

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 Fiscal Policy

BILL: SB 152

INTRODUCER: Senator Collins

SUBJECT: Public Records/Safe-school Officer at a Private School

DATE: March 8, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Stokes</u>	<u>Stokes</u>	<u>CJ</u>	Favorable
2.	<u>Stokes</u>	<u>Yeatman</u>	<u>FP</u>	Pre-Meeting

I. Summary:

SB 152 is the public records exemption linked to SB 150. This bill provides that any information that may identify whether a particular individual has been assigned as a safe-school officer pursuant to s. 1006.12, F.S., at a private school and that is held by a law enforcement agency is made exempt from public disclosure.

SB 150, in part, amends s. 1002.42, F.S., to permit a private school to partner with a law enforcement agency or a security agency to establish or assign one or more safe-school officers. The private school is responsible for the full cost of implementing such option.

Additionally, SB 150 provides that a private school that establishes a safe-school officer must comply with the requirements of s. 1006.12, F.S.

This bill is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2028, unless reviewed and saved from repeal through reenactment by the Legislature.

Because this bill creates a public records exemption, it will require a two-thirds vote of each house in order to pass.

This bill takes effect on the same date as SB 150 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law. The relevant section of SB 150 is effective July 1, 2023.

II. Present Situation:

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, ch. 119, F.S., known as the Public Records Act, provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

The Public Records Act provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

Section 119.011(12), F.S., defines “public records” to include:

All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business that are used to “perpetuate, communicate, or formalize knowledge of some type.”⁶

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020).

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “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.”

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person's right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.⁹ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹⁰

General exemptions from the public records requirements are contained in the Public Records Act.¹¹ Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹²

When creating a public records exemption, the Legislature may provide that a record is "exempt" or "confidential and exempt." There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.¹³ Records designated as "confidential and exempt" are not subject to inspection by the public and may only be released under the circumstances defined by statute.¹⁴ Records designated as "exempt" may be released at the discretion of the records custodian under certain circumstances.¹⁵

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act¹⁶ (the Act), prescribe a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ The Act requires the repeal of

⁷ Section 119.07(1)(a), F.S.

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST. art. I, s. 24(c).

¹⁰ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹¹ *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹² *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹³ *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁴ *Id.*

¹⁵ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁶ Section 119.15, F.S.

¹⁷ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹⁸ Section 119.15(2)(a) and (b), F.S., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.²⁰ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²² or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

The Act also requires specified questions to be considered during the review process.²⁴ In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to expire, the previously exempt records will remain exempt unless otherwise provided by law.²⁶

Safe-School Officers

Florida law requires each district school board and school district superintendent to partner with law enforcement agencies to establish or assign one or more safe-school officers at each school

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

²⁴ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²⁵ See *generally* s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

facility within the district by implementing one or more safe-school officer options which best meet the needs of the school district.²⁷ These options include:

- Establishing a school resource officer program, through a cooperative agreement with law enforcement agencies.
- Commissioning one or more school safety officers. The district school superintendent may recommend, and the district school board may appoint, one or more school safety officers.
- Participating in the Coach Aaron Feis Guardian Program if such program is established by the sheriff.
- Contracting with a security agency to employ a school security guard.

Coach Aaron Feis Guardian Program

The Coach Aaron Feis Guardian Program (guardian program) was established in 2018²⁸ as an option for school districts to meet the safe-school officer requirements in law.²⁹ Each sheriff has the discretion to establish a guardian program to aid in the prevention or abatement of active assailant incidents on school premises. A school district employee or personnel, or a charter school employee, may participate in the guardian program. The sheriff who chooses to establish a guardian program shall appoint as school guardians, without the power of arrest, school employees who volunteer and who comply with all of the following:³⁰

