

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 2036

SPONSOR: Senator Silver

SUBJECT: School Boards/Real Estate/Meetings

DATE: April 14, 1999 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hill</u>	<u>O'Farrell</u>	<u>ED</u>	<u>Favorable</u>
2.	_____	_____	<u>RC</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill revises an existing public records exemption applicable to district school boards, community college boards of trustees, and the Board of Trustees of the Florida School for the Deaf and the Blind. When any of these boards are acquiring or purchasing property for educational purposes, the written appraisals, offers, and counteroffers received by the board will become public after a contract is presented to the board for approval at a public meeting, instead of at the time an option contract is executed, 30 days before the board meets to approve a contract, or 30 days after negotiations terminate without submitting a contract.

The bill creates a public meeting exemption to permit a school board, superintendent, and appropriate staff to meet "out of the sunshine" in an executive session to discuss pending negotiations in the proposed acquisition or purchase of real property for educational purposes. The bill also provides a public records exemption for the records of these executive sessions, but not for the required summary of each session.

The bill provides a statement of public necessity for the proposed exemptions as required by Article I, section 24 of the Florida Constitution.

This bill substantially amends the following sections of the Florida Statutes: 235.054.

II. Present Situation:

Public Records Law

Article I, section 24(a), of the 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.

The Legislature may, by general law, exempt public records from the requirements of Article I, section 24(a). A general law that exempts records from public disclosure must state with specificity the public necessity justifying the exemption and can be no broader than necessary to accomplish the stated purpose of the law [Article I, section (24)(c)].

These constitutional provisions are reiterated by the Florida Statutes. Section 119.07, 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., permits the creation and maintenance of a public records exemption only if it serves an identifiable public purpose and the exemption is no broader than necessary to meet that public purpose. An identifiable public purpose is served if the exemption meets one of three statutorily designated purposes, and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and that such purpose cannot be accomplished without the exemption. The exemption must:

1. Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. Protect 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. Protect 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.

A public necessity justifying an exemption exists when, after considering the public good served by access to the record or meeting and the public or private harm that could be caused by allowing or denying access to the record or meeting, it is determined that the presumption in favor of open records and meetings is overcome because the public's interests are best served by

denying access in whole or in part to the record or meeting; and, access is denied to as little of the record or meeting as is practicable.

Public Meetings Law

Article I, section 24(b), of the Florida Constitution, expresses Florida's public policy regarding access to public meetings. This section provides that:

All meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public...

Article I, section 24(c), Florida Constitution, also provides that the Legislature may, by general law, exempt meetings from the open meetings requirement set forth in Article I, section 24(b) if such law states with specificity the public necessity justifying the exemption and the exemption is no broader than necessary to accomplish the stated purpose of the law.

Public policy regarding public meetings is also addressed in the Florida Statutes. Section 286.011, F.S., provides that all meetings of any board or commission of any state agency or authority or of any agency or authority or any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

The previously discussed provisions of s. 119.15, F.S., also apply to public meetings exemptions.

Public Records Exemption Applicable to Certain Transactions by Educational Boards

Section 235.011, F.S., defines "board" as any district school board, community college board of trustees, and the Board of Trustees of the Florida School of the Deaf and the Blind. When these boards purchase any real property for educational purposes, every appraisal, offer, and counteroffer must be in writing. Section 235.054, F.S., exempts these written documents from the public record until an option contract is executed, or if no option contract is executed, until 30 days before a contract or agreement for purchase is considered for approval by the board. The public records exemption for such written documents expires 30 days after negotiations are terminated if a contract or agreement for purchase is not submitted to the board for approval. Each board must maintain complete and accurate records of every such appraisal, offer, or counter offer. An "option contract" is an agreement by a board to purchase a piece of property subject to approval of the board at a public meeting held after 30 days public notice. Section 235.011(2), F.S., specifically provides that this public records exemption is not an exception from the public records law.

III. Effect of Proposed Changes:

This bill revises the limited public records exemption created by s. 235.054, F.S.. When a district school board, community college board of trustees, or the Board of Trustees of the Florida School for the Deaf and the Blind seeks to purchase property for educational purposes, written appraisals, offers, and counteroffers submitted to the boards will become public after a contract is presented to the board for approval at a public meeting.

