

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 703 Pub. Rec. and Meetings/Postsecondary Education Executive Search

**SPONSOR(S):** Post-Secondary Education & Lifelong Learning Subcommittee, Garrison

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 520

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Post-Secondary Education & Lifelong Learning Subcommittee	14 Y, 4 N, As CS	Wolff	Kiner
2) Government Operations Subcommittee	11 Y, 7 N	Landry	Toliver
3) Education & Employment Committee			

### SUMMARY ANALYSIS

State University System (SUS) and Florida College System (FCS) institutions often establish search committees for filling a vacant president position. The purpose of a search committee is to locate qualified applicants who are interested in filling the vacant position at the university or institution, vetting applicants, and selecting a candidate to fill the position. Records held by a search committee are public records, and all meetings of the search committee are open and noticed to the public.

The bill creates an exemption from public record and public meeting requirements for information associated with the applicant recruitment process and discussions associated with the applicant search for the position of president of a SUS or FCS institution.

The bill provides that any personal identifying information of an applicant for president of a SUS or FCS institution held by the institution is confidential and exempt from public record requirements. The bill provides that the personal identifying information of applicants who comprise a final group of applicants for president is no longer confidential and exempt from public record requirements once the final group of applicants is established or at least 14 days before the date of a meeting at which either an interview is conducted or at which final action or a vote is to be taken on the employment of applicants, whichever is earlier.

The bill also creates a public meeting exemption for any meeting held for the purpose of identifying or vetting applicants for president of a SUS or FCS institution, including any portion of a meeting that would disclose the personal identifying information of applicants. However, a recording must be made of any closed portion of a meeting and the meeting cannot be held off the record. The recording is exempt from public record requirements. The public meeting exemption does not apply to a meeting held for the purpose of establishing the qualifications of potential applicants or establishing a compensation framework. Any meeting held after a final group of applicants has been selected at which an interview is to be conducted or at which final action or a vote is to be taken on the employment of applicants must be open to the public.

The bill provides that this public meeting and public record exemptions are subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2027, unless the Legislature reviews and reenacts the exemptions by that date. It also provides a statement of public necessity as required by the State Constitution.

The bill may have a minimal fiscal impact on state universities and FCS institutions.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

###### Public Records and Meetings

###### *Public Records Law*

Article I, s. 24(a) of the State 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.

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record.

###### *Public Meetings Law*

Article I, s. 24(b) of the State Constitution sets forth the state's public policy regarding access to government meetings. The section requires all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, be open and noticed to the public.

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., known as the "Government in the Sunshine Law" or "Sunshine Law," further requires that all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, at which official acts are to be taken be open to the public at all times.<sup>1</sup> The board or commission must provide reasonable notice of all public meetings.<sup>2</sup> Minutes of a public meeting must be promptly recorded and open to public inspection.<sup>3</sup>

No resolution, rule, or formal action is considered binding unless action is taken or made at a public meeting.<sup>4</sup> Acts taken by a board or commission in violation of this requirement are considered void,<sup>5</sup> though a failure to comply with open meeting requirements may be cured by independent final action by the board or commission fully in compliance with public meeting requirements.<sup>6</sup>

###### *Public Record and Public Meeting Exemptions*

The Legislature may provide by general law for the exemption of records and meetings from the requirements of art. I, s. 24(a) and (b) of the State Constitution. 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.<sup>7</sup>

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

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

<sup>3</sup> Section 286.011(2), F.S.

<sup>4</sup> Section 286.011(1), F.S.

<sup>5</sup> *Grapski v. City of Alachua*, 31 So. 3d 193 (Fla. 1st DCA 2010).

<sup>6</sup> *Finch v. Seminole Cnty. Sch. Bd.*, 995 So. 2d 1068 (Fla. 5th DCA 2008).

<sup>7</sup> Article I, s. 24(c), Fla. Const.

Furthermore, the Open Government Sunset Review Act<sup>8</sup> provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. The exemption may be no broader than is necessary to meet one of the following purposes:<sup>9</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 information that would identify an individual may be exempted under this provision; or
- Protect trade or business secrets.

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October 2<sup>nd</sup> of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>10</sup>

### State Universities and Florida College System Institutions

#### *Board of Governors and State University Boards of Trustees*

Florida's State University System (SUS) is composed of twelve public state universities.<sup>11</sup> The Board of Governors (BOG) has the authority to regulate the State University System pursuant to Art. IX, s. 7(d) of the State Constitution and the Florida Statutes.<sup>12</sup> The BOG may develop procedures for adopting regulations to implement its constitutional duties.<sup>13</sup>

Each state university is administered by a board of trustees, which is subject to public record and open meetings laws.<sup>14</sup> The BOG establishes the powers and duties of the boards of trustees and may delegate its constitutional or statutory powers and duties to the boards of trustees as its designee.<sup>15</sup> The BOG establishes the personnel system for all state university employees and confirms the selection and reappointment of presidents by state university boards of trustees.<sup>16</sup>

