HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 711 Public Meetings and Public Records/Alzheimer's Disease Research Grant Advisory Board
SPONSOR(S): Government Operations Subcommittee; Health Quality Subcommittee; Hudson and others
TIED BILLS: CS/HB 709 **IDEN./SIM. BILLS:** SB 840

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	12 Y, 0 N, As CS	Guzzo	O'Callaghan
2) Government Operations Subcommittee	10 Y, 0 N, As CS	Williamson	Williamson
3) Health & Human Services Committee			

SUMMARY ANALYSIS

House Bill 709 (2014) creates the Ed and Ethel Moore Alzheimer's Disease Research Program and the Alzheimer's Disease Research Grant Advisory Board (board) in order to make recommendations to the State Surgeon General regarding funding for certain research proposals.

This bill, which is linked to the passage of House Bill 709, creates public record and public meeting exemptions for the board.

The bill provides that applications provided to the board for Alzheimer's disease research grants are confidential and exempt from public record requirements. In addition any records generated by the board relating to the review of research grant applications, except final recommendations, are confidential and exempt.

The bill also creates a public meeting exemption for those portions of a board meeting during which such applications are discussed. The closed portion of the meeting must be recorded, and the recording must be maintained by the board.

The bill provides that the confidential and exempt records, including the recording of the meeting, may be disclosed with the written consent of the individual to whom the information pertains, or the individual's legally authorized representative, or by a court order upon a showing of good cause.

The bill provides that the public record and public meeting exemptions are subject to the Open Government Sunset Review Act and will stand repealed on October, 2, 2019, unless saved from repeal by reenactment by the Legislature. It also provides a public necessity statement as required by the State Constitution.

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 Law
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.

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record.

Public Meetings Law
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 any collegial public body of the executive branch of state government or of 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, be open and noticed to the public.

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., known as the "Government in the Sunshine Law" or "Sunshine Law," further requires that all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, at which official acts are to be taken be open to the public at all times.[1] The board or commission must provide reasonable notice of all public meetings.[2] Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin or economic status or which operates in a manner that unreasonably restricts the public's access to the facility.[3] Minutes of a public meeting must be promptly recorded and open to public inspection.[4]

Public Record and Public Meeting Exemptions
The Legislature, however, may provide by general law for the exemption of records and meetings from the requirements of Article I, s. 24(a) and (b) 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 purpose.[5]

Furthermore, the Open Government Sunset Review Act[6] 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; or
- Protects trade or business secrets.

[1] Section 286.011(1), F.S.
[2] *Ibid.*
[3] Section 286.011(6), F.S.
[4] Section 286.011(2), F.S.
[5] Art. I, s. 24(c), Fla. Const.
[6] Section 119.15, F.S.

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

House Bill 709 (2014), Ed and Ethel Moore Alzheimer's Disease Research Program

House Bill 709 creates the Ed and Ethel Moore Alzheimer's Disease Research Program (program), and authorizes the program to be administered by the Department of Health (DOH). The purpose of the program is to fund research leading to prevention of or a cure for Alzheimer's disease.

The bill authorizes applications for research funding under the program to be submitted by any university or established research institute in the state, and requires that all qualified investigators in the state have equal access and opportunity to compete for research funding. The bill authorizes certain types of applications to be considered for funding, including:

- Investigatory-initiated research grants;
- Institutional research grants;
- Pre-doctoral and post-doctoral research fellowships; and
- Collaborative research grants, including those that advance the finding of cures through basic or applied research.

House Bill 709 also creates the Alzheimer's Disease Research Grant Advisory Board (board). The board must consist of 11 members appointed by the State Surgeon General, and must include two gerontologists, two geriatric psychiatrists, two geriatricians, two neuroscientists, and three neurologists. The bill provides requirements for the board, including requiring the board to advise the State Surgeon General as to the scope of the research program.

Effect of Proposed Changes

The bill creates a public record and public meeting exemption for the board.

The bill provides that applications provided to the board for Alzheimer's disease research grants are confidential and exempt[7] from public record requirements. In addition any records generated by the board relating to the review of research grant applications, except final recommendations, are confidential and exempt.

The bill also creates a public meeting exemption for those portions of a board meeting during which such applications are discussed. The closed portion of the meeting must be recorded, and the recording must be maintained by the board.

The bill provides that the confidential and exempt records, including the recording of the meeting, may be disclosed with the written consent of the individual to whom the information pertains, or the individual's legally authorized representative, or by a court order upon a showing of good cause.

The bill provides that the public record and public meeting exemptions are subject to the Open Government Sunset Review Act and will stand repealed on October, 2, 2019, unless saved from repeal by reenactment by the Legislature.

The bill provides a public necessity statement as required by the State Constitution, which states the exemptions are a public necessity because the research grant applications and the records generated by the board related to review of the applications contain information of a confidential nature, including ideas and processes, the disclosure of which could injure the affected researchers. Further, closing the

[7] 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).

access to those portions of meetings of the board during which research grant applications are discussed serves a public good by ensuring that decisions are based upon merit without bias or undue influence.

B. SECTION DIRECTORY:

Section 1: Amends s. 381.82, F.S., as created by House Bill 709, 2014 Regular Session, relating to the Ed and Ethel Moore Alzheimer's Disease Research Program.

Section 2: Provides a public necessity statement.

Section 3: Provides a contingent effective date.

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:

The bill may create a minimal fiscal impact on the board because staff responsible for complying with public records requests could require training related to the public record exemption. In addition, the board could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the board.

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. The exemption does not appear to be in conflict with the constitutional requirement.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rule-making or rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Healthy Quality Subcommittee
On March 5, 2014, the Health Quality Subcommittee adopted an amendment to HB 711 and reported the bill favorably as a committee substitute. The amendment made the following changes to the bill:

- Required the closed portion of a meeting to be recorded;
- Required the recording to be maintained by the board; and
- Authorized the recording to be disclosed with the written consent of either the individual affected or the individual's legally authorized representative, by a court order, or in the event of the exemption being repealed as a result of the Open Government Sunset Review Act.

Government Operations Subcommittee
On March 18, 2014, the Government Operations Subcommittee adopted an amendment and reported the bill favorably with committee substitute. The amendment corrected drafting errors and removed an incorrect cross-reference.

This analysis is drafted to the committee substitute as passed by the Government Operations Subcommittee.