

Tab 1	SB 1594 by Cruz; (Similar to H 01539) Public Records/Inspector of the Department of Agriculture and Consumer Services						
434696	A	S	RCS	AG, Cruz	Delete L.313 - 319:	03/10 12:30 PM	
Tab 2	SB 1634 by Brodeur (CO-INTRODUCERS) Ausley; (Similar to H 01399) Public Records/Aquaculture/Department of Agriculture and Consumer Services						
Tab 3	SPB 7058 by AG; OGSR/Dairy Industry Business' Trade Secrets						

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

AGRICULTURE
Senator Rouson, Chair
Senator Bradley, Vice Chair

MEETING DATE: Wednesday, March 10, 2021
TIME: 10:30 a.m.—12:30 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 1594 Cruz (Similar H 1539)	Public Records/Inspector of the Department of Agriculture and Consumer Services; Exempting personal identifying and location information of certain current or former inspectors of the Department of Agriculture and Consumer Services, and personal identifying and location information of spouses and children of such personnel, from public records requirements; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. AG 03/10/2021 Fav/CS GO RC	Fav/CS Yeas 9 Nays 0
2	SB 1634 Brodeur (Similar H 1399)	Public Records/Aquaculture/Department of Agriculture and Consumer Services; Providing a public records exemption for certain aquaculture records held by the Department of Agriculture and Consumer Services; providing that the records may be disclosed to other governmental entities under certain circumstances; providing for retroactive application of the exemption; providing for future legislative review and repeal under the Open Government Sunset Review Act; providing a statement of public necessity, etc. AG 03/10/2021 Favorable GO RC	Favorable Yeas 9 Nays 0
Consideration of proposed bill:			
3	SPB 7058	OGSR/Dairy Industry Business' Trade Secrets; Amending a provision which provides an exemption from public records requirements for a dairy industry business' trade secrets 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

COMMITTEE MEETING EXPANDED AGENDA

Agriculture

Wednesday, March 10, 2021, 10:30 a.m.—12:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	Presentation by Mark Zavlasky, Principal, and Steve Campos, President, Sturgeon Aquafarms		Presented
	Presentation on Food Insecurity in Florida by Laila Racevskis, Office of Program Policy Analysis and Government Accountability		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: CS/SB 1594

INTRODUCER: Agriculture Committee and Senator Cruz

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

DATE: March 10, 2021

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1594 expands the public records exemption for agency personnel information to include the home addresses, telephone numbers, dates of birth, and photographs of current or former inspectors of the Department of Agriculture and Consumer Services.

The bill exempts the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former inspectors of the Department of Agriculture and Consumer Services. The names and locations of schools and day care facilities attended by the children of current or former inspectors are also exempt.

This exemption is subject to the Open Government Sunset Review Act and shall stand repealed on October 2, 2024, unless reviewed and saved from repeal by the Legislature.

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

Because the bill creates a new public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

The bill takes effect July 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, section 11.0431, Florida Statutes (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 branch records.⁴ Lastly, chapter 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

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020).

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).

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

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

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).

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.

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

The Act also requires specified questions to be considered during the review process.²⁴ In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

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

Agency Personnel Information

Currently, under s. 119.071(4), F.S., specified personal information relating to the employees of agencies is protected from disclosure. For example, for current or former code enforcement officers, s. 119.071(4), F.S., provides a public records exemption for:

- Their home addresses, telephone numbers, and photographs;
- The home addresses, telephone numbers, and places of employment of their spouses and children; and
- The names and locations of schools and day care facilities attended by their children.²⁷

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.

²⁴ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ Section 119.071(4), F.S.

Section 119.071(4), F.S., provides similar records exemptions for the following agency personnel:

- Active or former law enforcement personnel;
- Department of Children and Family Services;
- Department of Health;
- Department of Revenue;
- Florida Supreme Court justices;
- Former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors;
- General magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support hearing officers;
- Current or former human resource, labor relations, or employee relations directors, assistant directors, managers, or assistant managers of any local government agency;
- Current or former United States attorneys and assistant United States attorneys;
- Former judges of the United States of Appeal, United States district judges, and United States magistrate judges;
- Current or former code enforcement officers;
- Current or former guardians ad litem;
- Current or former juvenile probation officers; and
- Supervisors, group treatment leaders, group treatment leader supervisors, rehabilitation therapists, and social service counselors of the Department of Juvenile Justice.

The Department of Agriculture and Consumer Services

The Department of Agriculture and Consumer Services (department) safeguards the public and supports Florida's agricultural economy by ensuring the safety and wholesomeness of food and other consumer products through inspection and testing programs.

Under s. 570.07, F.S, the department employs inspectors to enforce the state laws and rules relating to:

- Fruit and vegetable inspection and grading;
- Pesticide spray, residue inspection, and removal;
- Registration, labeling, inspection, sale, use, composition, formulation, wholesale and retail distribution, and analysis of commercial stock feeds and registration, labeling, inspection, and analysis of commercial fertilizers;
- Classification, inspection, and sale of poultry and eggs;
- Registration, inspection, and analysis of gasolines and oils;
- Registration, labeling, inspection, and analysis of pesticides;
- Registration, labeling, inspection, germination testing, and sale of seeds, both common and certified;
- Foods, as set forth in the Florida Food Safety Act;
- Inspection and certification of honey;
- Recordation and inspection of marks and brands of livestock; and
- Inspection of apiaries for diseases inimical to bees and beekeeping.²⁸

²⁸ See generally s. 570.07, F.S.

According to the department, 397 inspectors are currently employed and qualify under the provisions set forth within this bill.²⁹ The areas in which these inspectors preside are classified as: Animal Industry (36 inspectors), Consumer Services (98 inspectors), Fruit and Vegetable (155 inspectors), Plant Industry (24 inspectors), and Food and Safety (84 inspectors).³⁰

III. Effect of Proposed Changes:

Section 1 amends s. 119.071, F.S., providing that the home addresses, telephone numbers, dates of birth, and photographs of current or former inspectors of the Department of Agriculture and Consumer Services are exempt from public records requirements.

The bill also exempts the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former inspectors of the Department of Agriculture and Consumer Services. The names and locations of schools and day care facilities attended by the children of current or former inspectors are also exempt.

This section is subject to the Open Government Sunset Review Act and shall stand repealed on October 2, 2024, unless reviewed and saved from repeal by the Legislature.

Section 2 provides a public necessity statement as required by the State Constitution.

Section 3 provides that this act takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill enacts a new exemption for personal information of current or former inspectors of the Department of Agriculture and Consumer Services, thus, the bill requires a two-thirds vote to be enacted.

²⁹ E-mail from Carlos J. Nathan, Deputy Legislative Affairs Director, Florida Department of Agriculture and Consumer Services, Office of the Commissioner, to Katherine Becker, Staff Director, The Florida Senate Committee on Agriculture (March 8, 2021) (on file with the Senate Committee on Agriculture).

³⁰ *Id.*

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. Section 2 of the bill contains a statement of public necessity for the exemption.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect current or former inspectors of the Department of Agriculture and Consumer Services and their spouses and children from the danger of physical and emotional harm from disgruntled individuals who have contentious reactions to the duties carried out by the inspectors.

This bill exempts only current or former inspectors of the Department of Agriculture and Consumer Services and their spouses and children from the public records requirements. The exemption 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:

Indeterminate. The private sector will be subject to the cost associated with an agency making redactions in response to a public records request.

C. Government Sector Impact:

Indeterminate. The department will incur minor costs relating to the redaction of exempt records.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.071 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Agriculture on March 10, 2021:

The committee substitute rectifies a technical error to clarify that only current or former inspectors of the Department of Agriculture and Consumer Services and their family members are in danger of physical and emotional harm from disgruntled individuals.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/10/2021	.	
	.	
	.	
	.	

The Committee on Agriculture (Cruz) recommended the following:

Senate Amendment

Delete lines 313 - 319
and insert:
department and their family members in danger of physical and
emotional harm from disgruntled individuals. Such risk

By Senator Cruz

18-01658A-21

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A bill to be entitled

An act relating to public records; amending s. 119.071, F.S.; exempting personal identifying and location information of certain current or former inspectors of the Department of Agriculture and Consumer Services, and personal identifying and location information of spouses and children of such personnel, from public records requirements; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Paragraph (d) of subsection (4) of section 119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of public records.—

(4) AGENCY PERSONNEL INFORMATION.—

(d)1. For purposes of this paragraph, the term:

a. "Home addresses" means the dwelling location at which an individual resides and includes the physical address, mailing address, street address, parcel identification number, plot identification number, legal property description, neighborhood name and lot number, GPS coordinates, and any other descriptive property information that may reveal the home address.

b. "Telephone numbers" includes home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal

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communications devices.

2.a. The home addresses, telephone numbers, dates of birth, and photographs of active or former sworn law enforcement personnel or of active or former civilian personnel employed by a law enforcement agency, including correctional and correctional probation officers, personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect, and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

b. The home addresses, telephone numbers, dates of birth, and photographs of current or former nonsworn investigative personnel of the Department of Financial Services whose duties include the investigation of fraud, theft, workers' compensation coverage requirements and compliance, other related criminal activities, or state regulatory requirement violations; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt

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from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

c. The home addresses, telephone numbers, dates of birth, and photographs of current or former nonsworn investigative personnel of the Office of Financial Regulation's Bureau of Financial Investigations whose duties include the investigation of fraud, theft, other related criminal activities, or state regulatory requirement violations; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

d. The home addresses, telephone numbers, dates of birth, and photographs of current or former firefighters certified in compliance with s. 633.408; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such firefighters; and the names and locations of schools and day care facilities attended by the children of such firefighters are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

e. The home addresses, dates of birth, and telephone numbers of current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former justices and judges; and the names and locations of schools and day care facilities attended by the children of current or former justices and judges are

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exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

f. The home addresses, telephone numbers, dates of birth, and photographs of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; and the names and locations of schools and day care facilities attended by the children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

g. The home addresses, dates of birth, and telephone numbers of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; and the names and locations of schools and day care facilities attended by the children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers are exempt from s. 119.07(1) and s. 24(a), Art. I of the State

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117 Constitution.

118 h. The home addresses, telephone numbers, dates of birth,

119 and photographs of current or former human resource, labor

120 relations, or employee relations directors, assistant directors,

121 managers, or assistant managers of any local government agency

122 or water management district whose duties include hiring and

123 firing employees, labor contract negotiation, administration, or

124 other personnel-related duties; the names, home addresses,

125 telephone numbers, dates of birth, and places of employment of

126 the spouses and children of such personnel; and the names and

127 locations of schools and day care facilities attended by the

128 children of such personnel are exempt from s. 119.07(1) and s.

129 24(a), Art. I of the State Constitution.

