

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB OTA 18-01 OGSR/School Food Program  
**SPONSOR(S):** Oversight, Transparency & Administration Subcommittee  
**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Oversight, Transparency & Administration Subcommittee	12 Y, 0 N	Harrington	Harrington

### 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.

The Department of Agriculture and Consumer Services (DACS) is the state administrator of school food and nutrition service programs. Such programs include the National School Lunch Program, the Special Milk Program, the School Breakfast Program, the Summer Food Service Program, the Fresh Fruit and Vegetable Program, and any other program that relates to school nutrition under the purview of DACS. Applicants for school food and nutrition service programs must provide certain personal information to DACS and the Department of Education (DOE). Some of the information provided for purposes of determining eligibility for participation in the school food and nutrition service programs is considered to be of a sensitive, personal nature.

Current law provides that personal identifying information of an applicant for or a participant in a school food and nutrition service program held by DACS, DOE, or the Department of Children and Families is exempt from public record requirements. Such information must be disclosed to another governmental entity in the performance of its official duties and responsibilities or to any person who has the written consent of the applicant for or participant in such program.

The bill reenacts and narrows the application of the public record exemption, which will repeal on October 2, 2018, if this bill does not become law.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. 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.<sup>2</sup>

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it 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.<sup>3</sup>

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>4</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>5</sup> then a public necessity statement and a two-thirds vote for passage are not required.

##### School Food and Nutrition Service Program

Federal law authorizes federal financial assistance to states for the operation of school food and nutrition service programs.<sup>6</sup> The United States Department of Agriculture annually prescribes income guidelines for determining eligibility for free and reduced price meals.<sup>7</sup> The Department of Agriculture and Consumer Services (DACCS) is the state administrator of school food and nutrition service programs. Such programs include the National School Lunch Program, the Special Milk Program, the School Breakfast Program, the Summer Food Service Program, the Fresh Fruit and Vegetable Program, and any other program that relates to school nutrition under the purview of DACCS.<sup>8</sup>

Current law requires applicants for or participants in school food and nutrition service programs to provide certain personal information to DACCS and the Department of Education (DOE). In addition, the Department of Children and Families (DCF) receives information from the United States Social Security Administration and determines Medicaid eligibility for Florida and forwards that information to DACCS

---

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

<sup>2</sup> Section 119.15(3), F.S.

<sup>3</sup> Section 119.15(6)(b), F.S.

<sup>4</sup> Section 24(c), Art. I of the State Constitution.

<sup>5</sup> An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.

<sup>6</sup> See Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq) and the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq).

<sup>7</sup> 42 U.S.C. 1758(b)(1)(A) and 42 U.S.C. 1773(e)(1)(A); see also USDA Income Eligibility Guidelines found online at: <https://www.fns.usda.gov/school-meals/income-eligibility-guidelines> (last visited November 6, 2017).

<sup>8</sup> Section 595.402, F.S.

and local education agencies for a determination of whether a student is eligible for participation in a school food and nutrition service program. Although DCF shares certain information with DACS, DCF does not receive information related to applicants for or participants in school food and nutrition service programs.

#### Public Record Exemption under Review

In 2013, the Legislature created a public record exemption for personal identifying information of an applicant for or participant in a school food and nutrition program held by DACS, DOE, and DCF. The personal identifying information is exempt<sup>9</sup> from public record requirements.<sup>10</sup>

The 2013 public necessity statement for the exemption provided that:

A public records exemption for personal identifying information of an applicant for or participant in a school food and nutrition service program, as defined in s. 595.402, Florida Statutes, held by [DACS, DCF, or DOE] protects information of a sensitive, personal nature concerning an individual, the release of which could be defamatory to the individual, could cause unwarranted damage to his or her good name or reputation, and could possibly jeopardize the safety of the individual. Additionally, the public records exemption allows the state to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.<sup>11</sup>

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2018, unless reenacted by the Legislature.<sup>12</sup>

During the 2017 interim, subcommittee staff sent DACS, DOE, and DCF questionnaires and consulted with staff from the departments as part of its review under the Open Government Sunset Review Act. DOE and DACS recommended that the exemption be reenacted noting that the exemption has allowed the departments to properly operate the program while preventing the disclosure of a student's or parent's personal identifying information. DCF indicated that it does not hold personal identifying information of an applicant for or participant in a school food and nutrition service program. As such, DCF did not oppose narrowing the application of the exemption to remove DCF from the exemption.

#### **Effect of the Bill**

The bill removes the repeal date thereby reenacting the public record exemption for personal identifying information of an applicant for or participant in a school food and nutrition service program held by DACS and DOE. The bill also narrows the exemption removing reference to information held by DCF as that department does not hold information relating to applicants for or participants in a school food and nutrition service program.

#### **B. SECTION DIRECTORY:**

Section 1 amends s. 595.409, F.S., to save from repeal the public record exemption for personal identifying information of an applicant for or participant in a school food and nutrition service program.

---

<sup>9</sup> 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. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 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* Attorney General Opinion 85-62 (August 1, 1985).

<sup>10</sup> Chapter 2013-217, L.O.F.; codified as s. 595.409(1), F.S.

<sup>11</sup> Section 2, ch. 2013-217, L.O.F.

<sup>12</sup> Section 595.409(4), F.S.

Section 2 provides an effective date of October 1, 2018.

## **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:**

None.

### **D. FISCAL COMMENTS:**

None.

## **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:

None.

### **B. RULE-MAKING AUTHORITY:**

None.

### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

## **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.