

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 970
SPONSOR: Governmental Oversight & Productivity Committee and Senator Peaden
SUBJECT: Public Records/Aerial Application of Pesticides, Fertilizer, or Seed
DATE: February 19, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Akhavein</u>	<u>Poole</u>	<u>AG</u>	<u>Fav/1 amendment</u>
2.	<u>Rhea</u>	<u>Wilson</u>	<u>GO</u>	<u>Favorable/CS</u>
3.	_____	_____	<u>RC</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This committee substitute exempts the following records held by the Department of Agriculture and Consumer Services from public access requirements:

- \$ The restricted-use license number of any person engaged in the aerial application of pesticides, fertilizers, or seed; and
- \$ The flight plan of any person flying aircraft for the aerial application of pesticides, fertilizers, or seed for 24-hours after the flight.

The public necessity for the exemption is that this information could be used by a terrorist in the planning and commission of an act of terrorism. As provided for in the Open Government Sunset Review Act of 1995, this exemption would stand repealed October 2, 2007, unless reviewed and saved from repeal through reenactment.

This committee substitute amends section 119.07 of the Florida Statutes.

II. Present Situation:

Public Records Law - 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 public records requirements. 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.¹ 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.

¹ While s. 119.15, F.S., contains requirements for the creation of exemptions, the requirements that are statutory requirements are not binding on future sessions of the Legislature.

Regulation of Aerial Applicators - Chapter 388, F.S., authorizes the Department of Agriculture and Consumer Services (the “department”) to control arthropods, such as mosquitoes to protect human health, promote the economic development of the state, and facilitate the enjoyment of its natural attractions by reducing the number of pestiferous and disease-carrying arthropods. Chapter 487, F.S., authorizes the department to regulate the distribution, sale, and use of pesticides and to protect people and the environment from the adverse effects of pesticides. The department is authorized to regulate the sale and use of agricultural fertilizers under ch. 576, F.S., and the use of seed under ch. 578, F.S. Records made for compliance with requirements under chs. 487, 570, 576, or 578, F.S., are public records.

The department’s general authority is found in ch. 570, F.S. Generally, the department has authority to adopt rules to administer the provisions found in those chapters. The department, however, is not authorized to regulate the aerial applicators used to apply the products.

III. **Effect of Proposed Changes:**

Section 1. This committee substitute exempts the following records held by the Department of Agriculture and Consumer Services from public access requirements:

- \$ The restricted-use license number of any person engaged in the aerial application of pesticides, fertilizers, or seed; and
- \$ The flight plan of any person flying aircraft for the aerial application of pesticides, fertilizers, or seed for 24-hours after the flight.

The public necessity for the exemption is that this information could be used by a terrorist in the planning and commission of an act of terrorism. 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.

IV. **Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Article I, s. 24(c) of the State Constitution, authorizes the Legislature to create exemptions to public records and meetings requirements

. . . provided that such law shall state with specificity the public necessity justifying the exemption and shall be no broader than necessary to accomplish the stated purpose of the law.

The bill is narrowly tailored to meet the constitutional requirement that it be no broader than necessary to accomplish its purpose.

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.
