

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/SB 1770

SPONSOR: Education Committee and Senator Clary

SUBJECT: Public Records and Public Meetings Exemption for Florida Institute of Human and Machine Cognition

DATE: March 26, 2003

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dormady	O'Farrell	ED	Favorable/CS
2.	_____	_____	GO	_____
3.	_____	_____	JU	_____
4.	_____	_____	AED	_____
5.	_____	_____	AP	_____
6.	_____	_____	RC	_____

I. Summary:

SB 1770 provides certain exemptions for the Florida Institute of Human and Machine Cognition from (1) the public records requirements located in s. 119.07(1), F.S., and section 24, Art. I of the Florida Constitution and (2) the public meetings requirements located in s. 286.011, F.S., and section 24(b), Art. I of the Florida Constitution.

This bill creates a new section of the Florida Statutes.

The bill will be effective July 1, 2003, if SB 1414 or similar legislation is adopted during the 2003 legislative session or any extension thereof and becomes law.

II. Present Situation:

The Institute of Human and Machine Cognition is currently an interdisciplinary research unit of the University of West Florida. SB 1414 proposes to change the organizational structure of the Institute, authorizing its governance by a non-profit corporation created for that purpose and stipulating that the Institute would no longer be a state agency within the meaning of s. 20.03(11), F.S.

The Institute is currently subject to the public records and public meetings requirements set forth in ss. 119.07(1) and 286.011, F.S. and Sections 24 and 24(b) of Art. I of the Florida Constitution. These requirements generally provide (1) that meetings of public boards or commissions must be open to the public, that reasonable notice of the meetings must be given and that minutes of the

meetings be taken and (2) that public records¹ must be open for inspection by any person, under reasonable conditions. The only exceptions are those established by law or by the Florida Constitution.

Florida Constitution: Exemptions from Public Records and Public Meetings Requirements. Article I, s. 24(c) of the Florida Constitution authorizes the Legislature to create exemptions from public access and public meetings provisions of the law and constitution. Any law that creates such an exemption must:

- State with specificity the public necessity that justifies the exemption;
- Be no broader than necessary to comport with the stated public necessity; and
- Relate only to the exemptions and their enforcement.

Sunset and Review of Exemptions. The Open Government Sunset Review Act of 1995 specifies additional conditions under which a public records or public meetings exemption may be created.

By law, an exemption may be created or expanded only if the exemption:

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

III. Effect of Proposed Changes:

SB 1770 provides exemptions for the Institute from the public records requirements detailed above. General categories of exempt information provided for in the bill include:

- Potential trade secrets, methods of manufacture or production, potentially patentable material, actual trade secrets, or proprietary information ascertained during research conducted by or through IHMC and business transactions resulting from such research.
- Identity and all information regarding donors or prospective donors to the institute.
- Information otherwise confidential by law.
- Internal auditing controls and reports of internal auditors.

¹ S. 119.011, F.S., defines a “public record” broadly to include “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

² S. 119.15(4)(b), F.S.

- Matters subject to attorney-client privilege.
- Bids, contractual data, banking records and credit agreements the disclosure of which would impair the corporation's ability to contract.
- Contractual data the disclosure of which would impair the competitive interest of the provider of the information.
- Personnel information the disclosure of which would impair the ability of the corporation to recruit personnel.

Governmental entities with a demonstrated need for any of this information may access it under the bill.

SB 1770 also makes meetings of the governing board of the institute's non-profit corporation (and the governing board of all of the Institute's subsidiaries) exempt from the public meetings requirements of s. 286.011, F.S., and section 24(b), Art. I of the State Constitution, unless the meeting contains a discussion or report of the expenditure of funds appropriated to the non-profit corporation by the state.

Statement of Public Necessity. The basis for the exemption is that unrestricted public access to the information, proceedings and hearings relating to IHMC's scientific research, reports and contract and grant activities might damage the success and intellectual property development of the institute if made available to its competitors and could substantially affect the willingness of federal and foreign agencies to contract with IHMC. Reports and research of IHMC may constitute trade secrets that give IHMC a competitive advantage in the private market. Additionally, the disclosure of donor information or personnel information could have a chilling effect on donations and recruitment, respectively.

The bill also states that the ability of IHMC to secure outside contracts and grant activity is a public benefit. Providing confidentiality for these records and proceedings would permit IHMC to be more open in the information provided for these purposes without the fear that provision of the information would result in public dissemination of information that could be used to harm the institute and its members.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Because of the competitive nature of IHMC's activities and the potential commercial application of its research, it appears that the exemptions provided for in this bill are not overbroad relative to the public necessity articulated in the bill.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Unknown.

C. Government Sector Impact:

Unknown.

VI. Technical Deficiencies:

None.

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.
