

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 491 An exemption from public records and public meetings requirements for certain information held by the Florida Institute of Human and Machine Cognition

SPONSOR(S): Benson

TIED BILLS: HB 315

IDEN./SIM. BILLS: SB 1414(s)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Higher Education (Sub)</u>	<u>5 Y, 0 N</u>	<u>Tilton</u>	<u>Bohannon</u>
2) <u>Education K-20</u>	<u> </u>	<u> </u>	<u> </u>
3) <u>Education Appropriations (Sub)</u>	<u> </u>	<u> </u>	<u> </u>
4) <u>Appropriations</u>	<u> </u>	<u> </u>	<u> </u>
5) <u> </u>	<u> </u>	<u> </u>	<u> </u>

SUMMARY ANALYSIS

HB 491 creates a public records exemption for certain records relating to the Florida Institute of Human and Machine Cognition, the not-for-profit corporation formed to govern the Institute, and any subsidiaries formed by the not-for-profit corporation. The bill does not, however, specify which entity or entities the exemption runs to; in other words, it is unclear who enjoys the exemption.

HB 491 also creates a public meetings exemption for meetings of the governing board of the not-for-profit and its subsidiaries with the exception of meetings at which the expenditure of funds appropriated to the not-for-profit corporation by the state are discussed or reported.

Article I, s.24, of the Florida Constitution makes all meetings of collegial public bodies open and requires that an exemption creating closed meetings must be drawn as narrowly as possible to effectuate the purpose of the exemption. The public meetings exemption in HB 491 closes all meetings except meetings at which the expenditure of funds appropriated to the not-for-profit corporation by the state are discussed or reported. This appears to reverse the presumption of openness and does not appear to be adequately supported in the statement of public necessity thereby raising constitutional concerns. Additional concerns are discussed in Section III.A.2. of this analysis.

HB 491 has a contingent effective date of July 1, 2003, if HB 315 or similar legislation is adopted during the 2003 legislative session or any extension thereof and becomes law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0491a.edk.doc

DATE: April 3, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | 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. EFFECT OF PROPOSED CHANGES:

Background

Divisions Of Sponsored Research

The Florida Board of Governors has authorized each state university to create divisions of sponsored research to serve the function of administration and promotion of the programs of research, including sponsored training programs, of the university at which they are located. These divisions are under the supervision of the university president. Current law provides an exemption from public disclosure for certain records relating to activities of the divisions of sponsored research. Materials that relate to methods of manufacture or production, potential trade secrets, potentially patentable material, actual trade secrets, business transactions, or proprietary information received, generated, ascertained, or discovered during the course of research conducted within the state universities is confidential and exempt from the provisions of s. 119.07(1), F.S., except that a division of sponsored research must make available upon request the title and description of a research project, the name of the researcher, and the amount and source of funding provided for such projects.¹

Direct Support Organizations

Current law also authorizes state university direct support organizations. These organizations are not-for-profit corporations that are organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of a state university, a research and development park, or a research and development authority affiliated with a state university. The identity of donors who wish to remain anonymous must be protected. All records of the organization other than the auditor’s report, management letter, and any supplemental data requested by the State Board of Education, Auditor General, or OPPAGA is confidential and exempt from the provisions of s. 119.07(1), F.S.

Florida Institute of Human & Machine Cognition

The Florida Institute of Human & Machine Cognition (IHMC) was established in 1990 as an interdisciplinary research unit of the University of West Florida (UWF). According to IHMC’s 2002 Annual Report, the institute employs 98 researchers and staff investigating a broad range of topics related to understanding cognition in both humans and machines with a particular emphasis on building computational tools to leverage and amplify human cognitive and perceptual capacities. IHMC researchers receive funding from a wide range of government and private sources. The annual report

¹ Section 1004.22, F.S.

indicates that current funding in force exceeds \$23,000,000. IHMC reports that research partners have included entities such as the National Science Foundation, NASA, Army, Navy, Air Force, Noikia, Sun Microsystems, Fujitsu, Procter & Gamble, Boeing, and IBM among others.

As an organizational unit of UWF, IHMC enjoys any public records and public meetings exemptions afforded a state university.

Effect of the Bill

HB 315 establishes the Florida Institute for Human and Machine Cognition (the Institute) in law as an institute at the University of West Florida and requires the State Board of Education to enter into an agreement with a Florida not-for-profit corporation organized solely for the purpose of governing and operating the Institute.

