

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7007 PCB EEG 24-05 OGSR/Campus Emergency Response

SPONSOR(S): Ethics, Elections & Open Government Subcommittee, Griffiths

TIED BILLS: **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|-----------|---------|--|
| Orig. Comm.: Ethics, Elections & Open Government Subcommittee | 12 Y, 0 N | Rando | Toliver |
| 1) Postsecondary Education & Workforce Subcommittee | | Collins | Kiner |

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record exemption and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

Public postsecondary educational institutions, such as state universities and state colleges, must develop campus emergency response plans for responding to an act of terrorism or other public safety crisis or emergency. A campus emergency response includes things such as evacuation plans, shelter arrangements, vulnerability analyses, and the identification of certain students and staff. If campus emergency responses were made publicly available, they could be used to hinder the response of a public postsecondary institution to an act of terrorism or other public safety crisis or emergency.

Current law provides a public record exemption for a campus emergency response held by a public postsecondary educational institution, a state or local law enforcement agency, a county or municipal emergency management agency, the Executive Office of the Governor, the Department of Education, the Board of Governors of the State University System, or the Division of Emergency Management. Current law also provides a public meeting exemption for portions of a meeting where matters specifically exempt from disclosure are discussed.

The bill saves from repeal the public record and public meeting exemptions, which will repeal on October 2, 2024, if the bill does not become law. The bill also removes a superfluous provision of the exemption.

The bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

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.
- Protect trade or business secrets.³

If, and only 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

Campus Emergency Response

Postsecondary educational institutions must develop campus emergency response plans for responding to an act of terrorism⁵ or other public safety crisis or emergency.⁶ Specifically, a campus emergency response includes:

- Records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof.
- Threat assessments conducted by any agency or private entity.
- Threat response plans.
- Emergency evacuation plans.
- Shelter arrangements.
- Manuals for security personnel, emergency equipment, or security training.
- Security systems or plans.
- Vulnerability analyses.
- Postdisaster activities, including provisions for emergency power, communications, food, and water.
- Postdisaster transportation.
- Supplies, including drug caches.
- Identification of staff involved in emergency preparedness, response, and recovery activities.

¹ Section 119.15, F.S.

² Section 119.15(3), F.S.

³ Section 119.15(6)(b), F.S.

⁴ Article I, s. 24(c), Fla. Const.

⁵ See s. 775.30(1), F.S., for the applicable definition of "terrorism."

⁶ Section 1004.0962(1), F.S.

- Emergency equipment.
- Individual identification of affected or at risk-students, faculty, and staff before, during, or after an emergency; the transfer of records concerning affected or at risk students, faculty, and staff; and methods of responding to family inquires.⁷

A campus emergency response often includes a public postsecondary educational institution's Comprehensive Emergency Management Plan (CEMP) and their Continuity of Operations Plan (COOP). A CEMP outlines the mitigation, preparation, response, and recovery actions of campus personnel for all hazards that could impact a college or university campus. A CEMP incorporates the use of the National Incident Management System to facilitate interagency coordination between responding agencies.⁸ An institution's CEMP should be consistent with their county's CEMP, the State of Florida's CEMP, and the National Response Framework.⁹ A COOP outlines the actions that must be taken to ensure essential services and activities do not cease during an emergency or disaster and identifies the individuals or agencies responsible for those actions.¹⁰

Public Record and Public Meeting Exemptions under Review

In 2017, the Legislature created an exemption from public records requirements for information associated with a public postsecondary institution's campus emergency response and held by a public postsecondary institution, a state or local law enforcement agency, a county or municipal emergency agency, the Executive Office of the Governor, the Department of Education, the Board of Governors of the State University System, or the Division of Emergency Management.¹¹

The Legislature also created a public meeting exemption for any portion of a meeting that would reveal information related to a campus emergency response.¹²

The 2017 public necessity statement¹³ for the exemptions provides the following:

A campus emergency response affects the health and safety of the students, faculty, staff, and the public at large. If campus emergency responses were made publicly available for inspection or copying, they could be used to hamper or disable the response of a public postsecondary institution to an act of terrorism, or other public safety crisis or emergency. If a public postsecondary educational institution's response to these events were hampered or disabled, an increase in the number of Floridians subjected to fatal injury would occur. There is ample evidence of the capabilities of terrorists and other criminals to plot, plan, and coordinate complicated acts of terror and violence on university and college campuses all over the country. The aftermath of these events has also showed the importance of viable plans by which public postsecondary educational institutions can respond to terrorist attacks and other public safety crises or emergencies.¹⁴

Current law also authorizes custodians of such information to disclose the exempt information:

- To another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities; or

⁷ Section 1004.0962(1), F.S.

