

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 617 Pub. Rec. and Meetings/Statewide Council on Human Trafficking Direct-support Organization

**SPONSOR(S):** Judiciary Committee, Government Operations Subcommittee, Overdorf

**TIED BILLS:** CS/HB 615 **IDEN./SIM. BILLS:** SB 294

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice & Public Safety Subcommittee	14 Y, 0 N	Frost	Hall
2) Government Operations Subcommittee	16 Y, 0 N, As CS	Landry	Toliver
3) Judiciary Committee	20 Y, 0 N, As CS	Frost	Kramer

### SUMMARY ANALYSIS

In 2019, the Legislature required the Department of Legal Affairs (DLA) to establish a direct-support organization (DSO) to provide assistance, funding, and support to the Statewide Council on Human Trafficking (Council) and to assist in the fulfillment of the Council's purposes. The DSO met for the first time in August 2019 and incorporated as the Florida Alliance to End Human Trafficking. The DSO: conducts programs and activities; raises funds; requests and receives grants, gifts, and bequests of money; acquires, receives, holds, invests, and administers securities, funds, objects of value, or other property, real or personal; and makes expenditures to or for the direct or indirect benefit of the Council. In so doing, the DSO may often need to meet with donors or prospective donors to the DSO or discuss such individuals at DSO meetings. Current law does not provide an avenue for a donor or prospective donor to remain anonymous as records held by the DSO and meetings of the DSO are open to the public.

The bill, which is linked to the passage of CS/HB 615 (2022), creates a public record exemption and public meeting exemption for the personal identifying information (PII) of a donor or prospective donor to the DSO currently incorporated as the Florida Alliance to End Human Trafficking.

Specifically, CS/CS/HB 617 amends s. 16.618, F.S., to create a public record exemption for the PII of a donor or prospective donor to the DSO who desires to remain anonymous and for any communications between DSO board members related to a board approved event for which a donor is contributing. The bill also creates a public meeting exemption for any portion of a DSO meeting during which the PII of a donor or prospective donor who wishes to remain anonymous is discussed.

The bill provides for repeal of the public record and public meeting exemptions on October 2, 2027, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill may have an insignificant fiscal impact on the DLA, the Council, or the DSO when redacting confidential and exempt information prior to releasing a record or the minutes of a meeting as required under the bill.

The bill will become effective on the same date that CS/HB 615 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

**Article I, section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.**

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Public Records

Article I, s. 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature may, however, exempt a public record from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.<sup>1</sup> The general law must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish its purpose.<sup>2</sup>

Public policy regarding access to government records is addressed further in s. 119.07(1)(a), F.S., which guarantees every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt. Furthermore, the Open Government Sunset Review Act (Act)<sup>3</sup> provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose and the "Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."<sup>4</sup> In addition, the exemption may be no broader than is necessary to meet one of the following purposes:<sup>5</sup>

- 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; or
- Protect trade or business secrets.

The Act also requires the automatic repeal of a public record exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption. Public record exemptions apply prospectively,<sup>6</sup> unless the Legislature provides clear intent that the exemption applies retroactively.<sup>7</sup>

When creating a public record exemption, the Legislature may provide that a record is "exempt" or "confidential and exempt." Records designated as "exempt" may be released at the discretion of the records custodian under certain circumstances, while records designated as "confidential and exempt" are not subject to inspection by the public and may only be released under statutorily defined circumstances.<sup>8</sup>

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<sup>1</sup> Art. I, s. 24(c), Fla. Const.

<sup>2</sup> *Id.*

<sup>3</sup> S. 119.15, F.S.

<sup>4</sup> S. 119.15(6)(b), F.S.

<sup>5</sup> *Id.*

<sup>6</sup> *Memorial Hospital-West Volusia, Inc. v. News-Journal Corp.*, 784 So. 2d 438, 440-441 (Fla. 2001).

<sup>7</sup> *Campus Communications, Inc. v. Earnhardt*, 821 So. 2d 388, 396 (Fla. 5th DCA 2002), *review denied*, 848 So. 2d 1153 (Fla. 2003).

<sup>8</sup> See *WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied* 892 So. 2d 1015 (Fla. 2004); *City of Rivera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991); and Op. Att'y Gen. Fla. 85- 62 (1985).

