

1989

Session Law 89-055

Florida Senate & House of Representatives

Follow this and additional works at: <https://ir.law.fsu.edu/staff-analysis>



Part of the Legislation Commons

Recommended Citation

House of Representatives, Florida Senate &, "Session Law 89-055" (1989). *Staff Analysis*. 1022.
<https://ir.law.fsu.edu/staff-analysis/1022>

This Article is brought to you for free and open access by the Florida Legislative Documents at Scholarship Repository. It has been accepted for inclusion in Staff Analysis by an authorized administrator of Scholarship Repository. For more information, please contact efarrell@law.fsu.edu.

B
I
L
L

H
I
S
T
O
R
Y

H 818 GENERAL BILL/1ST ENG by Governmental Operations; Martin (Similar S 278, Compare S 279, S 280)
Direct Support Organizations: (OPEN GOVERNMENT SUNSET REVIEW) amends provisions which provide exemptions from public records requirements for certain information contained in annual audit reports of Ringling Museum of Art direct-support & state theater contract organizations; saves such exemptions from repeal; repeals provision which provides for confidentiality of donors to Fine Arts Endowment T.F., etc. Amends Chs. 265, 266, 267; repeals 119.07(3)(s). Effective Date: 10/01/89.

03/15/89 HOUSE Prefiled
03/22/89 HOUSE Placed on Calendar
04/04/89 HOUSE Introduced, placed on Calendar -HJ 79
04/06/89 HOUSE Placed on Special Order Calendar; Read second time; Amendments adopted -HJ 164
04/11/89 HOUSE Read third time; Passed as amended; YEAS 118 NAYS 0 -HJ 192
04/12/89 SENATE In Messages
04/19/89 SENATE Received, referred to Governmental Operations; Appropriations -SJ 194
04/28/89 SENATE Extension of time granted Committee Governmental Operations
05/02/89 SENATE Withdrawn from Governmental Operations -SJ 255; Now in Appropriations
05/03/89 SENATE Extension of time granted Committee Appropriations
05/18/89 SENATE Extension of time granted Committee Appropriations
05/31/89 SENATE Withdrawn from Appropriations; Substituted for SB 278; Passed; YEAS 34 NAYS 1 -SJ 658
05/31/89 Ordered enrolled
06/13/89 Signed by Officers and presented to Governor
06/16/89 Approved by Governor; Chapter No. 89-55

NOTES: Above bill history from Division of Legislative Information's *FINAL LEGISLATIVE BILL INFORMATION, 1989 SESSIONS*. Staff Analyses for bills amended beyond final committee action may not be in accordance with the enacted law. Journal page numbers (HJ & SJ) refer to daily Journals and may not be the same as final bound Journals.

STORAGE NAME: h0818-f.go
DATE: June 19, 1989

HOUSE OF REPRESENTATIVES
COMMITTEE ON GOVERNMENTAL OPERATIONS
FINAL STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: HB 818 (PCB GO 89-6)

RELATING TO: Confidentiality of Donors to Direct-Support, Citizen-Support,
Contract, and Sponsoring Organizations

SPONSOR(S): Committee on Governmental Operations and Martin

EFFECTIVE DATE: October 1, 1989

DATE BECAME LAW: June 16, 1989

CHAPTER #: 89-55, Laws of Florida

COMPANION BILL(S): SB 279 (identical); SB 278 and SB 280 (compare)

OTHER COMMITTEES OF REFERENCE: (1)
(2)

I. SHORT SUMMARY:

Sections 265.26(4)(h), 265.289(3), 265.605(2)(c), 266.08(3), 266.109(3), and 267.17(3), Florida Statutes, relate to direct-support, citizen-support, contract, and sponsoring organizations (referred to collectively as direct-support organizations). These organizations are not-for-profit organizations created by statute to assist in fund-raising, promotional, and other activities for the benefit of various state agencies and entities.

In most cases, the records of these direct-support organizations, other than the Auditor General's report and supplemental materials, are exempt from the Public Records Law. The primary reason for this exemption, as indicated by the responding direct-support organizations, is to protect the identity of donors who want to remain anonymous. This information (name, address, amount of contribution) is kept confidential in the audit reports when submitted to the Auditor General.

If released to the public, a donor could suffer injury in that other (i.e., private) not-for-profit organizations would be able to obtain this information and subsequently solicit donations from the donor. A donor may be reluctant to donate to a direct-support organization if his identity and amount of contribution were made public, possibly causing unwanted solicitation. This would impede and impair the effective administration and purpose of the direct-support organizations.

