

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 806

INTRODUCER: Senator Gainer

SUBJECT: Public Records/Animal Health Records/Department of Agriculture and Consumer Services

DATE: February 4, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Akhavein</u>	<u>Becker</u>	<u>AG</u>	<u>Favorable</u>
2.	<u> </u>	<u> </u>	<u>GO</u>	<u> </u>
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

I. Summary:

SB 806 creates a public records exemption for certain for animal health records submitted to or generated by the Department of Agriculture and Consumer Services (department) or the state veterinarian in connection with the Bronson Animal Disease Diagnostic Laboratory. The department relies upon these submissions to conduct disease surveillance, control, and eradication. This exemption applies to records and information held before, on, or after July 1, 2020.

This exemption is subject to the Open Government Sunset Review Act and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

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

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

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

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).

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
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

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 19.15(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.

²³ Section 119.15(6)(b)3., F.S.

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

Animal Health Records Held by the Department of Agriculture and Consumer Services

The Division of Animal Industry is responsible for enforcing animal health regulations in Florida and protecting the state from animal pests and diseases. District veterinarians and animal health inspectors throughout the state work with producers, animal owners, and private veterinarians to monitor and enhance the health and welfare of Florida's animals. Under Florida's Comprehensive Emergency Management Plan, the department serves as the lead agency for animal and agricultural issues, planning and coordinating the state's response to emergencies ranging from hurricanes to animal disease outbreaks.

The Bronson Animal Disease Diagnostic Laboratory (BADDL) is located in Osceola County. It provides scientific expertise in the detection and investigation of animal diseases that affect livestock, companion animals, and public health. It is the only animal disease diagnostic laboratory in Florida that is fully accredited by the American Association of Veterinary Laboratory Diagnosticians.²⁷ All tests and accompanying results submitted to BADDL are public records subject to disclosure as provided in s. 119.07(1), F.S., and section 24(a), Article 1 of the State Constitution.

In contrast, the records of other private and state supplemented animal diagnostic laboratories, including the University of Florida Laboratory, are confidential. Though the University of Florida Laboratory is a government entity subject to s. 119.07(1), F.S., and section 24(a), Article 1 of the State Constitution, its records are confidential and exempt as provided by s. 474.2167, F.S. The exemption set out in s. 474.2167, F.S., only applies to records held by any "state college of veterinary medicine." BADDL does not have a similar exemption from public records requirements. While both the University of Florida Laboratory and BADDL receive submissions from accredited veterinarians who may assume the records will be kept private,

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 See <https://www.fdacs.gov/Divisions-Offices/Animal-Industry> (Last visited January 16, 2020).

pursuant to s. 474.2165(4), F.S., BADDL records must be disclosed upon request, as they are public records.

In the absence of the proposed public records exemptions, animal owners and veterinarians have been reluctant to report animal diseases to the department or to use the service of the BADDL for fear that their personal information or the animal's medical information may be made public. Competitors could manipulate information gleaned from public records requests regarding animal disease diagnostics to create unwarranted consumer uncertainty about Florida producers' meat or dairy products. To avoid this potential harm, producers find other options for disease diagnostics at private laboratories or laboratories in other states, and the department is not made privy to valuable disease information, which hinders its efforts to protect the public health and welfare.

III. Effect of Proposed Changes:

Section 1 amends s. 585.61, F.S., to provide a public records exemption for certain animal health records submitted to or generated by the department or the state veterinarian in connection with the Bronson Animal Disease Diagnostic Laboratory. Any of the following information would be exempt:

- The diagnosis, treatment, or effect of the medical condition of an animal.
- The prescribing, dispensing, or administering of drugs, medicine, appliances, applications, or treatment of any nature to prevent, cure, or relieve an animal's wound, fracture, bodily injury, or disease.
- A manual procedure for the diagnosis of, or treatment related to, an animal's pregnancy, fertility, or infertility.

The exemption does not apply to official certificates of veterinary inspection or any document required by law to transport an animal in this state. The exemption does apply to animal health records held before, on, or after July 1, 2020.

This section is subject to the Open Government Sunset Review Act and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 provides Legislative intent that it is a public necessity to make certain animal health records submitted to or generated by the department of the state veterinarian exempt from the state's public records laws. Because these records are currently public, animal owners have been reluctant to report animal diseases to the department or to use the service of the BADDL for fear that their personal information or the animal's medical information may be made public. Competitors could manipulate information gleaned from public records requests regarding animal disease diagnostics to create unwarranted consumer uncertainty about Florida producers' meat or dairy products. To avoid this potential harm, producers find other options for disease diagnostics at private laboratories or laboratories in other states, and the department is not made privy to valuable disease information, which is contrary to the public health and welfare.

Section 3 provides that this act shall take effect July 1, 2020.

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 enacts a new exemption for certain animal health records, 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 animal owners from competitors who could manipulate information gleaned from public records requests regarding animal disease diagnostics to create unwarranted consumer uncertainty about Florida producers' meat or dairy products. To avoid this potential harm, producers find other options for disease diagnostics at private laboratories or laboratories in other states, and the department is not made privy to valuable disease information, which hinders its efforts to protect the public health and welfare. This bill exempts only the following from the public records requirements:

- The diagnosis, treatment, or effect of the medical condition of an animal.
- The prescribing, dispensing, or administer of drugs, medicine, appliances, applications, or treatment of any nature to prevent, cure, or relieve and animal's wound, fracture, bodily injury, or disease.
- A manual procedure for the diagnosis of, or treatment related to, an animal's pregnancy, fertility, or infertility.

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 identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Some agricultural companies are sending their samples to out-of-state laboratories because they are concerned that the laboratory records kept at the Bronson Animal Disease Diagnostic Laboratory (BADDL) are open to public records requests. The tests are at a higher cost, and test reporting is delayed. In addition to the increased burden on agricultural companies, delayed test reporting could result in a critical delay to the state's response to an animal disease outbreak.

C. Government Sector Impact:

Currently, releasing medical records in the form of test or necropsy results is contrary to the model Veterinary Medical Practice Act.²⁸ This was noted during the most recent audit of the BADDL by the American Association of Veterinary Laboratory Diagnosticians (AAVLD) in November 2019. The AAVLD found that the BADDL's records are not exempt from Florida's open records laws, which creates a conflict with AAVLD's client confidentiality requirements. It is imperative that the BADDL continue as Florida's only nationally accredited animal disease diagnostic laboratory, to allow it to maintain high quality standards, and to test for diseases of high consequences as designated by the state and federal government, including African swine fever virus, foot and mouth disease, and highly pathogenic avian influenza.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

²⁸ See <https://www.avma.org/policies/model-veterinary-practice-act> (Last visited January 16, 2020).

VIII. Statutes Affected:

This bill amends section 585.61 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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
