

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 359 Public Meetings

SPONSOR(S): Higher Education and Workforce Subcommittee, Pigman and others

TIED BILLS: **IDEN./SIM. BILLS:** 1276

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Higher Education & Workforce Subcommittee	12 Y, 0 N, As CS	Brink	Sherry
2) Government Operations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

The bill exempts certain meetings of university direct-support organization (DSO) boards of directors from public meetings laws.

Current law provides that certain DSO documents are public records, while all other documents are confidential and exempt from public records laws. However, there is no comparable public meetings exemption for DSO board meetings at which confidential documents are discussed.

The bill provides that a meeting or portion of a meeting of a DSO board of directors, or the board's executive committee or other committee of the board, at which documents exempt from public records laws are discussed, is exempt from public meetings requirements.

The bill further specifies that meetings or portions of meetings discussing the expenditure of public funds or public records are subject to public meetings laws.

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.

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 records or public meeting exemption. The bill creates a public meeting exemption; thus, it requires a two-thirds vote for final passage.

There is no anticipated fiscal impact associated with the bill.

The bill provides for an effective date of October 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation:

Public meetings law

Article I, s. 24(b) of the State Constitution sets forth the state's public policy regarding access to public meetings. The section requires that all meetings of any collegial public body of the executive branch or of local governments, school districts, or special districts be open and noticed to the public. Meetings of the Legislature must also be open and noticed to the public.¹

The Legislature may provide by general law for the exemption of meetings from the requirements of Article I, s. 24(b) 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.² Further, the Open Government Sunset Review Act,³ which concerns legislative review of public records exemptions set forth under s. 119.07, F.S., applies to provisions of law exempting public meetings from requirements established by statute.⁴

Public policy regarding access to government meetings is addressed further in the Florida Statutes. Section 286.011, F.S., declares public 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. The section provides that these 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.⁵

University direct-support organizations

Direct-support organizations are Florida, not-for-profit corporations that are 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 a state university.⁷ These direct-support organizations serve a critical role in raising private support for university academic, research, and athletic activities.⁸

State universities are considered agencies of the state and thus subject to public records and public meetings laws under chapters 119 and 286, F.S.⁹ University direct-support organization boards are similarly subject to open public records and public meetings laws.¹⁰

¹ Art. I, s. 24(b), Fla. Const.

² Art. I, s. 24(c), Fla. Const.

³ Section 119.15, F.S.

⁴ Section 286.0111, F.S.

⁵ Section 286.011(1), F.S.

⁶ Section 1004.28(1)(a), F.S.

⁷ *Id.*

⁸ Board of Governors staff, *Bill Analysis for HB 359* (Feb. 14, 2013).

⁹ 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 Case law provides that Florida's public records and public meetings laws are broadly construed to effect their remedial and protective purposes. See *Wood v. Marston*, 442 So. 2d 934 (Fla. 1983). The Florida Attorney General opined that community college direct-support organizations are subject to Sunshine Law. Op. Att'y Gen. Fla. 05-27 (2005). See also 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).

Direct-support organizations must provide for an annual financial audit of their accounts and records conducted by an independent certified public accountant pursuant to rules adopted in accordance with s. 11.45(8), F.S., and adopted by university boards of trustees.¹¹

All records of a DSO, with certain exceptions, are confidential and exempt from disclosure as a public record under s. 119.07, F.S.(1).¹² The only documents currently recognized by law to be public and open to inspection include:¹³

- Reports prepared by the independent auditor during the annual audit process pursuant to s. 1004.28(5);
- The auditor's 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).

However, there is no similar provision with respect to DSO board meetings or portions of meetings during which confidential and exempt documents are discussed. While the above-referenced records are considered confidential, DSO boards may only discuss these confidential documents at open, noticed meetings.

Effect of Proposed Changes

This bill provides when DSO board meetings, or portions thereof, are subject to the public meetings law.

When public meetings laws apply

Specifically, the bill provides that, unless otherwise made confidential or exempt by law, public meeting laws apply to a meeting or portion of a meeting of a support organization's board of directors, or executive committee or other committee of the board, at which the following are discussed:

- The expenditure of funds appropriated to the organization by the state;
- Reports prepared by an auditor pursuant to s. 1004.28(5);
- The auditor's 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).

When public meetings laws do not apply

The bill provides that a public meeting or portion of a meeting at which documents that are confidential and exempt from public records law are discussed is exempt from public meetings laws.

This, in effect, makes no change to the current requirement that meetings concerning public records and expenditure of public funds be noticed and open to the public. However, any other DSO board meeting or portion of a meeting may otherwise be closed to the public.

B. SECTION DIRECTORY:

Section 1. Amends s. 1004.28, F.S.; providing an exemption from public meeting requirements for a meeting or portion of a meeting of the board of directors of a university direct-support organization or of

¹¹ Section 1004.28(5), F.S.

¹² Section 1004.28(5)(a), F.S.

¹³ *Id.*

the executive committee or other committees of the board; specifying exceptions to the exemption; providing for review and repeal of the exemption; providing a statement of public necessity.

Section 2. Provides a statement of public necessity for the provisions of the bill.

Section 3. Provides an effective date of October 1, 2013.

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:

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 public meeting 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 public meeting 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's public necessity statement provides that direct-support organizations serve a vital role in raising

charitable donations from private sources, an undertaking that often demands great sensitivity and discretion. Since direct-support organizations must evaluate proposals that contain highly proprietary information, the documents are protected as confidential by current law. However, failure to close meetings in which exempt or confidential records are reported or discussed significantly compromises their confidentiality.

While the bill provides that discussion of the expenditure of public funds must be open and noticed, the public meetings exemption may be broader than what is necessary to protect discussion of sensitive, exempt records and could provide for closed discussion on matters beyond those identified in the bill's statement of public necessity.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not state that the expanded public record exemptions apply retroactively. The Supreme Court of Florida ruled that a public record exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied retroactively.¹⁴

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 13, 2013, The Higher Education & Workforce Committee adopted one strike-all amendment and reported the bill favorably. The strike-all amendment narrows the scope of the public meetings exemption, limiting its applicability to meetings at which the identity of a donor or prospective donor, any proposal seeking research funding from the organization, or a plan or program for either initiating or supporting research is discussed. It also adds greater detail to the bill's statement of public necessity. This change aligns the exemption more closely with the statement of public necessity and serves to avoid constitutional issues related to overbroad public meetings exemptions.

¹⁴ *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d 373 (Fla. 2001).