

**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.)

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Prepared By: The Professional Staff of the Committee on Education Pre-K -12

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BILL: SPB 7022

INTRODUCER: For consideration by the Education Pre-K - 12 Committee

SUBJECT: Public Records/Examination and Assessment Instruments

DATE: January 16, 2026 REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Brick</u>	<u>Bouck</u>		<u>Pre-meeting</u>

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## **I. Summary:**

SPB 7022 expands the public records exemption for examination and assessment instruments by adding public schools, district school boards, university boards of trustees, the State Board of Education, and the Board of Governors as additional records custodians, beyond Florida College System institutions, state universities, and the Department of Education. The bill also repeals a duplicative exemption and provides that the exemption may not be construed to limit student and parent rights relating to student records and education records.

The bill narrows and clarifies rulemaking and regulation authority by revising the duties of the State Board of Education and the Board of Governors from currently adopting provisions governing access, maintenance, and destruction of exempt examination and assessment instruments to adopting rules and regulations limited to establishing retention schedules and disposal processes for those exempt records.

The bill extends the scheduled repeal of the exemption from October 2, 2026, to October 2, 2031. If the bill does not become law, the exemption is scheduled to stand repealed on October 2, 2026. Because the bill expands an existing public records exemption, it requires a two-thirds vote of the members present and voting for final passage.

The bill takes effect upon becoming a law.

## **II. Present Situation:**

### **Public Records Law**

The State Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.<sup>1</sup> This applies to the official business

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<sup>1</sup> FLA. CONST. art. I, s. 24(a).

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.<sup>2</sup>

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

[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.<sup>4</sup>

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.<sup>5</sup> 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:

[a]ll 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 which are used to “perpetuate, communicate, or formalize knowledge of some type.”<sup>6</sup>

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.<sup>7</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>8</sup>

Only the Legislature may create an exemption to public records requirements.<sup>9</sup> An exemption must be created by general law and must specifically state the public necessity justifying the

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<sup>2</sup> *Id.*; see also *Sarasota Citizens for Responsible Gov’t v. City of Sarasota*, 48 So. 3d 755, 762-763 (Fla. 2010).

<sup>3</sup> Public records laws are found throughout the Florida Statutes.

<sup>4</sup> Section 119.01(1), F.S.

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

<sup>6</sup> *Shevin v. Byron, Harless, Schaffer, Reid & Assoc.*, 379 So. 2d 633, 640 (Fla. 1980).

<sup>7</sup> Section 119.07(1)(a), F.S.

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

<sup>9</sup> FLA. CONST. art. I, s. 24(c).

exemption.<sup>10</sup> 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 provisions<sup>11</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>12</sup>

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*.<sup>13</sup> 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.<sup>14</sup> Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.<sup>15</sup>

### **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,<sup>16</sup> with specified exceptions.<sup>17</sup> 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.<sup>18</sup> 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.<sup>19</sup> An exemption serves an identifiable purpose if the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption and it meets one of the following purposes:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;<sup>20</sup>
- It protects sensitive, personal information, the release of which 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;<sup>21</sup> or

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<sup>10</sup> *Id.*

<sup>11</sup> The bill may, however, contain multiple exemptions that relate to one subject.

<sup>12</sup> FLA. CONST. art. I, s. 24(c).

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

<sup>14</sup> *Id.*

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

<sup>16</sup> Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered substantially amended if it is expanded to include more records or information or to include meetings.

<sup>17</sup> 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.

<sup>18</sup> Section 119.15(3), F.S.

<sup>19</sup> Section 119.15(6)(b), F.S.

<sup>20</sup> Section 119.15(6)(b)1., F.S.

<sup>21</sup> Section 119.15(6)(b)2., F.S.

