

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Higher Education Committee

BILL: SB 166

INTRODUCER: Senator Ring

SUBJECT: Public Records/Donors' Identification/Public Buildings

DATE: March 9, 2009

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Molloy	Yeatman	CA	Favorable
2.	Harkey	Matthews	HE	Favorable
3.			GO	
4.			RC	
5.				
6.				

I. Summary:

This bill creates a public records exemption for information that identifies a donor or prospective donor of a donation made for the benefit of a publicly owned building or facility. The bill provides that at the request of the donor or prospective donor, identifying information would be confidential and exempt from the public records provisions of s. 119.07(1)(a), F.S., and s. 24(a), Art. I of the State Constitution. The exemption is subject to legislative review and repeal under the provisions of the Open Government Sunset Review Act.

This bill creates two undesignated sections of law.

II. Present Situation:

Public Access - Florida has a long history of providing public access to the records of governmental and other public entities. The Legislature enacted its first law affording access to public records in 1892. In 1992, Florida voters approved an amendment to the State Constitution which raised the statutory right of access to public records to a constitutional level.

Section 24(a), Art. I, State Constitution – Section 24(a), Art. I of the State Constitution provides the following:

- (a) Every person has the right to inspect or copy any public records made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency

or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Florida's Public Records Law – Florida's public records law is contained in chapter 119, F.S., and specifies conditions under which the public must be given access to governmental records. Section 119.07(1)(a), F.S., provides that every person who has custody of a public record¹ must permit the record to be inspected and examined by any person, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record. Unless specifically exempted, all agency² records are to be available for public inspection.

The Florida Supreme Court has interpreted the definition of public records to encompass all materials made or received by an agency in connection with official business which are "intended to perpetuate, communicate, or formalize knowledge."³ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.⁴

Only the Legislature is authorized to create exemptions to open government requirements.⁵ Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.⁶ A bill enacting an exemption⁷ may not contain other substantive provisions although it may contain multiple exemptions relating to one subject.⁸

There is a difference between records that the Legislature exempts from public inspection and those that the Legislature makes confidential and exempt from public inspection. If a record is made confidential with no provision for its release so that its confidential status will be maintained, such record may not be released by an agency to anyone other than the person or entities designated in the statute.⁹ If a record is simply exempt from mandatory disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.¹⁰

¹ s. 119.011(1), F.S., defines "public record" to include "all documents, papers, letters, maps, books, tapes, photographs, film, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency."

² s. 119.011(2), F.S., defines "agency" as "...any state, county, district, authority, or municipal officer, department, division, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

³ *Shevin v. Byron, Harless, Shafer, Reid, and Assocs., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁴ *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979)

⁵ Article I, s. 24(c) of the State Constitution.

⁶ *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So.2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

⁷ s. 119.15, F.S., provides that an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

⁸ Article 1, s. 24(c) of the State Constitution

⁹ Attorney General Opinion 85-62, August 1, 1985.

¹⁰ *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d. 289 (Fla. 1991).

Open Government Sunset Review Act - The Open Government Sunset Review Act established in s. 119.15, F.S., provides a review and repeal process for public records exemptions. In the fifth year after enactment of a new exemption or in the fifth year after substantial amendment of an existing exemption, the exemption is repealed on October 2, unless reenacted by the Legislature. Each year, by June 1, the Division of Statutory Revision of the Joint Legislative Management Committee is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

Some current exemptions for donors or prospective donors

<i>Entity</i>	<i>Exemption</i>	<i>Florida Statute</i>	<i>Status</i>
Enterprise Florida, Inc. (OTTED)	Identity of donor or prospective donor who desires to remain anonymous and all identifying information	11.45(3)(i)	Confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I, State Constitution.
Florida Development Finance Corporation, Inc. (OTTED)	Identity of donor or prospective donor who desires to remain anonymous and all identifying information	11.45(3)(j)	Confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I, State Constitution.
Cultural Endowment Program (Dept. of State)	Information which, if released, would identify donors and amounts contributed. Information which, if released, would identify prospective donors.	265.605(2)	Confidential and exempt from s. 119.07(1), F.S.
Direct Support Organization (Univ. of West Florida)	Identity of donor or prospective donor of property to a DSO who desires to remain anonymous, and all identifying information.	267.1732(8)	Confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I, State Constitution.
Citizen Support Organization (FWC)	Identity of donor or prospective donor to a CSO who desires to remain anonymous and all identifying information.	379.223(3)	Confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I, State Constitution.
Florida Agricultural Museum (DACs)	Identity of donor or prospective donor who desires to remain anonymous and all identifying information.	570.903(6)	Confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I, State Constitution.
John and Mable Ringling Museum of Art Direct Support Organization (FSU)	Information that would, if released, identify donors who wish to remain anonymous or prospective donors who wish to remain anonymous when the DSO has identified the prospective donor and has not obtained the name in another manner.	1004.45(2)(h)	Confidential and exempt from s. 119.07(1), F.S.

Florida Prepaid College Board Direct Support Organization	Identity of donors who wish to remain anonymous. Any sensitive, person information regarding contract beneficiaries, including identity.	1009.983(4)	Confidential and exempt from s. 119.07(1) and s. 24(a), Art. I, State Constitution.
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III. Effect of Proposed Changes:

The bill defines “publicly owned building or facility” as a building or facility for which title is vested in the state or in a political subdivision of the state, and creates a public records exemption for such facilities. Information that would identify the name, address, or telephone number of a donor of a donation made for the benefit of a publicly owned building or facility, and information that would identify a prospective donor is made confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution so long as the donor or prospective donor wishes to remain anonymous. The exemption is subject to the provisions of the Open Government Sunset Review Act and will stand repealed on October 2, 2014, unless reviewed and reenacted by the Legislature.

The bill provides justification for the public necessity of the exemption, stating that in order to encourage private investment in publicly owned buildings or facilities, it is necessary to promote the giving of gifts to, and the raising of private funds for, the acquisition, renovation, rehabilitation, and operation of publicly owned buildings or facilities. There is a chilling effect on donations because donors are concerned about the disclosure of personal information leading to theft, identity theft, and about personal safety and security, and therefore, the harm that would result outweighs any public benefit that might result from the disclosure.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

This bill creates a public records exemption for information that would identify a donor or a prospective donor of a donation made for the benefit of a publicly owned building or facility should such donor or prospective donor wish to remain anonymous. In accordance with s. 24, Art. I, State Constitution, the bill requires a two-thirds vote of each house of the Legislature for enactment.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Donors or prospective donors of donations made for the benefit of publicly owned buildings or facilities would have the option of requesting anonymity.

C. Government Sector Impact:

There may be minimal costs to the state or its political subdivisions that receive donations for the benefit of publicly owned buildings and facilities associated with complying with the bill's exemption requirements.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.