



# First Amendment FOUNDATION

Protecting Your Right to Know Since 1985

## SECRECY IN HIGHER ED HIRING

The House approved a bill that will make the hiring of university and college presidents more secret. **HB 703/SB 520** exempts and makes confidential personal identifying information of an applicant for president of a state university or college. Information of an applicant included in the final group of candidates becomes public either when the final group is established or 21 days before a meeting to interview an applicant or take final action to select a president. Meetings at which applicants are vetted and discussions that would reveal personal identifying information of applicants would be closed to the public

and exempt from the Sunshine Law. The bill passed the House 86-26.



In states with closed searches, presidents have lasted for only a few years and – in some cases – only a few months. For example, Oregon State hired former Louisiana State's president, F. King Alexander in a secret process. Inside Higher Ed reports that he resigned less than a year into his presidency following the release of a report documenting his mishandling of sexual conduct allegations and Title IX procedures as president of LSU. Alexander's handling of Title IX cases never came to light during the hiring process, conducted in secret with limited public input.

Search firms, often paid more than \$100,000 by Florida's institutions, perform minimal due diligence and vetting. In a review of contracts between headhunting firms and schools, researchers found that only half of the agreements required the search firm to conduct on-list reference checks; less than a quarter included social media checks; just one-third of the contracts included provisions for criminal record checks and credit

report checks. Florida's open process allows the public to vet candidates when headhunters fail to do so.

**Moreover, the open process has resulted in hiring of candidates who have improved Florida's universities and colleges.** Under the proposed legislation there is nothing preventing search committee or boards of trustees (selected by the Governor and the Board of Governors) from selecting one insider candidate to lead a college or university. The committees or boards could publicly name three candidates: one handpicked by the committee or board and two less qualified candidates. Faculty, staff, students, and alumni will have just 21 days to comment on the candidate selected in secret. There is nothing in this bill to prevent undue political interference in the hiring process.

The bill allows access to the age, race, and gender of all applicants who were qualified and considered for the position. However, the release of this data will prevent the public from knowing the qualifications and experiences of other candidates. Supporters contend this exemption is needed to attract better candidates and sitting presidents. The public will have no idea whether more sitting presidents or qualified candidates are applying or being considered. This bill will leave Florida's boards of trustees and the Board of Governors with little to no accountability to the public when they select university presidents.

## EDUCATION RECORDS

### HB 7059/SB 7006 OGSR/Campus Emergency Response

Reinstates exemption for campus emergency response plans and exemption for meetings that would reveal campus emergency response plans. The public necessity statement for the exemption stated that public access to this information could hamper or disable a public institution's response to terrorism. However, universities and colleges cited the exemption to withhold information about COVID-19 response plans. The sponsor of the original bill, Rep. Byron Donalds (R-Naples), explained that the exemption was not intended to withhold pandemic response plans and encouraged schools to release the plans. Without access to COVID-19 response plans, students, their family members and faculty do not know whether colleges and universities are following their own plans or whether the plans are effective. The exemption is broader than necessary to achieve its stated purpose. The House substituted the House version for **SB 7006** and adopted an amendment to extend the exemption for another two years. The amendment does not address the release of records related to public health emergencies. The House will vote Friday, March 4.

## LAW ENFORCEMENT + CRIMINAL JUSTICE RECORDS

### HB 873/SB 1204 Pub. Rec./Execution Information

Patt Maney (R-Fort Walton Beach), Doug Broxson (R-Pensacola)

Exempts identifying information or information that could reasonably lead to identification of a person or entity participating in any aspect of an execution. When asked

on the floor whether drug manufacturers objected to having medicine used in executions, the bill sponsor acknowledged that the Department of Corrections says that manufacturers have asked that their pharmaceuticals not to be used in this method. **HB 873** will prevent drug companies from knowing how their drugs are being used. Moreover, the public will not know the reputability of companies supplying drugs to the Department of Corrections to be used in lethal injections. This bill will preclude oversight of lethal injections.

Supporters argued that this exemption was needed to acquire FDA-approved drugs and carry out the death penalty and, specifically, lethal injection rather than electrocution. Yet, other states, including Texas and Tennessee, with similar secrecy laws have had issues obtaining necessary drugs. The Texas Tribune reports that, even with its records exemption, the state tried to import drugs from overseas. The FDA seized the drugs and later ruled that they couldn't be brought into the country because they were unapproved and misbranded. There is no guarantee that the bill will enable Florida to carry out lethal injections. The House approved the bill 84-32. The Senate will hear **SB 1204** Friday, March 4 for second reading.

