

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 7056
INTRODUCER: Education Pre-K -12 Committee
SUBJECT: Public Records/School Guardians
DATE: February 7, 2024 REVISED: _____

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

I. Summary:

SPB 7056 which is linked to the passage of SB 1356 (2024), amends s. 30.15, F.S., to create an exemption from public records requirements for any information held by the Florida Department of Law Enforcement (FDLE) or a law enforcement agency, school district, or charter school and reported to FDLE as required by SB 1356 that would identify an individual who has been certified to serve as a school guardian. This public record exemption supports the existing public record exemption for information that is 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 at a public school, charter school, or private school. The list, required to be maintained by the FDLE under SB 1356, if not protected, could identify a school guardian.

The bill provides that the public record exemption is a public necessity because disclosure of the identity of a school guardian could affect his or her ability to adequately respond to an active assailant situation.

The public records exemption established in the bill is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill will become effective on the same date that SB 1356 (2024) or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

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

¹ FLA. CONST. art. I, s. 24(a).

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, section 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, chapter 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 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 that are used to “perpetuate, communicate, or formalize knowledge of some type.”⁶

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

² FLA. CONST. art. I, s. 24(a).

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2022-2024) and Rule 14.1, *Rules of the Florida House of Representatives*, (2022-2024)

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).

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.

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 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

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.

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

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

Chris Hixon, Coach Aaron Feis, and Coach Scott Beigel Guardian Program

Sheriffs are required to assist district school boards, charter school governing boards, and private schools in exercising options for safe-school officers. A sheriff is required to provide access to a Chris Hixon, Coach Aaron Feis, and Coach Scott Beigel Guardian Program to aid in the prevention or abatement of active assailant incidents on school premises.²⁷

A sheriff who establishes a Chris Hixon, Coach Aaron Feis, and Coach Scott Beigel Guardian Program is required to consult with the Florida Department of Law Enforcement (FDLE) on programmatic guiding principles, practices, and resources, and certify as school guardians, school employees who:²⁸

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.

²⁷ Section 30.15(1)(k), F.S.

²⁸ Section 30.15(1)(k)2., F.S.

- Hold a license to carry a concealed weapon or concealed firearm.
- Complete a 144-hour training program, consisting of 12 hours of certified nationally recognized diversity training and 132 total hours of comprehensive firearm safety and proficiency training conducted by Criminal Justice Standards and Training Commission-certified instructors.
- Pass a psychological evaluation.
- Submit to and pass an initial drug test and subsequent random drug tests.
- Successfully complete ongoing training, weapon inspection, and firearm qualification on at least an annual basis.

The sheriff who conducts the guardian training is required to issue a school guardian certificate to individuals who meet these requirements and maintain documentation of weapon and equipment inspections, as well as the training, certification, inspection, and qualification records of each school guardian certified by the sheriff.²⁹

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:³⁰

- 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 who are employed by either a law enforcement agency or by the district school board.
- Participating in the Chris Hixon, Coach Aaron Feis, and Coach Scott Beigel Guardian Program.
- 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 and evaluation requirements as a school guardian.

Additionally, a private school may partner with a law enforcement agency or a security agency to establish or assign one or more safe-school officers.³¹

There are currently 49 counties that are participating in the Chris Hixon, Coach Aaron Feis, and Coach Scott Beigel Guardian Program.³² The FDLE is not directly involved with the training or tracking of persons appointed as school guardians. The responsibility is assigned to the sheriff’s office in each county that certifies school guardians.³³

²⁹ Section 30.15(1)(k), F.S.

³⁰ Section 1006.12, F.S.

³¹ Section 1006.12(18)(a), F.S.

³² Florida Department of Education, *Chris Hixon, Coach Aaron Feis, & Coach Scott Beigel Guardian Program*, <https://www.fldoe.org/safe-schools/guardian-program.stml> (last visited Feb. 1, 2024).

³³ Florida Department of Law Enforcement, *2024 FDLE Legislative Bill Analysis for HB 1473* (Jan. 29, 2024) at 2.

SB 1356 School Safety (2024)

SB 1356 (2024), to which this bill is linked, adds requirements for sheriffs and employers of school guardians to report the name, date of birth, and appointment beginning and end dates to the FDLE. SB 1356 requires the FDLE to maintain a list that includes school guardians, the reported information, and employment status, and remove from the list guardians with expired training.

III. Effect of Proposed Changes:

SPB 7056, which is linked to the passage of SB 1356 (2024), amends s. 30.15, F.S., to create an exemption from public records requirements for any information held by the Florida Department of Law Enforcement (FDLE) or a law enforcement agency, school district, or charter school and reported to the FDLE as required under the provisions included in SB 1356 that would identify an individual who has been certified to serve as a school guardian. This public record exemption supports the existing public record exemption for information that is 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 at a public school, charter school, or private school. The list, required to be maintained by the FDLE under SB 1356, if not protected, could identify a school guardian.

The bill provides the public record exemption is a public necessity because disclosure of the identity of a school guardian could affect his or her ability to adequately respond to an active assailant situation. Specifically, the bill provides that it is a public necessity that any information held by the FDLE, any district school board, charter school governing board, or sheriff that may identify whether a particular person is or has been certified or appointed as a school guardian be made exempt from s. 119.07(1), F.S., and s. 24(a), Article I of the State Constitution.

The bill provides that school security and student safety are fundamental priorities in the state and that the safety of people serving or who have served as school guardians is also an important priority in the state. The bill states that school guardians serve a critical role as safe-school officers and first responders, and their presence on school grounds serves as a deterrent against incidents threatening the lives of students and school personnel.

The bill further specifies that disclosure of the identity of school guardians, whether there is a school guardian on a school campus, and the number of school guardians on any school campus may compromise their safety and adversely affect their ability to adequately respond to an active assailant incident. The bill provides that it is necessary to protect the identity of school guardians from public records requirements in order to effectively and efficiently implement the purpose and intent of a school guardian program.

The public records exemption established in the bill is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2029, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill will become effective on the same date that SB 1356 (2024) or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law

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 information that would identify an individual who has been certified to serve as a school guardian, 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 information that would identify an individual who has been certified to serve as a school guardian. This bill exempts only information held by the Florida Department of Law Enforcement (FDLE) or a law enforcement agency, school district, or charter school and reported to FDLE as required by SB 1356 that would identify an individual who has been certified to serve as a school guardian 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.

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 section 30.15 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.