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 Higher Education Committee

BILL: SB 94

INTRODUCER: Senator Fasano

SUBJECT: Postsecondary Education Course Registration for Veterans

DATE: November 2, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fleming/Willar	Carter	MS	**Favorable**
2.	Harkey	Matthews	HE	**Pre-meeting**
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill requires institutions within the Florida College System and the State University System of Florida that offer priority course registration for a segment of the student population, or that establish such a policy, to provide priority course registration to veterans of the U.S. Armed Forces. Those eligible for priority registration under the bill include veterans using GI Bill educational benefits or the spouse or dependent children of a veteran to whom the GI Bill educational benefits have been transferred. The bill provides that qualified GI Bill users will be eligible for priority registration until the expiration of the GI Bill educational benefits.

The bill also encourages independent postsecondary institutions to provide priority course registration to veterans or their spouses or dependents who utilize GI Bill education benefits as public colleges and universities are required to provide under s. 1004.075, F.S.

The bill creates ss. 1004.075 and 1005.09, Florida Statutes.

II. Present Situation:

Priority Course Registration

Priority course registration allows designated groups of students at colleges and universities to register for courses for an upcoming semester before the entire student population is able to register. Some examples of groups of students who may typically be eligible for priority course registration at institutions that implement such a policy include: upper division students; student athletes; students with disabilities; honor college students; and student veterans.

Postsecondary institutions are currently not required to offer veterans of the U.S. Armed Forces priority when registering for courses based on their status as a veteran.[1] Rather, it is at the discretion of both public[2] and private[3] institutions of higher education whether or not to offer priority course registration and to determine which groups of students would be eligible.[4] If an institution does not offer priority registration for veterans, students who are veterans register for courses at the same time as the general student population.[5] It is common for a veteran to have put higher education on hold when he or she makes the decision to serve in the U.S. Armed Forces.

Veterans in Florida

Florida's population of 1.6 million veterans in the third largest the nation, after California and Texas.[6] More specifically, Florida is home to approximately 127,000 veterans whose ages range from 18-34, which demonstrates a significant concentration of "college age" veterans who may be interested in pursuing higher education, either at the undergraduate or the graduate level. As the fourth largest state in the nation, Florida offers a broad range of opportunities for those pursuing higher education, in the public and private postsecondary sectors. Veterans interested in utilizing their GI Bill benefits[7] can choose from a selection of 445 postsecondary institutions in deciding on an institution to attend.

Both nationwide and in Florida, there has recently been an influx of veterans on college campuses. Nationwide the number of veterans enrolling in college has increased to approximately 800,000 veterans using the GI Bill in 2010, which is up 40 percent from 2009.[8] Likewise, there is a large student veteran presence in universities and colleges in Florida. For the 2010 academic year, 7,047 veterans were enrolled within the State University System of

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[1] Section 1.01(14), F.S., defines the term "veteran" as a person who served in the active military, naval, or air service and who was discharged or released there from under honorable conditions only or who later received an upgraded discharge under honorable conditions, notwithstanding any action by the U.S. Department of Veterans Affairs on individuals discharged or released with other than honorable discharges.

[2] There are 11 public universities within the State University System of Florida and 28 institutions in the Florida College System.

[3] The private postsecondary institutions eligible to provide training for veterans include 375 institutions licensed by the Commission for Independent Education (CIE) pursuant to s. 1005.21, F.S., and 31 independent, non-profit colleges and universities which are exempt from licensure by CIE.

[4] For public universities, the Florida Board of Governor's Regulation 1.001(4)(a)3. authorizes the board of trustees of each state university to adopt university regulations or policies relating to the admission and enrollment of students, which could include priority course registration policies. Section 1007.263, F.S., governs admission of students to Florida College System institutions.

[5] The following public colleges and universities currently offer priority course registration for veterans: Florida International University; Florida State University; the University of South Florida; Tallahassee Community College; St. Petersburg College; Northwest Florida State College; and Miami-Dade College (E-mail correspondence with SUS and FCS staff September 27, 2011).

[6] Florida Department of Veterans' Affairs. 2009-10 Annual Report. Available at: http://www.floridavets.org/pdf/ann_rprt_10.pdf.

[7] GI Bill benefits refer to the financial support for tuition and housing provided to veterans by the U.S. Department of Veterans Affairs.