This bill reenacts the exemption for the donor identity portion of records submitted by the direct-support organizations under review from the Public Records Law. However, language exempting all records has been removed, thereby making the records of these direct-support organizations open to the public. In addition, it is recommended that language be added to ss. 266.08 and 266.109, Florida Statutes, relating to the accessibility of materials donated under certain terms and conditions.

A. INTRODUCTION:

Public policy of Florida has greatly favored public access to governmental records and meetings. In fact, the "Sunshine State" has been a national leader in the area of open government. The law embodying the public's right of access to records is codified at s. 119.01, Florida Statutes:

It is the policy of this state that all state, county, and municipal records shall at all times be open for a personal inspection by any person.

This provision is mandatory and any public official with custody of a nonexempt public record is required to disclose it to any member of the public. Records are exempt from public disclosure pursuant to chapter 119, Florida Statutes, only if it is provided by law that the public records are confidential or are expressly exempted from disclosure by general or special law. Exemptions are found in s. 119.07(3), Florida Statutes, and in various special acts. The provision requiring meetings to be public does not identify specific exemptions within that section, but various exemptions are included throughout the statutes.

In 1984, the Legislature enacted the Open Government Sunset Review Act to prevent the erosion of Florida's open government policy caused by unjustified exemptions to the Act. As amended by chapter 85-301, Laws of Florida, the Act provides specific criteria for the evaluation of exemptions subject to repeal. The law provides for a two-pronged test. First, it requires consideration of four factors:

- 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 information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?

Second, the law requires that the exemption will be maintained

only if it serves an identifiable purpose. An identifiable public purpose is served when the exemption meets one of the following purposes and such purpose is considered significant enough to override the strong public policy of open government. To qualify as meeting a public purpose, an exemption must:

- allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; or
- protect information of a sensitive personal nature concerning individuals if its release would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals, or its release would jeopardize the safety of such individuals; or
- protect information of a confidential nature concerning entities which include formulas, patterns, devices, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it if its disclosure would injure the affected entity in the marketplace.

The exemptions included in this report reviews the following:

- s. 265.26(4)(h), Ringling Museum of Art
- s. 265.289(3), State Theater Board of Florida
- s. 265.605(2)(c), Fine Arts Endowment Trust Fund
- s. 266.08(3), Historic St. Augustine Preservation Board
- s. 266.109(3), Historic Pensacola Preservation Board
- s. 267.17(3), Division of Historical Resources, Department of State

B. PRESENT SITUATION:

General Overview of Direct-Support Organizations

A direct-support organization (DSO) is defined generally in chapter 617, Florida Statutes, as an organization which is incorporated under state law and approved by the Department of State as a corporation not-for-profit. There are currently over 70 of these organizations in operation.

DSO's are distinguished from all other nonprofit corporations in three significant ways:

- (1) they are statutorily-created affiliates of state agencies, authorized to receive, hold, invest, and administer property for a specified purpose on behalf of the state;
- (2) they may be permitted by their affiliate agencies to use state property, facilities, and other services, which include both personnel and the state's payroll processing system; and

- (3) the state assumes some degree of liability for the DSO's because DSO's are recognized as agents of the state and are authorized to have state employees work on their programs.

Because of the use of state property, facilities, state personnel, and, in some cases, appropriated funds, DSO's are quasi-public in nature. However, they are not subject to the laws and regulations governing state agencies.

The primary function of a DSO is to assist in the raising and expenditure of funds. These funds can be used for special programs, property acquisition, and full/part-time personnel as needed.

There are a number of advantages to having monies channelled through a legislatively-created DSO:

- (1) A DSO can use these monies immediately without waiting on the state budgetary process to appropriate these funds, rendering them unavailable until July 1 of the following year. Having the use of these funds immediately enables the DSO to acquire property or items that otherwise might be unavailable once the Legislature completed its funding process.
- (2) These monies can be designated by the donor to be used for a particular purchase or project instead of designated by the Legislature. Donors tend to contribute more readily when they can designate where their monies will be spent.
- (3) Fund-raising activities at the community level enhances local interest and involvement in money-raising endeavors. This, in turn, increases the amount of money contributed, as well as attracting a larger number of volunteers in the community.

Direct-support organizations are required, by law, to have an annual audit report prepared by an independent certified public accountant. These audits are generally submitted to the DSO's state affiliate and sometimes to the Auditor General for review. The identity of donors is confidential and protected in these audit reports.