130 i. The home addresses, telephone numbers, dates of birth,

131 and photographs of current or former code enforcement officers;

132 the names, home addresses, telephone numbers, dates of birth,

133 and places of employment of the spouses and children of such

134 personnel; and the names and locations of schools and day care

135 facilities attended by the children of such personnel are exempt

136 from s. 119.07(1) and s. 24(a), Art. I of the State

137 Constitution.

138 j. The home addresses, telephone numbers, places of

139 employment, dates of birth, and photographs of current or former

140 guardians ad litem, as defined in s. 39.820; the names, home

141 addresses, telephone numbers, dates of birth, and places of

142 employment of the spouses and children of such persons; and the

143 names and locations of schools and day care facilities attended

144 by the children of such persons are exempt from s. 119.07(1) and

145 s. 24(a), Art. I of the State Constitution.

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146 k. The home addresses, telephone numbers, dates of birth,

147 and photographs of current or former juvenile probation

148 officers, juvenile probation supervisors, detention

149 superintendents, assistant detention superintendents, juvenile

150 justice detention officers I and II, juvenile justice detention

151 officer supervisors, juvenile justice residential officers,

152 juvenile justice residential officer supervisors I and II,

153 juvenile justice counselors, juvenile justice counselor

154 supervisors, human services counselor administrators, senior

155 human services counselor administrators, rehabilitation

156 therapists, and social services counselors of the Department of

157 Juvenile Justice; the names, home addresses, telephone numbers,

158 dates of birth, and places of employment of spouses and children

159 of such personnel; and the names and locations of schools and

160 day care facilities attended by the children of such personnel

161 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State

162 Constitution.

163 l. The home addresses, telephone numbers, dates of birth,

164 and photographs of current or former public defenders, assistant

165 public defenders, criminal conflict and civil regional counsel,

166 and assistant criminal conflict and civil regional counsel; the

167 names, home addresses, telephone numbers, dates of birth, and

168 places of employment of the spouses and children of current or

169 former public defenders, assistant public defenders, criminal

170 conflict and civil regional counsel, and assistant criminal

171 conflict and civil regional counsel; and the names and locations

172 of schools and day care facilities attended by the children of

173 current or former public defenders, assistant public defenders,

174 criminal conflict and civil regional counsel, and assistant

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175 criminal conflict and civil regional counsel are exempt from s.
 176 119.07(1) and s. 24(a), Art. I of the State Constitution.
 177 m. The home addresses, telephone numbers, dates of birth,
 178 and photographs of current or former investigators or inspectors
 179 of the Department of Business and Professional Regulation; the
 180 names, home addresses, telephone numbers, dates of birth, and
 181 places of employment of the spouses and children of such current
 182 or former investigators and inspectors; and the names and
 183 locations of schools and day care facilities attended by the
 184 children of such current or former investigators and inspectors
 185 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 186 Constitution.
 187 n. The home addresses, telephone numbers, and dates of
 188 birth of county tax collectors; the names, home addresses,
 189 telephone numbers, dates of birth, and places of employment of
 190 the spouses and children of such tax collectors; and the names
 191 and locations of schools and day care facilities attended by the
 192 children of such tax collectors are exempt from s. 119.07(1) and
 193 s. 24(a), Art. I of the State Constitution.
 194 o. The home addresses, telephone numbers, dates of birth,
 195 and photographs of current or former personnel of the Department
 196 of Health whose duties include, or result in, the determination
 197 or adjudication of eligibility for social security disability
 198 benefits, the investigation or prosecution of complaints filed
 199 against health care practitioners, or the inspection of health
 200 care practitioners or health care facilities licensed by the
 201 Department of Health; the names, home addresses, telephone
 202 numbers, dates of birth, and places of employment of the spouses
 203 and children of such personnel; and the names and locations of

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204 schools and day care facilities attended by the children of such
 205 personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of
 206 the State Constitution.
 207 p. The home addresses, telephone numbers, dates of birth,
 208 and photographs of current or former impaired practitioner
 209 consultants who are retained by an agency or current or former
 210 employees of an impaired practitioner consultant whose duties
 211 result in a determination of a person's skill and safety to
 212 practice a licensed profession; the names, home addresses,
 213 telephone numbers, dates of birth, and places of employment of
 214 the spouses and children of such consultants or their employees;
 215 and the names and locations of schools and day care facilities
 216 attended by the children of such consultants or employees are
 217 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 218 Constitution.
 219 q. The home addresses, telephone numbers, dates of birth,
 220 and photographs of current or former emergency medical
 221 technicians or paramedics certified under chapter 401; the
 222 names, home addresses, telephone numbers, dates of birth, and
 223 places of employment of the spouses and children of such
 224 emergency medical technicians or paramedics; and the names and
 225 locations of schools and day care facilities attended by the
 226 children of such emergency medical technicians or paramedics are
 227 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 228 Constitution.
 229 r. The home addresses, telephone numbers, dates of birth,
 230 and photographs of current or former personnel employed in an
 231 agency's office of inspector general or internal audit
 232 department whose duties include auditing or investigating waste,

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 233 fraud, abuse, theft, exploitation, or other activities that
 234 could lead to criminal prosecution or administrative discipline;
 235 the names, home addresses, telephone numbers, dates of birth,
 236 and places of employment of spouses and children of such
 237 personnel; and the names and locations of schools and day care
 238 facilities attended by the children of such personnel are exempt
 239 from s. 119.07(1) and s. 24(a), Art. I of the State
 240 Constitution.

s. The home addresses, telephone numbers, dates of birth,
 242 and photographs of current or former directors, managers,
 243 supervisors, nurses, and clinical employees of an addiction
 244 treatment facility; the home addresses, telephone numbers,
 245 photographs, dates of birth, and places of employment of the
 246 spouses and children of such personnel; and the names and
 247 locations of schools and day care facilities attended by the
 248 children of such personnel are exempt from s. 119.07(1) and s.
 249 24(a), Art. I of the State Constitution. For purposes of this
 250 sub-subparagraph, the term "addiction treatment facility" means
 251 a county government, or agency thereof, that is licensed
 252 pursuant to s. 397.401 and provides substance abuse prevention,
 253 intervention, or clinical treatment, including any licensed
 254 service component described in s. 397.311(26).

t. The home addresses, telephone numbers, dates of birth,
 256 and photographs of current or former directors, managers,
 257 supervisors, and clinical employees of a child advocacy center
 258 that meets the standards of s. 39.3035(1) and fulfills the
 259 screening requirement of s. 39.3035(2), and the members of a
 260 Child Protection Team as described in s. 39.303 whose duties
 261 include supporting the investigation of child abuse or sexual

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 262 abuse, child abandonment, child neglect, and child exploitation
 263 or to provide services as part of a multidisciplinary case
 264 review team; the names, home addresses, telephone numbers,
 265 photographs, dates of birth, and places of employment of the
 266 spouses and children of such personnel and members; and the
 267 names and locations of schools and day care facilities attended
 268 by the children of such personnel and members are exempt from s.
 269 119.07(1) and s. 24(a), Art. I of the State Constitution.

u. The home addresses, telephone numbers, dates of birth,
 271 and photographs of current or former inspectors of the
 272 Department of Agriculture and Consumer Services; the names, home
 273 addresses, telephone numbers, dates of birth, and places of
 274 employment of the spouses and children of such current or former
 275 staff; and the names and locations of schools and day care
 276 facilities attended by the children of such current or former
 277 staff are exempt from s. 119.07(1) and s. 24(a), Art. I of the
 278 State Constitution.

3. An agency that is the custodian of the information
 280 specified in subparagraph 2. and that is not the employer of the
 281 officer, employee, justice, judge, or other person specified in
 282 subparagraph 2. shall maintain the exempt status of that
 283 information only if the officer, employee, justice, judge, other
 284 person, or employing agency of the designated employee submits a
 285 written request for maintenance of the exemption to the
 286 custodial agency.

4. An officer, an employee, a justice, a judge, or other
 288 person specified in subparagraph 2. may submit a written request
 289 for the release of his or her exempt information to the
 290 custodial agency. The written request must be notarized and must

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specify the information to be released and the party that is authorized to receive the information. Upon receipt of the written request, the custodial agency shall release the specified information to the party authorized to receive such information.

5. The exemptions in this paragraph apply to information held by an agency before, on, or after the effective date of the exemption.

6. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that the home addresses, telephone numbers, dates of birth, and photographs of current or former inspectors of the Department of Agriculture and Consumer Services; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such staff; and the names and locations of schools and day care facilities attended by the children of such staff be exempt from public record requirements. The release of such identifying and location information may place current or former inspectors of the department and their family members, and county tax collectors through their work with such department personnel, in danger of physical and emotional harm from disgruntled individuals who have contentious reactions to revenue collection or enforcement actions or child support enforcement actions or whose business or professional practices have come under the scrutiny of investigators and inspectors of the department. Such risk

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continues after their service with the department as disgruntled individuals may wait to commit an act of revenge until after the employment of the department personnel ends. If such identifying and location information is released, the safety of current or former personnel and their spouses and children could be seriously jeopardized. For these reasons, the Legislature finds that it is a public necessity that such information be made exempt from public records requirements and that the harm that may result from the release of such personal identifying and location information outweighs any public benefit that may be derived from the disclosure of the information.

Section 3. This act shall take effect July 1, 2021.

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

THE FLORIDA SENATE
APPEARANCE RECORD

03/10/2021

Meeting Date

SB 1594

Bill Number (if applicable)

Topic Public Records/Inspector of the Department of Agriculture and Consumer Services

Amendment Barcode (if applicable)

Name Carlos Nathan

Job Title Deputy Legislative Affairs Director

Address 400 S. Monroe Street

Phone 850-617-7700

Street

Tallahassee

FL

32399

Email carlos.nathan@fdacs.gov

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Department of Agriculture and Consumer Services

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 1634

INTRODUCER: Senator Brodeur

SUBJECT: Public Records/Aquaculture/Department of Agriculture and Consumer Services

DATE: March 10, 2021

REVISED: _____

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

I. Summary:

SB 1634 exempts from public inspection and copying requirements certain aquaculture records held by the Department of Agriculture and Consumer Service. The exempt records include shellfish receiving and production records generated by shellfish processing facilities, audit records and supporting documentation required for submerged land leases, and aquaculture production records and receipts generated by aquaculture facilities. This exemption applies to aquaculture records held before, on, or after July 1, 2021.

This exemption is subject to the Open Government Sunset Review Act and shall stand repealed on October 2, 2026, unless reviewed and saved from repeal by the Legislature.

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

Because the bill creates a new public records exemption and expands other public records exemptions, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

The bill takes effect July 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

¹ FLA. CONST. art. I, s. 24(a).

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, section 11.0431, Florida Statutes (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 branch records.⁴ Lastly, chapter 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

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020)

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).

with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

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

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 89 (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).

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.

- 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

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

Aquaculture Records Held by the Department of Agriculture and Consumer Services

The Department of Agriculture and Consumer Services (department) is Florida's lead aquaculture agency. It coordinates and assists in the development of aquaculture and regulates aquafarms to protect and conserve Florida's natural resources. There are an estimated 1,500 species or varieties of fish, plants, mollusks, crustaceans, and reptiles grown in the state.²⁷

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

²² Section 119.15(6)(b)2., F.S.

