

**STORAGE NAME:** h1535.cu.doc  
**DATE:** March 26, 2001

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
COMMITTEE ON COLLEGES & UNIVERSITIES  
ANALYSIS**

**BILL #:** HB 1535  
**RELATING TO:** Public Records  
**SPONSOR(S):** Representative(s) Lynn, Melvin, Waters, and Others  
**TIED BILL(S):** HB 1533

**ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:**

- (1) COMMITTEE ON COLLEGES & UNIVERSITIES
  - (2) STATE ADMINISTRATION
  - (3) COUNCIL FOR LIFELONG LEARNING
  - (4)
  - (5)
- 

I. SUMMARY:

This bill creates a public records exemption for any identifying information regarding applicants for the position of Commissioner of Education, president of a state university, or president of a public community college. The bill does not identify the custodian of the records.

The bill also creates a public meetings exemption for any meeting or portion of a meeting wherein such information is discussed.

The bill makes it a first degree misdemeanor for any person, other than an applicant who discloses his or her own candidacy for one of these positions, who knowingly and willfully makes public or discloses to any unauthorized person any information made confidential and exempt pursuant to the provisions of the bill. A person who violates this section could be imprisoned for a term not to exceed one year and may be fined up to \$1,000.

The exemptions are subject to the Open Government Sunset Review Act of 1995 and will stand repealed on October 2, 2006, unless reviewed and saved from repeal through reenactment by the Legislature before that date.

The bill provides a statement of public necessity as required by Article I, s. 24(c), Florida Constitution.

The bill takes effect on the same day as legislation relating to education governance, if such legislation is adopted during the 2001 Regular Session or an extension thereof and becomes law.

This bill does not appear to have an impact on state or local governments.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |                              |                             |   |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

**Public Records and Public Meetings Laws**

Article I, S. 24(a), Florida Constitution, expresses Florida's public policy regarding access to government records as follows:

Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07(1)(a), F.S., provides:

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at a reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

In regard to public meetings, Article I, s. 24(b), Florida Constitution, provides that:

[a]ll meetings of any collegial public body of the executive branch of state government or 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, shall be open and noticed to the public ...

Section 286.011, F.S., provides that:

[a]ll meetings of any board or commission of any state agency or authority or of any agency or authority or any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be

considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

Article I, s. 24(c), Florida Constitution, does, however, permit the Legislature to provide by general law for the exemption of records and meetings from the requirements of s. 24. The general law must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish its purpose.

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, provides that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes, 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:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or
3. Protects information of a confidential nature concerning entities, including but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

### **State University System**

The State University System is comprised of the Board of Regents and the ten state universities.

Section 240.209(2), F.S., directs the Board of Regents to appoint a Chancellor to serve at its pleasure and perform such duties as are assigned by the board. Search committee activities for the selection of the Chancellor up to the point of transmitting a list of nominees to the Board Regents is confidential and exempt from the provisions of ss. 119.07(1) and 286.011, F.S.

Section 240.209(3)(b), F.S., directs the Board of Regents to appoint or remove the president of each university in accordance with procedures and rules adopted by the Board of Regents. The board may appoint a search committee to assist in evaluating presidential candidates. Each appointment of a university president must be conducted in accordance with the provisions of ss. 119.07 and 286.011, F.S.

### **Florida Community College System**

The Florida Community College System is comprised of the State Board of Community Colleges and 28 public community colleges. Public community colleges are operated by district boards of trustees in accordance with rules of the State Board of Education and the State Board of Community Colleges. Such rules include provision for each board of trustees to appoint, suspend, or remove the president of the community college and for the board of trustees to appoint a search committee. There is no public records exemption or public meetings exemption relating to the hiring of community college presidents.

## **Florida Education Governance Reorganization Act of 2000**

At the 1998 General Election, Floridians amended the State Constitution, effective January 7, 2003, to require a new state board of education consisting of seven members appointed by the Governor, subject to confirmation by the Senate and to require that this board appoint the Commissioner of Education.

The 2000 Legislature addressed the 1998 constitutional amendment by enacting the Florida Education Governance Reorganization Act of 2000 (ch. 2000-321, L.O.F.). This act also abolishes the Board of Regents, establishes boards of trustees appointed by the Governor for each state university, and provides for the appointment by the Governor, President of the Senate, and Speaker of the House of Representatives of a reorganization transition task force (Task Force) to make recommendations to the Legislature to accomplish a smooth and orderly transition to the new education system.

