

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: SB 7026 Public Records/Department of Agriculture and Consumer Services

SPONSOR(S): Agriculture

TIED BILLS: **IDEN./SIM. BILLS:**

FINAL HOUSE FLOOR ACTION: 115 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

SB 7026 passed the House on March 6, 2024.

Following the devastation of Hurricane Idalia in 2023, the Florida Legislature passed CS/HB 1-C to provide relief to those affected by the hurricane. The law established the Agriculture and Aquaculture Producers Natural Disaster Recovery Loan Program (program) within the Department of Agriculture and Consumer Services (DACS) to provide loans to agriculture and aquaculture producers that have experienced damage or destruction from a declared natural disaster. Loan funds may be used to restore, repair, or replace essential physical property or remove vegetative debris from essential physical property.

The bill creates a public record exemption for certain records related to the program held by DACS. Specifically, the bill provides that tax returns and credit history information, credit reports, and credit scores are exempt from public record requirements. The bill specifies that the exemption does not prohibit the disclosure of information held by DACS pursuant to its administration of the program in an aggregated and anonymized format.

The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2029, unless the Legislature reviews and reenacts the exemption by that date. The bill also provides a public necessity statement as required by the State Constitution.

The bill has an insignificant negative fiscal impact on DACS and no fiscal impact on local governments. See Fiscal Comments.

The bill was approved by the Governor on May 1, 2024, ch. 2024-138, L.O.F., and became effective on that date.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF 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

Agriculture and Aquaculture Producers Natural Disaster Recovery Loan Program

Following the devastation of Hurricane Idalia in 2023, the Florida Legislature passed CS/HB 1-C to provide relief to those affected by the hurricane.⁶ The law established the Agriculture and Aquaculture Producers Natural Disaster Recovery Loan Program (program) within the Department of Agriculture and Consumer Services (DACs) to provide loans to agriculture and aquaculture producers that have experienced damage or destruction from a declared natural disaster.⁷ Loan funds may be used to restore, repair, or replace essential physical property or remove vegetative debris from essential physical property.⁸

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 Chapter 2023-349, L.O.F.; HB 1-C (2023).

⁷ Section 20, ch. 2023-349, L.O.F.

⁸ *Id.*

Under the program, DACS is authorized to make low-interest or interest-free loans of up to \$500,000 to eligible applicants.⁹ To be eligible, an applicant must:

- Own or lease a bona fide farm operation that is located in a county named in a declared natural disaster that was damaged or destroyed as a result of such declared natural disaster; and
- Maintain complete and acceptable farm records, pursuant to criteria published by the department, and present them as proof of production levels and bona fide farm operations.¹⁰

An approved applicant may not receive more than one loan per declared disaster and two loans per year in disaster loans or five loans within any 3-year period. The term of each loan is 10 years.¹¹

The loan program expires on July 1, 2043, unless reviewed and saved from repeal by the Legislature.

Effect of the Bill

The bill creates a public record exemption for certain records related to the program held by DACS. Specifically, the bill provides that tax returns and credit history information, credit reports, and credit scores are exempt from public record requirements. The bill specifies that the exemption does not prohibit the disclosure of information held by DACS pursuant to its administration of the program in an aggregated and anonymized format.

The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and will repeal on October 2, 2029, unless the Legislature reviews and reenacts the exemption by that date.

The bill provides a public necessity statement as required by the State Constitution, specifying that in the absence of the exemption, the sensitive information DACS collects as part of the program could be released and used by fraudulent contractors, predatory lenders, thieves, or individuals seeking to impose on the borrower. The bill specifies it is necessary to exempt the sensitive information DACS receives as part of the program in order to ensure that borrowers are not harassed, intimidated, or potentially defrauded. The bill states the Legislature finds the harm that may result from the release of such sensitive information outweighs the public benefit that may be derived from the disclosure of the information.

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.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have a minimal fiscal impact on DACS 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.