

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 Pre-K -12

BILL: SPB 7022

INTRODUCER: Education Pre-K -12 Committee

SUBJECT: OGSR/Marjory Stoneman Douglas High School Public Safety Commission/Safe-school Officers

DATE: March 14, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brick</u>	<u>Bouck</u>	_____	ED Submitted as Comm. Bill/Fav

I. Summary:

SPB 7022 saves from repeal two exemptions from public records and public meetings requirements. The bill saves from repeal the exemption from public meeting requirements relating to any portion of a meeting of the Marjory Stoneman Douglas High School Public Safety Commission at which exempt or confidential and exempt information is discussed.

The bill also saves from repeal the exemption from public records disclosure requirements relating to any information held by a law enforcement agency, school district, or charter school that would identify whether a particular individual has been appointed as a safe-school officer.

The exemptions from public records and public meetings requirements stand repealed on October 2, 2023, unless reviewed and reenacted by the Legislature.

The bill takes effect October 1, 2023.

II. Present Situation:

Public Records Law

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 This 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

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.³ The Public Records Act states that

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Public records laws are found throughout the Florida Statutes.

[i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁴

The Public Records Act typically contains general exemptions that apply across agencies. Agency- or program-specific exemptions often are placed in the substantive statutes relating to that particular agency or program.

The Public Records Act does not apply to legislative or judicial records.⁵ Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the legislature.

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 connections 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 which are used to “perpetuate, communicate, or formalize knowledge of some type.”⁶

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any state or local government 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

Only the Legislature may create an exemption to public records requirements.⁹ An exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹⁰ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions¹¹ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹²

⁴ Section 119.01(1), F.S.

⁵ *Locke v. Hawkes*, 595 So. 2d 32, 34 (Fla. 1992); *see also Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).

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

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.*

¹¹ The bill may, however, contain multiple exemptions that relate to one subject.

¹² FLA. CONST., art. I, s. 24(c)

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 Act (the Act), prescribe a legislative review process for newly created or substantially amended public records or open meetings exemptions,¹⁶ with specified exceptions.¹⁷ The Act requires the repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption or repeal the sunset date.¹⁸ In practice, many exemptions are continued by repealing the sunset date, rather than reenacting the exemption.

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.¹⁹ 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 subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;²⁰
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²¹ or
- It protects trade or business secrets.²²

The Act also requires specified questions to be considered during the review process.²³ In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

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. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings.

¹⁷ 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.

¹⁸ Section 119.15(3), F.S.

¹⁹ Section 119.15(6)(b), F.S.

²⁰ Section 119.15(6)(b)1., F.S.

²¹ Section 119.15(6)(b)2., F.S.

²² Section 119.15(6)(b)3., F.S.

²³ 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?

If, in reenacting an exemption or repealing the sunset date, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁴ If the exemption is reenacted or saved from repeal without substantive changes or if the exemption is 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.²⁵

Marjory Stoneman Douglas High School Public Safety Commission

The Marjory Stoneman Douglas High School Public Safety Commission (commission) was established in 2018 to investigate system failures in the Marjory Stoneman Douglas High School shooting and prior mass violence incidents, and to develop recommendations for system improvements.²⁶ The commission is housed within the Florida Department of Law Enforcement.²⁷ The commission submitted its initial report to the Governor and the Legislature on January 2, 2019,²⁸ and its second report on November 1, 2019.²⁹ The commission is scheduled to sunset on July 1, 2026.³⁰

Any portion of a meeting of the commission at which exempt or confidential and exempt information is discussed is exempt from public meeting requirements. The exemption from public meeting requirements is subject to the requirements of the Act and is repealed on October 2, 2023, unless reviewed and reenacted by the Legislature.³¹

Chapter 2018-1, Laws of Florida, which established the exemption from public meeting requirements for any portion of a meeting of the commission at which exempt or confidential and exempt information is discussed, included a public necessity statement that provided a rationale for the exemption. This rationale recognized that the commission must be able to discuss exempt or confidential and exempt information that it receives as part of its investigation. The public meetings exemption is intended to allow the commission to review and discuss exempt or confidential and exempt information that will be useful in forming meaningful recommendations for system improvements for prevention and response to mass violence incidents. As such, it is a necessity that those portions of meetings wherein exempt or confidential and exempt information is discussed be made exempt from public meetings

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- 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?

²⁴ FLA. CONST. art. I, s. 24(c).

²⁵ Section 119.15(7), F.S.

²⁶ Section 943.687(3), F.S.

²⁷ Section 943.687(1), F.S.

²⁸ Commission, *Initial Report* (Jan. 2, 2019), available at <http://www.fdle.state.fl.us/MSDHS/CommissionReport.pdf> (last visited Feb. 3, 2023).

²⁹ Commission, *Report Submitted to the Governor, Speaker of the House of Representatives and Senate President*, (Nov. 1, 2019), available at <http://www.fdle.state.fl.us/MSDHS/MSD-Report-2-Public-Version.pdf>.

³⁰ Section 943.687, F.S.