### **SB 598 Public Records/Criminal Conflict and Civil Regional Counsel Office**

Dennis Baxley (R-Lady Lake)

**SB 596**, in part, authorizes an office of criminal conflict and civil regional counsel to register a license plate or decal under a fictitious name for counsel's use. **SB 598** exempts records relating to the registration application for a license plate or decal issued under a fictitious name. The Senate unanimously approved **SB 598**.

### **HB 7031/SB 7024 OCSR/Alleged Victim or Victim of Sexual Harassment**

Reinstates exemption for personal identifying information of an alleged victim of sexual harassment. Also expands the exemption to prevent release of identifying information of a victim of sexual harassment. The identifying information is exempt if it identifies that person as an alleged victim or as a victim of sexual harassment. It does not apply to all agency records identifying the victim. A victim or alleged victim may waive confidentiality. The House substituted **HB 7031** for **SB 7024**, and will vote on the Senate bill Friday, March 4.

### **HB 773/HB 1045 Public Records/Law Enforcement Geolocation Information**

Matt Willhite (D-Wellington), Ed Hooper (R-Palm Harbor)

Exempts law enforcement geolocation information. Defines law enforcement geolocation information as information collected using a global positioning system or another mapping, locational, or directional information system that allows tracking of the location or movement of a law enforcement officer or vehicle. **HB 773** provides that information must be released to local, state, and federal government entities; to any person who seeks a petition in circuit court and shows good cause for access to the information; if requested in criminal, civil, or administrative proceedings upon a showing of good cause; and if law enforcement geolocation information is included in a uniform

traffic citation, crash report, homicide report, arrest report, or any other official report by an agency. The House votes on the legislation Friday, March 4.

## COURT RECORDS

### **HB 1363/SB 1304 Public Records/Trust Proceedings**

Elizabeth Fetterhoff (R-DeLand), Joe Gruters (R-Sarasota)

Requires a clerk of court, upon written request, to keep all official records separate and out of public view in a proceeding involving a family trust company, licensed family trust company, or foreign licensed family trust company. Proceedings will be presumptively sealed – without any necessary factual findings from a judge. Makes confidential and exempts official records – defined as the docket, all filings,



and other records – of such cases. The bill provides access to official records only to the following individuals: trust settlor; trustee or trust director; trust beneficiary; attorney for the settlor, fiduciary, or a beneficiary of the trust. In addition, the following individuals may petition a court for access to the confidential official records: a person showing a specific interest in the trust, a transaction relating to the trust, or an asset held or previously held by the trust. These person may obtain the records only when a court determines they have shown "a compelling need for releasing the information requested." While some individuals may be able to show a compelling need for trust information, the general public cannot show a need for access to the court records.

The exemption is counter to longstanding common law right to access to court records. It permits some parties to access the courts in secret without showing whether secrecy is needed to protect the parties involved or whether alternative methods exist to protect the parties. Courts must close court proceedings and seal records regardless of the facts or nature of the case. The House temporarily postponed the second reading of **HB 1363** Thursday, March 3. The Senate approved **SB 1304** 35-3.

### **HB 1441/SB 756 Public Records/Human Trafficking Victims**

Jackie Toledo (R-Tampa), Manny Diaz (R-Hialeah Gardens)

Exempts and makes confidential all documents related to a petition to expunge criminal records resulting from arrest or charges for offenses committed while a person was victim of human trafficking. **HB 1439** expands expunction for offenses listed as habitual violent felony offender designation if the defendant was found not guilty or did not plead guilty or nolo contendere to such offense. The House substituted **HB 1441** for the Senate bill, and unanimously approved **SB 756**.



**SB 1846 Public Records/Respondent's Name**

Aaron Bean (R-Jacksonville)

Makes confidential and exempts a respondent's name, at trial and on appeal, and all petitions or applications for voluntary and involuntary admission for mental health examinations or treatment (Baker Act) and for application or petitions for substance abuse treatment or assessment (Marchman Act). The Senate unanimously approved the bill.

