

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB GAC 17-05 OGSR/Publicly Owned Performing Arts Center  
**SPONSOR(S):** Government Accountability Committee  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 7002

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Accountability Committee	23 Y, 0 N	Whittaker	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.

Florida has many performing arts centers in every region of the state. The term “publicly owned performing arts center” is defined as 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 and to encourage and cultivate public and professional knowledge and appreciation of the arts.

Current law provides that any 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 is confidential and exempt from public record requirements.

The bill reenacts the public record exemption, which will repeal on October 2, 2017, if this bill does not become law.

The bill does not appear to have a fiscal impact on the 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.<sup>2</sup>

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:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect 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.
- Protect trade or business secrets.<sup>3</sup>

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>4</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>5</sup> then a public necessity statement and a two-thirds vote for passage are not required.

##### Publicly Owned Performing Arts Centers in Florida

Florida has many performing arts centers in every region of the state. Their ownership, management, and financing vary. Section 265.7015(1), F.S., defines the term "publicly owned performing arts center" as:

[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.

##### Public Record Exemption under Review

In 2012, the Legislature created 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

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

<sup>2</sup> Section 119.15(3), F.S.

<sup>3</sup> Section 119.15(6)(b), F.S.

<sup>4</sup> Section 24(c), Art. I of the State Constitution.

<sup>5</sup> An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.

center who desires to remain anonymous.<sup>6</sup> The exemption provides that such identifying information is confidential and exempt<sup>7</sup> from public record requirements.

The 2012 public necessity statement for the exemption provided that:<sup>8</sup>

In order to encourage private support for publicly owned performing arts centers, it is a public necessity to promote the giving of gifts to, and the raising of private funds for, the acquisition, renovation, rehabilitation, and operation of publicly owned performing arts centers. An essential element of an effective plan for promoting the giving of private gifts and the raising of private funds is the need to protect the identity of prospective and actual donors who desire to remain anonymous. If the identity of prospective and actual donors who desire to remain anonymous is subject to disclosure, there is a chilling effect on donations because donors are concerned about disclosure of personal information leading to theft and, in particular, identity theft, including personal safety and security.

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2017, unless reenacted by the Legislature.<sup>9</sup>

During the 2016 interim, committee staff sent questionnaires to performing arts centers around the state as part of its review under the Open Government Sunset Review Act. Four publicly owned performing arts centers responded to the survey. The survey responses indicated that it is critical for the specified identifying information about the donor or prospective donor to remain anonymous and recommended reenactment of the exemption without changes.<sup>10</sup>

### **Effect of the Bill**

The bill removes the scheduled repeal date, thereby reenacting the 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.

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

Section 1 amends s. 265.7015, F.S., to save from repeal the public record exemption for identifying information of a donor or prospective donor to a publicly owned performing arts center.

Section 2 provides an effective date of October 1, 2017.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

None.

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<sup>6</sup> Chapter 2012-12, L.O.F.; codified as s. 265.7015, F.S.

<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 custodian of public records to anyone other than the persons or entities specifically designated in statute. See Attorney General Opinion 85-62 (August 1, 1985).

<sup>8</sup> Chapter 2012-12, s. 2, L.O.F.

<sup>9</sup> Section 265.7015(3), F.S.

<sup>10</sup> Surveys on file with the Government Accountability Committee.

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:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.