

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 657 Pub. Rec./Biomedical Research

SPONSOR(S): Health & Human Services Committee; Health & Human Services Access Subcommittee; Coley

TIED BILLS: HB 655 **IDEN./SIM. BILLS:** SB 1856

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee	15 Y, 0 N, As CS	Holt	Schoolfield
2) Government Operations Subcommittee	12 Y, 2 N	Williamson	Williamson
3) Health & Human Services Committee	17 Y, 0 N, As CS	Holt	Gormley

SUMMARY ANALYSIS

Current law provides that when peer review panels convene to evaluate grant or fellowship applications submitted to the James and Esther King Biomedical Research Program or to the William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program the meetings are open and noticed to the public and any records generated, including the grant applications that are being reviewed, are considered public and must be made available for public viewing.

The bill creates a public meeting exemption for a portion of a meeting of a peer review panel, in which, applications for biomedical research grants are discussed. Additionally, the bill provides that any records generated relating to the review of research applications, except final recommendations, are confidential and exempt from public records requirements. The bill provides that information held confidential and exempt may be disclosed with the express written consent of the individual to whom the information pertains or the individual's legal guardian or by court order. The bill provides that public record and public meeting exemptions granted to a peer review panel are subject to the Open Government Sunset Review Act and will be repealed on October 2, 2017, unless saved from repeal by reenactment by the Legislature. The bill provides a public necessity statement as required by the State Constitution.

The bill provides an effective date that is contingent upon the passage of House Bill 655 or similar legislation.

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 appears to require a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records and Open Meetings Laws

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. Article I, s. 24(b) of the State Constitution sets forth the state's public policy regarding access to government meetings. The section requires that all meetings of the executive branch and local government be open and noticed to the public.

The Legislature may, however, provide by general law for the exemption of records and meetings from the requirements of Article I, s. 24 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 stated purpose. In addition, the State Constitution requires enactment of the exemption by a two-thirds vote of the members present and voting.¹

Public policy regarding access to government records and meetings also is addressed in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect, examine, and copy any state, county, or municipal record. Section 286.011, F.S., requires that all state, county, or municipal meetings be open and noticed to the public.

Furthermore, the Open Government Sunset Review Act² provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- 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 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.
- Protects trade or business secrets.

Public record and public meeting exemptions are subject to a scheduled repeal on October 2nd in the fifth year after enactment, unless the Legislature acts to reenact the exemption.³

James and Esther King and Bankhead-Coley Research Programs

The James and Esther King Biomedical Research Program (King Program) is established within the Florida Department of Health (DOH) and is funded by the proceeds of the Lawton Chiles Endowment Fund, cigarette surcharge, and the General Revenue Fund.⁴ The purpose of the King Program is to provide an annual and perpetual source of funding in order to support research initiatives that address the health care problems of Floridians in the areas of tobacco-related cancer, cardiovascular disease, stroke, and pulmonary disease.⁵ The funds appropriated to the King Program are to be used to award research grants and fellowships.⁶

¹ FLA CONST., article I, s. 24(c)

² See s. 119.15, F.S.

³ Section 119.15(3), F.S.

⁴ Sections 215.5602(1) and (12), F.S.

⁵ Section 215.5602, F.S.

⁶ Section 215.5602(2), F.S.

The William G. "Bill" Bankhead, Jr., and David Coley Cancer Research Program (Bankhead-Coley Program) is established within DOH and is funded by an annual appropriation from the General Revenue Fund.⁷ The purpose of the Bankhead-Coley Program is to advance progress towards cures for cancer and cancer-related illnesses through grants awarded through a peer-reviewed process.

The research grants and fellowships are awarded based on criteria and standards developed by the Biomedical Research Advisory Council (Council) created within DOH and subject to review by independent peer review panels.⁸ The Council is directed to award grants for the King Program and the Bankhead-Coley Program.

