

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7005      PCB OTM 19-05      OGSR/Public Research Facilities/Animal Research  
**SPONSOR(S):** Oversight, Transparency & Public Management Subcommittee, Yarborough  
**TIED BILLS:**            **IDEN./SIM. BILLS:** SB 7018

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	16 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.

Current law provides a public record exemption for personal identifying information of a person employed by, under contract with, or volunteering for a public research facility, including a state university, that conducts animal research or is engaged in activities related to animal research when such information is contained in certain records.

The bill maintains the public record 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 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.

##### Public Record Exemption under Review

In 2014, the Legislature created a public record exemption for personal identifying information of a person employed by, under contract with, or volunteering for a public research facility, including a state university, that conducts animal research or is engaged in activities related to animal research when such information is contained in the following records:

- Animal records, including animal care and treatment records.
- Research protocols and approvals.
- Purchasing, funding, and billing records related to animal research or activities.
- Animal care and use committee records.
- Facility and laboratory records related to animal research or activities.<sup>6</sup>

Such information is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.<sup>7</sup>

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

<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> Chapter 2014-37, L.O.F.; codified as s. 585.611, F.S.

<sup>7</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

The 2014 public necessity statement for the exemption provided that:

[T]he release of such personal identifying information will place such persons in danger of threats and harassment as well as physical and emotional harm from those who advocate against such research. University employees have been harassed and threatened after animal care records that included their personal identifying information were disclosed pursuant to public records requests. Thus, the Legislature finds that the harm and threat to such persons' safety that results from the release of personal identifying information in records about the animals or about the animal research outweighs any public benefit that may be derived from the disclosure of the information.<sup>8</sup>

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2019, unless reenacted by the Legislature.<sup>9</sup>

During the 2018 interim, subcommittee staff sent a questionnaire to each state college that conducts animal research and each state university as part of its review under the Open Government Sunset Review Act. Responses were received from 13 of these entities, and nine entities indicated they conduct animal research or activities related to animal research. All nine of these entities recommended reenactment of the public record exemption in order to protect the safety of researchers and students as well as the integrity of the research being conducted.

#### **Effect of the Bill**

The bill removes the scheduled repeal date of the public record exemption, thereby saving from repeal the public record exemption for personal identifying information of a person employed by, under contract with, or volunteering for a public research facility, including a state university, that conducts animal research or is engaged in activities related to animal research.

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

Section 1. amends s. 585.611, F.S., relating to animal research identifying information.

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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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>8</sup> Section 2, ch. 2014-37, L.O.F.

<sup>9</sup> Section 585.611(3), 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. 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.