

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB APC 18-07 Public Records and Public Meetings
SPONSOR(S): Appropriations Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Appropriations Committee	27 Y, 0 N	Kramer	Leznoff

SUMMARY ANALYSIS

PCB APC 18-06 creates the Marjory Stoneman Douglas High School Public Safety Commission (Commission), the School Safety Awareness Program, and a marshal program. The Commission will investigate systems failures in the Marjory Stoneman Douglas High School shooting and prior mass violence incidents in this state and develop recommendations for system improvements. For purposes of the School Safety Awareness Program, the Department of Law Enforcement will competitively procure a mobile suspicious activity reporting tool that will allow students and the community to relay anonymously information concerning unsafe, potentially harmful, dangerous, violent, or criminal activities to appropriate public safety agencies and school officials. District school boards, through an agreement with a local law enforcement agency, will establish a marshal program, to allow school employees meeting certain requirements and appointed on a voluntary basis by a local law enforcement agency to serve as a school marshal.

The bill creates public record and public meeting exemptions relating to issues of school safety. Specifically, the bill creates the following exemptions:

- A public meeting exemption for any portion of a meeting of the Commission when confidential or exempt information is discussed.
- A public record exemption for the identity of an individual who reports information using the mobile suspicious activity reporting tool concerning unsafe, potentially harmful, dangerous, violent, or criminal activities, or the threat of these activities, when such information is held by a the Department of Law Enforcement, a law enforcement agency, or school officials.
- A public record exemption for any information held by a law enforcement agency, school district, or charter school that would identify whether a particular individual has been appointed as a school marshal.

The bill provides for repeal of the exemptions on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature. The bill provides a public necessity statement as required by the State Constitution.

The bill may have a minimal fiscal impact on the state and local governments. See Fiscal Comments.

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 newly created or expanded public record or public meeting exemption. The bill creates new public record and public meeting exemptions; thus, it requires a two-thirds vote for final passage

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records Law

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.

Public policy regarding access to government records is addressed further in s. 119.07(1)(a), F.S., which guarantees every person a right to inspect and copy any state, county, or municipal record.

Public Meetings Law

Article I, s. 24(b) of the State Constitution sets forth the state's public policy regarding access to government meetings. The section requires all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, be open and noticed to the public.

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., known as the "Government in the Sunshine Law" or "Sunshine Law," further requires that all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, at which official acts are to be taken be open to the public at all times.¹ The board or commission must provide reasonable notice of all public meetings.² Public meetings may not be held at any location that discriminates based on sex, age, race, creed, color, origin, or economic status or that operates in a manner that unreasonably restricts the public's access to the facility.³ Minutes of a public meeting must be promptly recorded and open to public inspection.⁴

Public Record and Public Meeting Exemptions

The Legislature may provide by general law for the exemption of records and meetings from the requirements of Art. I, s. 24(a) and (b) of the State Constitution.⁵ The general law must state with specificity the public necessity justifying the exemption⁶ and must be no more broad than necessary to accomplish its purpose.⁷

Furthermore, the Open Government Sunset Review Act⁸ 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 necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to administer effectively and efficiently a governmental program, which administration would be significantly impaired without the exemption.

¹ Section 286.011(1), F.S.

² *Id.*

³ Section 286.011(6), F.S.

⁴ Section 286.011(2), F.S.

⁵ FLA. CONST. art. I, s. 24(c).

⁶ This portion of a public record or public meeting exemption is commonly referred to as a "public necessity statement."

⁷ FLA. CONST. art. I, s. 24(c).

⁸ Section 119.15, F.S.

- 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.⁹

The Act also requires the automatic repeal of a public record or public meeting exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁰

PCB APC 18-06 (2018) – Public Safety

Marjory Stoneman Douglas High School Public Safety Commission

PCB APC 18-06 (2018) creates the Marjory Stoneman Douglas High School Public Safety Commission (Commission) to investigate system failures in the Marjory Stoneman Douglas High School shooting and prior mass violence incidents in this state and develop recommendations for system improvements. The Commission will have subpoena powers and is expressly authorized to access all records necessary to its functions, including confidential or exempt records. Such records may include records of investigations by the Department of Children and Families for child welfare or adult protective services functions or records held by the Department of Juvenile Justice.

The Commission is created subject to s. 20.052, F.S., which expressly subjects all commissions (if not specifically exempted) to the public meeting requirements of s. 286.011, F.S. Therefore, all Commission meetings will be public, including those at which the Commission discusses any confidential or exempt information it receives. Without the ability to close those portions of its public meetings, the Commission cannot maintain the confidential or exempt status of such information.

