

<b>Tab 1</b>	<b>SB 236</b> by <b>Jones (CO-INTRODUCERS) Ausley, Powell</b> ; (Identical to H 00015) Children with Developmental Delays
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<b>Tab 2</b>	<b>SB 268</b> by <b>Diaz</b> ; (Similar to H 00395) Proclamation of "Victims of Communism Day"
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<b>Tab 3</b>	<b>SB 270</b> by <b>Hutson</b> ; Funds for Student Transportation
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<b>Tab 4</b>	<b>SB 318</b> by <b>Rouson</b> ; Florida Seal of Fine Arts Program
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<b>Tab 5</b>	<b>SPB 7004</b> by <b>ED</b> ; OGSR/Technology Systems/State University or a Florida College System Institution
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<b>Tab 6</b>	<b>SPB 7006</b> by <b>ED</b> ; OGSR/Campus Emergency Response
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**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**EDUCATION**  
**Senator Gruters, Chair**  
**Senator Jones, Vice Chair**

**MEETING DATE:** Tuesday, November 2, 2021  
**TIME:** 12:30—3:00 p.m.  
**PLACE:** Pat Thomas Committee Room, 412 Knott Building

**MEMBERS:** Senator Gruters, Chair; Senator Jones, Vice Chair; Senators Berman, Bradley, Broxson, Diaz, Hutson, Passidomo, Polsky, and Thurston

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>SB 236</b> Jones (Identical H 15)	Children with Developmental Delays; Revising the definition of the term "exceptional student" to include additional students with developmental delays, etc.  ED     11/02/2021 AED AP	
2	<b>SB 268</b> Diaz (Similar H 395)	Proclamation of "Victims of Communism Day"; Requiring the Governor to annually proclaim November 7 as "Victims of Communism Day"; requiring the day to be observed in public schools and by public exercise; requiring a day other than November 7 to be observed by public schools under a specified circumstance; requiring certain high school students to receive specified instruction on Victims of Communism Day, etc.  ED     11/02/2021 AED AP	
3	<b>SB 270</b> Hutson	Funds for Student Transportation; Modifying requirements for determining student membership in a school district in order to determine the annual allocation for funding for student transportation, etc.  ED     11/02/2021 AED AP	
4	<b>SB 318</b> Rouson	Florida Seal of Fine Arts Program; Establishing the Florida Seal of Fine Arts Program within the Department of Education; specifying eligibility requirements for the awarding of a Seal of Fine Arts; requiring the Commissioner of Education and school districts to perform specified duties to administer the program; prohibiting a school district or the Department of Education from charging a fee for the seal, etc.  ED     11/02/2021 AED AP	

**COMMITTEE MEETING EXPANDED AGENDA**

Education

Tuesday, November 2, 2021, 12:30—3:00 p.m.

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
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Consideration of proposed bill:

5	<b>SPB 7004</b>	OGSR/Technology Systems/State University or a Florida College System Institution; Amending a provision which provides exemptions from public records and public meetings requirements for specified data or information from technology systems owned, under contract, or maintained by a state university or a Florida College System institution and portions of meetings which would reveal such data and information; removing the scheduled repeal of the exemptions, etc.	
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Consideration of proposed bill:

6	<b>SPB 7006</b>	OGSR/Campus Emergency Response; Amending a provision which provides an exemption from public records requirements for 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, and for any portion of a public meeting which would reveal information related to a campus emergency response; removing the scheduled repeal of the exemption, etc.	
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Other Related Meeting Documents

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**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.)

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Prepared By: The Professional Staff of the Committee on Education

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BILL: SB 236

INTRODUCER: Senators Jones and Ausley

SUBJECT: Children with Developmental Delays

DATE: November 1, 2021

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brick	Bouck	ED	<b>Pre-meeting</b>
2.			AED	
3.			AP	

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## I. Summary:

SB 236 modifies the definition of a developmental delay by extending the upper age limit for the identification of a student as having a developmental delay from age 5 to age 9, the maximum age authorized by federal law, or through the completion of grade 2, whichever comes first. Under the bill, a student with a developmental delay up to age 9 or grade 2 may be included in the definition of an “exceptional student” and eligible for admission to public special education programs. Accordingly, the bill requires the State Board of Education to adopt rules for the identification of developmental delays in students up to age 9 or grade 2, whichever comes first, who are eligible for admission to public special education programs and for related services.

The bill takes effect July 1, 2022.

## II. Present Situation:

### Developmental Delay

A child with a developmental delay has a sensory, physical, mental, or emotional condition which significantly affects the attainment of normal developmental milestones.<sup>1</sup> Developmental delays are one of the most common concerns in early childhood, with 16.7 percent of children experiencing a delay in at least one domain of development.<sup>2</sup> A child may have a developmental delay if the child fails to attain developmental milestones as compared to peers from the same

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<sup>1</sup> Florida Department of Education, *Early Education and Kindergarten: Ages Three Through Five*, <https://www.fldoe.org/academics/exceptional-student-edu/early-education/ages-three-through-five.html> (last visited Nov. 1, 2021).

<sup>2</sup> Pediatric Health Care Alliance, P.A., *Developmental Delays and Behavioral Difficulties in Children and the Role of a Developmental-Behavioral Pediatrician*, <https://www.pedialliance.com/developmental-delays-and-behavioral-difficulties-children-and-role-developmental-behavioral> (last visited Oct. 29, 2021).

population.<sup>3</sup> A child with a developmental delay may be eligible for early intervention or special education services under specified federal and state criteria, and may eventually demonstrate age-appropriate cognitive abilities.<sup>4</sup>

## Federal Law

### *The Individuals with Disabilities Education Act*

The Education for All Handicapped Children Act became law in 1975<sup>5</sup> and was reauthorized as the Individuals with Disabilities Education Act (IDEA).<sup>6</sup> The IDEA makes available a free appropriate public education to eligible children with disabilities and ensures special education and related services to those children.<sup>7</sup> The IDEA governs how states and public agencies provide early intervention, special education, and related services to more than 7.5 million (as of school year 2018-19) eligible infants, toddlers, children, and youth with disabilities.<sup>8</sup>

Each state educational agency is responsible for administering the IDEA within the state and distributing the funds for special education programs. The IDEA authorizes formula grants<sup>9</sup> to states and discretionary grants to state educational agencies, postsecondary institutions, and other nonprofit organizations subject to specific conditions on the receipt of federal IDEA funds.<sup>10</sup>

The IDEA authorizes each state to determine the definition of a developmental delay for children under age 3<sup>11</sup> and provides flexibility for states to provide special education and related services for children age 3 through age 9 with developmental delays, as defined by the state.<sup>12</sup> Under the IDEA, a child with a disability includes a child who is experiencing developmental delays, as defined by the state and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and who, by reason thereof, needs special education and related services. In 2018, 48 states included

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<sup>3</sup> Khan I, Leventhal BL, *Developmental Delay*, Updated Aug. 4, 2021, StatPearls Publishing, <https://www.ncbi.nlm.nih.gov/books/NBK562231/> (last visited Oct. 29, 2021).

<sup>4</sup> M. Shevell et al., *Practice parameter: Evaluation of the child with global developmental delay*, Report of the Quality Standards Subcommittee of the American Academy of Neurology and The Practice Committee of the Child Neurology Society, Feb. 2003, at 368, available at <https://n.neurology.org/content/neurology/60/3/367.full.pdf>.

<sup>5</sup> Pub. L. 94-142 (Nov. 29, 1975).

<sup>6</sup> U.S. Department of Education, *About IDEA*, <https://sites.ed.gov/idea/about-idea/#IDEA-History> (last visited Oct. 28, 2021).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Formula grants are awarded to states annually to support early-intervention services for infants and toddlers with disabilities and their families, preschool children ages three through five, and special education for children and youth with disabilities. U.S. Department of Education, *Individuals with Disabilities Education Act: State Formula Grants*, <https://sites.ed.gov/idea/state-formula-grants/> (last visited Nov. 1, 2021).

<sup>10</sup> U.S. Department of Education, *Protecting Students with Disabilities*, <https://www2.ed.gov/about/offices/list/ocr/504faq.html> (last visited Oct. 28, 2021).

<sup>11</sup> 20 U.S.C. ss. 1432(3) and 1435(a)(1); also 34 C.F.R. s. 303.10.

<sup>12</sup> 34 C.F.R. s. 300.8(b); see also U. S. Department of Education, *42nd Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act* (2020), at 285-289, available at <https://sites.ed.gov/idea/files/42nd-arc-for-idea.pdf>.

reporting for children ages three through five with developmental delays, and 38 of these states additionally reported children with developmental delays ages 6 through 9.<sup>13</sup>

Infants and toddlers, birth through age two, with disabilities and their families receive early intervention services under IDEA Part C,<sup>14</sup> usually as provided pursuant to an individualized family support plan.<sup>15</sup> The Florida Department of Health, Children's Medical Services is responsible for administering formula grant funds awarded to Florida under Part C, which is known as the "Early Steps Program."<sup>16</sup> Early intervention services include individual and group therapies and services needed to enhance both the infant's or toddler's growth and development and family functioning.<sup>17</sup> Services include rehabilitative services and assistive technology devices, and parent support and training.<sup>18</sup>

Children and youth ages 3 through 21 receive special education and related services under IDEA Part B,<sup>19</sup> which in Florida is administered by the Florida Department of Education and district school boards.<sup>20</sup> Services provided under Part B may include transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and include speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.<sup>21</sup>

School districts may also use up to 15 percent of the grant awarded under Part B to provide early intervening services to students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade 3) who have not been identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment.<sup>22</sup> These services may include professional development and educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.<sup>23</sup>

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<sup>13</sup> U. S. Department of Education, *42nd Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act* (2020), at 285-289, available at <https://sites.ed.gov/idea/files/42nd-arc-for-idea.pdf>.

<sup>14</sup> U.S. Department of Education, *About IDEA*, <https://sites.ed.gov/idea/about-idea/#IDEA-History> (last visited Oct. 28, 2021).

<sup>15</sup> Pacer Center, *What is the difference between an IFSP and an IEP?* (2011), available at <https://www.pacer.org/parent/php/PHP-c59.pdf>.