- Hold a valid license issued under s. 790.06, F.S. (license to carry a concealed firearm).
- Complete a 144 hour training program, consisting of 12 hours of certified nationally recognized diversity training and 132 hours of comprehensive firearm safety and proficiency training conducted by Criminal Justice Standards and Training Commission-certified instructors, which must include:
 - Eighty hours of firearms instruction based on the Criminal Justice Standards and Training Commission's Law Enforcement Academy training model, which must include at least 10 percent but no more than 20 percent more rounds fired than associated with academy training. Program participants must achieve an 85 percent pass rate on the firearms training.
 - Sixteen hours of instruction in precision pistol.
 - Eight hours of discretionary shooting instruction using state-of-the-art simulator exercises.
 - Eight hours of instruction in active shooter or assailant scenarios.
 - Eight hours of instruction in defensive tactics.
 - Twelve hours of instruction in legal issues.
- Pass a psychological evaluation administered by a psychologist licensed under ch. 490, F.S., and designated by the FDLE and submit the results of the evaluation to the sheriff's office. The FDLE may provide the sheriff's office with mental health and substance abuse data for compliance with this requirement.
- Submit to and pass an initial drug test and subsequent random drug tests in accordance with the requirements of s. 112.0455, F.S., and the sheriff's office.

²⁷ Section 1006.12, F.S.

²⁸ Section 26, ch. 2018-3, L.O.F.

²⁹ Section 1006.12, F.S.

³⁰ Section 30.15(1)(k), F.S.

- Successfully complete ongoing training, weapon inspection, and firearm qualifications on at least an annual basis.³¹

A sheriff must issue a school guardian certificate to individuals who meet the requirements specified in law.³² The sheriff must maintain documentation of weapon and equipment inspections, as well as the training, certification, inspection, and qualification records of each school guardian appointed by the sheriff. An individual who is certified may serve as a school guardian only if he or she is appointed by the applicable school district superintendent or charter school principal.³³

III. Effect of Proposed Changes:

SB 152 is the public records exemption linked to SB 150. This bill provides that any information that may identify whether a particular individual has been assigned as a safe-school officer pursuant to s. 1006.12, F.S., at a private school and that is held by a law enforcement agency is made exempt from public disclosure.

SB 150, in part, amends s. 1002.42, F.S., to permit a private school to partner with a law enforcement agency or a security agency to establish or assign one or more safe-school officers. The private school is responsible for the full cost of implementing such option, which includes all training costs of implementing the Coach Aaron Feis Guardian Program under s. 30.15(1)(k), F.S.

Additionally, SB 150 provides that a private school that establishes a safe-school officer must comply with the requirements of s. 1006.12, F.S. The bill specifies that any references to a school district, district school board, or district school superintendent in s. 1006.12(1)-(5), F.S., must also mean a private school governing board or private school head of school. References to a school district employee in s. 1006.12(3), F.S., also means a private school employee.

This bill is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2028, unless reviewed and saved from repeal through reenactment by the Legislature.

This bill provides a public necessity statement as required by Article I, s. 24(c) of the State Constitution. The public necessity statement provides that:

The Legislature finds that it is a public necessity that any information that may identify whether a particular individual has been assigned as a safe-school officer at a private school and that is held by a law enforcement agency be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. School security and student safety are fundamental priorities in this state. Private schools should be provided options for a security presence similar to that established for school districts. To maximize the effectiveness of the presence of safe-school officers as a deterrent and in their role as first responders to incidents threatening the lives of students and school staff, safe-school officers may perform their school-related duties while carrying a weapon.

³¹ Section 30.15(1)(k), F.S.

³² *Id.*

³³ *Id.*

Disclosure of the identity of a safe-school officer can affect his or her ability to adequately respond to an active assailant situation. Accordingly, it is necessary to protect the identity of safe-school officers from public records requirements in order to effectively and efficiently implement the purpose and intent of the program. Such personal identifying information of an individual assigned as a safe-school officer which is held by a law enforcement agency or public school is currently exempt from public records requirements.

This bill takes effect on the same date as SB 150 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law. The relevant section of SB 150 is effective July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

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 bill creating or expanding an exemption to the public records requirements. This bill enacts a new exemption for any information that may identify whether a particular individual has been assigned as a safe-school officer pursuant to s. 1006.12, F.S., at a private school and that is held by a law enforcement agency thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemption.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect the identity of individuals who have been assigned as a safe-school officer. This bill exempts only information that may identify whether a particular individual has been assigned as a safe-school officer pursuant to s. 1006.12, F.S., at a private school and that is held by a law enforcement agency from the public records requirements. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate. Private schools will be subject to the cost associated with establishing or assigning one or more safe-school officers.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

1002.42

This bill substantially amends section 1002.42 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.