In most cases, the DSO's records are exempt from the Public Records Law, except for the information provided in connection with the audit reports.

Below are brief summaries of the exemptions under review, providing some background information on each state entity and their corresponding DSO.

Ringling Museum of Art - s. 265.26(4)(h), Florida Statutes

Section 265.26, Florida Statutes, relates to the John and Mable Ringling Museum of Art. This museum has been designated as the official art museum of the State of Florida, the purpose and function of which shall be to maintain and preserve all objects

of art donated to the state through the will of John Ringling; to acquire and preserve objects of art; to provide art museum services to communities throughout the state; and to conduct programs in cooperation with these communities. In addition to receiving monies appropriated by the state, the museum receives monies from admission fees, rental of state property and facilities, government grants, and private contributions.

Section 265.261, Florida Statutes, creates the DSO for the Ringling Museum of Art. It is organized and operated exclusively to raise funds; to submit requests and receive grants from the federal government, the state, private foundations, and individuals; to receive, hold, invest, and administer property; and to make expenditures to or for the benefit of the John and Mable Ringling Museum of Art.

Section 265.26(4)(h), Florida Statutes, provides that an annual audit report be submitted to the Auditor General. Currently, all records, other than the Auditor General's report and supplementary materials, are exempt from the Public Records Law. Donors' identities are kept confidential if anonymity is requested.

State Theater Contract Organization - s. 265.289(3), Florida Statutes

Section 265.287, Florida Statutes, creates within the Department of State, a State Theater Program, the purpose of which is to enrich the lives of the citizens of the state by providing quality theater programs statewide; to encourage the development of theater educational programs in public schools and universities; and to assist in developing a work force of professionals for the film and theater industry within the state. In addition, the department, through this program, is authorized to contract with professional theatrical management groups and companies to provide theatrical services using state appropriated funds and public and private contributions.

Section 265.289(1), Florida Statutes, defines a contract organization as a not-for-profit corporation that is organized and operated to conduct theater programs under contracting provisions described in s. 265.289(2).

Section 265.289(3), Florida Statutes, provides that an annual audit report be submitted to the Auditor General. Currently, all records, other than the Auditor General's report and supplementary materials, are exempt from the Public Records Law. Donors' identities are kept confidential if anonymity is requested.

Fine Arts Endowment Trust Fund - s. 265.605(2)(c), Florida Statutes

Recognizing the need for significant additional funding needed by local fine arts organizations in the state, the Legislature

created the Fine Arts Endowment Program in 1985 to guarantee sufficient operating resources for those participating organizations.

Section 265.605, Florida Statutes, creates the trust fund for the use of this program. The trust fund consists of monies appropriated by the Legislature, monies specifically contributed from other public or private sources, and interest earned from the investment of monies in this fund.

There are five fine arts regions located throughout the state consisting of a number of counties as designated in s. 265.604, Florida Statutes. Sponsoring organizations within these regions are eligible to apply for matching monies from the trust fund, the monies of which are used to establish a fine arts endowment program in their respective regions. This supplemental funding is available on a recurring basis, to be used for day-to-day expenses incurred by the sponsoring organizations.

Section 265.605(2)(c), Florida Statutes, provides that the identity of donors to the Fine Arts Endowment Trust Fund, as well as to the local sponsoring organization's trust fund, are confidential if anonymity is requested.

Historic St. Augustine Preservation Board - s. 266.08(3), Florida Statutes

Section 266.01, Florida Statutes, creates the Historic St. Augustine Preservation Board of Trustees. Established by statute in 1959, its purpose is to acquire, restore, preserve, maintain, reconstruct, reproduce, and operate for the people of this state and nation certain ancient or historic landmarks, sites, cemeteries, and other objects of historical or antiquarian interest of the City of St. Augustine, Florida and surrounding territory. In addition, they are authorized to research, prepare, publish, and procure documents and materials to protect and preserve information about historic sites and properties pertaining to Florida history.

Section 266.08, Florida Statutes, creates the DSO for the Historic St. Augustine Preservation Board. Its purpose is primarily to raise funds; to submit requests and receive grants from the federal government, the state, private foundations, and individuals; and to receive, hold, invest, and administer property and to make expenditures to or for the benefit of the Historic St. Augustine Preservation Board of Trustees. In addition to the monies received above, an annual appropriation of \$50,000 is authorized to be used in defraying part of the cost incurred in carrying out the purposes of the board.

