

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 Governmental Oversight and Accountability

BILL: CS/SB 1276

INTRODUCER: Committee on Education and Senator Montford

SUBJECT: Public Meetings/University Direct-Support Organizations

DATE: April 8, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Graf	Klebacha	ED	Fav/CS
2.	Naf	McVaney	GO	Pre-meeting
3.			EE	
4.			RC	
5.				
6.				

Please see Section VIII. for Additional Information:	
A. COMMITTEE SUBSTITUTE.....	<input checked="" type="checkbox"/> Statement of Substantial Changes
B. AMENDMENTS.....	<input type="checkbox"/> Technical amendments were recommended
	<input type="checkbox"/> Amendments were recommended
	<input type="checkbox"/> Significant amendments were recommended

I. Summary:

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

Specifically, 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 public meetings exemption pursuant to the Open Government Sunset Review Act 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.

Because this bill creates a public meeting exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature 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:

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.¹

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.²

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.³

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.⁴

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 2 of the fifth year, unless the Legislature acts to reenact the exemption.⁵

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.⁶ A DSO may also be operated for the benefit of a research and development park or research and development authority affiliated with

¹ Art. I, s. 24(a), Fla. Const.

² Art. I, s. 24(b), Fla. Const.

³ Section 286.011(1), F.S.

⁴ Art. I, s. 24(c), Fla. Const.

⁵ Section 119.15(2)-(3), F.S.

⁶ Section 1004.28(1)(a)1.-2., F.S.

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.⁷ DSOs serve a role in raising private support for university academic, research, and athletic activities.⁸

State universities are considered agencies of the state. As a result, state universities are subject to public records and public meetings laws.⁹ DSO boards are also subject to public records and public meetings laws.¹⁰

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 law¹¹ and by the university board of trustees.¹²

Current law provides a public records exemption for the identity of a donor who desires to remain anonymous and for all records of a DSO *except* any:¹³

- Audit report prepared by the independent auditor during the annual audit process under current law;¹⁴
- Management letter; or
- 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).

Therefore, all other records are confidential and exempt from public records requirements.

Current law does not provide a comparable public meetings exemption for a portion of a DSO meeting at which confidential and exempt information is discussed.

III. Effect of Proposed Changes:

CS/SB 1276 creates a public meetings exemption for 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 any the following is discussed:

- Identity of a donor or a prospective donor;
- A proposal seeking research funding from the DSO; or
- A plan or program for either initiating or supporting research.

⁷ Section 1004.28(1)(a)2.-3., F.S.

⁸ Florida Board of Governors, *2013 Agency Bill Analysis for HB 359* (Feb. 14, 2013), at 1. HB 359

⁹ 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).

¹⁰ 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).

¹¹ Section 11.45(8), F.S.

¹² Section 1004.28(5), F.S.

¹³ Section 1004.28(5), F.S.

¹⁴ Section 1004.28(5), F.S.

The bill provides that the bill will repeal on October 2, 2018, pursuant to the Open Government Sunset Review Act, unless reviewed and reenacted by the Legislature.

The bill provides a statement of public necessity as required by the Florida Constitution.

The bill's effective date is October 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. This bill does not appear to affect county or municipal governments.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public records or public meetings exemption. This bill creates a new public meetings exemption; therefore, it requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a bill creating a new public records or public meetings exemption to contain a public necessity statement justifying the exemption. This bill creates a new public meetings exemption; therefore, it includes a public necessity statement.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The public meetings exemption may encourage potential donors to DSOs who desire anonymity.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The public necessity statement provides that it is a public necessity that portions of a DSO meeting be made exempt from *disclosure*. For clarity, it is suggested that the public necessity statement instead make clear that it is a public necessity to exempt such meeting portions from the public meetings requirements of s. 286.011, F.S., and Art. I, s. 24(b) of the Florida Constitution. In addition, the Legislature may wish to include in the public necessity statement a discussion of the relationship of the public meetings exemption to the current public records exemption.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Committee on Education on March 18, 2013:

The committee substitute differs from SB 1276 in that the committee substitute:

- Replaces the term “a” with “any” regarding portions of meetings to which the public meetings exemption will apply.

- B. **Amendments:**

None.