**HB 7011/SB 7008 OCSR/Substance Abuse Impaired Persons**

Reinstates exemption for Marchman Act petitions, court orders, and related records filed with a court. Exempts personal identifying information contained in such records published on a court docket. Allows access by court order upon a showing of good cause. The Senate passed the bill with no votes against it. The House substituted **HB 7011** for the Senate bill and will take a final vote Friday, March 4.

**HB 1413/SB 1526 Public Records/Annuity Contact Payees**

John Snyder (R-Palm City), Jim Boyd (R-Bradenton)

Exempts personal identifying information and annuity contract numbers of a payee of a structured settlement and the names of the family members, dependents, and beneficiaries of such payee. A structured settlement is an arrangement for periodic payment of damages for personal injuries awarded in a settlement or judgment of a tort resolution. Exemption withholds only court files relating to the approval of a transfer of settlement payment rights. Records become public 6 months after a court order approving or denying the transfer application. The legislation will be heard for a second reading on Friday, March 4.

**CYBERSECURITY****HB 7057/SB 1694 Public Records/ and Public Meetings/Cyber Security Incident or Ransomware Incident**

Jason Fischer (R-Jacksonville), Travis Hutson (R-Palm Coast)

Exempts and makes confidential coverage limits and deductible or self-insurance amounts of insurance or other risk mitigation coverages obtained for the protection of information technology systems or data of an agency. Also exempts and makes confidential information relating to critical infrastructure, defined as existing and proposed information technology and operational technology systems and assets, which if destroyed or disabled, would negatively affect security, economic security, public health or safety. Exempts and makes confidential network schematics, hardware or software configurations, or information that identifies detection, investigation, or response practices for suspected or confirmed cybersecurity breaches. Finally, closes meetings at which confidential or exempt information is discussed. Agencies may report information about cyber security incidents in the aggregate. The Senate Appropriations Committee unanimously approved the bill. The House votes on the measure Friday, March 4.

## AGENCY RECORDS

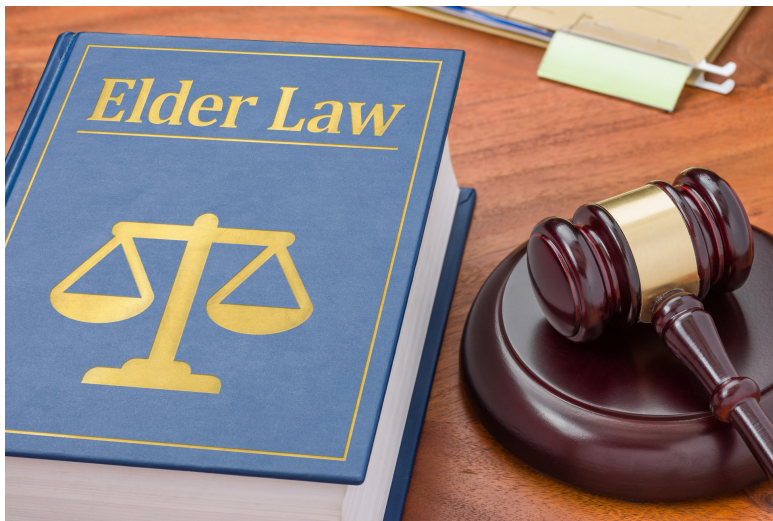
### HB 1351 Pub. Rec./Guardianship Data Transparency

Linda Chaney (R-St. Petersburg)

**HB 1349** requires the Florida Clerks of Court Operations Corporation to create a statewide database of guardianship information to improve court oversight of guardianship cases. The database must allow the public to search by the name of guardians and view data on the number of wards served by the guardian and counties of residence of such wards. **HB 1351** exempts and makes confidential the personal identifying information of a ward or petitioner in the database. Information may be released to other governmental entities for use in the performance of its official duties and responsibilities. The Health & Human Services Committee unanimously approved the bill. The House temporarily postponed the bill Thursday, March 3.

### HB 7017/SB 7010 OGSR/Public and Professional Guardians/Department of Elderly Affairs

Reinstates exemption for records held by the Department of Elderly Affairs about



investigations into complaints filed with the Department. Exempts the names of complainant and ward involved; the ward's personal health and financial records; and photographs and videos related to the complaint or obtained during the investigation. Allows access by court order and allows release of information once the investigation is complete or no longer active. The House substituted **HB 7017** for the for the Senate version and adopted

an amendment clarifying that the exemption applies if the department has a reasonable, good faith belief that its investigation may lead to a finding that a guardian has violated the standards of practice established by the Office of Public and Professional Guardians. The amendment requires not only an active investigation but also a reasonable and good faith investigation. In addition, the amendment permits the release of photographs in a complaint, as long as the photographs do not depict a ward or complainant. The House voted in favor of **SB 7010** over one not vote by Rep. Tracie Davis (R-Jacksonville).