- It protects information of a confidential nature concerning entities, such as trade or business secrets.<sup>22</sup>

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

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 again required.<sup>24</sup> 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.<sup>25</sup>

## Education Governance

The State Board of Education has such supervision of the system of free public education as is provided by law and is the chief implementing and coordinating body of public education in Florida except for the State University System; the State Board of Education has authority to adopt rules to implement laws conferring duties upon it.<sup>26</sup>

District school boards operate, control, and supervise all free public schools in their respective districts and may exercise any power except as expressly prohibited by the State Constitution or general law.<sup>27</sup> District school boards require the district school superintendent, as secretary, to keep minutes and records necessary to set forth clearly all actions and proceedings of the school board, and the superintendent keeps such other records as may be necessary to provide complete information regarding the district school system.<sup>28</sup>

Each institution within the Florida College System is governed by a local board of trustees.<sup>29</sup>

Each Florida College System institution board of trustees is constituted as a body corporate and is vested with responsibility to govern the institution and make cost-effective policy decisions appropriate to the institution's mission.<sup>30</sup>

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<sup>22</sup> Section 119.15(6)(b)3., F.S.

<sup>23</sup> 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?

<sup>24</sup> FLA. CONST. art. I, s. 24(c).

<sup>25</sup> Section 119.15(7), F.S.

<sup>26</sup> FLA. CONST. art. IX, s. 2; s. 1001.02(1), F.S.

<sup>27</sup> FLA. CONST. art. IX, s. 4(b); s. 1001.32(2), F.S.

<sup>28</sup> Section 1001.42(1), F.S.; s. 1001.51(3), F.S.

<sup>29</sup> Section 1001.60(3), F.S.

<sup>30</sup> Sections 1001.63 and 1001.64(1)-(2), F.S.

The Board of Governors has authority to regulate the State University System and may adopt regulations when expressly authorized or required by law.<sup>31</sup> Each local constituent university is administered by a university board of trustees.<sup>32</sup>

### **Confidentiality of Assessment Instruments**

The public record exemption under review protects all examination or assessment instruments, including developmental materials and workpapers directly related thereto, which are prepared by, prescribed, or administered by a Florida College System institution, a state university, or the Department of Education.<sup>33</sup> In addition, the exemption specifically protects from disclosure the following types of examinations and assessments.<sup>34</sup>

- Statewide student assessment programs for public schools and the coordinated screening and progress monitoring system (ss. 1008.22 and 1008.25, F.S.).
- Educator certification examinations and assessments (s. 1012.56, F.S.).
- English language examinations and assessments for public schools (s. 1003.56, F.S.).
- Assessments prescribed for students in Department of Juvenile Justice Education programs (s. 1003.52, F.S.).
- Florida Civic Literacy Exam (s. 1007.25, F.S.)
- Examinations and assessments given under the Florida Partnership for Minority and Underrepresented Student Achievement, which include the PSAT/NMSQT, CLT10, and PreACT (s. 1007.35, F.S.).

Provisions governing access, maintenance, and destruction of such instruments and related materials are required to be prescribed by rules of the State Board of Education and the Board of Governors, as applicable.<sup>35</sup>

This exemption is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.<sup>36</sup>

### **Open Government Sunset Review Findings and Recommendations**

In August 2025, the Senate Education Pre-K – 12 Committee and the House Government Operations Subcommittee jointly sent an Open Government Sunset Review questionnaire to the 12 institutions of the State University System, the 28 institutions of the Florida College System, and 67 school districts. The survey sought information regarding the need to maintain the exemption related to examination and assessment instruments.

All of the respondents recommended that the exemption remain in effect to maintain the integrity of examination and assessment instruments. Several school districts reported spending funds to

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<sup>31</sup> FLA. CONST. art. IX, s. 7; s. 1001.706(1)(a)-(b), F.S.

<sup>32</sup> FLA. CONST. art. IX, s. 7(c); s. 1001.71(1), F.S.

<sup>33</sup> Section 1008.23(2)(a), F.S.

<sup>34</sup> Section 1008.23(1), F.S.

<sup>35</sup> Section 1008.23(1) and (2)(b), F.S.

<sup>36</sup> Section 1008.23(3), F.S.

develop assessments used to evaluate teachers and students and requested that the exemption also apply to examination and assessment instruments prepared by a district school board.

