

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7017      PCB GVOPS 12-03      OGSR/Donor Information/Historic Preservation of City of St. Augustine

**SPONSOR(S):** Government Operations Subcommittee, Broxson

**TIED BILLS:**                      **IDEN./SIM. BILLS:** SB 832

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	11 Y, 0 N	Thompson	Williamson
1) State Affairs Committee	14 Y, 0 N	Thompson	Hamby

### SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

Current law provides a public record exemption for the identity of a donor or prospective donor to the University of Florida direct-support organization for the City of St. Augustine, who desires to remain anonymous, and all information identifying such donor or prospective donor.

The bill reenacts the public record exemption, which will repeal on October 2, 2012, if this bill does not become law. It also removes superfluous language, which restates the type of information that is confidential and exempt from public records requirements.

The bill does not appear to have a fiscal impact on state or local governments.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Open Government Sunset Review Act

The Open Government Sunset Review Act<sup>1</sup> sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act 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.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.<sup>2</sup> If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created<sup>3</sup> then a public necessity statement and a two-thirds vote for passage are not required.

##### Historic Preservation, City of St. Augustine

Current law provides for the long-term historic preservation of state-owned historic properties in St. Augustine through a contract with the University of Florida (UF). The goal of the contract is to enhance existing educational programs in historic preservation, archaeology, and cultural resource management at UF while simultaneously meeting the needs for historic preservation in St. Augustine.<sup>4</sup> UF is authorized to contract with a direct-support organization (DSO) in carrying out its historic preservation and historic preservation education activities.<sup>5</sup>

The UF DSO for the City of St. Augustine is organized to assist UF in carrying out its dual historic preservation and historic preservation education purposes and responsibilities for the City of St. Augustine by:

- Raising money;
- Submitting requests for and receiving grants from the Federal Government, the state or its political subdivisions, private foundations, and individuals;
- Receiving, holding, investing, and administering property; and
- Making expenditures to or for the benefit of UF.<sup>6</sup>

The DSO must be incorporated under chapter 617, F.S., approved by the Department of State as a not-for-profit,<sup>7</sup> and governed by a board of directors.<sup>8</sup>

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<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Section 24(c), Art. I of the State Constitution

<sup>3</sup> An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

<sup>4</sup> Section 267.1735(1), F.S.

<sup>5</sup> Section 267.1735(4), F.S.

<sup>6</sup> Section 267.1736(1), F.S.

### Public Record Exemption under Review

In 2007, the Legislature created a public record exemption for the identity of a donor or prospective donor to the DSO, who desires to remain anonymous, and all information identifying such donor or prospective donor.<sup>9</sup> The anonymity of the donor or prospective donor must be maintained in the auditor's report.

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2012, unless reenacted by the Legislature.<sup>10</sup>

According to UF, the DSO was incorporated on June 28, 2010, and held its first board meeting on February 11, 2011.<sup>11</sup> The DSO has not conducted any fundraising activities since its existence.<sup>12</sup> Consequently, the exemption has not yet been utilized; however, UF fully anticipates that the use of the exemption will prove beneficial to future fundraising efforts of the DSO.<sup>13</sup>

### **Effect of Bill**

The bill removes the repeal date, thereby reenacting the public record exemption for the identity of a donor or prospective donor to the DSO, who desires to remain anonymous. It also removes superfluous language, which restates the type of information that is confidential and exempt<sup>14</sup> from public records requirements.

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

Section 1 amends s. 267.1736, F.S., to reenact the public record exemption for the identity of a donor or prospective donor to the UF DSO for the City of St. Augustine.

Section 2 provides an effective date of October 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:**

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<sup>7</sup> Section 267.1736(1)(a), F.S.

<sup>8</sup> Section 267.1736(2), F.S.

<sup>9</sup> Chapter 2007-77, L.O.F.; codified as s. 267.1736(9), F.S.

<sup>10</sup> Section 267.1736(9)(b), F.S.

<sup>11</sup> Open Government Sunset Review of s. 267.1736(9), F.S., relating to the public record exemption for the DSO, joint questionnaire by Senate and House staff, July 29, 2011, at question 2. (On file with the Government Operations Subcommittee).

<sup>12</sup> *Id.* at question 4.

<sup>13</sup> *Id.* at questions 6, 8, 9, and 13.

<sup>14</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).

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 appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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

None.