



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited Government- This bill decreases access to public records.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Public Records Law**

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. Section (24)(a), Art. I 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 there under; 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 s. 24(c), Art. I of the State Constitution, the Legislature may provide for the exemption of records from the public records 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.

The Open Government Sunset Review Act, s. 119.15, F.S., provides for the review, repeal, and reenactment of an exemption. A new exemption is repealed on October 2nd in the fifth year after enactment, unless the exemption is reenacted by the Legislature. An exemption may be created or maintained only if it serves an identifiable public purpose, and it may be no broader than necessary to meet that purpose.

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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).

## **Proposed Changes**

The bill creates a public records exemption to allow donors and prospective donors to the direct-support organization of the University of Florida who support the educational and historic preservation of state-owned historic properties in St. Augustine to remain anonymous, if they wish. The bill provides that the public records exemption is necessary because the release of information identifying donors will adversely affect the direct-support organization's ability to further the state goal of maintaining, preserving, promoting and advancing historic preservation of these state owned properties. The bill states that the exemption will allow the DSO to administer the promotion, preservation, and public education efforts effectively and efficiently.

This bill takes effect on the date that HB 851 or similar legislation takes effect. The public records exemption will automatically repeal on October 2, 2012, unless reviewed and saved from repeal through reenactment by the Legislature.

### **C. SECTION DIRECTORY:**

Section 1: adds to s. 267.1736, F.S., as created by HB 851, 2007 Regular session, to create a public records exemption for identifying information of persons making a donation to the direct-support organization of the University of Florida to support the educational and historic preservation of state-owned historic properties in St. Augustine.

Section 2: provides for review and future repeal of the exemption on October 2, 2012.

Section 3: provides a statement of public necessity.

Section 4: provides an effective date of the same date that HB 851, or similar legislation takes effect.

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

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

1. Revenues: None.

2. Expenditures: None.

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

1. Revenues: None.

2. Expenditures: None.

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

None.

### **D. FISCAL COMMENTS:**

The public records law in general creates a significant, although unquantifiable, increase in government spending. Government employees must locate requested records, and must examine every requested

record to determine if a public records exemption prohibits release of the record. There is likely no fiscal impact to a single public records exemption; the location and examination process remains whether or not a particular public records exemption exists.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

##### **3. Other:**

Article I, s. 24(c) 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. Thus, the bill requires a two-thirds vote for passage.

#### **B. RULE-MAKING AUTHORITY:**

None.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

#### **D. STATEMENT OF THE SPONSOR**

No statement provided.

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