

**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 Governmental Operations Committee

BILL: CS/SB 1630

INTRODUCER: Agriculture Committee and Agriculture Committee

SUBJECT: Review Under the Open Government Sunset Review Act

DATE: March 13, 2008      REVISED: \_\_\_\_\_

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

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

This bill is the result of an Open Government Sunset Review performed by the Agriculture Committee. Section 500.148, F.S., exempts from public disclosure certain information that is deemed confidential under federal law that is provided to the department during a joint investigation concerning food safety or food-borne illness, as a requirement for conducting a federal-state contract or partnership activity, or for regulatory review. The purpose of the exemption is to permit federal and state agencies to share information and fully participate together to achieve timely resolutions of causal or contributing factors to outbreaks and, thereby to achieve a safer, more secure food supply for the consuming public. The exemption will sunset on October 2, 2008, unless saved from repeal through reenactment by the Legislature.

Based upon the review, the bill deletes the provision that repeals the exemption. Further, the bill reorganizes the exemption for clarity.

This committee substitute substantially amends s. 500.148, Florida Statutes.

## II. Present Situation:

### Florida Public Records Law

Florida has a long history of providing public access to government records. The Legislature enacted the first public records law in 1892.<sup>1</sup> In 1992, Floridians adopted an amendment to the State Constitution that created Article I, s. 24 and raised the statutory right of access to public records to a constitutional level.

The Public Records Act<sup>2</sup> specifies conditions under which public access must be provided to records of the executive branch and other agencies. Unless specifically exempted, all agency<sup>3</sup> records are available for public inspection. Section 119.011(11), F.S., defines *public record* very broadly to include “all documents, ... tapes, photographs, films, sounds recordings, ... made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Unless made exempt, all such materials are open for public inspection.<sup>4</sup>

Only the Legislature is authorized to create exemptions to open government requirements. Exemptions must be created by general law, and such law must specifically state the public necessity justifying the exemption.<sup>5</sup> Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.<sup>6</sup> A bill enacting an exemption or substantially amending an existing exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.<sup>7</sup>

### Open Government Sunset Review Act

Section 119.15, F.S., the Open Government Sunset Review Act, provides for the systematic review of exemptions from the Public Records Act on a five-year cycle ending October 2 of the fifth year following the enactment or substantial amendment of an exemption.<sup>8</sup> Each year, by June 1, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.<sup>9</sup>

Under the Open Government Sunset Review Act, an exemption may be created, revised, or maintained only if it serves an identifiable public purpose and it is no broader than necessary to meet the public purpose it serves.<sup>10</sup> An identifiable public purpose is served if the exemption meets one of three specified purposes and the Legislature finds that the purpose is sufficiently

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<sup>1</sup> Sections 1390, 1391, F.S. (Rev. 1892).

<sup>2</sup> Chapter 119, F.S.

<sup>3</sup> Section 119.011(2), F.S., defines *agency* as “any state, county, ... or municipal officer, department, ... or other separate unit of government created or established by law ... and any other public or private agency, person, ... acting on behalf of any public agency.”

<sup>4</sup> *Tribune Co. v. Cannella*, 458 So. 2d 1075, 1077 (Fla. 1984).

<sup>5</sup> Art. 1, § 24(c), Fla. Const.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Section 119.15(3), F.S.

<sup>9</sup> Section 119.15(5)(a), F.S.

<sup>10</sup> Section 119.15(6)(b), F.S.

compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An exemption meets the statutory criteria if it:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- 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
- 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.<sup>11</sup>

### **Food Safety**

A food-borne disease outbreak is defined as the occurrence of two or more cases of a similar illness resulting from the ingestion of a common food. Outbreak investigations are a critical means of identifying new and emerging pathogens and maintaining awareness about ongoing problems. Prompt and thorough investigations of food-borne outbreaks aid in the timely identification of etiologic agents and lead to appropriate prevention and control measures.

