

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7001 PCB OTM 19-06 OGSR/State University DSO Research Funding
SPONSOR(S): Oversight, Transparency & Public Management Subcommittee, Aloupis
TIED BILLS: **IDEN./SIM. BILLS:** SB 7020

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Oversight, Transparency & Public Management Subcommittee	13 Y, 0 N	Moore	Harrington
1) Education Committee	17 Y, 0 N	Bishop	Hassell
2) State Affairs Committee	23 Y, 0 N	Moore	Williamson

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record exemption and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

A university direct-support organization (DSO) is a not for profit organization that serves a role in raising private support for university academic, research, and athletic activities. DSOs are subject to public record and public meeting laws.

Current law provides a public meeting exemption for any portion of a meeting of the board of directors of a university DSO, or of the executive committee or other committees of such board, at which the board or committee discusses a proposal seeking research funding from the DSO or a plan or program for either initiating or supporting research.

The bill saves from repeal the public meeting exemption, which will repeal on October 2, 2019, if this bill does not become law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.²

The Act 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:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect 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.
- Protect trade or business secrets.³

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.⁴ If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created⁵ then a public necessity statement and a two-thirds vote for passage are not required.

University Direct-support Organizations

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

- A Florida corporation not for profit incorporated under the provisions of ch. 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 research and development park or research and development authority affiliated with a state university and organized under part V of ch. 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.⁶

A university DSO serves a role in raising private support for university academic, research, and athletic activities. The DSO may establish accounts with the State Board of Administration for investment of

¹ Section 119.15, F.S.

² Section 119.15(3), F.S.

³ Section 119.15(6)(b), F.S.

⁴ Section 24(c), Art. I of the State Constitution.

⁵ An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.

⁶ Section 1004.28(1)(a), F.S.

funds pursuant to part IV of ch. 218, F.S.⁷ A university DSO is prohibited from giving any gift to a political committee for any purpose.⁸

DSOs are subject to public record and public meeting laws.⁹ Current law provides that the following records held by a university DSO are confidential and exempt¹⁰ from public record requirements:

- The identity of a donor who desires to remain anonymous; and
- All records of a university DSO and any supplemental data requested by the Board of Governors, the university board of trustees, the Auditor General, and the Office of Program Policy Analysis and Government Accountability, except for the DSO's auditor's report, the management letter, any records related to the expenditure of state funds, and any financial records related to the expenditure of private funds for travel.¹¹

Public Meeting Exemption under Review

In 2014, the Legislature created a public meeting exemption for any portion of a meeting of the board of directors of a university DSO, or of the executive committee or other committees of such board, at which the board or committee discusses a proposal seeking research funding from the DSO or a plan or program for either initiating or supporting research.¹²

The 2014 public necessity statement for the exemption provided that:

The resources raised by direct-support organizations are frequently used to initiate, develop, and fund plans and programs for research that routinely contain sensitive proprietary information, including university-connected research projects, which provide valuable opportunities for faculty and students and may lead to future commercial applications. This activity requires the direct-support organization to develop research strategies and evaluate proposals for research grants that routinely contain sensitive or proprietary information, including specific research approaches and targets of investigation, the disclosure of which could injure those conducting the research. Maintaining the confidentiality of research strategies, plans, and proposals is a hallmark of a responsible funding process, is practiced by the National Science Foundation and the National Institutes of Health, and allows for candid exchanges among reviewers. The state has recognized these realities by expressly making most of the records of direct-support organizations confidential and exempt from the state's public records requirements, including proposals seeking research funding. Failure to close meetings in which these activities are discussed would significantly undermine the confidentiality of the strategies, plans, and proposals themselves. Without the exemption from public meeting requirements, the release during a public meeting of a proposal seeking research funding from the direct-support organization

⁷ Section 1004.28(2)(a), F.S.

⁸ Section 1004.28(4), F.S.

⁹ See *Palm Beach Community College Foundation, Inc. v. WTFT, Inc.*, 611 So. 2d 588 (Fla. 4th DCA 1993). Florida's Attorney General has 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).

¹⁰ 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 statute. See Attorney General Opinion 85-62 (August 1, 1985).

¹¹ Section 1004.28(5), F.S.

¹² Chapter 2014-27, L.O.F.; codified as s. 1004.28(5)(c), F.S.

or a plan or program for either initiating or supporting research would defeat the purpose of the public records exemption.¹³

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2019, unless reenacted by the Legislature.¹⁴

During the 2018 interim, subcommittee staff sent a questionnaire to each university DSO as part of its review under the Open Government Sunset Review Act. Responses were received from 15 DSOs. Two of the DSOs indicated they currently use the exemption to protect portions of meetings at which research proposals are discussed, and one DSO indicated it anticipates using the exemption for an upcoming research proposal. All three of these DSOs recommended reenactment of the exemption as it is necessary to protect intellectual property information related to the research proposals.

Effect of the Bill

The bill removes the scheduled repeal of the public meeting exemption, thereby maintaining the public meeting exemption for any portion of a meeting of the board of directors of a university DSO, or of the executive committee or other committees of such board, at which the board or committee discusses a proposal seeking research funding from the DSO or a plan or program for either initiating or supporting research.

B. SECTION DIRECTORY:

Section 1. amends s. 1004.28, F.S., relating to direct-support organizations, use of property; board of directors; activities; audit; facilities.

Section 2. provides an effective date of October 1, 2019.

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.

¹³ Section 2, ch. 2014-27, L.O.F.

¹⁴ Section 1004.28(5)(c), F.S.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.