

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 539 Pub. Rec./Florida Historic Capitol and Legislative Research Center and Museum

**SPONSOR(S):** Frishe

**TIED BILLS:**           **IDEN./SIM. BILLS:** SB 374

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	11 Y, 0 N	Williamson	Williamson
2) Rules & Calendar Committee	18 Y, 0 N	Thomas	Birtman
3) State Affairs Committee			

### 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 information that would identify a donor or prospective donor to the direct-support organization for the Florida Historic Capitol and the Legislative Research Center and Museum who desires to remain anonymous. It provides for repeal of the exemption on October 2, 2017, unless reviewed and saved from repeal by the Legislature. The bill 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 a new public record exemption; 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 to justify 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:

- To allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- To protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. Under this provision, only the identity of an individual may be exempted.
- To protect 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>

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

In 2009, the Legislature authorized the Legislative Research Center and Museum at the Historic Capitol and the Capitol Curator<sup>6</sup> to establish a direct-support organization (DSO) to provide assistance and promotional support through fundraising for the Florida Historic Capitol and the Legislative Research Center and Museum.<sup>7</sup> The DSO must be a not-for-profit Florida corporation that is incorporated under chapter 617, F.S.,<sup>8</sup> and approved by the Department of State.<sup>9</sup>

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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> 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>7</sup> Section 3, chapter 2009-179, L.O.F.; codified as s. 272.136, F.S.

<sup>8</sup> Chapter 617, F.S., relates to not for profit corporations.

<sup>9</sup> Section 272.136(2), F.S.

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>10</sup>

If the DSO is no longer authorized, 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>11</sup>

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

### **Effect of Bill**

The bill creates a public record exemption for the identity of a donor or prospective donor to the direct-support organization for the Florida Historic Capitol and the Legislative Research Center and Museum who desires to remain anonymous. The personal identifying information is confidential and exempt<sup>12</sup> 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, 2017, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.<sup>13</sup>

#### **B. SECTION DIRECTORY:**

Section 1 amends s. 272.136, F.S., to create a public record exemption for the direct-support organization for the Florida Historic Capitol and the Legislative Research Center and Museum.

Section 2 provides a public necessity statement.

Section 3 provides an effective date of July 1, 2012.

## **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:**

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<sup>10</sup> Section 272.136(1), F.S.

<sup>11</sup> Section 272.136(6), F.S.

<sup>12</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>13</sup> Section 24(c), Art. I of the State Constitution.

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 appear to affect county or municipal governments.

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 a new public record exemption; 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 a new public record exemption; thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill creates a public record exemption for the “identity of a donor or prospective donor” to the direct-support organization (DSO) and for “all information identifying such donor or prospective donor” to the DSO. The language appears redundant. In order to avoid redundancy, the sponsor may want to consider an amendment to revise the language as follows:

Any information identifying a donor or prospective donor to the direct-support organization who desires to remain anonymous is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.