

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 Education

BILL: SB 110

INTRODUCER: Senator Brandes

SUBJECT: Public Records and Public Meetings/Information Technology/Postsecondary Education Institutions

DATE: March 20, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Benvenisty</u>	<u>Graf</u>	<u>ED</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 110 creates a new public record and meeting exemption for records of state universities and Florida College System (FCS) institutions pertaining to Information Technology (IT) security systems if the disclosure of such records would facilitate the unauthorized access to, or unauthorized modification, disclosure, or destruction of data, information, or IT resources. Specifically, the bill:

- Exempts from public records laws data or information from technology systems owned, contracted, or maintained by a state university or FCS institution.
- Exempts from public meetings laws portions of public meetings that may reveal data or information from technology systems owned, contracted, or maintained by a state university or an FCS institution.
 - Requires an exempt portion of a public meeting to be recorded and transcribed but specifies such recording and transcript must be exempt from disclosure, unless a court determines that the meeting was not restricted to discussion of confidential and exempt data.
- Specifies the entities to whom exempt records must be provided.

The bill provides a statement of public necessity justifying the exemption as required by the Florida Constitution. Additionally, the bill provides for repeal of the public record and meeting exemption on October 2, 2022, pursuant to the Open Government Sunset Review Acts unless reviewed and saved from repeal by the Legislature.

Article I, s. 24(c), of the Florida 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 public meetings.

The bill takes effect upon becoming law.

II. Present Situation:

Public Records Law

Article I, s. 24(a), of the 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.

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.

Public Meetings Law

Article I, s. 24(b), of the Florida Constitution sets forth the state's public policy regarding access to government meetings. The section requires that all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, be open and noticed to the public.

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., known as the "Government in the Sunshine Law" or "Sunshine Law," further requires that all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, at which official acts are to be taken be open to the public at all times.¹ The board or commission must provide reasonable notice of all public meetings.² Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin or economic status or which operates in a manner that unreasonably restricts the public's access to the facility.³ Minutes of a public meeting must be promptly recorded and open to public inspection.⁴

Public Record and Public Meeting Exemptions

The Legislature, however, may provide by general law for the exemption of records and meetings from the requirements of Art. I, s. 24(a) and (b), of the 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.⁵

¹ Section 286.011(1), F.S.

² *Id.*

³ Section 286.011(6), F.S.

⁴ Section 286.011(2), F.S.

⁵ Art. I, s. 24(c), Fla. Const.

The Open Government Sunset Review Act

Florida law provides for the review of any new or substantially amended⁶ public records exemptions created pursuant to Art. I, s. 24, of the Florida Constitution.

The Open Government Sunset Review Act (OGSR) prescribes the review process for new or substantially amended public records exemptions.⁷ The OGSR provides that an exemption is automatically repealed on October 2 of the fifth year unless the Legislature reenacts the exemption.⁸ Records exempt before the date of the repeal of an exemption may not be made public unless otherwise provided by law.⁹

State Universities and Florida College System Institutions

Records and meetings held by state universities and Florida College System (FCS) institutions regarding information security incidents, such as investigations into security breaches, security technologies, processes and practices as well as security risk assessments are currently subject to Florida public records laws.^{10,11} Section 282.318, F.S., exempts from public records laws data and information from technology systems owned, contracted, or maintained by a state agency.¹² A “state agency” means any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government; the Justice Administrative Commission; and the Public Service Commission.¹³ However, state universities and university boards of trustees are specifically excluded from the definition of “state agency.”¹⁴

Florida College System records at the state level, as part of the Department of Education, are confidential and exempt under s. 282.318, F.S., but it is unclear the extent to which the records of FCS institutions and their boards of trustees are confidential and exempt under current law.¹⁵

III. Effect of Proposed Changes:

SB 110 creates a new public record and meeting exemption for records of state universities and Florida College System (FCS) institutions pertaining to Information Technology (IT) security systems if the disclosure of such records would facilitate the unauthorized access to, or unauthorized modification, disclosure, or destruction of data, information, or IT resources.

Public Records Exemption

The bill exempts from disclosure:

⁶ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. *Id.* An exemption is not substantially amended if the amendment narrows the scope of the exemption. *Id.*

⁷ Section 119.15(6), F.S.

⁸ Section 119.15(3), F.S.

⁹ Section 119.15(7), F.S.

¹⁰ Art. I, s. 24(c), Fla. Const.

¹¹ Ch. 119, F.S.

¹² State University System of Florida, Board of Governors, *2017 Legislative Bill Analysis for SB 110* (Jan. 10, 2017), at 1.

¹³ Sections 282.0041(23) and 282.318(2), F.S.

¹⁴ Sections 282.0041(23), F.S.

¹⁵ Florida Department of Education, *2017 Legislative Bill Analysis for SB 110* (Dec. 21, 2016), at 3.

- Records held by the university or college which identify detection, investigation, or response practices for suspected or confirmed information technology security incidents, including suspected or confirmed breaches, if the disclosure of such records would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction of data or information, whether physical or virtual, or information technology resources; and
- Those portions of risk assessments, evaluations, external and internal audits, and other reports of the university's or institution's information technology security program for its data, information, and information technology resources which are held by the university or institution. These records would be exempt if disclosure of such records would lead to the unauthorized access to or unauthorized modification, disclosure, or destruction of the data, information, or IT resources.

Public Meetings Exemption

The bill also exempts portions of public meetings that may reveal:

- Records pertaining to the detection, investigation, and response practices for suspected or confirmed IT security incidents, including breaches; and
- Portions of risk assessments, evaluations, external and internal audits and related reports of state university's or FCS institutions' IT security program for its data, information, and IT resources.

The bill requires exempt portions of a public meeting to be recorded and transcribed. However, the bill specifies that the recording and transcript of the meeting must remain confidential and exempt from disclosure unless a court with competent jurisdiction determines the meeting was not restricted to confidential and exempt data and information.

Statement of Public Necessity

The bill provides a statement of public necessity for the proposed public record and meeting exemptions created in the bill. Specifically, the bill provides the following reasons for such exemptions:

- Records held by a state university or FCS institution that identify IT detection, investigation, or response practice for suspected or confirmed IT security incidents, including breaches, may be used in the investigation of the incident. The release of such information may interfere with and jeopardize the ongoing investigation.
- An investigation into an IT security incident, including a breach, may result in the gathering of sensitive personal information exempt from disclosure under state and federal law.¹⁶ Release of such information may be used to commit identity theft or other crimes and subject potential victims of the security incident to further harm.¹⁷
- Disclosure of records such as an audit or forensic analysis of a state university or FCS institutions may reveal weaknesses in the university or institutions IT security system.

¹⁶ 20 U.S.C. s. 1232g and ss. 1002.225 and 1006.52, F.S.

¹⁷ Florida law specifies procedures that must be taken in the event the security of personal information maintained by a government entity is breached. A government entity must give notice to each individual in the state whose personal information was, or the government entity reasonably believes to have been, accessed because of a breach of security. Section 501.171(4), F.S. Email, State University System of Florida Board of Governors (March 7, 2017).

- Records held by a state university or FCS institution may contain proprietary information, the release of which would provide an unfair advantage for business competitors in the market place.
- Disclosure of records may compromise and interfere with the administration of ongoing education programs.

According to the Board of Governors of the State University System (BOG) “a state university is vulnerable to the disclosure of records or information that could potentially compromise the confidentiality, integrity, and availability of a state university’s information technology system” which contain sensitive data.¹⁸

Open Government Sunset Review

The bill provides for the repeal of the exemptions created by this bill on October 2, 2022, as required by the Open Government Sunset Review Act. This timeframe for scheduled repeal appears to be consistent with the law regarding state public meeting and public record exemptions.¹⁹

Application

The bill provides for retroactive application of the public records exemption. As such, all prior records pertaining to the detection, investigation, and response practices for suspected or confirmed IT security incidents and related reports will become confidential and exempt from disclosure.

All records and portions of public meeting recordings and transcripts made confidential and exempt by the bill must be available to the Auditor General, the Cybercrime Office of the Department of Law Enforcement, and, for the state universities, the Board of Governors. Additionally, such records and portions of meetings may be made available to a state or federal agency for security purposes or in furtherance of the agency’s official duties.

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹⁸ State University System of Florida, Board of Governors, *2017 Legislative Bill Analysis for SB 110* (Jan. 10, 2017) at 1. The Board of Governors (BOG) regulation prescribes a minimum standard for security of data and related information technology resources. Florida Board of Governors Regulation 3.0075. The president of each university is responsible for ensuring appropriate and auditable security controls are in place on his or her campus. *Id.* at (1).

¹⁹ Section 119.15(2)-(3), F.S.

B. Public Records/Open Meetings Issues:**Vote Requirement**

Article I, s. 24(c), of the Florida 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 public meetings.

SB 110 creates a public record and public meeting exemption; therefore, a two-thirds vote of the members of each house of the Legislature is required for final passage of the bill.

Public Necessity Statement

Article I, s. 24(c), of the Florida Constitution, requires that a bill creating an exemption for public records or public meetings contain a public necessity statement justifying the exemption.

The bill contains a statement of public necessity.

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:

This bill creates section 1004.055 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.