The bill also creates a public meeting exemption for an executive session of the school board, superintendent, and appropriate staff to discuss pending negotiations concerning the proposed acquisition or purchase of real property for educational purposes. The exemption applies under these certain circumstances:

- The subject matter of the executive session must be confined to the proposed acquisition or purchase and related strategy.
- The school board must give reasonable public notice of the time and place of the meeting.
- The session must be recorded, including the times of commencement and termination, and names of all present and all who spoke. A summary of the record must be transcribed and filed with the board's clerk within a reasonable time.

The bill creates a public records exemption for the record of executive session and specifies that the summary is not exempt from s. 119.07(1), F.S., and Article I, section 24(a) of the Florida Constitution.

The public meetings and public records exemptions for these executive sessions and related records are repealed on July 1, 2004, in accordance with s. 119.15, F.S. (the Open Government Sunset Review Act of 1995), unless reviewed and reenacted by the Legislature.

The bill provides a statement of public necessity for the proposed public meetings and public records exemptions which relate to the prevention of inflated pricing of the land and the avoidance of an unfair bargaining position.

This bill is effective July 1, 1999.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article 1, section 24(c) of the Florida Constitution provides that laws creating public record and public meeting exemptions shall relate to one subject. Since the bill makes only modest changes to an existing public record exemption in s. 235.054, F.S., such changes would not need to be in a separate bill. Even if the bill created a separate public record exemption, both the public record exemption and the public meeting exemption relate to the same subject -- executive sessions of certain educational boards and their staff discussing the acquisition or purchase of real estate.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The statute amended by this bill (s. 235.045, F.S.) applies to “boards” as defined by s. 235.011, F.S., (i.e., district school boards, as well as community college boards of trustees, and the Board of Trustees of the Florida School for the Deaf and Blind). This bill uses the terms “board” and “school board” interchangeably when revising the existing public records exemption. The bill applies the proposed public records and public meetings exemptions to executive sessions involving only school boards, superintendents, and appropriate staff. The statement of necessity also applies only to school boards, superintendents, and appropriate staff, although the revised public records exemption applies to other boards.

VII. Related Issues:

Section 1 of the bill deletes language which causes a public record exemption for appraisals, offers and counteroffers to expire 30 days after the termination of negotiations. Florida courts have frowned on such open-ended exemptions where no public policy justifies it. In 1997, the Fifth District Court of Appeal, in *Halifax Hospital Medical Center v. News-Journal Corp.*, 701 So.2d 434, (Fla. 5th DCA 1997), held the public meetings exemption in s. 395.3035(4), F.S., pertaining to discussions of “strategic plans,” violative of Article I, section 24 of the Florida Constitution which requires that an exemption be no broader than necessary to accomplish its stated purpose. Because “strategic plans” was not a defined term, the court determined that it could include more than was necessary to be kept confidential. More particularly, the Fifth District’s rationale for

holding the public meetings exemption unconstitutional was that the scope of the exemption, as well as the exemption's duration, was overly broad. The court stated:

There is no definition of, and therefore no limitation on, what can be included in a strategic plan....In order to comply with the limitations imposed by the constitution, at the very least the term "strategic plan" must be defined. It is not. Further, there appears no justification for an arbitrary three year duration for the secrecy to continue [that is the three years that the transcript of a closed meeting must be held confidential before it can be released to the public].

On January 21, 1999, the Florida Supreme Court affirmed the decision of the Fifth DCA for the reasons cited above. See *Halifax Hospital Medical Center v. News-Journal Corp.*, (Fla., No. 92047, Jan. 21, 1999). Regarding a possible judicial construction which would narrow the term "strategic plan," the court wrote that it "cannot move into the legislature's province by making the factual determination that would bring this statutory exemption within constitutional boundaries....The task of enacting a more limited statutory exemption appropriately belongs to the legislature in this case." Id.

In addition, courts have frowned on the inclusion of persons in these "shade meetings" who are not specifically listed in the statutory exemption. The phrase "and appropriate staff" may cause a court to rule the exemption invalid as constitutionally overbroad for not defining the qualified persons with more specificity. See *Zorc v. City of Vero Beach*, 23 Fla. L. Weekly D26222 (4th DCA 1998); *School Board of Duval County v. Florida Publishing Co.*, 670 So.2d 99 (Fla. 1st DCA 1996); AGO 98-06 (1998); and AGO 95-06 (1995).

VIII. Amendments:

None.