

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: April 10, 1998 Revised: 4/14/98 _____

Subject: Public Records/Graduates Program

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Chasteen</u>	<u>O'Farrell</u>	<u>ED</u>	<u>Fav/1 amendment</u>
2.	<u>Rhea</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/1 amendment</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Under Art. I, s. 24 of the State Constitution, and ch. 119, F.S., the Public Records Law, records of governmental and other public entities are open to the public unless made exempt. This bill creates an exemption from existing public records requirements for the identity of donors to the Florida Endowment Foundation for Florida's Graduates who desire to remain anonymous. It provides for future review and exemption.

This bill amends section 446.609, Florida Statutes, to be created by SB 1736 or a similar House bill, if such legislation passes.

II. Present Situation:

Florida has a long history of providing public access to the records of governmental and other public entities. The first law affording access to public records was enacted by the Florida Legislature in 1909.¹ In 1992, Floridians voted to adopt an amendment to the State Constitution that raised the statutory right of public access to public records to a constitutional level.² Article I, s. 24, State Constitution, provides:

(a) Every person has the right to inspect or copy any public records 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. This section specifically

¹Section 1, ch. 5942.

²Article I, s. 24 of the State Constitution.

includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the State Constitution, the Public Records Law³ specifies conditions under which public access must be provided to governmental records of the executive branch and other governmental agencies. Section 119.07(1)(a), F.S., requires:

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

The Public Records Law states that, unless specifically exempted, all agency⁴ records are to be 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.⁵

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.⁶ All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.⁷

Exemptions to the Public Records Law are permitted by the Florida Constitution and by statute. Article I, s. 24, State Constitution, permits the Legislature to provide by general law for the exemption of records. A law that exempts a record must state with specificity the public necessity justifying the exemption and the exemption must be no broader than necessary to accomplish the

³Chapter 119, F.S.

⁴The 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." The Florida Constitution also establishes a right of access to 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 those records exempted by law or the state constitution.

⁵Section 119.011(1), F.S.

⁶*Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁷*Wait v. Florida Power & Light Company*, 372 So. 2d 420 (Fla. 1979).

stated purpose of the law. Additionally, a bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.⁸

The Open Government Sunset Review Act of 1995⁹ states that an exemption may be created or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves. 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 if the exemption:

- 1) Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- 2) 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
- 3) 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.¹⁰

Article I, s. 23, State Constitution, also provides Floridians with a right of privacy. That constitutional right, however, does contain a limitation relating to public records:

Every natural person has the right to be let alone and free from governmental intrusion into his private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.

The Open Government Sunset Review Act of 1995 provides for the systematic review, through a 5-year cycle ending October 2nd of the 5th year following enactment, of an exemption from the Public Records Act or the Public Meetings Law. Each year, by June 1, the Division of Statutory Revision of the Joint Legislative Management Committee is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

⁸Art. I, s. 24(c) of the State Constitution.

⁹Section 119.15, F.S.

¹⁰Section 119.15(4)(b), F.S.

III. Effect of Proposed Changes:

This bill creates an exemption to public records requirements for certain records of applicants and clients of the Jobs for Florida's Graduates Program, a program that is created by Senate Bill 1736. That program is a school-to-work program that is to be funded through an endowment fund and is to be supported by the Florida Endowment Foundation for Florida's Graduates, a direct-support organization of the Florida Department of Education.

This bill specifies that all records of the foundation constitute public records that are available for public review, with the exception of confidential records of applicants and clients. In addition, the identity of donors who wish to remain anonymous would be kept confidential and would be exempted from the public records disclosure requirements. The bill states that it is a public necessity to exempt from disclosure of donor information, as it relates to the Florida Endowment Foundation for Florida's Graduates, because the release of such information could result in numerous unwanted solicitations of donors and could seriously undermine fund raising efforts.

The subsection is subject to the Open Government Sunset Review Act of 1995 and is subject to repeal on October 2, 2002, unless reviewed and reenacted by the Legislature.

The bill provides an effective date of the same day on which legislation creating s. 446.609, F.S. takes effect.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Article I, s. 24(c) of the State Constitution, authorizes the Legislature to create exemptions to public records requirements. The general law creating an exemption must state the public necessity justifying the exemption and the exemption can be no broader than necessary to accomplish the stated purpose of the law. The bill exempts the identity of a donor to the Florida Endowment Foundation for Florida's Graduates *who desires to remain anonymous* from public records disclosure requirements. The statement of public necessity, however, exempts the identity of *all donors* to the Florida Endowment Foundation for Florida's Graduates. In other words, the statement of public necessity for the exemption is broader than the exemption itself. While this does not run afoul of constitutional requirements, it would be appropriate to make the statement of public necessity consistent with the exemption by referring to anonymous donors in the statement.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Education:

Changes a reference from HB _____ to SB 1736.

#1 by Governmental Reform and Oversight:

Technical amendment that conforms language in the statement of public necessity to the exemption.