

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCB EEG 23-09 OGSR/School Safety Mobile Suspicious Activity Reporting Tool

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

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Ethics, Elections & Open Government Subcommittee		Skinner	Toliver

**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.

FortifyFL is a mobile suspicious activity reporting tool that allows students and the community to relay information anonymously concerning unsafe, potentially harmful, dangerous, violent, or criminal activities, or the threat of these activities, to appropriate public safety agencies and school officials. FortifyFL must notify the reporting party that he or she may provide his or her report anonymously and that if the reporting party chooses to disclose his or her identity, such information will be shared with the appropriate law enforcement agency and school officials, who must maintain such information as confidential.

Current law provides public record exemptions for certain information related to FortifyFL. The identity of the reporting party received through FortifyFL and held by the Florida Department of Law Enforcement (FDLE), law enforcement agencies, or school officials is confidential and exempt from public record requirements. Any other information received through FortifyFL and held by FDLE, law enforcement agencies, or school officials is exempt from public record requirements.

The bill expands these public record exemptions to include such information held by the Florida Department of Education and provides for retroactive application of these exemptions. Due to the expansion of such exemptions, the bill extends the scheduled repeal of the exemptions until October 2, 2028, and also includes the constitutionally required public necessity statement.

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

**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 records or public meeting exemption. The bill expands an existing public record exemption; thus, it requires a two-thirds vote for final passage.**

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSR Act)<sup>1</sup> 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 2<sup>nd</sup> of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>2</sup>

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.<sup>3</sup>

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.<sup>4</sup> 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 for passage are not required.

##### School Safety Awareness Program - FortifyFL

FortifyFL is a mobile suspicious activity reporting tool that was created by the Legislature in 2018.<sup>5</sup> The Legislature directed the Florida Department of Law Enforcement (FDLE), in collaboration with the Department of Legal Affairs, to competitively procure the reporting tool.<sup>6</sup> The name – FortifyFL – was recommended by students of Marjory Stoneman Douglas High School.<sup>7</sup> FortifyFL allows students and the community to relay information anonymously concerning unsafe, potentially harmful, dangerous, violent, or criminal activities, or the threat of these activities, to appropriate public safety agencies and school officials.<sup>8</sup> Information reported using the tool must be promptly forwarded to the appropriate law enforcement agency or school official.<sup>9</sup> FortifyFL must notify the reporting party that:

- He or she may provide his or her report anonymously.
- If he or she chooses to disclose his or her identity, that information will be shared with the appropriate law enforcement agency and school officials, who must maintain such information as confidential.
- If, following an investigation, it is determined that he or she knowingly submitted a false tip, the Internet protocol address of the device on which the tip was submitted will be provided to law enforcement for further investigation and he or she may be subject to criminal penalties;

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<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Section 119.15(3), F.S.

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

<sup>4</sup> Article I, s. 24(c), FLA. CONST.

<sup>5</sup> See Chapter 2018-3, L.O.F., codified as s. 943.082, F.S.

<sup>6</sup> Section 943.082(1), F.S.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Section 943.082(3), F.S.

however, in all other circumstances, unless he or she has chosen to disclose his or her identity, the report will remain anonymous.<sup>10</sup>

Law enforcement dispatch centers, school districts, schools, and other entities identified by FDLE must be made aware of FortifyFL.<sup>11</sup> District school boards must promote the use of FortifyFL by advertising it on the school district website, in newsletters, on school campuses, and in school publications.<sup>12</sup> District school boards must also install it on all mobile devices issued to students and bookmark the website on all computer devices issued to students.<sup>13</sup> Additionally, FDLE must, in collaboration with the Division of Victim Services within the Office of the Attorney General and the Office of Safe Schools within the Florida Department of Education (DOE), develop and provide a comprehensive training and awareness program on the use of FortifyFL.<sup>14</sup>

#### Public Record Exemption under Review

In 2018, the Legislature created<sup>15</sup> a public record exemption for the identity of the reporting party received through FortifyFL and held by FDLE, law enforcement agencies, or school officials. Such information is confidential and exempt<sup>16</sup> from public record requirements.<sup>17</sup> Additionally, a public record exemption was also created for any other information received through FortifyFL and held by FDLE, law enforcement agencies, or school officials.<sup>18</sup> Such information is exempt from public record requirements.<sup>19</sup>

The 2018 public necessity statement<sup>20</sup> provides, in part, that the Legislature finds that:

The public records exemption for the identity of those individuals reporting potentially harmful or threatening activities as part of the School Safety Awareness Program encourages individuals to act and not be fearful that their identity will be revealed. Without the public records exemption, individuals reporting such activities might be less willing to report their knowledge of these possible activities to the appropriate authorities out of fear. Ensuring their identity is protected will encourage reporting, which could lead to law enforcement or other appropriate agencies intervening before an incident of mass violence occurs.

The public records exemption for any other information received through the mobile suspicious activity reporting tool protects information of a sensitive personal nature that, if disclosed, could be embarrassing. Without the public records exemption, individuals reporting such activities might be less willing to report their knowledge of these possible activities to the appropriate authorities out of fear and concern for their safety. The public records exemption will encourage reporting, which could lead to law enforcement or other appropriate agencies intervening before an incident of mass violence occurs.<sup>21</sup>

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<sup>10</sup> Section 943.082(2), F.S.

<sup>11</sup> Section 943.082(4)(a), F.S.

<sup>12</sup> Section 943.082(4)(b), F.S.

<sup>13</sup> *Id.*

<sup>14</sup> Section 943.082(5), F.S.

<sup>15</sup> Chapter 2018-01, L.O.F., codified as s. 943.082(6), F.S.

<sup>16</sup> There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So. 2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 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 Attorney General Opinion 85-62* (August 1, 1985).

<sup>17</sup> Section 943.082(6), F.S.

<sup>18</sup> Chapter 2018-01, L.O.F., codified as s. 943.082(6), F.S.

<sup>19</sup> Section 943.082(6), F.S.

<sup>20</sup> Article I, s. 24(c), FLA. CONST., requires each public record exemption to “state with specificity the public necessity justifying the exemption.”

<sup>21</sup> Chapter 2018-01, s. 4, L.O.F.

Pursuant to the OGSR Act, these public record exemptions will repeal on October 2, 2023, unless reenacted by the Legislature.<sup>22</sup>

During the 2022 interim, House and Senate staff met with staff from FDLE and DOE as part of their review under the OGSR Act. Both agencies were unaware of any litigation regarding the exemption. Additionally, FDLE estimated over 23,000 tips have been received through FortifyFL since it was created. House and Senate staff also sent questionnaires<sup>23</sup> to school districts, police departments, and sheriffs' offices. Of the respondents recommending action, the vast majority recommended reenacting the exemption as is, and no respondents recommended repealing the exemption. No responses indicated having received any complaints regarding the exemption or being aware of any litigation involving the exemption.

### **Effect of the Bill**

The bill expands these public record exemptions to include such information held by DOE and provides for retroactive application of these exemptions. Due to the expansion of such exemptions, the bill extends the scheduled repeal of the exemptions until October 2, 2028, and also includes the required public necessity statement.

#### **B. SECTION DIRECTORY:**

Section 1 amends s. 943.082, F.S., relating to the School Safety Awareness Program.

Section 2 provides a public necessity statement.

Section 3 provides this act takes effect upon becoming a law.

## **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:**

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<sup>22</sup> Section 943.082(6), F.S.

<sup>23</sup> Open Government Sunset Review Questionnaire, FortifyFL Information and Safe-School Officers, responses on file with the Ethics, Elections & Open Government Subcommittee.

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 expenditure of funds; reduce the authority that counties and municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties and municipalities.

##### 3. Other:

###### Vote Requirement

Article I, section 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 creates a public record exemption; thus, it requires a two-thirds vote for final passage.

###### Public Necessity Statement

Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it includes a public necessity statement. The public necessity statement provides, in part, that the Legislature finds that without the exemption, such individuals might be less willing to report their knowledge of these possible activities to the appropriate authorities, and that reporting such activities could lead to law enforcement or other appropriate agencies intervening before an incident of mass violence occurs. The public necessity statement also provides that the public record exemption for any other information received through the mobile suspicious reporting tool protects information of a sensitive personal nature that, if disclosed, could be embarrassing and that without the exemption, individuals might be less willing to report their knowledge of such activities out of fear and concern for safety.

###### Breadth of Exemption

Article 1, section 24(c) of the Florida Constitution requires a newly created or expanded public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for specified information concerning sensitive information submitted through FortifyFL and held by DOE, which does not appear to be broader than necessary to accomplish its purpose.

#### 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

Not applicable.