

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.)

Prepared By: The Professional Staff of the Committee on Higher Education

BILL: SPB 7004

INTRODUCER: Committee on Higher Education

SUBJECT: OGSR/Commission for Independent Education

DATE: January 20, 2015 REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Scott</u>	<u>Klebacha</u>	_____	<u>HE Submitted as Committee Bill</u>

I. Summary:

SPB 7004 removes a statutory provision providing for repeal of exemptions for investigatory records and meetings relating to disciplinary proceedings conducted by the Commission for Independent Education.

The bill takes effect July 1, 2015.

II. Present Situation:

Public Records and Open Meetings Requirements

The State Constitution affords every person access to public records made or received in association with the official business of any governmental entity.¹ Meetings during which such official business is discussed must be noticed and open to the public.² However, the Legislature may pass a general law by two-thirds vote exempting public records and meetings, if the law specifically identifies a public necessity for the exemptions and is narrowly tailored to achieve the purpose of the exemptions.³ State law broadly defines a public record to include “[...] documents, papers, letters, maps, books, tapes, photographs, films, sounds recordings, data processing software, or other material [...]” associated with the official business of any agency.⁴ An agency must produce such records for inspection and copying by any person who requests to do so, unless an exemption applies.⁵

¹ Art. I, s. 24(a), Fla. Const.; s. 119.07(1), F.S.

² Art. I, s. 24(b), Fla. Const.; s. 286.011(1), F.S.

³ Art. I, s. 24(c), Fla. Const.

⁴ Section 119.011(12), F.S.

⁵ Section 119.07(1)(a), F.S.

Open Government Sunset Review Act

The Open Government Sunset Review Act (the Act) provides for legislative repeal or reenactment of public records and meetings exemptions from the requirements in s. 24, Article I of the State Constitution.⁶ The Act requires that any exemption created, or an existing exemption that is substantially amended, be repealed 5 years after enactment, unless the Legislature reenacts the exemption.⁷ The Legislature must consider a series of factors as part of its review of an exemption scheduled for repeal.⁸ Furthermore, the Act requires that “[a]n exemption may be created, revised, or maintained only if it serves an identifiable public purpose, and the exemption may be no broader than is necessary to meet the public purpose it serves.”⁹ The Legislature must determine whether creating, revising, or maintaining an exemption:

- Permits an agency to conduct its business without significant impairment;
- Protects the personally identifying information of an individual, the disclosure of which would damage, defame, or jeopardize the individual’s name, reputation, or safety; or
- Protects confidential business information that is essential to an entity’s commercial interests.¹⁰

Commission for Independent Education

Disciplinary Proceedings

The Commission for Independent Education¹¹ (Commission) created within the Florida Department of Education approves applications submitted by independent postsecondary educational institutions for licensure to operate in the state and to award diplomas and degrees.¹² The Commission is authorized to deny, revoke, or place on probation any license that it has granted and to investigate and initiate disciplinary proceedings against licensed institutions suspected of violating chapter 1005, Florida Statutes, or Commission rule.¹³ The results of an investigation are reported to a panel to determine whether there is probable cause.¹⁴

Investigatory Records and Panel Meetings

During the investigatory process and disciplinary proceedings, any records or meetings held by the Commission, including the recordings and minutes of meetings, are confidential and exempt from disclosure for no longer than 10 days after a probable cause panel makes its determination.¹⁵

⁶ Section 119.15, F.S.

⁷ *Id.* at (3).

⁸ Section 119.15(6)(a), F.S.

⁹ Section 119.15(6)(b), F.S.

¹⁰ *Id.*

¹¹ Seven members are appointed by the Governor to serve on the Commission, subject to Senate confirmation. s. 1005.21(2), F.S.

¹² Sections 1005.05 and 1005.21(1) and (2), F.S. *See also*, ss. 1005.06 and 1005.31(1)(a), F.S. An independent postsecondary educational institution that is not within the Commission’s jurisdiction is not required to obtain licensure.

¹³ Section 1005.38(1) and (6), F.S.

¹⁴ Section 1005.38(6)(a), F.S.

¹⁵ Section 1005.38(6)(b), F.S.

Legislative Review of Exemptions

Identifiable Public Purpose

In 2005 and 2010, the Legislature found that the exemptions for investigatory records and disciplinary proceedings (e.g., probable cause panel meetings) serve a public purpose by “prevent[ing] unfounded complaints and investigations from being used to damage the good name of an institution or persons associated with the institution” and ensuring that the discussions and findings of the probable cause panel are unimpeded.¹⁶ The Legislature also found that the “temporary nature” of the exemptions maintains “public oversight.”¹⁷

Scheduled for Repeal Unless Reenacted

As required by the Open Government Sunset Review Act, the exemptions are scheduled for repeal on October 2, 2015, unless reenacted by the Legislature.¹⁸ If the exemptions are not reenacted by the Legislature before October 2, 2015, the investigatory records and probable cause hearings held by the Commission will be subject to public disclosure.¹⁹

III. Effect of Proposed Changes:

SPB 7004 amends s. 1005.38(6), F.S., by maintaining the existing public records and meeting exemptions for investigatory records and probable cause panel meetings associated with disciplinary proceedings initiated by the Commission for Independent Education’s (Commission) against nonpublic postsecondary educational institutions suspected of violating state law or Commission rule. Existing law will remain in effect; hence, maintaining the confidentiality of the records and meetings during the investigatory process for no longer than 10 days after a probable cause panel makes its determination.

The bill does not substantially amend the existing exemptions and, thus, does not require subsequent repeal under the Open Government Sunset Review Act. Any records or portions of meetings containing a student’s education records or other personal identifying information would remain confidential and exempt under state or federal law upon release of the records by the Commission.²⁰ Such information would be redacted by the Commission before release of the records.²¹

The bill takes effect July 1, 2015.

¹⁶ Section 2, ch. 2005-203 and s. 2, ch. 2010-77, L.O.F.

¹⁷ *Id.*

¹⁸ Section 1005.38(6)3., F.S.

¹⁹ The Commission for Independent Education recommends in its response to an Open Government Sunset Review Questionnaire that the Legislature reenact the public records and meetings exemptions, stating that “it is foreseeable that an investigation could be compromised” if the records and meetings were open to the public (received December 18, 2014; on file with the Senate Committee on Higher Education). Also, in a letter addressed to the chairs of the Senate Committee on Governmental Oversight and Accountability and the House State Affairs Committee, the First Amendment Foundation does not object to reenactment of the exemptions as written, stating that the exemptions are “sufficiently narrow.” (dated August 22, 2014; on file with the Senate Committee on Higher Education).

²⁰ See 20 U.S.C. s. 1232g, Family Educational Rights and Privacy Act (FERPA).

²¹ Section 119.07(1)(d), F.S.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members of each house of the Legislature for final passage of a bill that creates an exemption for public records or meetings. The bill does not create an exemption, nor does it expand the scope of an existing exemption; therefore, a two-thirds vote of the members of each house of the Legislature is not required for final passage of the bill.

C. Trust Funds Restrictions:

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:

The bill amends section 1005.38 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.

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