



# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill decreases access to public records and public meetings.

### B. EFFECT OF PROPOSED CHANGES:

#### Background

The Florida Constitution sets forth the state's public policy regarding access to government records. It guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.<sup>1</sup> The Florida Constitution also sets forth the state's public policy regarding access to government meetings. It requires that all meetings of the executive branch and local government be open and noticed to the public.<sup>2</sup>

The Legislature may, however, provide by general law for the exemption of records and meetings from the requirements of s. 24, Article I 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 purpose.<sup>3</sup>

Public policy regarding access to government records and meetings is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record, and s. 286.011, F.S., requires that all state, county, or municipal meetings be open and noticed to the public. In addition, the Open Government Sunset Review Act provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting 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; or
- Protecting trade or business secrets.

Current law provides a number of public records exemptions for information identifying a donor or prospective donor who wishes to remain anonymous. For example, information identifying a donor or prospective donor to a:

- Citizen support organization of the Fish and Wildlife Conservation Commission is confidential and exempt from public records requirements.<sup>4</sup>
- Direct support organization providing assistance to certain programs in the Department of Agriculture and Consumer Services is confidential and exempt from public records requirements.<sup>5</sup>
- Direct support organization for the University of Florida is confidential and exempt from public records requirements.<sup>6</sup>

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<sup>1</sup> Section 24(a), Art. I of the State Constitution.

<sup>2</sup> Section 24(b), Art. I of the State Constitution.

<sup>3</sup> Section 24(c), Art. I of the State Constitution.

<sup>4</sup> Section 372.0215(3), F.S.

<sup>5</sup> Section 570.903(6), F.S.

<sup>6</sup> Section 267.1732(8), F.S.

There is not, however, a similar exemption information that identifies a donor or prospective donor to a publicly owned house museum.

#### Effect of Bill

The bill creates a public records exemption for any document held by a state agency, unit of local government, or an agency or instrumentality thereof that identifies:

- The name, identity, home or employment telephone number, home or employment address, or personal assets of any potential or actual donor to a publicly owned house museum; or
- Any donation of gifts or funds to such museum.

The museum must be designated as a National Historic Landmark by the United States Department of the Interior.

The bill also creates a public meetings exemption for any portion of a meeting of any governing board or subcommittee, of such house museum, at which the confidential and exempt information is discussed. Any records generated during the closed portion of a meeting are confidential and exempt from public records requirements.

The bill provides for future review and repeal of the exemption on October 2, 2012. It also provides a public necessity statement as required by the State Constitution.

#### C. SECTION DIRECTORY:

Section 1 creates s. 267.076, F.S., creating a public records and public meetings exemption for records and meetings related to publicly owned house museums.

Section 2 provides a public necessity statement.

Section 3 provides an effective date of July 1, 2007.

### **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS section.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS section.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill likely could create a minimal fiscal impact on publicly owned house museums, because staff responsible for complying with public records requests will require training related to the creation of the current public records exemption. In addition, such museums could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, should be absorbed as they would be part of the day-to-day responsibilities for the museum.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

Vote Requirement

Section 24(c), Article I of the State Constitution requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. The bill creates a public records and a public meetings exemption; thus, it requires a two-thirds vote for passage.

Public Necessity Statement

Section 24(c), Article I of the State Constitution requires a statement of public necessity (public necessity statement) for a newly created public records or public meetings exemption. The bill creates a public records and public meetings exemption; thus, it includes a public necessity statement.

Overly Broad

Section 24(c), Article I of the State Constitution requires that an exemption be no broader than necessary to accomplish its purpose. The bill could raise constitutional concerns, because the exemption could be considered overly broad. The public necessity for the exemption is to protect the identity of donors or potential donors who wish to remain anonymous because, without this protection, potential donors might be less likely to contribute to these publicly owned house museums.

The exemption could be narrowed to protect only information identifying the donor or prospective donor and still accomplish the same purpose. This change would permit public access and oversight regarding money donated to these museums, while also providing anonymity to those donors or prospective donors who wish to remain anonymous.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill appears to provide a more broad protection for certain donor information than is afforded in other exemptions for similar information. Typically, public records exemptions for donor information only apply to information that would specifically identify a donor or prospective donor who wishes to remain anonymous. In addition, such exemptions do not provide public meetings exemptions. *The*

*sponsor intends to offer an amendment to conform this exemption to other similar, more narrowly drafted exemptions provided in current law.*

#### D. STATEMENT OF THE SPONSOR

I thank Chairman Gardiner & the Members for hearing this Bill. My thanks also to the Council staff for their hard work in preparing the bill for this meeting. This bill will enable certain public museums to receive significant donations and contributions that they would not have otherwise received.

I am offering a strike-all amendment which has been reviewed by the First Amendment Foundation and to which they have indicated their neutrality.

I am requesting the Council's favorable consideration of this good bill.

#### **IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

Not applicable.