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/Aquaculture> (Last visited March 10, 2021).

aquaculture producers may make the decision not to operate in this state. This makes the department's regulating and monitoring responsibilities more difficult and hinders its efforts to continue developing Florida's aquaculture industry.

The department has indicated that there is a significant precedent for the exemption of private sales and production information for agriculture and fisheries products. The aquaculture information which is proposed to become exempt under this bill was, in fact, exempt under s. 397.362(6), F.S., until 1998 when the Florida Game and Freshwater Fish Commission was reorganized, including its aquaculture regulatory authority. After the formation of the Florida Fish and Wildlife Conservation Commission (FWC), authority for the regulation of marine life was redistributed between the department, the FWC, and the Department of Environmental Protection. The public records exemption was transferred along with other statutory authority to FWC but was not specifically added for the records held by the department.²⁸

III. Effect of Proposed Changes:

Section 1 creates s. 597.0042, F.S., to provide a public records exemption for certain aquaculture records that are required by the department. The exempt records include shellfish receiving and production records generated by shellfish processing facilities, audit records and supporting documentation required for submerged land leases, and aquaculture production records and receipts generated by aquaculture facilities. This exemption applies to aquaculture records held before, on, or after July 1, 2021.

This section is subject to the Open Government Sunset Review Act and shall stand repealed on October 2, 2026, unless reviewed and saved from repeal by the Legislature.

Section 2 provides legislative intent that it is a public necessity that certain production records related to aquaculture and shellfish facilities held by the department are exempt from Florida's public records laws. Without this exemption, the department may be hindered from obtaining valuable and accurate information. With this exemption, the department can protect the aquaculture industry and its facilities while maintaining compliance with federal partners and documenting the compliance of aquaculture producers with statutory requirements.

Section 3 provides that the bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

²⁸ See Department of Agriculture and Consumer Services, Bill Analysis for SB 1634 (March 4, 2021) (on file with the Senate Committee on Agriculture).

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 enacts a new exemption for the private sales and production information for aquaculture businesses, thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemption.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect private aquaculture business information, to make facilities theft more difficult, and to enable the department to more efficiently monitor the industry. This bill exempts the following from the public records requirements:

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

The exemption 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:

Indeterminate. The private sector will be subject to the cost associated with an agency making redactions in response to a public records request.

C. Government Sector Impact:

Indeterminate. The department will incur minor costs relating to the redaction of exempt records.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 597.0042 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By Senator Brodeur

9-01429A-21

20211634__

A bill to be entitled

An act relating to public records; creating s. 597.0042, F.S.; providing a public records exemption for certain aquaculture records held by the Department of Agriculture and Consumer Services; providing that the records may be disclosed to other governmental entities under certain circumstances; providing for retroactive application of the exemption; providing for future legislative review and repeal under the Open Government Sunset Review Act; providing a statement of public necessity; providing an effective date.

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

Section 1. Section 597.0042, Florida Statutes, is created to read:

597.0042 Public records exemptions; aquaculture records.—

(1) The following records held by the department are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) Shellfish receiving and production records generated by shellfish processing facilities licensed pursuant to s. 597.020.

(b) Audit records and supporting documentation required for submerged land leases issued in accordance with chapter 253 or former chapter 370.

(c) Aquaculture production records and receipts generated by aquaculture facilities certified pursuant to s. 597.004.

(2) A record made confidential and exempt under subsection

Page 1 of 2

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(1) may be disclosed to another governmental entity in the performance of its duties and responsibilities and may be disclosed pursuant to s. 474.2165.

(3) The exemption from public records requirements under subsection (1) applies to aquaculture records held before, on, or after July 1, 2021.

(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, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that certain production records related to aquaculture and shellfish facilities held by the Department of Agriculture and Consumer Services be made confidential and exempt from disclosure under s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. In the absence of the exemption, the department may be hindered from obtaining valuable and accurate information due to the nature of the industry and its inability to maintain confidentiality of information that is required by Florida law. With this exemption, the department can protect this industry and its facilities while maintaining compliance with federal partners and documenting the compliance of aquaculture producers with statutory requirements.

Section 3. This act shall take effect July 1, 2021.

Page 2 of 2

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



The Florida Senate

Committee Agenda Request

To: Senator Darryl Ervin Rouson, Chair
Committee on Agriculture

Subject: Committee Agenda Request

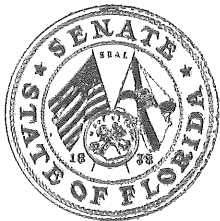
Date: March 3, 2021

I respectfully request that **Senate Bill 1634**, relating to Public Records, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.

A handwritten signature in black ink that reads "Jason Brodeur".

Senator Jason Brodeur
Florida Senate, District 9



SENATOR JASON BRODEUR
9th District

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Environment and Natural Resources, *Chair*
Health Policy, *Vice Chair*
Appropriations Subcommittee on Agriculture,
Environment, and General Government
Appropriations Subcommittee on Health and
Human Services
Children, Families, and Elder Affairs
Community Affairs

SELECT COMMITTEE:

Select Committee on Pandemic
Preparedness and Response

JOINT COMMITTEE:

Joint Administrative Procedures Committee

March 9, 2021

Honorable Darryl Ervin Rouson
212 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Rouson,

I am writing to request that Senator Loranne Ausley be allowed to present SB 1634, Public Records, in the Agriculture Committee in my place.

I appreciate your consideration in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Jason Brodeur".

Jason Brodeur

Cc: Katherine Becker, Staff Director
Mackenzie Hart, Administrative Assistant
Laureen Zaugg, Administrative Assistant

REPLY TO:

□ 311 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5009

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

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

Duplicate

THE FLORIDA SENATE
APPEARANCE RECORD

3/10/21
Meeting Date

1639
Bill Number (if applicable)

Topic Public Records / Aquaculture / DACs

Name Natalie Kato

Job Title Lobbyist

Address _____
Street

Phone 763-221-3151

City _____ State _____ Zip _____

Email Natalie@Kato.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Cedar Key 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)

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

THE FLORIDA SENATE

APPEARANCE RECORD

03/10/2021

Meeting Date

SB 1634

Bill Number (if applicable)

Topic Public Records/Aquaculture/Department of Agriculture and Consumer Services

Amendment Barcode (if applicable)

Name Carlos Nathan

Job Title Deputy Legislative Affairs Director

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FL

32399

Email carlos.nathan@fdacs.gov

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Department of Agriculture and Consumer Services

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 7058

INTRODUCER: For consideration by the Agriculture Committee

SUBJECT: OGSR/Dairy Industry Business' Trade Secrets

DATE: March 9, 2021

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Becker	Becker	AG	Submitted and Reported Favorably as a Committee Bill

I. Summary:

SPB 7058 amends s. 502.222, F.S., to remove the scheduled repeal of a public records exemption for records of a dairy business held by the Department of Agriculture and Consumer Services that 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

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:

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 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.

- 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.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.

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 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,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

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.

“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.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

The Department of Agriculture and Consumer Services (department) administers and enforces laws governing milk, milk products, and frozen desserts. Specifically, the department regulates:

- The production, processing, and distribution of milk, milk products, frozen dessert, and frozen dessert mix;
- The sanitation and sanitary practices of establishments where food and drink, including milk and milk products, are sold for consumption on the premises, except food service establishments regulated under chapters 381 and 509, including the sanitary and healthful condition of the food and drink sold by such establishments; and
- The laboratory work of testing and analyzing milk, milk products, frozen dessert, and frozen dessert mix.³⁴

Open Government Sunset Review Findings and Recommendations

In March 2021, the Professional Staff of the Senate Committee on Agriculture sent an Open Government Sunset Review Questionnaire to the department. The department reported that in the last 10 years it received two requests for the information exempt under s. 502.222, F.S. and that the information was not released as it was determined to be a trade secret and exempt from public records requirements. The department releases this exempt information to the United States Food and Drug Administration.³⁵

The department recommended that the exemption in s 502.222, F.S., should be reenacted.³⁶

III. Effect of Proposed Changes:

SPB 7058 amends s. 502.222, F.S., to remove the scheduled repeal of a public records exemption for records of a dairy business held by the Department of Agriculture and Consumer Services that would reveal a trade secret as defined in s. 812.081, F.S.

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

³³ *Id.*

³⁴ Section 502.014(1), Florida Statutes

³⁵ See *Open Government Sunset Review Questionnaire* response from the Florida Department of Agriculture and Consumer Services on file with the Senate Committee on Agriculture.

³⁶ *Id.*

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 section 502.222 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

575-02408-21

20217058pb

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 502.222, F.S., which provides an exemption from public records requirements for a dairy industry business' trade secrets 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 502.222, Florida Statutes, is amended to read:

502.222 Information relating to trade secrets confidential.—The records of the department regarding matters encompassed by this chapter are public records, subject to chapter 119, except that any information that would reveal a trade secret, as defined in s. 812.081, of a dairy industry business is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. If the department determines that any information requested by the public will reveal a trade secret, it shall, in writing, inform the person making the request of that determination. The determination is a final order as defined in s. 120.52. ~~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 1 of 1

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

Sturgeon AquaFarms (SAF)

History & Effects of Hurricane Michael (2018)





The Caspian Sea

The Caspian Sea

- World's largest body of inland water.
- Over 90% of the world's caviar production comes from Sturgeon who inhabit the Caspian Sea and its branch of rivers.
- From the 1970's-2000's due to pollution and overfishing, the population declined over 95%.
- Soviet Union and Iran have long dominated the sturgeon export market.
- To reduce and eventually stop importation of caviar from Russia and Iran, we decided to bring the Caspian Sea to Florida.

Caspian Sea Sturgeon at SAF



Beluga (*Huso huso*)



Osetra (*Ac. gueldenstaedtii*)



Siberian (*Ac. baerii*)



Sevruga (*Ac. stellatus*)

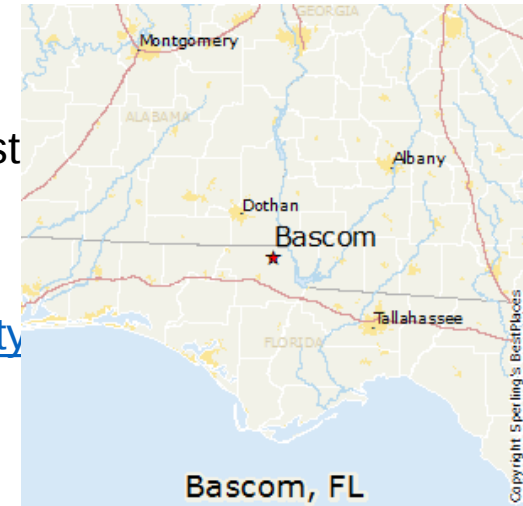


Sterlet (*Ac. ruthenus*)

Introduction to Sturgeon Aquafarms

Location of SAF

- Sturgeon AquaFarms is located in Bascom, FL
- 5 miles south of the Alabama border and 7 miles from Georgia
- 120 acres of land transformed into an aquafarm
- Site chosen due to low flood risk and no major hurricane activity in the last 100 years prior.
- SAF sits on the Floridian aquifer which provides groundwater resources
- [20% of the Bascom population was below poverty level in 2000 \(University of Florida GeoPlan Center\)](#)



SAF

- Sturgeon Aquafarms (SAF) was formed in April 2001 as a U.S based aquaculture business to breed, grow, and harvest selected species of sturgeon.
- Imported broodstock, fingerlings, and fertilized eggs from the Caspian Sea for 5 different species of sturgeon that have been successfully tested and growing at SAF.
- Our goal is to provide consumers with inexpensive sturgeon meat (fresh, canned, smoked), the highest quality sustainable caviar, and sturgeon by-products such as leather, cartilage, and scrap parts.