Section 266.08(3), provides that an annual audit report be submitted to the Auditor General for review. Currently, all records are open to the public. Donors' identities are confidential if anonymity is requested.

Historic Pensacola Preservation Board - s. 266.109(3), Florida Statutes

Section 266.101, Florida Statutes, creates the Historic Pensacola Preservation Board of Trustees. Established by statute in 1967, its purpose is to acquire, restore, preserve, maintain, reconstruct, reproduce, and operate for people of this state and nation certain ancient or historic landmarks, sites, cemeteries, and other objects of historical or antiquarian interest of the City of Pensacola, Florida and surrounding territory. In addition, they are authorized to research, prepare, publish, and procure documents and materials to protect and preserve information about historic sites and properties pertaining to Florida history.

Section 266.109, Florida Statutes, creates the DSO for the Historic Pensacola Preservation Board. Its purpose is primarily to raise funds; to submit requests and receive grants from the federal government, the state, private foundations, and individuals; and to receive, hold, invest, and administer property and to make expenditures to or for the benefit of the Historic Pensacola Preservation Board of Trustees. The Board of Commissioners of Escambia County and the City of Pensacola are authorized to appropriate annually from their funds as are available, as well as accept contributions from the United States or any agency thereof, individuals, organizations, societies, or groups to further the purposes of the board.

Section 266.109(3), Florida Statutes, provides that an annual audit report be submitted to the Auditor General for review. Currently, all records, except the Auditor General's report and supplemental materials, are exempt from the Public Records Law. Donors' identities are kept confidential if anonymity is requested.

Division of Historical Resources of the Department of State - Citizen-Support Organizations - s. 267.17, Florida Statutes

The Division of Historical Resources of the Department of State is authorized, by s. 267.17, Florida Statutes, to support the establishment of citizen support organizations within the division. The purpose of these organizations is to provide assistance, funding, and promotional support for the archaeology, museum, folklife, and historic preservation programs of the division. These citizen-support organizations are organized and operated to conduct programs and activities; raise funds; request and receive grants, gifts, and bequests of money; acquire, receive, hold, invest, and administer, in its own name, securities, funds, objects of value, or other property, real or personal; and make expenditures to or for the direct or indirect benefit of the division or individual program units of the division.

Section 267.17(3), Florida Statutes, provides that an annual audit be submitted by each citizen-support organization to the

Auditor General for review. Donors' identities are kept confidential if anonymity is requested.

Conclusion

Surveys were sent to various DSO's and to the Division of Historical Resources in the Department of State. The respondents stated that the primary reason for the current exemptions was to protect the identity of donors who wished to remain anonymous. They also indicated that, without this confidentiality, donors would be reluctant to contribute.

These exemptions serve an identifiable public purpose as required by the Open Government Sunset Review Act, s. 119.14, Florida Statutes, in that the release of this information could cause possible injury (unwanted solicitation) to the donors, thus making them reluctant to contribute. This, in turn, would impair the efficient and effective administration of the DSO's. It is recommended that these exemptions be reenacted, but only to the extent necessary to protect the identity of donors.

Two of the reviewed DSO's currently receive materials under certain terms and conditions. These materials are exempt from the public records law and it is unclear as to the extent of this exemption.

It is therefore recommended that the exemption for materials donated under certain terms and conditions be exempt only to the extent necessary to meet these terms and conditions.

C. EFFECT OF PROPOSED CHANGES:

This bill would revive and readopt the public records exemptions provided by ss. 265.26(4)(h), 265.289(3), 265.605(2), 266.08(3), 266.109(3), and 267.17(3), Florida Statutes, effective October 1, 1989, providing that the identities of donors remain confidential and exempt from the Public Records Laws.

In addition, language has been removed from ss. 265.26(4)(h), 265.289(3), and 266.109(3), Florida Statutes, which made all records of these DSO's exempt from the provisions of chapter 119. Therefore, all records from these DSO's will be open to the public, except that the identities of donors requesting anonymity shall remain confidential.

Also, language has been added to ss. 266.08 and 266.109, Florida Statutes, concerning the accessibility of certain materials. This language states that any materials that are accepted by the DSO's under special terms or conditions restricting their use shall be made accessible in accordance with such terms or conditions, and shall be protected and exempt from the provision of the s. 119.07(1), to the extent necessary to meet those terms or conditions.

D. SECTION-BY-SECTION ANALYSIS:

Section 1 -- Reenacts the public records exemption found in s. 265.26(4)(h), Florida Statutes, relating to the confidentiality of the identity of donors to the Ringling Museum of Art. Removes language that states that all records of DSO are exempt from the provisions of chapter 119.