HB 491 is linked with HB 315 and makes the following records confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24, Art. I of the State Constitution:

1. Materials that relate to methods of manufacture or production; potential trade secrets; potentially patentable material; actual trade secrets as defined in s. 688.002, F.S.; or proprietary information received, generated, ascertained, or discovered during the course of research conducted by or through the Institute and business transactions resulting from such research;
2. The identity of a donor or prospective donor to the Institute who wishes to remain anonymous and all information identifying such donor or prospective donor.
3. Any information received by the Institute in the performance of its duties and responsibilities which is otherwise confidential and exempt by law.
4. Any information received by the Institute from a person from another state or nation or the Federal Government which is otherwise confidential or exempt pursuant to the state's or nation's laws or pursuant to federal law.
5. Internal auditing controls and reports of internal auditors.
6. Matters reasonably encompassed in privileged attorney-client communications.
7. Bids or other contractual data, banking records, and credit agreements the disclosure of which would impair the efforts of the not-for-profit corporation or its subsidiaries to contract for goods or services on favorable terms.
8. Information relating to private contractual data, the disclosure of which would impair the competitive interest of the provider of the information.
9. Corporate officer and employee personnel information.

HB 491 permits access to such confidential and exempt information or materials by any governmental entity that needs the information in order to perform its duties and responsibilities. The bill also requires these entities to keep such information confidential and exempt.

HB 491 further provides that all information and materials made confidential and exempt by the bill that are owned, controlled, or acquired by the Institute are not subject to subpoena, discovery, or introduction into evidence in any civil proceeding, except that such information and materials otherwise available from other sources are not immune from subpoena, discovery, or introduction into evidence from those sources solely because they were presented to the Institute.

HB 491 requires meetings of the governing board of the not-for-profit corporation and meetings of the subsidiaries of the not-for-profit corporation at which the expenditure of funds appropriated to the not-for-profit corporation by the state are discussed or reported to remain open to the public. Current state funds for the Institute are in the base budget of UWF. The extent to which the Legislature will appropriate funds directly to the Institute or the not-for-profit corporation that will govern and operate the Institute is unknown. The bill makes all other meetings of the governing board of the not-for-profit corporation and of the subsidiaries of the not-for-profit corporation exempt from s. 286.011, F.S., and s. 24(b), Art. I of the State Constitution.

HB 491 provides for futures review and repeal of the exemptions and provides a statement of public necessity.

C. SECTION DIRECTORY:

Section 1. Creates a public records exemption for certain records relating to the Institute, the not-for-profit corporation formed to govern the Institute, and any subsidiaries formed by the not-for-profit corporation. Creates a public meetings exemption for meetings of the governing board of the not-for-profit and its subsidiaries with the exception of meetings at which the expenditure of funds appropriated to the not-for-profit corporation by the state are discussed or reported.

Section 2. Provides a statement of public necessity.

Section 3. Provides a contingent effective date.

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.

2. Other:

Public Records Law

Article I, s.24(a), Florida Constitution, guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record.

Public Meetings Law

Article 1, s. 24(b), Florida Constitution, 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 must be open and noticed to the public. 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 of 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. In addition, s. 286.011, F.S., provides that no resolution, rule, or formal action is to be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

Exemptions to public records and public meetings laws

The Legislature may provide by general law for the exemption of records and meetings from the requirements of Article I, s. 24, Florida Constitution. 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.

Open Government Sunset Review Act of 1995²

The Open Government Sunset Review Act of 1995 provides that a public records or public meetings 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 public purposes:

- a. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- b. Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individuals' safety (only the identity of an individual may be exempted under this provision); or
- c. Protecting trade or business secrets.

Analyst's Comments

Subsection (1) of HB 491 does not identify the custodian of the records, therefore it is unclear what entity the exemption affects.

² Section 119.15, F.S.

Subsection (3) of HB 491 is beyond the scope of a public records exemption and should not be in the bill.

Subsection (4) of HB 491 creates a public meetings exemption for “meetings of the governing board of the not-for-profit and meetings of the subsidiaries of the not-for-profit corporation”, but does not identify the “not-for-profit corporation” it references. In addition, the meetings exemption runs to the not-for-profit and its subsidiaries whereas the public necessity statement references the Institute.

The public necessity statement for HB 491 does not reference donor records or corporate officer and employee personnel information although HB 491 makes such information confidential and exempt. The public necessity statement explains why certain meetings of the Institute should be closed to the public, not why all meetings except those meetings about expenditure of funds appropriated to the not-for-profit corporation by the state should be closed. Thus, it appears that the meetings exemption may be subject to constitutional challenge on the basis that it is overly broad.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The constitutional reference in subsection (1) should be to s. 24(a).

In Subsection (2) of HB 491, “or materials” should be deleted.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES