

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1091 CS Public Records and Public Meetings Exemptions for Investigations
by the Commission for Independent Education

SPONSOR(S): Greenstein

TIED BILLS: HB 1089

IDEN./SIM. BILLS: SB 1272

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Colleges & Universities Committee</u>	<u>8 Y, 0 N, w/CS</u>	<u>Hatfield</u>	<u>Tilton</u>
2) <u>Governmental Operations Committee</u>	<u></u>	<u>Williamson</u>	<u>Everhart</u>
3) <u>Education Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

Current law authorizes the Commission for Independent Education (commission) to conduct disciplinary proceedings through an investigation of any suspected violation of Chapter 1005, F.S., including a finding of probable cause. It also authorizes the commission to make reports to any law enforcement agency or regulatory agency. While other regulatory entities have public records and public meetings exemptions relating to investigatory proceedings, the commission does not.

HB 1091 CS creates a public records exemption for all investigatory records held by the commission in conjunction with the investigations it conducts, including minutes and findings of an exempt probable cause panel meeting. The exemption expires 10 days after the panel declares a finding of probable cause. It also creates a public meetings exemption for proceedings of the probable cause panel. The bill provides a statement of public necessity, provides for future review and repeal of the exemptions, and provides a contingent effective date.

The bill appears to have a minimal fiscal impact on state government. See FISCAL COMMENTS section for further details. It does not appear to have a fiscal impact on local governments.

The bill requires a two-thirds vote of the members present and voting for passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill decreases public access to records of the Commission for Independent Education and meetings of the probable cause panel.

B. EFFECT OF PROPOSED CHANGES:

Background

Prior to July 1, 2001, the State Board of Nonpublic Career Education (SBNCE) was responsible for administering statutory provisions relating to the establishment and operation of nonpublic postsecondary career schools. Among other requirements, those provisions directed the SBNCE to investigate in a timely manner any suspected violation of law or rule relating to such institutions. The law held that the complaint and all information obtained by the SBNCE in the course of an investigation was confidential and exempt from public records requirements for a maximum of 10 days after the probable cause panel declared a finding of probable cause. The law further held that proceedings of the probable cause panel were exempt from public meetings requirements.¹

Prior to July 1, 2001, the State Board of Independent Colleges and Universities (SBICU) was responsible for administering statutory provisions relating to nonpublic colleges and universities.²

The 2001 Legislature combined the powers and duties of the SBNCE and SBICU and transferred those powers and duties to a single board – the Commission for Independent Education (commission). The commission was given jurisdiction over all of the institutions that were under the SBNCE and all of the institutions that were under the SBICU with the exception of certain private colleges and universities that participate in the Florida Resident Access Grant (FRAG) and certain religious colleges.

Current law authorizes the commission to conduct disciplinary proceedings through an investigation of any suspected violation of Chapter 1005, F.S., including a finding of probable cause. It authorizes the commission to make reports to any law enforcement agency or regulatory agency. While other regulatory entities, such as those governed by chapter 455, F.S., have public records and public meetings exemptions relating to investigatory proceedings, the commission does not.

The Department of Education reports that without the exemptions, the commission must conduct probable cause hearings in public meetings and must make public all records of complaints against an institution. Since proprietary schools are frequently competitive, the open records and meetings offer an opportunity for schools to cause trouble for one another. The possibility of false complaints and disruptions during probable cause hearings potentially impedes the ability of the commission to carry out its duties effectively.³

Effect of Proposed Changes

The bill creates a public records exemption for all investigatory records held by the commission in conjunction with investigations it conducts, including minutes and findings of an exempt probable cause panel meeting, for a period not to exceed 10 days after the panel declares a finding of probable cause. It also creates a public meetings exemption for proceedings of the probable cause panel until the panel declares a finding of probable cause. It is not clear whether the information will be made available even if the probable cause panel does not find that probable cause exists.

¹ See Chapter 246, 2001 Florida Statutes. Chapter 246, F.S., was repealed by ch. 2000-321, LOF, effective January 7, 2003.

² *Id.*

³ Florida Department of Education, Bill Analysis, March 11, 2005, at 4.

The bill provides for repeal of the exemption on October 2, 2010, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity and a contingent effective date.

C. SECTION DIRECTORY:

Section 1: Amends s. 1005.38, F.S., to create a public records exemption for investigatory records held by the commission, and a public meetings exemption for proceedings of a probable cause panel.

Section 2: Provides a statement of public necessity.

Section 3: Provides a contingent effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. The bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. The bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

None. The bill does not create, modify, amend, or eliminate a local expenditure.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None. This bill does not affect persons in the private sector.

D. FISCAL COMMENTS:

The public records law in general creates a significant, although unquantifiable, increase in government spending. Government employees must locate requested records, and must examine every requested record to determine if a public records exemption prohibits release of the record. There is likely no marginal fiscal impact to a single public records exemption; the location and examination process remains whether or not a particular public records exemption exists.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not: require counties or municipalities to spend funds or to take an action requiring the expenditure of funds; reduce the percentage of a state tax shared with counties or municipalities; or reduce the authority that municipalities have to raise revenue.

2. Other:

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. Thus, the bill requires a two-thirds vote for passage.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Public Records and Public Meetings Laws

Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. Article I, s. 24(b), Florida Constitution sets forth the state's public policy regarding access to government meetings. The section requires all meetings of the executive branch and local government be open and noticed to the public.

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

Public policy regarding access to government records and meetings is also addressed in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record, and s. 286.011, F.S., requires that all state, county, or municipal meetings be open and noticed to the public. Furthermore, the Open Government Sunset Review Act of 1995⁴ provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes: one, allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; two, protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or, three, protecting trade or business secrets.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 15, 2005, the Colleges & Universities Committee adopted an amendment to HB 1091. The bill was reported favorable with a Committee Substitute (CS). The CS clarifies the records that will be covered by the public records exemption and revises the public necessity statement.

⁴ Section 119.15, F.S.