Section 2 -- Reenacts the public records exemption found in s. 265.289(3), Florida Statutes, relating to the confidentiality of the identity of donors to contract organizations within the State Theater Program. Removes language that states that all records of the DSO are exempt from the provisions of chapter 119.

Section 3 -- Reenacts the public records exemption found in s. 265.605(2), Florida Statutes, relating to the confidentiality of the identity of donors to the Fine Arts Endowment Trust Fund. Makes a technical change to the reference language, providing consistency.

Section 4 -- Reenacts the public records exemption found in s. 266.08(3), Florida Statutes, relating to the confidentiality of the identity of donors to the Historic St. Augustine Preservation Board. Adds language concerning the accessibility of materials placed with the DSO under special terms and conditions.

Section 5 -- Reenacts the public records exemption found in s. 266.109(3), Florida Statutes, relating to the confidentiality of the identity of donors to the Historic Pensacola Preservation Board. Adds language concerning the accessibility of materials placed with the DSO under special terms and conditions.

Section 6 -- Reenacts the public records exemption found in s. 267.17(3), Florida Statutes, relating to the confidentiality of the identity of donors to citizen support organizations within the Division of Historical Resources of the Department of State.

Section 7 -- Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

Not applicable.

2. Recurring or Annualized Continuation Effects:

Not applicable.

3. Long Run Effects Other Than Normal Growth:

Not applicable.

STORAGE NAME: h0818-f.go

DATE: June 19, 1989

PAGE 10

4. Appropriations Consequences:

Not applicable.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

Not applicable.

2. Recurring or Annualized Continuation Effects:

Not applicable.

3. Long Run Effects Other Than Normal Growth:

Not applicable.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Not applicable.

2. Direct Private Sector Benefits:

Not applicable.

3. Effects on Competition, Private Enterprise, and Employment Markets:

Not applicable.

D. FISCAL COMMENTS:

Not applicable.

III. LONG RANGE CONSEQUENCES:

Not applicable.

IV. COMMENTS:

None.

V. SIGNATURES:

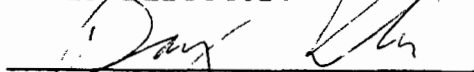
SUBSTANTIVE COMMITTEE:

Prepared by:



Hunter L. Barnett

Staff Director:



Barry Kling

STORAGE NAME: h0818-f.go
DATE: June 19, 1989
PAGE 11

SECOND COMMITTEE OF REFERENCE:
Prepared by:

Staff Director:

APPROPRIATIONS:
Prepared by:

Staff Director:

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Hosack</u> <i>MLK</i>	<u>Stengle</u> <i>JS</i>	1. <u>GO</u>	<u>Favorable</u>
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____
4. _____	_____	4. _____	_____

SUBJECT:

Open Government; Direct-Support and
Citizen Support Organizations,
Department of State

BILL NO. AND SPONSOR:

SB 278 by
Governmental Operations
Committee

I. SUMMARY:

A. Present Situation:

Chapter 119, F.S., the Public Records Law, requires records of government agencies to be open to public inspection and copying, except as otherwise specifically exempted by law. An "agency", as defined in s. 119.011(2), F.S., subject to the provisions of the law includes, in addition to government agencies, any other public or private agency, corporation, or business entity acting on behalf of any public agency. Certain entities within the Department of State have been authorized to approve private not-for-profit corporations to operate as either a direct-support organization, or a citizen support organization, for the benefit of and on the property of the designated entity. Because such organizations are private corporations acting on behalf of a state entity, the records of each of these organizations are subject to the provisions of the Public Records Law unless specifically exempted by law.

The Open Government Sunset Review Act, s. 119.14, F.S., provides for the repeal of public meetings and public records exemptions over the 10-year period from 1986 to 1995, unless the Legislature acts to revive an exemption prior to its scheduled repeal date. A stated objective of the act is to "provide for the maximum public access to the meetings and records as is consistent with the purpose of the exemption." Each exemption is reviewed under the statutorily-mandated criteria of s. 119.14, F.S., to determine if it should be continued, and if so, if it should be limited to provide the required maximum public access consistent with its purpose. It is also noted that s. 119.14(4)(c), F.S., provides that records made prior to repeal of the exemption shall not be made public unless otherwise provided by law. Repeal of the exemption, by itself, would not mandate public access to records previously closed.

