

FLORIDA HOUSE OF REPRESENTATIVES

BILL ANALYSIS

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BILL #: [HB 7021](#) [PCB GOS 26-12](#)

TITLE: OGSR/Examination and Assessment Instruments

SPONSOR(S): Government Operations Subcommittee,
Nix

COMPANION BILL: [SB 7022](#)

LINKED BILLS: None

RELATED BILLS: None

Committee References

[Orig. Comm.: Government
Operations](#)
18 Y, 0 N



[Education Administration](#)
18 Y, 0 N



[State Affairs](#)
22 Y, 0 N

SUMMARY

Effect of the Bill:

The bill expands a public record exemption for education examination and assessment instruments to include additional record custodians; provides a more detailed record release procedure amongst custodians; and narrows and clarifies existing rulemaking authority relating to the administration of the exemption. The bill extends the repeal date for the exemption from October 2, 2026, to October 2, 2031; however, if the bill does not become law, the exemption will repeal on October 2, 2026.

Fiscal or Economic Impact:

None

Extraordinary Vote Required for Passage:

The bill requires a two-thirds vote of the members present and voting in both houses of the Legislature for final passage.

[JUMP TO](#)

[SUMMARY](#)

[ANALYSIS](#)

[RELEVANT INFORMATION](#)

[BILL HISTORY](#)

ANALYSIS

EFFECT OF THE BILL:

The bill expands a public record exemption for education examination and assessment instruments, and related development materials and workpapers, to include additional record custodians, provide a more detailed record release procedure amongst custodians, and narrow existing rulemaking authority regarding the exemption. Specifically, the bill adds public schools, [district school boards](#), [boards of trustees](#) of universities, the [State Board of Education](#) (SBE), and the [Board of Governors](#) (BOG) to the current list of record custodians of examination and assessment instruments, which already includes Florida College System (FCS) institutions, state universities, and the Department of Education (DOE). The bill narrows and clarifies the rulemaking authority of the SBE and the BOG from allowing the adoption of provisions governing access, maintenance, and destruction of exempt records to requiring the adoption of rules and regulations establishing retention schedules and disposal processes for those records. (Section [1](#))

The bill provides a permissive release mechanism that allows authorized record custodians to disclose confidential and exempt information to the other authorized custodians. However, certain custodians—public schools, district school boards, FCS institutions, and state universities—are required under the bill to disclose the confidential and exempt records to the DOE, the SBE, or the BOG upon request. (Section [1](#))

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DATE: 2/3/2026

The bill expressly provides that nothing in the public record exemption may limit currently protected [rights of students or parents](#) with respect to student records and education records as defined under state and federal law. Additionally, the bill repeals a duplicative public record exemption. (Section [1](#))

The bill includes the constitutionally required public necessity statement, which finds that disclosure of the records would enable cheating and academic dishonesty, compromise the validity and reliability of assessments, and undermine the fair measurement of student learning and program effectiveness. (Section [2](#))

[Article I, s. 24\(c\)](#) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands the current public record and public meeting exemption; thus, it requires a two-thirds vote for final passage.

The effective date of the bill is upon becoming a law. (Section [3](#))

RELEVANT INFORMATION

SUBJECT OVERVIEW:

Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSR 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 OGSR 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; or
- Protect trade or business secrets.³

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

[Student and Parental Rights](#)

Current law requires that parents of public school students be provided accurate and timely information regarding their child's academic progress and informed of ways they can help their child to succeed in school.⁵ Among other things, parents must be provided the student's report cards and progress reports, as well as school report cards and financial reports.⁶ Students and their parents must be notified regarding student promotion policies, including policies for whole grade and mid-year promotion, third grade retention, and remediating academic deficiencies.⁷ Additionally, the school district must notify high school students and their parents, in writing, of the requirements

¹ [S. 119.15, F.S.](#)

² [S. 119.15\(3\), F.S.](#)

³ [S. 119.15\(6\)\(b\), F.S.](#)

⁴ [Art. I, s. 24\(c\), FLA. CONST.](#)

⁵ [S. 1002.20, F.S.](#)