School Safety Awareness Program

PCB APC 18-06 (2018) requires the Department of Law Enforcement to competitively procure a mobile suspicious activity reporting tool that allows students and the community to relay anonymously information concerning unsafe, potentially harmful, dangerous, violent, or criminal activities, including the threat of these activities, to appropriate public safety agencies and school officials. The tool must receive reports through electronically through both Android and Apple devices. Any information received by the tool must be promptly forwarded to the appropriate law enforcement agency or school official.

The bill requires the tool to notify the reporting party of the following information:

- That the reporting party may provide his or her report anonymously.
- That if the reporting party chooses to disclose his or her identity, that information will be shared with the appropriate law enforcement agency and school officials; however, the law enforcement agency and school officials must maintain the information as confidential.

Marshal Program

PCB APC 18-06 (2018) authorizes district school boards to establish a school marshal program through an agreement with a local law enforcement agency. School marshals are school employees appointed on a voluntary basis by a local law enforcement agency in accordance with the agreement. In order to be appointed as a school marshal, the school employee must hold a concealed weapons permit, undergo a psychological evaluation, and earn a school marshal certificate issued by the Criminal Justice Standards and Training Commission after successfully completing rigorous training requirements designed specifically for responding to armed assailants in a school setting. A school

⁹ Section 119.15(6)(b), F.S.

¹⁰ Section 119.15(3), F.S.

marshal may carry a firearm of the specific type and caliber with which he or she is qualified to carry pursuant to the training. A school marshal must be distinctly and visually identifiable to responding law enforcement officers, faculty, staff, and students only in the case of an active assailant incident on the school campus and otherwise may perform his or her school-related duties in plain clothes.

Effect of the Bill

The bill, which is linked to the passage of PCB APC 18-06, creates multiple public record and public meeting exemptions concerning school safety. Specifically, the bill creates the following exemptions:

- A public meeting exemption for any portion of a meeting of the Marjory Stoneman Douglas High School Public Safety Commission when confidential or exempt information is discussed.
- A public record exemption for the identity of an individual who reports information using the mobile suspicious activity reporting tool concerning unsafe, potentially harmful, dangerous, violent, or criminal activities, or the threat of these activities, when such information is held by the Department of Law Enforcement, a law enforcement agency, or school officials. Such information about the reporter is confidential and exempt¹¹ from public record requirements.
- A public record exemption for any information held by a law enforcement agency, school district, or charter school that would identify whether a particular individual has been appointed as a school marshal. Such information is exempt from public record requirements.

The bill provides a public necessity statement as required by the State Constitution for the public record and public meeting exemptions. The public necessity statement provides that without these exemptions, the effective and efficient administration of the marshal program, the School Safety Awareness Program, and the Marjory Stoneman Douglas High School Public Safety Commission could be compromised. The public record exemption to protect the identities of marshals is in order to maximize their effectiveness. The public record 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 identities will be revealed to their fellow students. Finally, the public meeting exemption will allow the Marjory Stoneman Douglas High School Public Safety Commission to review and discuss confidential or exempt information that will be useful in forming meaningful recommendations without negating the public record exemptions.

The bill provides for repeal of the exemptions on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

B. SECTION DIRECTORY:

Section 1. amends s. 943.082, F.S., to create a public record exemption for the School Safety Awareness Program.

Section 2. amends s. 943.687, F.S., to create a public meeting exemption for the Marjory Stoneman Douglas High School Public Safety Commission.

Section 3. amends s. 1006.12, F.S., to create a public record exemption for certain information identifying school marshals.

Section 4. provides public necessity statements.

¹¹ There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates as 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 (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 2004); and 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, the record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute.

See 85-62 Fla. Op. Att’y Gen. (1985).

Section 5. provides a contingent effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have an impact on state government revenues.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have an impact on local government revenues.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill could have a minimal fiscal impact on agencies because agency staff responsible for complying with public record requests may require training related to creation of the public record exemptions. In addition, agencies could incur costs associated with redacting the confidential or exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of agencies.

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 take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

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 newly created public record or public meeting exemption. The bill creates new public record and public meeting exemptions; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. Because the bill creates new public record and public meeting exemptions, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates public record and public meeting exemptions relating to school safety that protect whether a particular individual is a marshal, the identity of a person who identifies a potentially dangerous or unsafe situation to appropriate personnel, and closes portions of meetings wherein confidential or exempt information relating to school safety is discussed. As such, the exemptions do not appear to be in conflict with the constitutional requirement that they be no broader than necessary to accomplish their purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.