

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/SB 1562

SPONSOR: Governmental Oversight & Productivity Committee and Education Committee and Senator Villalobos

SUBJECT: Public Records/Exemptions/Education

DATE: March 11, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matthews	O'Farrell	ED	Favorable/CS
2.	Rhea	Wilson	GO	Favorable/CS
3.	_____	_____	AGG	_____
4.	_____	_____	AP	_____
5.	_____	_____	RC	_____
6.	_____	_____	_____	_____

I. Summary:

The CS/CS/SB 1562 reenacts public records and public meeting exemptions contained in ch. 240, F.S., and amends the exemptions to conform to the Florida Education Governance Reorganization Implementation Act. The CS/CS/SB 1562 no longer has one section that expanded an existing exemption contained in s. 240.2996, F.S., by adding community colleges to the exemption (*See*, CS/SB 658 for the bill that now contains that exemption). This bill also no longer contains a section that created a new exemption in s. 246.1112 for complaints and information obtained by the Commission for Independent Education in the course of an investigation. That exemption is now contained in CS/SB 660.

The committee substitute amends and reenacts ss. 240.213(4), 240.237, 240.241(2), 240.253, 240.299(5), 240.323, 240.331(6), 240.3315(6), 240.337, 240.512(8) and (9), 240.551(14) and (22)(c), 240.554, 240.711(2)(h); reenacts ss. 240.3315, and 240.554, of the Florida Statutes.

II. Present Situation:

The following statutory sections contain public records and meetings exemptions that are subject to repeal pursuant to subsection (7) of section 3 of chapter 2000-321, Laws of Florida:

Section 240.213(4), F.S. - This section 2 provides that the claims files of a self-insurance program adopted by the Board of Regents are privileged, confidential, and exempt from s. 119.07(1), F.S.

Section 240.237, F.S. - This section provides that a university may prescribe the content and custody of records and reports on its students, and that such records are confidential and exempt from s. 119.07(1), F.S. The records are open to inspection only as provided in s. 228.093, F.S.

Section 240.241(2), F.S. - This section provides for an exemption for a division of sponsored research from s. 119.07(1), F.S., for materials that relate to manufacturing or production, potential and actual trade secrets, potentially patentable material, business transactions, or proprietary information obtained conducting research within the state universities. Upon request, a division of sponsored research shall provide the title and description, the name of the researcher, and the amount and funding source for a project.

Section 240.253, F.S. - This section provides that each state university shall adopt rules prescribing the content and custody of limited-access records that the university maintains on its employees. The exemption only applies to records created after July 1, 1995. Such records are confidential and exempt from s. 119.07(1), F.S. Specifically, the following exemptions and exceptions are created:

- Records containing information reflecting academic evaluations of employee performance shall be open to inspection only by the employee and by supervisory university officials.
- Records maintained for the purposes of any investigation of employee misconduct shall be confidential until the investigation ceases to be active or the university advises the employee in writing that it has concluded the investigation or issued a letter of discipline. Active investigations are defined as an investigation with good faith anticipation that a finding will be made in the foreseeable future. There is a presumption of inactivity if no finding is made within 90 days after filing of the complaint.
- Records maintained for any disciplinary proceedings against an employee remain confidential until a final decision is made in the proceeding. The record of any disciplinary proceeding is open to the employee.
- Records maintained for a grievance proceeding in a collective bargaining matter shall be open to inspection only to the employee and by university officials conducting the grievance until a final decision is made.
- Records, which are otherwise confidential by law, such as sexual harassment investigations, complainant identity, witness identity or records leading to such identification, remain confidential. The custodian of the limited-access records may release information as required by the president to fulfill his or her official responsibilities, upon written authorization by the employee, or by court order.
- Records comprising the common core items contained in the State University System Student Assessment of Instruction may not be prescribed as limited-access records.

Section 240.299(5), F.S. - This section provides for confidentiality and exemption of donor identities and direct-support organization records except for the auditor's report, management letter, and supplemental data from s. 119.07(1), F.S.