⁶ [Ss. 1002.20\(14\)-\(16\)](#) and [1008.25\(9\), F.S.](#)

⁷ [S. 1008.25, F.S.](#)

for a standard high school diploma, available diploma designations, and the eligibility requirements for state scholarship programs and postsecondary admissions.⁸

Parents' Bill of Rights

In 2021, the Legislature created the Parents' Bill of Rights⁹ to codify the fundamental right of parents to direct the upbringing, education, and care of their minor children.¹⁰ The law requires the state, any of its political subdivisions, other governmental entities, or any other institutions to demonstrate as reasonable and necessary any action that would infringe on the fundamental rights of a parent to direct the upbringing, education, health care, and mental health of his or her minor child. Among other enumerated rights, parents have the right to direct the education, care, upbringing, and moral or religious training of their minor children; enroll their children in public school, private school, home education, or other authorized education options; and access their minor child's education records.¹¹

Family Educational Rights and Privacy Act

The Family Educational Rights and Privacy Act of 1974 (FERPA), applies to all public and private higher education institutions that receive federal funds, including grants, financial aid, and student loan programs.¹² FERPA provides students and their parents or legal guardians the right to inspect, review, and challenge the content of their child's education records¹³ and, subject to certain exceptions, control the disclosure of education records or personally identifiable information¹⁴ contained in the records.¹⁵

State Board of Education and Department of Education

The State Board of Education (SBE) is the constitutional entity charged with supervising the system of free public schools in Florida.¹⁶ In this role, it coordinates and implements public education in Florida—except for the State University System—and establishes objectives and long range plans, appoints the Commissioner of Education, annually develops a coordinated K-20 budget, and oversees the Department of Education (DOE).¹⁷ The SBE has rulemaking authority to carry out these functions¹⁸ and implements accountability measures based primarily on student achievement for Florida's K-20 public education system, which includes K-12 free public schools and the Florida College System.¹⁹ The SBE is authorized to delegate its general powers to the Commissioner of Education or the directors of the divisions of the DOE.²⁰

⁸ [S. 1003.4282\(2\), F.S.](#)

⁹ [Ch. 1014, F.S.](#)

¹⁰ [S. 1014.02\(1\), F.S.](#)

¹¹ *Id.*

¹² 20 U.S.C. s. 1232g.

¹³ "Education records" is defined to mean records, files, documents, and other materials which— (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution. 20 U.S.C. s. 1232g(a)(4).

¹⁴ "Personally identifiable information" is defined to include, without limitation, the names of the student and his or her parents or other family members; the address of the student or student's family; the student's social security number, student number, biometric record, or other personal identifier; indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name; and other information that could reasonably identify a student. 34 C.F.R. s. 99.3.

¹⁵ 20 U.S.C. s. 1232g(a) and (b); 34 C.F.R. part 99; [s. 1002.222\(1\)\(b\), F.S.](#) In cases of divorced, separated, or never-married parents, each parent is presumed to have rights under FERPA unless a state statute, court order, or other legally binding document provides to the contrary. 34 C.F.R. s. 99.4.

¹⁶ See [Art. IX, FLA. CONST.](#); [s. 1001.02\(1\), F.S.](#)

¹⁷ See [s. 1001.02, F.S.](#)

¹⁸ [S. 1001.02\(1\), F.S.](#)

¹⁹ See ss. [1008.31](#), and [1008.32, F.S.](#)

²⁰ [S. 1001.02\(1\), F.S.](#)

District School Boards

The Florida Constitution gives district school boards the authority to operate, control, and supervise all free public schools within the district.²¹ Each board is composed of at least five elected members serving four-year terms.²² Among the powers and duties prescribed to school board districts by statute, district school boards are responsible for the maintenance of records held by public schools.²³

Board of Governors

The Board of Governors (BOG) is responsible for operating, regulating, controlling, and being fully responsible for the management of the State University System (SUS). The SUS is composed of 12 public universities. Fourteen of the 17 members of the BOG are appointed by the Governor and confirmed by the Senate.²⁴