Investigations of food safety and food-borne illnesses require close collaboration and cooperation among multiple state and federal agencies. In addition to the Department of Agriculture and Consumer Services' (department) basic obligation to maintain a safe and wholesome food supply, its responsibilities include assisting state and federal governments with food-borne illness outbreaks that involve Florida firms or farms. The data gathered by the federal agencies are considered confidential under federal law. In 2003, the Legislature passed SB 1230 which included a statement of public necessity that the harm caused by release of this federal data substantially outweighs any minimal public benefit derived from disclosure of the information. The bill allows confidential federal records which are provided to the department for assistance during a joint food safety or food-borne illness investigation to remain confidential and exempt from public records requirements. The disclosure of such information is prohibited unless a federal agency has found that the record is no longer entitled to protection or unless ordered by a court. With the ability to confidentially review these documents, the department can resolve outbreaks as efficiently and quickly as possible. Further, in carrying out its contract and partnership agreements to conduct federal Food and Drug Administration inspections, the department is obligated to review Hazard Analysis Critical Control Point plans that are required under federal regulations and are considered confidential. This legislation eliminated the requirement that the review be carried out on site, resulting in more efficient use of inspectors' time. It also eliminated the potential that such documents could be acquired by a firm's

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<sup>11</sup> *Id.*

competitors. Additionally, some aspects of federal rulemaking are not subject to disclosure under the Freedom of Information Act and as such, draft proposed rules are confidential under federal law. Many times federal agencies want the department to review and comment on these proposed rules, but until the legislation was passed, federal agencies would not provide early drafts to the department for fear that the proposed rules would become public records. The 2003 changes allow the department to participate in the early stages of federal rulemaking concerning important food safety issues.

Section 500.148, F.S., exempts from public disclosure certain information that is deemed confidential under federal law that is provided to the department during a joint investigation concerning food safety or food-borne illness, as a requirement for conducting a federal-state contract or partnership activity, or for regulatory review.<sup>12</sup> The purpose of the exemption is to permit federal and state agencies to share information and fully participate together to achieve timely resolutions of causal or contributing factors to outbreaks and, thereby to achieve a safer, more secure food supply for the consuming public. The exemption will sunset on October 2, 2008, unless saved from repeal through reenactment by the Legislature. Access to the information may be obtained after a final determination has been made by the federal agency that the information is no longer entitled to protection or pursuant to court order.

Senate staff reviewed the exemption in s. 500.148, F.S., pursuant to the Open Government Sunset Review Act, and found that the exemption from the public records law meets the statutory criteria for reenactment. Subparagraph 119.15(6)(b)(1), F.S., allows the state to effectively and efficiently administer a governmental program, which would be significantly impaired without the exemption. Information provided to the department by the federal government allows the department to effectively contribute its expertise relative to Florida food operations and to affect a more timely resolution of causal or contributing factors to food-borne illness outbreaks. This ensures the safest and most secure food supply to the consuming public. Accordingly, staff has recommended that the exemptions in s. 500.148, F.S., be reenacted and thereby saved from repeal.

### **III. Effect of Proposed Changes:**

**Section 1.** The bill amends s. 500.148, F.S., to retain an exemption from the public-records law that allows certain information that is provided to the Department of Agriculture and Consumer Services by the federal government during a joint food safety or food-borne illness investigation to remain confidential. The bill makes organizational changes for clarity.

**Section 2.** The act takes effect October 1, 2008.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

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<sup>12</sup> Specifically, the exemption protects information that is deemed confidential under 21 C.F.R. part 20.61, part 20.62, or part 20.88, or 5 U.S.C.s 552(b), and that is provided to the department during a joint investigation concerning food safety or food-borne illness.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The public will have a safer and more secure food supply.

C. Government Sector Impact:

Reenactment of s. 500.148, F.S., would allow the Department of Agriculture and Consumer Services to continue participating in the early stages of federal rulemaking concerning important food safety issues and would facilitate more efficient use of food safety inspectors' time.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

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

**CS by Agriculture on March 6, 2008:**

CS/SB 1630 is different from SB 1630 in that it corrects a reference in section one of the bill by substituting “food-borne illness” for “food illness”.

B. Amendments:

None.