The peer review panel is required to evaluate grant or fellowship applications on the basis of scientific merit as determined by an open competitive peer review panel to ensure that all proposals for research funding are appropriate and are evaluated fairly on the basis of scientific merit.⁹ The peer review panel process reviews the content of each proposal and establishes a scientific priority score. The priority score is considered in the review process by the Council who makes recommendations to the State Surgeon General as to what grants or fellowships should be awarded. The Council and peer review panels are directed to establish and follow rigorous guidelines for ethical conduct and adhere to a strict policy with regard to conflict of interest.¹⁰

Sections 215.5602(7) and 381.922(3)(c), F.S., provides that the meetings of the Council and the peer review panels are subject to public records and public meetings requirements.

Effect of Proposed Changes

The bill creates a public meeting exemption for a portion of a meeting of a peer review panel in which applications for biomedical research grants are discussed. Additionally, the bill provides that any records generated relating to the review of research applications, except final recommendations, are confidential and exempt¹¹ from public records requirements. The bill provides that information held confidential and exempt may be disclosed with the express written consent of the individual to whom the information pertains or the individual's legal guardian or by court order. The bill provides that the public record and public meeting exemptions are subject to the Open Government Sunset Review Act and will repeal on October 2, 2017, unless saved from repeal by reenactment by the Legislature. Finally, it provides a public necessity statement as required by the State Constitution.

B. SECTION DIRECTORY:

Section 1. Creates an unnumbered section, relating to exemptions from public records and public meetings requirements and peer review panels.

Section 2. Provides a public necessity statement.

Section 3. Provides an effective date that is contingent upon the passage of HB 655 or similar legislation.

⁷ Section 215.5602(12), F.S.

⁸ Sections 215.5602(3) and 381.922(3)(b), F.S.

⁹ Sections 215.5602(6) and 381.922(3)(b), F.S.

¹⁰ Sections 215.5602(7) and 381.922(3)(c), F.S.

¹¹ There is a difference between records the Legislature designates as 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. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 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 the statutory exemption. (See Attorney General Opinion 85-62, August 1, 1985).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
None identified.
2. Expenditures:
None identified.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None identified
2. Expenditures:
None identified.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None identified.

D. FISCAL COMMENTS:

None identified.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:
Not applicable. This bill does not appear to affect county or municipal governments.
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 new 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 new exemptions; thus, it includes a public necessity statement.

Exemption Bills

Article I, s. 24(c) of the State Constitution provides that an exemption must be created by general law and the law must contain only exemptions from public record or public meeting requirements. Lines 35 – 45 and lines 65 – 75 of the bill make clarifying changes and remove superfluous language; however, it is unclear whether such changes would be deemed substantive in nature.

B. RULE-MAKING AUTHORITY:

The bill will exempt DOH from having to adopt rules and provide public notice of meetings.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 11, 2012, the Health & Human Services Access Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all includes explicit language that meets the statutory requirements for a public records and meetings exemption for peer review panels, such that, the strike-all:

- Provides an explicit exemption for peer review panels from the requirements of ss. 119.07(1) and 286.011, F.S., and s. 24, Art. I of the State Constitution;
- Provides that the repeal occurs at the end of 5 years and the exemption is subject to the Open Sunset Review Act such that it must be reviewed and saved by the Legislature through reenactment; and
- Provides more specificity to the public necessity statement.

On February 16, 2012, the Health & Human Services Committee adopted a strike-all amendment and an amendment to the amendment and reported the bill favorably as a committee substitute. The strike-all:

- Conforms to the Senate bill and creates an unnumbered section of law.
- Narrows the applicability of the public meetings exemption to the portion of a peer review meeting which applications for biomedical research are discussed.
- Narrows the applicability of the public records exemption to the research applications held by the peer review panel.
- Makes information confidential and exempt; allows disclosure with written consent of the individual to whom the information pertains or their legal representative, or by court order.
- Subjects the exemption to the Open Government Sunset Review Act and repeals it on October 2, 2017, unless reenacted.
- Provides a public necessity statement.

This analysis is drafted to the committee substitute.