

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 711 Public Meetings and Public Records/Alzheimer's Disease Research Grant Advisory Board

SPONSOR(S): Health Quality Subcommittee; Hudson

TIED BILLS: 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			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

The bill is contingent upon the passage of CS/HB 709, which creates the Ed and Ethel Moore Alzheimer's Disease Research Program, and the Alzheimer's Disease Research Grant Advisory Board (board) to make recommendations to the State Surgeon General for certain research proposals to be funded.

CS/HB 711 creates a public records exemption for Alzheimer's disease research grant applications provided to the board. Additionally, the bill provides that any records generated by the board relating to the review of research grant applications, except final recommendations, are confidential and exempt from public records requirements.

The bill also creates a public meetings exemption for the portion of a board meeting in which applications for Alzheimer's disease research grants are discussed. The bill requires the closed portion of a meeting to be recorded. The recording is required to be maintained by the board and is subject to disclosure under certain circumstances.

The bill authorizes information held confidential and exempt to be disclosed with the express written consent of the individual to whom the information pertains or the individual's legally authorized representative, or by court order. The bill provides that public record and public meeting exemptions granted to the board are subject to the Open Government Sunset Review Act and will be repealed on October, 2, 2019, unless saved from repeal by reenactment by the Legislature.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.

The bill provides an effective date that is contingent upon the passage of CS/HB 709 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

Ed and Ethel Moore Alzheimer's Disease Research Program

Should CS/HB 709 be enacted, it would create the Ed and Ethel Moore Alzheimer's Disease Research Program (program), and authorize 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.

CS/HB 709 provides that applications for research funding under the program may be submitted by any university or established research institute in the state, and all qualified investigators in the state must have equal access and opportunity to compete for research funding. The bill authorizes certain types of applications to be considered for funding, including:

¹ FLA CONST., article I, s. 24(c)

² See s. 119.15, F.S.

³ Section 119.15(3), F.S.

- 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.

CS/HB 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. The board members must include two gerontologists, two geriatric psychiatrists, two geriatricians, two neuroscientists, and three neurologists. In addition, the bill:

- Requires staggered 4-year terms for board members;
- Requires the board to elect a chairperson from the membership of the board to serve a term of two years;
- Requires the board to establish operating procedures and follow rigorous guidelines for ethical conduct and adhere to a strict policy with regard to conflict of interest;
- Requires DOH to provide staff to assist the board in carrying out its duties, and prohibits members of the board from receiving compensation, or reimbursement for per diem or travel;
- Requires the board to advise the State Surgeon General as to the scope of the research program;
- Requires the board to submit their recommendations to the State Surgeon General by December 15 of each year; and
- Requires the board to submit a fiscal-year progress report to the Governor, President of the Senate, and Speaker of the House by a specified date.

Effect of Proposed Changes

The bill creates a public records exemption for research grant applications provided to the Alzheimer's Disease Research Grant Advisory Board (board). Additionally, the bill provides that any records generated by the board relating to the review of research grant applications, except final recommendations, are confidential and exempt from public records requirements.

The bill also creates a public meetings exemption for the portion of a board meeting in which applications for Alzheimer's disease research grants are discussed. The bill requires the closed portion of a meeting to be recorded. The recording is required to be maintained by the board and is subject to disclosure with the written consent of either the individual affected or the individual's legally authorized representative, or by a court order. The recording may also be disclosed in the event of the exemption being repealed as a result of the Open Government Sunset Review Act.

The other confidential and exempt records or information referred to in the bill may also be disclosed with the express written consent of the individual to whom the information pertains or the individual's legally authorized representative, or by court order. The bill provides that public record and public meeting exemptions granted to the board are subject to the Open Government Sunset Review Act and will be 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 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.

The bill provides an effective date that is contingent upon the passage of CS/HB 709 or similar legislation.

B. SECTION DIRECTORY:

Section 1: Amends s. 381.82, F.S., as created by CS/HB 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 an effective date that is contingent upon the passage of CS/HB 709 or similar legislation.

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:

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

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.

This analysis is drafted to the committee substitute as passed by the Health Quality Subcommittee.