<sup>16</sup> Section 391.308, F.S.; see also U.S. Department of Education, *Differentiated Monitoring Letter to Surgeon General Rivkees*, (January 19, 2021), available at <https://www2.ed.gov/fund/data/report/idea/partcdmsrpts/dms-fl-c-2021-report.pdf>.

<sup>17</sup> Section 391.302(3), F.S.

<sup>18</sup> *Id.*

<sup>19</sup> U.S. Department of Education, *About IDEA*, <https://sites.ed.gov/idea/about-idea/#IDEA-History> (last visited Oct. 28, 2021).

<sup>20</sup> U.S. Department of Education, *Part B Grant Award Letter to Education Commissioner Richard Corcoran*, (July 1, 2021), available at <https://www2.ed.gov/fund/data/award/idea/2021partb/fl-2021b-letter-enclosures.pdf>. See also Rule 6A-6.0331, F.A.C.

<sup>21</sup> 34 C.F.R. s. 300.34.

<sup>22</sup> 20 U.S.C. s. 1413(f).

<sup>23</sup> 20 U.S.C. s. 1413(f)(2).

For the 2021 federal fiscal year, Florida received \$884.2 million through IDEA Part B.<sup>24</sup> Florida also received an estimated additional \$153.4 million in allocations to supplement IDEA through the American Rescue Plan.<sup>25</sup>

## Florida Law

### *School District Obligations*

Florida law provides that all students who are between the ages of 3 to 21 and have a disability have the right to a free, appropriate public education.<sup>26</sup> School districts have the responsibility to ensure that students suspected of having a disability are subject to general education intervention procedures.<sup>27</sup> Each district school board is required to provide for an appropriate program of special instruction, facilities, and services for exceptional students.<sup>28</sup> For example, each district program must:<sup>29</sup>

- Provide the necessary professional services for diagnosis and evaluation of exceptional students.
- Provide the special instruction, classes, and services, either within the district school system, in cooperation with other district school systems, or through contractual arrangements with approved private schools or community facilities.

The Individual Education Plan (IEP) is the primary vehicle for communicating the school district's commitment to addressing the unique educational needs of a student with a disability.<sup>30</sup> A student may not be given special instruction or services as an exceptional student until after he or she has been properly evaluated and found eligible as an exceptional student.<sup>31</sup> A school district must evaluate a student within 60 days after receiving signed parental consent.<sup>32</sup> An IEP team, to include the parents of the affected student, must then review the evaluation and determine the educational needs of the student.<sup>33</sup>

<sup>24</sup>U.S. Department of Education, *Fiscal Year 2021 Allocations for Grants to States, Individuals with Disabilities Education Act –and Part B, Section 619*, available at <https://www2.ed.gov/policy/speced/leg/arp/ffy-2021-part-b-grants-to-states-summary-table-arp.xlsx> (Part B, Section 611); and [https://sites.ed.gov/idea/files/FY\\_2021\\_Preschool\\_Grants\\_to\\_States\\_Summary\\_Table\\_04-20-2021.xlsx](https://sites.ed.gov/idea/files/FY_2021_Preschool_Grants_to_States_Summary_Table_04-20-2021.xlsx) (Part B, Section 619). Florida received \$26.1 million through Part C of the IDEA in federal fiscal year 2020. U.S. Department of Education, *Differentiated Monitoring Letter to Surgeon General Rivkees*, (January 19, 2021), at 5, available at <https://www2.ed.gov/fund/data/report/idea/partcdmsrpts/dms-fl-c-2021-report.pdf>.

<sup>25</sup> U.S. Department of Education, *Estimated American Rescue Plan IDEA Supplemental Grant Allocations*, <https://www2.ed.gov/policy/speced/leg/arp/arp-idea-allocations.html> (last visited Oct. 28, 2021).

<sup>26</sup> Section 1003.5716, F.S.

<sup>27</sup> Rule 6A-6.0331, F.A.C.

<sup>28</sup> Section 1001.42(4)(l), F.S.

<sup>29</sup> Section 1003.57(1)(b), F.S.

<sup>30</sup> Florida Department of Education, *Developing Quality Individual Education Plans* (2015), available at <http://www.fldoe.org/core/fileparse.php/7690/urlt/0070122-qualityieps.pdf>, at 9.

<sup>31</sup> Section 1003.57(1)(c), F.S.

<sup>32</sup> Rule 6A-6.0331(2)(f), F.A.C.

<sup>33</sup> Rule 6A-6.0331(6)(a), F.A.C.

### *Student Eligibility*

The State Board of Education (SBE) determines the procedures for qualifying a student as eligible to receive exceptional student education.<sup>34</sup> Exceptional students include students who are gifted and students with disabilities who have an intellectual disability; autism spectrum disorder; a speech impairment; a language impairment; an orthopedic impairment; another health impairment; traumatic brain injury; a visual impairment; an emotional or behavioral disability; or a specific learning disability, including, but not limited to, dyslexia, dyscalculia, or developmental aphasia; students who are deaf or hard of hearing or dual sensory impaired; students who are hospitalized or homebound; children with developmental delays ages birth through five years, or children, ages birth through two years, with a diagnosed physical or mental condition known to have a high probability of resulting in developmental delay.<sup>35</sup>

### *Developmental Delays*

The SBE has adopted rules for the identification of developmental delays for children birth through age five,<sup>36</sup> which evaluate children for delays in the areas of:<sup>37</sup>

- Adaptive or self-help development.
- Cognitive development.
- Communication development.
- Social or emotional development.
- Physical development including fine, or gross, or perceptual motor.

A developmental delay is documented by a multidisciplinary team utilizing multiple measures of assessment, including:<sup>38</sup>

- Standardized instruments, judgement based assessments, criterion referenced instruments, systematic observation, functional skills assessments, or other procedures selected in consultation with the parent; or
- Informed clinical opinion utilizing qualitative and quantitative information to determine the need for early intervention services; and,
- Parent report which can confirm or modify information obtained and describe behavior in environments that the district may not be able to access.

As appropriate, the individualized family support plan<sup>39</sup> or IEP must be developed through interagency collaboration with the family and other providers of services to the child and family and in accordance with SBE rules.<sup>40</sup> A student must be evaluated for a qualifying disability and a

<sup>34</sup> Section 1003.57(1)(c), F.S.

<sup>35</sup> Section 1003.01(3)(a), F.S. *See also* Rule 6A-6.03030, F.A.C.

<sup>36</sup> Section 1003.21(1)(e), F.S.

<sup>37</sup> Rule 6A-6.03027(1), F.A.C.

<sup>38</sup> Rule 6A-6.03027(4)(a), F.A.C. When a developmental delay cannot be verified by the use of standardized instruments, the delay may be established through observation of atypical functioning in any one or more of the developmental areas. Rule 6A-6.03027(4)(b), F.A.C.

<sup>39</sup> An individualized family support plan (IFSP) is a written plan identifying the specific concerns and priorities of a family related to enhancing their child's development and the resources to provide early intervention services to children with disabilities ages birth through two (2) years and may also be used for special education and related services to children with disabilities ages three through five. Rule 6A-6.03029, F.A.C.

<sup>40</sup> Rule 6A-6.03027(5)(a), F.A.C.



family support plan or IEP developed before the child is six years old to continue eligibility for special programs.<sup>41</sup>

In the fall of 2020, out of 406,944 students with a disability who qualified to receive exceptional student education, 22,593 students ages 3 through 5 qualified because of having a developmental delay.<sup>42</sup>

### ***State Funding***

Exceptional student education cost factors are determined by using a matrix of services that documents the services that each exceptional student will receive.<sup>43</sup> The nature and intensity of the services indicated on the matrix must be consistent with the services described in each exceptional student's individual educational plan.<sup>44</sup>

The state applies a weighted cost factor<sup>45</sup> to fund students in support levels IV and V, which are the two highest levels of need.<sup>46</sup> For the 2021 fiscal year, the state funded students in support level IV at 3.648 times the base student allocation<sup>47</sup> of \$4,372.91 for students in basic programs, and students in support level V are funded at 5.34 times the base student allocation.<sup>48</sup> Exceptional student education for students who do not require a support level IV or V is funded through a guaranteed exceptional student education allocation,<sup>49</sup> which is \$1,064,584,063 for the 2021 fiscal year.<sup>50</sup>

### **III. Effect of Proposed Changes:**

The bill modifies the definition of a developmental delay by extending the upper age limit for the identification of a student as having a developmental delay from age 5 to age 9, the maximum age authorized by federal law, or through the completion of grade 2, whichever comes first. Under the bill, a student with a developmental delay up to age 9 or grade 2 may be included in the definition of an “exceptional student” and eligible for admission to public special education programs. Accordingly, the bill requires the State Board of Education to adopt rules for the identification of developmental delays in students up to age 9 or grade 2, whichever comes first, who are eligible for admission to public special education programs and for related services.

<sup>41</sup> Rule 6A-6.03027(6), F.A.C.

<sup>42</sup> Florida Department of Education, PK-12 Public School Data Publications and Reports, *Membership in Programs for Exceptional Students, Final Survey 2, 2020-2021*, available at <https://www.fldoe.org/core/fileparse.php/7584/urlt/MPES2021.xlsx> (worksheets labeled “DD” and “All\_SWD”).

<sup>43</sup> Section 1011.62(1)(e)1.a., F.S.

<sup>44</sup> *Id.*

<sup>45</sup> Cost factors in the Florida Education Finance Program are based on desired relative cost differences between educational programs. Section 1011.62(1)(c), F.S.

<sup>46</sup> Section 1011.62(1)(c), F.S.

<sup>47</sup> The base student allocation is the amount for each student in grades kindergarten through grade 12 that is determined annually by the Legislature. Section 1011.62(1)(b). The base student allocation does not include different cost factors among programs, or categorical or incentive funding available. *See generally*, s. 1011.62, F.S.

<sup>48</sup> Specific Appropriation 90, s. 2, ch. 2021-36, L.O.F.

<sup>49</sup> Section 1011.62(1)(e)1.c., F.S.

<sup>50</sup> Specific Appropriation 90, s. 2, ch. 2021-36, L.O.F.

In some young children experiencing developmental delays, it may be difficult to assign a specific disability. If a student's disability that caused the developmental delay is not evaluated or evident prior to age six, the student may experience a break in service. Extending the age limit for which a student with a developmental delay is eligible for special program services may provide additional time to re-evaluate the student for a specific disability and develop a new individual education plan.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill does not require the additional expenditure of state funds.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 1003.01 and 1003.21.