⁸ See Comprehensive Emergency Management Plan, *Division of Emergency Management*, available at <https://portal.floridadisaster.org/preparedness/External/CEMP/2022%20State%20CEMP%20Base%20Plan.pdf> (last visited October 19, 2023).

⁹ *Id.*

¹⁰ See Continuity of Operations Implementation Guidance, *Division of Emergency Management*, available at <https://www.floridadisaster.org/globalassets/importedpdfs/coop-implementation-guidance.pdf#:~:text=The%20disaster%20preparedness%20plans%2C%20otherwise%20referred%20to%20as,of%20selected%20State%20personnel%20and%20functions%20is%20required> (last visited October 19, 2023).

¹¹ Chapter 2017-184, L.O.F.; codified as s. 1004.0962, F.S.

¹² Section 1004.0962(5), F.S.

¹³ Article I, s. 24(c), Fla. Const., requires each public record exemption to "state with specificity the public necessity justifying the exemption."

¹⁴ Chapter 2017-184, L.O.F.

- Upon a showing of good cause before a court of competent jurisdiction.¹⁵

However, this authorization appears unnecessary because records designated “exempt” may be released at the discretion of the records custodian under certain circumstances.¹⁶ The mere transfer from one government entity to another does not change the character of the information with respect to its exemption.¹⁷

In 2022, the Legislature reviewed the public record and public meeting exemptions and extended the repeal date from October 2, 2022, to October 2, 2024. The public record exemption was narrowed to provide that the identification of staff involved in emergency preparedness, response, and recovery activities is exempt instead of staffing information generally.¹⁸ The public record exemption was also narrowed to provide that the individual identification of students, faculty and staff applies only to those persons affected or at risk before, during, or after an emergency. Lastly, the provision of the exemption protecting the transfer of records was narrowed to apply to only affected or at-risk students, faculty, and staff.

Pursuant to the OGSR Act, these exemptions will repeal on October 2, 2024, unless reenacted by the legislature.¹⁹

During the 2023 interim, subcommittee staff sent questionnaires to all 12 of the State University System (SUS) institutions and all 28 of the Florida College System (FCS) institutions.²⁰ Several SUS and FCS institutions indicated that a campus emergency response includes plans such as their CEMP and COOP, which outline the overall framework for responding to emergencies, as well as plans for more specific situations such as responding to dangerous weather, bomb threats, active shooters, and evacuation procedures.²¹ Of the SUS and FCS institutions that responded to the questionnaire, all respondents — except one which declined to give a recommendation — recommended that the exemption be reenacted as is.

Effect of the Bill

The bill removes the scheduled repeal of the exemptions, thereby saving the public record exemption and public meeting exemption from repeal. The bill also removes a superfluous provision of the exemption that authorizes entities to disclose the exempt information in specified circumstances, as entities are not prohibited from disclosing the information.

B. SECTION DIRECTORY:

Section 1: 1004.0962, F.S., relating to public record and public meeting exemptions for a campus emergency response of a public postsecondary educational institution.

Section 2: provides an effective date of October 1, 2024.

¹⁵ Section 1004.0962(4), F.S.

¹⁶ 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 Riviera 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).

¹⁷ *City of Riviera Beach v. Barfield*, 642 So.2d 1135, 1137 (Fla. 4th DCA 1994) (Transfer of police record to another agency did not remove exemption status).

¹⁸ Chapter 2022-133, L.O.F.

¹⁹ Section 1004.0962(6), F.S.

²⁰ Open Government Sunset Review Questionnaire, Campus Emergency Response Plans, responses on file with the Ethics, Elections & Open Government Subcommittee.

²¹ *Id.*

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not require rulemaking nor confer or alter an agency's rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.