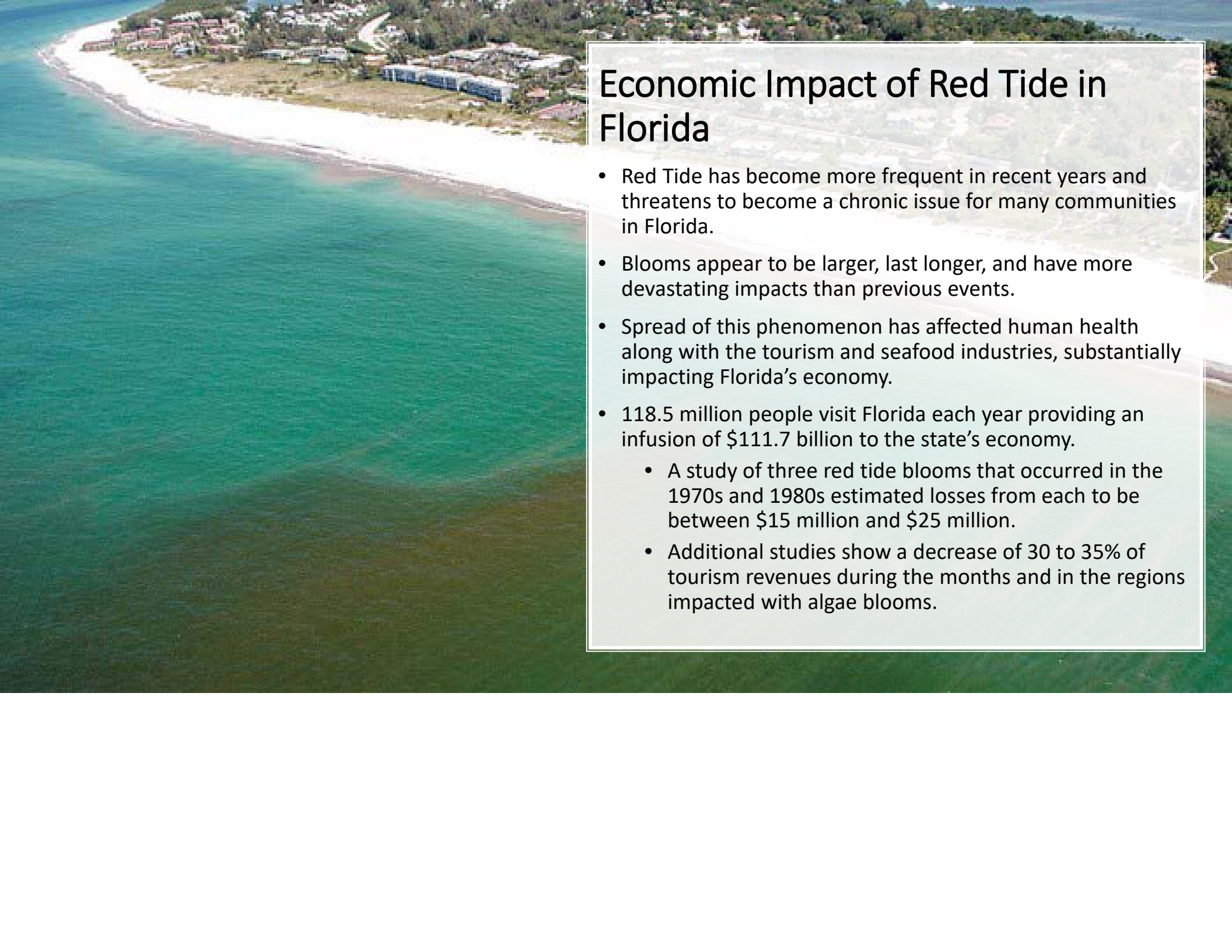
- Provide 50% of the oxygen we breath
- Absorb environmentally harmful CO₂ and nitrogen
- Support and sustain beneficial aquatic life
- Provide a renewable, sustainable food source for humans, animals and plants

But if our ecosystem is out of balance,
certain toxic species become a problem

How does Red Tide Happen?

- Term used for a **harmful** algal bloom (HAB)
- Red tides have been around since long before humans. However, certain human activities are making them more frequent.
- Chemicals from farming, factories, sewage treatment plants and other sources are entering the water table at increasing rates.
- During the rainy season, unusually large amounts of runoff occur containing excessive algae friendly nutrients from the chemicals.
- This runoff eventually flows into the gulf or ocean, causing algae to grow faster, leading to **toxic** algal blooms.