[8] *Vets go from Combat to Campus by Trevor Hughes*, USA Today, April 12, 2011 from http://www.usatoday.com/news/education/2011-04-11-college-vets_N.htm.

Florida,[9] 17,453 within the Florida College System,[10] 4,490 at private non-profit institutions,[11] and 16,500 at private for-profit institutions.[12]

Federal Education Benefits for Veterans[13]

The U.S. Department of Veterans Affairs (VA) administers a variety of education benefit programs, commonly known as the GI Bill, for veterans pursuing higher education.[14] The most commonly utilized GI Bill benefits include the Montgomery GI Bill[15] and the Post-9/11 GI Bill.[16] The Post-9/11 GI Bill is the most recent adaptation of the GI Bill and offers substantially enhanced financial assistance compared to the Montgomery GI Bill.[17]

The Post-9/11 GI Bill offers an unprecedented level of benefits in providing financial support for education and housing to individuals with at least 90 days of aggregate service on or after September 11, 2001, or individuals discharged with a service-connected disability after 30 days. A service member must have received an honorable discharge to be eligible for the Post-9/11 GI Bill. The Post-9/11 GI Bill covers the cost of tuition and fees, not to exceed the most expensive in-state undergraduate tuition at a public institution of higher education.[18] The Post-9/11 GI Bill provides veterans with 36 months of education benefits which expire 15 years from a veteran's last period of active duty of at least 90 consecutive days.[19]

For Post-9/11 GI Bill users attending a private school or a public school as a non-resident out-of-state student, the VA offers the Yellow Ribbon Program to help reimburse the difference. Under the Yellow Ribbon Program, institutions of higher learning voluntarily enter into an agreement with the VA to fund tuition and fee expenses that exceed the highest public in-state undergraduate tuition and fee rate in their state.[20]

The Post-9/11 GI Bill also includes the Transfer of Post-9/11 GI-Bill Benefits to Dependents program which allows an individual to transfer Post-9/11 GI Bill benefits to the individual's spouse, one or more of the individual's children, or any combination of spouse and child. An eligible service member may transfer up to the total months of unused Post-9/11 GI Bill benefits, or the entire 36 months if the member has used none.

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[9] State University System of Florida 2012 Legislative Bill Analysis.
[10] E-mail correspondence with Florida College System staff September 23, 2011.
[11] Email correspondence with ICUF staff September 23, 2011, and 2010-11 ICUF Accountability Report.
[12] E-mail correspondence with CIE staff, November 2, 2011.
[13] For more information on federal education benefits for veterans, see: http://www.gibill.va.gov/benefits/index.html.
[14] For more information, see http://www.gibill.va.gov/benefits/index.html.
[15] Chapter 30 of Title 38, U.S. Code.
[16] Chapter 33 of Title 38, U.S. Code.
[17] Congress passed the Post-9/11 Veterans Educational Assistance Act in June 2008, which came to be known as the Post-9/11 GI Bill.
[18] In addition to graduate and undergraduate degrees, individuals may use the Post-9/11 GI Bill benefits towards vocational/technical training, on-the-job training, flight training, correspondence training, licensing and national testing programs, and tutorial assistance.
[19] Post-9/11 GI Bill Pamphlet. Available at: http://www.gibill.va.gov/documents/pamphlets/ch33_pamphlet.pdf.
[20] http://www.gibill.va.gov/benefits/post_911_gibill/index.html.

III. Effect of Proposed Changes:

This bill requires institutions within the Florida College System and the State University System of Florida that offer priority course registration for a segment of the student population (or upon the establishment of such policy) to provide priority course registration to veterans of the U.S. Armed Forces. Those eligible for priority registration under the bill include veterans using GI Bill educational benefits or the spouse or dependent children of a veteran to whom the GI Bill educational benefits have been transferred. The bill provides that qualified GI Bill users will be eligible for priority registration until the expiration of the GI Bill educational benefits.

The bill encourages independent postsecondary institutions that are under the jurisdiction of the Commission for Independent Education (Commission) or exempt from the jurisdiction of the Commission to provide the same benefit of priority course registration to veterans or their spouses or dependents who utilize GI Bill education benefits as public colleges and universities are required to provide under s. 1004.075, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

A veteran pursing higher education may benefit from priority course registration which could give the veteran greater access to the courses he or she needs in order to move through a degree program quickly and graduate.