³¹ Section 943.687(8), F.S.

requirements. If such portions of a meeting are not closed, then the public records exemptions would be negated.³²

Safe-School Officer Requirement

Florida law requires each district school board and school district superintendent to partner with law enforcement and security agencies to establish or assign one or more safe-school officers at each school facility within the district by implementing one or more safe-school officer options which best meet the needs of the school district and charter schools. These options include:

- Establishing a School Resource Officer (SRO) program through a cooperative agreement with law enforcement agencies. SROs are certified law enforcement officers.
- Commissioning one or more school safety officers. School safety officers are certified law enforcement officers with the power of arrest on district school property, who are employed by either a law enforcement agency or by the district school board.
- Participating in the Coach Aaron Feis Guardian Program to employ school personnel who are trained in responding to threats from active assailants but have no authority to act in any law enforcement capacity except to the extent necessary to prevent or abate an active assailant incident.
- Contracting with a security agency to employ as a school security guard an individual who holds a Class “D” and Class “G” license and completes the same training as a school guardian.

Any information that would identify whether a particular individual has been appointed as a safe-school officer held by a law enforcement agency, school district, or charter school is exempt from public records disclosure requirements. The exemption from public records requirements is subject to the requirements of the Act and is repealed on October 2, 2023, unless reviewed and reenacted by the Legislature.³³

Chapter 2018-1, Laws of Florida, which established the exemption from public records disclosure requirements for information that would identify whether a particular individual has been appointed as a safe-school officer held by a law enforcement agency, school district, or charter school, included a public necessity statement that provided a rationale for the exemption. This rationale recognized that, in light of the tragic events at Marjory Stoneman Douglas High School, in which 14 students and 3 adults were shot and killed on February 14, 2018, district school boards must be allowed to provide a supplemental security presence. To maximize the effectiveness of safe-school officers as a deterrent and responsive factor to situations threatening the lives of students and school staff, safe-school officers may perform their school-related duties while carrying a concealed weapon. 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.³⁴

³² Ch. 2018-1, Laws of Fla.

³³ *Id.*

³⁴ Ch. 2018-1, Laws of Fla.

Open Government Sunset Review Findings and Recommendations

Marjory Stoneman Douglas High School Public Safety Commission

Staff of the Senate Committee on Education and the House of Representatives Government Operations Subcommittee jointly met with staff from the Florida Department of Law Enforcement in August 2022 to discuss the exemption from public meeting requirements relating to any portion of a meeting of the commission at which exempt or confidential and exempt information is discussed. The Florida Department of Law Enforcement recommended reenacting the exemption as is.³⁵

Safe-School Officers

In September 2022, the Senate Committee on Education and the House of Representatives Government Operations Subcommittee jointly sent an Open Government Sunset Review Questionnaire to the 67 county sheriffs and district school superintendents. The survey sought information regarding the need to maintain the exemption related to information that would identify whether a particular individual has been appointed as a safe-school officer held by a law enforcement agency, school district, or charter school.

Responses to the questionnaire were submitted by 42 of the district school superintendents and 16 of the county sheriffs. No respondent recommended allowing the exemption to sunset. One superintendent recommended excluding sworn law enforcement officers from the exemption, and another recommended excluding sworn law enforcement officers and school security guards from the exemption. One county sheriff recommended expanding the exemption to protect information that would reveal the type or number of safe-school officers assigned to a school facility or within a school district. The remaining 43 respondents to whom the exemption was applicable recommended reenacting the exemption as is. Several respondents identified some overlap with other exemptions provided in law, particularly more general exemptions from inspection or copying of public records³⁶ and exemptions from public access or disclosure of security and firesafety systems;³⁷ however, none of the institutions that identified overlap recommended merging the exemptions, given the specific and heightened protection for information that would identify whether a particular individual has been appointed as a safe-school officer as provided in s. 1006.12, F.S.

III. Effect of Proposed Changes:

SPB 7022 saves from repeal the current public meeting exemption relating to any portion of a meeting of the Marjory Stoneman Douglas High School Public Safety Commission at which exempt or confidential and exempt information is discussed.

³⁵ Email, Florida Department of Law Enforcement (Feb. 3, 2023).

³⁶ 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.

³⁷ Sections 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 a FCS institution is confidential and exempt.

The bill also saves from repeal the public records exemption relating to any information that would identify whether a particular individual has been appointed as a safe-school officer held by a law enforcement agency, school district, or charter school.

The exemptions from open meetings and public records requirements stand repealed on October 2, 2023, unless reviewed and reenacted by the Legislature.

The bill takes effect October 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 continues current open meeting exemption and a public records exemption beyond the current dates of repeal. The bill does not create or expand an exemption. Thus, the bill does not require an extraordinary vote for enactment.

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. This bill continues a current open meeting exemption and a public records exemption without expansion. Thus, a statement of public necessity is not required.

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 purposes of the law are to allow the commission to review and discuss exempt or confidential and exempt information that will be useful in forming meaningful recommendations for system improvements for prevention and response to mass violence incidents and to protect the ability of a safe-school officer to adequately respond to an active assailant situation. The exemptions do not appear to be broader than necessary to accomplish the purposes of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

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 substantially amends the following sections of the Florida Statutes: 943.687 and 1006.12.

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.