

**The Florida Senate**  
**PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT**

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

Prepared By: Governmental Operations Committee

BILL: CS/SB 2406

INTRODUCER: Governmental Operations Committee and Senator King

SUBJECT: St. Augustine Historic District

DATE: April 18, 2007                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carrouth	Matthews	HE	<b>Favorable</b>
2.	Rhea	Wilson	GO	<b>Fav/CS</b>
3.			RC	
4.				
5.				
6.				

**I. Summary:**

This bill exempts from public disclosure the identity of a donor or prospective donor to a direct-support organization of the University of Florida if the donor wishes to remain anonymous. The bill is linked to SB 2404, which allows for donations to the direct-support organization for purposes of historic preservation in St. Augustine. Additionally, the bill requires the anonymity of the donor to be maintained in an auditor’s report.

The exemption sunsets on October 2, 2012, in accordance with the Open Government Sunset Review Act, unless reenacted by the Legislature.

This bill creates a new exemption and is subject to the two-thirds vote of each house requirement established in Art. I, s. 24(c) of the State Constitution.

This bill amends section 267.1736 of the Florida Statutes, as created by SB 2404.

**II. Present Situation:**

**Public Records** – The State of Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.<sup>1</sup> One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.<sup>2</sup> Article I, s. 24 of the State Constitution, provides that:

<sup>1</sup> Section 1390, 1391 F.S. (Rev. 1892).

<sup>2</sup> Article I, s. 24 of the State Constitution.

(a) Every person has the right to inspect or copy any public record 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.

In addition to the State Constitution, the Public Records Act,<sup>3</sup> which pre-dates the State Constitution, specifies conditions under which public access must be provided to records of an agency.<sup>4</sup> Section 119.07(1) (a), F.S., states:

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.

Unless specifically exempted, all agency records are available for public inspection. The term “public record” is broadly defined to mean:

. . . all documents, papers, letters, maps, books, tapes, photographs, films, 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.<sup>5</sup>

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate or formalize knowledge.<sup>6</sup> All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.<sup>7</sup>

Only the Legislature is authorized to create exemptions to open government requirements.<sup>8</sup> Exemptions must be created by general law and such law must specifically state the public

---

<sup>3</sup> Chapter 119, F.S.

<sup>4</sup> The word “agency” is defined in s. 119.011(2), F.S., to mean “. . . any state, county, district, 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.” The Florida Constitution also establishes a right of access to any public record 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 those records exempted by law or the state constitution.

<sup>5</sup> Section 119.011(11), F.S.

<sup>6</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

<sup>7</sup> *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

<sup>8</sup> Article I, s. 24(c) of the State Constitution.

necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.<sup>9</sup> A bill enacting an exemption<sup>10</sup> may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.<sup>11</sup>

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.<sup>12</sup> If a record is simply made exempt from disclosure requirements an agency is not prohibited from disclosing the record in all circumstances.<sup>13</sup>

The Open Government Sunset Review Act<sup>14</sup> provides for the systematic review, through a 5-year cycle ending October 2nd of the 5th year following enactment, of an exemption from the Public Records Act or the Public Meetings Law. Each year, by June 1, the Division of Statutory Revision of the Office of Legislative Services 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.

The act states that an exemption may be created or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An exemption meets the three statutory criteria if it:

- (1) allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- (2) protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- (3) protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.<sup>15</sup>

---

<sup>9</sup> *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).

<sup>10</sup> Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

<sup>11</sup> Art. I, s. 24(c) of the State Constitution.

<sup>12</sup> Attorney General Opinion 85-62.

<sup>13</sup> *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5<sup>th</sup> DCA), review denied, 589 So.2d 289 (Fla. 1991).

<sup>14</sup> Section 119.15, F.S.

<sup>15</sup> Section 119.15(4)(b), F.S.

