

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7041 PCB GAP 09-14 OGSR/Florida Institute for Human and Machine Cognition, Inc.

SPONSOR(S): Governmental Affairs Policy Committee and Eisnaugle

TIED BILLS: **IDEN./SIM. BILLS:** SB 1902

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Governmental Affairs Policy Committee	11 Y, 0 N	Williamson	Williamson
1)	Economic Development & Community Affairs Policy Council		Williamson	Tinker
2)				
3)				
4)				
5)				

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 Florida Institute for Human and Machine Cognition, Inc., is a research institute where scientists and engineers investigate topics related to understanding cognition in both humans and machines. Established in 1990 as an interdisciplinary research unit of the University of West Florida, the Institute was created as a Florida not-for-profit corporation by the 2003 Legislature.

The following information held by the Corporation or an authorized subsidiary is confidential and exempt from public records requirements: material relating to methods of manufacture or production; potential trade secrets; patentable material; actual trade secrets or proprietary information received, generated, ascertained, or discovered during the course of research conducted by or through the Corporation and its subsidiaries; business transactions resulting from such research; any information received by the Corporation or a subsidiary from a person from another state or nation or the Federal Government which is otherwise exempt or confidential pursuant to the laws of that state or nation or pursuant to federal law; any information received by the Corporation or a subsidiary in the performance of its duties and responsibilities which is otherwise confidential and exempt by law; and all identifying information of a donor or prospective donor to the Corporation or a subsidiary who wishes to remain anonymous.

That portion of a meeting of the Corporation or a subsidiary at which such confidential and exempt information is presented or discussed is exempt from public meetings requirements.

The bill reenacts the exemptions, which will repeal on October 2, 2009, if this bill does not become law. It also reorganizes the section, makes conforming changes, and removes superfluous language.

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

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ 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.

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:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects 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.
- Protects trade or business secrets.

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.² 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 created³ then a public necessity statement and a two-thirds vote for passage are not required.

The Florida Institute for Human and Machine Cognition, Inc.

The Florida Institute for Human and Machine Cognition, Inc., is a research institute where scientists and engineers investigate topics related to understanding cognition in both humans and machines.

¹ Section 119.15, F.S.

² Section 24(c), Art. I of the State Constitution.

³ An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

Established in 1990 as an interdisciplinary research unit of the University of West Florida, the Institute was created as a Florida not-for-profit corporation by the 2003 Legislature.⁴

The Corporation has formal affiliation agreements with the University of West Florida, Florida Atlantic University, the University of Central Florida, and the Florida Institute of Technology. In addition to these formal affiliations, the Corporation has established research partnerships with the University of North Florida and the University of South Florida. Its research activities are funded by government agencies such as the Defense Advanced Research Project Agency (DARPA), the U.S. Army, the National Aeronautics and Space Administration (NASA), and the U.S. Navy; and by private corporations such as IDEO, Nokia, Boeing, Lockheed Martin Corporation, and Science Applications International Corporation (SAIC).⁵

The Corporation's current research activities include: knowledge modeling and sharing, adjustable autonomy, robotics, advanced interfaces and displays, communication and collaboration, computer-mediated learning systems, intelligent data understanding, software agents, expertise studies, work practice simulation, knowledge representation, and other related areas.⁶

Public Record and Public Meeting Exemptions under Review

The following information held by the Corporation or an authorized subsidiary is confidential and exempt⁷ from public records requirements.⁸

- Material relating to methods of manufacture or production;
- Potential trade secrets;
- Patentable material;
- Actual trade secrets⁹ or proprietary information received, generated, ascertained, or discovered during the course of research conducted by or through the Corporation and its subsidiaries;
- Business transactions resulting from such research;
- Any information received by the Corporation or a subsidiary from a person from another state or nation or the Federal Government which is otherwise exempt or confidential pursuant to the laws of that state or nation or pursuant to federal law;
- Any information received by the Corporation or a subsidiary in the performance of its duties and responsibilities which is otherwise confidential and exempt by law; and
- All identifying information of a donor or prospective donor to the Corporation or a subsidiary who wishes to remain anonymous.¹⁰

That portion of a meeting of the Corporation or a subsidiary at which such confidential and exempt information is presented or discussed is exempt from public meetings requirements.¹¹ The Corporation

⁴ Chapter 2003-294, L.O.F., codified in s. 1004.447, F.S.

⁵ Response from the Florida Institute for Human and Machine Cognition, Inc., to the Joint House and Senate Questionnaire regarding the public record and public meeting exemptions under review, June 19, 2008, at question 6.

⁶ *Id.*

⁷ 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 the statutory exemption. (See Attorney General Opinion 85-62, August 1, 1985)

⁸ Section 1004.4472(1), F.S.

⁹ Section 688.002(4), F.S., defines "trade secret" to mean information, including a formula, pattern, compilation, program, device, method, technique, or process that: derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

¹⁰ Since 2005, the Corporation has had zero requests from anonymity from donors or potential donors. Response from the Florida Institute for Human and Machine Cognition, Inc., to the Joint House and Senate Questionnaire regarding the public record and public meeting exemptions under review, June 19, 2008, at question 16.e.

¹¹ Section 1004.4472(3), F.S.

reports that, to date, it has not closed a public meeting because there have been no specific discussions concerning confidential and exempt information.¹²

Pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2009, unless reenacted by the Legislature.

EFFECT OF BILL

The bill removes the repeal date, thereby reenacting the public record and public meeting exemptions for the Corporation and its subsidiaries. It also defines:

- “Corporation” to mean the Florida Institute for Human and Machine Cognition, Inc.; and
- “Subsidiary” to mean a subsidiary authorized and approved by the Corporation.

The bill makes conforming changes, removes superfluous language, and reorganizes the section.

B. SECTION DIRECTORY:

Section 1 amends s. 1004.4472, F.S., to reenact the public record and public meeting exemptions for the Corporation and its subsidiaries.

Section 2 provides an effective date of October 1, 2009.

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:

¹² Response from the Florida Institute for Human and Machine Cognition, Inc., to the Joint House and Senate Questionnaire regarding the public record and public meeting exemptions under review, June 19, 2008, at question 21.

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

None.