### HB 1565 Pub. Rec./Consumer Data Privacy

Fiona McFarland (R-Sarasota)

**HB 9**, in part, authorizes the Department of Legal Affairs ("DLA") to bring an action under the Florida Unfair or Deceptive Trade Practices Act related to unlawful uses of consumers' personal information. **HB 1565** exempts and makes confidential all

information received by the DLA pursuant to a notification of a violation of **HB 9** or a law enforcement agency. Exempt information may be released during an investigation to notify the public of a data breach or in the furtherance of the duties and responsibilities of an investigating agency. The exemption does not apply once an investigation is complete or ceases to be active. However, the following information remains exempt after the completion of an investigation: information to which another public records exemption applies; personal information; a computer forensic report; information that would reveal weaknesses in data security; and information that would disclose proprietary information. The House unanimously passed the bill and it is now in the Senate Judiciary Committee.

### **HB 1121/SB 1614 Public Records/Motor Vehicle Crashes/ Traffic Citations**

Chuck Brannan (R-Lake City), Gayle Harrell (R-Stuart) Exempts and makes confidential crash reports that reveal the identity of parties involved in the crash. Redacted reports must be made available, upon request, to radio and televisions stations licensed by the FCC and newspapers qualified to publish legal



notices. In its current form, the legislation allows the media to access reports and inform the public of crashes and detect crash patterns. Both bills impose civil penalties on parties who obtain a crash report or data and knowingly disclose or use the information for improper purposes. The penalties do not apply to tv and radio stations or newspapers. The House temporarily postponed the second reading of the bill. The Senate passed SB 1614, with 3 lawmakers voting no.

### **HB 1445/SB 7026 OGSR/Dependent Eligibility Verification Services**

Reinstates exemption for records collected by the Department of Management Services for purposes of dependent eligibility verification services conducted for the state group insurance program. The House will vote on **HB 1445** Friday, March 4.

### **HB 7043/SB 7016 OGSR/Information Submitted by Insurers/DFS**

Reinstates exemption for information relating to investigating and tracking insurance fraud submitted by insurers to the Department of Financial Services. The House substituted **HB 7043** for the Senate version and will vote on the bill Friday, March 4.

### **HB 7045/SB 7020 OGSR/Office of Insurance Regulation\***

Reinstates Fla. Stat. § 663.416(2), exempting personal identifying information of customer or prospective customer of an international trust entity appearing in the books and records of an International Trust Company Representative Office ("ITCRO"), an off-shore trust company with offices in Florida, and Fla. Stat. § 663.540(2), exempting personal identifying information of customers of an international trust entity appearing in the books of a qualified limited service affiliate held by the Office of Financial Regulation.

Reinstates Fla. Stat. § 655.057(1), which exempts and makes confidential records and information relating to an investigation by OFR until the investigation is completed or ceases to be active. Reinstates exemption for reports of examinations, including working papers, prepared by the OFR or any state or federal agency responsible for regulating financial institutions. Reinstates exemption for confidential documents supplied to the OFR by other state or federal government agencies.

The staff analysis for the Senate version, **SB 7020**, notes that the OFR has never received a request for information made exempt by sections 663.416 and 663.540. Based on the OFR's statements, FAF recommends sunseting these two provisions of the statute. No public purpose is served by maintaining these exemptions. The House substituted **HB 7045** for **SB 7020**. Representatives will vote Friday, March 4.

### **HB 699/SB 934 Public Records/Homelessness Counts and Information Systems**

Fiona McFarland (R-Sarasota), Joe Gruters (R-Sarasota)

Exempts and makes confidential individual identifying information of a person contained in a Point-in-Time Count or homeless management information system. Individual identifying information is defined as information that directly or indirectly identifies a specific person, can be manipulated to identify a specific person, or can be linked with other available information to identify a specific person. Information can be released in the aggregate if it does not disclose the individual identifying information of a person. The House will hear **HB 699** for second reading Friday, March 4.