

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 832

INTRODUCER: Higher Education Committee

SUBJECT: Open Government Sunset Review/Direct Support Organization/University of Florida

DATE: January 4, 2012

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|-----------------|-----------|--------------------|
| 1. | Harkey | deMarsh-Mathues | HE | Pre-meeting |
| 2. | | | GO | |
| 3. | | | | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

I. Summary:

Section 267.1736(9), F.S., provides a public records disclosure exemption for certain 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 identities of donors or prospective donors who wish to remain anonymous. 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 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 UFHSA who wishes to remain anonymous; and
- All information identifying such donor or prospective donor.

As of June 2011, no funds from the UFHSA 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 UFHSA 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 UFHSA 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:

This 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.