

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1311 Pub. Rec./DSO/Office of Supplier Diversity/DMS

SPONSOR(S): Albritton

TIED BILLS: HB 1309 **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---------------------------------------|---------------|----------------|--|
| 1) Government Operations Subcommittee | | Williamson | Williamson |

SUMMARY ANALYSIS

Current law establishes the Office of Supplier Diversity within the Department of Management Services to assist minority business enterprises in becoming suppliers of commodities, services, and construction services to state government.

House Bill 1309 (2013) permits the Office of Supplier Diversity (office) to transfer certain operations to a direct-support organization (DSO). The bill requires the Department of Management Services to establish and govern a DSO to assist the department in carrying out the duties of the Secretary of Management Services with respect to supplier diversity. The purpose of the DSO is to raise money; submit requests for and receive grants from the Federal Government, the state or its political subdivisions, private foundations, and individuals; receive, hold, invest, and administer property; and make expenditures to or for the benefit of the mission of the office. House Bill 1309 provides that funds solicited by the DSO must be held in a separate depository account in the name of the DSO.

The bill creates a public record exemption for the identity of a donor or prospective donor to the DSO who desires to remain anonymous.

The bill provides for repeal of the exemption on October 2, 2016, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution. The bill also provides an effective date that is contingent upon the passage of House Bill 1309.

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

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records Law

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State 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.¹

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act² 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.

Public Record Exemptions, Donor Information

Current law provides several public record exemptions for the identity of a donor or prospective donor to a direct-support organization who desires to remain anonymous. Examples include the direct-support organization for the Florida Agricultural Museum,³ the direct-support organization for the John and Mable Ringling Museum of Art,⁴ and the direct-support organization for the Department of Veterans' Affairs.⁵

Office of Supplier Diversity

Section 287.09451, F.S., provides that the Legislature finds that there is evidence of a systematic pattern of past and continuing racial discrimination against minority business enterprises and a disparity in the availability and use of minority business enterprises in the state procurement system. Because of the disparity, the state has enacted race and gender-conscious remedial programs to ensure minority participation in state contracts. The Office of Supplier Diversity is created within the Department of Management Services to assist minority business enterprises in becoming suppliers of commodities, services, and construction services to state government.

House Bill 1309

House Bill 1309 (2013) permits the Office of Supplier Diversity (office) to transfer certain operations to a direct-support organization (DSO). The bill requires the Department of Management Services to establish and govern a DSO to assist the department in carrying out the duties of the Secretary of Management Services with respect to supplier diversity. The bill provides that the DSO must be

¹ Section 24(c), Art. I of the State Constitution.

² Section 119.15, F.S.

³ Section 570.903(6), F.S.

⁴ Section 1004.45(2)(h), F.S.

⁵ Section 292.055(9), F.S.

incorporated under the provisions of chapter 617, F.S. and approved by the Department of State as a not for profit corporation.

The purpose of the DSO is to raise money; submit requests for and receive grants from the Federal Government, the state or its political subdivisions, private foundations, and individuals; receive, hold, invest, and administer property; and make expenditures to or for the benefit of the mission of the office. House Bill 1309 provides that funds solicited by the DSO must be held in a separate depository account in the name of the DSO. In addition, the DSO must provide an annual financial audit, pursuant to s. 215.981, F.S. The department and the Auditor General must have access to all records of the DSO.⁶

Effect of the Bill

The bill creates a public record exemption for certain information regarding a donor or prospective donor to the DSO for the Office of Supplier Diversity. Specifically, the identity of a donor or prospective donor to the DSO who desires to remain anonymous, and all information identifying such donor or prospective donor, is confidential and exempt⁷ from public records requirements. Such information is confidential and exempt so long as the contribution, gift, or bequest is received anonymously. If the donation is received anonymously, then it is unclear what specific information the DSO would be protecting from public disclosure. If a donation is received anonymously then it would seem the DSO would not have any information identifying the anonymous donor or prospective donor.

The bill also provides that such anonymity must be maintained in the auditor's report.

The bill provides for repeal of the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.⁸

B. SECTION DIRECTORY:

Section 1 amends s. 287.09451, F.S., to create a public record exemption for the direct-support organization authorized to assist the Office of Supplier Diversity within the Department of Management Services.

Section 2 provides a public necessity statement.

Section 3 provides a contingent effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

⁶ Direct-support organizations are considered state agencies within the public records law and as such, the records that the DSO must make available to the department and Auditor General are public records. As such, the provision in House Bill 1309 may be unnecessary and better placed in House Bill 1311. See *Palm Beach Community College Foundation, Inc. v. WTFT, Inc.*, 611 So.2d 588 (Fla. 4th DCA 1993).

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

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill likely could create a minimal fiscal impact on the direct-support organization (DSO), because staff responsible for complying with public record requests could require training related to the public record exemption. In addition, the DSO could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the DSO.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for the identity of a donor or prospective donor to the DSO who desires to remain anonymous. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill creates a public record exemption for the identity of a donor or prospective donor to the direct-support organization (DSO) who desires to remain anonymous so long as the contribution, gift, or bequest is received anonymously. It is unclear what identifying information the DSO would receive if the exemption only applies when the information is received anonymously. As such, the exemption would not seem necessary.

Other similar exemptions do not contain the requirement that the contribution be received anonymously. As such, the sponsor may wish to amend the bill to remove the phrase “so long as the contribution, gift, or bequest is received anonymously.” This would allow the exemption for the DSO to mirror other similar public record exemptions.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES