

By the Committee on Education Pre-K - 12; and Senator Detert

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1                   A bill to be entitled  
2       An act relating to public records; creating s.  
3       1002.221, F.S.; providing an exemption from public-  
4       records requirements for K-12 education records held  
5       by an agency, public school, center, institution, or  
6       other entity that is part of the state's education  
7       system; providing exceptions to the exemption;  
8       providing for future legislative review and repeal of  
9       the exemption under the Open Government Sunset Review  
10      Act; amending s. 1006.52, F.S.; expanding the  
11      exemption from public-records requirements for records  
12      of students in public postsecondary educational  
13      institutions to include education records and  
14      applicant records; providing requirements for the  
15      release, use, and maintenance of education records;  
16      providing for future legislative review and repeal of  
17      the exemption under the Open Government Sunset Review  
18      Act; providing legislative findings; providing a  
19      statement of public necessity; providing a contingent  
20      effective date.

21  
22 Be It Enacted by the Legislature of the State of Florida:

23  
24       Section 1. Section 1. Section 1002.221, Florida Statutes,  
25 is created to read:

26       1002.221 K-12 education records.-

27       (1) Education records, as defined in the Family Educational  
28 Rights and Privacy Act (FERPA), 20 U.S.C. s. 1232g, and the  
29 federal regulations issued pursuant thereto, are confidential

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30 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
31 Constitution.

32 (2) An agency, as defined in s. 1002.22(1)(a), or a public  
33 school, center, institution, or other entity that is part of  
34 Florida's education system under s. 1000.04(1), (3), or (4), may  
35 not release a student's education records without the written  
36 consent of the student or parent to any individual, agency, or  
37 organization, except in accordance with and as permitted by the  
38 FERPA. Education records released by an agency, as defined in s.  
39 1002.22(1)(a), or by a public school, center, institution, or  
40 other entity that is part of Florida's education system under s.  
41 1000.04 (1), (3), or (4), to the Auditor General or the Office  
42 of Program Policy Analysis and Government Accountability, which  
43 are necessary for such agencies to perform their official duties  
44 and responsibilities, shall be used and maintained by the  
45 Auditor General and the Office of Program Policy Analysis and  
46 Government Accountability in accordance with the FERPA.

47 (3) This section is subject to the Open Government Sunset  
48 Review Act in accordance with s. 119.15, and shall stand  
49 repealed on October 2, 2014, unless reviewed and saved from  
50 repeal through reenactment by the Legislature.

51 Section 2. Section 1006.52, Florida Statutes, is amended to  
52 read:

53 1006.52 Education ~~Student~~ records and applicant records.-

54 (1) Each public postsecondary educational institution  
55 ~~university~~ may prescribe the content and custody of records that  
56 ~~and reports which~~ the institution ~~university~~ may maintain on its  
57 students and applicants for admission. A student's education  
58 ~~Such~~ records, as defined in the Family Educational Rights and

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59 Privacy Act (FERPA), 20 U.S.C. s. 1232g, and the federal  
60 regulations issued pursuant thereto, and applicant records are  
61 confidential and exempt from ~~the provisions of s. 119.07(1) and~~  
62 s. 24(a), Art. I of the State Constitution ~~are open to~~  
63 inspection only as provided in s. 1002.22. For the purpose of  
64 this subsection, applicant records shall be considered to be  
65 records that are:

66 (a) Directly related to an applicant for admission to a  
67 public postsecondary institution who has not been in attendance  
68 at the institution; and

69 (b) Maintained by a public postsecondary institution or by  
70 a party acting on behalf of the public postsecondary  
71 institution.

72 (2) A public postsecondary educational institution may not  
73 release a student's education records without the written  
74 consent of the student to any individual, agency, or  
75 organization, except in accordance with and as permitted by the  
76 FERPA. Education records released by public postsecondary  
77 educational institutions to the Auditor General or the Office of  
78 Program Policy Analysis and Government Accountability, which are  
79 necessary for such agencies to perform their official duties and  
80 responsibilities, shall be used and maintained by the Auditor  
81 General and the Office of Program Policy Analysis and Government  
82 Accountability in accordance with the FERPA.