## Public Meetings

The Florida Constitution provides that the public has a right to access governmental meetings.<sup>9</sup> Each collegial public body must provide notice of its meetings to the public and permit the public to attend any meeting where official acts are taken or public business is transacted or discussed. This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts, or special districts.<sup>10</sup>

Section 286.011, F.S., requires all meetings of any board or commission of any state or local agency or authority where official acts are to be taken be open to the public.<sup>11</sup> The board or commission must provide the public reasonable notice of such meetings.<sup>12</sup> Minutes of a public meeting must be promptly recorded and open to public inspection.<sup>13</sup> A public officer or member of a governmental entity who violates the requirements for public meetings is subject to civil and criminal penalties.<sup>14</sup>

The Legislature may also create an exemption to open meetings requirements by passing a general law by a two-thirds vote of the House and the Senate. The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.<sup>15</sup>

## Current Public Records Exemptions for Donors or Prospective Donors

Florida currently provides several instances in which specified personal identifying information of certain donors or prospective donors to organizations is confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution, such as:

- The identity of a donor or prospective donor of Enterprise Florida, Inc.,<sup>16</sup> and of the Florida Development Finance Corporation.<sup>17</sup>
- Information that would identify the name, address, or telephone number of a donor or prospective donor of a donation made for the benefit of a publicly owned performing arts center who desires to remain anonymous.<sup>18</sup>
- Any information identifying a donor or prospective donor to the direct-support organization of the University of Florida who desires to remain anonymous.<sup>19</sup>
- Any information identifying a donor or prospective donor to the direct-support organization of the Department of Veteran Affairs who desires to remain anonymous.<sup>20</sup>
- The identity of a donor or prospective donor to the citizen support organization of the Fish and Wildlife Conservation Commission who desire to remain anonymous and all information identifying such donor or prospective donor.<sup>21</sup>

## Statewide Council on Human Trafficking

The Statewide Council on Human Trafficking (Council), within the Department of Legal Affairs (DLA), is tasked with:

- Developing recommendations for human trafficking victim programs and services, including certification criteria for safe houses and foster homes.
- Making recommendations for apprehending and prosecuting traffickers.
- Annually holding a statewide policy summit.

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<sup>9</sup> Art. I, s. 24(b), Fla. Const.

<sup>10</sup> *Id.*

<sup>11</sup> S. 286.011(1), F.S.

<sup>12</sup> S. 286.011(2), F.S.

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

<sup>14</sup> S. 286.011(3), F.S.

<sup>15</sup> *Id.*

<sup>16</sup> S. 11.45(3)(i), F.S.

<sup>17</sup> S. 11.45(3)(j), F.S.

<sup>18</sup> S. 265.7015(2), F.S.

<sup>19</sup> S. 267.1736(9), F.S.

<sup>20</sup> S. 292.055(9)(a), F.S.

<sup>21</sup> S. 379.223(3), F.S.

- Working with the Department of Children and Families to create and maintain an inventory of human trafficking programs and services in each county.
- Developing policy recommendations.<sup>22</sup>

Membership on the Council includes:

- The Attorney General, or a designee, serving as chair.
- The Secretary of Children and Families, or a designee, serving as vice chair.
- The State Surgeon General, or a designee.
- The Secretary of Health Care Administration, or a designee.
- The executive director of the Department of Law Enforcement, or a designee.
- The Secretary of Juvenile Justice, or a designee.
- The Commissioner of Education, or a designee.
- One member of the Senate appointed by the President of the Senate.
- One member of the House of Representatives appointed by the Speaker of the House of Representatives.
- An elected sheriff appointed by the Attorney General.
- An elected state attorney appointed by the Attorney General.
- Two members appointed by the Governor, and two members appointed by the Attorney General, who have professional experience to assist the Council in the development of care and treatment options for human trafficking victims.<sup>23</sup>

### DSO Supporting the Council – Florida Alliance to End Human Trafficking

A direct-support organization (DSO) is a non-profit organization authorized by statute to carry out specific tasks in support of a public entity or public cause. The function and purpose of a DSO is detailed in its enacting statute and the contract with the agency the DSO was created to support.<sup>24</sup> In 2019, the Legislature required DLA to establish a DSO to provide assistance, funding, and support to the Council, and to assist in the fulfillment of the Council's purposes.<sup>25</sup> The DSO met for the first time in August 2019 and incorporated as the Florida Alliance to End Human Trafficking.<sup>26</sup>

The DSO is statutorily required to be:

- A Florida not for profit corporation, incorporated under ch. 617, F.S., and approved by the Secretary of State;
- Certified by DLA, after review, to be operating in a manner consistent with the purposes of the DSO and in the best interests of the state.<sup>27</sup>

The DSO's board of directors must be thirteen members, including:

- Two members appointed by the executive director of the Florida Department of Law Enforcement, both of whom must have experience and knowledge in the area of human trafficking.
- Three members appointed by the Attorney General:
  - One of whom must be a human trafficking survivor.
  - One of whom must be a mental health expert.
- Four members appointed by the President of the Senate.
- Four members appointed by the Speaker of the House of Representatives.<sup>28</sup>

<sup>22</sup> S. 16.617, F.S.

<sup>23</sup> *Id.*

<sup>24</sup> Ss. 14.29(9)(a), 16.616(1), and 258.015(1), F.S. See also Rules of the Florida Auditor General, *Audits of Certain Nonprofit Organizations* (effective June 30, 2021), Rule 10.720(1)(b) and (d), [https://flauditor.gov/pages/pdf\\_files/10\\_700.pdf](https://flauditor.gov/pages/pdf_files/10_700.pdf) (last visited Feb. 8, 2022).

<sup>25</sup> Ch. 2019-152, Laws of Fla.; S. 16.618, F.S.

