

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Military Affairs, Space, and Domestic Security

BILL: SB 474

INTRODUCER: Military Affairs, Space, and Domestic Security Committee

SUBJECT: OGSR/Department of Veterans' Affairs/Direct-support Organization/Donor Information

DATE: February 6, 2013 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|----------------------------------|
| 1. | Ryon | Ryon | MS | ms SPB 7002 as introduced |
| 2. | | | GO | |
| 3. | | | RC | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

I. Summary:

SB 474 is the result of an Open Government Sunset Review performed by the Committee on Military Affairs, Space, and Domestic Security.

Current law¹ provides that certain personal information identifying a donor or prospective donor to the direct-support organization to the Florida Department of Veterans' Affairs, who desires to remain anonymous, is confidential and exempt from public records requirements. This exemption also applies to portions of meetings of the direct-support organization during which the identity of a donor or prospective donor is discussed. This exemption is subject to review under the Open Government Sunset Review Act.² It will sunset on October 2, 2013, unless saved from repeal through reenactment by the Legislature.

The bill reenacts the exemption.

The bill substantially amends section 292.055(9) of the Florida Statutes.

II. Present Situation:

Public Records and Open Meeting Requirements

The State Constitution specifies requirements for public access to government records and meetings. It provides every person the right to inspect or copy any public record made or state, or

¹ Section 252.055(9), F.S.

² Section 119.15, F.S.

received in connection with the official business of any public body, officer, or employee of the of persons acting on their behalf.³ The records of the legislative, executive, and judicial branches are specifically included.⁴ The State Constitution also requires all meetings of any collegial public body of the executive branch of state government or of any local government, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, to be open and noticed to the public.⁵

In addition to the State Constitution, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. The Public Records Act⁶ guarantees every person's right to inspect and copy any state or local government public record⁷ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁸ The Sunshine Law⁹ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken to be noticed and open to the public.¹⁰

Only the Legislature may create an exemption to public records or open meetings requirements.¹¹ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹² Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other

³ FLA. CONST., art. I, s. 24(a).

⁴ *Id.*

⁵ FLA. CONST., art. I, s. 24(b).

⁶ Chapter 119, F.S.

⁷ Section 119.011(12), F.S., defines "public records" to mean "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." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

⁸ Section 119.07(1)(a), F.S.

⁹ Section 286.011, F.S.

¹⁰ Section 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in Art. III, s. 4(e) of the State Constitution. That section requires the rules of procedure of each house to provide that:

- All legislative committee and subcommittee meetings of each house and of joint conference committee meetings must be open and noticed to the public; and
- All prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.

¹¹ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *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 (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 2004); and *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).

¹² FLA. CONST., art. I, s. 24(c).

substantive provisions¹³ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹⁴

Open Government Sunset Review Act

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁵ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁶

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.¹⁷ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- It 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; or
- It protects trade or business secrets.¹⁸

The Act also requires specified questions to be considered during the review process.¹⁹

When reenacting an exemption that will repeal, a public necessity statement and a two-thirds vote for passage are required if the exemption is expanded.²⁰ A public necessity statement and a two-thirds vote for passage are not required if the exemption is reenacted with grammatical or

¹³ The bill may, however, contain multiple exemptions that relate to one subject.

¹⁴ FLA. CONST., art. I, s. 24(c).

¹⁵ Section 119.15, F.S. 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 (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

¹⁶ Section 119.15(3), F.S.

¹⁷ Section 119.15(6)(b), F.S.

¹⁸ *Id.*

¹⁹ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²⁰ An exemption is expanded when it is amended to include more records, information, or meetings or to include meetings as well as records, or records as well as meetings.

stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception²¹ to the exemption is created.