An aerial photograph of a coastal area. In the foreground, the water is a deep, dark green, indicating a dense bloom of algae. A white sandy beach runs along the shoreline. Behind the beach, there is a residential area with several houses and buildings. The background shows more land with trees and a clear sky.

Economic Impact of Red Tide in Florida

- Red Tide has become more frequent in recent years and threatens to become a chronic issue for many communities in Florida.
- Blooms appear to be larger, last longer, and have more devastating impacts than previous events.
- Spread of this phenomenon has affected human health along with the tourism and seafood industries, substantially impacting Florida's economy.
- 118.5 million people visit Florida each year providing an infusion of \$111.7 billion to the state's economy.
 - A study of three red tide blooms that occurred in the 1970s and 1980s estimated losses from each to be between \$15 million and \$25 million.
 - Additional studies show a decrease of 30 to 35% of tourism revenues during the months and in the regions impacted with algae blooms.



Algae is Part of
the Solution

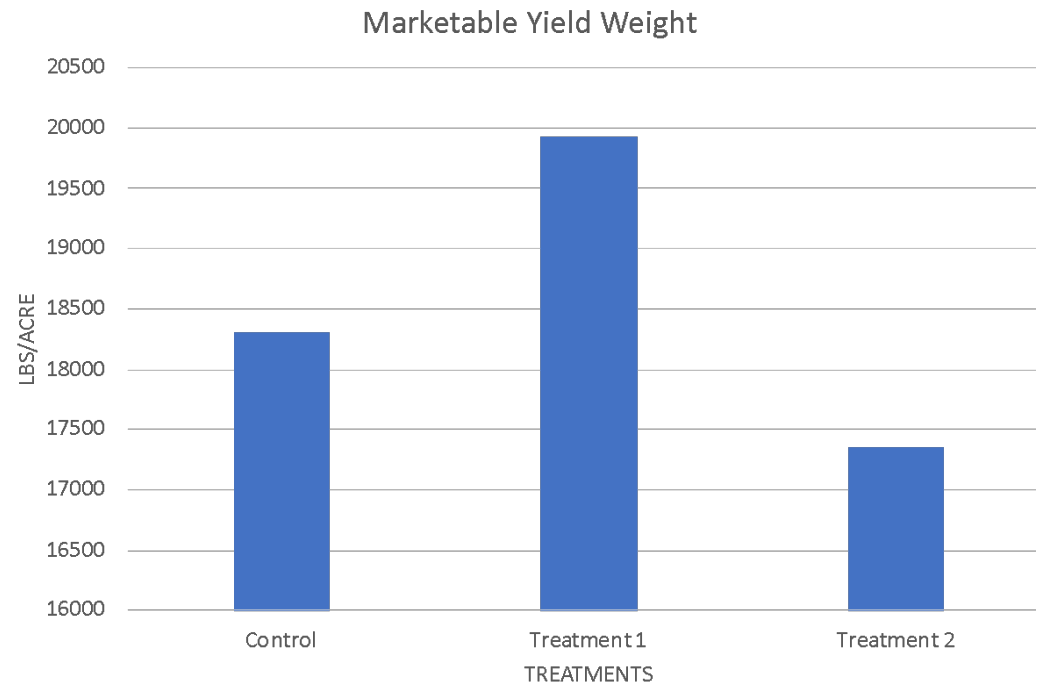
Our Mission

To bring the multi-faceted benefits of natural, regenerative, sustainable microalgae to the agriculture community.

- Located in Dover, Florida
- 36 metric ton production facility
- Selling to Florida farmers for berry, melon and other crop production
- Working with local turf service companies

Our Product TrueSolum™

- TrueSolum, an organic, metabolite rich liquid produced by algae, can **reduce** the use of **nitrogen** containing chemical fertilizers by **75%** and still increase crop yield!



How Can We Partner to Change the Tide?