<sup>26</sup> Office of the Attorney General, *Statewide Council on Human Trafficking*, <http://myfloridalegal.com/pages.nsf/main/8aea5858b1253d0d85257d34005afa72> (last visited Feb. 8, 2022).

<sup>27</sup> S. 16.618(1), F.S.

<sup>28</sup> S. 16.618(3), F.S.

The DSO: conducts programs and activities; raises funds; requests and receives grants, gifts, and bequests of money; acquires, receives, holds, invests, and administers, in its own name, securities, funds, objects of value, or other property, real or personal; and makes expenditures to or for the direct or indirect benefit of the Council.<sup>29</sup> In doing so, the DSO may often need to meet with donors or prospective donors to the DSO or discuss such individuals at DSO meetings. Current law does not allow a donor or prospective donor to keep his or her identifying information anonymous, as records held by the DSO and meetings of the DSO are open to the public.<sup>30</sup>

### CS/HB 615 (2022)

CS/CS/HB 615, to which this bill is linked, amends s. 16.618, F.S., to require the development of specified human trafficking training for firesafety inspectors. Under the bill, the DSO is required to disseminate such training statewide, and allow the training to be eligible for certain continuing education credits.

### **Effect of Proposed Changes**

This bill, which is linked to the passage of CS/HB 615 (2022), creates a public record exemption and public meeting exemption for the personal identifying information (PII) of a donor or prospective donor to the DSO currently incorporated as the Florida Alliance to End Human Trafficking.

Specifically, CS/CS/HB 617 amends s. 16.618, F.S., to create a public record exemption for the PII of a donor or prospective donor to the DSO who desires to remain anonymous and for any communications between DSO board members related to a board approved event for which a donor is contributing. Under the bill, such information is confidential and exempt. The bill also creates a public meeting exemption for any portion of a DSO meeting during which the PII of a donor or prospective donor who wishes to remain anonymous is discussed.

The bill provides a public necessity statement as required by article I, section 24(c) of the Florida Constitution. The public necessity statement provides that the exemptions under the bill are necessary to protect the identities of prospective and actual donors who desire to remain anonymous. Because donors and prospective donors may be concerned about their PII being disclosed and that such disclosure could potentially lead to theft, and in particular, identity theft, failing to exempt such information may have a chilling effect on donations which support the DSO. Furthermore, failing to also exempt from public meeting requirements any portion of a DSO meeting during which a donor or potential donor's PII is discussed would defeat the purpose of exempting such information from public records.

The bill provides for repeal of the public record and public meeting exemptions on October 2, 2027, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill will become effective on the same date that CS/HB 615 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

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<sup>29</sup> S. 16.618(8)(a), F.S.

<sup>30</sup> Other state laws requiring the disclosure of donor information have been found to violate the donors' first amendment right to freedom of association. See *Americans for Prosperity Found. v. Bonta*, 141 S. Ct. 2373 (2021). (Holding that a California law requiring tax-exempt charities that solicited contributions in California to disclose to the Attorney General's Office IRS forms containing the names and addresses of their major donors imposed a widespread burden on the donors' associational rights, which could not be justified on the ground that it was narrowly tailored to investigating charitable wrongdoing, or that the State's interest in administrative convenience is sufficiently important).

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 16.618, F.S., relating to direct-support organization.

**Section 2:** Provides a public necessity statement.

**Section 3:** Provides that the bill is effective on the same date that CS/HB 615 (2022) or similar legislation takes effect.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

By allowing the PII of donors and prospective donors to the DSO to remain confidential and exempt, the bill may encourage more individuals who wish to protect their PII and remain anonymous to donate to the DSO.

2. Expenditures:

The bill may have an insignificant fiscal impact on the DLA, the Council, or the DSO when redacting confidential and exempt information prior to releasing a record or the minutes of a meeting as required under the bill.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

By protecting the PII of donors or potential donors to the DSO, the bill may encourage more private donations to the DSO.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to take action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote Requirement

Article I, section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption and a public meeting exemption; thus, it requires a two-thirds vote for final passage.

### Public Necessity Statement

Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption and a public meeting exemption; thus, it includes a public necessity statement.

### Breadth of Exemption

Article I, section 24(c) of the Florida Constitution requires a newly created or expanded public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for the PII of a donor or prospective donor to the DSO and for any communications between DSO board members related to a board approved event for which a donor is contributing, as well as a public meeting exemption for any portion of a meeting during which such information is discussed, should the donor or prospective donor wish to remain anonymous.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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

On February 3, 2022, the Government Operations Subcommittee adopted an amendment and reported the bill favorable as a committee substitute. The amendment removed an exemption from the Administrative Procedure Act regarding notices for certain public meetings.

On February 8, 2022, the Judiciary Committee adopted an amendment and reported the bill favorably as a committee substitute for committee substitute. The amendment created a public record exemption for any communications between DSO board members related to a board approved event for which a donor is contributing.

The analysis is drafted to the committee substitute as passed by the Judiciary Committee.