The Florida Veterans Foundation

The 2008 Legislature authorized the establishment of a direct-support organization to provide assistance, funding and support for the Florida Department of Veterans' Affairs (FDVA) in carrying out its mission of veterans' advocacy.²² Section 292.055(2), F.S., calls on the direct-support organization to organize and operate exclusively to:

- Obtain funds;
- Request and receive grants, gifts, and bequests of moneys;
- Acquire, receive, hold, invest, and administer in its own name securities, funds, or property; and
- Make expenditures to or for the benefit of the FDVA, Florida's veterans, and congressionally chartered veterans service organizations that have subdivisions that are incorporated in Florida.

The direct-support organization was incorporated as the Florida Veterans Foundation (FVF) in June 2008, and is governed by a voluntary board of directors appointed by the executive director of the FDVA.

The FVF's mission is to serve, support, and advocate for Florida veterans to improve their well-being. To achieve its mission, the FVF has identified the following goals that it aims to further with its charitable and educational programs and services:

- Keeping veterans in their homes safely and comfortably;
- Increasing a veteran's access to quality healthcare and benefits;
- Raising the public's awareness of psychological and neurological issues facing veterans;
- Reducing the stigma associated with seeking behavioral health treatment;
- Decreasing veterans suicide;
- Increasing veteran employment;
- Reducing chronic homelessness among veterans; and
- Providing justice-involved veterans an opportunity to receive treatment vice incarceration.²³

For the first four years of its existence, the FVF relied upon a combination of state funding and charitable donations to carry out its mission. When the 2008 Legislature authorized the establishment of the FVF, it also created a short-term state funding source to support the organization. The Legislature entitled the FVF to a percentage of the annual revenue collected from the sale of the Florida Salutes Veterans license plate.²⁴ This allocation of state revenue expired on June 30, 2012, and served as a substantial revenue source for the FVF for four

²¹ An example of an exception to a public records exemption would be allowing an additional agency access to confidential and exempt records.

²² Chapter 2008-84, L.O.F.

²³ See Florida Veterans Foundation *Who We Are Brochure*.

http://www.floridaveteransfoundation.org/DOCs/Who_We_Are_Brochure.pdf

²⁴ For fiscal years 2008-09 and 2009-10, the FVF was entitled to 20 percent of the Florida Salutes Veterans license plate revenue (Ch. 2008-84, L.O.F.). For fiscal years 2010-11 and 2011-12, the percentage which FVF was entitled was reduced to 10 percent of the license plate revenue (Ch. 2010-168, L.O.F.).

years.²⁵ Moving forward, the FVF will rely solely on charitable donations to carry out its functions.

The table below illustrates the annual revenue the FVF received from charitable donations and license plate fees since its inception.²⁶

| REVENUE SOURCE | FISCAL YEAR | | | | TOTAL |
|-----------------------------|-------------|-----------|------------------------|-----------|-----------|
| | 2008-09 | 2009-10 | 2010-11 | 2011-12 | |
| Charitable Donations | \$108,870 | \$54,124 | \$29,327 | \$205,136 | \$397,457 |
| License Plate Fees | \$68,052 | \$63,199 | \$26,644 ²⁷ | \$23,325 | \$181,220 |
| Total | \$176,922 | \$117,323 | \$55,971 | \$228,461 | \$578,677 |

Current Exemption Under Review

Under s. 295.055(9), F.S., the following information held by the FVF is exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution:

- The identity of a donor or prospective donor to the foundation who wishes to remain anonymous; and
- All information identifying such donor or prospective donor.

In addition, portions of meetings of the FVF during which the identity of donors or prospective donors is discussed are also confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.

This public record exemption is scheduled to expire on October 2, 2013, unless saved from repeal by the Legislature after a review under the Open Government Sunset Act.²⁸

Senate professional staff of the Committee on Military Affairs, Space, and Domestic Security conducted a review of the public records exemption in s. 292.055, F.S., as required by the Open Government Sunset Review Act.²⁹

In response to questions posed by Senate professional staff, representatives of the FVF reported that as of July 2012:³⁰

²⁵ Additionally, s. 320.08058(73), F.S., entitles the FVF to 20 percent of the annual revenues collected from the sale of the Veterans of Foreign Wars license plate, following its development. The Veterans of Foreign Wars license plate has not yet been developed and FVF representatives anticipate minimal revenues from the sale of the license plate.