C. Government Sector Impact:

The State University System of Florida and the Florida College System expect a minimal fiscal impact as a result of the bill. Both systems acknowledge that minimal expenses may occur due to additional administrative staff time that would be spent to notify and process eligible veteran students.

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.

By Senator Fasano

11-00147-12 201294__

A bill to be entitled

An act relating to postsecondary education course registration for veterans; creating s. 1004.075, F.S.; requiring certain Florida College System institutions and state universities to provide priority course registration for veterans; providing eligibility requirements; creating s. 1005.09, F.S.; encouraging certain independent postsecondary educational institutions to provide priority course registration for veterans; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 1004.075, Florida Statutes, is created to read:

1004.075 Priority course registration for veterans.—Each Florida College System institution and state university that offers priority course registration for a segment of the student population, or upon implementation of priority course registration for a segment of the student population, shall provide priority course registration for each veteran of the United States Armed Forces who is receiving GI Bill educational benefits or for the spouse or dependent children of the veteran to whom the GI Bill educational benefits have been transferred. Each eligible veteran, or his or her spouse or dependent children, shall be granted priority for course registration until the expiration of the GI Bill educational benefits.

Section 2. Section 1005.09, Florida Statutes, is created to read:

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

11-00147-12 201294__

1005.09 Priority course registration for veterans.—Each independent postsecondary educational institution that is under the jurisdiction of the commission or is exempt from the jurisdiction of the commission and that offers priority course registration for a segment of the student population, or upon implementation of priority course registration for a segment of the student population, is encouraged to provide priority course registration for each veteran of the United States Armed Forces, or his or her spouse or dependent children, who is receiving GI Bill educational benefits, in accordance with s. 1004.075.

Section 3. This act shall take effect July 1, 2012.

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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 Higher Education Committee

BILL: SPB 7018

INTRODUCER: For consideration by the Higher Education Committee

SUBJECT: Open Government Sunset Review

DATE: November 1, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harkey	Matthews	HE	**Pre-meeting**
2.				
3.				
4.				
5.				
6.				

I. Summary:

Section 267.1736(9), F.S., provides a public records disclosure exemption for the identities of donors or prospective donors, who wish to remain anonymous, held by the University of Florida's direct support organization that supports the university's historic preservation and historic preservation education responsibilities for the City of St. Augustine. The exemption is subject to the Open Government Sunset Review Act and will sunset on October 2, 2012, unless reenacted by the Legislature. This bill reenacts the exemption.

This proposed bill amends section 267.1736, Florida Statutes.

II. Present Situation:

Public Records

Article I, s. 24 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.

The Public Records Law specifies conditions under which public access must be provided to records of the executive branch and other agencies. Section 119.07(1)(a), F.S., states:

Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

Unless specifically exempted, all agency records are available for public inspection. The term "public record" is broadly defined 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.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business, which are used to perpetuate, communicate, or formalize knowledge. All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.

Only the Legislature is authorized to create exemptions to open government requirements. Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. 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 substantive provisions, although it may contain multiple exemptions that relate to one subject.

The Open Government Sunset Review Act of 1995 establishes a review process for public records exemptions. In the fifth year after enactment of a new exemption or the substantial amendment of an existing exemption, the exemption is repealed on October 2, unless the Legislature reenacts the exemption.

An exemption may be created or expanded only if it serves an identifiable public purpose and is no broader than necessary to meet that purpose. An identifiable public purpose is served if the exemption meets one of the following purposes, and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

- The exemption allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- The exemption protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- The exemption protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.

The act also requires consideration of the following:

- 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?

Finally, there is a difference between records that the Legislature has made exempt from public inspection and those that are confidential and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute. If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.

UF Historic St. Augustine, Inc. (UFHSA)

The 2007 Legislature authorized a direct support organization to assist the University of Florida in carrying out its responsibilities for historic preservation and historic preservation education for the City of St. Augustine and the state. In carrying out its purposes related to historic preservation of state owned historic properties in St. Augustine, the direct support organization is authorized to raise money; apply for and receive grants from federal, state and local governments and private sources; receive, hold, invest, and administer property; and make expenditures to or on behalf of the university. Following the development of a strategic plan for the historic area, the direct support organization was incorporated on June 28, 2010, as UF Historic St. Augustine, Inc. The UFHSA held its first board meeting on February 11, 2011.

