

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

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Prepared By: Community Affairs Committee

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BILL: CS/SB 2142

SPONSOR: Governmental Oversight and Productivity Committee and Senator Argenziano

SUBJECT: Public Records Exemption/Anonymous Donors

DATE: April 22, 2005

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rhea	Wilson	GO	<b>Fav/CS</b>
2.	Vickers	Yeatman	CA	<b>Favorable</b>
3.			BI	
4.			RC	
5.				
6.				

## I. Summary:

This bill creates an exemption for a donor to a citizen support organization authorized to support functions of the Department of State as created by the enactment of CS/SB 2152. Among various other issues, the CS/SB 2152 creates a citizen support organization to assist the division with its cultural and arts programs and creates a citizen support organization to assist the division with its library, archives, and records management programs.

The donor's anonymity extends to the auditor's report.

As this bill creates new exemptions from public records requirements, it is subject to a two-thirds vote of the members present and voting in each house of the Legislature.

This bill creates the following sections of the Florida Statutes: 257.43 and 265.703.

## II. Present Situation:

**Structure and Responsibilities of Department of State** - The Department of State (DOS), created in s. 20.10, F.S., is composed of six divisions: Elections, Historical Resources, Corporations, Library and Information Services, Cultural Affairs, and Administration.

The Department of State is charged with the responsibility for:

- < Serving as the official custodian of records;
- < Administering and enforcing the state election laws;
- < Filing acts and papers of the Legislature and county ordinances;

- < Filing all rules and regulations contained in the Florida Administrative Code and publishing and distributing proposed rules and regulations in the Florida Administrative Weekly for state agencies;
- < Issuing commissions to all elected and appointed officials;
- < Maintaining financial disclosures for all constitutional and state officers and specified employees;
- < Qualifying all federal and state candidates;
- < Serving as the ministerial filing agency that serves as the statewide repository for business entity filings and uniform business reports/annual reports, the statewide central filing office for judgment lien filings, and the statewide central registration office for fictitious names, trademarks and service marks;
- < Preserving and promoting the state's cultural heritage and programs through cultural grant programs and promotional programs and implementing programs to gain international recognition on behalf of Florida artists and arts programs;
- < Protecting, preserving, and promoting Florida's historical resources through encouraging identification, evaluation, protection, preservation, collection, conservation and interpretation of and public access to information about Florida's historic sites, properties and objects related to Florida history and to archaeological and folk cultural heritage;
- < Administering the statewide historic preservation plan and administering historic properties of the state, either directly or through management of contracts;
- < Providing library, records management, and archival services at the state and local level; and,
- < Enhancing and coordinating foreign affairs and diplomacy fostering global relationships for Florida.

The Division of Cultural Affairs is made up of the Office of the Director and Bureau of Grants Services. The division awards, administers, monitors, and evaluates cultural grant programs of the Department of State, as well as plans and implements programs designed to gain national and international recognition on behalf of Florida artists and arts organizations. The division also disseminates arts-related information and fosters the development of a receptive climate for the arts in Florida.

The Division of Library and Information Services provides library, records management, and archival services at the state and local level. Structurally, the division administers these services through three bureaus: Archives and Records Management, Library and Network Services, and Library Development. The division provides direct library services to state government, management services, technical assistance, education, financial aid, and cooperative services. Working in partnership with archivists, librarians, records managers, government officials, and citizens, the division seeks to ensure access to materials and information of past, present and future value to enable state government and local libraries and agencies to provide effective information services for the benefit of the people of Florida.

### **Public Records Law**

Florida has a long history of providing public access to the records of governmental and other public entities. The Legislature enacted its first law affording access to public records in 1909. In

1992, the electors of Florida approved an amendment to the State Constitution which raised the statutory right of access to public records to a constitutional level. Section 24(a), Art. I 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. This section specifically 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.

The Public Records Law codified as ch. 119, F.S., specifies conditions under which the public must be given access to governmental records. Section 119.011(11), F.S., defines the term “public records” to include:

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 as including all materials made or received by an agency in connection with official business which are “intended to perpetuate, communicate, or formalize knowledge.”<sup>1</sup>

Under s. 24(c), Art. I of the State Constitution, the Legislature may enact a law exempting records from the open government requirements if: (1) the law creating the exemption states with specificity the public necessity justifying the exemption; and (2) the exemption is no broader than necessary to accomplish the stated purpose of the law.

### **III. Effect of Proposed Changes:**

This bill makes confidential and exempt the identity of a donor to a citizen support organization authorized to support functions of the Department of State as created by the enactment of CS/SB 2152. Among various other issues, the CS/SB 2152 creates a citizen support organization to assist the division with its cultural and arts programs and creates a citizen support organization to assist the division with its library, archives, and records management programs.

The donor’s anonymity extends to the auditor’s report.

The bill is made subject to the Open Government Sunset Review Act of 1995 and the exemption will repeal October 2, 2010, unless saved from repeal by the Legislature.

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<sup>1</sup> *Shevin v. Byron, Harless, Schaffer, Reid & Assocs., Inc.*, 379 So.2d 633, 640 (Fla. 1980).

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The bill will permit donor's to the specified citizen support organizations to maintain anonymity if they desire.

**C. Government Sector Impact:**

By permitting donor's who wish to maintain their anonymity, the citizen support organizations authorized by the CS/SB 2152 may obtain donations that they might not otherwise receive.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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## **VIII. Summary of Amendments:**

None.

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