

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GAP 10-21 OGSR Commission for Independent Education

SPONSOR(S): Governmental Affairs Policy Committee

TIED BILLS: IDEN./SIM. BILLS: SB 1676

| | REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|--------------|---------------------------------------|--------|------------|----------------|
| Orig. Comm.: | Governmental Affairs Policy Committee | | Williamson | Williamson |
| 1) | | | | |
| 2) | | | | |
| 3) | | | | |
| 4) | | | | |
| 5) | | | | |

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record 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.

The Commission for Independent Education (commission) is established in the Department of Education. It is a seven member commission that functions in matters concerning independent postsecondary educational institutions in consumer protection, program improvement, and licensure for institutions under its purview. The commission may conduct disciplinary proceedings through an investigation of any suspected violation of chapter 1005, F.S., related to nonpublic postsecondary education.

Current law provides a public record exemption for investigatory records held by the commission; however, such exemption expires 10 days after a probable cause panel makes a determination regarding probable cause. It also provides a public meeting exemption for those meetings of a probable cause panel wherein exempt records are discussed.

The bill reenacts the public record and public meeting exemptions for the commission. It requires a recording to be made of any closed portion of a probable cause panel meeting. The recording must be maintained by the commission. The bill expands the current exemptions to include recordings of closed meetings. As such, the bill extends the repeal date from October 2, 2010, to October 2, 2015. It also provides a public necessity statement as required by the State Constitution.

The bill could create a minimal fiscal impact on the commission as a result of costs associated with recording closed portions of meetings.

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 expands the current exemption under review; thus, it requires a two-thirds vote for final passage.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ 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.

The 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:

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

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.² 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 created³ then a public necessity statement and a two-thirds vote for passage are not required.

Commission for Independent Education

The Commission for Independent Education (commission) is established in the Department of Education.⁴ It is a seven member commission that functions in matters concerning independent

¹ Section 119.15, F.S.

² Section 24(c), Art. I of the State Constitution.

³ An example of an exception to a public record exemption would be allowing another agency access to confidential or exempt records.

⁴ Section 1005.21(1), F.S.

postsecondary educational institutions in consumer protection, program improvement, and licensure for institutions under its purview.⁵

The commission currently licenses more than 820 private postsecondary institutions serving more than 275,000 students. Approximately 38 percent of the licensed institutions are degree-granting institutions.⁶ The commission must adopt rules for the establishment and operation of the postsecondary educational institutions it licenses and must submit the rules to the State Board of Education for approval.⁷

The commission may conduct disciplinary proceedings through an investigation of any suspected violation of chapter 1005, F.S., related to nonpublic postsecondary education.⁸ It may deny, place on probation, or revoke the license of an institution or may fine an institution up to \$5000, for a violation of the commission's rules.⁹

Exemptions under Review

Current law provides a public record and public meeting exemption for the Commission for Independent Education.¹⁰

All investigatory records held by the commission, in conjunction with an investigation conducted pursuant to a suspected violation of chapter 1005, F.S., or commission rule, are exempt¹¹ from public records requirements. The exemption expires 10 days after a probable cause panel makes a determination regarding probable cause.¹²

Those portions of meetings of a probable cause panel at which exempt records are discussed are exempt from public meetings requirements.¹³ In addition, minutes and findings of an exempt probable cause panel meeting are exempt from public records requirements for a period not to exceed 10 days after the panel makes a determination regarding probable cause.¹⁴

Current law does not require a recording of the closed portions of meetings. As such, one could argue the public has no assurance that the commission actually discusses exempt records during those closed meetings.

Pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2010, unless reenacted by the Legislature.¹⁵

Effect of Bill

The bill reenacts the public record and public meeting exemptions. In addition, any portion of a closed meeting must be recorded and the recording must be maintained by the commission. No portion of the closed meeting may be off the record.

⁵ Section 1005.21(2), F.S.

⁶ Senate Bill Analysis and Fiscal Impact Statement for SB 1676 (February 24, 2010) at 3.

⁷ Section 1005.22(1)(e)1., F.S.

⁸ Section 1005.38(6), F.S.

⁹ Section 1005.38(1), F.S.

¹⁰ Section 1005.38(6)(b), F.S.

¹¹ 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 the statutory exemption. (*See Attorney General Opinion 85-62*, August 1, 1985).

¹² Section 1005.38(6)(b)1., F.S.

¹³ Section 1005.38(6)(b)2., F.S.

¹⁴ Section 1005.38(6)(b)1., F.S.

¹⁵ Section 1005.38(6)(b)3., F.S.

The bill creates a temporary public record exemption for the recording of a closed portion of a meeting. The exemption for the recording also expires 10 days after a probable cause panel makes a determination regarding probable cause.

Because the bill creates a temporary public record exemption for the recordings of closed panel meetings, the bill extends the repeal date for the exemptions from October 2, 2010, to October 2, 2015. It also provides a public necessity statement as required by the State Constitution.¹⁶

B. SECTION DIRECTORY:

Section 1 amends s. 1005.38, F.S., to reenact and expand the public record and public meeting exemptions for the Commission for Independent Education.

Section 2 provides a public necessity statement.

Section 3 provides an effective date of October 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Commission for Independent Education could incur costs associated with recording closed portions of meetings; however, those costs should be minimal.

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:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

¹⁶ Section 24(c), Art. I of the State Constitution.

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 expands the current exemptions under review; 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. The bill expands the current exemptions under review; thus, it includes a public necessity statement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

Not applicable.