According to the university, UFHSA has the following duties for historic preservation and historic preservation education:

- Responding to the state's needs for professionals in historic preservation, archaeology, cultural resources management, cultural tourism, and museum administration;
- Preserving, maintaining, and exhibiting ancient or historical landmarks within the City of St. Augustine, or surrounding areas;
- Assisting, establishing, or operating museums or other places for exhibits of documents and artifacts of historical interest;
- Promoting research, education, and publishing in science, history, literature, music and art relating to historic sites and persons in Florida history;
- To the extent permitted by law, soliciting, and receiving grants, gifts and bequests of money or property from the federal government, state government, foundations, business entities and individuals and holding or disposing of, and investing and reinvesting the same; and
- Acquiring, holding, managing, administering, selling, or in any manner, disposing of, dealing or trading in property of any kind.

Public Records Exemption
Under s. 267.1736(9), F.S., the following information held by UFHSA 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 UFHAS who wishes to remain anonymous; and
- All information identifying such donor or prospective donor.

As of June 2011, no funds from the UFHAS have supported preservation activities, and no donors or prospective donors have requested anonymity. Thus, the public records exemption has not been used.

The Open Government Sunset Review of s. 267.1736(9), F.S.
Senate Higher Education Committee professional staff has reviewed the exemption in s. 267.1736(9), F.S., and finds that the exemption meets the requirements for reenactment. The exemption, viewed against the Open Government Sunset Review criteria, protects information concerning individuals and is no broader than is necessary to allow UF Historic St. Augustine, Inc., to carry out its responsibilities for historic preservation and historic preservation education. While UFHAS has not used the public records exemption thus far, if a donor or potential donor to the organization requested anonymity, the exemption would be necessary to protect the information from public disclosure. Given the extensive duties of the organization for historic preservation and historic preservation education, it is likely that UFHAS will have occasion to use the exemption in the future. Accordingly, professional staff recommends that the public records and public meetings exemptions in s. 267.1736(9), F.S., be reenacted.

III. Effect of Proposed Changes:

The proposed bill reenacts and saves from repeal the public records exemption for information held by the University of Florida's direct support organization that supports the university's historic preservation and historic preservation education responsibilities for the City of St. Augustine.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

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.

FOR CONSIDERATION By the Committee on Higher Education

589-00642C-12 20127018__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 267.1736, F.S.; deleting the repeal of an exemption from public records requirements for information identifying a donor or prospective donor to the direct-support organization established to assist the University of Florida in the historic preservation of the City of St. Augustine; saving the exemption from repeal under the Open Government Sunset Review Act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (9) of section 267.1736, Florida Statutes, is amended to read:

267.1736 Direct-support organization.—

(9) ~~(a)~~ The identity of a donor or prospective donor to the direct-support organization who desires to remain anonymous, and all information identifying such donor or prospective donor, is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution; and that anonymity must be maintained in the auditor's report. The university and the Auditor General shall have access to all records of the direct-support organization upon request.

~~(b) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2012, unless reviewed and saved from repeal through reenactment by the Legislature.~~

589-00642C-12 20127018__

Section 2. This act shall take effect October 1, 2012.

The Florida Senate

Interim Report 2012-311 *September, 2011*

Committee on Higher Education

OPEN GOVERNMENT SUNSET REVIEW OF SECTION 267.1736(9), F.S.,

ST. AUGUSTINE HISTORIC DISTRICT

Issue Description

The 2007 Legislature[1] enacted a public records disclosure exemption for information held by the University of Florida's direct support organization that supports the university's historic preservation and historic preservation education responsibilities for the City of St. Augustine. The exemption applies to the identity of a donor or prospective donor to the direct support organization who desires to remain anonymous and all information identifying the donor or prospective donor. In accordance with the Open Government Sunset Review Act of 1995 under s. 119.15, F.S., this exemption shall be repealed on October 2, 2012, unless saved from repeal through reenactment by the Legislature.

Background

Public Records and Meetings

The State of Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.[2] One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.[3] Article I, s. 24 of the State Constitution, provides every person with a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.

