

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB GVOPS 12-02 OGSR Donor Information/Publicly Owned House Museums

**SPONSOR(S):** Government Operations Subcommittee

**TIED BILLS:**           **IDEN./SIM. BILLS:** SB 810

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee		Thompson	Williamson

### SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

Current law provides a public record exemption for information that identifies a donor or prospective donor to a publicly owned house museum designated by the United States Department of the Interior as a National Historic Landmark. The exemption is applicable only if the donor or prospective donor wishes to remain anonymous.

The bill reenacts this public record exemption, which will repeal on October 2, 2012, if this bill does not become law.

The bill does not appear to have a fiscal impact on state or local governments.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Open Government Sunset Review Act

The Open Government Sunset Review Act<sup>1</sup> sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act 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.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.<sup>2</sup> If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created<sup>3</sup> then a public necessity statement and a two-thirds vote for passage are not required.

##### Publicly Owned House Museums Designated as National Historic Landmarks

The purpose of the National Historic Landmarks Program is to identify and designate National Historic Landmarks, and to encourage the long range preservation of nationally significant properties that illustrate or commemorate the history and prehistory of the United States. The National Park Service administers the National Historic Landmarks Program on behalf of the Secretary of the Interior.<sup>4</sup>

Currently, there are two publicly owned house museums in Florida that are designated by the United States Department of the Interior as National Historic Landmarks.<sup>5</sup> The two houses are the Marjorie Kinnan Rawlings Historic State Park (Park) in Cross Creek, which is owned by the Florida Department of Environmental Protection, and the Vizcaya Museum and Gardens (Museum), which is owned by Miami-Dade County.

##### Public Record Exemption under Review

In 2007, the Legislature created a public record exemption for information that identifies a donor or prospective donor to a publicly owned house museum designated by the United States Department of the Interior as a National Historic Landmark. The exemption is applicable only if the donor or prospective donor wishes to remain anonymous.<sup>6</sup>

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<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Section 24(c), Art. 1 of the State Constitution

<sup>3</sup> An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

<sup>4</sup> See 36 C.F.R. 65.

<sup>5</sup> Information received from Dr. Barbara Mattick, Ph.D., Survey & Registration Supervisor, National Register, National Historic Landmarks Coordinator, Bureau of Historic Preservation, Florida Department of State, on November 18, 2011.

<sup>6</sup> Chapter 2007-213, L.O.F.; codified as s. 267.076, F.S.

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2012, unless reenacted by the Legislature.

Donors and prospective donors to the Park have never requested to have their information protected from public disclosure.<sup>7</sup> However, Park staff have been unaware of the exemption and, therefore, have never attempted to offer application of the exemption to donors or prospective donors.<sup>8</sup> The donations to the Park between 2007 and 2010 totaled approximately \$13,000 and, in 2011, the park received two donations totaling approximately \$15,000.<sup>9</sup>

Conversely, donors and prospective donors to the Museum have requested that their information be protected from public disclosure.<sup>10</sup> The Museum informs donors and prospective donors as a part of the solicitation process that the option for anonymity is available.<sup>11</sup> According to the Museum, anonymity for donors and prospective donors is necessary for the development of a robust, charitable, support program.<sup>12</sup> In 2010-2011, Vizcaya received approximately eight donations totaling \$483,941.<sup>13</sup>

If reenacted, the Park would likely begin to use the exemption, and the Museum would continue to use it.

### **Effect of Bill**

The bill removes the repeal date, thereby reenacting the public record exemption for information that identifies a donor or prospective donor to a publicly owned house museum designated by the United States Department of the Interior as a National Historic Landmark.

#### **B. SECTION DIRECTORY:**

Section 1 amends s. 267.076, F.S., to reenact the public record exemption for information that identifies a donor or prospective donor to a publicly owned house museum designated by the United States Department of the Interior as a National Historic Landmark.

Section 2 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:**

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<sup>7</sup> Open Government Sunset Review of s. 267.076, F.S., relating to publicly owned house museum designated as a National Historic Landmark, questionnaire by the Senate Committee on Environmental Preservation and Conservation in cooperation with the House Governmental Operations Subcommittee, received from the Department of Environmental Protection on June 21, 2011, at question 2. (On file with the Government Operations Subcommittee).

<sup>8</sup> *Id.* at question 4.

<sup>9</sup> *Id.* at question 1.

<sup>10</sup> Open Government Sunset Review of s. 267.076, F.S., relating to publicly owned house museum designated as a National Historic Landmark, questionnaire by the Senate Committee on Environmental Preservation and Conservation in cooperation with the House Governmental Operations Subcommittee, received from Lynn Summers, Executive Director for the Vizcayans, Inc., July 1, 2011, at question 2. (On file with the Government Operations Subcommittee).

<sup>11</sup> *Id.* at question 5.

<sup>12</sup> *Id.* at question 11.

<sup>13</sup> *Id.* at question 1.

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

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:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.