The public records exemptions which have been statutorily granted to several direct-support and citizen support organizations, authorized to operate on behalf of specified entities within the Department of State, are scheduled to repeal October 1, 1989. Those entities, respectively, are the Board of Trustees of the John and Mable Ringling Museum of Art, the Historic St. Augustine Preservation Board of Trustees, the Historic Pensacola Preservation Board of Trustees, and the Division of Historical Resources. Each of these exemptions has been the subject of legislative review to determine whether the exemptions meet the statutory criteria to be revived and readopted.

The direct-support organizations and citizen support organizations authorized to function on behalf of entities of the Department of State have the same general characteristics.

They are required to be private not-for profit corporations incorporated under the provisions of ch. 617, F.S., to operate exclusively for the entity for which they are authorized. Such organizations may raise funds, submit requests and receive grants, receive, hold, invest, and administer property, and make expenditures to or for the benefit of the state entity for which they are authorized. Each is required to insure that an annual audit is conducted by an independent certified public accountant, and to submit the audit to the department and the Auditor General for review.

These non-profit corporations may be authorized to use the property, facilities, and personal services of the state entity. Unlike the state entity for which they operate, the organizations are not generally subject to laws which govern state entities such as purchasing provisions, budgeting requirements, or state audits. The laws authorizing each direct-support or citizen support organization exempt certain records of the organizations from the public access requirements of the Public Records Law.

Board of Trustees of the John and Mable Ringling Museum of Art

Section 265.26, F.S., designates the John and Mable Ringling Museum of Art as the official art museum of the state, and provides for the management of the museum by the Board of Trustees of the John and Mable Ringling Museum of Art. The board consists of nine members who are appointed by the Governor and confirmed by the Senate, who serve for staggered 4-year terms. The board is directed to preserve the Ringling art collection, to acquire other objects of art, to provide museum services to communities throughout the state, and to engage in national and international programs to enhance the cultural resources of Florida. For FY 1988-89, the Legislature appropriated \$2.35 million to the board from the General Revenue Fund. The museum has a full-time staff of 99 employees, whose salaries are funded by state appropriation.

The Board of Trustees was authorized by law to approve a direct-support organization to operate on its behalf in 1977. Section 265.26(4)(h), F.S., exempts the records of the direct-support organization of the Board of Trustees of the John and Mable Ringling Museum Art, except for an audit report and certain supplemental data requested by the board or the Auditor General, from the public access provisions of ch. 119, F.S. The exemption is scheduled to repeal on October 1, 1989, subject to prior legislative review.

The direct-support organization of the museum is the John and Mable Ringling Museum of Art Foundation, Inc. In accordance with an annual agreement, the Board of Trustees of the John and Mable Ringling Museum of Art serves as the governing board of the direct-support organization. In FY 1987-88, the museum budget was approximately \$4.1 million, of which approximately \$2.1 million were provided by state appropriation for salaries and some expenses, and \$1.8 million were provided by the direct-support organization for other expenses, including certain operating and personnel expenses. Of the funding provided from the direct-support organization, approximately \$1.3 million were derived from admission and rental fees, as was then authorized by law.

Section 265.26, F.S., was amended in 1988 to provide that all admission and rental fees received by the museum be held in trust by the board of trustees, rather than by the direct-support organization, as had been authorized by law since 1982. Other income is to be held in trust by the direct-support organization, and may be used by the direct-support organization for supplemental salaries and personnel not funded by the General Revenue Fund. All such funds are to revert to the state in the event of the dissolution of the direct-support

organization, in accordance with provisions in a contract with the board.

A questionnaire was sent to the director of the Board of Trustees of the John and Mable Ringling Museum of Art, to gather information regarding the direct-support organization, and the purpose of its public records exemption. According to the questionnaire response, the foundation has 15 employees, including the executive director of the foundation, curators, a controller, an events coordinator, and support staff for other programs of the museum. The direct-support organization also provides supplemental salaries to 13 state employees in the total amount of approximately \$50,000.

All records of the direct-support organization are in the custody of the board. According to the questionnaire response, the direct-support organization needs the public records exemption to protect information identifying donors, including the addresses of such donors, and information regarding the security systems of the John and Mable Ringling Museum of Art. It is noted, however, that s. 281.301, F.S., currently protects all records and meetings pertaining to security systems for all government leased or owned property, including the security systems of the John and Mable Ringling Museum of Art.

