

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 993 Pub. Rec./Animal Researchers at Public Research Facilities

SPONSOR(S): Higher Education & Workforce Subcommittee and Cummings

TIED BILLS: **IDEN./SIM. BILLS:** SB 414

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|---------------------|------------|--|
| 1) Higher Education & Workforce Subcommittee | 11 Y, 1 N, As CS | Thomas | Sherry |
| 2) Government Operations Subcommittee | 10 Y, 0 N | Williamson | Williamson |
| 3) Education Committee | | | |

SUMMARY ANALYSIS

The bill creates a public records exemption for personal identifying information of a person employed by, under contract with, or volunteering for a public research facility, including a state university, that conducts animal research or is engaged in activities related to animal research. Such information is exempt from public records requirements when the information is contained in the following records:

- Animal records, including animal care and treatment records.
- Research protocols and approvals.
- Purchase and billing records related to animal research or activities.
- Animal care and committee records.
- Facility and laboratory records related to animal research or activities.

The bill provides for retroactive application of the public record exemption.

The public records exemption is subject to the Open Government Sunset Review Act and must stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also provides a statement of public necessity as required by the State Constitution.

The bill does not appear to have a fiscal impact on state or local governments.

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 exemption. The bill creates a public record exemption; thus, it requires 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. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) 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.

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 Record Exemptions

The Legislature may provide by general law for the exemption of records 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.¹

Furthermore, the Open Government Sunset Review Act² provides that a public record 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.

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.

Effect of Proposed Changes

The bill creates a public records exemption for personal identifying information of a person employed by, under contract with, or volunteering for a public research facility, including a state university, that conducts animal research or is engaged in activities related to animal research. Such information is exempt from public records requirements when the information is contained in the following records:

- Animal records, including animal care and treatment records.
- Research protocols and approvals.
- Purchase and billing records related to animal research or activities.
- Animal care and committee records.
- Facility and laboratory records related to animal research or activities.

¹ Art. I, s. 24(c), Fla. Const. The Open Government Sunset Review Act prescribes a legislative review process for newly created or substantially amended public records or open meeting exemptions. It requires the automatic repeal of such an October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

² Section 119.15, F.S.

The bill provides for retroactive application of the public record exemption.³

The public records exemption is subject to the Open Government Sunset Review Act and must stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also provides a statement of public necessity as required by the State Constitution.

B. SECTION DIRECTORY:

Section 1. Provides an exemption from public records requirement for personal identifying information of certain animal researchers at public research facilities, including state universities; provides for retroactive applicability of the exemption; provides for future legislative review and repeal of the exemption.

Section 2. Provides a statement of public necessity.

Section 3. Provides an effective date of July 1, 2014.

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 agencies because staff responsible for complying with public records requests could require training related to the public record exemption. In addition, agencies could incur costs associated with redacting the 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 agency.

III. COMMENTS

³ The Supreme Court of Florida ruled that a public record exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied as such. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001)

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require municipalities or counties to expend funds or to take any action requiring the expenditure of funds, reduce the authority that municipalities or counties have to raise revenues in the aggregate, or reduce the percentage of state tax shared with municipalities or counties.

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 a new public record exemption; 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 a new public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for personal identifying information of certain employees and volunteers of a public research facility that conducts animal research or is engaged in activities related to such research. As such, the exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 19, 2014, the Higher Education & Workforce Subcommittee adopted a strike-all amendment to the bill and reported the bill favorably as a committee substitute. The amendment:

- Provided a public records exemption for a person employed by, under contract with, or volunteering for a public research facility, including a state university, that conducts animal research or is engaged in activities related to animal research.
- Provided a public records exemption for personal identifying information when such information is contained in certain records.
- Provided for retroactive applicability of the public records exemption.
- Provided for future legislative review and repeal of the public records exemption.
- Provided a statement of public necessity as required by the State Constitution.

This analysis is drafted to the committee substitute as passed by the Higher Education & Workforce Subcommittee.