²⁶ Data in Table 1 obtained from FVF Annual Reports and e-mail correspondence with FVF staff.

²⁷ For FY 2011 and FY 2012, the Florida Department of Highway Safety and Motor Vehicles over-distributed license plate revenue totaling \$29,872 to the FVF. As of Jan 13, 2012, the FVF had returned all of the over distribution. The license plate revenue amounts in the table represent the amount required by s. 320.08058(4), F.S., to be distributed to the FVF, not the actual amount that was erroneously distributed.

²⁸ Section 292.055(9)(c), F.S.

²⁹ Section 119.15, F.S.

- No donors who have contributed to the FVF have requested anonymity; and
- The FVF has never received a request for personal information of individuals who have contributed to the FVF.

According to the FVF, although the FVF has not had the opportunity to utilize the public records exemption, the exemption is important to the success of the FVF's fundraising efforts.³¹ The FVF recommends the Legislature reenact the public meeting exemption in order to preserve competitiveness with other charitable organizations which have such an exemption.³²

Representatives of the FVF provided the following circumstances to support reenactment of the exemption:

- The FVF is now fully reliant upon the solicitation of charitable contributions to carry out its mission moving forward due to the recent discontinuation of state license plate revenue allocated to the FVF;³³
- The FVF plans to enhance donation solicitation practices and find new and creative ways to enhance the public's awareness of the FVF to increase donations;³⁴ and
- As the FVF continues to become more well-known among the public, the veteran community, and government leaders, expectations of the FVF's abilities to provide quality services to Florida veterans have and will continue to increase.³⁵

Based upon the Open Government Sunset Review of the exemption, professional staff of the Committee on Military Affairs, Space, and Domestic Security recommend the Legislature retain the public records exemption established in s. 252.055, F.S. The public records exemption for the identity of donors and potential donors to the FVF allows the FVF to effectively and efficiently secure charitable donations in order to fund the provision of quality services to veterans in Florida. To the extent that donors might be dissuaded from contributing to the FVF in the absence of the public records exemption, the ability of the FVF to raise funds might be limited.

Information from First Amendment Foundation

The First Amendment Foundation "is not opposed to reenactment of the exemption in its current form."³⁶

III. Effect of Proposed Changes:

Personal identifying information of donors or potential donors to the direct-support organization of the Florida Department of Veterans' Affairs (FDVA) will remain confidential and exempt from the public records laws.

³⁰ Senate Military Affairs, Space, and Domestic Security Committee staff meeting with John Haynes, FVF Chairman, and Jim Brodie, FDVA Legislative Affairs Director. July 19, 2012.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ Senate Military Affairs, Space, and Domestic Security Committee staff meeting with John Haynes, FVF Chairman, Barbara Radford, Executive Assistant to Chairman, and Jim Brodie, Legislative Affairs Director, FDVA. August 20, 2012.

³⁶ Letter from Barbara A. Peterson, President, First Amendment Foundation, to The Honorable Jeremy Ring, Chair, Senate Governmental Oversight and Accountability Committee (July 19, 2012) (RE: 2013 Open Government Sunset Reviews).

Section 1 of the bill amends s. 252.055(9), F.S., to remove its scheduled repeal on October 2, 2013, thereby reenacting the exemption for personal identifying information of donors or prospective donors to the direct-support organization of the FDVA.

Section 2 of the bill provides an effective date of October 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The bill reenacts and amends an existing public records exemption specified in s. 252.055(9), F.S. The bill does not expand the scope of the exemption and therefore does not require a two-thirds vote of each house of the Legislature for passage.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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