Historic St. Augustine Preservation Board of Trustees

The Historic St. Augustine Preservation Board of Trustees was the first of the eight historic preservation boards created in ch. 266, F.S., to protect and promote historic preservation in designated areas of the state. The board is charged by law with preserving, acquiring, and managing historic sites and objects in St. Augustine, as well as researching, preparing, and disseminating information regarding Florida history. The board has seven members who are appointed by the Governor and confirmed by the Senate. The board operates as a unit of the Department of State, and receives specific appropriations from the Legislature for its operation. The board has an office in St. Augustine, which is staffed with 30 state employees, including an executive director. For FY 1988-89, the Legislature appropriated \$653,597 to the board from the General Revenue Fund. The board was further appropriated \$294,864 from its operating trust fund.

In 1984, the Legislature enacted law authorizing the board to approve a direct-support organization to operate on its behalf. Section 266.08(3), F.S., exempts from the public access provisions of ch. 119, F.S., the identity of donors, who desire to remain anonymous, to the direct-support organization of the Historic St. Augustine Preservation Board of Trustees. The exemption is scheduled to repeal October 1, 1989, subject to prior legislative review.

The San Agustin Antiquo Foundation, Inc. was officially designated as the direct-support organization of the Historic St. Augustine Preservation Board of Trustees in 1984. In accordance with the articles of incorporation of the San Agustin Antiquo Foundation, Inc., the Historic St. Augustine Preservation Board of Trustees serves as the board of directors of the direct-support organization.

A questionnaire was sent to the executive director of the Historic St. Augustine Preservation Board of Trustees, to gather information regarding the direct-support organization and the purpose of its public records exemption. According to the executive director, the direct-support organization is the main operating arm of the board. The board has leased 25 of the 29 properties to which it holds title to the direct-support organization free of charge. All rental and admission fees on those properties are paid to and managed by the direct-support organization. The direct-support organization employs 17

persons to serve in such positions as museum store clerks, museum guides, and museum artisans. The board allows the use of its state personnel for the overall management of the direct-support organization.

The board is the custodian of all records of the direct-support organization. According to the executive director, the direct-support organization has not begun a fundraising effort to date and, thus, has not received any requests from donors that their identities remain anonymous. The board does prefer to have law reenacted to retain the public records exemption for the identity of donors who desire remain anonymous, in order to not discourage future potential donors from contributing to the direct-support organization.

Historic Pensacola Preservation Board of Trustees

The Historic Pensacola Preservation Board of Trustees is created in ch. 266, F.S., to protect and promote historic preservation in designated areas of the state. The board is charged by law with preserving, acquiring, and managing historic sites and objects in the Pensacola area, as well as researching, preparing, and disseminating information regarding Florida history. The board is comprised of seven members who are appointed by the Governor and confirmed by the Senate. The board operates as a unit of the Department of State. The board has an office in Pensacola, which is staffed with 15 state employees, including an executive director. For FY 1988-89, the Legislature appropriated \$440,514 to the board from the General Revenue Fund. The board was further appropriated \$177,092 from its operating trust fund.

The board was authorized by law to approve a direct-support organization to operate on its behalf in 1986. Section 266.109(3), F.S., exempts the records of the direct-support organization, except for an audit report and certain supplemental data requested by the Auditor General or the board, from the public access provisions of ch. 119, F.S. The exemption is scheduled for repeal October 1, 1989, subject to prior legislative review.

Historic Pensacola, Inc. is the officially designated direct-support organization of the board. A questionnaire was sent to the executive director of the board to gather information regarding the direct-support organization, and the purpose of its public records exemption. The members of the Historic Pensacola Preservation Board of Trustees serve as the board of directors of the direct-support organization. The direct-support organization currently does not have any employees of its own. The preservation board allows the use of its state personnel to manage the records, membership program, and activities of the direct-support organization. The board is the custodian of all records of the direct-support organization.

The direct-support organization and the board have a written agreement which provides that the direct-support organization will deposit all income from admissions, rentals, sales, grants, or gifts in separate trust fund accounts for investment or expenditures that serve the interests of the board. In practice, according to the executive director of the board, these funds are placed in a local account, and are transferred to the state on a quarterly basis, after which they are appropriated by the Legislature to the board from the operating trust fund of the board.