**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.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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By Senator Jones

35-00302-22

2022236\_\_

A bill to be entitled

An act relating to children with developmental delays; amending s. 1003.01, F.S.; revising the definition of the term "exceptional student" to include additional students with developmental delays; amending s. 1003.21, F.S.; conforming provisions to changes made by the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (3) of section 1003.01, Florida Statutes, is amended to read:

1003.01 Definitions.—As used in this chapter, the term:

(3) (a) "Exceptional student" means any student who has been determined eligible for a special program in accordance with rules of the State Board of Education. The term includes students who are gifted and students with disabilities who have an intellectual disability; autism spectrum disorder; a speech impairment; a language impairment; an orthopedic impairment; an other health impairment; traumatic brain injury; a visual impairment; an emotional or behavioral disability; or a specific learning disability, including, but not limited to, dyslexia, dyscalculia, or developmental aphasia; students who are deaf or hard of hearing or dual sensory impaired; students who are hospitalized or homebound; children with developmental delays ages birth through 9 ½ years or through the student's completion of grade 2, whichever occurs first, or children, ages birth through 2 years, with established conditions that are identified in State Board of Education rules pursuant to s. 1003.21(1) (e).

Page 1 of 2

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

35-00302-22

2022236\_\_

Section 2. Paragraph (e) of subsection (1) of section 1003.21, Florida Statutes, is amended to read:

1003.21 School attendance.—

(1)

(e) Consistent with rules adopted by the State Board of Education, children with disabilities who have attained the age of 3 years shall be eligible for admission to public special education programs and for related services. Children with disabilities younger than 3 years of age who are deaf or hard of hearing, visually impaired, dual sensory impaired, orthopedically impaired, or other health impaired or who have experienced traumatic brain injury, have autism spectrum disorder, have established conditions, or exhibit developmental delays or intellectual disabilities may be eligible for special programs and may receive services in accordance with rules of the State Board of Education. Rules for the identification of established conditions for children birth through 2 years of age and developmental delays for children birth through 9 ½ years of age or through the student's completion of grade 2, whichever occurs first, must be adopted by the State Board of Education.

Section 3. This act shall take effect July 1, 2022.

Page 2 of 2

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

**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.)

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Prepared By: The Professional Staff of the Committee on Education

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BILL: SB 268

INTRODUCER: Senator Diaz

SUBJECT: Proclamation of “Victims of Communism Day”

DATE: November 1, 2021

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brick	Bouck	ED	<b>Pre-meeting</b>
2.			AED	
3.			AP	

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**I. Summary:**

SB 268 requires the Governor to annually issue a proclamation designating November 7 as “Victims of Communism Day” and calls for public schools to suitably observe such day as a day honoring the 100 million people who fell victim to communist regimes across the world.

Beginning in the 2023-2024 school year, the bill requires high school students enrolled in the United States Government class required for a standard high school diploma to receive at least 45 minutes of instruction on Victims of Communism Day on topics related to communist regimes and how victims suffered under communist regimes.

The bill takes effect upon becoming law.

**II. Present Situation:**

**Legal Holidays and Special Observance Days**

Chapter 683, F.S., establishes legal holidays and special observance days in Florida. Legal holidays are listed in s. 683.01, F.S., while ss. 683.04 – 683.333, F.S., establish special observance days.

Section 683.01, F.S., enumerates legal holidays, which under Florida law are also public holidays.<sup>1</sup> This section also provides that if any legal holiday falls on a Sunday, the next following Monday is deemed a public holiday. Florida currently has 21 legal holidays:

- Sunday, the first day of each week;
- New Year’s Day, January 1;

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<sup>1</sup> This section also provides that if any legal holiday falls on a Sunday, the next following Monday is deemed a public holiday. Section 683.01(2), F.S.

- Birthday of Martin Luther King, Jr., January 15;
- Birthday of Robert E. Lee, January 19;
- Lincoln's Birthday, February 12;
- Susan B. Anthony's Birthday, February 15;
- Washington's Birthday, the third Monday in February;
- Good Friday;
- Pascua Florida Day, April 2;
- Confederate Memorial Day, April 26;
- Memorial Day, the last Monday in May;
- Birthday of Jefferson Davis, June 3;
- Flag Day, June 14;
- Independence Day, July 4;
- Labor Day, the first Monday in September;
- Columbus Day and Farmers' Day, the second Monday in October;
- Veterans' Day, November 11;
- General Election Day;
- Thanksgiving Day, the fourth Thursday in November;
- Christmas Day, December 25; and
- Shrove Tuesday, sometimes also known as "Mardi Gras," in counties where carnival associations are organized for the purpose of celebrating the same.

Under s. 683.02, F.S., whenever a contract is to be performed in the state and reference is made to "legal holidays," the term includes the holidays designated in s. 683.01, F.S., and any other holidays designed in law. Alternatively, a legal holiday designation does not necessarily make a day a paid holiday for public employees. Section 110.117, F.S., establishes which legal holidays are paid holidays for the employees of all state branches and agencies.<sup>2</sup> Likewise, the court system does not necessarily use the legal holidays described in s. 683.01, F.S., while computing time frames for matters in civil and criminal procedure.<sup>3</sup>

Chapter 683, F.S., includes 34 special observances.<sup>4</sup> Unlike legal holidays, special observances do not directly affect the definition of "legal holidays" in contracts. Special observance days may apply throughout the state, or they may be limited to particular counties. For example, "Gasparilla Day"<sup>5</sup> is a legal holiday observed only in Hillsborough County, while "Bill of Rights Day,"<sup>6</sup> if issued by the Governor, is observed throughout the state. Examples of other special observances include:

- Law Enforcement Memorial Day.<sup>7</sup>
- Patriots' Day.<sup>8</sup>

<sup>2</sup> Section 110.117(1), F.S., establishes the following paid holidays: New Year's Day; Martin Luther King Birthday; Memorial Day; Independence Day; Labor Day; Veterans' Day; Thanksgiving Day; the Friday after Thanksgiving; and Christmas Day.

<sup>3</sup> See *R.J. Reynolds Tobacco Co. v. Kenyon*, 826 So.2d 370 (Fla. 2nd DCA 2002); see also *State v. Garber*, 726 So.2d 338 (Fla. 5th DCA 1999).

<sup>4</sup> Sections 683.04 – 683.333, F.S.

<sup>5</sup> Section 683.08, F.S.

<sup>6</sup> Section 683.25, F.S.

<sup>7</sup> Section 683.115, F.S. (May 15)

<sup>8</sup> Section 683.14, F.S. (April 19)

- Medal of Honor Day.<sup>9</sup>
- Juneteenth Day.<sup>10</sup>

## Communism

Communism is a political and economic philosophy that aims to replace private property and a profit-based economy with public ownership and communal control of the major means of production and society's natural resources.<sup>11</sup> Karl Marx and his associate, Friedrich Engels, blamed capitalism for the unfavorable and often-hazardous conditions of workers during the Industrial Revolution. They presented this critique of capitalism in their widely circulated pamphlet, *Manifesto of the Communist Party*.<sup>12</sup>

One facet of the communist theory is that the proletariat<sup>13</sup> would capture political power, abolish private property ownership, and take the private property of the bourgeoisie.<sup>14</sup> Communism postulates that the taking and abolishment of private property by the proletariat would result in shared ownership of the means of production, ushering the world into a communal economic and societal utopia with equality for all.<sup>15</sup>

Before the full establishment of communism, however, the communist theory suggests that a transitional dictatorship of the proletariat may be necessary.<sup>16</sup> Communist movements throughout history have been unable to transition out of state control and dictatorship into the utopia of equality promised by communism and instead have universally devolved into tyranny and state-sanctioned murder of its own citizens.<sup>17</sup>

## Bolshevik Revolution

The Bolshevik Revolution, also known as the October Revolution, was the second of two revolutions in Russia in 1917.<sup>18</sup> The Bolshevik Revolution was a revolution led by Vladimir

<sup>9</sup> Section 683.147, F.S. (March 25)

<sup>10</sup> Section 683.21, F.S. (June 19)

<sup>11</sup> Encyclopedia Britannica, *Communism*, <https://www.britannica.com/topic/communism> (last visited Oct. 27, 2021).

<sup>12</sup> *Id.*

<sup>13</sup> According to Engels, the proletariat is that class in society which lives entirely from the sale of its labor and does not draw profit from any kind of capital; whose weal and woe, whose life and death, whose sole existence depends on the demand for labor. Engels, Friedrich, Engels, Friedrich, *Principles of Communism, No. 2 – What is the Proletariat?* (1847), available at <https://www.marxists.org/archive/marx/works/1847/11/prin-com.htm> (last visited Oct. 27, 2021).

<sup>14</sup> Engels defines the bourgeoisie as the class of capitalists who are already in almost exclusive possession of all the means of subsistence and of the instruments (machines, factories) and materials necessary for the production of the means of subsistence. Engels, Friedrich, *Principles of Communism, No. 4 – How did the Proletariat Originate?* (1847), available at <https://www.marxists.org/archive/marx/works/1847/11/prin-com.htm> (last visited Oct. 27, 2021).

<sup>15</sup> Engels, Friedrich, *Principles of Communism, No. 4 – How did the Proletariat Originate?* (1847), available at <https://www.marxists.org/archive/marx/works/1847/11/prin-com.htm> (last visited Oct. 27, 2021).

<sup>16</sup> Encyclopedia Britannica, *Dictatorship of the Proletariat*, <https://www.britannica.com/topic/dictatorship-of-the-proletariat> (last visited Oct. 27, 2021).

<sup>17</sup> Ilya Somin, *Lessons from a Century of Communism*, Wash. Post, Nov. 7, 2017, available at <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/11/07/lessons-from-a-century-of-communism/> (last visited Oct. 27, 2021).

<sup>18</sup> History, *The Russian Revolution*, available at <https://www.history.com/topics/russia/russian-revolution> (last visited Oct. 27, 2021). Despite occurring in November, the event is commonly known as the “October Revolution” because at the time Russia still used the Julian calendar.

