

Every person has the right to inspect or copy any public records made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Article I, s. 24(c), Florida Constitution, does, however, permit the Legislature to provide by general law for the exemption of records from the requirements of s. 24. The general law must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish its purpose.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07(1)(a), F.S., provides that:

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at a reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, provides that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes, and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or
3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

Reports and Dissemination of Information Under the Florida Food Safety Act

Section 500.148, F.S., authorizes the department to publish reports and disseminate information regarding food safety. Currently, public records for information under s. 500.148, F.S. may be obtained by anyone who requests them. The department reports that the result of this policy is information vital to protecting the health and safety of the public, which is confidential under federal regulations and statutes, is not shared by federal sources with the department, as demonstrated below:

- Traceback situations – In the investigation at the federal level of food borne outbreaks, the United States Food and Drug Administration (FDA) conducts a “traceback.” The FDA seeks to determine what products ill people had in common and where the product originated. Information obtained during the investigation is confidential under federal regulations. The FDA will not share this information with the department even if a Florida food product is suspected because the information would have to be disclosed under Florida’s Public Records Law. Because of this, the department is hampered in its efforts to assist the FDA and to assist the food industry in Florida.
- Recall situations – The FDA and the United States Department of Agriculture (USDA) are responsible for the regulation of certain products, such as meat and poultry. When recalls are made due to contamination, the FDA and the USDA will not share details concerning which businesses have the type of products in inventory because that information is considered confidential business information under federal regulations and there is the concern that it would have to be disclosed under Florida’s Public Records Law. Because only general information is provided to the department, it has to resort to an inefficient, statewide search for these products.
- Rulemaking process – There is a point in the federal rule making process where internal deliberations are no longer shared with the public. At that point, the department is no longer able to participate in the process because of the concern that communications or documents shared with the department would have to be disclosed under Florida’s Public Records Law. Participation would benefit the Food Safety program and other regulated industries.
- HACCP plan reviews – HACCP plans are required for certain food establishments. This is a risk based analysis of a business’s safety and sanitation control measures. The department reviews the plans on an annual basis. These reviews must take place at the site as the plans contain confidential business information and the businesses will not allow copies to be made. Follow-up and report completion are complicated and inefficient because that information cannot be brought back to the office because of the concern that such documents would have to be disclosed under Florida’s Public Records Law.

The ability of the department to obtain information from federal agencies, which is not presently provided because of public disclosure concerns, would enable the department to perform certain functions more efficiently which could reduce the potential for the spread of food-borne illnesses.

III. Effect of Proposed Changes:

Section 1. Amends s. 500.148, F.S., to exempt the following information obtained by the department from public records requirements:

- \$ Records, documents, or information related to food-borne illness investigations;
- \$ Records, documents, or information related to HACCP programs as defined in s. 580.03(12), F.S., for animal feeds, or similar HACCP records required for processing of food;
- \$ Trade secrets and commercial or financial information submitted to the FDA and deemed exempt from public disclosure under 21 C.F.R. part 20.61;
- \$ Interagency or intraagency memoranda or letters of the FDA deemed exempt from public disclosure under 21 C.F.R. part 20.62;
- \$ Specified communications between FDA and state and local government officials deemed exempt from public disclosure under 21 C.F.R. part 20.88;
- \$ Any records, documents, information, trade secrets, commercial or financial information, memoranda, letters, or communications of the types described in the foregoing subparagraphs deemed exempt from public disclosure under 5 U.S.C. 552(b).

As provided for in the Open Government Sunset Review Act of 1995, this exemption would stand repealed October 2, 2007, unless reviewed and saved from repeal through reenactment.

Section 2. Provides a statement of the public necessity for the exemption.

Section 3. Provides that this bill shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