In addition to the State Constitution, the Public Records Act,[4] which pre-dates the current State Constitution, specifies conditions under which public access must be provided to records of the executive branch and other agencies. Unless specifically exempted, all agency[5] records are available for public inspection. The term "public record" is defined to include "all documents,…or other materials…made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency."[6] All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.[7]

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[1] ch. 2007-77, L.O.F.
[2] Section 1390, 1391 Florida Statutes. (Rev. 1892).
[3] Article I, s. 24 of the State Constitution.
[4] ch. 119, F.S.
[5] The word "agency" is defined in s. 119.011(2), F.S., to mean ". . . 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."
[6] s. 119.011(12), F.S.
[7] *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla. 1979).

Only the Legislature is authorized to create exemptions to open government requirements.[8] An exemption must be created in general law, must state the public necessity justifying it, and must not be broader than necessary to meet that public necessity.[9] A bill enacting an exemption or substantially amending an existing exemption[10] may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.[11]

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.[12] If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.[13]

The Open Government Sunset Review Act (the Act)[14] provides for the systematic review, through a 5-year cycle ending October 2 of the 5th year following enactment, of an exemption from the Public Records Act or the Sunshine Law. In the fifth year after enactment of a new exemption or the substantial amendment of an existing exemption, the exemption is repealed on October 2, unless the Legislature reenacts the exemption.

An exemption may be created, revised, or maintained only if it serves an identifiable public purpose and if the exemption is no broader than is necessary to meet the public purpose it serves.[15] An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. The three statutory criteria are that the exemption:

- 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 information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.[16]

The Act also requires the Legislature to consider the following:

- 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?

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[8] Art. I, s. 24(c) of the State Constitution.
[9] *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So. 2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).
[10] Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.
[11] Art. I, s. 24(c) of the State Constitution.
[12] Attorney General Opinion 85-62.
[13] *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).
[14] s. 119.15, F.S.
[15] *Id.*
[16] s. 119.15(6)(b), F.S.

UF Historic St. Augustine, Inc. (UFHSA)

The 2007 Legislature authorized a direct support organization to assist the University of Florida in carrying out its responsibilities for historic preservation and historic preservation education for the City of St. Augustine and the state.[17] In carrying out its purposes related to historic preservation of state owned historic properties in St. Augustine, the direct support organization is authorized to raise money; apply for and receive grants from federal, state and local governments and private sources; receive, hold, invest, and administer property; and make expenditures to or on behalf of the university. Following the development of a strategic plan for the historic area,[18] the direct support organization was incorporated on June 28, 2010, as UF Historic St. Augustine, Inc. The UFHSA held its first board meeting on February 11, 2011.

According to the university, UFHSA has the following duties for historic preservation and historic preservation education:

- Responding to the state's needs for professionals in historic preservation, archaeology, cultural resources management, cultural tourism, and museum administration and helping meet the needs of St. Augustine and the state through educational internships and practicums;
- Preserving, maintaining, and exhibiting ancient or historical landmarks, locations, sites, monuments, buildings, remains or other property of historic or antiquarian interest within the City of St. Augustine, or surrounding areas;
- Assisting, establishing, or operating museums or other places for exhibits of documents and artifacts of historical interest;
- Promoting research and education in science, history, literature, music and art, and in connection therewith, publishing and procuring, for the use and benefit of the general public, books, reports, articles, documents, maps, photographs, or other media, about historic sites and persons in Florida history;
- To the extent permitted by law, soliciting, and receiving grants, gifts and bequests of money or property from the federal government, state government, foundations, business entities and individuals and holding or disposing of, and investing and reinvesting the same; and
- Acquiring, holding, managing, administering, selling, or in any manner, disposing of, dealing or trading in property of any kind.

Public Records Exemption

Under s. 267.1736(9), F.S., the following information held by UFHSA 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 UFHAS who wishes to remain anonymous; and
- All information identifying such donor or prospective donor.

As of June 2011, no funds from the UFHAS have supported preservation activities, and no donors or prospective donors have requested anonymity. Thus, the public records exemption has not been used.

Findings and/or Conclusions

Florida Senate Higher Education Committee professional staff worked in consultation with professional staff of the Senate Committee on Governmental Oversight and Accountability and the Florida House of Representatives Government Operations Subcommittee of the Committee on State Affairs to determine whether the exemptions in s. 267.1736(9), F.S., meet the criteria for retention of the exemption. Senate professional staff surveyed the University of Florida concerning the use of the public records exemption and the records protected from public disclosure.

