

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 991 Pub. Rec./School District After-Drill Report

SPONSOR(S): Rodrigues

TIED BILLS: CS/HB 989 **IDEN./SIM. BILLS:** SB 800

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) K-12 Subcommittee	10 Y, 0 N	Beagle	Ahearn
2) Government Operations Subcommittee	11 Y, 0 N	Stramski	Williamson
3) Education Committee			

SUMMARY ANALYSIS

A security system plan or portion thereof for any property owned by or leased to the state or any of its political subdivisions, or for any privately owned or leased property held by an agency, is confidential and exempt from Art. I, s. 24(a), of the State Constitution. A security system plan includes threat assessments conducted by any agency, threat response plans, emergency evacuation plans, and sheltering arrangements.

Under Florida law, each district school board is required to formulate policies and procedures for emergency response drills and actual emergencies. CS/HB 989 requires each public school to submit to the district school board an after-drill report detailing each emergency evacuation drill or lockdown drill conducted by the school. The after-drill reports may include recommendations for improving lockdown procedures made by law enforcement and fire department personnel.

The bill creates a public record exemption for after-drill reports and recommendations made by law enforcement and fire department personnel.

The bill provides for repeal of the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature. The bill provides a statement of public necessity as required by the State Constitution. It also provides an effective date that is contingent upon the passage of House Bill 989, or similar legislation, if adopted during the same legislative session and if such legislation becomes law.

The bill does not appear to have a fiscal impact on state or local government.

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.¹

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act² provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

Public Record Exemptions -- Security System Plans

A security system plan or portion thereof for any property owned by or leased to the state or any of its political subdivisions, or for any privately owned or leased property held by an agency,³ is confidential and exempt⁴ from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.⁵

The term "security system plan" includes all:

- Records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to the physical security of the facility or revealing security systems;
- Threat assessments conducted by any agency or any private entity;
- Threat response plans;
- Emergency evacuation plans;
- Sheltering arrangements; or
- Manuals for security personnel, emergency equipment, or security training.⁶

¹ Section 24(c), Art. I of the State Constitution.

² See s. 119.15, F.S.

³ Section 119.011(2), F.S., defines "agency" to mean 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.

⁴ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991) If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. See Attorney General Opinion 85-62 (August 1, 1985).

⁵ Section 119.071(3)(a)2., F.S.

School District Emergency Response Drills

Florida law requires each district school board to formulate policies and procedures for emergency response drills and actual emergencies. These policies must include procedures for responding to various emergencies, such as fires, natural disasters, and bomb threats. Commonly used alarm system responses for specific types of emergencies must be incorporated into such policies.⁷

Committee Substitute for House Bill 989

CS/HB 989 requires each public school to conduct emergency lock-down drills with the same frequency as emergency evacuation drills, and requires each school to submit to the district school board an after-drill report detailing each emergency evacuation drill or lockdown drill conducted by the school. The after-drill reports may include recommendations for improving lockdown procedures made by law enforcement and fire department personnel.

Effect of Proposed Changes

The bill creates a public record exemption for after-drill reports of public school emergency evacuation and lockdown drills and recommendations made by participating law enforcement and fire department personnel.

The bill repeals the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.⁸

The bill provides an effective date that is contingent upon the passage of House Bill 989, or similar legislation, if adopted during the same legislative session and if such legislation becomes law.

B. SECTION DIRECTORY:

Section 1 amends s. 1006.07, F.S., creating a public record exemption for a school district's after-drill report.

Section 2 provides a public necessity statement.

Section 3 provides an effective date that is contingent upon the passage of House Bill 989, or similar legislation, if adopted during the same legislative session and if such legislation becomes law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

⁶ Section 119.071(3)(a)1., F.S.

⁷ Section 1006.07(4)(a), F.S. Additionally, district school boards must establish model emergency management and preparedness procedures for weapon-use and hostage situations; hazardous materials or toxic chemical spills; weather emergencies, including hurricanes, tornadoes, and severe storms; and exposure resulting from manmade emergencies. Section 1006.07(4)(b), F.S.

⁸ Article I, Sec. 24(c), FLA. CONST.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill likely could create a minimal fiscal impact on school districts, because staff responsible for complying with public record requests could require training related to creation of the public record exemption. In addition, those school districts could incur costs associated with redacting the exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the school district.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for after-drill reports of public school emergency evacuation and lockdown drills and recommendations made by law enforcement and fire department personnel. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Current law provides a public record exemption for a security system plan or portion thereof for any property owned by or leased to the state or any of its political subdivisions, or for any privately owned or leased property held by an agency. Security system plans include, in part, threat assessments conducted by any agency or any private entity, threat response plans, and emergency evacuation plans. It would appear that the public record exemption provided in current law would also protect a school district's after-drill report and recommendations from participating law enforcement officers or fire officials. As such, the exemption created by this bill could appear redundant and unnecessary.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

