

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB GEAC 08-11 OGSR Food Safety and Food Illness Investigations  
**SPONSOR(S):** Government Efficiency & Accountability Council  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1630

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Government Efficiency & Accountability Council	14 Y, 0 N	Williamson/Dykes	Cooper
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

Investigations of food-borne illnesses require close collaboration and cooperation among multiple state and federal agencies. In addition to the basic obligation to maintain a safe and wholesome food supply, the responsibilities of the Department of Agriculture and Consumer Services (DACs) include assisting state and federal governments with food-borne illness outbreaks that involve Florida firms or farms. The information gathered by federal agencies is confidential under federal law.

Current law provides a public record exemption for information deemed confidential under federal law and that is provided to DACs:

- During a joint food safety or food-borne illness investigation, as a requirement for conducting a federal-state contract or partnership activity; or
- For regulatory review.

The bill reenacts the public record exemption, which will repeal on October 2, 2008, if this bill does not become law. It also reorganizes the section.

The bill does not appear to have a fiscal impact on state or local governments.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

### B. EFFECT OF PROPOSED CHANGES:

#### **BACKGROUND**

##### Open Government Sunset Review Act

The Open Government Sunset Review Act<sup>1</sup> sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting 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; or,
- Protecting trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.<sup>2</sup> If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created,<sup>3</sup> then a public necessity statement and a two-thirds vote for passage are not required.

##### Food Safety and Food-Borne Illness Investigations

Investigations of food-borne illnesses require close collaboration and cooperation among multiple state and federal agencies. In addition to the basic obligation to maintain a safe and wholesome food supply, the responsibilities of the Department of Agriculture and Consumer Services (DACS) include assisting state and federal governments with food-borne illness outbreaks that involve Florida firms or farms. The information gathered by federal agencies is confidential under federal law.

##### Public Record Exemption

Current law provides a public record exemption for information deemed confidential under federal law and that is provided to DACS:

- During a joint food safety or food-borne illness investigation, as a requirement for conducting a federal-state contract or partnership activity; or

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<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Section 24(c), Art. I of the State Constitution.

<sup>3</sup> An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

- For regulatory review.<sup>4</sup>

The confidential and exempt information may be disclosed only if a final determination has been made by the appropriate federal agencies that such information is no longer entitled to protection, or pursuant to a court order.

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2008, unless reenacted by the Legislature.<sup>5</sup>

### 2007 Interim Study

In 2007, the Division of Statutory Revision of the Office of Legislative Services certified for repeal the public record exemption for information related to a food safety or food-borne illness investigation. As such, Committee staff reviewed the exemption during the interim and it was determined that the exemption allows DACS to effectively and efficiently conduct such investigations, which would be significantly impaired without the exemption.<sup>6</sup>

### **EFFECT OF BILL**

The bill removes the repeal date, thereby reenacting the public record exemption. It also reorganizes the section to relocate the exemption to the beginning of the section, and to collocate the reporting requirements found within the section.

#### **C. SECTION DIRECTORY:**

Section 1 amends s. 500.148, F.S., to reenact the public record exemption for information regarding food safety and food-borne illness investigations.

Section 2 provides an effective date of October 1, 2008.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

#### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

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<sup>4</sup> Section 500.148(3), F.S.

<sup>5</sup> *Id.*

<sup>6</sup> See the Committee on State Affairs interim project report entitled "Open Government Sunset Reviews," January 2008, at pages 17 – 19 (on file with the Committee on State Affairs).

None.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

Not applicable.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

None.