Lenin in Russia against the ruling Russian Parliament. The coup began on November 7, 1917, when the Bolsheviks led the forces into Petrograd, then the capital of Russia.<sup>19</sup> The Bolsheviks occupied government buildings and other locations across Petrograd. The coup led to the Russian Civil War and eventually the creation of the Soviet Union.<sup>20</sup> The event inspired and ignited communist movements around the world.<sup>21</sup> However, instead of the expected dictatorship of the majority class of proletarians, the revolution resulted in a political party that claimed to represent proletarian interests.<sup>22</sup>

### **Victims of Communism**

In addition to violations of freedom of speech, freedom of religion, loss of property rights, and the criminalization of ordinary economic activity, communist regimes in the 20<sup>th</sup> century intentionally killed their own citizens.<sup>23</sup> One researcher compiled data from 1900 to 1987 related to state-sanctioned killings to provide a metric to consider when reflecting on the victims of communism.<sup>24</sup>

This researcher concluded that the Soviet Union is approximately responsible for the deaths of over 61 million people. “Stalin himself is responsible for almost 43 million of these. Most of the deaths, around 39 million, are due to lethal forced labor in gulag and transit thereto.”<sup>25</sup> The researcher found that Communist China (1923 – 1949) was responsible for about 3.5 million deaths, and the People’s Republic of China (PRC) (1949 – present) was responsible for an additional 35.2 million deaths.<sup>26</sup>

In Cambodia, Pol Pot and the Khmer Rouge likely killed about 2 million Cambodians from April 1975 through December 1978, out of a population of around 7 million – calculated annually, about 8 percent of the population died each year. During this time, the odds of an average Cambodian surviving Pol Pot’s rule was slightly over two to one.<sup>27</sup>

In sum, from 1900 to 1987, communist dictators and regimes were responsible for the death of approximately 110 million individuals.<sup>28</sup> In 1993, Congress made similar findings and authorized a national memorial to honor victims of communism.<sup>29</sup> In addition to death, Congress found that “the imperialist regimes of international communism have brutally suppressed the human rights, national independence, religious liberty, intellectual freedom, and cultured life of the peoples of

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<sup>19</sup> History, *The Russian Revolution*, available at <https://www.history.com/topics/russia/russian-revolution> (last visited Oct. 27, 2021).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Encyclopedia Britannica, *Dictatorship of the Proletariat*, <https://www.britannica.com/topic/dictatorship-of-the-proletariat> (last visited Oct. 27, 2021).

<sup>23</sup> Ilya Somin, *Lessons from a Century of Communism*, Wash. Post, Nov. 7, 2017, available at <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/11/07/lessons-from-a-century-of-communism/> (last visited Oct. 27, 2021).

<sup>24</sup> Rummel, R.J., *How Many Did Communist Regimes Murder?* (Nov. 1993) available at: <https://www.hawaii.edu/powerkills/COM.ART.HTM> (last visited Oct. 27, 2021).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at Table 1.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> Pub. L. No. 103-199, s. 905 (Dec. 17, 1993).



over 40 captive nations.”<sup>30</sup> The purpose of the memorial is to permanently honor the sacrifices of these victims “so that never again will nations and peoples allow so evil a tyranny to terrorize the world.”<sup>31</sup>

### ***Victims of Communism Day***

The first national day recognizing victims of communism was November 7, 2017. Currently, three states have officially recognized November 7 as “Victims of Communism Memorial Day,” and ten other states currently have legislation filed to follow suit.<sup>32</sup>

### **Required Instruction**

Between 1961<sup>33</sup> and 1991,<sup>34</sup> Florida required the teaching of a 30-hour course of study for all students enrolled in public high schools entitled “Americanism vs. Communism.” The instruction included the history, doctrines, objectives and techniques of communism with particular emphasis upon the dangers of communism, the ways to fight communism, the evils of communism, the fallacies of communism, and the false doctrines of communism.<sup>35</sup>

### ***Requirements for a Standard High School Diploma***

Beginning with students entering grade 9 in the 2013-2014 school year, receipt of a standard high school diploma requires successful completion of 24 credits, an International Baccalaureate curriculum, or an Advanced International Certificate of Education curriculum.<sup>36</sup> Of the 24 required credits, three credits must be in social studies, including at least one credit in United States History, one credit in World History, one-half credit in Economics, and one-half credit in United States Government.<sup>37</sup>

The course in United States Government must include a comparative discussion of political ideologies, such as communism and totalitarianism, that conflict with the principles of freedom and democracy essential to the founding principles of the United States.<sup>38</sup> Course standards include evaluating and defending positions on the founding ideals and principles of American government, explaining how nations are governed differently, and comparing indicators of democratization in other countries, among others.<sup>39</sup> Course standards for World History include comparing the philosophies of capitalism, socialism, and communism; identifying factors that led to the decline and fall of communism in the Soviet Union and Eastern Europe; and analyzing

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<sup>30</sup> Pub. L. No. 103-199, s. 905 (Dec. 17, 1993).

<sup>31</sup> *Id.*

<sup>32</sup> Victims of Communism Memorial Foundation, *Victims of Communism Memorial Day*, available at: <https://victimsofcommunism.org/programs/memory/voc-day/> (last visited Oct. 19, 2021). The states that officially recognize “Victims of Communism Memorial Day” are Alabama, Utah, and Virginia. The ten states with legislation filed to recognize a day for victims of communism are Arizona, Arkansas, Florida, Idaho, Illinois, Missouri, New Jersey, Pennsylvania, South Carolina, and Texas. *Id.*

<sup>33</sup> Chapter 61-77, L.O.F.

<sup>34</sup> Section 81, ch. 91-105, L.O.F.

<sup>35</sup> Chapter 61-77, L.O.F.

<sup>36</sup> Section 1003.4282(1)(a), F.S.

<sup>37</sup> Section 1003.4282(3)(d), F.S.

<sup>38</sup> Section 1003.4282(3)(d), F.S.

<sup>39</sup> See CPALMS, *United States Government Course Standards*, <https://www.cpalms.org/Public/PreviewCourse/Preview/633> (last visited Oct. 19, 2021).

the successes and failures of democratic reform efforts in Africa, Asia, the Caribbean, and Latin America.<sup>40</sup>

### III. Effect of Proposed Changes:

SB 268 requires the Governor to annually proclaim November 7 as “Victims of Communism Day” and calls for public schools to suitably observe such day as a day honoring the 100 million people who fell victim to communist regimes across the world. The bill also requires Victims of Communism Day to be suitably observed by public exercise at the State Capitol and elsewhere as the Governor may designate.

The bill specifies that if November 7 falls on a day that is not a school day, Victims of Communism Day must be observed in the schools on the preceding school day or on such school day as may be designated by local school authorities.

Beginning in the 2023-2024 school year, the bill requires high school students enrolled in the United States Government course required for a standard high school diploma to receive at least 45 minutes of instruction on Victims of Communism Day on topics such as Mao Zedong and the Cultural Revolution, Joseph Stalin and the Soviet System, Fidel Castro and the Cuban Revolution, Vladimir Lenin and the Russian Revolution, Pol Pot and the Khmer Rouge, and Nicolás Maduro and the Chavismo movement and how victims suffered under these regimes through poverty, starvation, migration, systemic lethal violence, and suppression of speech.

The bill takes effect upon becoming law.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

#### D. State Tax or Fee Increases:

None.

#### E. Other Constitutional Issues:

None.

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<sup>40</sup> See CPALMS, *World History Course Standards*, <https://www.cpalms.org/PreviewCourse/Preview/4473#> (last visited Oct. 19, 2021).

**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 creates section 683.334 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.

By Senator Diaz

36-00464-22

2022268\_\_

1 A bill to be entitled  
 2 An act relating to the proclamation of "Victims of  
 3 Communism Day"; creating s. 683.334, F.S.; requiring  
 4 the Governor to annually proclaim November 7 as  
 5 "Victims of Communism Day"; requiring the day to be  
 6 observed in public schools and by public exercise;  
 7 requiring a day other than November 7 to be observed  
 8 by public schools under a specified circumstance;  
 9 requiring certain high school students to receive  
 10 specified instruction on Victims of Communism Day;  
 11 providing an effective date.

12  
 13 WHEREAS, more than 100 years have passed since the  
 14 Bolshevik Revolution in Russia and the formation of the first  
 15 communist government under Vladimir Lenin, leading to decades of  
 16 oppression and violence under communist regimes throughout the  
 17 world, and

18 WHEREAS, based on the economic philosophy of Karl Marx,  
 19 communism has proven incompatible with the ideals of liberty,  
 20 prosperity, and dignity of human life and has given rise to such  
 21 infamous totalitarian dictators as Joseph Stalin, Vladimir  
 22 Lenin, Mao Zedong, and Pol Pot, and

23 WHEREAS, communist regimes worldwide have killed more than  
 24 100 million people and subjected countless others to  
 25 exploitation and unspeakable atrocities, with victims  
 26 representing many different ethnicities, creeds, and  
 27 backgrounds, and

28 WHEREAS, through false promises of equality and liberation  
 29 or through coercion, brutality, and fear, communist regimes have

Page 1 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

36-00464-22

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30 systematically robbed their own citizens of the rights of  
 31 freedom of worship, freedom of speech, and freedom of  
 32 association, and

33 WHEREAS, many victims of communism were persecuted as  
 34 political prisoners for speaking out against these regimes, and  
 35 others were killed in genocidal state-sponsored purges of  
 36 undesirable groups, and

37 WHEREAS, in addition to violating basic human rights,  
 38 communist regimes have suppressed intellectual freedom, cultural  
 39 life, and self-determination movements in more than 40 nations,  
 40 NOW, THEREFORE,

41  
 42 Be It Enacted by the Legislature of the State of Florida:

43  
 44 Section 1. Section 683.334, Florida Statutes, is created to  
 45 read:

46 683.334 Victims of Communism Day.—

47 (1) The Governor shall annually proclaim November 7 as  
 48 "Victims of Communism Day," which must be suitably observed in  
 49 the public schools of this state as a day honoring the 100  
 50 million people who fell victim to communist regimes across the  
 51 world and which must be suitably observed by public exercise at  
 52 the State Capitol and elsewhere as the Governor may designate.

53 (2) If November 7 falls on a day that is not a school day,  
 54 Victims of Communism Day must be observed in the public schools  
 55 in this state on the preceding school day or on such school day  
 56 as may be designated by local school authorities.

57 (3) Beginning in the 2023-2024 school year, high school  
 58 students enrolled in the United States Government class required

Page 2 of 3

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36-00464-22

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59 by s. 1003.4282 must receive at least 45 minutes of instruction  
60 on Victims of Communism Day on topics such as Mao Zedong and the  
61 Cultural Revolution, Joseph Stalin and the Soviet System, Fidel  
62 Castro and the Cuban Revolution, Vladimir Lenin and the Russian  
63 Revolution, Pol Pot and the Khmer Rouge, and Nicolás Maduro and  
64 the Chavismo movement and how victims suffered under these  
65 regimes through poverty, starvation, migration, systemic lethal  
66 violence, and suppression of speech.

67 Section 2. This act shall take effect upon becoming a law.

**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.)

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Prepared By: The Professional Staff of the Committee on Education

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BILL: SB 270

INTRODUCER: Senator Hutson

SUBJECT: Funds for Student Transportation

DATE: November 1, 2021

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jahnke	Bouck	ED	<b>Pre-meeting</b>
2.			AED	
3.			AP	

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**I. Summary:**

SB 270 modifies the district school board’s criterion for identifying students who are funded for transportation services from students living two miles or more from school to at least one mile from school. The change may result in more students transported by a school district.

The bill does not have an impact on state revenues or expenditures. See Section V.

The bill takes effect July 1, 2022.

**II. Present Situation:**

Florida law specifies the responsibilities of the district school superintendents and district school boards regarding the transportation of students to and from school.

**District School Superintendent Duties Regarding Transportation**

The district school superintendent must:<sup>1</sup>

- Ascertain which students should be transported to school or to school activities;
- Determine the most effective arrangement of transportation routes to accommodate these students and recommend such routing to the district school board;
- Recommend plans and procedures for providing facilities for the economical and safe transportation of students; and
- Recommend such rules as may be necessary and see that all rules relating to the transportation of students approved by the district school board, as well as rules of the State Board of Education (SBE), are properly carried into effect, as prescribed in law.

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<sup>1</sup> Section 1006.21(1), F.S.

## District School Board Duties Regarding Transportation

Each district school board must, after considering recommendations from the district school superintendent, provide transportation for each student in prekindergarten disability programs and in kindergarten through grade 12 in a public school when, and only when, transportation is necessary to provide adequate educational facilities and opportunities which otherwise would not be available and to transport students whose homes are more than a reasonable walking distance, as defined by SBE rule, from the nearest appropriate school.<sup>2</sup>

The SBE rule defines “a reasonable walking distance,” for any student not already identified in law as eligible to be transported, as any distance not more than two miles between the home and school or one and one-half miles between the home and the assigned bus stop.<sup>3</sup> Currently, each district must identify those students who are transported by reason of living two miles or more from school.<sup>4</sup>

## Funds for Student Transportation

School districts receive an annual allocation for transportation to public school programs, including charter schools, of students in kindergarten through grade 12.<sup>5</sup> In 2021-22, the FEFP includes \$458,641,984 in funding through the Student Transportation Allocation, which provides an average of \$414 in funding per base student rider and \$1,885 in funding for a rider with disabilities.<sup>6</sup>

School districts typically spend more than double what they receive in transportation specific funding through the FEFP.<sup>7</sup> In the 2019-2020 school year, school districts reported spending \$999,372,387 to transport 1,046,269 students, which included 954,888 students eligible for funding and 91,381 students who were not eligible for transportation funding, known as “courtesy riders.”<sup>8</sup> This averaged \$955.18 per rider.<sup>9</sup>

Each district must identify students to be included in the allocation who are transported by reason of:<sup>10</sup>

- Living two miles or more from school.
- Being a student with disabilities or enrolled in a teenage parent program, regardless of distance from school.
- Being in a state prekindergarten program, regardless of distance from school.
- Being a career and technical education or dual enrollment student, or a student with disabilities transported from one school center to another to participate in an instructional program or service.

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<sup>2</sup> Section 1006.21(3)(a), F.S.

<sup>3</sup> Rule 6A-3.001(3), F.A.C.

<sup>4</sup> Section 1011.68(1)(a), F.S.

<sup>5</sup> Section 1011.68, F.S. Students in migrant and exceptional education programs below kindergarten are also eligible to be included in the transportation allocation. *Id.*

<sup>6</sup> Florida Department of Education, *2022 Agency Legislative Bill Analysis of SB 270* (Oct. 26, 2021), at 3.

<sup>7</sup> Florida Department of Education, *2022 Agency Legislative Bill Analysis of SB 270* (Oct. 26, 2021), at 2.

<sup>8</sup> *Id.*

<sup>9</sup> Florida Department of Education, *2022 Agency Legislative Bill Analysis of SB 270* (Oct. 26, 2021), at 4.

<sup>10</sup> Section 1003.54, F.S.

- Being subjected to hazardous walking conditions en route to or from school for elementary students whose grade level does not exceed grade six.<sup>11</sup>
- Being a pregnant student or student parent, and the child of a student parent regardless of distance from school.

### **III. Effect of Proposed Changes:**

SB 270 modifies the district school board's criteria for identifying public school students in kindergarten through grade 12 with regards to funding for student transportation services. The bill changes the criterion school districts use to identify transported students from those students living two miles or more from school to at least one mile from school.

Specifically, the bill requires school districts to transport any student who lives one mile or more from the school. The modification in the bill to the transportation funding provision would require a corresponding change to the State Board of Education rule definition of "reasonable walking distance."

The bill takes effect July 1, 2022.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

#### **D. State Tax or Fee Increases:**

None.

#### **E. Other Constitutional Issues:**

None.

### **V. Fiscal Impact Statement:**

#### **A. Tax/Fee Issues:**

None.

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<sup>11</sup> Hazardous walking conditions are defined in law for walkways parallel to a road, perpendicular to a road, or crossings over a road. Section 1006.23, F.S.



**B. Private Sector Impact:**

Under the bill, any student who lives one mile or more from the school would now be eligible for transportation services, and so the families may no longer incur the cost of transportation.<sup>12</sup>

**C. Government Sector Impact:**

The bill does not have an impact on state revenues or expenditures.

However, school districts may incur additional costs to transport the additional students. This potential cost includes expenses related to the adjustment in bus routes and school start times, and may also necessitate the purchase of additional buses.<sup>13</sup>

Under the bill, school districts would be required to transport any student who lives one mile or more from the school. The DOE has estimated that the bill would result in approximately 193,110 additional riders. Transporting these additional students could increase the cost to school districts by approximately \$184.5 million (193,110 students x \$955.18 per rider) each year.<sup>14</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 1011.68 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.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>12</sup> Florida Department of Education, *2022 Agency Legislative Bill Analysis of SB 270* (Oct. 26, 2021), at 5.

<sup>13</sup> *Id.* at 4.

<sup>14</sup> *Id.*

By Senator Hutson

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A bill to be entitled

An act relating to funds for student transportation;  
amending s. 1011.68, F.S.; modifying requirements for  
determining student membership in a school district in  
order to determine the annual allocation for funding  
for student transportation; providing an effective  
date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (1) of section  
1011.68, Florida Statutes, is amended to read:

1011.68 Funds for student transportation.—The annual  
allocation to each district for transportation to public school  
programs, including charter schools as provided in s.  
1002.33(17)(b), of students in membership in kindergarten  
through grade 12 and in migrant and exceptional student programs  
below kindergarten shall be determined as follows:

(1) Subject to the rules of the State Board of Education,  
each district shall determine the membership of students who are  
transported:

(a) By reason of living 1 mile ~~2 miles~~ or more from school.

Section 2. This act shall take effect July 1, 2022.

**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.)

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Prepared By: The Professional Staff of the Committee on Education

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BILL: SB 318

INTRODUCER: Senator Rouson

SUBJECT: Florida Seal of Fine Arts Program

DATE: November 1, 2021

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sagues	Bouck	ED	<b>Pre-meeting</b>
2.			AED	
3.			AP	

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**I. Summary:**

SB 318 establishes the Florida Seal of Fine Arts Program to recognize high school graduates who have attained a high level of skill in fine arts coursework. The bill specifies that beginning in the 2022-2023 school year, the Florida Seal of Fine Arts must be awarded to a high school graduate who completes at least three year-long courses or earns three sequential course credits in dance, music, theater, or the visual arts with a grade of “A” or higher in each course and meets a minimum of two of the following:

- Successfully completes a fine arts International Baccalaureate, Advanced Placement, dual enrollment, or honors course in dance, music, theater, or the visual arts with a grade of “B” or higher.
- Participates in a district or statewide organization juried event as a selected student participant for two or more years.
- Records at least 25 volunteer hours of arts-related community service and presents a comprehensive presentation on his or her experience.
- Meets the requirements of a portfolio-based program identifying the student as an exemplary practitioner of the fine arts.
- Receives district, state, or national recognition for the creation and submission on an original work of art or performance.

The bill also authorizes the State Board of Education to establish additional criteria for the award of the Seal of Fine Arts and adopt rules, and specifies requirements for the Commissioner of Education and school districts to implement the program.

The fiscal impact of the bill is indeterminate. See Section V.

The bill takes effect on July 1, 2022.

## II. Present Situation:

Art education refers to learning, instruction and programming based upon the visual and tangible arts. Art education includes performing arts like dance, music, theater, and visual arts like drawing, painting, sculpture, and design works. Design works include design in jewelry, pottery, weaving and fabrics. Art education can also include commercial graphics, photography, video, film, and design. Art education instruction is provided through a standards-based, sequential approach by a qualified instructor as part of the core curriculum.<sup>1</sup>

### The Arts Industry

Nationally, the nonprofit arts industry generated \$166.3 billion of economic activity during fiscal year 2015:

- \$63.8 billion by the nation's nonprofit arts and culture organizations; and
- \$102.5 billion in event-related expenditures by their audiences.<sup>2</sup>

This economic activity supported 4.6 million full-time jobs and generated \$27.5 billion in revenue to local, state, and federal governments.<sup>3</sup>

Florida's arts and cultural industry generated \$4.68 billion total economic activity during fiscal year 2015. This includes \$2.29 billion by nonprofit arts and culture organizations and an additional \$2.39 billion in event-related spending by their audiences. This economic activity supports 132,366 full-time jobs, generates \$3.35 billion in household income to local residents, and delivers \$492.3 million in local and state government revenue.<sup>4</sup>

### The Arts and Florida Students

Florida brings the arts to students in a variety of ways; from promoting nationally recognized Arts Education Month<sup>5</sup> to enacting arts-related legislation such as:

- Requiring each school board to provide courses and instruction in the arts for all students, and requiring students to take one credit in fine or performing arts, speech and debate, or practical arts to meet graduation requirements.<sup>6</sup>
- Establishing the annual art in the capitol competition as a statewide visual arts competition for all public, private, and home education students in grades six through eight.<sup>7</sup>
- Requiring the Commissioner of Education to annually prepare and post a fine arts report that includes:
  - Students access to and participation in fine arts courses, including visual arts, music, dance, and theatre courses;

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<sup>1</sup> US Legal, *Art Education Law and Legal Definition*, <https://definitions.uslegal.com/a/art-education/> (last visited Oct. 25, 2022).