SAF Milestone

- 2001: SAF was founded
- 2003-2004: After 2 years of pre-planning we were able to bring all species of Caspian Sea Sturgeon to Florida on 14 trans-Atlantic flights
- 2005: U.S. Fish and Wildlife Service declares Beluga an endangered species and bans import and export of Beluga products
- 2011: First spawning of Beluga, Sevruga, and Sterlet sturgeon at SAF
- 2012-2015: Due to continued growth and limited mortality rates, SAF expanded to over 120 tanks
- 2016: SAF achieved it's most important milestone in obtaining the **only** existing U.S. permit to trade in critically endangered Beluga sturgeon meat in the United States.
- 2016: SAF had more Beluga and Sevruga sturgeon than in the Russian federation.
- 2017: U.S Fish & Wildlife expanded the permit exemption to include Beluga sturgeon caviar.
- 2018: Hurricane Michael swept through SAF.





“On June 15, 2016, the Service approved, under certain conditions, the requested exemption from threatened species permitting requirements to allow the take of beluga sturgeon from Sturgeon AquaFarms' aquacultured stock, located at its facility in Bascom, Florida, for the purpose of harvesting {beluga} and to allow for the interstate commerce and export of {beluga} the facility harvests from its aquacultured stock.”

82 Fed. Reg. 28875, July 26th, 2017

U.S. Fish and Wildlife Service

<https://www.federalregister.gov/documents/2017/06/26/2017-13232/threatened-species-exemption-from-threatened-species-permits-for-a-qualifying-beluga-sturgeon>

Sturgeon Aquafarms Goals and Contributions

Goals of SAF

- Preventing sturgeon population extinction.
- Preserving genetic diversity of the sturgeon population and stocks.
- Advancing sustainable aquaculture and sturgeon rearing technology.
- Producing high quality domestic caviar that is free of pollutants and chemical additives. Additionally, producing caviar that does not rely on Russia, Iran, or foreign influences.
- Working hand in hand with industry and academic partners to educate the world on the preservation of the sturgeon species.
- Assisting in repopulation efforts of the Caspian Sea and Sea of Azov.
- Employing surrounding community members of Bascom, FL and supporting the local economy and aquaculture industry. Expand employment base by adding processing and packaging capacity for meat to feed the population



What SAF Has Accomplished

2001:

- Sturgeon Aquafarms invested more than \$15 million over the last 17 years to develop the most technologically advanced nursery and production of Beluga in the world
- We are members of the World Sturgeon Conservation Society and Sturgeon Stewardship Council

2016:

- Attended the World Sturgeon Conservation Society Symposium in Krasnodar, Russia to share information on Sturgeon conservation and SAF's successful reproduction methods. Here, Mark Zaslavsky released several Beluga sturgeon into the wild.
- Donated 2 Beluga sturgeons to the Great Lakes Aquarium where the staff organizes tours to educate visitors on sturgeon and Beluga sturgeon
- No other entity can legally trade in Beluga Sturgeon in the United States.
- As the only company in possession of these critically endangered species in the US, we were placed in a unique position and created the additional goal of assisting in Beluga sturgeon repopulation efforts while working with commercial and academic industry partners to do so.

2017:

- SAF exported more than 80,000 Beluga baby's (fertilized eggs) free of charge to the Caspian Sea littoral states in compliance with USFWS permit exemption agreement.

2018:

- SAF exported another 80,000 Beluga baby's (fertilized eggs) free of charge to the Caspian Sea.
- Preparing to construct additional facilities for the process of smoking and canning sturgeon meat.
- **Category 5 Hurricane Michael swept through SAF on October 10, 2018**

2020:

- Published a children's book on Beluga Sturgeon in Russian to educate children in the Caspian Sea region about the current critical situation with sturgeon and Beluga in the wild.
- In the last 3 years SAF provided to the local community more than 10,000 lbs of sturgeon meat to support low income and people in need.



Hurricane Michael

Before and After

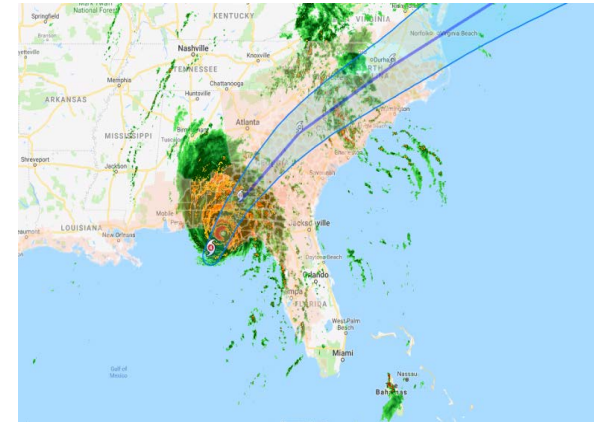
Before Hurricane Michael

- 120 freshwater tanks
- State of the art nursery and hatchery including ultrasound machines.
- 4,000 sqft processing facility including a meat and caviar production room.
- 60,000+ sturgeon fish on site
 - ~21,089 of these were Beluga sturgeon
 - 41 of these were broodstock females and males
 - 199 of these were sexually matured females weighing over 80 lbs that would have produced caviar in 2019 (DOB 2011)
- Total monthly expenditures of \$100,000 to maintain SAF.
 - ~\$25,000+ monthly expenditure on electricity
 - ~\$35,000+ on feeding the fish
 - ~\$30,000+ monthly payroll (aquafarm labor only)



Hurricane Michael, October 2018

- Third most intense Atlantic hurricane to make landfall in the contiguous US
- Strongest storm in terms of max sustained wind speed to strike the contiguous US since Hurricane Andrew in 1992
- Strongest storm on record in the Florida Panhandle
- Reached peak winds of over 155 mph
- Category 5 Hurricane whose eye swept over Bascom, FL on Oct. 10, 2018



Consequences of Hurricane Michael

- Death of Sturgeon fish including:
 - Thousands of Beluga, Sevruga, Sterlet, and Osetra sturgeon.
 - 3,770 Beluga immediately lost as a result of destruction (lost power, critical oxygen/water pipe damage, broken tanks)
 - Thousands of additional fish were lost in the subsequent months due to environmental stress and structural damages
 - As a result of the hurricane, the growth of the sturgeon that survived to sexual maturity has been delayed for 3 years.



Consequences of Hurricane Michael (continued)

Infrastructure damages includes:

- Loss of 100,000 sqft roofing and insulation
- Damaged/destroyed fish tanks
- Loss of fish tank covers
- Damaged oxygen pipes
- Repaired/replaced oxygen tank
- Filtration systems
- Generators destroyed
- All wells damaged/destroyed
- Various aquafarm equipment destroyed
- Water pipes ripped from ground
- Fallen trees
- Lakes ruined by debris

* Extensive infrastructure repairs and rebuilding continue to this date.



Consequences of Hurricane Michael (continued)

- Serious rescue and prevention measures were taken including:
 - Relocation of livestock from damaged tanks
 - Disinfection of the tanks with dead fish
 - Photos, tagging, and inventory of dead fish
 - Burning and burial of the dead fish
 - Overall, this required weeks of gruesome labor as workers dealt with handling and disposing the bodies of thousands of large fish









































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3/10/2021

Meeting Date

THE FLORIDA SENATE

APPEARANCE RECORD

TAB 4

Bill Number (if applicable)

Topic Sturgeon Aquafarms

Amendment Barcode (if applicable)

Name Mark Zavlasky

Job Title President and Founder

Address 6298 Tower Rd

Street

Phone 561)212-7799

Bascom

FL

32423

City

State

Zip

Email markz@markys.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Sturgeon Aquafarms

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)

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

THE FLORIDA SENATE

APPEARANCE RECORD

3/10/2021

Meeting Date

TAB 4

Bill Number (if applicable)

Topic Sturgeon Aquafarms

Amendment Barcode (if applicable)

Name Steven Campos

Job Title CFO

Address 6298 Tower Rd

Phone 561)212-7799

Street

Bascom

FL

32423

Email scampos@markys.com

City

State

Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Sturgeon Aquafarms

Appearing at request of Chair: ☒ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

