

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Public Records Law

Article I, s. 24(a), 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, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a), Florida 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. Public policy regarding access to government records also is addressed in Florida Statutes.

Chapter 119, F.S., more completely addresses the issue of public records. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record.

Open Government Sunset Review Act

Section 119.15, F.S., the "Open Government Sunset Review Act," sets forth a legislative review process that requires newly created or expanded exemptions to include an automatic repeal of the exemption on October 2nd of the fifth year after enactment or substantial amendment, unless the Legislature reenacts the exemption. It provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting 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
- Protecting trade or business secrets.

Sure Ventures Commercialization Program

HB 1521 creates the "Sure Ventures Commercialization, Inc.," a non-profit corporation intended to encourage commercialization of state university research. It achieves this goal by contracting with and issuing grants to universities and encouraging private investors to get involved in commercialization of state university research projects. HB 1521 expressly states that the corporation is not a unit of state government, but is subject generally to the public records and public meetings laws of the State of Florida.

Proposed Exemptions

This bill creates a public records exemption for the corporation. It makes confidential and exempt:

- Information relating to methods of manufacture or production, actual or potential trade secrets, patentable material, or proprietary information received, generated, ascertained, or discovered by university research projects submitted for funding through the grant program, and transactions resulting from such research.
- Agreements and proposals to receive funding under the program.
- Information identifying an investor or prospective investor in a project.
- Information received from a person from another state or nation or the Federal Government that is exempt or confidential pursuant to the laws of that state or nation or pursuant to federal law.

This bill also requires the corporation to permit access to such confidential and exempt information to any public employee in the performance of its duties and responsibilities. The public employee must maintain the confidential and exempt status of the information received, or the employee commits a misdemeanor of the first degree.

This bill creates a public meetings exemption for the corporation. Those portions of meetings of the corporation during which confidential and exempt information is presented or discussed are exempt from the public meetings requirements.

This bill provides for future review and repeal of the exemptions, and provides a statement of public necessity.

C. SECTION DIRECTORY:

- Section 1.** Creates s. 288.9566, F.S.; creating a public records and public meetings exemption.
- Section 2.** Provides a statement of public necessity.
- Section 3.** Provides an effective date of July 1, 2007, if HB 1521 or similar legislation is adopted.

II. 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.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution, requires a statement of public necessity (public necessity statement) for a newly created public records or public meetings exemption. The bill creates a public records exemption. Thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Potential Overbreadth

As drafted, the bill may receive criticism from open government advocates over the breadth of the exemption created in s. 288.9566(1)(b) F.S. By exempting entire agreements, the grant recipient and dollar amounts are hidden from public access. Given the narrower protections of sub-subsection (a) regarding trade secrets (and all other confidential materials), and the protections of sub-subsection (c) regarding the identity of private investors, it seems that all of the relevant information is protected without exempting agreements in their entirety.

"Public Employee" Access

The phrase "public employee" created in s. 288.9566(4), F.S. may be too limiting, and block access to material by some entity with a legitimate public purpose to access the information. Other statutes expand this concept by using the phrase "governmental entity," to encompass as many legitimate uses as possible.

Penalties

It may be advisable to expand the scope of the penalty for improper release of exempt material, by replacing the phrase "public employee" with "any person," in the penalty portion of s. 288.9566(4), F.S.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES