

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 501 Pub. Rec. and Meetings/Information Technology/Postsecondary Education Institutions

SPONSOR(S): Education Committee; Post-Secondary Education Subcommittee; Leek; Silvers and others

TIED BILLS: None **IDEN./SIM. BILLS:** CS/CS/SB 110

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Post-Secondary Education Subcommittee	14 Y, 0 N, As CS	McAlarney	Bishop
2) Oversight, Transparency & Administration Subcommittee	14 Y, 0 N	Whittaker	Harrington
3) Education Committee	18 Y, 0 N, As CS	McAlarney	Hassell

SUMMARY ANALYSIS

Records and meetings held by state universities and Florida College System institutions regarding information security incidents, such as investigations into security breaches, security technologies, processes and practices as well as security risk assessments are subject to Florida open record laws. Public disclosure of this information may present a significant security risk because such information could reveal weaknesses within the State University System and Florida College System computer networks, raising the potential for exploitation.

The bill provides that the following records held by a state university or Florida College System institution are confidential and exempt from public record requirements:

- Records that identify detection, investigation, or response practices for suspected or confirmed information technology security incidents, including suspected or confirmed breaches, if the disclosure of such records would facilitate unauthorized access to or unauthorized modification, disclosure, or destruction of data or information or information technology resources; and
- Those portions of risk assessments, evaluations, audits, and other reports of the university's or institution's information technology security program for its data, information, and information technology resources, if the disclosure of such records would facilitate unauthorized access to or unauthorized modification, disclosure, or destruction of data or information or information technology resources.

The bill exempts from public meeting requirements those portions of a meeting that would reveal data or information that is made confidential and exempt by this bill. The meeting must be recorded and transcribed, but the recording and transcript of such a meeting must remain confidential and exempt from public disclosure. The bill provides that such confidential and exempt information must be provided to specified entities.

The bill provides for repeal of the exemption on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

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

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates public record and public meeting exemptions; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Public Records Law

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record.

Public Meetings Law

Article I, s. 24(b) of the State Constitution sets forth the state's public policy regarding access to government meetings. The section requires that all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, be open and noticed to the public.

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., known as the "Government in the Sunshine Law" or "Sunshine Law," further requires that all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, at which official acts are to be taken be open to the public at all times.¹ The board or commission must provide reasonable notice of all public meetings.² Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin or economic status or which operates in a manner that unreasonably restricts the public's access to the facility.³ Minutes of a public meeting must be promptly recorded and open to public inspection.⁴

Public Record and Public Meeting Exemptions

The Legislature, however, may provide by general law for the exemption of records and meetings from the requirements of Article I, s. 24(a) and (b) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.⁵

Furthermore, the Open Government Sunset Review Act⁶ 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; or

¹ Section 286.011(1), F.S.

² *Id.*

³ Section 286.011(6), F.S.

⁴ Section 286.011(2), F.S.

⁵ Art. I, s. 24(c), Fla. Const.

⁶ Section 119.15, F.S.

- Protects trade or business secrets.

State Universities and Florida College System Institutions

Records and meetings held by state universities and Florida College System institutions regarding information security incidents, such as investigations into security breaches, security technologies, processes and practices as well as security risk assessments are subject to Florida open records laws.^{7,8} Public disclosure of this information presents a significant security risk and would reveal weaknesses within the State University System and Florida College System computer networks, raising the potential for exploitation.

Section 282.318, F.S., exempts from Open Meeting and Public Records laws data and information from technology systems owned, contracted, or maintained by a state agency.

However, state universities and university boards of trustees are specifically excluded from the definition of “state agency”. Section 282.318(2), F.S., defines “state agency” as having the same meaning as provided in s. 282.0041, F.S. State agency is defined in s. 282.0041(23), F.S., as meaning:

[A]ny official, officer, commission, board, authority, council, committee, or department of the executive branch of state government; the Justice Administrative Commission; and the Public Service Commission. The term does not include university boards of trustees or state universities. ...

Therefore, a state university is vulnerable to the disclosure of records or information that could potentially compromise the confidentiality, integrity, and availability of a state university’s information technology system which contains highly sensitive student, medical, research, and other personal data.⁹

Florida College System records at the state level, as part of the Department of Education, are protected under s. 282.318, F.S., but it is unclear the extent to which individual colleges and their boards of trustees are protected under current law.

Effect of Proposed Changes

The bill creates public record and public meeting exemptions to protect data and records pertaining to the security of the State University System and Florida College System information networks from disclosure. Certain enumerated forms of information held by a university or institution related to information technology security and potential breaches of security, as well as risk assessments, evaluations, and audits, are confidential and exempt from disclosure, including:

- Records held by the university or college which identify detection, investigation, or response practices for suspected or confirmed information technology security incidents, including suspected or confirmed breaches, if the disclosure of such records would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction of data or information, whether physical or virtual, or information technology resources; and
- Those portions of risk assessments, evaluations, audits, and other reports of the university’s or institution’s information technology security program for its data, information, and information technology resources which are held by the university or institution. These records would be exempt if their disclosure would lead to the unauthorized access to or modification, disclosure, or destruction of the data, information, or information technology resources.

⁷ FLA. CONST. art. I, s. 24 (c).

⁸ Chapter 119, F.S.

⁹ State University System of Florida, Board of Governors, Legislative Bill Analysis (February 13, 2017).

The bill also exempts portions of otherwise public meetings where such enumerated information technology security matters are discussed. Recordings or transcripts of such closed portions of meetings must be taken. Recordings or transcripts are confidential and exempt, unless a court determines a transcript may be released to a third party, and subject to an in camera review by a judge upon challenge of a refusal to disclose.

The public record exemptions are retroactive and apply to records or portions of public meetings, recordings, and transcripts held by the university or institution before, on, or after the effective date of this act.

The bill provides for the review of such enumerated information by the Auditor General, the Board of Governors for a state university, the State Board of Education for a Florida College System institution, and the Cybercrime Office of the Department of Law Enforcement, as well as other state and federal agencies for security purposes.

The bill creates an October 2, 2022, sunset provision.

B. SECTION DIRECTORY:

Section 1. Exempts from the Sunshine Laws all specified data or information from technology systems owned, contracted, or maintained by a state university or a Florida College System institution. Also, provides an October 2, 2022, sunset of the exemption.

Section 2. Provides a public necessity statement.

Section 3. Directs Division of Law Revision and Information to replace the phrase “the effective date of this act” with the date this act becomes law.

Section 4. Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may create a minimal fiscal impact on state universities and the Florida College System because staff responsible for complying with public record requests could require training related to the creation of the public record exemptions. In addition, state universities and the Florida College System could incur costs associated with redacting the exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the state universities and the Florida College System.

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:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates public record and public meeting exemptions; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates public record and public meeting exemptions; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates public record exemptions for records held by a state university or Florida College System institution that identify detection, investigation, or response practices for suspected or confirmed information technology security incidents in addition to a public meeting exemption for portions of public meetings which would reveal such data and information. The exemptions do not appear to be in conflict with the constitutional requirement that the exemptions be no broader than necessary to accomplish the stated purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 13, 2017, the Post-Secondary Education Subcommittee adopted an amendment clarifying that records and portions of public meeting records and transcripts related to the Florida College System must be made available to the State Board of Education. The bill was reported favorably as a committee substitute.

On April 6, 2017, the Education Committee adopted a committee substitute which conformed the House bill to the Senate bill. Changes include technical changes and deleting the definition of "external audit."

The bill analysis is drafted to the committee substitute as adopted by the Education Committee.