The Task Force began meeting in September 2000 and published its recommendations to the Legislature on March 1, 2001. The Task Force issued the following recommendations regarding the hiring of institution presidents:

Boards of trustees for each institution would select and appoint the institutional president subject to ratification by the Florida Board of Education. An institution's board of trustees would define the search process and appoint a search committee. The Florida Board of Education would adopt broad guidelines addressing criteria for presidents.

The selection committee would launch a national search, inviting applications and recruiting candidates of the highest caliber. Responses to this invitation would be exempt from the sunshine.

The committee would evaluate candidates based on state guidelines and specific criteria reflecting the leadership priorities and needs of the institution. The search process would include conducting criminal background checks/reference checks on candidates considered finalists for recommendation.

The committee would make recommendations to the full Board of Trustees and provide the board with all relevant information about the recommended candidate.

The Board of Trustees would formally select one candidate for reference to the Chancellor and ratification by the Florida Board of Education.

The above search committee activities would be confidential and exempt from the provision of Florida's Government in the Sunshine laws, ss. 119.07(1) and 286.011.

Written materials related to the search to this point would also be exempt from public records law.

A copy of the complete Task Force report is available at the following website:

[http://www.myflorida.com/myflorida/governmnet/learn/egrt\\_taskforce/index.html](http://www.myflorida.com/myflorida/governmnet/learn/egrt_taskforce/index.html)

## **Criminal Penalties**

Misdemeanors are classified, for the purpose of sentencing and for any other purpose specifically provided by statute, into the following categories:

- (a) Misdemeanor of the first degree;
- (b) Misdemeanor of the second degree.

Section 775.082, F.S., provides that a person who has been convicted of a misdemeanor of the first degree may be sentenced by a definite term of imprisonment not exceeding one year. Section 775.083, F.S., provides that a person who has been convicted of an offense other than a capital felony may be sentenced to pay a fine in addition to any punishment described in s. 775.082, F.S. A fine of \$1,000 is authorized when the conviction is of a misdemeanor of the first degree.

### **C. EFFECT OF PROPOSED CHANGES:**

This bill creates a public records exemption for any identifying information regarding applicants for the position of Commissioner of Education, president of a state university, or president of a public community college. The bill does not identify the custodian of the records.

The bill also creates a public meetings exemption for any meeting or portion of a meeting wherein such information is discussed.

The bill makes it a first degree misdemeanor for any person, other than an applicant who discloses his or her own candidacy for one of these positions, who knowingly and willfully makes public or discloses to any unauthorized person any information made confidential and exempt pursuant to the provisions of the bill. A person who violates this section could be imprisoned for a term not to exceed one year and may be fined up to \$1,000.

The exemptions are subject to the Open Government Sunset Review Act of 1995 and will stand repealed on October 2, 2006, unless reviewed and saved from repeal through reenactment by the Legislature before that date.

The bill provides a statement of public necessity as required by Article I, s. 24, Florida Constitution. The necessity statement finds that disclosure of the information could result in the release of sensitive personal information regarding an applicant, thereby discouraging potential candidates from pursuing such positions. The necessity statement further notes that this in turn could have a chilling effect on the pool of suitable candidates who might otherwise express interest in such positions, thereby severely limiting the ability of the state to hire a highly qualified individual because release of such information compromises the privacy of potential applicants and may do harm to their current personal and professional status. The necessity statement notes that any limitation on the number of qualified applicants seeking such positions could have a significant impact on the effective and efficient administration of programs and services offered by these entities and concludes that the harm from providing access to, and disclosure of, this information significantly outweighs any public benefit that could be derived from public access to the information.

### **D. SECTION-BY-SECTION ANALYSIS:**

This section need be completed only in the discretion of the Committee.

III. 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.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

The bill does not state what entity is given the exemption. The exemption may be overly broad because it does not specify which agency is affected.

**STORAGE NAME:** h1535.cu.doc

**DATE:** March 26, 2001

**PAGE:** 7

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

An amendment limiting the "identifying information regarding applicants" to that held by the Florida Board of Education, a university board of trustees, a community college board of trustees, or their designees is recommended to narrow the proposed exemptions.

An amendment is needed on line 30 of page 2 of HB 1535 to identify the tied bill, HB 1533.

VII. SIGNATURES:

COMMITTEE ON COMMITTEE ON COLLEGES & UNIVERSITIES:

Prepared by:

Staff Director:

---

Betty H. Tilton, Ph.D.

---

Betty H. Tilton, Ph.D.