Section 240.2996, F.S. - This section exempts the following records of each university health services support organization from public disclosure:

- Contracts for managed care, preferred provider organization contracts, health maintenance organization contracts, alliance network arrangements, exclusive provider organization contracts, and any documents relating to the negotiation, performance, and implementation of any such contracts for managed care arrangements or alliance network arrangements; however the organization must disclose the title and general description of a contract for managed-care arrangements, the names of the contracting parties, and the duration of the contract.
- Marketing plans, the disclosure of which may reasonably be expected by the organization's governing board to be used by a competitor or affiliated provider to exploit the purposes of the plan before it is implemented; however, budget and documents submitted as part of approval of the budget are not exempt.
- Trade secrets as defined in s. 688.002, F.S., including reimbursement methodologies and rates.
- Records of peer review panels, committees and governing board, and agents of the university health services support organization which relate solely to evaluation of health care services and professional credentials of health care providers employed or under contract by the organization; however, health care providers may inspect documents concerning determination of professional credentials.
- Portions of a public record generated during governing board, peer review panel, or committee meeting which contains information relating to contracts, documents, records, marketing plans, or trade secrets.

Section 240.2996, F.S., exempts from public meeting requirements any governing board, peer review panel, or committee meeting during which a confidential and exempt contract, document, record, marketing plan, or trade secret is discussed. However, the exemption is not applicable if the governing board votes to lease, sell, or transfer a substantial part of the facilities or property of the university health services support organization to a nonpublic entity. A person may petition a court of competent jurisdiction for an order releasing the records of a meeting. A court may order the release of the records of the meeting if the compelling public interest outweighs the public necessity for maintaining confidentiality and the release would not adversely affect any entity or person.

Records regarding negotiations for managed-care contracts may be released within 2 years following the termination or completion of the contract or 2 years after negotiations if no contract was executed. However, portions of the contract containing trade secrets shall remain confidential and exempt.

The organization may petition a court of competent jurisdiction to maintain confidentiality of any public record upon a showing of good cause. The exemption may remain in effect only as necessary to protect a substantial public interest. The exemption does not protect the discovery of records pursuant to the Florida Rules of Civil Procedure or any other discovery law for the purpose of civil actions.

Section 240.323, F.S. - This section provides that the State Board of Community Colleges (Florida Board of Education pursuant to s. 229.003, F.S.) may prescribe the content and custody of records that a community college maintains on its students. The student records are exempt from public-disclosure requirements.

Section 240.331(6), F.S. - This section provides for an annual audit of a community college direct-support organization. The identity of donors is exempt from public disclosure requirements. The auditor's report shall maintain that exemption. All records of the organization with the exception of the auditor's report, information necessary for the auditor's report, information related to the expenditure of funds, and any supplemental data, are exempt from public disclosure requirements.

Section 240.3315(6), F.S. - This section provides for an annual audit of a statewide community college direct-support organization. The identity of a donor or respective donor is exempt from the public disclosure requirements and the anonymity shall be maintained in the auditor's report.

Section 240.337, F.S. - This section provides that the State Board of Community Colleges (Florida Board of Education pursuant to s. 229.003, F.S.) prescribes the content and custody of the limited-access community college employee records. The student records are exempt from public disclosure requirements. However, the president may use the records in performance of his or her duties. The employee and the employee's supervisors at the community college may inspect the records. The records may be released pursuant to written authorization from the employee or by order of a court of competent jurisdiction.

Section 240.512(8) and (9), F.S. - This section exempts the following records of the H. Lee Moffitt Cancer Center and Research Institute, its governing board, and its subsidiaries from the public disclosure requirements:

- Proprietary confidential business information; however the Auditor General, the Office of Program and Policy Analysis and Government Accountability, and the Florida Board of Education shall have access to such information but must maintain the confidentiality of the information. The protected information includes:
 - Internal auditing controls and reports;
 - Documents protected by attorney-client privilege;
 - Contracts for managed-care arrangements and negotiations, performance, and implementation of such managed-care arrangements;
 - Bids or other contractual data, banking records, and credit agreements, if the disclosure would impair the not-for-profit corporation or its subsidiaries from contracting on favorable terms;
 - Information relating to private contractual data, if the disclosure would impair the competitive interest of the provider of the information;
 - Information relating to proceedings and records of credentialing panels, committees, and governing board of the not-for-profit corporation or its subsidiaries relating to credentialing;
 - Minutes of meetings;
 - Information that reveals plans for marketing services;
 - Trade secrets as defined in s. 688.002, F.S., including reimbursement methodologies or rates; or

- Identity of donors or prospective donors of property who wish to remain anonymous.

Section 240.512(9), F.S., provides that meetings of the not-for-profit corporation and its subsidiaries are exempt from public meeting requirements except for meetings at which the expenditure of dollars appropriated to the not-for-profit corporation and its subsidiaries is discussed.

