

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7005 PCB GVOPS 15-02 OGSR/Commission for Independent Education

**SPONSOR(S):** Government Operations Subcommittee, Ingoglia

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 7004

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	11 Y, 0 N	Harrington	Williamson
1) State Affairs Committee	16 Y, 0 N	Harrington	Camechis

### SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The Commission for Independent Education (commission) is created within the Department of Education. It approves applications submitted by independent postsecondary education institutions for licensure to operate in the state and to award diplomas and degrees. The commission is authorized to deny, revoke, or place on probation any license that it has granted and to investigate any suspected violation of chapter 1005, F.S., or commission rules. The results of an investigation are reported to a probable cause panel.

Current law provides a public record exemption for certain commission investigatory records. Specifically, investigatory records held by the commission in conjunction with an investigation are exempt from public record requirements for a period not to exceed 10 days after the panel makes a determination regarding probable cause. Those portions of a meeting of a probable cause panel at which exempt investigatory records are discussed are exempt from the public meeting requirements. In addition, the recording of a closed portion of a meeting and the minutes and findings of such meeting are exempt from public record requirements for a period not to exceed 10 days after the panel makes a determination of probable cause.

The bill reenacts the public record and public meeting exemptions, which will repeal on October 2, 2015, if this bill does not become law.

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

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Open Government Sunset Review Act

The Open Government Sunset Review Act<sup>1</sup> sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act 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.

If, and only if, in reenacting an exemption that will repeal and the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.<sup>2</sup> If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created<sup>3</sup> then a public necessity statement and a two-thirds vote for passage are not required.

##### Commission for Independent Education

The Commission for Independent Education (commission) is created within the Department of Education (department).<sup>4</sup> The department serves as the administrative agent for the commission, but the commission otherwise exercises independently all powers, duties, and functions prescribed by law.<sup>5</sup> The commission functions in matters concerning independent postsecondary educational institutions in consumer protection, program improvement, and licensure for institutions under its purview.<sup>6</sup> The commission consists of seven members who are residents of this state. Commission members are appointed by the Governor and subject to confirmation by the Senate.<sup>7</sup> The members serve 3-year terms.<sup>8</sup> The commission must meet at least four times per fiscal year.<sup>9</sup>

The commission approves applications submitted by independent postsecondary education institutions for licensure to operate in the state and to award diplomas and degrees.<sup>10</sup> An institution under the jurisdiction of the commission may not operate a program unless specific authority is granted in its

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<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Section 24(c), Art. I of the State Constitution.

<sup>3</sup> An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.

<sup>4</sup> Section 1005.21(1), F.S.

<sup>5</sup> *Id.*

<sup>6</sup> Section 1005.21(2), F.S.

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

<sup>8</sup> Section 1005.21(3), F.S.

<sup>9</sup> Section 1005.21(4), F.S.

<sup>10</sup> Sections 1005.21(1) and 1005.31 F.S.

license.<sup>11</sup> According to the commission's annual report, 436 degree-granting institutions are under the jurisdiction of the commission, and 582 licensed institutions only offer non-degree programs.<sup>12</sup>

The commission is authorized to deny, revoke, or place on probation any license that it has granted and to initiate an investigation of any suspected violation of chapter 1005, F.S., or commission rules.<sup>13</sup> The results of an investigation are reported to a probable cause panel. The determination for probable cause must be made by a majority vote of the probable cause panel.<sup>14</sup> After the panel makes a finding of probable cause, the commission may issue an administrative complaint and prosecute such complaint under chapter 120, F.S.<sup>15</sup>

#### Public Record and Public Meeting Exemptions under Review

In 2005, the Legislature created a public record and public meeting exemption for the commission.<sup>16</sup> Investigatory records held by the commission in conjunction with an investigation of a suspected violation of chapter 1005, F.S., or commission rules, are exempt<sup>17</sup> from public record requirements for a period not to exceed 10 days after the panel makes a determination regarding probable cause. That portion of a meeting of a probable cause panel at which exempt records are discussed is exempt from public meeting requirements.

In 2010, the Legislature amended the public meeting exemption to require a recording to be made of the closed portion of the probable cause panel meeting and to require the commission to maintain the recording.<sup>18</sup> In addition, the Legislature expanded the public record exemption to include the recording of the closed portion of the meeting, and the minutes and findings of such meeting, for a period not to exceed 10 days after the panel makes a determination regarding probable cause.<sup>19</sup>

Pursuant to the Open Government Sunset Review Act, the public record and public meeting exemptions will repeal on October 2, 2015, unless reenacted by the Legislature.<sup>20</sup>

During the 2014 interim, subcommittee staff sent a questionnaire to the commission as part of the Open Government Sunset Review process. As part of its questionnaire response, the commission recommended reenactment of the public record and public meeting exemptions under review.<sup>21</sup>

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<sup>11</sup> Section 1005.31(8), F.S.

<sup>12</sup> A copy of the 2013-2014 annual report can be found online at: <http://www.fl DOE.org/policy/cie> (last visited January 30, 2015).

<sup>13</sup> Sections 1005.31(6) and 1005.38, F.S.

<sup>14</sup> Section 1005.38(6)(d), F.S.

<sup>15</sup> *Id.*

<sup>16</sup> Chapter 2005-203, L.O.F.; codified as s. 1005.38(6)(b), F.S. The 2005 public necessity statement provides that “[t]he exemptions created by this act relating to investigations conducted by the Commission for Independent Education prevent unfounded complaints and investigations from being used to damage the good name of an institution or persons associated with the institution. Because the information made exempt under this act will be available to the public after a determination regarding probable cause is made, public oversight will be maintained.”

<sup>17</sup> 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 statute. See Attorney General Opinion 85-62 (August 1, 1985).

<sup>18</sup> Chapter 2010-77, L.O.F.; codified as s. 1005.38(6)(b)1. and 2., F.S.

<sup>19</sup> *Id.* The 2010 public necessity statement provides that “[r]elease of such recordings, minutes, or findings would compromise those discussions of the commission members which took place during a closed meeting, thus negating the public meeting exemption. In addition, the temporary nature of the public records exemption for the recording of a closed meeting of the probable cause panel ensures that public oversight is provided.”

<sup>20</sup> Section 1005.38(6)(b)3., F.S.

<sup>21</sup> The commission questionnaire response is on file with the Government Operations Subcommittee.

## **Effect of the Bill**

The bill removes the repeal date, thereby reenacting the public record and public meeting exemptions for the commission.

### **B. SECTION DIRECTORY:**

Section 1 amends s. 1005.38, F.S., to save from repeal the public record and public meeting exemptions of the Commission for Independent Education.

Section 2 provides an effective date of October 1, 2015.

## **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.

#### **2. Expenditures:**

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

### **D. FISCAL COMMENTS:**

None.

## **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:**

None.

### **B. RULE-MAKING AUTHORITY:**

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.