

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: HB 7059 PCB GOS 22-11 OGSR/Campus Emergency Response

SPONSOR(S): Government Operations Subcommittee; Borrero

TIED BILLS: **IDEN./SIM. BILLS:** SB 7006

FINAL HOUSE FLOOR ACTION: 109 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

HB 7059 passed the House on March 4, 2022, as SB 7006 as amended. The Senate concurred in the House amendment to the Senate bill and subsequently passed the bill as amended on March 8, 2022.

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.

Postsecondary educational institutions must develop campus emergency response plans for responding to an act of terrorism or other public safety crisis or emergency. If campus emergency responses were made publicly available, they could be used to impede the response of a public postsecondary educational institution to an act of terrorism, or other public safety crisis or emergency.

Current law provides a public record exemption for a campus emergency response held by a public postsecondary educational institution, a state or local law enforcement agency, a county or municipal emergency management agency, the Executive Office of the Governor, the Department of Education, the Board of Governors of the State University System, or the Division of Emergency Management. The exempt information may be provided to another governmental entity in the performance of the receiving entities duties and responsibilities or upon a showing of good cause before a court of competent jurisdiction. Current law also provides a public meeting exemption for that portion of a meeting that would reveal information related to a campus emergency response.

This bill extends the repeal date of the public record exemption and public meeting exemption from October 2, 2022, to October 2, 2024. The bill narrows the exemptions to provide that identification of staff involved in emergency preparedness, response, and recovery activities is exempt instead of staffing information generally. It also narrows the exemption to provide that the individual identification of students, faculty and staff applies to those persons affected or at-risk before, during, or after an emergency, and that the exemption for the transfer of records applies to the same group of individuals.

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

The bill was approved by the Governor on May 20, 2022, ch. 2022-133, L.O.F., and will become effective on October 1, 2022.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)¹ 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.²

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:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect 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.
- Protect trade or business secrets.³

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.⁴ 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 then a public necessity statement and a two-thirds vote for passage are not required.

Campus Emergency Response

Postsecondary educational institutions must develop campus emergency response plans for responding to an act of terrorism or other public safety crisis or emergency.⁵ Specifically, a campus emergency response includes:

- Records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof;
- Threat assessments conducted by any agency or private entity;
- Threat response plans;
- Emergency evacuation plans;
- Sheltering arrangements;
- Manuals for security personnel, emergency equipment, or security training;
- Security systems or plans;
- Vulnerability analyses;
- Post-disaster activities, including provisions for emergency power, communications, food, and water;
- Post-disaster transportation;
- Supplies, including drug caches;
- Staffing;
- Emergency equipment; and

¹ Section 119.15, F.S.

² Section 119.15(3), F.S.

³ Section 119.15(6)(b), F.S.

⁴ Section 24(c), Art. I, FLA. CONST.

⁵ Section 1004.0962(1), F.S.

- Individual identification of students, faculty, and staff; the transfer of records; and methods of responding to family inquiries.⁶

A campus emergency response often includes a postsecondary educational institution's Comprehensive Emergency Management Plan (CEMP) and their Continuity of Operations Plan (COOP). A CEMP outlines the mitigation, preparation, response, and recovery actions of campus personnel for all hazards that could impact a college or university campus. A CEMP incorporates the use of National Incident Management System to facilitate interagency coordination between responding agencies.⁷ An institution's CEMP should be consistent with their county's CEMP, the State of Florida's CEMP, and the National Response Framework.⁸ A COOP outlines the actions that must be taken to ensure services and activities do not cease during an emergency or disaster and identifies the individuals or agencies responsible for those actions.

Public Record and Public Meeting Exemptions under Review

In 2017, the Legislature created an exemption from public records requirements for information associated with a campus emergency response of a public postsecondary educational institution held by a public postsecondary institution, a state or local law enforcement agency, a county or municipal emergency management agency, the Executive Office of the Governor, the Department of Education, the Board of Governors of the State University System (SUS), or the Division of Emergency Management.⁹ Such information is exempt¹⁰ from public records requirements, but may be disclosed to another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities or upon a showing of good cause before a court of competent jurisdiction.

