

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: SB 7078 Public Records and Meetings/Cancer Research Grant Applications

SPONSOR(S): Fiscal Policy, Harrell

TIED BILLS: CS/SB 7072 **IDEN./SIM. BILLS:**

FINAL HOUSE FLOOR ACTION: 114 Y's

0 N's

GOVERNOR'S ACTION: Pending

SUMMARY ANALYSIS

SB 7078 passed the House on March 6, 2024.

CS/SB 7072 establishes the Cancer Connect Collaborative (collaborative) to advise the Department of Health (DOH) and the legislature on developing a holistic approach to the state's efforts to fund cancer research, cancer facilities, and treatments for cancer patients.

SB 7078 creates a public records exemption for proprietary business information related to the collaborative's receipt and review of research grant applications. Proprietary business information is designated confidential and exempt, but may be disclosed under certain circumstances. The bill also exempts from the public meetings requirements portions of the collaborative's meetings at which proprietary business information contained in grant applications are discussed. The bill requires that closed meetings be recorded and disclosed under specific circumstances.

The exemptions are subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2029, unless reviewed and saved from repeal by the Legislature. The bill contains a statement of public necessity, as required by the Florida Constitution.

The bill has an insignificant, negative fiscal impact on DOH, which current resources are adequate to absorb, and no fiscal impact on state or local government.

Subject to the Governor's veto powers, the bill provides the same effective date as SB 7072 which is July 1, 2024.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Public Records

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.¹ The Legislature, however, may provide by general law for exemption from public record requirements provided the exemption passes by two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption, and is no broader than necessary to meet its public purpose.²

The Florida Statutes also address the public policy regarding access to government records. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt.³ Furthermore, the Open Government Sunset Review Act⁴ provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose and the "Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."⁵ An identifiable public purpose is served 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 sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only an individual maybe exempted under this provision; or
- Protects trade or business secrets.⁶

Pursuant to the Open Government Sunset Review Act, a new public record exemption or substantial amendment of an existing public record exemption is repealed on October 2nd of the fifth year following enactment, unless the Legislature reenacts the exemption.

Cancer Connect Collaborative

CS/SB 7072 establishes the Cancer Connect Collaborative (collaborative) within the Department of Health (DOH) to advise DOH and the legislature on developing a holistic approach to the state's efforts to fund cancer research, cancer facilities, and treatments for cancer patients. The collaborative is authorized to make recommendations on proposed legislation, rules, best practices, data collection and reporting, issuance of grant funds, and other proposals for state policy relating to cancer research or treatment. The bill requires the collaborative to develop a long-range comprehensive plan for the Casey DeSantis Cancer Research Program. The collaborative must request input from cancer centers, research institutions, biomedical education institutions, hospitals, and medical providers to develop the program.

¹ Art. I, s. 24(a), FLA. CONST.

² Art. I, s. 24(c), FLA. CONST.

³ A public record exemption means a provision of general law which provides that a specified record, or portion thereof, is not subject to the access requirements of s. 119.07(1), F.S., or s. 24, Art. I of the State Constitution. See s. 119.011(8), F.S.

⁴ S. 119.15, F.S.

⁵ S. 119.15(6)(b), F.S.

⁶ *Id.*

The collaborative is charged with spearheading the Cancer Innovation Fund and to, during any fiscal year for which funds are appropriated, recommend to DOH the awarding of grants to support innovative cancer research and treatment models, including emerging research and treatment trends and promising treatments that may serve as catalysts for further research and treatments. The collaborative must review all grant applications and make grant funding recommendations to DOH and DOH is directed to make final grant allocation awards.

Effect of the Bill

The bill creates a public records exemption for proprietary business information contained in grant applications submitted to the collaborative and, in the records, except the final recommendations, generated by the collaborative during its review. The exemption applies to information that:

- Is owned or controlled by the applicant;
- Is intended to be private and is treated by the applicant as private because disclosure would harm the applicant or the applicant's business operations;
- Has not been disclosed except as required by law or a private agreement that provides that the information will not be released to the public;
- Is not readily available or ascertainable through proper means from another source in the same configuration as received by the collective; and
- Affects competitive interests, the disclosure of which would impair the competitive advantage of the applicant; or is a trade secret as defined in s. 688.002, F.S.

The information is confidential and exempt under the bill. The bill provides that records may be released with the express written consent of the person to whom the information pertains or the person's legally authorized representative, or by a court upon a showing of good cause.

The bill provides that the portions of the collaborative's meetings at which proprietary business information contained in grant applications is discussed are exempt from the public meetings law. The bill requires that the closed portions of the meetings be recorded and the recordings may be released under the same circumstances as apply to the exempt records—with the express written consent of the person to whom the information pertains or the person's legally authorized representative, or by court order upon a showing of good cause.

The bill provides for repeal of the exemptions pursuant to the Open Government Sunset Review Act on October 2, 2029, unless reviewed and saved from repeal by the Legislature.

The bill provides a public necessity statement, which is required by the Florida Constitution. The bill states that the public records exemption is necessary to protect the intellectual property of the applicants, to promote scientific innovation, and to ensure a peer review process. It states that the public meetings exemption is necessary to ensure candid exchanges among reviewers, thereby ensuring that decisions are based on merit and not subject to bias or undue influence.

The bill takes effect on the same date as CS/SB 7072 or similar legislation takes effect, if adopted And becomes law. CS/SB 7072 provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The cost of the administrative functions of the collaborative, and the additional DOH report, can be absorbed by DOH within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.