Boards of Trustees

Each local constituent university is administered by a board of trustees composed of six citizen members appointed by the Governor and five citizen members appointed by the BOG, all confirmed by the Senate.²⁵ The BOG establishes the powers and duties of the boards of trustees. The university president serves as the chief executive officer to the board of trustees and is responsible to the board of trustees for all operations of the university.²⁶

Public Record Exemption under Review

Since 2002, Florida law has provided a public record exemption for education examinations and assessments, including any related developmental materials and workpapers.²⁷ Initially, the exemption protected statewide student examination and assessments created as part of a comprehensive revision of the Florida Education Code.²⁸ In 2021, the Legislature expanded the exemption to include statewide kindergarten screening assessments,²⁹ assessments of learning gains for students in a Department of Juvenile Justice education program,³⁰ any assessment for the identification of limited English proficient students,³¹ the civic literacy assessment administered by Florida College System (FCS) institutions,³² teacher certification assessments,³³ and the Preliminary SAT/National Merit Scholar Qualifying Test and the PreACT assessments.³⁴ The law made those instruments and related developmental materials and workpapers confidential and exempt³⁵ from public record requirements.³⁶ The SBE and the BOG were directed to prescribe rules to govern the access, maintenance, and destruction of those instruments and related materials.³⁷

²¹ [Art. IX, s. 4, FLA. CONST.](#)

²² *Id.*

²³ [S. 1001.42\(13\), F.S.](#)

²⁴ [Art. IX, s. 7, FLA. CONST.](#)

²⁵ [Art. IX, s. 7\(c\), FLA. CONST.](#)

²⁶ Board of Governors Regulation 1.001.

²⁷ [S. 1008.23, F.S.](#)

²⁸ [Ch. 2002-387, L.O.F.](#)

²⁹ [S. 7, ch. 2021-9, L.O.F.](#)

³⁰ [S. 1003.52, F.S.](#)

³¹ [S. 1003.56, F.S.](#)

³² [S. 1007.25, F.S.](#)

³³ [S. 1012.56, F.S.](#)

³⁴ [S. 1007.35, F.S.](#)

³⁵ There is a difference between records the Legislature designates *exempt* from public record requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So.2d 1015 (Fla. 2004); *State v. Wooten*, 260 So. 3d 1060, 1070 (Fla. 4th DCA 2018); *City of Rivera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 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 Op. Att’y Gen. Fla. 04-09 (2004).

³⁶ [S. 1008.23, F.S.](#); see Board of Governors Regulation 3.005.

³⁷ [S. 1008.23, F.S.](#)

The 2021 public necessity statement³⁸ provided that:

The state's ability to objectively assess educational progress and performance is impaired if examination and assessment instruments can be publicly disseminated before or after being administered. Public dissemination of already-administered examination and assessment instruments may also invade a student's privacy and harm his or her ability to protect his or her personal information and educational records.³⁹

During the 2025 interim, House and Senate committee staff surveyed school board districts, FCS institutions, and state universities concerning the public record exemption under review.⁴⁰ Among the 71 entities that responded, none claimed to have had any issue interpreting the public record exemption, nor were any aware of any pending litigation stemming from the exemption. The majority of the respondents recommended the exemption be reenacted as is.

BILL HISTORY

COMMITTEE REFERENCE	ACTION	DATE	STAFF DIRECTOR/ POLICY CHIEF	ANALYSIS PREPARED BY
Orig. Comm.: Government Operations Subcommittee	18 Y, 0 N	1/13/2026	Toliver	Lines
Education Administration Subcommittee	18 Y, 0 N	1/29/2026	Sleap	Wolff
State Affairs Committee	22 Y, 0 N	2/3/2026	Williamson	Lines

³⁸ [Art. I, s. 24\(c\), FLA CONST.](#), requires each public meeting exemption to "state with specificity the public necessity justifying the exemption."

³⁹ [Ch. 2021-81, L.O.F.](#)

⁴⁰ Open Government Sunset Review Questionnaire, Examination and Assessment Information, on file with the Government Operations Subcommittee.