

STORAGE NAME: h0731.sgc.doc
DATE: February 5, 2002

**HOUSE OF REPRESENTATIVES
SMARTER GOVERNMENT COUNCIL
ANALYSIS**

BILL #: HB 731 (PCB SEC 02-11)
RELATING TO: Public Records/Aerial Application of Pesticides, Fertilizer, or Seed
SPONSOR(S): Select Committee on Security and Representative(s) Machek and others
TIED BILL(S): HB 809

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) SECURITY, SELECT YEAS 8 NAYS 0
- (2) STATE ADMINISTRATION YEAS 3 NAYS 2
- (3) SMARTER GOVERNMENT COUNCIL
- (4)
- (5)

I. SUMMARY:

This bill creates a public records exemption for the following information obtained by the Department of Agriculture and Consumer Services:

- Name, address, and restricted-use license number of any person engaged in the aerial application of pesticides, fertilizers, or seed;
- The Federal Aviation Administration aircraft number of any aircraft used for the aerial application of pesticides, fertilizers, or seed; and
- The name and address of any person or entity that sells, leases, purchases, rents, or transfers any aircraft used for the aerial application of pesticides, fertilizers, or seed.

This exemption repeals October 2, 2006, unless reviewed and saved from repeal through reenactment. The Open Government Sunset Review Act of 1995 provides for the review of exemptions five years after the enactment; accordingly this exemption should repeal on October 2, 2007, not October 2, 2006.

This bill is contingent upon the passage of other legislation, which appears to be HB 809 that authorizes the department to regulate the operation of aerial applicators. This link is not needed. The public records exemption is not contingent upon the passage of any of the provisions in HB 809.

See "Constitutional Issues" section and "Other Comments" section for concerns.

This bill does not appear to have a fiscal impact on state or local government.

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Public Records Law

Florida Constitution

Article I, s. 24(a), Florida Constitution, expresses Florida's public policy regarding access to government records as follows:

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 (public necessity statement) and must be no broader than necessary to accomplish its purpose.

Florida Statutes

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

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.

Open Government Sunset Review Act of 1995

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.

Regulation of Aerial Applicators

The Department of Agriculture and Consumer Services regulates the use of pesticides pursuant to chapter 487, F.S.; the use of agricultural fertilizers pursuant to chapter 576, F.S.; and the use of seed pursuant to chapter 578, F.S. The department's general authority is found in chapter 570, F.S. Generally, the department has authority to adopt rules to administer the provisions found in those chapters. For example, with regard to pesticides, the department is authorized by rule to:

Establish procedures for the taking and handling of samples and establish tolerances and deficiencies where not specifically provided for in this chapter; assess penalties; and prohibit the sale or use of pesticides or devices shown to be detrimental to human beings, the environment, or agriculture or to be otherwise of questionable value.”¹

Similar authority is available to the department to administer regulations controlling the use of agricultural fertilizers and the application of seed.

However, within these chapters the department is not authorized to regulate the aerial applicators used to apply these products.

¹ Section 487.051(1)(b), F.S.

Definition of Pesticides

The Florida Statutes defines "pesticide" as follows:

Pesticide means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, nematodes, fungi, weeds, or other forms of plant or animal life or viruses, except viruses, bacteria, or fungi on or in living humans or other animals, which the department by rule declares to be a pest, and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant²

The definition of pesticide covers products such as insecticides, herbicides, fungicides, and miticides.³

C. EFFECT OF PROPOSED CHANGES:

This bill creates a public records exemption for the following information obtained by the Department of Agriculture and Consumer Services:

- Name, address, and restricted-use license number of any person engaged in the aerial application of pesticides, fertilizers, or seed;
- The Federal Aviation Administration aircraft number of any aircraft used for the aerial application of pesticides, fertilizers, or seed; and
- The name and address of any person or entity that sells, leases, purchases, rents, or transfers any aircraft used for the aerial application of pesticides, fertilizers, or seed.

This bill provides a statement of the public necessity for the exemption. This statement asserts, in part, that in light of the September 11, 2001, terrorist attacks and the subsequent threat of anthrax that this exemption is necessary.

As a newly created exemption, this exemption repeals October 2, 2006, unless reviewed and saved from repeal through reenactment. The Open Government Sunset Review Act of 1995 provides for the review of exemptions five years after the enactment; accordingly this exemption should repeal on October 2, 2007, not October 2, 2006.

This bill is contingent upon the passage of other legislation, which appears to be HB 809 that authorizes the department to regulate the operation of aerial applicators. This link is not needed. The public records exemption is not contingent upon the passage of any of the provisions in HB 809.

D. SECTION-BY-SECTION ANALYSIS:

Please see "EFFECT OF PROPOSED CHANGES."

² Section 487.021(49), F.S.

³ Phone conversation, Staff Director, Committee on Agriculture & Consumer Affairs, 1/28/02.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

This bill may raise a constitutional concern. It creates a public records exemption for information otherwise readily available.⁴ More particularly, the bill makes the Federal Aviation Administration aircraft number of any aircraft used for the aerial application of pesticides, fertilizers, or seed exempt from public disclosure. Yet, such number can be clearly viewed from the ground. Also, some of the other information can be found in the phone book, in advertisements, and over the Internet.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

Legislative History

This issue originated in House Bill 147-B. The bill was introduced, but not referred to committee before the expiration of 2001 Special Session B.

Senate Companion

The Senate Companion to this bill is SB 970. SB 970 does not provide an exemption for the name or address of any person engaged in the aerial application of pesticides, fertilizers, or seed, nor does it provide an exemption for the Federal Aviation Administration aircraft registration number. SB 970 takes effect upon becoming a law and is not contingent on the passage of other legislation. The exemption created in SB 970 repeals October 2, 2007.

Proponents/Opponents

Proponents of this bill assert that this exemption is necessary for state security; that the Department of Agriculture and Consumer Services is the only source for a complete list of this kind of aerial application information; and that the information kept by the department could be used by terrorists to organize a chemical or biological attack.⁵ Opponents assert that this bill is unnecessary. The information exempted by the bill is available from other sources. More particularly, the Federal Aviation Administration aircraft registration number is painted on the plane. Also, the bill limits a person's ability to monitor governmental action as well as the investigative abilities of private groups and the media.⁶

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

⁴ One of the considerations set forth in s. 119.15, F.S., with regard to an exemption is: "Can the information contained in the records be readily obtained by alternative means?"

⁵ Phone conversation, Legislative Affairs Director, Department of Agriculture and Consumer Services, 1/16/02.; testimony of Ben Wilcox, First Amendment Foundation, 1/30/02.

⁶ Phone conversation, President of the First Amendment Foundation, 1/18/02 and 1/22/02.

STORAGE NAME: h0731.sgc.doc

DATE: February 5, 2002

PAGE: 7

VII. SIGNATURES:

COMMITTEE ON SECURITY, SELECT:

Prepared by:

David M. Greenbaum

Staff Director:

Thomas Randle/Richard Hixson

AS REVISED BY THE COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

Josh White

Staff Director:

J. Marleen Ahearn, Ph.D., J.D.

AS FURTHER REVISED BY THE SMARTER GOVERNMENT COUNCIL:

Prepared by:

Josh White

Staff Director:

Don Rubottom