Although all records of the direct-support organization, except the accountant's report and supplemental data requested by the Auditor General or the board, are exempt from the Public Records Law, the board's questionnaire response states that the only records affected by the exemption are those which reveal

the identity of donors who desire to remain anonymous, and certain collections which are donated or loaned under conditions which restrict their use. The board believes that without the ability to provide such confidentiality when requested, some donors would not make contributions. The board also states that archival materials (diaries, private business papers, and other such items) are sometimes donated with the proviso that they not be available to the public for a number of years, or until upon the death of the donor or affected party.

Division of Historical Resources

The Florida Historical Resources Act, established in ch. 267, F.S., provides policy for the preservation of the state's historical resources. The act provides for the preservation and promotion of the historical resources of the state by establishing requirements and programs in the areas of archaeology, museum curation, folklife, and the preservation of historic buildings and landmarks. The Division of Historical Resources is charged with administering the provisions of the act. The department has established four bureaus within the division to administer state preservation programs: the Bureau of Archaeological Research, the Bureau of Florida Folklife, the Bureau of Historic Preservation, and the Bureau of Historic Museums.

The division has been authorized by law since 1986 to support the establishment of citizen support organizations to provide assistance, funding, and promotional support to the programs of the division. Section 267.17(3), F.S., exempts from the public access provisions of ch. 119, F.S., the identity of donors, who desire to remain anonymous, to the citizen support organizations of the Division of Historical Resources. This exemption is scheduled to repeal on October 1, 1989, subject to prior legislative review.

A questionnaire was sent to the director of the Division of Historical Resources, to obtain information about citizen support organizations authorized to operate on behalf of the division, as well as the purpose of their public records exemption. According to the division director, only one citizen support organization has been approved to date to operate on behalf of the division, the Florida History Associates, Inc., which provides support to the Museum of Florida History.

The Florida History Associates, Inc. was incorporated in 1983 to operate on behalf of the Museum of Florida History; this was done prior to the enactment of statutory authorization for the division to approve citizen support organizations. The not-for-profit corporation was approved by the division to provide such support under the authority granted in s. 267.072, F.S. Section 267.072, F.S., provides that an approved not-for-profit organization may conduct special events and programs in the museum, the proceeds from which are to be used to support the museum programs. The organization has sponsored programs in conjunction with the museum, and has provided financial support through fundraising activities and special events. The organization has also received funds through state grant to conduct special exhibits.

The Florida History Associates, Inc. has no employees; however, its members provide volunteer services. Although the use of state personnel by a citizen support organization is not specifically authorized by law, the division allows the use of its state personnel for the overall management of the citizen support organization.

The records of the citizen support organization are retained in the custody of the division. Even though the citizen support

organization has not received any requests from donors that their identity remain anonymous, the division prefers to retain the public records exemption for the identity of donors who desire such anonymity. The division believes that repeal of the current exemption could discourage future potential donors from contributing to authorized citizen support organizations.

B. Effect of Proposed Changes:

Certain records of specified direct-support and citizen support organizations of the Department of State would continue to be exempt from the public access provisions of the Public Records Law, ch. 119, F.S. These exemptions would be specifically made subject to future legislative review in accordance with the Open Government Sunset Review Act.

The exemption found in s. 265.26(4)(h), F.S., pertaining to certain records of the direct-support organization of the Board of Trustees of the John and Mable Ringling Museum of Art would be revived and readopted with modifications. The exemption would be limited to records which would identify donors to the direct support organization who desire to remain anonymous. All other records of the organization, obtained on or after October 1, 1989, would be open for public inspection, unless specifically exempt under separate provision of law.

The exemption found in s. 266.08(3), F.S., pertaining to certain records of the direct-support organization of the Historic St. Augustine Preservation Board of Trustees would be revived and readopted. The records of the direct-support organization would continue to be open, with the exception of the identity of donors who desire to remain anonymous.

The exemption found in s. 266.109(3), pertaining to records of the direct-support organization of the Historic Pensacola Preservation Board of Trustees, would be revived and readopted with modifications. Records of the organization which would identify donors who desire to remain anonymous would be exempt from public access. Nonpublic documents and archival materials donated to the organization under special terms and conditions would also be exempt in accordance with those terms and conditions. All other records of the organization, obtained on or after October 1, 1989, would be open to public inspection, unless exempted from the public access provisions of ch. 119, F.S., under separate provision of law.

The exemption found in s. 267.17(3), F.S., pertaining to certain records of the citizen support organizations of the Division of Historical Resources, would be revived and readopted. The identity of donors who desire to remain anonymous would be exempt from the public access requirements of the Public Records Law. All other records would continue to be open.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

None.

III. COMMENTS:

None.

IV. AMENDMENTS:

None.