

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 1396

INTRODUCER: Senator Montford

SUBJECT: Public Records/Public-private Partnerships/State Universities

DATE: March 10, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hand	Klebacha	ED	Pre-meeting
2.			GO	
3.			RC	

I. Summary:

SB 1396 exempts from disclosure, pursuant to Florida’s public records law, certain unsolicited proposals for a public-private partnership filed with a state university board of trustees.

If the board does not intend to enter into an agreement for the qualifying project, the unsolicited proposal is not exempt from disclosure. Otherwise, the unsolicited proposal is exempt from disclosure until:

- Notice of the board’s intended decision, or
- Twelve 12 months after the board rejects all proposals for the project described in the unsolicited proposal.

The bill is tied to the passage of SB 900 (Sen. Latvala), and takes effect on the same date as SB 900 (July 1, 2014) or similar legislation, if such legislation is adopted in this legislative session and becomes law.

II. Present Situation:

Florida Public Records Requirements

The Constitution of the State of Florida provides that:

[e]very 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, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution.¹

¹ Art. I, s. 24(a), Fla. Const. The Florida Statutes define the term “public records” as “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical

Under Florida law, “[e]very person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.”²

However, the Legislature is authorized to exempt records from such laws that otherwise require accessibility.³ Such exemptions must be passed by a two-thirds vote of each house, state with specificity the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the law.⁴

Open Government Sunset Review Act

The Open Government Sunset Review Act⁵ provides that an exemption must serve an “identifiable public purpose, and the exemption may be no broader than is necessary to meet the public purpose it serves.”⁶ The exemption must meet one of the following identifiable public purposes:⁷

- 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 information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

A new public records exemption shall be repealed on October 2nd of the fifth year after enactment, unless the Legislature reenacts the exemption.⁸

III. Effect of Proposed Changes:

SB 1396 exempts from disclosure, pursuant to Florida’s public records law, certain unsolicited proposals for a public-private partnership filed with a state university board of trustees.

form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(12), F.S.

² Section 119.07(1)(a), F.S.

³ Art. I, s. 24(c), Fla. Const.

⁴ *Id.*

⁵ Section 119.15, F.S.

⁶ Section 119.15(6)(b), F.S.

⁷ *Id.*

⁸ Section 119.15(3), F.S.

If the board does not intend to enter into an agreement for the qualifying project, the unsolicited proposal is not exempt from disclosure. Otherwise, the unsolicited proposal is exempt from disclosure until:

- Notice of the board's intended decision, or
- Twelve 12 months after the board rejects all proposals for the project described in the unsolicited proposal.

The public records exemption is subject to the Open Government Sunset Review Act⁹ and shall be repealed on October 2, 2019, unless action is taken by the Legislature to reenact the exemption.¹⁰

The bill provides a statement of public necessity for the exemption,¹¹ which states that:

- If unsolicited proposals are publicly available before the board makes a decision, competitors could determine the creative financing used to fund the projects.
- Unsolicited proposals may contain proprietary business information and trade secrets, such as patent-pending designs and financing terms.
- The harm that may result from the release of such information outweighs any public benefit that may be derived from disclosure of the information.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

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 new public record exemptions and, therefore, 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 new public record exemptions and, therefore, includes a public necessity statement.

⁹ Section 119.15, F.S.

¹⁰ Section 119.15(3), F.S.

¹¹ The bill does not exempt solicited proposals from disclosure pursuant to a public records request. The same public purpose for exempting a solicited proposal may also exist for solicited proposals. *Compare*, Section 119.071(1)(b), F.S. (which creates a public records exemption for all sealed bids, proposals or replies in response to a competitive solicitation pursuant to s. 287.057, F.S.).

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1013.505 of the Florida Statutes, which will be created should SB 900, or a substantially similar bill, become law.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.