

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GVOPS 13-04 OGSR Direct-support Organization of the Department of Veterans' Affairs

SPONSOR(S): Government Operations Subcommittee

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 474

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---------------|----------------|--|
| Orig. Comm.: Government Operations Subcommittee | | Williamson | Williamson |

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

Current law authorizes the Department of Veterans' Affairs (department) to establish a direct-support organization (DSO) to provide assistance, funding, and support for the department in carrying out its mission. The DSO was incorporated as the Florida Veterans Foundation and is governed by a board of directors appointed by the executive director of the department.

Current law provides a public record and public meeting exemption for the DSO. Information that identifies a donor or prospective donor to the DSO who desires to remain anonymous is confidential and exempt from public record requirements. In addition, portions of meetings of the DSO during which the identity of donors or prospective donors is discussed are exempt from public meeting requirements.

The bill reenacts this public record and public meeting exemption, which will repeal on October 2, 2013, if this bill does not become law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act 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.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.² If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created³ then a public necessity statement and a two-thirds vote for passage are not required.

Department of Veterans' Affairs, Direct-Support Organization

In 2008, the Legislature authorized the Department of Veterans' Affairs (department) to establish a direct-support organization (DSO) to provide assistance, funding, and support for the department in carrying out its mission.⁴ The DSO was incorporated as the Florida Veterans Foundation and is governed by a board of directors appointed by the executive director of the department.⁵ The DSO operates under a written contract with the department.⁶

Public Record and Public Meeting Exemptions under Review

In 2008, the Legislature created a public record and public meeting exemption for the DSO.⁷ Information that identifies a donor or prospective donor to the DSO who desires to remain anonymous

is confidential and exempt⁸ from public record requirements.⁹ In addition, portions of meetings of the DSO during which the identity of donors or prospective donors is discussed are exempt from public meeting requirements.¹⁰

¹ Section 119.15, F.S.

² Section 24(c), Art. I of the State Constitution

³ An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

⁴ Chapter 2008-84, L.O.F.; codified as s. 292.055, F.S.

⁵ Section 292.055(3), F.S.

⁶ Section 292.055(4), F.S.

⁷ Chapter 2008-85, L.O.F.; codified as s. 292.055(9), F.S.

⁸ 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.

Pursuant to the Open Government Sunset Review Act, the public record exemption will repeal on October 2, 2013, unless reenacted by the Legislature.

During the 2012 interim, subcommittee staff sent questionnaires to the department and the DSO as part of the Open Government Sunset Review process. Both the department and the DSO recommended reenactment of the public record and public meeting exemption under review.

Effect of the Bill

The bill removes the repeal date, thereby reenacting the public record and public meeting exemption for the DSO. It clarifies that the public meeting exemption only applies to those portions of meetings wherein confidential and exempt donor information is discussed.

B. SECTION DIRECTORY:

Section 1 amends s. 292.055, F.S., to save from repeal the public record and public meeting exemption for information identifying certain donors to the DSO.

Section 2 provides an effective date of October 1, 2013.

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:

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).

⁹ Section 292.055(9)(a), F.S.

¹⁰ Section 292.055(9)(b), F.S.

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal government.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES