

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Education

BILL: SB 1276

INTRODUCER: Senator Montford

SUBJECT: Public Meetings/University Direct-Support Organizations

DATE: March 15, 2013

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------------------|
| 1. | Graf | Klebacha | ED | Pre-meeting |
| 2. | | | GO | |
| 3. | | | EE | |
| 4. | | | RC | |
| 5. | | | | |
| 6. | | | | |

I. Summary:

SB 1276 exempts portions of meetings of university direct-support organizations (DSO) from public meeting laws when confidential information and documents are discussed.

The bill exempts from public meetings requirements, a portion of a meeting of a DSO board of directors, or the board's executive committee or other committees of the board at which information or documents related to donors, funding proposals, or research plans or programs are discussed.

The bill provides for repeal of the exemption regarding DSO meetings on October 2, 2018, unless reviewed and saved from repeal by the Legislature. Additionally, the bill provides a statement of public necessity justifying the exemption as required by the Florida Constitution.

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of each house for the exemption of records or meetings from the requirements of Article I, s. 24(a) or (b) of the Florida Constitution. The bill creates a public meeting exemption. As a result, the bill requires a two-thirds vote for final passage.

The effective date of the bill is October 1, 2013.

This bill amends section 1004.28 of the Florida Statutes.

II. Present Situation:

University direct-support organizations

A university direct-support organization (DSO) is a Florida not-for-profit corporation which is organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of a state university.¹ A DSO may also be operated for the benefit of a research and development park or research and development authority affiliated with a state university. A DSO must be certified by a state university board of trustees to operate in a manner consistent with the goals of the university and in the best interest of the state.² DSOs serve a critical role in raising private support for university academic, research, and athletic activities.³

State universities are considered agencies of the state. As a result, state universities are subject to public records and public meetings laws.⁴ DSO boards are also subject to open public records and public meetings laws.⁵

A DSO must provide for an annual financial audit of the organization's accounts and records which must be conducted by an independent certified public accountant pursuant to rules adopted by the Auditor General in accordance with current law⁶ and by the university board of trustees.⁷ The DSO documents that are currently recognized by law to be public and open to inspection include the following:⁸

- Audit report prepared by the independent auditor during the annual audit process under current law;⁹
- Management letter; and
- Any supplemental data requested by the Board of Governors, the university's board of trustees, the Auditor General, and the Office of Program Policy Analysis and Government Accountability (OPPAGA).

A DSO document is considered confidential if the document does not fall within the above-referenced records that are recognized as public documents under current law. Although current law exempts certain DSO documents from disclosure as a public record, the DSO meetings at

¹ Section 1004.28(1)(a)1.-2., F.S.

² Section 1004.28(1)(a)2.-3., F.S.

³ Florida Board of Governors, *2013 Agency Bill Analysis for HB 359* (Feb. 14, 2013), at 1. HB 359

⁴ Chapters 119 and 286, Florida Statutes. See *Wood v. Marston*, 442 So. 2d 934, 938 (Fla. 1983) (holding that a University of Florida screening committee was subject to Florida's Sunshine Law).

⁵ Section 1004.28, F.S.; see also *Palm Beach Community College Foundation, INC., v. WFTV, INC.*, 611 So.2nd 588 (4th DCA 1993); Op. Att'y Gen. Fla. 05-27 (2005); Op. Att'y Gen. Fla. 92-53 (1992) (providing that John and Mable Ringling Museum of Art Foundation, Inc., established pursuant to statute as a not-for-profit corporation to assist the museum in carrying out its functions by raising funds for the museum, is subject to Sunshine Law by virtue of its substantial ties with the museum).

⁶ Section 11.45(8), F.S.

⁷ Section 1004.28(5), F.S.

⁸ Section 1004.28(5), F.S.

⁹ Section 1004.28(5), F.S.

which such confidential documents are discussed are not exempt from disclosure as a public record.

Public records and meetings law

Article I, s. 24(a) of the Florida Constitution sets forth the state law regarding access to public records. 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.¹⁰

Article I, s. 24(b) of the Florida Constitution sets forth the state law regarding access to public meetings. All meetings of any collegial public body of the executive branch of state government or of local governments, school districts, or special districts at which public business of such body is transacted or discussed must be open and noticed to the public. Meetings of the Legislature must also be open and noticed to the public.¹¹

Current law also requires all meetings of any board or commission of any agency or authority of the state or of any county, municipal corporation, or political subdivision at which official acts are to be taken are declared to be public meetings. Such meetings must be open to the public at all times and that no resolution, rule, or formal action is binding except as taken or made at an open meeting. The board or commission is responsible for providing reasonable notice of all such meetings.¹²

However, the Legislature has the authority to exempt records and meetings from the requirements of Article I, s. 24(a) and (b) of the Florida Constitution. The Legislature may provide by general law passed by a two-thirds vote of each house for the exemption of records and meetings. 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.¹³

Pursuant to the Open Government Sunset Review Act, in the 5th year after enactment of a new exemption or substantial amendment of an existing exemption, the exemption must be repealed on October 2nd of the fifth year, unless the Legislature acts to reenact the exemption.¹⁴

III. Effect of Proposed Changes:

SB 1276 exempts from public meetings requirements, a portion of a meeting of a DSO board of directors, or the board's executive committee or other committees of the board at which the following are discussed:

- Identity of a donor or a prospective donor;
- A proposal seeking research funding from the DSO; or

¹⁰ Art. I, s. 24(a), Fla. Const.

¹¹ Art. I, s. 24(b), Fla. Const.

¹² Section 286.011(1), F.S.

¹³ Art. I, s. 24(c), Fla. Const.

¹⁴ Section 119.15(2)-(3), F.S.

- A plan or program for either initiating or supporting research.

By exempting the above-referenced information from public meetings, the bill will protect the identity of donors and prospective donors thereby increasing the likelihood of candid discussions regarding a state university's research plans and proposals at such meetings.

Pursuant to the Open Government Sunset Review Act,¹⁵ portions of DSO meetings that include discussions regarding information or documents related to donors, funding proposals, or research plans or programs will cease to be exempt from current law regarding public meetings on October 2, 2018, unless the Legislature reenacts the exemption for such information or documents.

The need for exemption regarding a research funding proposal or a plan for initiating or supporting research may vary. As a result, the period of exemption for 5 years or longer may not be necessary for all proposals and plans.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

¹⁵ Section 119.15(2)-(3), F.S.

VI. Technical Deficiencies:

The bill uses inconsistent term regarding portions of meetings to which the exemption will apply (i.e., “any” and “a” portion).

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.
