

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 351 Public Records

**SPONSOR(S):** Moraitis, Jr.

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 570

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	15 Y, 0 N	Williamson	Williamson
2) State Affairs Committee	14 Y, 0 N	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 information that would identify the name, address, or telephone number of a donor or prospective donor to a publicly owned performing arts center 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 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

Florida has many performing arts centers in every region of the state. Their ownership, management, and financing vary.<sup>6</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. Information that would identify the name, address, or telephone number of the donor or prospective donor is confidential and exempt<sup>7</sup> from public records requirements.

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

<sup>7</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 bill defines “publicly owned performing arts center” to mean

[A] facility consisting of at least 200 seats, owned and operated by a county, municipality, or special district, 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, 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>8</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 provides a public necessity statement.

Section 3 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:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

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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>8</sup> Section 24(c), Art. I of the State Constitution.

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**DATE:** 12/8/2011

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1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

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:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.