Food Insecurity in Florida

Presentation to the Senate Committee on Agriculture

Laila Racevskis, Staff Director for Health and Human Services

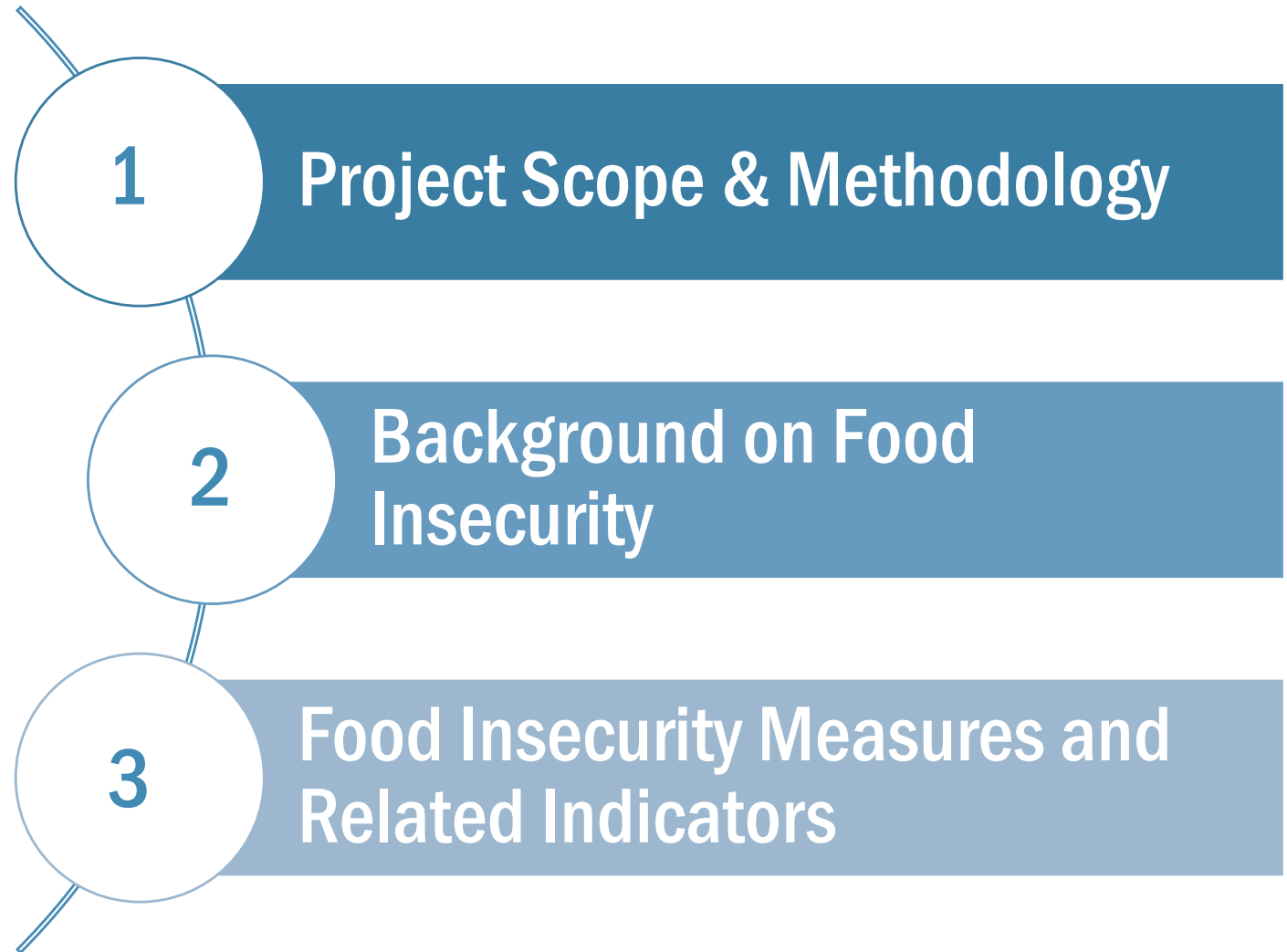


OPPAGA

Office of Program Policy Analysis and Government Accountability

MARCH 10, 2021

Overview



Project Scope

- Identify definitions and measures of food insecurity
 - Review academic literature and other studies
 - Identify and define commonly used measures and describe any limitations
- Using existing data sources, compile county-level data in Florida for
 - Measures of food insecurity
 - Other associated indicators

Methodology

Literature Review

- Populations affected
- Health impacts
- Measures of and indicators related to food insecurity
- Limitations of food insecurity measures and indicators

Food Assistance Program Review

- Background information and eligibility criteria for federal and state food assistance programs
- Available data sources related to program participation

Data Collection, Analysis, and Presentation

- Compiled county-level information on food insecurity measures and other indicators in Florida
 - Food Insecurity Measures
 - Federal Food Assistance Participation Measures
 - Economic Indicators
 - Homeless Population

Background

Food Insecurity Overview

Food Insecurity is a household-level economic and social condition of limited or uncertain access to adequate food

**U.S. Food
Insecurity**

14.9% (2011)



10.5% (2019)

**Florida Food
Insecurity**

16.2% (2014)



13.0% (2018)

Populations Affected by Food Insecurity

What populations are more likely to be food insecure?

- Females
- Younger adults
- Those from a racial/ethnic minority group
- Those who have lower socioeconomic status
- Households with children
- Those who live in poverty
- Those who are unemployed

What are the health impacts of food insecurity?

- For adults: poor nutrition, mental health problems, diabetes, hypertension, and trouble sleeping
- For Children: anemia, poor nutrition, cognitive problems, higher risk of hospitalization, poor health generally, asthma, behavioral problems, depression, and poor oral health

Food Assistance Programs

Supplemental Nutrition Assistance Program (SNAP)

- The largest federal nutrition assistance program that helps low-income people buy nutritious food

National School Lunch Program (NSLP)

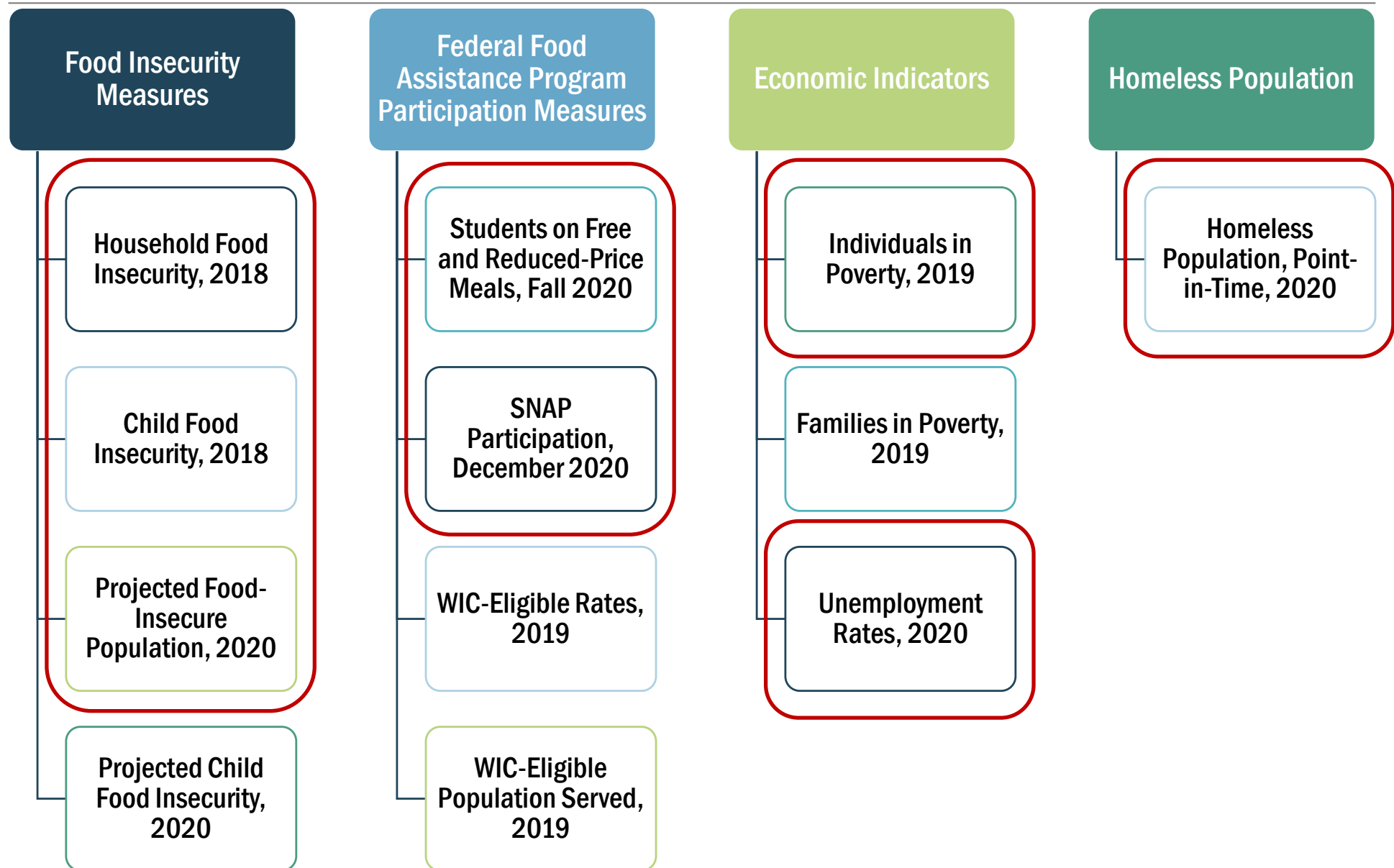
- A federally assisted meal program that provides nutritionally balanced meals each day to students in both public and private schools

Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)

- Federal program that provides nutritious foods intended to supplement participants' diets, as well as health-based resources such as health screenings and nutrition counseling for eligible women and children

Food Insecurity Measures and Related Indicators

Food Insecurity Measures and Related Indicators

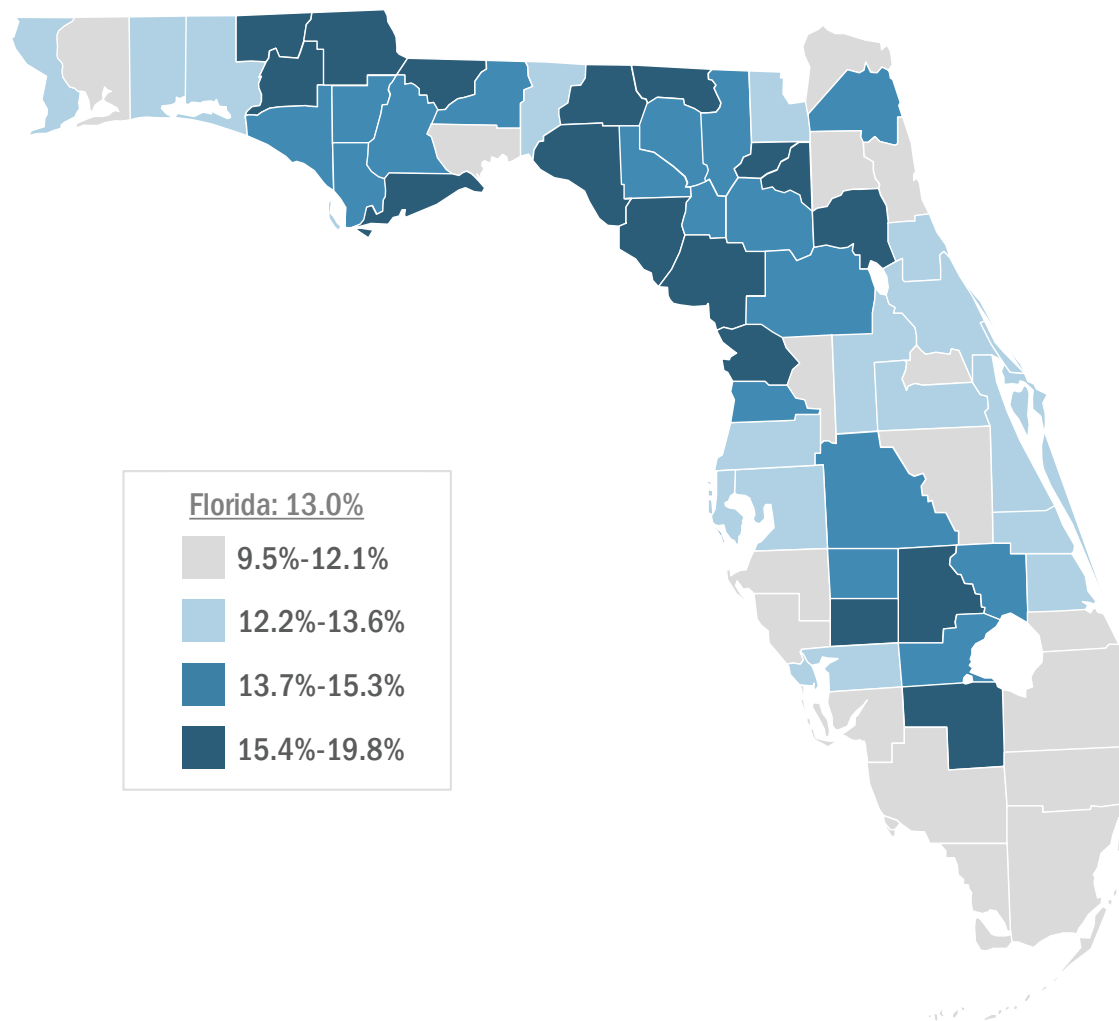


Food Insecurity Measures

- Standard measure is based on questions from the U.S. Census Current Population Survey Food Security Supplement (CPS-FSS)
 - Includes household survey questions about difficulty meeting food needs at any time during in the past 12 months
 - Available at the state level but unavailable at the county level
- County level food insecurity data are generated by Feeding America, the largest national domestic hunger-relief organization
 - County-level estimates based on statistical models using results from the CPS-FSS, combined with information from American Community Surveys
 - Measures presented include county-level household food insecurity rates, child food insecurity rates, and projected 2020 food insecurity estimates

