

**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: Higher Education Committee

BILL: SB 2406

INTRODUCER: Senator King

SUBJECT: St. Augustine Historic District

DATE: April 10, 2007                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carrouth	Matthews	HE	<b>Favorable</b>
2.			GO	
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 amends section 267.1736 of the Florida Statutes, as created by SB 2404.

**II. Present Situation:**

**Public Records Law, Generally**

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 1909. In 1992, Floridians adopted an amendment to the state constitution that raised the statutory right of access to public records to a constitutional level. Article I, s. 24(a) of the State Constitution provides that:

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.

The Public Records Law<sup>1</sup> also specifies conditions under which the public must have access to governmental records. Section 119.011(11), F.S., defines the term “public records” to include:

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.

The Florida Supreme Court has interpreted this definition of public records to include all materials made or received by an agency in connection with official business which are used “to perpetuate, communicate, or formalize knowledge.”<sup>2</sup> Unless the Legislature makes these materials exempt, they are open for public inspection, regardless of whether they are in final form.<sup>3</sup>

Under Article I, s. 24(c) of the State Constitution, the Legislature may provide for the exemption of records from the open government requirements provided: (1) the law creating the exemption states with specificity the public necessity justifying the exemption; and (2) the exemption is no broader than necessary to accomplish the stated purpose of the law.

### **Open Government Sunset Review Act**

The Open Government Sunset Review Act of 1995, s. 119.15, F.S., establishes a review and repeal process for public records exemptions. In the fifth year after enactment of a new exemption or the substantial amendment of an existing exemption, the exemption is repealed on October 2, unless the Legislature reenacts the exemption. An “exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. An exemption is not substantially amended if the amendment narrows the scope of the exemption.”<sup>4</sup>

Under s. 119.15(2), F.S., an exemption may be maintained only if it meets one of the following:

- The exempted record or meeting is of a sensitive, personal nature concerning individuals;
- The exemption is necessary for the effective and efficient administration of a governmental program; or
- The exemption affects confidential information concerning an entity.

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<sup>1</sup> Chapter 119, F.S.

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

<sup>3</sup> *See Wait v. Florida Power & Light Co.*, 372 So.2d 420 (Fla. 1979).

<sup>4</sup> s. 119.15(3)(b), F.S.

Section 119.15(6)(a), F.S., requires, as part of the review process, the consideration of the following questions:

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?

An exemption may be maintained only if it serves an identifiable public purpose, and it may be no broader than necessary to meet that purpose. An identifiable public purpose is served if the exemption meets one of the following purposes and the Legislature finds that the purpose is sufficiently compelling to override the strong policy of open government and cannot be accomplished without the exemption:

- The exemption allows “the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.”
- The exemption protects “information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals.”
- The exemption protects “information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.”<sup>5</sup>

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>6</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 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.

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<sup>5</sup> s. 119.15(4)(b), F.S.

<sup>6</sup> s. 286.011(1) and (2), F.S.

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>7</sup>

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

None.

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<sup>7</sup> s. 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:**

On page 1, line 16, the bill references s. 267.1736, F.S., as created by HB 851. It should reference SB 2404.

On page 2, line 28, the linked bill should be identified as SB 2404.

**VII. Related Issues:**

None.



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

None.

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

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