

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1399 Pub. Rec./Aquaculture Records
SPONSOR(S): Environment, Agriculture & Flooding Subcommittee, Learned
TIED BILLS: **IDEN./SIM. BILLS:** SB 1634

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Environment, Agriculture & Flooding Subcommittee	18 Y, 0 N, As CS	Gawin	Moore
2) Government Operations Subcommittee	17 Y, 0 N	Roth	Smith
3) State Affairs Committee			

SUMMARY ANALYSIS

Shellfish farming is a multi-step process that includes production of small seed clams or oysters in a hatchery, rearing of larger seed in a nursery, and grow out on submerged land leases. When shellfish have reached the preferred size for sale, they are harvested from the leases and sold to a certified shellfish processing facility.

Once certified, a shellfish processing facility is routinely inspected by Department of Agriculture and Consumer Services (DACS) staff to ensure compliance and consumer safety. Processing facilities must maintain a variety of records for such inspections, including, but not limited to, production volume reports, receipts of sale, and sanitation monitoring schedules.

The bill creates a public record exemption for certain aquaculture records held by DACS. Specifically, the bill provides that shellfish receiving and production records generated by licensed shellfish processing facilities, audit records and supporting documentation required for submerged land leases, and aquaculture production records and receipts generated by certified aquaculture facilities are confidential and exempt from public records requirements. Such records may be disclosed to another governmental entity in the performance of its duties and responsibilities. The bill further specifies that the exemption applies to aquaculture records held before, on, or after July 1, 2021.

The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2026, unless the Legislature reviews and reenacts the exemption by that date. The bill provides a public necessity statement as required by the State Constitution.

The bill may have a minimal fiscal impact on the state and local governments. See Fiscal Comments.

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 newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records Laws

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record.

Public Record Exemptions

The Legislature may provide by general law for the exemption of records from the requirements of Art. I, s. 24(a) of the State Constitution.¹ 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.²

Furthermore, the Open Government Sunset Review Act³ provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. The exemption may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.⁴

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.⁵

Sale of Aquaculture Products

The Department of Agriculture and Consumer Services (DACs) serves as the state's lead aquaculture agency and works to coordinate the development and regulation of aquaculture to protect and conserve Florida's natural resources. There are an estimated 1,500 species of fish, plants, mollusks, crustaceans, and reptiles grown in the aquaculture industry in Florida.⁶

Aquaculture Certificate

In order to raise aquatic species for commercial sale, entities must acquire an aquaculture certificate of registration from DACs.⁷ The certificate authorizes the certificate holder to plant, harvest, and sell

¹ Art. I, s. 24(c), FLA. CONST.

² Art. I, s. 24(c), FLA. CONST.

³ Section 119.15, F.S.

⁴ Section 119.15(6)(b), F.S.

⁵ Section 119.15(3), F.S.

⁶ DACs, *Division of Aquaculture*, <https://www.fdacs.gov/Divisions-Offices/Aquaculture> (last visited Mar. 24, 2021).

⁷ DACs, *Aquaculture Certificate of Registration*, <https://www.fdacs.gov/Agriculture-Industry/Aquaculture/Aquaculture-Certificate-of-Registration> (last visited Mar. 24, 2021).

aquaculture products; entitles the holder to the same benefits provided to other agricultural producers, including tax benefits; and reduces the number of permits the holder must obtain from other agencies.⁸

Applicants for the certificate must submit their name, company name, complete mailing address, legal property description of all aquaculture facilities, the actual physical street address for each aquaculture facility, a description of production facilities, a description of the aquaculture products to be produced, an annual registration fee of \$100, documentation of compliance with DACS rules, and, for some applicants, a certificate of training.⁹ Each applicant is also required to comply with DACS-approved best management practices (BMPs) to ensure proper effluent treatment.¹⁰ Upon approval, DACS issues the applicant an aquaculture certificate of registration for a period of one year, which must be renewed each June 30 with the accompanying fee.¹¹

Certified aquaculture producers and dealers are permitted to sell aquaculture products, except those otherwise prohibited by law and those for which the origin of the product is unknown.¹² Specifically prohibited species include shellfish, snook, any fish of the genus *Micropterus*, and prohibited restricted freshwater and marine species identified by the Fish and Wildlife Conservation Commission.¹³