<sup>2</sup> Florida Department of State, *Arts and Economic Prosperity 5* (2017), available at <https://ia800603.us.archive.org/13/items/ArtsEconomicProsperityFL/ArtsEconomicProsperityFL.pdf>, at 1.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 3.

<sup>5</sup> Florida Department of Education (FDOE), *Memorandum, Arts Education Month* (2021), available at <https://info.fldoe.org/docushare/dsweb/Get/Document-9079/dps-2021-13.pdf>

<sup>6</sup> See ss. 1003.42(1) and 1003.4282(3)(e), F.S.

<sup>7</sup> Section 1003.49965(1) and (2), F.S.

- The number and certification status of educators providing instruction in fine arts courses;
- Educational facilities designed and classroom space equipped for fine arts instruction; and
- The manner in which schools are providing the core curricular content for fine arts established in the Sunshine State Standards.<sup>8</sup>

During the 2020-2021 school year, as included in the fine arts report, all school districts offered courses and 54.3 percent of students enrolled in arts courses, with:

- Visual arts comprising 42.3 percent of overall arts enrollment;
- Music comprising 41.6 percent of overall arts enrollment;
- Theatre comprising 2.2 percent of overall arts enrollment; and
- Dance comprising 1.9 percent of overall arts enrollment.<sup>9</sup>

### **Diploma Designations and Seals**

Students meeting specific requirements for graduation and demonstrating exemplary performance may be awarded recognition upon graduation. One way this is accomplished is through special diploma designations and seal programs established at the state or local level. For example, Arizona<sup>10</sup> offers diploma seals in the areas of biliteracy, civic literacy, personal finance, and arts proficiency.<sup>11</sup> Ohio<sup>12</sup> and Georgia<sup>13</sup> also offer diploma seal recognitions for students excelling in the arts.

Florida currently offers three diploma recognitions: the Scholar Diploma Designation; the Merit Diploma Designation;<sup>14</sup> and the Seal of Biliteracy.<sup>15</sup>

#### ***Florida Scholar Diploma Designation***

In addition to meeting the 24-credit standard high school diploma requirements, a student must meet all of the following requirements to earn the Scholar Diploma Designation:

- Earn one credit in Algebra 2 or an equally rigorous course.
- Pass the Geometry End of Course Exam (EOC).
- Earn one credit in Statistics or an equally rigorous mathematics course.
- Pass the Biology 1 EOC.

<sup>8</sup> Section 1003.4995, F.S.

<sup>9</sup> FDOE, *Florida Fine Arts Report, Florida PK-20 Education Information Portal (EDStats)*, <http://www.fldoe.org/academics/standards/subject-areas/fine-arts/> (last visited Oct. 25, 2021).

<sup>10</sup> Arizona Department of Education, *Diploma Seals*, <https://www.azed.gov/standards-practices/welcome-diploma-seals> (last visited Oct. 25, 2021).

<sup>11</sup> Arizona Department of Education, *Arizona State Seal of Arts Proficiency* <https://www.azed.gov/artseducation/arizona-state-seal-of-arts-proficiency/> (last visited Oct. 25, 2021).

<sup>12</sup> Ohio Department of Education, *Arts Honors Diploma* <http://education.ohio.gov/Topics/Ohio-s-Graduation-Requirements/Honors-Diplomas/Arts-Honors-Diploma> (last visited Oct. 25, 2021).

<sup>13</sup> Georgia Department of Education, *Fine Arts* <https://www.gadoe.org/Curriculum-Instruction-and-Assessment/Curriculum-and-Instruction/Pages/Fine-Arts.aspx> (last visited Oct. 25, 2021).

<sup>14</sup> Section 1003.4285(a) and (b), F.S.

<sup>15</sup> Section 1003.432, F.S. Currently, 44 states and Washington D.C. have approved a biliteracy program. Seal of Biliteracy, *Frequently Asked Questions*, <https://sealofbiliteracy.org/faq/> (last visited Oct. 25, 2021).

- Earn one credit in Chemistry or Physics.
- Earn one credit in a course equally rigorous to Chemistry or Physics.
- Pass the U.S. History EOC.
- Earn two credits in the same (foreign) World Language.
- Earn at least one credit in an Advanced Placement, International Baccalaureate, Advanced International Certificate of Education, or a dual enrollment course.<sup>16</sup>

### ***Florida Merit Diploma Designation***

In addition to meeting the 24-credit standard high school diploma requirements, a student must attain one or more qualified industry certifications to earn the Merit Diploma Designation.<sup>17</sup>

During the 2019-2020 school year 20,002 students earned the Scholar Diploma Designation, 20,307 earned the Merit Diploma Designation and 13,710 earned both the Scholar and Merit Diploma Designation.<sup>18</sup>

### ***Florida Seal of Biliteracy Program***

The Florida Legislature authorized the Florida Seal of Biliteracy Program (biliteracy program) in 2016. The biliteracy program recognizes high school graduates who attain a high level of competency in listening, speaking, reading, and writing in one or more foreign languages in addition to English, and offers two seals: gold and silver.<sup>19</sup>

To earn the gold or silver seal of biliteracy, a Florida high school student who has earned a standard high school diploma must:<sup>20</sup>

- Earn four foreign language course credits in the same foreign language with a cumulative 3.0 GPA or higher;
- Achieve a qualifying scores on a foreign language assessment with the gold seal requiring higher qualifying scores; or
- Satisfy alternative requirements as determined by the State Board of Education.<sup>21</sup>

During the 2019-2020 school year 7,806 students earned the Gold Seal of Biliteracy, 1,720 students earned the Silver Seal of Biliteracy, and 2,824 students earned both the Gold Seal and Silver Seal of Biliteracy.<sup>22</sup>

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<sup>16</sup> FDOE, *Standard Diploma Requirements* (2020), available at

<https://www.fldoe.org/core/fileparse.php/7764/urlt/StandardDiplomaRequirements.pdf>.

<sup>17</sup> *Id.*

<sup>18</sup> Email from Jessica Fowler, Deputy Legislative Affairs Director, FDOE (March 25, 2021) (on file with Senate Committee on Education).

<sup>19</sup> FDOE, *World Language (Foreign Languages)* <http://www.fldoe.org/academics/eng-language-learners/world-languages-foreign-languages.stml> (last visited Oct. 25, 2021).

<sup>20</sup> Section 1003.432(4), F.S.

<sup>21</sup> Rule 6A-1.09951, F.A.C.

<sup>22</sup> Email from Jessica Fowler, Deputy Legislative Affairs Director, FDOE (March 25, 2021) (on file with Senate Committee on Education).

### **III. Effect of Proposed Changes:**

The bill creates s. 1003.4321, F.S., to establish the Florida Seal of Fine Arts Program (Seal of Fine Arts) to recognize high school graduates who have attained a high level of skill in fine arts coursework. The purpose of the Seal of Fine Arts is to encourage students to develop expertise in the performing or visual arts.

The bill specifies that beginning in the 2022-2023 school year, the Seal of Fine Arts must be awarded to a high school graduate who completes three year-long courses or earns three sequential course credits in dance, music, theater, or the visual arts with a grade of “A” or higher in each course and meets a minimum of two of the following:

- Successfully completes a fine arts International Baccalaureate, Advanced Placement, dual enrollment, or honors course in dance, music, theater, or the visual arts with a grade of “B” or higher.
- Participates in a district or statewide organization juried event as a selected student participant for two or more years.
- Records at least 25 volunteer hours of arts-related community service and presents a comprehensive presentation on his or her experience.
- Meets the requirements of a portfolio-based program identifying the student as an exemplary practitioner of the fine arts.
- Receives district, state, or national recognition for the creation and submission on an original work of art or performance.

The bill also includes a number of provisions required to implement the program, including:

- Requiring the Commissioner of Education (commissioner) to prepare and provide to each school district the Seal of Fine Arts and provide appropriate benchmarks in rubric form necessary for a school district to implement the program.
- Requiring each school district to maintain appropriate records, provide the commissioner with required information, affix the appropriate insignia to the student’s diploma and indicate on the student’s transcript that the student has earned the Seal of Fine Arts.
- Authorizing the State Board of Education to establish additional criteria for the award of the Seal of Fine Arts and adopt rules to implement the program.

The bill specifies that neither the school district nor the Department of Education may charge a fee for the Seal of Fine Arts.

The establishment of the Seal of Fine Arts may encourage more high school students to build expertise in the arts, earn recognition, and follow art-related career paths.

The bill takes effect on July 1, 2022.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The Department of Education may incur costs associated with creating the seal for the Seal of Fine Arts Program. Because the number of students who will qualify for a Seal of Fine Arts cannot be determined, the fiscal impact of the bill is indeterminate, but likely insignificant.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 1003.4321 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.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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By Senator Rouson

19-00098-22

2022318\_\_

A bill to be entitled

An act relating to the Florida Seal of Fine Arts Program; creating s. 1003.4321, F.S.; establishing the Florida Seal of Fine Arts Program within the Department of Education; providing the purpose of the program; specifying eligibility requirements for the awarding of a Seal of Fine Arts; defining the term "work of art"; authorizing the State Board of Education to adopt additional criteria for the award of a seal; requiring the Commissioner of Education and school districts to perform specified duties to administer the program; prohibiting a school district or the Department of Education from charging a fee for the seal; requiring the state board to adopt rules; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 1003.4321, Florida Statutes, is created to read:

1003.4321 Florida Seal of Fine Arts Program for high school graduates.-

(1) The Florida Seal of Fine Arts Program is established within the Department of Education to recognize high school graduates who have met exemplary benchmarks in fine arts coursework.