Household Food Insecurity, 2018

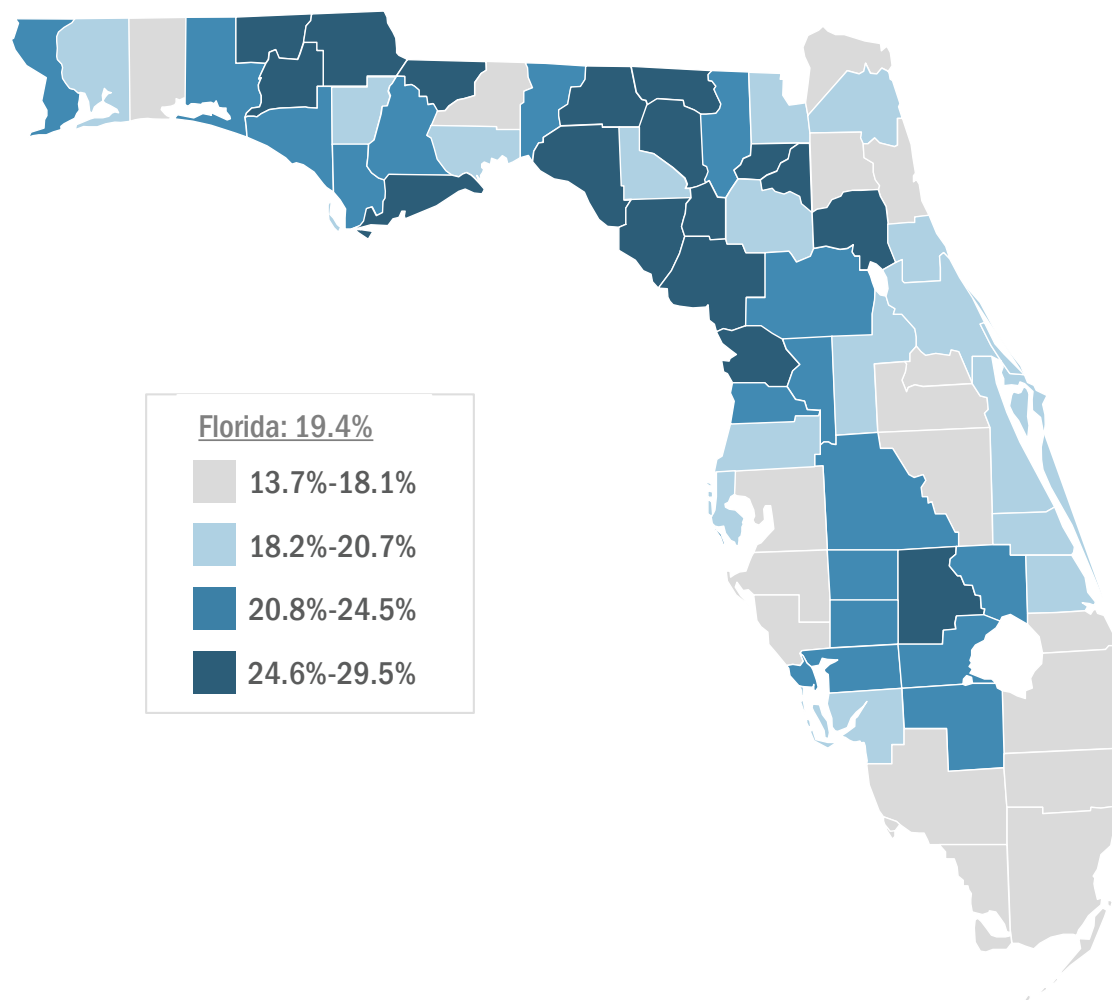
In 2018, county-level household estimated food insecurity in Florida ranged from 9.5% in St. Johns County to 19.8% in Hamilton County



Source: Florida Department of Health FLHealthCHARTS Data Viewer. <http://www.flhealthcharts.com/charts/OtherIndicators/NonVitalIndRateOnlyDataViewer.aspx?cid=9910>

Child Food Insecurity, 2018

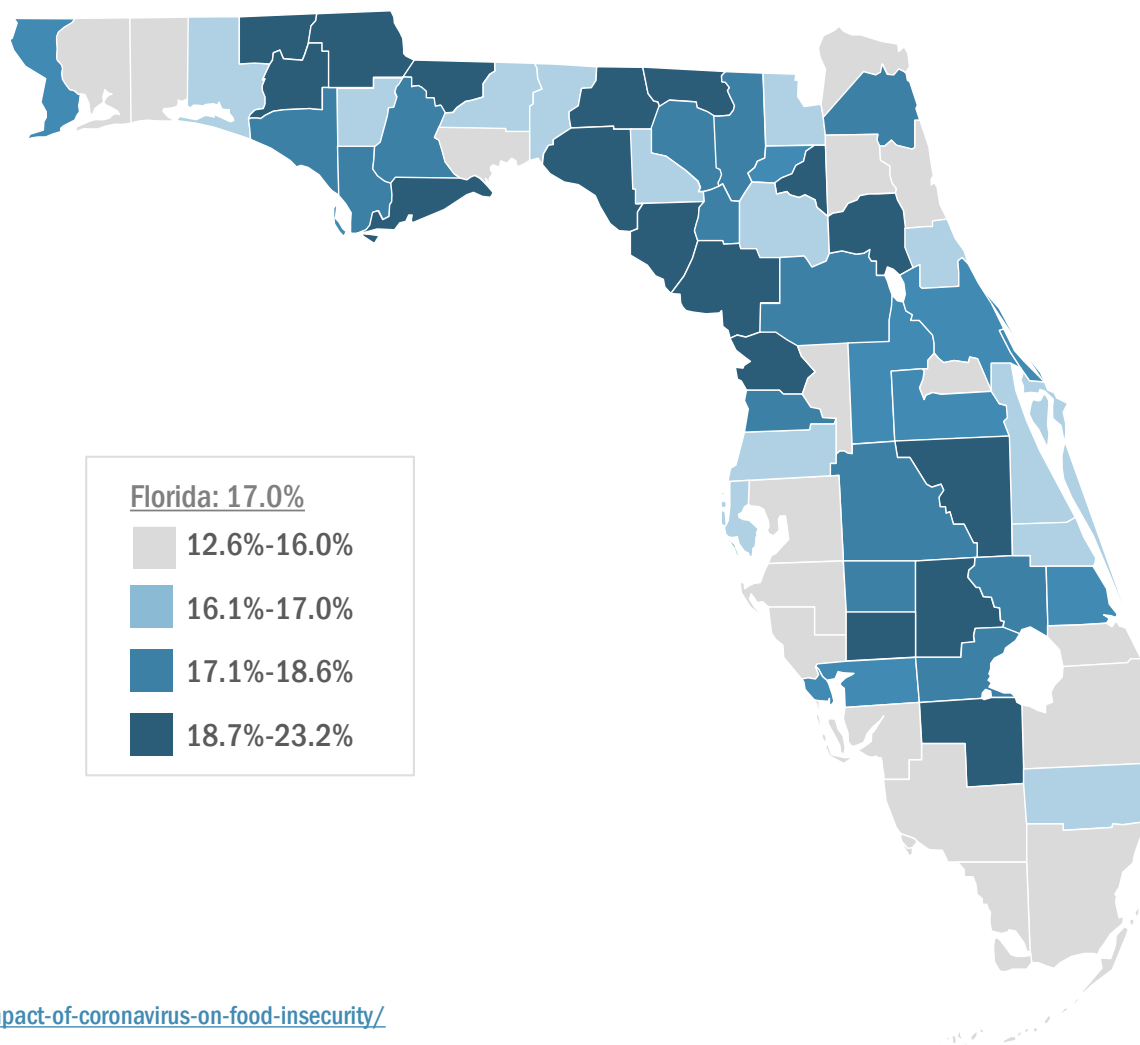
Child food insecurity in Florida in 2018 ranged from 13.7% in St. Johns County to 29.5% in Madison County



Source: Florida Department of Health FLHealthCHARTS Data Viewer. <http://www.flhealthcharts.com/charts/OtherIndicators/NonVitalIndRateOnlyDataViewer.aspx?cid=9911>

Projected Food Insecure Population, 2020

Food insecurity rates for 2020 are projected to increase in Florida and nationally, largely resulting from the COVID-19 pandemic