Shellfish Processing Facilities

Shellfish farming is a multi-step process that includes production of small seed clams or oysters in a hatchery, rearing of larger seed in a nursery, and growout on submerged land leases.¹⁴ When shellfish have reached the preferred size for sale, they are harvested from the leases and sold to a certified shellfish processing facility.¹⁵

Once certified, a shellfish processing facility is routinely inspected by DACS staff to ensure compliance and consumer safety.¹⁶ Processing facilities must maintain a variety of records for such inspections, including, but not limited to, production volume reports,¹⁷ receipts of sale,¹⁸ and sanitation monitoring schedules.¹⁹ Additionally, as part of the required BMPs, facilities must also retain documentation of broodstock origin, purchases, and seed sales for a minimum of two years.²⁰ According to DACS, these records, if released, could be detrimental to the facilities as information regarding products, harvest times, and locations make aquaculture businesses susceptible to theft, particularly with respect to sovereign submerged land leases in remote waters.²¹

Effect of the Bill

The bill creates a public record exemption for certain aquaculture records held by DACS. Specifically, the bill provides that the shellfish receiving and production records generated by licensed shellfish processing facilities, audit records and supporting documentation required for submerged land leases, and aquaculture production records and receipts generated by certified aquaculture facilities are confidential and exempt²² from public records requirements. The bill authorizes the disclosure of a

⁸ *Id.*

⁹ Section 597.004(1), F.S.; r. 5L-3.005(1)(i), F.A.C.

¹⁰ Section 597.004(2), F.S.; r. 5L-3.005, F.A.C.

¹¹ Section 597.004(6)(a), F.S.

¹² Section 597.004(5), F.S.

¹³ *Id.*

¹⁴ DACS, *Shellfish*, <https://www.fdacs.gov/Agriculture-Industry/Aquaculture/Shellfish> (last visited Mar. 24, 2021).

¹⁵ *Id.*

¹⁶ DACS, *Shellfish Processing Facility Certification*, <https://www.fdacs.gov/Agriculture-Industry/Aquaculture/Shellfish-Processing-Facility-Certification> (last visited Mar. 24, 2021).

¹⁷ Rule 5L-1.013(14), F.A.C.

¹⁸ Rule 5L-1.013(10), F.A.C.

¹⁹ Rule 5L-1.013(17), F.A.C.

²⁰ DACS, *Aquaculture Best Management Practices Manual* (revised Nov. 2016) 46-47, available at <https://www.flrules.org/Gateway/reference.asp?No=Ref-07694> (last visited Mar. 24, 2021).

²¹ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2021 Senate Bill 1634, p. 2 (Mar. 4, 2021).

²² There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So. 2d 1015 (Fla.

record made confidential and exempt to another governmental entity in the performance of its duties and responsibilities. The bill further specifies that the exemption applies to aquaculture records held by DACS before, on, or after July 1, 2021.

The bill provides a public necessity statement as required by the State Constitution, specifying that producers are required to provide receiving logs, production volume records, inventories, and receipts and invoices related to their aquaculture facilities to DACS to ensure compliance with the terms and conditions of sovereign submerged land lease agreements and aquaculture BMPs. These records include information, such as quantity and price of seed stock purchased and harvest times, which, if released, could be detrimental to individual businesses and make them susceptible to theft, particularly with respect to sovereign submerged land leases in remote locations. The bill specifies that the exemption would allow DACS to protect the limited industry and its facilities while maintaining compliance with federal partners and documenting compliance of aquaculture producers with statutory requirements.

The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2026, unless the Legislature reviews and reenacts the exemption by that date.

B. SECTION DIRECTORY:

Section 1. Creates s. 597.0042, F.S., to create a public record exemption for records held by DACS relating to shellfish aquaculture.

Section 2. Provides a public necessity statement.

Section 3. Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

2004); *City of Rivera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *See Op. Att’y Gen. Fla.* (1985).

The bill could have a minimal fiscal impact on agencies because agency staff responsible for complying with public record requests may require training related to the creation of the public record exemption. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of agencies.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

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 newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created or expanded public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for certain shellfish production records, audit records related to sovereign submerged lands leases, and aquaculture production records that are submitted to DACS by aquaculture producers. The exemption does not appear to be in conflict with the constitutional requirement that it be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 23, 2021, the Environment, Agriculture & Flooding Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment codified the public records exemption in ch. 597, F.S., rather than ch. 379, F.S., and revised the public necessity statement to clarify the need for the exemption.

This analysis is drafted to the committee substitute as approved by the Environment, Agriculture & Flooding Subcommittee.