- Work to **diminish conventional fertilizer use** on public land
 - Use organic alternatives, like **TrueSolum**, to reduce chemical use
- **Educate the farming** community about their impact on the environment and the long term economic impact
 - Promote reduction of conventional fertilizers
 - Provide options, like **TrueSolum**, to maintain crop productivity
- Provide **connections and introductions**
 - State Agencies
 - Industry groups
 - Farmers



Our Proprietary Technology

- Proprietary, closed system vertical photobioreactor
- Fast production with high yield
- Uses only the liquid, not the biomass
- Water contains the key nutrients expressed by the algae
- Easy to use with standard irrigation
- Effects multiple aspects of soil and plant well-being

Extended Shelf Life - Strawberries



Extended Shelf Life - Blueberries





Thank you!

Better for Farmers. Safe for the Environment.
www.TrueAlgae.com

GreenTech Ventures, Inc.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-3-21

Meeting Date

T-11

Bill Number (if applicable)

Topic True Algae

Amendment Barcode (if applicable)

Name Thomas Brown

Job Title VP Business Development

Address 16302 McIntosh Rd.

Phone 813-294-9778

Street

Dover

City

FL

State

33527

Zip

Email tbrown@truealgae.com

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against
(The Chair will read this information into the record.)

Representing _____

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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This form is part of the public record for this meeting.

S-001 (10/14/14)

CourtSmart Tag Report

Room: SB 110

Case No.:

Type:

Caption: Senate Agriculture Committee

Judge:

Started: 3/3/2021 12:02:01 PM

Ends: 3/3/2021 1:17:03 PM **Length:** 01:15:03

12:02:00 PM Call to Order
12:02:09 PM Roll Call
12:02:55 PM Pledge of Allegiance
12:03:05 PM Chair comments
12:03:40 PM Take up Tab 3-SB 1018 by Boyd
12:04:08 PM Senator Boyd for explanation
12:05:07 PM Any questions?
12:05:14 PM Appearance cards
12:05:40 PM Jim Spratt waives in support
12:05:51 PM Emily Dudda Buckley waives in support
12:06:03 PM Debate
12:06:10 PM one more person to speak from Civic Center
12:06:18 PM Landon Hoffman, Farm Bureau waives in support
12:06:28 PM No debate
12:06:36 PM Senator Boyd to close
12:06:40 PM Roll call on SB 1018
12:06:49 PM SB 1018 reported favorably
12:07:14 PM Take up Tab 2 SB 650 on Tethering Dogs and Cats
12:07:29 PM Senator Taddeo for explanation
12:08:43 PM Amendments
12:08:52 PM Take up barcode 188208 by Senator Perry
12:10:14 PM Senator Boyd for question
12:14:04 PM Senator Thurston for a question on the amendment
12:15:25 PM Senator Taddeo for response
12:17:15 PM Senator Perry to close on the amendment
12:17:43 PM Amendment is adopted
12:17:48 PM Take up amendment barcode: 611878 by Taddeo
12:18:08 PM Senator Taddeo for explanation
12:18:45 PM Questions?
12:18:52 PM No appearance cards
12:19:08 PM Debate?
12:19:15 PM Senator Taddeo waives close
12:19:20 PM Amendment adopted
12:19:24 PM Back on the bill as amended
12:19:29 PM Questions?
12:19:32 PM Appearance Cards:
12:19:36 PM Marion Hammer waives against
12:19:44 PM Judith Seltrecht waives against
12:19:53 PM David Sudar speaking for information
12:20:21 PM Debate?
12:20:23 PM Senator Boyd in debate
12:20:53 PM Senator Taddeo to close
12:21:07 PM Roll call on CS/SB 650
12:21:40 PM CS/SB 650 is reported favorably
12:22:01 PM Take up Tab 1 - SB 628 by Senator Rousson
12:22:27 PM Senator Rousson for explanation
12:24:12 PM Questions?
12:24:15 PM Senator Boyd in question
12:25:06 PM Senator Rousson for response
12:25:16 PM Taylor Biehl waives in support
12:25:45 PM David Serdar for information
12:27:42 PM Move to debate