#### *State Board of Education and Florida College System Institution Boards of Trustees*

The Florida College System (FCS) is composed of twenty-eight public community and state colleges<sup>17</sup> governed by boards of trustees.<sup>18</sup> The State Board of Education (SBE)<sup>19</sup> establishes the standards and guidelines for FCS institutions.<sup>20</sup>

Each board of trustees is authorized to establish the personnel program for all employees of a FCS institution, including the president.<sup>21</sup> The established guidelines for the personnel program may include the recruitment, selection, or reappointment of personnel.<sup>22</sup> A FCS institution's board of trustees is authorized to appoint, suspend, or remove the president and may appoint a search committee to fill the

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<sup>8</sup> Section 119.15, F.S.

<sup>9</sup> Section 119.15(6)(b), F.S.

<sup>10</sup> Section 119.15(3), F.S.

<sup>11</sup> Article IX, s. 7(b), Fla. Const.; *see also* 1000.21(6)(a)-(l), F.S.

<sup>12</sup> Sections 20.155 and 1001.70-1001.706, F.S. *see also* s. 1001.705(a) and (d), F.S., defining the terms "Board of Governors" and "state universities" as used in the Florida K-20 Education Code.

<sup>13</sup> Section 1001.706(2), F.S.

<sup>14</sup> Article IX, s. 7(b)-(c), Fla. Const.; *see also* s. 1001.72(2), F.S.

<sup>15</sup> Article IX, s. 7(c), Fla. Const.; *see also* s. 1001.706(2)(b), F.S.

<sup>16</sup> Sections 1001.705(2)(k) and 1001.706(6)(a), F.S.; *see also* Florida Board of Governors, Regulation 1.001 University Board of Trustees Powers and Duties, (5)(c), *available at* [https://www.flbog.edu/wp-content/uploads/1\\_001-PowersandDuties.pdf](https://www.flbog.edu/wp-content/uploads/1_001-PowersandDuties.pdf).

<sup>17</sup> *See* s. 1000.21(3), F.S., for a definition and list of each "Florida College System institution." Such institutions constitute political subdivisions of the state operated by boards of trustees. *See* s. 1004.67 and ss. 1001.61-1001.64, F.S.

<sup>18</sup> Sections 1001.60, 1001.61(1) and (2), and 1001.64(2), F.S.

<sup>19</sup> Article IX, s. 2, Fla. Const.

<sup>20</sup> Section 20.15(1), (2), and (5); *see also* s. 1001.02(1) and (6), F.S.

<sup>21</sup> Section 1001.64(18), F.S.; *see also* s. 1001.02(6)(a), F.S.

<sup>22</sup> Section 1001.64(18), F.S.

vacancy.<sup>23</sup> The board of trustees must notify the SBE of the appointment of a president immediately upon such action.<sup>24</sup>

### Search Committees

State universities<sup>25</sup> and FCS institutions<sup>26</sup> often establish search committees for filling a vacant president position. The purpose of a search committee is to locate qualified applicants who are interested in filling the vacant position at the university or institution, vetting applicants, and selecting a candidate to fill the position. The search committees may utilize consultants to aid them in their search.

During a presidential search, SUS institution boards of trustees are required to obtain an executive compensation analysis for use by the search committee and must provide the search committee with the scope of the search, the estimated timeline for the search, and the committees responsibilities.<sup>27</sup> SUS institution search committees must fulfill specified responsibilities, including the following:<sup>28</sup>

- Oversight of a webpage on the institution's website providing the public with information on the presidential search;
- Developing recommended position criteria;
- Approving a marketing plan;
- Vetting applicants; and
- Recommending more than two qualified applicants to the board of trustees for consideration.

Information obtained by a search committee or consultant, including applications and other information gathered by a committee or consultant regarding applicants, must be made available for copying and inspection upon request. In addition, any meetings associated with the search process, including vetting of applicants, are open to the public.<sup>29</sup>

### Effect of Proposed Changes

The bill creates an exemption from public record and public meeting requirements for information associated with the applicant recruitment process and discussions associated with the applicant search for the position of president of a state university or FCS institution.

The bill provides that any personal identifying information of an applicant for president of a state university or FCS institution held by the institution is confidential and exempt<sup>30</sup> from public record requirements. The bill provides that the personal identifying information of applicants who comprise a final group of applicants for president is no longer confidential and exempt from public record

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<sup>23</sup> Section 1001.64(19), F.S.

<sup>24</sup> Rule 6A-14.026, F.A.C.

<sup>25</sup> Florida Board of Governors, Regulation 1.001 University Board of Trustees Powers and Duties, (5)(c), *available at* [https://www.flbog.edu/wp-content/uploads/1\\_001-PowersandDuties.pdf](https://www.flbog.edu/wp-content/uploads/1_001-PowersandDuties.pdf); *see also* Florida Board of Governors, Regulation 1.002 Presidential Search and Selection, *available at* <https://www.flbog.edu/wp-content/uploads/1.002-Presidential-Search-and-Selection.pdf>.