(2) The purpose of the Florida Seal of Fine Arts Program is to encourage students to develop an exemplary level of proficiency in the performing or visual arts.

Page 1 of 3

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(3) (a) Beginning with the 2022-2023 school year, the Seal of Fine Arts shall be awarded to a high school student who has earned a standard high school diploma; successfully completed at least three year-long courses in dance, music, theatre, or the visual arts with a grade of "A" or higher in each course or earned three sequential course credits in such courses with a grade of "A" or higher in each course; and meets a minimum of two of the following requirements:

1. Successfully completes a fine arts International Baccalaureate, advanced placement, dual enrollment, or honors course in the subjects listed in this paragraph with a grade of "B" or higher.

2. Participates in a district or statewide organization's juried event as a selected student participant for two or more years.

3. Records at least 25 volunteer hours of arts-related community service in his or her community and presents a comprehensive presentation on his or her experiences.

4. Meets the requirements of a portfolio-based program identifying the student as an exemplary practitioner of the fine arts.

5. Receives district, state, or national recognition for the creation and submission of an original work of art. For purposes of this paragraph, the term "work of art" means a musical or theatrical composition, visual art work, or choreographed routine or performance.

(b) The State Board of Education may establish additional criteria for the award of the Seal of Fine Arts.

(4) The Commissioner of Education shall:

Page 2 of 3

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59 (a) Prepare for and provide to each school district an  
60 appropriate seal to be affixed to a student's diploma indicating  
61 that the student has been awarded the Seal of Fine Arts.

62 (b) Provide appropriate benchmarks in rubric form which are  
63 necessary for a school district to successfully implement the  
64 program.

65 (5) Each school district shall:

66 (a) Maintain appropriate records to identify a student who  
67 has met the requirements to receive a Seal of Fine Arts.

68 (b) Provide the Commissioner of Education with the number  
69 of students who have met the requirements to receive a Seal of  
70 Fine Arts.

71 (c) Affix the appropriate insignia to the student's diploma  
72 and indicate on the student's transcript that he or she has  
73 earned a Seal of Fine Arts.

74 (6) A school district or the department may not charge a  
75 fee for a Seal of Fine Arts.

76 (7) The State Board of Education shall adopt rules to  
77 administer this section, including, but not limited to:

78 (a) A process created in rubric form to confirm a student's  
79 successful completion of the requirements in subsection (3).

80 (b) Any additional requirements a student must meet to be  
81 awarded the Seal of Fine Arts.

82 Section 2. This act shall take effect July 1, 2022.

**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.)

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Prepared By: The Professional Staff of the Committee on Education

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BILL: SPB 7004

INTRODUCER: For consideration by the Education Committee

SUBJECT: OGSR/Technology Systems/State University or a Florida College System Institution

DATE: November 1, 2021

REVISED: \_\_\_\_\_

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ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Jahnke	Bouck		<b>Pre-meeting</b>

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**I. Summary:**

SPB 7004 saves from repeal the public records and public meetings exemption for certain information held by a state university or Florida College System institution related to information technology (IT) security or potential breaches of security, as well as IT security program risk assessments, evaluations, and audits held by the institution.

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

This bill is effective 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.<sup>1</sup> 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.<sup>2</sup>

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, 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 rules of each house of the Legislature.<sup>3</sup> Florida Rule of Judicial Administration 2.420 governs public access to judicial

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<sup>1</sup> Art. I, s. 24(a), Fla. Const.

<sup>2</sup> *Id.*

<sup>3</sup> See Rule 1.48, *Rules and Manual of the Florida Senate*, (2020-2022) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 1, (2020-2022).

branch records.<sup>4</sup> Lastly, ch. 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.<sup>5</sup>

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.<sup>6</sup> 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.”<sup>7</sup>

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.<sup>8</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>9</sup>

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.<sup>10</sup> 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.<sup>11</sup>

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

<sup>5</sup> 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.”

<sup>6</sup> 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.”

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

<sup>8</sup> Section 119.07(1)(a), F.S.

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

<sup>10</sup> Art. I, s. 24(c), Fla. Const.

<sup>11</sup> *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.<sup>12</sup> Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.<sup>13</sup>

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.<sup>14</sup> Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.<sup>15</sup>

### **Open Government Sunset Review Act**

The Open Government Sunset Review Act<sup>16</sup> (the Act) prescribes a legislative review process for newly created or substantially amended<sup>17</sup> public records or open meetings exemptions, with specified exceptions.<sup>18</sup> 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.<sup>19</sup>

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.<sup>20</sup> 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;<sup>21</sup>
- 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;<sup>22</sup> or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.<sup>23</sup>

<sup>12</sup> 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).

<sup>13</sup> 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).

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

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

<sup>16</sup> Section 119.15, F.S.

<sup>17</sup> 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.

<sup>18</sup> 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.

<sup>19</sup> Section 119.15(3), F.S.

<sup>20</sup> Section 119.15(6)(b), F.S.

<sup>21</sup> Section 119.15(6)(b)1., F.S.

<sup>22</sup> Section 119.15(6)(b)2., F.S.

<sup>23</sup> Section 119.15(6)(b)3., F.S.

The Act also requires specified questions to be considered during the review process.<sup>24</sup> 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.<sup>25</sup> 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.<sup>26</sup>

### **State Universities and Florida College System Institutions**

In 2017, the Legislature approved an exemption from public records and public meetings requirements for the security of data and information technology (IT) in state postsecondary education institutions.<sup>27</sup>

The law makes confidential and exempt from public disclosure data or information from technology systems owned by, under contract, or maintained by a state university or Florida College System (FCS) institution. Such data and information includes the following types of records and portions of documents:

- Records held by the university or college which identify detection, investigation, or response practices for suspected or confirmed IT 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 IT resources; and
- Those portions of risk assessments, evaluations, and other reports of the institution's IT security program for its data, information, and IT resources which are held by the university or college. These records would be confidential and exempt if disclosure of such records would lead to the unauthorized access to or unauthorized modification, disclosure, or destruction of the data, information, or IT resources.<sup>28</sup>

The law closes portions of public meetings in which confidential and exempt information is discussed. Closed portions of meetings must be recorded and transcribed. However, the law specifies that the recording and transcript of the meeting must remain confidential and exempt from disclosure unless a court with competent jurisdiction determines the meeting was not

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<sup>24</sup> 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?

<sup>25</sup> See generally s. 119.15, F.S.

<sup>26</sup> Section 119.15(7), F.S.

<sup>27</sup> Section 1004.055, F.S.

<sup>28</sup> Section 1004.055(1), F.S.

restricted to confidential and exempt data and information. If this occurs, then the court may disclose the recordings and transcripts that do not contain confidential and exempt information.<sup>29</sup>

The records and portions of public meeting recordings and transcripts made confidential and exempt must be available to the Auditor General; the Cybercrime Office of the Department of Law Enforcement; for a state university, the Board of Governors; and for a Florida College System institution, the State Board of Education. Such records and portions of meetings, recordings, and transcripts may be made available to a state or federal agency for security purposes or in furtherance of the agency's official duties.<sup>30</sup>

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.<sup>31</sup>

Chapter 2017-109, L.O.F., which established the exemption from public records disclosure requirements for certain data or information from technology systems owned by, under contract, or maintained by a state university or FCS institution, included a public necessity statement that provided a rationale for the exemption. This rationale recognized that:

- Records held by a state university or FCS institution that identify IT detection, investigation, or response practice for suspected or confirmed IT security incidents, including breaches, may be used in the investigation of the incident or breach. The release of such information may interfere with and jeopardize the ongoing investigation.
- An investigation into an IT security incident, including a breach, may result in the gathering of sensitive personal information exempt from disclosure under state and federal law. Release of such information may be used to commit identity theft or other crimes and subject potential victims of the security incident to further harm.
- Disclosure of records such as an audit or forensic analysis of a state university or FCS institution may reveal weaknesses in the institution's IT security system.
- Records held by a state university or FCS institution may contain proprietary information, the release of which would provide an unfair advantage for business competitors in the marketplace.
- Disclosure of records may compromise and interfere with the administration of ongoing education programs.<sup>32</sup>

### **Open Government Sunset Review Findings**

In August 2021, the Senate Education Committee and the House Government Operations Subcommittee jointly sent an Open Government Sunset Review Questionnaire to each state university and FCS institution regarding the need to maintain the public records and public meetings exemption for certain data and information held by a state university or FCS institution related to IT security or potential breaches of security, as well as, IT security program risk assessments, evaluations, and audits held by the institution.

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<sup>29</sup> Section 1004.055(2), F.S.

<sup>30</sup> Section 1004.055(3), F.S.

<sup>31</sup> Section 1004.055(5), F.S.

<sup>32</sup> Ch. 2017-109, L.O.F.



All 12 state universities and 16 of the 28 FCS institutions responded to the questionnaire. All institutions requested that the exemption be retained, with an overwhelming majority requesting to reenact the exemption as is.

### III. Effect of Proposed Changes:

The bill saves from repeal the public records and public meetings exemption in s. 1004.055, F.S., for certain information held by a state university or FCS institution related to IT security or potential breaches of security, as well as IT security program risk assessments, evaluations, and audits held by the institution.

This bill is effective October 1, 2022.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### 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 creating or expanded public records exemption. If an exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are not required. The bill does not create or expand a public records exemption, therefore it does not require a two-thirds vote for final passage.

##### **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. The bill continues the current public records exemptions under sunset review; it does not expand this exemption or create a new exemption. Therefore, the bill does not require a public necessity statement.

##### **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 exemptions is to protect the records of state university and FCS institutions pertaining to IT security systems if the disclosure of such records would facilitate the unauthorized access to, or unauthorized modification, disclosure, or destruction of data, information, or IT resources. 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.

**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 1004.055 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.

FOR CONSIDERATION By the Committee on Education

581-00861A-22

20227004pb

1 A bill to be entitled  
 2 An act relating to a review under the Open Government  
 3 Sunset Review Act; amending s. 1004.055, F.S., which  
 4 provides exemptions from public records and public  
 5 meetings requirements for specified data or  
 6 information from technology systems owned, under  
 7 contract, or maintained by a state university or a  
 8 Florida College System institution and portions of  
 9 meetings which would reveal such data and information;  
 10 removing the scheduled repeal of the exemptions;  
 11 providing an effective date.