83 (3) This section is subject to the Open Government Sunset  
84 Review Act in accordance with s. 119.15, and shall stand  
85 repealed on October 2, 2014, unless reviewed and saved from  
86 repeal through reenactment by the Legislature.

87 ~~(2) Rules of the State Board of Education may prescribe the~~

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88 ~~content and custody of records and reports which a community~~  
89 ~~college may maintain on its students. Such records are~~  
90 ~~confidential and exempt from s. 119.07(1) and are open to~~  
91 ~~inspection only as provided in s. 1002.22.~~

92 Section 3. (1) The Legislature finds that it is a public  
93 necessity to continue to make confidential and exempt from  
94 disclosure education records, as defined in the Family  
95 Educational Rights and Privacy Act (FERPA), 20 U.S.C. s. 1232g,  
96 and the federal regulations issued pursuant thereto, which are  
97 maintained by public postsecondary educational institutions or  
98 persons acting for such institutions. The state has historically  
99 protected education records from public disclosure and continues  
100 to provide for the confidential and exempt nature of education  
101 records; however, the state does not currently conform to the  
102 federal definition of education records, which is more inclusive  
103 than the state law. Such inconsistency may result in  
104 noncompliance with federal law, for which public educational  
105 institutions could be sanctioned by the loss of all federal  
106 funds received from the United States Department of Education.

107 (2) The Legislature finds that it is a public necessity  
108 that student applicant records held by public postsecondary  
109 educational institutions be made confidential and exempt in  
110 accordance with public-records requirements. Student applicant  
111 records maintained by public postsecondary educational  
112 institutions may include, but are not limited to, academic  
113 transcripts, test scores, records of disciplinary proceedings,  
114 disability and health records, and other records that are  
115 protected from disclosure under state and federal law. An  
116 exemption for student applicant records is necessary because the

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117 release of certain information from the records of students who  
118 are not admitted to or who do not enroll in an institution would  
119 negatively affect the applicant's privacy interests in their  
120 education records, which are already confidential and exempt as  
121 maintained by the transmitting educational institutions. The  
122 Legislature finds that the private and confidential nature of  
123 the records of an applicant who is not accepted for admission or  
124 who otherwise does not enroll in an institution is identical to  
125 the records of an enrolled student, which are confidential and  
126 exempt from public-records requirements. The Legislature further  
127 finds that the release of an applicant's records to the public  
128 would harm the applicant's ability to protect his or her  
129 personal and education records and could result in identity  
130 theft and hinder applicants from providing truthful and complete  
131 information during the admission process.

132 (3) The Legislature finds that the public and private harm  
133 in disclosing personal and educational information contained in  
134 public postsecondary applicant records significantly outweighs  
135 any public benefit derived from disclosure and that the  
136 exemption of public postsecondary applicant records from public  
137 disclosure will enhance the ability of applicants and public  
138 postsecondary educational institutions to protect the privacy  
139 rights that otherwise attach to such information outside the  
140 admission process.

141 (4) Public disclosure of a public school student's  
142 educational information, especially sensitive information,  
143 including, but not limited to, academic achievement, diagnostic  
144 tests, and the existence of mental and physical disabilities,  
145 would significantly inhibit the educational process, the

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146 functions of the school, and the ability of parents to oversee  
147 their children's education. Although the Legislature has  
148 historically provided for significant mandatory disclosure and  
149 public reporting of information on student achievement and other  
150 factors, the disclosure and public reporting are released in  
151 aggregate form and do not personally identify students or  
152 disclose their education records.

153 (5) The Legislature finds that in order to comply with the  
154 applicable federal requirements regarding the collection, use,  
155 and release of education records, such records must be made  
156 confidential and exempt from public disclosure. Therefore, the  
157 Legislature finds that state law must be updated to maintain  
158 consistency with federal requirements, including newly  
159 promulgated exemptions to public disclosure.

160 Section 4. This act shall take effect on the same date that  
161 Senate Bill 2426, or similar legislation takes effect, if such  
162 legislation is adopted in the same legislative session or an  
163 extension thereof and becomes law.