

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7003      PCB OTM 19-04      OGSR/Alzheimer's Disease Research Grant Advisory Board  
**SPONSOR(S):** Oversight, Transparency & Public Management Subcommittee, Pigman, Cary  
**TIED BILLS:**            **IDEN./SIM. BILLS:** SB 7002SB 7002

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Oversight, Transparency & Public Management Subcommittee	13 Y, 0 N	Harrington	Harrington
1) Health Quality Subcommittee	10 Y, 0 N	Gilani	McElroy
2) State Affairs Committee			

### 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.

The Ed and Ethel Moore Alzheimer's Disease Research Program is established within the Florida Department of Health to fund research to help prevent or cure Alzheimer's disease. Applications for research funding under the program are submitted from universities and established research institutes in the state. Grant funding is used for research relating to the prevention, diagnosis, treatment, and cure of Alzheimer's disease.

Current law provides that when the board discusses applications for Alzheimer's disease research grants, those portions of the meeting are exempt from public meeting requirements. In addition, applications provided to the board for research grants and the records generated during the review of those applications, except final recommendations, are confidential and exempt from public record requirements. Information held confidential and exempt may be disclosed with the express consent of the individual to whom the information pertains or the individual's legal guardian or by court order.

The bill reenacts the public meeting and public record exemptions, which will repeal on October 2, 2019, if this bill does not become law.

The bill has no fiscal impact on the state or local governments.

The bill provides an effective date of October 1, 2019.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Open Government Sunset Review Act

The Open Government Sunset Review Act<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup>

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.<sup>4</sup> 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 created<sup>5</sup> then a public necessity statement and a two-thirds vote for passage are not required.

##### Ed and Ethel Moore Alzheimer's Disease Research Program

The Ed and Ethel Moore Alzheimer's Disease Research Program (program), within the Florida Department of Health (DOH), funds research to help prevent or cure Alzheimer's disease. The long-term goals of the program are to:<sup>6</sup>

- Improve the health of Floridians by researching better prevention and diagnoses of and treatments and cures for Alzheimer's disease;
- Expand the foundation of knowledge relating to the prevention, diagnosis, treatment, and cure of Alzheimer's disease; and
- Stimulate economic activity in the state in areas related to Alzheimer's disease.

Funds appropriated to the program are used exclusively for the award of grants and fellowships through a competitive process for research relating to the prevention, diagnosis, treatment, and cure of

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<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Section 119.15(3), F.S.

<sup>3</sup> Section 119.15(6)(b), F.S.

<sup>4</sup> Article I, s. 24(c), FLA. CONST.

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

<sup>6</sup> Section 381.82(1), F.S.

Alzheimer's disease and for expenses incurred in the administration of the program. Priority is given to research designed to prevent or cure Alzheimer's disease.<sup>7</sup>

The Alzheimer's Disease Research Grant Advisory Board (board) advises the State Surgeon General on the scope of the research program and provides recommendations for proposals that should be funded. The State Surgeon General, after consulting with the board, awards grants on the basis of scientific merit.<sup>8</sup> The board also may advise on program priorities, assist in developing linkages with nonacademic entities, and develop and provide oversight of mechanisms for disseminating research results.<sup>9</sup>

Applications for research funding under the program may be submitted by any university or established research institute in the state.<sup>10</sup> Awards are made through a competitive, peer-reviewed process in any of the following categories:<sup>11</sup>

- Investigator-initiated research;
- Institutional research;
- Predoctoral and postdoctoral research fellowships; and
- Collaborative research, including those that advance the finding of cures through basic or applied research.

The board annually submits a fiscal-year progress report on the programs under its purview to the Governor, the Speaker of the House of Representatives, the President of the Senate, and the State Surgeon General.<sup>12</sup> The report must include the amount of research funding flowing from the National Institutes of Health, the board's progress towards its goals and its recommendations to further its mission, and summaries of each grant-supported research project and the results, or expected results, of these projects.<sup>13</sup>

#### Public Record and Public Meeting Exemptions under Review

In 2014, the Legislature created a public meeting exemption for portions of the board meeting where applications for research grants are discussed.<sup>14</sup> The closed portion of the meeting must be recorded.<sup>15</sup> The Legislature also created a public record exemption for grant applications submitted to the board and the records generated during its review, except final recommendations.<sup>16</sup> Such information is confidential and exempt<sup>17</sup> from public record requirements. The records may be released, however, with the express written consent of the person to whom the information pertains or the person's legally authorized representative, or by the court upon a showing of good cause.<sup>18</sup>

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<sup>7</sup> Section 381.82(2), F.S.

<sup>8</sup> Section 381.82(3)(c), F.S.

<sup>9</sup> *Id.*

<sup>10</sup> Section 381.82(2)(b), F.S.

<sup>11</sup> *Id.*

<sup>12</sup> Section 381.82(4), F.S.

<sup>13</sup> *Id.*

<sup>14</sup> Chapter 2014-164, L.O.F.; codified as s. 381.82(3)(d), F.S.

<sup>15</sup> Section 381.82(3)(d)2., F.S.

<sup>16</sup> Section 381.82(3)(d)1., F.S.

<sup>17</sup> 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).

<sup>18</sup> Section 381.82(3)(d)3., F.S.

The 2014 public necessity statement<sup>19</sup> for the exemptions provides that:

The research grant applications, and the records generated by the board related to review of the applications, contain information of a confidential nature, including ideas and processes, the disclosure of which could injure the affected researchers. Maintaining confidentiality is practiced by the National Science Foundation and the National Institutes of Health and allows for candid exchanges among reviewers critiquing proposals. The Legislature further finds that closing access to those portions of meetings of the board during which Alzheimer's disease research grant applications are discussed serves a public good by ensuring that decisions are based upon merit without bias or undue influence.<sup>20</sup>

Pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2019, unless reenacted by the Legislature.<sup>21</sup>

During the 2018 interim, subcommittee staff sent DOH a questionnaire as part of its review under the Open Government Sunset Review Act. DOH staff recommended that the exemption be reenacted, noting that the exemption has enabled the board to openly discuss and evaluate each research grant application. In addition, DOH noted that the exemption allows the board to maintain the level of integrity for research necessary to combat Alzheimer's disease in the state.

### **Effect of the Bill**

The bill removes the repeal date thereby reenacting the public meeting exemption for portions of the board's meeting where applications for research grants are discussed. The bill also reenacts the public record exemption for grant applications submitted to the board and any records generated by the board relating to review of those applications, except final recommendations.

#### **B. SECTION DIRECTORY:**

Section 1 amends s. 381.82, F.S., to save from repeal the public meeting and public record exemptions for the Alzheimer's Disease Research Advisory Board.

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.

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<sup>19</sup> Article I, s. 24(c), FLA. CONST., requires each public record exemption to "state with specificity the public necessity justifying the exemption."

<sup>20</sup> Section 2, ch. 2014-164, L.O.F.

<sup>21</sup> Section 381.82(3)(d)4., F.S.

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:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.