

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1079 Pub. Rec. and Meetings/Comprehensive Emergency Management Plan for Public Postsecondary Institutions

SPONSOR(S): Oversight, Transparency & Administration Subcommittee; Rommel

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1224

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Post-Secondary Education Subcommittee	14 Y, 0 N	McAlarney	Bishop
2) Oversight, Transparency & Administration Subcommittee	13 Y, 0 N, As CS	Moore	Harrington
3) Education Committee			

SUMMARY ANALYSIS

The bill creates an exemption from public record and public meeting requirements for information associated with a campus emergency response of a public postsecondary educational institution. "Campus emergency response" is defined as a public postsecondary educational institution's response to or plan for responding to an act of terrorism or other public safety crisis or emergency.

The bill provides that any portion of a campus emergency response held by a public postsecondary educational 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 is exempt from public record requirements. This exemption applies to plans held by a custodial agency before, on, or after the effective date of the bill.

The bill also provides that the portion of a public meeting which would reveal information related to a campus emergency response is exempt from public meeting requirements.

The bill provides for repeal of the exemptions 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 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:⁷

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;

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.

⁷ Section 119.15(6)(b), F.S.

- 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
- Protects trade or business secrets.

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.⁸

Current Security Plans

Section 119.071(3), F.S. provides that "security system plans" for any property owned by or leased to the state or any of its political subdivisions or any privately owned or leased property held by an agency are confidential and exempt from public record requirements. Security system plans include:⁹

- Records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to the physical security of the facility or revealing security systems;¹⁰
- Threat assessments conducted by any agency or any private entity;¹¹
- Threat response plans;¹²
- Emergency evacuation plans;¹³
- Sheltering arrangements;¹⁴ or
- Manuals for security personnel, emergency equipment, or security training.¹⁵

In addition, a portion of a meeting that would reveal a security system plan or portion thereof is exempt from public meeting requirements.¹⁶

Assuming that Florida public universities are considered "owned by or leased to the state," there is an open question as to whether a discussion or record concerning a campus emergency plan would be exempt. Courts would likely decide the applicability of the security exception to state universities on a case-by-case basis.

Effect of Proposed Changes

The bill creates an exemption from public record requirements for information associated with the campus emergency response of a public postsecondary educational institution.

"Campus emergency response" is defined as a public postsecondary educational institution's response to or plan for responding to an act of terrorism or other public safety crisis or emergency. Specifically, the term includes:

- 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.

⁸ Section 119.15(3), F.S.

⁹ Section 119.071(3)(a) 1., F.S.

¹⁰ Section 119.071(3)(a)1.a, F.S.

¹¹ Section 119.071(3)(a)1.b., F.S.

¹² Section 119.071(3)(a)1.c., F.S.

¹³ Section 119.071(3)(a)1.d., F.S.

¹⁴ Section 119.071(3)(a)1.e., F.S.

¹⁵ Section 119.071(3)(a)1.f., F.S.

¹⁶ Section 286.0113, F.S.

- Emergency evacuation plans.
- Sheltering arrangements.
- Manuals for security personnel, emergency equipment, or security training.
- Security systems or plans.
- Vulnerability analyses.
- Post-disaster activities, including provisions for emergency power, communications, food, and water.
- Post-disaster 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.

The bill provides that any portion of a campus emergency response held by a public postsecondary educational 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 is exempt¹⁷ from public record requirements. The bill is remedial in nature in that the public record exemptions apply to campus emergency responses held by a custodial agency before, on, or after the bill's effective date.

The bill specifies that the exempt 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 bill also addresses public meetings. The portion of a public meeting which would reveal information related to a campus emergency response is exempt from the open meeting laws.

The bill provides that the exemption is subject to the Open Government Sunset Review Act and will be repealed 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.

B. SECTION DIRECTORY:

Section 1. Creates s. 1004.0962, F.S., to provide public record and public meeting exemptions associated with campus emergency response plans of a public postsecondary educational institution.

Section 2. Provides a statement of public necessity as required by the State Constitution.

Section 3. Provides an effective date of July 1, 2017.

¹⁷ 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).

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 FCS institutions because staff responsible for complying with public record requests could require training related to creation of the public record exemption. In addition, state universities and FCS institutions 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 universities and institutions.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

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 a public record exemption for information associated with campus emergency responses of a public postsecondary educational institution, in addition to a public meeting exemption for any portion of a meeting wherein such information is discussed. 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 28, 2017, the Oversight, Transparency & Administration Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment corrected a drafting error and specified that the exempt 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 analysis is drafted the committee substitute as adopted by the subcommittee.