

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Higher Education Appropriations Committee

BILL: CS/SB 1076

INTRODUCER: Committee on Higher Education Appropriations and Senator Lynn

SUBJECT: Public Records and Meetings

DATE: March 15, 2007

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------|
| 1. | Bryant | Hamon | HI | Fav/CS |
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I. Summary:

CS/SB 1076 creates a public records exemption for specified information held by the State University Research Commercialization Funding Corporation. This exemption includes information contained in university grant proposals relating to manufacture, trade secrets, patentable material, and proprietary information. In addition, information on investors and potential investors is exempt. The bill also exempts from being open to the public those portions of meetings of the board of directors at which confidential information is presented or discussed. The bill allows confidential information to be released to public employees exclusively for the performance of their duties and provides criminal penalties for a person who fails to maintain the confidentiality of the information. These exemptions are repealed on October 2, 2012, unless reenacted after review by the Legislature under the Open Government Sunset Review Act (s. 119.15, F.S.).

This bill creates s. 288.9625, Florida Statutes.

II. Present Situation:

CS/SB 1076 is a companion bill to CS/SB 1074 which creates the State University Research Commercialization Funding Corporation. This corporation is for the purpose of promoting the commercialization of university research products.

Current Public Records Exemptions for Economic Development

Under current law, Florida has public records exemptions for economic development

programs and incentives to shield specified business information (e.g., certain proprietary, trade secret, and personal data) from public disclosure (s. 288.1067, F.S.). These exemptions apply to the business information of qualified businesses in incentive programs which are held by:

- The Governor's Office of Tourism, Trade, and Economic Development (OTTED);
- Enterprise Florida, Inc. (EFI), the state's principal economic development organization (s. 288.901, F.S.);
- County or municipal governmental entities; or
- Employees or agents of OTTED, EFI, or the local governmental entities.

Government in the Sunshine

Florida has a long history of providing public access to the records of governmental and other public entities. The first law affording access to public records was enacted by the Florida Legislature in 1909. In 1992, the people of Florida voted to adopt an amendment to the State Constitution that raised the statutory right of public access to public records to a constitutional level. Section 24(a), Art. I of the State Constitution provides:

Every person has the right to inspect or copy any public record 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.

In addition to the State Constitution, the Public Records Law (ch. 119, F.S.) specifies the conditions under which public access must be provided to governmental records of the executive branch and other governmental agencies. The term "public records" has been defined by the Legislature in s. 119.011(11), F.S., to include:

all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

This definition of "public records" has been interpreted by the Florida Supreme Court to include all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge. Unless these materials have been made exempt by the Legislature, they are open for public inspection, regardless of whether they are in final form.

The State Constitution permits exemptions to open government requirements and establishes the means by which these exemptions are to be established. Under s. 24(c), Art. I of the State Constitution, the Legislature may provide by general law passed by a two-thirds vote of each

house for the exemption of records, if: (1) the law creating the exemption states with specificity the public necessity justifying the exemption; and (2) the exemption is no broader than necessary to accomplish the stated purpose of the law. A law creating an exemption must only contain exemptions to public records or meetings requirements and must relate to one subject.

Open Government Sunset Review Act

The Open Government Sunset Review Act (s. 119.15, F.S.) establishes a review and repeal process for exemptions to public records or meetings requirements. In the fifth year after enactment of a new exemption or the substantial amendment of an existing exemption, the exemption is repealed on October 2 of the fifth year, unless the Legislature reenacts the exemption.

Current law requires a law that enacts a new exemption or substantially amends an existing exemption to state that the exemption is repealed at the end of five years and that the exemption must be reviewed by the Legislature before the scheduled repeal date (s. 119.15(3), F.S.). An “exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. An exemption is not substantially amended if the amendment narrows the scope of the exemption” (s. 119.15(4)(b), F.S.).

In the year before the repeal of an exemption, the Division of Statutory Revision is required to certify to the President of the Senate and the Speaker of the House of Representatives each exemption scheduled for repeal the following year which meets the criteria of an exemption.

An exemption that is not identified and certified is not subject to legislative review and repeal under the Open Government Sunset Review Act. If the division fails to certify an exemption that it subsequently determines should have been certified, it must include the exemption in the following year’s certification after the determination. An exemption shall be created or maintained only if:

- The exempted record or meeting is of a sensitive, personal nature concerning individuals;
- The exemption is necessary for the effective and efficient administration of a governmental program; or
- The exemption affects confidential information concerning an entity.

The legislative review process must consider specific questions including the following (s. 119.15(6)(a), F.S.):

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?

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 (s. 119.15(6)(b), F.S.).

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:

- The exemption allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- The exemption 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 provision, only information that would identify the individuals may be exempted; or
- The exemption 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.

III. Effect of Proposed Changes:

Public Records and Meetings Exemptions

The bill creates public records exemptions for The State University Research Commercialization Funding Corporation, shielding specified information from public inspection. The public records exemptions apply to the following specified information:

- Methods of manufacture or production, potential trade secrets, patentable material, or proprietary information within university projects submitted for funding.
- Information concerning investors or potential investors in projects reviewed.
- Information received from any person or another state or nation, or the Federal Government which is confidential.

The bill creates a public meetings exemption for those portions of board meetings which contain confidential information. The bill also exempts records of the closed portions of the board meetings from public disclosure.

Interagency Exchange of Confidential Information

The bill allows information made confidential by the bill to be released to public employees exclusively for the performance of their duties. The bill also requires public employees receiving confidential information to maintain the confidentiality of the information. The bill provides criminal penalties for a person who fails to maintain the confidentiality of the information, punishable as a misdemeanor of the first degree (up to 1 year in jail or up to a \$1,000 fine).

Open Government Sunset Review Act

The bill provides that the public records and meetings exemptions created by the bill are repealed on October 2, 2012, unless reenacted after review by the Legislature under the Open Government Sunset Review Act (s. 119.15, F.S.).

Statement of Public Necessity

The bill provides a legislative statement of public necessity for the public records exemption, as required under s. 24(c), Art. I of the State Constitution.

Contingent Effective Date

The bill takes effect on the date PCS/SB 1074 or similar legislation become law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Section 24(c), Art. I of the State Constitution permits the Legislature to create exemptions to public records and meetings requirements by general law. These exemptions must be no broader than necessary to accomplish the stated purpose of the law. A law creating an exemption must contain only exemptions from the public records and meetings requirements and provisions governing enforcement and must relate to one subject. The bill appears to relate to one subject and contain only provisions creating exemptions and providing for enforcement.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By protecting sensitive research and financing information, the public records and meetings exemptions created by the bill may help prevent university proposals submitted to the University Research Commercialization Funding Corporation from being injured in the marketplace. Thus the exemptions may help facilitate economic development activities that benefit the state.

C. Government Sector Impact:

The administrative costs associated with maintaining confidentiality are estimated to be insignificant.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

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