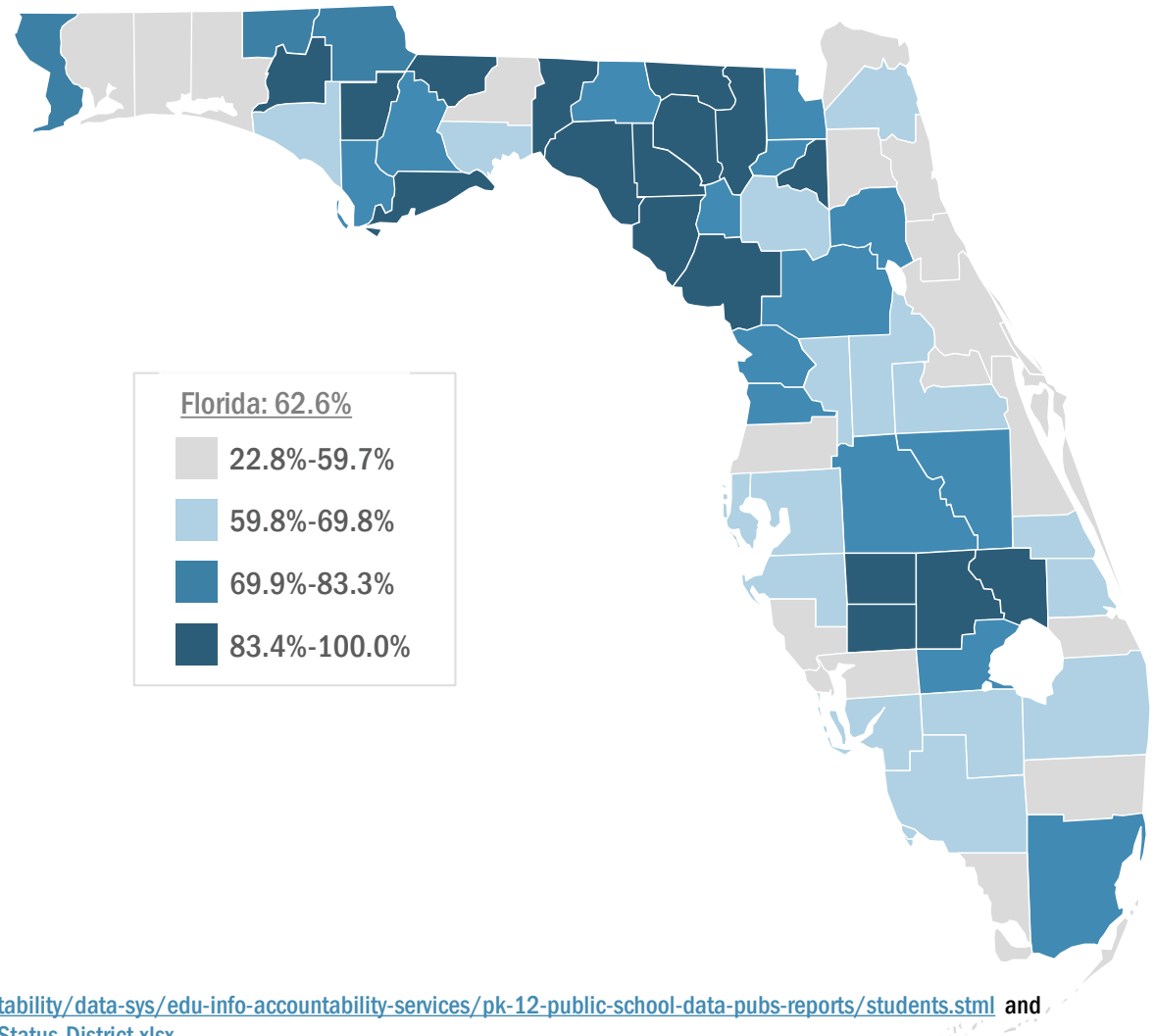
Source: Feeding America. <https://www.feedingamericaaction.org/the-impact-of-coronavirus-on-food-insecurity/>

Federal Food Assistance Program Participation Measures

- Participation in food assistance programs helps alleviate food insecurity, but participation rates are not good measures of food insecurity; rather, they are indicative of underlying conditions that contribute to food insecurity
- Populations on food assistance programs could be more vulnerable to food insecurity without these programs
- In our research, we present information on recent statewide trends in SNAP participation and county-level participation in SNAP, students on Free and Reduced-Price Meals, and WIC-eligible population and WIC population served

Students on Free and Reduced-Price Meals, Fall 2020*

Students on Free and Reduced-Price Meals in Fall 2020 ranged from a low of 22.8% in St. Johns County to a high of 100% in Gadsden and Jefferson Counties

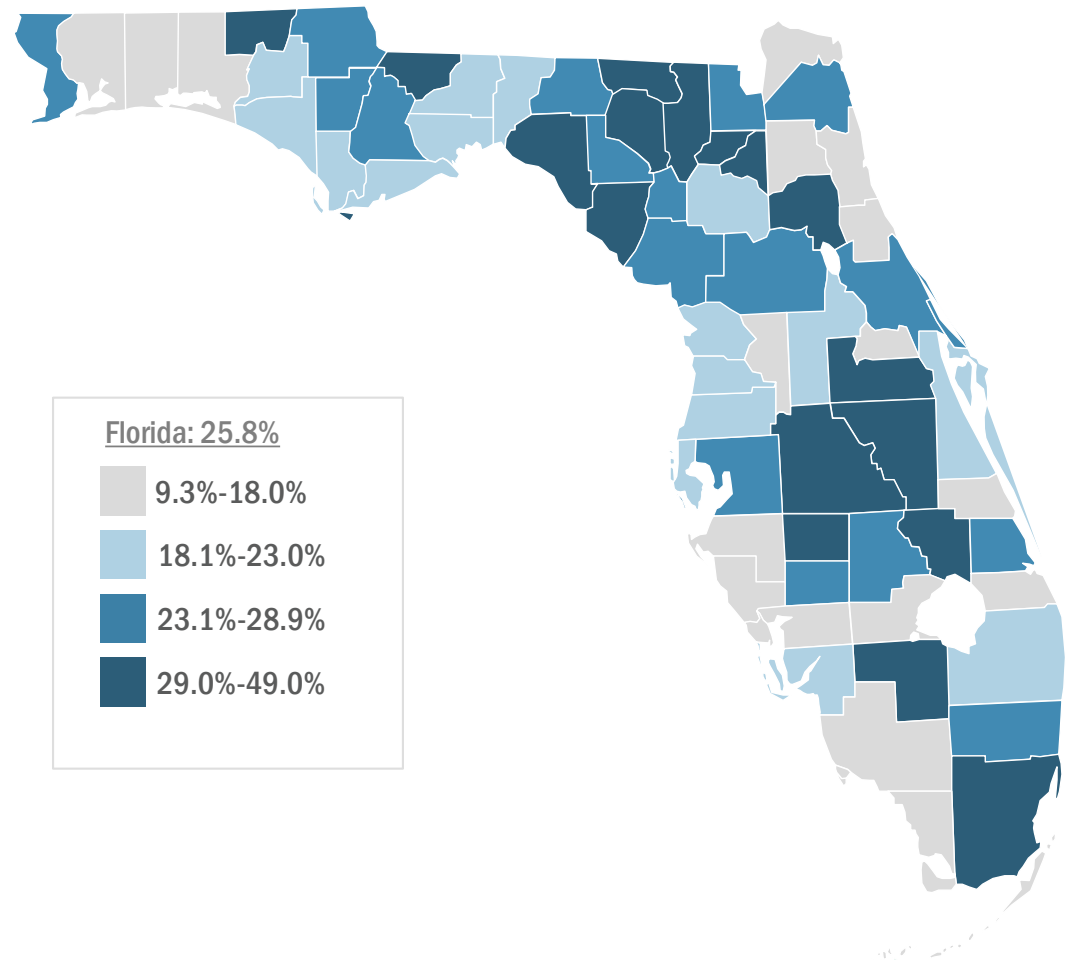


* With funding multiplier applied.

Source: Florida Department of Education. <http://www.fldoe.org/accountability/data-sys/edu-info-accountability-services/pk-12-public-school-data-pubs-reports/students.html> and <http://www.fldoe.org/core/fileparse.php/7584/urlt/2021FS2-Lunch-Status-District.xlsx>

SNAP Participation, December 2020

Household SNAP participation rate in Florida ranged from 9.3% in Sumter County to 49.0% in Miami-Dade County in December 2020



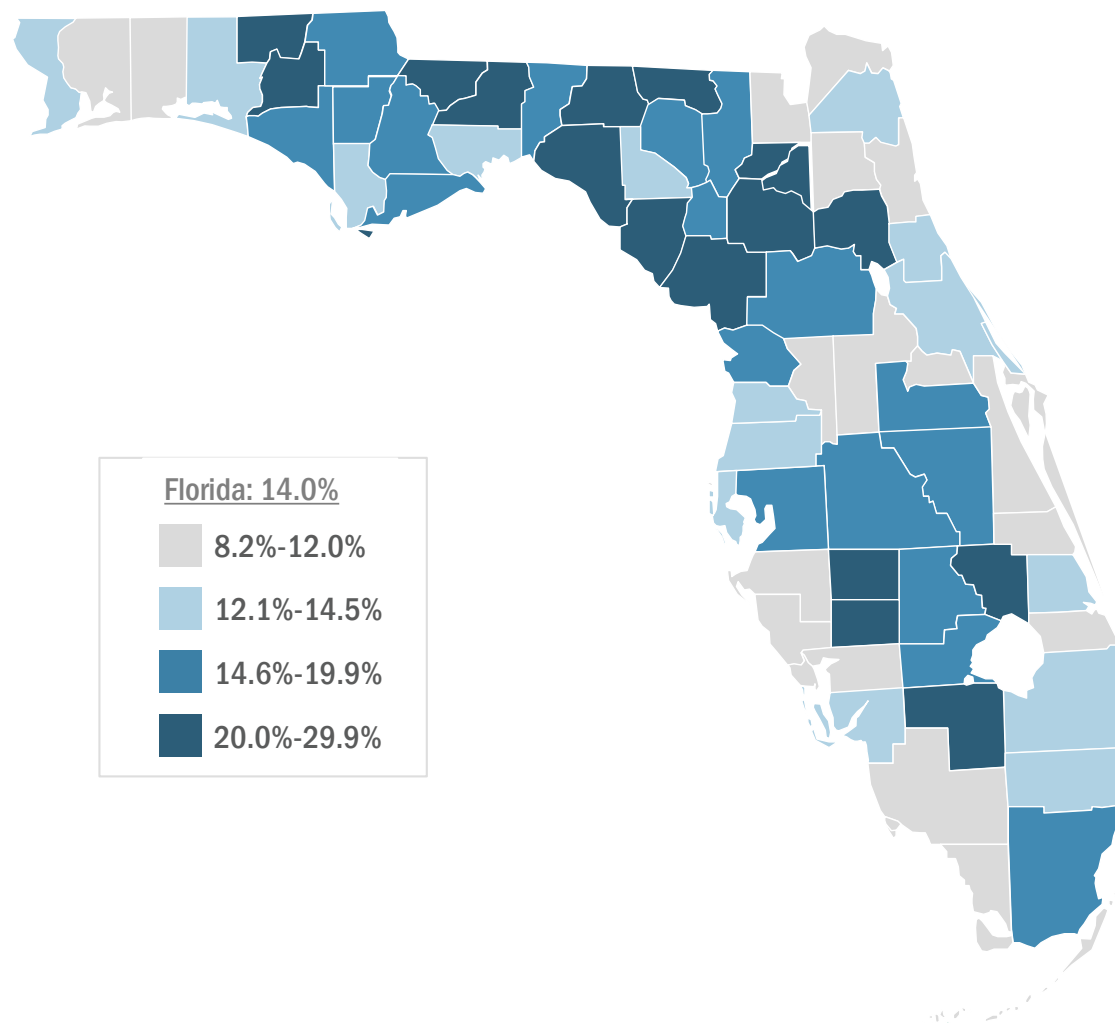
Source: Florida Department of Children and Families. <https://www.myflfamilies.com/service-programs/access/StandardDataReports.asp>

Economic Indicators

- Individuals and families who are in poverty and those who are unemployed are more likely to be food insecure
- Individuals who have incomes above the federal poverty level may also be food insecure
 - A study that examined trends in food insecurity from 2011 to 2017 found that 58% of all food-insecure households reported incomes above the federal poverty level
- In our research, we present county-level data on individuals and families in poverty and unemployment rates

