

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: SB 318

INTRODUCER: Senator Stargel

SUBJECT: Public Meetings/University Direct-support Organization

DATE: March 11, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Graf</u>	<u>Klebacha</u>	<u>ED</u>	Favorable
2.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	Pre-meeting
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 318 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 university DSO board of directors, or the board's executive committee or other committees of the board, at which information or documents related to donors and prospective 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, 2019, 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 the 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, 2014.

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 fifth 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 In addition, a university DSO may also be operated for the benefit of a research and development park or research and development authority affiliated with a state university. The 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 assist the state universities “achieve excellence by providing supplemental resources from private gifts and bequests, and valuable education support services.”⁸

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(1)-(3), F.S.

⁶ Section 1004.28(1)(a)1.-2., F.S.

⁷ Section 1004.28(1)(a)2.-3., F.S.

⁸ Board of Governors of the State University System of Florida, *State University System of Florida Consolidated Financial Statements* (Fiscal Year June, 30, 2010), at 10, available at <http://flbog.edu/about/budget/docs/2012-SUS-Consolidated-Financial-Statement-Manual.pdf>.

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 university 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 university 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 of the State University System of Florida (Florida 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 university DSO meeting at which confidential and exempt information is discussed.

III. Effect of Proposed Changes:

SB 318 creates a public meetings exemption for a portion of a meeting of the university 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.

The bill provides a statement of public necessity, as required by the Florida Constitution, and establishes October 2, 2019 as the date for repeal of the public meetings exemption, unless the exemption is reviewed and reenacted by the Legislature, pursuant to the Open Government Sunset Review Act.

⁹ Chapters 119 and 286, F.S. *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's effective date is October 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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:

None.

VI. Technical Deficiencies:

Currently s. 1004.028, F.S. includes a public records exemption tailored to exempt to the identity of a donor who wishes to remain anonymous. This public meetings bill is broader than the public records exemption in that it exempts the identity of any donor or prospective donor and not just donors who wish to remain anonymous.

VII. Related Issues:

The Florida Board of Governors reported that if a state university receives funding for a research project or program from both state and private sources, it may be challenging to determine if the exemption from public meetings will apply.¹⁵

VIII. Statutes Affected:

This bill substantially amends section 1004.28 of the Florida Statutes.

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹⁵ Board of Governors of the State University System of Florida, *2014 Agency Bill Analysis for SB 318* (Nov. 20, 2013), at 2.