12:27:46 PM Debate?
12:28:16 PM Senator Rousson to close
12:28:28 PM Roll call on SB 628
12:29:09 PM SB 628 is reported favorably
12:29:54 PM Take up Tab 4 - SPB 7036 by Agriculture Committee
12:30:18 PM Senator Rousson for explanation
12:31:09 PM Questions?
12:31:16 PM Emily Duda Buckley waives in support
12:31:30 PM Back to questions
12:31:35 PM Senator Ausley has a question
12:31:43 PM Senator Rousson for response
12:32:09 PM Debate?
12:32:13 PM Senator Rousson moves SB 7036 be submitted as a committee bill
12:32:35 PM roll call
12:32:42 PM SPB 7036 reported favorably as a committee bill
12:33:01 PM SPB 7038 by Agriculture Committee
12:33:11 PM Senator Rousson for explanation
12:34:50 PM Questions?
12:34:59 PM Emily Duda Buckley waives in support
12:35:18 PM Debate?
12:35:21 PM Senator Ausley in debate
12:36:16 PM Senator Rousson moves to submit as a committee bill
12:36:28 PM roll call
12:36:30 PM SPB 7038 is reported favorably as a committee bill
12:36:56 PM Take up SPB 7040 - by Agriculture Committee
12:37:18 PM Senator Rousson for explanation
12:37:32 PM Questions?
12:37:38 PM Emily Duda Buckley waives in support
12:37:53 PM Debate?
12:37:56 PM Senator Rousson moves to submit as a committee bill
12:38:08 PM roll call
12:38:10 PM SPB 7040 is reported favorably as a committee bill
12:38:32 PM Take up Tab 7 - SPB 7042 by Agriculture Committee
12:38:48 PM Senator Rousson for explanation
12:38:53 PM Questions?
12:39:12 PM Shannon Shepp waives in support
12:39:41 PM Debate?
12:39:45 PM Senator Rousson moves to submit as a committee bill
12:39:57 PM roll call
12:40:01 PM SPB 7042 is reported favorably as a committee bill
12:40:01 PM
12:40:18 PM Take up Tab 8 - SPB 7044 by Agriculture Committee
12:40:32 PM Senator Rousson for an explanation
12:41:01 PM Questions?
12:41:12 PM Shannon Shepp for information
12:41:24 PM Debate?
12:41:25 PM Senator Rousson moves to submit as a committee bill
12:41:37 PM roll call
12:41:41 PM SPB 7044 is reported favorably as a committee bill
12:41:58 PM Take up Tab 9 - SPB 7046 by Agriculture Committee
12:42:17 PM Senator Rousson for an explanation
12:42:37 PM Questions?
12:42:42 PM Shannon Shepp is here for information
12:42:56 PM Debate?
12:43:00 PM Senator Rousson moves the committee bill
12:43:06 PM Roll call
12:43:09 PM SPB 7046 is reported favorably as a committee bill
12:43:32 PM Take up Tab 10 - SPB 7048 by Agriculture Committee
12:43:45 PM Senator Rousson for an explanation
12:44:00 PM Questions?
12:44:18 PM Shannon Shepp is here for information
12:44:30 PM David Sedar for information

12:46:19 PM	Emily Dudda Buckley waives in support
12:46:28 PM	Senator Rousson moves the bill
12:46:34 PM	Roll call
12:46:38 PM	SPB 7048 is reported favorably as a committee bill
12:47:12 PM	Take up Tab 11 - Presentation on True Algae
12:47:30 PM	Thomas Brown for an explanation
12:49:19 PM	How does Red Tide happen?
12:50:34 PM	Economic Impact
12:51:54 PM	Mission of True Algae
12:54:41 PM	About our product
12:55:58 PM	Partnership with Florida farmers
12:57:07 PM	About our Technology
1:01:34 PM	Questions?
1:01:39 PM	Chair Rousson for a question
1:02:35 PM	Senator Burgess for a question
1:03:32 PM	Follow up
1:04:02 PM	Mr. Brown for a response
1:05:46 PM	Senator Boyd for a question
1:06:51 PM	Mr. Brown for a response
1:08:05 PM	Follow up
1:08:14 PM	Senator Rodriguez for a question
1:08:35 PM	Senator Thurston for a question
1:09:04 PM	Mr. Brown for response
1:10:14 PM	Follow up
1:10:18 PM	Mr. Brown for a response
1:11:39 PM	Chair rousson for a question
1:15:22 PM	Mr. Brown for comments
1:15:50 PM	Senator Rodriguez motion to vote in the affirmative on SB 628
1:16:03 PM	Senator Thurston motion to vote favorably on SB's 7036, 7038 and 7040
1:16:25 PM	Senator Rousson motion to vote in the affirmative on SB 1018
1:16:40 PM	motion adopted
1:16:44 PM	Senator Ausley moves we adjourn
1:16:51 PM	We are adjourned.