

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 121 Pub. Rec./Donors to Performing Arts Centers or DSO of Florida Historic Capitol & Legislative Research Center & Museum

**SPONSOR(S):** State Affairs Committee, Government Operations Subcommittee, and Thurston

**TIED BILLS:**           **IDEN./SIM. BILLS:** CS/SB 106

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	12 Y, 0 N, As CS	Williamson	Williamson
2) State Affairs Committee	15 Y, 0 N, As CS	Williamson	Hamby

### SUMMARY ANALYSIS

Current law provides several public record exemptions for the identity of a donor or prospective donor to an organization who wishes to remain anonymous. Examples include the Cultural Endowment Program, the direct support organization for the Florida Agricultural Museum, and the direct support organization for the John and Mable Ringling Museum of Art.

The bill creates a public record exemption for the identity of a donor or prospective donor to a publicly owned performing arts center who desires to remain anonymous. It also creates a public record exemption for the identity of a donor or prospective donor to the direct-support organization of the Legislative Research Center and Museum at the Historic Capitol who desires to remain anonymous.

The bill provides for repeal of the exemptions on October 2, 2016, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

**Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates new public record exemptions; thus, it requires a two-thirds vote for final passage.**

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Public Records Law

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) 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>1</sup>

Public policy regarding access to government records 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. Furthermore, the Open Government Sunset Review Act<sup>2</sup> provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

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

##### Public Record Exemptions, Donor Information

Current law provides several public record exemptions for the identity of a donor or prospective donor to an organization who wishes to remain anonymous. Examples include the Cultural Endowment Program,<sup>3</sup> the direct support organization for the Florida Agricultural Museum,<sup>4</sup> and the direct support organization for the John and Mable Ringling Museum of Art.<sup>5</sup>

#### **Performing Arts Centers**

##### Background

Spending on arts and cultural events in Florida generated nearly \$250 million in state and local tax revenues in 2008. The overall return on investment by governments on art and cultural spending is five to one.<sup>6</sup> Florida has many performing arts centers in every region of the state. Their ownership, management, and financing vary.<sup>7</sup>

##### Effect of Bill

The bill creates a public record exemption for the identity of a donor or prospective donor of a donation made for the benefit of a publicly owned performing arts center who desires to remain anonymous.

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

<sup>2</sup> Section 119.15, F.S.

<sup>3</sup> Section 265.605(2), F.S.

<sup>4</sup> Section 570.903(6), F.S.

<sup>5</sup> Section 1004.45(2)(h), F.S.

<sup>6</sup> Senate Bill Analysis and Fiscal Impact Statement for SB 106 (March 9, 2011), at 7. SB 106 is the companion bill to HB 107.

<sup>7</sup> See <http://funandsun.com/1tocf/artf/perfs.html> for an unofficial list.

Information that would identify the name, address, or telephone number of the donor or prospective donor is confidential and exempt<sup>8</sup> from public records requirements.

The bill defines “publicly owned performing arts center” to mean

[A] facility consisting of at least 200 seats, owned and operated by a county or municipality, which is used and occupied to promote development of any or all of the performing, visual, or fine arts or any or all matters relating thereto and to encourage and cultivate public and professional knowledge and appreciation of the arts.

The bill provides for repeal of the exemption on October 2, 2016, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.<sup>9</sup>

## **Direct-Support Organization, Legislative Research Center and Museum**

### Background

In 2009, the Legislature authorized the Legislative Research Center and Museum, at the Historic Capitol, and the Capitol Curator<sup>10</sup> to establish a direct-support organization (DSO) in order to provide assistance and promotional support through fundraising for the Florida Historic Capitol and the Legislative Research Center and Museum.<sup>11</sup> The DSO must be a not for profit, Florida corporation that is incorporated under chapter 617, F.S.,<sup>12</sup> and approved by the Department of State.<sup>13</sup>

The DSO is governed by a nine-member board of directors who must have a demonstrated capacity for supporting the mission of the Historic Capitol. Initial appointments to the board are made by the President of the Senate and the Speaker of the House of Representatives and, thereafter, by the board.<sup>14</sup>

If the DSO is no longer authorized or fails to comply with the statutory requirements, fails to maintain its tax-exempt status, or ceases to exist, then all funds obtained through grants, gifts, and donations in the DSO’s account revert to the state and are deposited into an account designated by the Legislature.<sup>15</sup>

The DSO received its not-for-profit designation in October 2010, and has been receiving contributions.

### Effect of Bill

The bill creates a public record exemption for the identity of a donor or prospective donor to the DSO who desires to remain anonymous. The personal identifying information is confidential and exempt

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<sup>8</sup> There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (*See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. (*See* Attorney General Opinion 85-62, August 1, 1985).

<sup>9</sup> Section 24(c), Art. I of the State Constitution.

<sup>10</sup> The Florida Historic Capitol Curator is appointed by and serves at the pleasure of the President of the Senate and the Speaker of the House of Representatives. The curator is responsible for: promoting and encouraging state knowledge and appreciation of the Florida Historic Capitol; collecting, researching, exhibiting, interpreting, preserving and protecting the history, artifacts, objects, furnishings and other materials related to the Florida Historic Capitol, other than archaeological materials; and developing, directing, supervising, and maintaining the interior design and furnishings within the Florida Historic Capitol. In conjunction with the Legislative Research Center and Museum at the Historic Capitol, the curator also may assist the Florida Historic Capitol in the performance of certain monetary duties. *See* s. 272.135, F.S.

<sup>11</sup> Section 3, chapter 2009-179, L.O.F.; codified as s. 272.136, F.S.

<sup>12</sup> Chapter 617, F.S., relates to not for profit corporations.

<sup>13</sup> Section 272.136(2), F.S.

<sup>14</sup> Section 272.136(1), F.S.

<sup>15</sup> Section 272.136(6), F.S.

from public records requirements. The anonymity of a donor or prospective donor must be maintained in the auditor's report for annual financial audits.

The bill provides for repeal of the exemption on October 2, 2016, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.<sup>16</sup>

**B. SECTION DIRECTORY:**

Section 1 creates an unnumbered section law to create a public record exemption for publicly owned performing arts centers.

Section 2 amends s. 272.136, F.S., to create a public record exemption for the direct-support organization for the Legislative Research Center and Museum at the Historic Capitol.

Section 3 provides a public necessity statement.

Section 4 provides an effective date of October 1, 2011.

**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:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax

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<sup>16</sup> Section 24(c), Art. I of the State Constitution.

shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates new public record exemptions; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates new public record exemptions; thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

Government Operations Subcommittee

On March 29, 2011, the Government Operations Subcommittee adopted two amendments and reported the bill favorably with committee substitute.

The committee substitute provides that the public record exemption applies to a performing arts center that is owned or operated by a special district. In addition, it removes the public record exemption for donors to the direct-support organization for the Florida Historic Capitol.

State Affairs Committee

On April 7, 2011, the State Affairs Committee adopted a strike-all amendment and reported the bill favorably with committee substitute.

The committee substitute provides reinstates the public record exemption for donors to the direct-support organization for the Florida Historic Capitol, which was removed in the Government Operations Subcommittee.