

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 359 Public Meetings

SPONSOR(S): Government Operations Subcommittee; Higher Education & Workforce Subcommittee; Pigman and others

TIED BILLS: None **IDEN./SIM. BILLS:** CS/CS/SB 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	11 Y, 0 N, As CS	Harrington	Williamson
3) Judiciary Committee	17 Y, 0 N	Williams	Havlicak

SUMMARY ANALYSIS

Current law provides that certain university direct-support organization (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 university DSO board meetings at which confidential documents are discussed.

The bill creates a public meetings exemption for any portion of a meeting of the board of directors of the DSO or of a committee of the DSO in which the board or committee discusses the identity of a donor or prospective donor, proposal seeking research funding from the DSO, or a plan or program for either initiating or supporting research.

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.

There is no anticipated fiscal impact associated with the bill.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

State Constitution: Open Meetings

Article I, s. 24(b) of the State Constitution sets forth the state's public policy regarding access to government meetings. The section requires that all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, be open and noticed to the public.

Article I, s. 24(c) of the State Constitution authorizes the Legislature to provide exemptions from the open meeting requirements upon a two-thirds vote of both legislative chambers, in a bill that specifies the public necessity giving rise to the exemption.

Government in the Sunshine Law

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., known as the "Government in the Sunshine Law" or "Sunshine Law," further requires that all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, at which official acts are to be taken be open to the public at all times.¹ The board or commission must provide reasonable notice of all public meetings.² Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin or economic status or which operates in a manner that unreasonably restricts the public's access to the facility.³ Minutes of a public meeting must be promptly recorded and be open to public inspection.⁴

The Open Government Sunset Review Act⁵ provides that a public meeting exemption may be created or maintained only if it serves an identifiable public purpose and the "[l]egislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."⁶ However, the exemption 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; or
- Protects trade or business secrets.⁷

University Direct-Support Organizations

Current law defines "university direct-support organization" (DSO) to mean an organization that is:

- A Florida corporation not for profit incorporated under the provisions of chapter 617, F.S., and approved by the Department of State.
- Organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of a state university in Florida or for the benefit of a

¹ Section 286.011(1), F.S.

² *Id.*

³ Section 286.011(6), F.S.

⁴ Section 286.011(2), F.S.

⁵ Section 119.15, F.S.

⁶ *Id.*

⁷ *Id.*

research and development park or research and development authority affiliated with a state university and organized under part V of chapter 159, F.S.

- An organization that a state university board of trustees, after review, has certified to be operating in a manner consistent with the goals of the university and in the best interest of the state. Any organization that is denied certification by the board of trustees shall not use the name of the university that it serves.⁸

The DSO serves a role in raising private support for university academic, research, and athletic activities.⁹ The DSO may establish accounts with the State Board of Administration for investment of funds pursuant to part IV of chapter 218, F.S.¹⁰ The DSO is prohibited from giving any gift to a political committee or committee of continuous existence for any purpose other than those certified by a majority roll call vote of the governing board of the DSO at a regularly scheduled meeting as being directly related to the educational mission of the university.¹¹

DSOs are subject to public records and public meetings laws.¹² Current law provides that the following records are confidential and exempt¹³ from public records requirements:

- The identity of donors who desire to remain anonymous; and
- All records of the DSO other than the auditor's report,¹⁴ management letter, and any supplemental data required by the Board of Governors, the university board of trustees, the Auditor General, and the Office of Program Policy Analysis and Government Accountability.¹⁵

However, there is no similar exemption for DSO board meetings during which confidential and exempt records are discussed.

Effect of Proposed Changes

This bill creates a public meetings exemption for meetings of the university DSO. Specifically, the bill provides that any portion of a meeting of the board of directors for the DSO, or of the executive committee or other committee of such board, where the identify 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, is exempt from the public meetings requirements in s. 286.011, F.S., and s. 24(b), Art. I of the State Constitution.

The bill provides that the exemption is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature. The bill provides a statement of public necessity, which in part provides that the meetings

⁸ Section 1004.28(1)(a), F.S.

⁹ State University System Board of Governors, *2013 Legislative Bill Analysis for HB 359* (Feb. 14, 2013) (on file with the Higher Education and Workforce Subcommittee).

¹⁰ Section 1004.28(2)(a), F.S.

¹¹ Section 1004.28(4), F.S.

¹² See *Palm Beach Community College Foundation, Inc. v. WFTF, Inc.*, 611 So.2d 588 (Fla. 4th DCA 1993). 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).

¹³ 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).

¹⁴ Current law requires a DSO to provide for an annual financial audit of its accounts and records conducted by an independent certified public accountant in accordance with certain requirements. The annual audit report must be submitted to the Auditor General and the Board of Governors for review.

¹⁵ Section 1004.28(5), F.S.

included in the exemption frequently demand great sensitivity and discretion, as donors frequently seek anonymity and express concerns over the release of sensitive financial information.

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

B. SECTION DIRECTORY:

Section 1. Amends s. 1004.28, F.S., providing an exemption from public meetings requirements for a meeting or portion of a meeting of the board of directors of a university direct-support organization or of the executive committee or other committees of the board; providing for review and repeal of the exemption.

Section 2. Provides a statement of public necessity.

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 meetings exemption. The bill creates a public meetings 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 meetings exemption. The bill creates a public meetings 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 meetings exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill's public necessity statement provides that DSOs serve a vital role in raising charitable donations from private sources, an undertaking that often demands great sensitivity and discretion. Since DSOs 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. The bill limits the public meetings exemption to only the portion of the meeting in which the University DSO discusses the identity of a donor or prospective donor, proposal seeking research funding from the DSO, or a plan or program for either initiating or supporting research.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 13, 2013, the Higher Education & Workforce Subcommittee 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.

On March 27, 2013, the Government Operations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment corrected a drafting issue.

This analysis is drafted to the committee substitute as passed by the Government Operations Subcommittee.