12

13 Be It Enacted by the Legislature of the State of Florida:

14

15 Section 1. Section 1004.055, Florida Statutes, is amended  
 16 to read:

17 1004.055 Security of data and information technology in  
 18 state postsecondary education institutions.—

19 (1) All of the following data or information from  
 20 technology systems owned, under contract, or maintained by a  
 21 state university or a Florida College System institution is  
 22 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
 23 of the State Constitution:

24 (a) Records held by the university or institution which  
 25 identify detection, investigation, or response practices for  
 26 suspected or confirmed information technology security  
 27 incidents, including suspected or confirmed breaches, if the  
 28 disclosure of such records would facilitate unauthorized access  
 29 to or unauthorized modification, disclosure, or destruction of:

Page 1 of 3

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

581-00861A-22

20227004pb

30 1. Data or information, whether physical or virtual; or  
 31 2. Information technology resources, which include:  
 32 a. Information relating to the security of the university's  
 33 or institution's technologies, processes, and practices designed  
 34 to protect networks, computers, data processing software, and  
 35 data from attack, damage, or unauthorized access; or  
 36 b. Security information, whether physical or virtual, which  
 37 relates to the university's or institution's existing or  
 38 proposed information technology systems.

39 (b) Those portions of risk assessments, evaluations,  
 40 audits, and other reports of the university's or institution's  
 41 information technology security program for its data,  
 42 information, and information technology resources which are held  
 43 by the university or institution, if the disclosure of such  
 44 records would facilitate unauthorized access to or the  
 45 unauthorized modification, disclosure, or destruction of:

46 1. Data or information, whether physical or virtual; or  
 47 2. Information technology resources, which include:  
 48 a. Information relating to the security of the university's  
 49 or institution's technologies, processes, and practices designed  
 50 to protect networks, computers, data processing software, and  
 51 data from attack, damage, or unauthorized access; or  
 52 b. Security information, whether physical or virtual, which  
 53 relates to the university's or institution's existing or  
 54 proposed information technology systems.

55 (2) Those portions of a public meeting as specified in s.  
 56 286.011 which would reveal data and information described in  
 57 subsection (1) are exempt from s. 286.011 and s. 24(b), Art. I  
 58 of the State Constitution. No exempt portion of an exempt

Page 2 of 3

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

581-00861A-22

20227004pb

59 meeting may be off the record. All exempt portions of such a  
60 meeting must be recorded and transcribed. The recording and  
61 transcript of the meeting must remain confidential and exempt  
62 from disclosure under s. 119.07(1) and s. 24(a), Art. 1 of the  
63 State Constitution unless a court of competent jurisdiction,  
64 following an in camera review, determines that the meeting was  
65 not restricted to the discussion of data and information made  
66 confidential and exempt by this section. In the event of such a  
67 judicial determination, only that portion of the transcript  
68 which reveals nonexempt data and information may be disclosed to  
69 a third party.

70 (3) The records and portions of public meeting recordings  
71 and transcripts described in subsection (1) must be available to  
72 the Auditor General; the Cybercrime Office of the Department of  
73 Law Enforcement; for a state university, the Board of Governors;  
74 and for a Florida College System institution, the State Board of  
75 Education. Such records and portions of meetings, recordings,  
76 and transcripts may be made available to a state or federal  
77 agency for security purposes or in furtherance of the agency's  
78 official duties.

79 (4) The exemptions listed in this section apply to such  
80 records or portions of public meetings, recordings, and  
81 transcripts held by the university or institution before, on, or  
82 after June 14, 2017.

83 ~~(5) This section is subject to the Open Government Sunset~~  
84 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~  
85 ~~on October 2, 2022, unless reviewed and saved from repeal~~  
86 ~~through reenactment by the Legislature.~~

87 Section 2. This act shall take effect October 1, 2022.

**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.)

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Prepared By: The Professional Staff of the Committee on Education

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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>	_____	<b>Pre-meeting</b>
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.<sup>1</sup> 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.<sup>2</sup>

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

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<sup>1</sup> Art. I, s. 24(a), Fla. Const.

<sup>2</sup> *Id.*

rules of each house of the Legislature.<sup>3</sup> Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.<sup>4</sup> 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.<sup>5</sup>

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.<sup>6</sup> 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.”<sup>7</sup>

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.<sup>8</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>9</sup>

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.<sup>10</sup> 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.<sup>11</sup>

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<sup>3</sup> 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).

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

<sup>5</sup> 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.”

<sup>6</sup> 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.”

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

<sup>8</sup> Section 119.07(1)(a), F.S.

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

<sup>10</sup> Art. I, s. 24(c), Fla. Const.

<sup>11</sup> *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.<sup>12</sup> Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.<sup>13</sup>

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.<sup>14</sup> Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.<sup>15</sup>

### **Open Government Sunset Review Act**

The Open Government Sunset Review Act<sup>16</sup> (the Act) prescribes a legislative review process for newly created or substantially amended<sup>17</sup> public records or open meetings exemptions, with specified exceptions.<sup>18</sup> 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.<sup>19</sup>

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.<sup>20</sup> 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;<sup>21</sup>
- 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;<sup>22</sup> or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.<sup>23</sup>

<sup>12</sup> 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).

<sup>13</sup> 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).

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

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

<sup>16</sup> Section 119.15, F.S.

<sup>17</sup> 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.

<sup>18</sup> 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.

<sup>19</sup> Section 119.15(3), F.S.

<sup>20</sup> Section 119.15(6)(b), F.S.

<sup>21</sup> Section 119.15(6)(b)1., F.S.

<sup>22</sup> Section 119.15(6)(b)2., F.S.

<sup>23</sup> Section 119.15(6)(b)3., F.S.

The Act also requires specified questions to be considered during the review process.<sup>24</sup> 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.<sup>25</sup> 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.<sup>26</sup>

### **Comprehensive Emergency Management Plans**

The Florida Division of Emergency Management (DEM) is required to prepare a state comprehensive emergency management plan (CEMP).<sup>27</sup> The CEMP serves as the master operations document for Florida and is the framework through which the state handles emergencies and disasters.<sup>28</sup> 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.<sup>29</sup>

### **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.<sup>30</sup> 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.<sup>31</sup> 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.<sup>32</sup>

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<sup>24</sup> 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?

<sup>25</sup> See generally s. 119.15, F.S.

<sup>26</sup> Section 119.15(7), F.S.

<sup>27</sup> Section 252.35(2), F.S.

<sup>28</sup> *Id.*

<sup>29</sup> 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.

<sup>30</sup> Chapter 2017-184, L.O.F.

<sup>31</sup> Section 1004.0962(2), F.S.

<sup>32</sup> 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 terrorism<sup>33</sup> or other public safety crisis or emergency.<sup>34</sup> The law provides that a campus emergency response includes information relating to:<sup>35</sup>

- 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.<sup>36</sup>

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.<sup>37</sup>

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

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<sup>33</sup> "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.

<sup>34</sup> Section 1004.0962(1), F.S.

<sup>35</sup> *Id.*

<sup>36</sup> Section 1004.0962(4), F.S.

<sup>37</sup> 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.<sup>38</sup>

### **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 records<sup>39</sup> and exemptions from public access or disclosure of security and firesafety systems;<sup>40</sup> 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.

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<sup>38</sup> Ch. 2017-184, L.O.F.

<sup>39</sup> 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.

<sup>40</sup> 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.



730824

LEGISLATIVE ACTION

Senate

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. .  
. .  
. .  
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House

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The Committee on Education (Berman) recommended the following:

**Senate Amendment (with title amendment)**

Delete line 28

and insert:

emergency unrelated to the occurrence or threat of an infectious disease, and includes information relating to:

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Between lines 13 and 14

insert:



730824

12       revising the definition of the term "campus emergency  
13       response" to exclude responses or plans for responding  
14       to public safety crises or emergencies related to  
15       infectious diseases;

FOR CONSIDERATION By the Committee on Education

581-00536-22

20227006pb

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 1004.0962, F.S., which provides an exemption from public records requirements for 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, and for any portion of a public meeting which would reveal information related to a campus emergency response; removing the scheduled repeal of the exemption; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 1004.0962, Florida Statutes, is amended to read:

1004.0962 Campus emergency response of a public postsecondary educational institution; public records exemption; public meetings exemption.—

(1) As used in this section, the term "campus emergency response" means a public postsecondary educational institution's response to or plan for responding to an act of terrorism, as defined by s. 775.30, or other public safety crisis or emergency, and includes information relating to:

(a) Records, information, photographs, audio and visual

Page 1 of 3

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581-00536-22

20227006pb

presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof.

(b) Threat assessments conducted by any agency or private entity.

(c) Threat response plans.

(d) Emergency evacuation plans.

(e) Sheltering arrangements.

(f) Manuals for security personnel, emergency equipment, or security training.

(g) Security systems or plans.

(h) Vulnerability analyses.

(i) Postdisaster activities, including provisions for emergency power, communications, food, and water.

(j) Postdisaster transportation.

(k) Supplies, including drug caches.

(l) Staffing.

(m) Emergency equipment.

(n) Individual identification of students, faculty, and staff; the transfer of records; and methods of responding to family inquiries.

(2) (a) Any portion of a campus emergency response held by a public postsecondary educational institution is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) Any portion of a campus emergency response held by 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 s. 119.07(1) and s. 24(a), Art. I of

Page 2 of 3

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

581-00536-22

20227006pb

59 the State Constitution.

60 (3) The public records exemptions provided by this section  
61 are remedial in nature, and it is the intent of the Legislature  
62 that the exemptions apply to campus emergency responses held by  
63 a custodial agency before, on, or after the effective date of  
64 this section.

65 (4) Information made exempt by this section may be  
66 disclosed:

67 (a) To another governmental entity if disclosure is  
68 necessary for the receiving entity to perform its duties and  
69 responsibilities; or

70 (b) Upon a showing of good cause before a court of  
71 competent jurisdiction.

72 (5) That portion of a public meeting which would reveal  
73 information related to a campus emergency response is exempt  
74 from s. 286.011 and s. 24(b), Art. I of the State Constitution.

75 ~~(6) This section is subject to the Open Government Sunset~~  
76 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~  
77 ~~on October 2, 2022, unless reviewed and saved from repeal~~  
78 ~~through reenactment by the Legislature.~~

79 Section 2. This act shall take effect October 1, 2022.