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[17] ch. 2007-54, L.O.F.

[18] "St. Augustine Historic Area Strategic Plan," January 2009. Readable at: http://www.facilities.ufl.edu/staugustine/docs/StAugustine_Historic_Area_Strategic_Plan_FINAL.pdf

The Specific Records Affected by the Exemption and Those Uniquely Affected by the Exemption

The public records exemption protects the identity and identifying information of donors and prospective donors of the UFHAS. The university anticipates that the "names, addresses, telephone numbers, other contact information, the amount of the respective gifts, paper and electronic correspondence, copies of checks, receipts, gift agreements, written direction from donors, and any other record from which the identity of a donor could be obtained, whether stored as hard copy and/or electronically" will be kept confidential. The prospective donors and donors to the UFHAS who wish to remain anonymous are the only individuals who would be affected by the exemption.

The Purpose and Public Necessity for the Exemption

The 2007 Legislature established the public records exemption, "to honor the request for anonymity of donors or prospective donors to the not-for-profit corporation and thereby encourage donations from individuals and entities that might otherwise decline to contribute."[19] The necessity of the exemption was explained as follows:

> Without the exemption, potential donors may be dissuaded from contributing to the direct-support organization because such donors fear being harmed by the release of sensitive financial information. Difficulty in soliciting donations would hamper the ability of the direct-support organization to carry out its marketing, promotion, education, and preservation activities and would hinder fulfillment of the goal of the state in maintaining these state-owned properties and in preserving, promoting, and advancing historic preservation of these properties through funding by both the public sector and the private sector.[20]

The public records exemption has not been used since the creation of UF Historic St. Augustine in June 2010. However, the University of Florida anticipates that providing anonymity to donors will be beneficial as the direct support organization continues fund raising efforts and has requested that the exemption be reenacted for that purpose.

Under s. 24(c), Art. I, of the State Constitution, the exemption must be no broader than necessary to accomplish the stated purpose of the law. The exemption in s. 267.1736(9), F.S., is narrowly drawn to exempt only the identity and identifying information about donors and prospective donors, and thus meets the constitutional requirement for a narrowly drawn exemption. The exemption serves one of the purposes for which an exemption may be created: it exempts information of a sensitive, personal nature concerning individuals.

Alternative Means for Obtaining the Records

According to the University of Florida, the information contained in the records could not be readily obtained by alternative means.

Other Exemptions Pertaining to the Records

As a state university direct support organization, the UFHAS receives a public records exemption under s. 1004.28(5), F.S., which provides an exemption for certain records relating to audits. This statute specifically exempts the identity of donors who desire to remain anonymous and requires that the anonymity of donors be maintained in the auditor's report. This exemption does not specifically exempt the identity of prospective donors. The exemption in s. 1004.28, F.S.,[21] was enacted prior to the constitutional amendment of 1992.

Possibly Combining Multiple Exemptions

A number of statutes create public records exemptions for the identity of donors and potential donors. In the future, the Legislature might consider combining such exemptions into a single one for each type of record, such as a general exemption for the identity of donors and prospective donors.

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[19] s. 2., ch. 2007-77, L.O.F.
[20] *Id.*
[21] This section was previously codified as s. 240.299, F.S., and was renumbered as s. 1004.28, F.S., when the Florida School Code was rewritten in 2002.

Options and/or Recommendations

Senate professional staff has reviewed the exemption in s. 267.1736(9), F.S., and finds that the exemption meets the requirements for reenactment. The exemption, viewed against the Open Government Sunset Review criteria, protects information concerning individuals and is no broader than is necessary to allow UF Historic St. Augustine, Inc., to carry out its responsibilities for historic preservation and historic preservation education. While UFHAS has not used the public records exemption thus far, if a donor or potential donor to the organization requested anonymity, the exemption would be necessary to protect the information from public disclosure. Given the extensive duties of the organization for historic preservation and historic preservation education, it is likely that UFHAS will have occasion to use the exemption in the future. Accordingly, professional staff recommends that the public records and public meetings exemptions in s. 267.1736(9), F.S., be reenacted.