Section 240.551(14) and (22)(c), F.S. - This section 240.551(14), F.S., provides that the identities of purchasers, beneficiaries of any plan under the Florida Prepaid College Program and their advance payment account activities are exempt from public disclosure requirements. The Florida Prepaid College Program Board may release such information to a community college, college, or university in which a beneficiary is enrolled or may enroll. The community college, college, or university must maintain confidentiality of the information as exempt from the public disclosure requirements.

Section 240.551(22)(c), F.S., provides that the identity of donors, who desire to remain anonymous, is confidential and exempt from public disclosure requirements and such anonymity shall be maintained in the auditor's report. Any sensitive, personal information regarding contract beneficiaries, including their identities, is exempt from the public disclosure requirements.

Section 240.554, F.S. - This section 240.554, F.S., provides that information that identifies the benefactors or the designated beneficiary of any account initiated under the Florida College Savings Program and information regarding individual account activities is exempt from public disclosure requirements. However, the Florida College Savings Program Board may authorize the release of such information to a community college, college, university in which a designated beneficiary may enroll or is enrolled. Community colleges, colleges, and universities shall maintain the confidentiality of such information. The exemption sunsets on October 2, 2005, unless reenacted.

Section 240.711(2)(h), F.S. -- This section 240.711(2)(h), F.S., provides for an annual audit of the direct-support organization of the John and Mable Ringling Museum of Art. Information that identifies donors, who desire to remain anonymous, or prospective donors is exempt from public disclosure requirements. The identity of prospective donors are not exempt if the direct-support organization obtained the name of the prospective donor by copying, purchasing, or borrowing names from another organization or source. Identities of donors and prospective donors shall not be revealed in the auditor's report.

Section 246.226(2) and (3), F.S. - This section 246.226(2), F.S., provides that the complaint and all information obtained by the State Board of Nonpublic Career Education in the course of an investigation are exempt from public-disclosure requirements for a maximum of 10 days after the probable-cause panel declares a finding of probable cause.

Section 246.226(3), F.S., provides that the proceedings of the probable cause panel are exempt from the public meeting requirements of s. 286.011, F.S., until the panel declares a finding of probable cause.

III. Effect of Proposed Changes:

The CS/CS/SB 1562 reenacts public records and public meeting exemptions contained in ch. 240, F.S., and amends the exemptions to conform to the Florida Education Governance Reorganization Implementation Act. The CS/CS/SB 1562 no longer has one section that expanded an existing exemption contained in s. 240.2996, F.S., by adding community colleges to the exemption (*See*, CS/SB 658 for the bill that now contains that exemption). This bill also no longer contains a section that created a new exemption in s. 246.1112 for complaints and information obtained by the Commission for Independent Education in the course of an investigation. That exemption is now contained in CS/SB 660.

Further, the CS/CS/SB 1562 no longer contains language avoiding the mandatory review of exemptions under s. 119.15, F.S., Open Government Sunset Review Act of 1995.

The bill reenacts and amends the following public records and public meetings exemptions as part of the mandatory review provided in subsection (7) of section (3) of chapter 2000-321, Laws of Florida:

Section 240.213(4), F.S. - The bill reenacts and amends s. 240.213(4), F.S., to provide that the self-insurance programs adopted by the university or college board of trustees are privileged, confidential, and exempt from s. 119.07(1), F.S, and s. 24(a), Art. I of the State Constitution. The bill deletes a reference to the Board of Regents. The bill expands the number of self-insurance programs that would be exempt from public disclosure requirements. The exemption is required to protect the self-insurance programs from injury in the marketplace and to ensure continued effective and efficient administration of a government program.

Section 240.237, F.S. - The bill reenacts and amends s. 240.237, F.S., to provide that university and college boards of trustees shall prescribe the content and custody of the records that a university or college keeps on its students, that are exempt from s. 119.07(1), F.S., and s. 24 (a), Art I. of the State Constitution. The bill expands the number of student records exempted from public disclosure by including students of state colleges. The exemption is required to protect confidential information of a sensitive personal nature to ensure a student's safety and expectation of privacy.

Section 240.241(2), F.S. - The bill reenacts and amends s. 240.241(2), F.S. The bill adds the constitutional reference to s. 24(a), Art I. of the State Constitution for the public records exemption. The bill does not expand the public records exemption. The continued exemption is required to protect the division's business and research advantage in the marketplace. Disclosure would also impair the division's ability to administrate effectively and efficiently.