The Legislature also created a public meeting exemption for any portion of a meeting that would reveal information related to a campus emergency response.¹¹

The 2017 public necessity statement¹² for the exemptions provides that the Legislature finds that the public record and public meeting exemptions are necessary because:

A campus emergency response affects the health and safety of the students, faculty, staff, and the public at large. If campus emergency responses were made publicly available for inspection or copying, they could be used to hamper or disable the response of a public postsecondary educational institution to an act of terrorism, or other public safety crisis or emergency. If a public postsecondary educational institution's response to these events were hampered or disabled, an increase in the number of Floridians subjected to fatal injury would occur. There is ample existing evidence of the capabilities of terrorists and other criminals to plot, plan, and coordinate complicated acts of terror and violence on university and college campuses all over the country. The aftermath of these events has also showed the importance of viable plans by which public postsecondary educational

⁶ *Id.*

⁷ See Comprehensive Emergency Management Plan, Division of Emergency Management, available at <https://www.floridadisaster.org/globalassets/cemp/2020-cemp/2020-state-cemp.pdf> (last visited February 10, 2022)

⁸ *Id.*

⁹ Chapter 2017-184, L.O.F.; codified as section 1004.0962, F.S.

¹⁰ 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).

¹¹ Section 1004.0962(5), F.S.

¹² Article I, s. 24(c), FLA. CONST., requires each public record exemption to "state with specificity the public necessity justifying the exemption."

institutions can respond to terrorist attacks and other public safety crises or emergencies.¹³

Pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2022, unless saved from repeal by the Legislature.¹⁴

During the 2021 interim, as part of its review under the Open Government Sunset Review Act, the House Government Operations Subcommittee staff sent a questionnaire to the 12 SUS institutions and 28 Florida College System (FCS) institutions.¹⁵ Several SUS and FCS institutions indicated that a campus emergency response includes plans such as their COOP and CEMP, which outline the overall framework for responding to emergencies, as well as plans for more specific situations such as responding to bomb threats, active shooters, and evacuation procedures.¹⁶ All of the SUS institutions and 17 of the 28 FCS institutions responded to the questionnaire and all of the respondents recommended that the exemption remain in effect.¹⁷ Some institutions identified overlap with other exemptions provided in law,¹⁸ however, none of the institutions identifying such overlap recommended merging the exemptions, given the specific and heightened protection for critical security and emergency response information provided in s. 1004.0962, F.S.

Effect of the Bill

The bill extends the scheduled repeal date of the public record exemption and public meeting exemption from October 2, 2022 to October 2, 2024; thereby, maintaining the public record exemption for a public postsecondary educational institution's campus emergency response, and the public meeting exemption for portions of a public meeting that would reveal information related to such response for an additional two years. The bill narrows the exemptions to provide that identification of staff involved in emergency preparedness, response, and recovery activities is exempt instead of staffing information generally. It also narrows the exemption to provide that the individual identification of students, faculty and staff applies to those persons affected or at-risk before, during, or after an emergency, and that the exemption for the transfer of records applies to the same group of individuals.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

¹³ Chapter 2017-184, L.O.F.

¹⁴ Section 1004.0962(6), F.S.

¹⁵ Open Government Sunset Review Questionnaire, Campus Emergency Response Plans, responses on file with the Government Operations Subcommittee.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Section 119.071, F.S., provides for general exemptions from inspection or copying of public records regarding agency administration, criminal intelligence and criminal investigation, and specified personal information. Section 252.905, F.S., provides that information furnished to DEM for the purpose of being provided assistance with emergency planning is exempt. Section 119.071(3)(a), F.S., provides that security or firesafety system plans held by an agency are confidential and exempt. Section 281.301, F.S., provides that information relating to the security or firesafety systems for specified property is confidential and exempt. Section 286.0113, F.S., provides that a specified portion of a meeting that would reveal a security or firesafety system plan is exempt. Section 1004.055, F.S., provides that specified security data or information from technology systems owned, under contract, or maintained by a state university or an FCS institution is confidential and exempt.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.