

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Education

BILL: SPB 7006

INTRODUCER: For consideration by the Education Committee

SUBJECT: OGSR/Campus Emergency Response

DATE: November 1, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brick</u>	<u>Bouck</u>	_____	Pre-meeting
2.	_____	_____	_____	_____

I. Summary:

SPB 7006 saves from repeal the public records exemption relating to any portion of a campus emergency response held by a public postsecondary institution, a state or local law enforcement agency, a county or municipal emergency management agency, the Executive Office of the Governor, the Department of Education, the Board of Governors of the State University System, or the Division of Emergency Management, as well as that portion of a public meeting which would reveal information related to a campus emergency response.

The exemption from public records and public meetings requirements stands repealed on October 2, 2022, unless reviewed and reenacted by the Legislature.

The bill takes effect October 1, 2022.

II. Present Situation:

Access to Public Records – Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, section 11.0431, Florida Statutes (F.S.), provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the

¹ Art. I, s. 24(a), Fla. Const.

² *Id.*

rules of each house of the Legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, chapter 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020).

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁶ Section 119.011(12), F.S., defines “public record” to mean “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.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.07(1)(a), F.S.

⁹ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

¹⁰ Art. I, s. 24(c), Fla. Const.

¹¹ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ (the Act) prescribes a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.²⁰ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²² or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

¹² See, e.g., s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ See, e.g., s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ See *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁶ Section 119.15, F.S.

¹⁷ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹⁸ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

The Act also requires specified questions to be considered during the review process.²⁴ In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²⁶

Comprehensive Emergency Management Plans

The Florida Division of Emergency Management (DEM) is required to prepare a state comprehensive emergency management plan (CEMP).²⁷ The CEMP serves as the master operations document for Florida and is the framework through which the state handles emergencies and disasters.²⁸ The CEMP requires the Department of Education (DOE) and the Board of Governors of the State University System (BOG) to coordinate emergency response procedures at state colleges and universities, respectively.²⁹

Campus Emergency Response

The exemption from public records and public meetings requirements for the campus emergency response of a public postsecondary educational institution was enacted in 2017.³⁰ The law provides a public records exemption for any portion of a campus emergency response held by a public postsecondary educational institution, state or local law enforcement agency, county or municipal emergency management agency, the Executive Office of the Governor (EOG), the DOE, the BOG, or the DEM.³¹ The law also provides a public meetings exemption for any portion of a public meeting which would reveal information related to a campus emergency response.³²

²⁴ Section 119.15(6)(a), F.S. The specified questions are:

- 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 the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ Section 252.35(2), F.S.

²⁸ *Id.*

²⁹ Florida Division of Emergency Management, *2020 Comprehensive Emergency Management Plan*, available at <https://www.floridadisaster.org/globalassets/cemp/2020-cemp/2020-state-cemp.pdf>, at 10, 13. The BOG requires each state university to implement a CEMP. Fla. Board of Governors Regulation 3.001.

³⁰ Chapter 2017-184, L.O.F.

³¹ Section 1004.0962(2), F.S.

³² Section 1004.0962(5), F.S.

A campus emergency response is a public postsecondary educational institution's response to or plan for responding to an act of terrorism³³ or other public safety crisis or emergency.³⁴ The law provides that a campus emergency response includes information relating to:³⁵

- Records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof.
- Threat assessments conducted by any agency or private entity.
- Threat response plans.
- Emergency evacuation plans.
- Sheltering arrangements.
- Manuals for security personnel, emergency equipment, or security training.
- Security systems or plans.
- Vulnerability analyses.
- Postdisaster activities, including provisions for emergency power, communications, food, and water.
- Postdisaster transportation.
- Supplies, including drug caches.
- Staffing.
- Emergency equipment.
- Individual identification of students, faculty, and staff; the transfer of records; and methods of responding to family inquiries.