Estimated Number of Individuals in Poverty, 2019

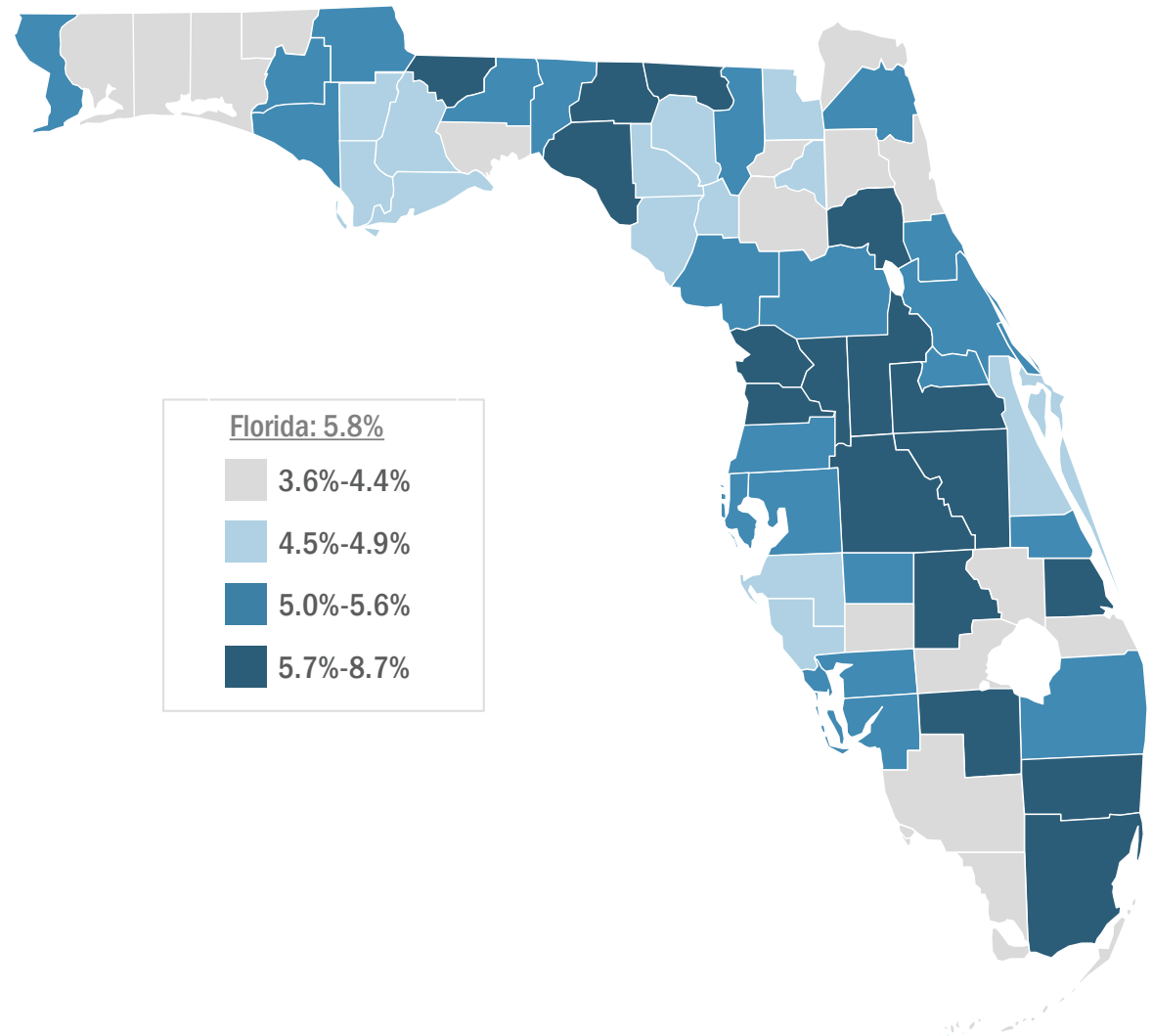
The percentage of individuals in poverty in Florida in 2019 ranged from 8.2% in St. Johns and Sumter Counties to 29.9% in Hamilton County



Source: Florida Department of Health FLHealthCHARTS Data Viewer. <http://www.flhealthcharts.com/charts/OtherIndicators/NonVitalIndDataViewer.aspx?cid=0294>

Unemployment Rates, 2020*

Unemployment rates in December 2020 ranged from 3.6% in St. Johns and Wakulla Counties to 8.7% in Osceola County



***Not Seasonally Adjusted**
Source: U.S. Bureau of Labor Statistics.

Homeless Population, Point-in-Time, 2020

- The homeless population is particularly vulnerable to food insecurity but may be underrepresented in other measures of food insecurity and related indicators
- Continuum of Care geographic areas count the number of people experiencing homelessness in their geographic area on a given day
- In our research, we present homeless population point-in-time counts, which ranged from 2 in Washington County to 3,472 in Miami-Dade County in 2020

Summary of Food Insecurity Measures and Related Indicators

Food Insecurity Measures

- U.S. Census CPS Household survey questions collect data on food insecurity; these are unavailable at the county level.
- Feeding America generates county-level food insecurity estimates.

Federal Food Assistance Participation Measures

- Participation in food assistance programs helps alleviate food insecurity, but participation rates are not good measures of food insecurity. They are indicative of underlying conditions that contribute to food insecurity.
- Populations on food assistance programs could be more vulnerable to food insecurity without these programs.

Economic Indicators

- These are predictors of food insecurity but are not direct measures of food insecurity.
- These indicators provide information on populations that may be vulnerable to food insecurity.

Homeless Population

- The homeless population is particularly vulnerable to food insecurity but is not captured in other measures of food insecurity and related indicators.

Questions?

Contact Information

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Staff Director

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FLORIDA LEGISLATURE OFFICE OF PROGRAM POLICY ANALYSIS AND
GOVERNMENT ACCOUNTABILITY

OPPAGA supports the Florida Legislature by providing data, evaluative research, and objective analyses that assist legislative budget and policy deliberations.

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

THE FLORIDA SENATE

APPEARANCE RECORD

3/10/21

Meeting Date

✓ TAB 5
Bill Number (if applicable)

Topic Food Insecurity in Florida

Amendment Barcode (if applicable)

Name Laila Racevskis

Job Title Staff Director

Address 110 Madison

Phone 717-0524

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Tallahassee

FL

32399

Email racevskis.laila@oppaga.fl.gov

City

State

Zip

Speaking: ☐ For ☐ Against ☒ Information

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

Representing OPPAGA

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)

CourtSmart Tag Report

Room: SB 110

Case No.:

Type:

Caption: Senate Agriculture Committee Judge:

Started: 3/10/2021 10:31:48 AM

Ends: 3/10/2021 11:39:32 AM

Length: 01:07:45

10:31:46 AM Call to Order
10:31:54 AM Roll Call
10:32:13 AM Quorum present
10:32:40 AM Chair comments
10:33:54 AM Take up Tab 1 - Public Records/DACS Inspector by Senator Cruz
10:34:12 AM Senator Cruz for explanation
10:35:02 AM Take up amendment barcode: 434696 by Senator Cruz
10:35:19 AM Senator Cruz for explanation
10:35:30 AM Questions?
10:35:36 AM Appearance cards?
10:35:58 AM Debate?
10:36:08 AM Senator Cruz to close
10:36:23 AM Amendment is adopted
10:36:29 AM Back on the bill as amended
10:36:44 AM Carlos Nathan waives in support
10:36:59 AM Debate?
10:37:07 AM Senator Cruz waives close
10:37:12 AM Roll call on SB 1594
10:37:27 AM CS/SB 1594 is reported favorably
10:37:49 AM Senator Thurston for a question
10:38:18 AM Senator Cruz for clarification
10:38:24 AM Take up Tab 2 - SB 1634 Public Records/DACS/Aquaculture
10:38:38 AM Senator Ausley will present the bill for Senator Brodeur
10:39:22 AM Senator Ausley for explanation
10:39:51 AM Questions
10:39:55 AM Appearance Cards?
10:40:02 AM Carlos Nathan waives in support
10:40:11 AM Natalie Kato waives in support
10:40:41 AM Debate?
10:40:47 AM Senator Boyd for comments
10:41:32 AM Senator Ausley waives close
10:41:39 AM Roll Call on SB 1634
10:41:46 AM SB 1634 is reported favorably
10:42:10 AM Vice Chair Bradley now has the Chair
10:42:18 AM Take up Tab 3 - PCB 7058 -OGSR/Dairy Industry by AG Committee
10:42:28 AM Senator Rouson to explain the PCB
10:42:47 AM Questions?
10:42:52 AM Appearance Cards?
10:43:07 AM Debate?
10:43:13 AM Senator Rouson moves to submit the committee bill
10:43:21 AM Roll call
10:43:30 AM SPB 7058 is reported favorably as a committee bill
10:43:52 AM Senator Rouson now has the Chair
10:43:59 AM Take up Tab 4 - Aquaculture Farms Presentation
10:45:07 AM Mark Zavlasky President and Founder of Sturgeon Farms in Bascom, FL
10:45:37 AM Explanation and presentation and video of the farm
10:50:46 AM Hurricane Michael effects on farm
10:52:33 AM Conservation of the Beluga sturgeon
10:56:01 AM Damage by Hurricane Michael was extensive
10:57:51 AM Closing comments on video
10:59:02 AM Mr. Steven Campos, CFO for comments
11:04:53 AM Chair Rouson for a question

11:05:02 AM Mr. Zavlasky for a response
11:05:30 AM Chair for a series of questions
11:07:52 AM Chair for general comments
11:08:34 AM Senator Perry for questions
11:11:02 AM Mr. Zavlasky for response
11:13:12 AM Chair Rouson for final comments on sturgeon farm
11:13:50 AM Senator Thurston for comments on sturgeon presentation
11:15:03 AM Take up Tab 5 - Presentation on food insecurities from OPPAGA
11:15:23 AM Chair comments
11:15:44 AM Laila Racevskis to present
11:16:48 AM Presentation of the study
11:17:00 AM Identification of project scope
11:17:17 AM Methodology
11:18:18 AM Background
11:19:16 AM Populations affected by food insecurity
11:20:17 AM Food Assistance Programs
11:21:54 AM Insecurity Measures and Related Indicators
11:24:31 AM Chair Rouson for a question
11:24:50 AM Mr. Racevskis for response
11:26:09 AM Federal Food Assistance Program Participation Measures
11:27:33 AM Map of Students receiving free or reduced price meals
11:27:51 AM SNAP Participation
11:28:04 AM Economic Indicators
11:29:40 AM Homeless Population
11:31:02 AM Summary of Research
11:31:24 AM Questions?
11:31:29 AM Senator Ausley for comments
11:32:08 AM Chair Rouson for a series of questions
11:32:23 AM Ms. Racevskis for response
11:36:42 AM Senator Perry for questions
11:37:29 AM Ms. Racevskis for response
11:38:43 AM Any other matters?
11:38:49 AM Senator Bradley moves we adjourn
11:39:16 AM Seeing no objection, we are adjourned