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DATE: January 15, 2002

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
SECURITY, SELECT
ANALYSIS**

BILL #: HB 731 (PCB SEC 02-11)

RELATING TO: Public Records/Aerial Application of Pesticides, Fertilizer, or Seed

SPONSOR(S): Select Committee on Security and Representative(s) Machek & others

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) SECURITY, SELECT YEAS 8 NAYS 0
 - (2)
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

This bill amends section 119.07(3), F.S., to exempt from public disclosure information relating to aerial applicators obtained by the Department of Agriculture and Consumer Services (Department) pursuant to new regulatory duties that would be authorized under legislation tied to this public record exemption, including:

- The name, address, and restricted-use license number of any person engaged in the aerial application of pesticides, fertilizers, or seed;
- The Federal Aviation Administration aircraft registration number of any aircraft used for the aerial application of pesticides, fertilizers, or seed; and
- The name and address of any person or entity that sells, leases, purchases, rents, or transfers any aircraft used for the aerial application of pesticides, fertilizers, or seed.

As provided for in the Open Government Sunset Review Act of 1995, this exemption would stand repealed October 2, 2006, unless reviewed and saved from repeal through reenactment.

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

The bill takes effect contingent upon the passage of legislation that would authorize the department to regulate the operation of aerial applicators.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Public Records Law

Article I, s. 24(a), Florida Constitution, expresses Florida's public policy regarding access to government records as follows:

Every person has the right to inspect or copy any public records made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Article I, s. 24(c), Florida Constitution, does, however, permit the Legislature to provide by general law for the exemption of records from the requirements of s. 24. The general law must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish its purpose.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07(1)(a), F.S., provides:

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at a reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, provides that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes, and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or
3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

Regulation of Aerial Applicators.

The Department of Agriculture and Consumer Services (Department) regulates the use of pesticides under chapter 487, F.S., the use of agricultural fertilizers under chapter 576, F.S., and the use of seed under chapter 578, F.S. The Department's general authority is found in chapter 570, F.S. Generally, the Department has authority to adopt rules to administer the provisions found in those chapters. For example, with regard to pesticides, the Department is authorized by rule to: "establish procedures for the taking and handling of samples and establish tolerances and deficiencies where not specifically provided for in this chapter (ch. 487, F.S.); assess penalties; and prohibit the sale or use of pesticides or devices shown to be detrimental to human beings, the environment, or agriculture or to be otherwise of questionable value." Section 487.501(1)(b), F.S. Similar authority is available to the Department to administer regulations controlling the use of agricultural fertilizers and the application of seed.

However, within these chapters the Department is not authorized to regulate the aerial applicators used to apply these products.

C. EFFECT OF PROPOSED CHANGES:

This bill amends section 119.07(3), F.S., to exempt from public disclosure information relating to aerial applicators obtained by the Department of Agriculture and Consumer Services (Department) pursuant to new regulatory duties that would be authorized under legislation tied to this public record exemption, including:

- The name, address, and restricted-use license number of any person engaged in the aerial application of pesticides, fertilizers, or seed;
- The Federal Aviation Administration aircraft registration number of any aircraft used for the aerial application of pesticides, fertilizers, or seed; and
- The name and address of any person or entity that sells, leases, purchases, rents, or transfers any aircraft used for the aerial application of pesticides, fertilizers, or seed.

The bill provides a statement of the public necessity for the exemption.

As provided for in the Open Government Sunset Review Act of 1995, this exemption would stand repealed October 2, 2006, unless reviewed and saved from repeal through reenactment.

The bill takes effect contingent upon the passage of legislation that would authorize the department to regulate certain aspects of the operation of aerial applicators.

D. SECTION-BY-SECTION ANALYSIS:

Please see section I.c., above.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

Legislative History

This issue originated in House Bill 147-B. The bill was introduced, but not referred to committee before the expiration of 2001 Special Session B.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON SECURITY, SELECT:

Prepared by:

Staff Director:

David M. Greenbaum

Thomas Randle/Richard Hixson