A public postsecondary educational institution, state or local law enforcement agency, county or municipal emergency management agency, EOG, DOE, BOG, or DEM may disclose information made exempt to another governmental entity if disclosure is necessary for the receiving entity to perform its duties or responsibilities, or upon a showing of good cause before a court of competent jurisdiction.³⁶

The exemption from public records and public meetings requirements is subject to the requirements of the Act and is repealed on October 2, 2022, unless reviewed and reenacted by the Legislature.³⁷

Chapter 2017-184, L.O.F., which established the exemption from public records disclosure requirements for specified portions of campus emergency responses for public postsecondary educational institutions, included a public necessity statement that provided a rationale for the exemption. This rationale recognized that if campus emergency responses were made publicly available for inspection or copying, they could be used to hamper or disable a public postsecondary education institution's response to an act of terrorism or other crisis or emergency. Furthermore, providing terrorists and other criminals the capabilities to plot, plan, and coordinate

³³ "Terrorism" means an activity that involves a "violent act or an act dangerous to human life which is a violation of the criminal laws of this state or of the United States;" or a violation of s. 815.06, F.S., intended to "intimidate, injure, or coerce a civilian population; influence the policy of a government by intimidation or coercion; or affect the conduct of government through destruction of property, assassination, murder, kidnapping, or aircraft piracy." Section 775.30(1), F.S.

³⁴ Section 1004.0962(1), F.S.

³⁵ *Id.*

³⁶ Section 1004.0962(4), F.S.

³⁷ Section 1004.0962(6), F.S.

complicated acts of terror and violence on university and college campuses would lead to an increase in the number of Floridians subjected to fatal injury if a public postsecondary educational institution's response to these events were hampered or disabled.³⁸

Open Government Sunset Review Findings and Recommendations

In August 2021, the Senate Education Committee and the House Government Operations Subcommittee jointly sent an Open Government Sunset Review Questionnaire to the 12 institutions of the State University System (SUS) and the 28 institutions of the Florida College System (FCS). The survey sought information regarding the need to maintain the exemption related to a campus emergency response of a public postsecondary institution for responding to an act of terrorism or other public safety crisis or emergency.

All 12 state universities and 17 of the 28 FCS institutions responded to the questionnaire, and all recommended that the exemption remain in effect to ensure institutional security in the case of an emergency and to protect the safety of institutional constituents. Several institutions identified some overlap with other exemptions provided in law, particularly more general exemptions from inspection or copying of public records³⁹ and exemptions from public access or disclosure of security and firesafety systems;⁴⁰ however, none of the institutions that identified overlap recommended merging the exemptions, given the specific and heightened protection for critical security and emergency response information provided in s. 1004.0962, F.S.

III. Effect of Proposed Changes:

The bill saves from repeal the current public records exemption relating to any portion of a campus emergency response held by a public postsecondary institution, a state or local law enforcement agency, a county or municipal emergency management agency, the Executive Office of the Governor, the Department of Education, the Board of Governors of the State University System, or the Division of Emergency Management, as well as that portion of a public meeting which would reveal information related to a campus emergency response.

The exemption from public records and public meetings requirements stands repealed on October 2, 2022, unless reviewed and reenacted by the Legislature.

The bill takes effect October 1, 2022.

³⁸ Ch. 2017-184, L.O.F.

³⁹ Section 119.071, F.S., provides for general exemptions from inspection or copying of public records regarding agency administration, criminal intelligence and criminal investigation, and specified personal information. Section 252.905, F.S., provides that information furnished to DEM for the purpose of being provided assistance with emergency planning is exempt.

⁴⁰ Sections 119.071(3)(a), F.S., provides that security or firesafety system plans held by an agency are confidential and exempt. Section 281.301, F.S., provides that information relating to the security or firesafety systems for specified property is confidential and exempt. Section 286.0113, F.S., provides that a specified portion of a meeting that would reveal a security or firesafety system plan is exempt. Section 1004.055, F.S., provides that specified security data or information from technology systems owned, under contract, or maintained by a state university or a FCS institution is confidential and exempt.

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

Not applicable.

B. Public Records/Open Meetings Issues:***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 bill creating or expanding an exemption to the public records requirements. This bill continues a current public records exemption beyond its current date of repeal. The bill does not create or expand an exemption. Thus, the bill does not require an extraordinary vote for enactment.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. This bill continues a current public records exemption without expansion. Thus, a statement of public necessity is not required.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect portions of a public postsecondary educational institution's campus emergency response to protect the health and safety of students, faculty, staff, and the public at large. The bill exempts only information relating to a public postsecondary educational institution's response to or plan for responding to an act of terrorism or other public safety crisis or emergency, and allows that such information may be disclosed to another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities, or upon a showing of good cause before a court of competent jurisdiction. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1004.0962 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.