Section 240.253, F.S. - The bill reenacts and amends s. 240.253, F.S., to provide that university and college boards of trustees prescribe the content and custody of employee records maintained by the university or college, which are exempt from s. 119.07(1), F.S., and s. 24(a), Art I. of the State Constitution. The bill expands the number of employee records exempted from public disclosure requirements by including employees of the state colleges. The exemption is required to protect confidential information of a sensitive personal nature to ensure an employee's safety and expectation of privacy.

Section 240.299(5), F.S. - The bill reenacts and amends s. 240.299(5), F.S., to exempt records of the direct-support organization, other than the auditor's report, management letter, and any supplemental data requested by the State Board of Education and the university and college boards of trustees, from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. The identity of donors who desire to remain anonymous shall be protected from public disclosure. The bill does not expand the public records exemption. The continued exemption is required to protect donors from disclosure of a sensitive personal nature and to protect a donor's expectation of privacy. The continued exemption for the direct-support organization is required to protect its business advantage by prohibiting competitors from obtaining insight into the strategic plans of the direct-support organization.

Section 240.323, F.S. - The bill reenacts and amends s. 240.323, F.S., to provide that the State Board of Education has rulemaking authority with respect to community college student records, which are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. The bill does not expand the public records exemption. The continued exemption is required in order to protect a student's safety and expectation of privacy.

Section 240.331(6), F.S. - The bill reenacts and amends s. 240.331(6), F.S., to provide that records of a community college direct-support organization with the exception of the auditor's report, information necessary for the auditor's report, information related to the expenditure of funds, and any supplemental data are exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. The bill conforms a reference to the State Board of Community Colleges with the State Board of Education. The bill does not expand the public records exemption. The continued exemption is required in order to protect a business advantage. Disclosure would provide competitors with a detailed insight into the financial status and strategic plans of the direct-support organization.

Section 240.3315, F.S. - The bill reenacts s. 240.3315, F.S. The continued exemption is required to protect a donor's expectation of privacy.

Section 240.337, F.S. - The bill reenacts and amends s. 240.337, F.S., to provide that the State Board of Education shall adopt rules regarding limited-access records that a community college maintains on its employees. The records are exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. The bill does not expand the public records exemption. The continued exemption is required to protect community college employee information of a sensitive personal nature and protecting the employee's safety and expectation of privacy.

Section 240.512(8) and (9), F.S. - The bill reenacts and amends s. 240.512(8) and (9), F.S., to provide that the State Board of Education must be given access to all proprietary confidential business information of the not-for-profit corporation and its subsidiaries, and must maintain the confidentiality of the information. The bill does not expand the public records or public meeting exemptions. The continued exemption is required to protect the business advantage of the not-for-profit corporation and its subsidiaries to ensure that competitors do not have detailed insight into the research conducted by the entities, thereby injuring the entities in the marketplace. A meeting at which the expenditure of appropriated dollars is discussed remains subject to s. 286.011, F.S., and s. 24(b), Art. I of the State Constitution.

Section 240.551(14) and (22)(c), F.S. - The bill reenacts and amends s. 240.551(14) and (22)(c), F.S., to provide that information that identifies the purchasers or beneficiaries of a Florida Prepaid College Program and their advance payment account activities is exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. Community Colleges, Colleges, and Universities that receive beneficiary information from the Florida Prepaid College Program shall maintain the information as exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. The bill reenacts s. 240.551(22)(c), F.S., relating to identity of donors, desiring to remain anonymous, as protected from public disclosure requirements. The bill does not expand the public records exemption. The continued exemptions are required to protect the expectation of privacy by the beneficiary, the purchaser, and the donor.

Section 240.554, F.S. - The bill reenacts s. 240.554, F.S. The continued exemption is required to protect the expectation of privacy of the beneficiary and the purchaser.

Section 240.711(2)(h), F.S. - The bill reenacts and amends s. 240.711(2)(h), F.S., to provide that information that would identify a donor or prospective donor, who desires to remain anonymous, is exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. The bill conforms a cross-reference to refer to s. 240.299(5), F.S., relating to financial audits. The bill maintains that the names of prospective donors obtained from another source are not exempted from public disclosure requirements. The bill does not expand the public records exemption. The continued exemption is required to protect the expectation of privacy of the donors and prospective donors.

The bill is linked to Senate Bill 1564 and Senate Bill 2022.

The bill has an effective date of January 7, 2003.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

Page 4, line 10 – contains a reference to the “Board of Regents” which should be “board of trustees.”

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill’s sponsor or the Florida Senate.