The act also requires consideration of the following:

- (1) What specific records or meetings are affected by the exemption?
- (2) Whom does the exemption uniquely affect, as opposed to the general public?
- (3) What is the identifiable public purpose or goal of the exemption?
- (4) Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- (5) Is the record or meeting protected by another exemption?
- (6) Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

While the standards in the Open Government Sunset Review Act may appear to limit the Legislature in the exemption review process, those aspects of the act that are only statutory as opposed to constitutional, do not limit the Legislature because one session of the Legislature cannot bind another.<sup>16</sup> The Legislature is only limited in its review process by constitutional requirements.

Further, s. 119.15(4) (e), F.S., makes explicit that:

... notwithstanding s. 768.28 or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of any exemption under this section. The failure of the Legislature to comply strictly with this section does not invalidate an otherwise valid reenactment.

Under s. 119.10(1) (a), F.S., any public officer who violates any provision of the Public Records Act is guilty of a noncriminal infraction, punishable by a fine not to exceed \$500. Further, under paragraph (b) of that section, a public officer who knowingly violates the provisions of s. 119.07(1), F.S., relating to the right to inspect public records, commits a first degree misdemeanor penalty, and is subject to suspension and removal from office or impeachment. Any person who willfully and knowingly violates any provision of the chapter is guilty of a first degree misdemeanor, punishable by potential imprisonment not exceeding one year and a fine not exceeding \$1,000.

Section 286.011, F.S., provides that all meetings of any board or commission of any state agency or authority of any agency, or any county, municipality, or political subdivision, at which official acts are taken, are considered public meetings. As meetings open to the public, these meetings must be properly noticed and recorded, and open to public inspection.<sup>17</sup>

### **III. Effect of Proposed Changes:**

This bill exempts from public disclosure the identity of a donor or prospective donor to a direct-support organization of the University of Florida (UF) if the donor wishes to remain

---

<sup>16</sup> *Straughn v. Camp*, 293 So.2d 689, 694 (Fla. 1974).

<sup>17</sup> Section 286.011(1) and (2), F.S.

anonymous. The bill is linked to SB 2404, which allows for donations to the direct-support organization for purposes of historic preservation in St. Augustine. Additionally, the bill requires the anonymity of the donor to be maintained in an auditor's report.

Senate Bill 2404 authorizes the University of Florida to establish a direct support organization to assist UF in historic preservation in St. Augustine and associated historical education programs. The DSO is authorized, contingent upon a contract between UF and the Board of Trustees of the Internal Improvement Trust Fund, to secure donations from private donors.

The bill makes the identity of the donors or prospective donors confidential and exempt. However, the Auditor General and the University of Florida would have access to all records of the direct-support organization.

The exemption sunsets on October 2, 2012, in accordance with the Open Government Sunset Review Act, unless reenacted by the Legislature.

The bill identifies the public necessity justifying the exemption as the following:

- The exemption is needed to protect information of a sensitive, personal nature concerning donors or prospective donors, namely their identity.
- The exemption is necessary to ensure that the University of Florida and its direct-support organization can effectively and efficiently administer the program.

The bill has a contingent effective date.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

Under s. 24(c), Art. I of the State Constitution, records may be exempted from open government requirements only where the exemption is no broader than necessary to accomplish the stated purpose of the law. The bill provides that the public records exemption is necessary to protect information of a sensitive, personal nature concerning donors or prospective donors and to ensure that the program can be effectively and efficiently administered.

The bill creates a new public records exemption and would require a two-thirds vote of each house of the Legislature for the exemption to be enacted.<sup>18</sup>

##### **C. Trust Funds Restrictions:**

None.

---

<sup>18</sup> Section 24(c), Art. I of the State Constitution.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The public records exemption would allow anonymous donations to the direct-support organization for the University of Florida for historic preservation in St. Augustine. Donors and prospective donors who wish to donate anonymously would no longer be discouraged from donating by public records laws.

**C. Government Sector Impact:**

The public records exemption would allow anonymous donations to the direct-support organization for the University of Florida for historic preservation in St. Augustine. Donors and prospective donors who wish to donate anonymously would no longer be discouraged from donating by public records laws. Accordingly, the program may benefit from private donations.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

## **VIII. Summary of Amendments:**

None.

---

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

---