### **Student and Parent Rights Regarding Education Records**

Student and parent rights with respect to education records created, maintained, or used by public educational institutions and agencies are protected in accordance with the Family Educational Rights and Privacy Act (FERPA), the implementing regulations, and Florida law.<sup>37</sup> Compliance with FERPA is tied to the eligibility of public educational institutions and agencies to receive federal funds and participate in federal programs.<sup>38</sup>

Test instruments or question booklets that do not identify a student and do not contain personally identifiable information are not education records subject to FERPA access provisions.<sup>39</sup> Completed test instruments or question booklets that contain information identifying a particular student constitute education records subject to FERPA. When an answer sheet is separate from a question booklet that is not directly related to a student, the answer sheet generally constitutes the education record. When a question booklet includes both the questions and the student's responses, the booklet constitutes an education record.<sup>40</sup>

### **III. Effect of Proposed Changes:**

SPB 7022 revises s. 1008.23(2)(a), F.S., to provide that all examination and assessment instruments, including developmental materials and workpapers directly related thereto, are confidential and exempt from public records inspection and copying requirements when held by any of the following entities, rather than when such instruments are prepared, prescribed, or administered by a Florida College System institution, a state university, or the Department of Education:

- A public school.
- A district school board.
- A Florida College System institution.
- A state university.
- A board of trustees.
- The Department of Education.
- The State Board of Education.
- The Board of Governors.

The bill deletes the duplicative exemption in s. 1008.23(1), F.S., that applied only to examination and assessment instruments prepared, prescribed, or administered pursuant to specified statutes, including provisions relating to statewide student assessment, student progression, and educator certification examinations.

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<sup>37</sup> Section 1002.22(2), F.S.

<sup>38</sup> Section 1002.22(2), F.S.

<sup>39</sup> U.S. Department of Education, Student Privacy Policy Office, *Letter to Britt Silver, Esq., Ingermann Smith, L.L.P., re: Test Protocols and FERPA* (Aug. 7, 1998), available at

[https://studentprivacy.ed.gov/sites/default/files/resource\\_document/file/Letter\\_to\\_Attorney\\_in\\_New\\_York\\_Regarding\\_Test\\_Protocols\\_and\\_FERPA\\_August1998.pdf](https://studentprivacy.ed.gov/sites/default/files/resource_document/file/Letter_to_Attorney_in_New_York_Regarding_Test_Protocols_and_FERPA_August1998.pdf), at 2.

<sup>40</sup> *Id.*

### **Retention Schedules and Disposal Process**

The bill requires the State Board of Education and the Board of Governors to adopt rules and regulations, respectively, establishing retention schedules and a disposal process for the exempt records. The bill deletes language requiring rules and regulations governing “access, maintenance, and destruction” of the instruments and related materials.

### **Authorized and Required Disclosures of Exempt Information**

The bill authorizes any covered entity to disclose confidential and exempt instruments and related materials to any other covered entity. The bill also requires a public school, district school board, Florida College System institution, or state university to provide the confidential and exempt information to the Department of Education, the State Board of Education, or the Board of Governors upon request.

### **Construction of Student and Parent Rights**

The bill provides that the exemption may not be construed to limit, abridge, or infringe student and parent rights regarding student records and education records under state law.

### **Open Government Sunset Review Public Necessity**

The bill extends the scheduled repeal of the exemption from October 2, 2026, to October 2, 2031.

The bill includes a public necessity statement finding that disclosure would facilitate cheating and academic dishonesty, compromise the validity and reliability of assessments, and undermine the fair measurement of student learning and program effectiveness.

The bill takes effect upon becoming a 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 expands the exemption for records relating to certain examinations and assessments, 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:

- Prevent cheating and academic dishonesty by maintaining the confidentiality of examination and assessment instruments and related secure materials.
- Protect the validity and reliability of examinations and assessments by preventing public disclosure of test items, prompts, answer keys, scoring rubrics, item specifications, and related developmental materials and workpapers.
- Preserve fair measurement of student learning and program effectiveness through secure administration of recurring assessments.
- Avoid significant public expenditures that would be required to replace compromised instruments and rebuild secure item banks.

This bill exempts from public inspection and copying requirements only examinations and assessments, including developmental materials and workpapers directly related thereto, which are held by a district school board, Florida College System institution, a state university, or the Florida Department of Education. 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 1008.23 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.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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