<sup>26</sup> Section 1001.64(19), F.S.

<sup>27</sup> Board of Governors, Regulation 1.002 Presidential Search and Selection, (1)(b), *available at* <https://www.flbog.edu/wp-content/uploads/1.002-Presidential-Search-and-Selection.pdf>.

<sup>28</sup> Board of Governors, Regulation 1.002 Presidential Search and Selection, (1)(c), *available at* <https://www.flbog.edu/wp-content/uploads/1.002-Presidential-Search-and-Selection.pdf>.

<sup>29</sup> FCS institutions and state universities are considered state agencies, subject to public records and public meetings laws. *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); *Rhea v. Dist. Bd. of Trs. of Santa Fe College*, 109 So. 3d 851 at 855, n. 1 (Fla. 1st DCA 2013) (noting that Santa Fe College, as part of the Florida College System, is a state agency having a duty to provide access to public records).

<sup>30</sup> There is a difference between records the Legislature designates 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. 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). 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 Op. Att'y Gen. Fla. 08-24* (2008).

requirements once a final group of applicants is established or 14 days before the date of a meeting at which either an interview is conducted or at which final action or a vote is to be taken on the employment of applicants, whichever is earlier. However, the personal identifying information of all other applicants will remain confidential and exempt.

The bill also creates an exemption from public meeting requirements for any meeting held for the purpose of identifying or vetting applicants for president of a state university or FCS institution, including any portion of a meeting that would disclose the personal identifying information of applicants. However, a recording must be made of any closed portion of a meeting and the meeting cannot be held off the record. The recording is exempt from public record requirements. The public meeting exemption does not apply to a meeting held for the purpose of establishing the qualifications of potential applicants or establishing a compensation framework. In addition, any meeting held after a final group of applicants has been selected must be open to the public.

The bill provides that the public record and public meeting exemptions are subject to the Open Government Sunset Review Act and will be repealed on October 2, 2027, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

**B. SECTION DIRECTORY:**

**Section 1:** Creates s. 1004.098, F.S.; providing an exemption from public records requirements for any personal identifying information of an applicant for president of a state university or a Florida College System institution held by a state university or a Florida College System institution; specifying when the personal identifying information of applicants who are in the final group of applicants is no longer confidential and exempt; providing an exemption from public meeting requirements for any portion of a meeting held for the purpose of identifying or vetting applicants for president of a state university or a Florida College System institution, including any portion of a meeting which would disclose certain personal identifying information of such applicants; requiring that a recording be made of any portion of a closed meeting which would disclose personal identifying information of such applicants; providing that no portion of a closed meeting may be held off the record; providing that the recording of any closed portion of a meeting is exempt from public records requirements; specifying that certain meetings are not exempt from public meeting requirements; providing for future legislative review and repeal of the exemptions.

**Section 2:** Providing a statement of public necessity as required by the State Constitution.

**Section 3:** Provides the act shall take effect upon becoming law.

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

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

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

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

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill likely could create a minimal fiscal impact on state universities and FCS institutions because staff responsible for complying with public record requests and public meeting requirements could require training to implement the public record and public meeting exemptions. In addition, state universities and FCS institutions could incur costs associated with redacting the confidential and exempt information prior to releasing a record and recording the closed portions of meetings. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the universities and FCS institutions.

### 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 spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote Requirement

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

Public Necessity Statement

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

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created 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 personal identifying information of an applicant for president of any state university or FCS institution. Once a final group of applicants is established or 14 days before the date of a meeting at which either an interview is conducted or at which final action or a vote is to be taken on the employment of applicants, whichever is earlier, however, the personal identifying information of the final group is no longer confidential and exempt. In addition, the bill creates a public meeting exemption for any meeting wherein those applicants are vetted or during which the personal identifying information of an applicant is discussed. The public meeting exemption does not apply to meetings held for the purpose of establishing the qualifications of potential applications or establishing a compensation framework and meetings held after a final group of applicants have been selected at which an interview is conducted or at which final action or a vote is taken. As such, the exemptions do not appear to be in conflict with the constitutional requirement that the exemptions be no broader than necessary to accomplish the stated purpose.

B. RULE-MAKING AUTHORITY:

The bill does not confer rulemaking authority nor require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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

On January 18, 2022, the Post-Secondary Education & Lifelong Learning Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The amendments provide that the personal identifying information of applicants who comprise a final group of applicants for president is no longer confidential and exempt from public record requirements once a final group of applicants is established or 14 days before the date of a meeting at which either an interview is conducted or at which final action or a vote is to be taken on the employment of applicants, whichever is earlier and changes the effective date of the bill to when the bill becomes law.

The bill analysis is drafted to the committee substitute adopted by the Post-Secondary Education & Lifelong Learning Subcommittee.