

1                                   A bill to be entitled  
 2       An act relating to public records; creating s. 1002.221,  
 3       F.S.; providing an exemption from public records  
 4       requirements for K-12 education records held by an agency,  
 5       public school, center, institution, or other entity that  
 6       is part of the state's education system; providing  
 7       requirements for the release, use, and maintenance of  
 8       education records; providing for future legislative review  
 9       and repeal of the exemption under the Open Government  
 10      Sunset Review Act; amending s. 1006.52, F.S.; expanding  
 11      the exemption from public records requirements for records  
 12      of students in public postsecondary educational  
 13      institutions to include education records and applicant  
 14      records; providing requirements for the release, use, and  
 15      maintenance of education records; providing for future  
 16      legislative review and repeal of the exemption under the  
 17      Open Government Sunset Review Act; providing legislative  
 18      findings; providing a statement of public necessity;  
 19      providing a contingent effective date.

20  
 21 Be It Enacted by the Legislature of the State of Florida:

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 23           Section 1.   Section 1002.221, Florida Statutes, is created  
 24 to read:

25           1002.221 K-12 education records.--  
 26           (1) Education records, as defined in the Family  
 27 Educational Rights and Privacy Act (FERPA), 20 U.S.C. s. 1232g,  
 28 and the federal regulations issued pursuant thereto, are

29 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
 30 of the State Constitution.

31 (2) An agency, as defined in s. 1002.22(1)(a), or a public  
 32 school, center, institution, or other entity that is part of  
 33 Florida's education system under s. 1000.04(1), (3), or (4), may  
 34 not release a student's education records without the written  
 35 consent of the student or parent to any individual, agency, or  
 36 organization, except in accordance with and as permitted by the  
 37 FERPA. Education records released by an agency, as defined in s.  
 38 1002.22(1)(a), or by a public school, center, institution, or  
 39 other entity that is part of Florida's education system under s.  
 40 1000.04 (1), (3), or (4), to the Auditor General or the Office  
 41 of Program Policy Analysis and Government Accountability, which  
 42 are necessary for such agencies to perform their official duties  
 43 and responsibilities, shall be used and maintained by the  
 44 Auditor General and the Office of Program Policy Analysis and  
 45 Government Accountability in accordance with the FERPA.

46 (3) This section is subject to the Open Government Sunset  
 47 Review Act in accordance with s. 119.15 and shall stand repealed  
 48 on October 2, 2014, unless reviewed and saved from repeal  
 49 through reenactment by the Legislature.

50 Section 2. Section 1006.52, Florida Statutes, is amended  
 51 to read:

52 1006.52 Education ~~Student~~ records and applicant records.--

53 (1) Each public postsecondary educational institution  
 54 ~~university~~ may prescribe the content and custody of records that  
 55 ~~and reports which~~ the institution ~~university~~ may maintain on its  
 56 students and applicants for admission. A student's education

57 ~~Such~~ records, as defined in the Family Educational Rights and  
 58 Privacy Act (FERPA), 20 U.S.C. s. 1232g, and the federal  
 59 regulations issued pursuant thereto, and applicant records are  
 60 confidential and exempt from the provisions of s. 119.07(1) and  
 61 s. 24(a), Art. I of the State Constitution are open to  
 62 inspection only as provided in s. 1002.22. For the purpose of  
 63 this subsection, applicant records shall be considered to be  
 64 records that are:

65 (a) Directly related to an applicant for admission to a  
 66 public postsecondary educational institution who has not been in  
 67 attendance at the institution; and

68 (b) Maintained by a public postsecondary educational  
 69 institution or by a party acting on behalf of the public  
 70 postsecondary educational institution.

71 (2) A public postsecondary educational institution may not  
 72 release a student's education records without the written  
 73 consent of the student to any individual, agency, or  
 74 organization, except in accordance with and as permitted by the  
 75 FERPA. Education records released by public postsecondary  
 76 educational institutions to the Auditor General or the Office of  
 77 Program Policy Analysis and Government Accountability, which are  
 78 necessary for such agencies to perform their official duties and  
 79 responsibilities, shall be used and maintained by the Auditor  
 80 General and the Office of Program Policy Analysis and Government  
 81 Accountability in accordance with the FERPA.

82 (3) This section is subject to the Open Government Sunset  
 83 Review Act in accordance with s. 119.15 and shall stand repealed  
 84 on October 2, 2014, unless reviewed and saved from repeal

85 through reenactment by the Legislature.

86 ~~(2) Rules of the State Board of Education may prescribe~~  
 87 ~~the content and custody of records and reports which a community~~  
 88 ~~college may maintain on its students. Such records are~~  
 89 ~~confidential and exempt from s. 119.07(1) and are open to~~  
 90 ~~inspection only as provided in s. 1002.22.~~

91 Section 3. (1) The Legislature finds that it is a public  
 92 necessity to continue to make confidential and exempt from  
 93 disclosure education records, as defined in the Family  
 94 Educational Rights and Privacy Act (FERPA), 20 U.S.C. s. 1232g,  
 95 and the federal regulations issued pursuant thereto, which are  
 96 maintained by public postsecondary educational institutions or  
 97 persons acting for such institutions. The state has historically  
 98 protected education records from public disclosure and continues  
 99 to provide for the confidential and exempt nature of education  
 100 records; however, the state does not currently conform to the  
 101 federal definition of education records, which is more inclusive  
 102 than the state law. Such inconsistency may result in  
 103 noncompliance with federal law, for which public educational  
 104 institutions could be sanctioned by the loss of all federal  
 105 funds received from the United States Department of Education.

106 (2) The Legislature finds that it is a public necessity  
 107 that student applicant records held by public postsecondary  
 108 educational institutions be made confidential and exempt in  
 109 accordance with public records requirements. Student applicant  
 110 records maintained by public postsecondary educational  
 111 institutions may include, but are not limited to, academic  
 112 transcripts, test scores, records of disciplinary proceedings,

PCB EPC 09-02

Redraft - A

2009

113 disability and health records, and other records that are  
114 protected from disclosure under state and federal law. An  
115 exemption for student applicant records is necessary because the  
116 release of certain information from the records of applicants  
117 who are not admitted to or who do not enroll in an institution  
118 would negatively affect the applicants' privacy interests in  
119 their education records, which are already confidential and  
120 exempt as maintained by the transmitting educational  
121 institutions. The Legislature finds that the private and  
122 confidential nature of the records of an applicant who is not  
123 accepted for admission or who otherwise does not enroll in an  
124 institution is identical to the nature of the records of an  
125 enrolled student, which are confidential and exempt from public  
126 records requirements. The Legislature further finds that the  
127 release of an applicant's records to the public would harm the  
128 applicant's ability to protect his or her personal and education  
129 records and could result in identity theft and hinder applicants  
130 from providing truthful and complete information during the  
131 admission process.

132 (3) The Legislature finds that the public and private harm  
133 in disclosing personal and educational information contained in  
134 public postsecondary applicant records significantly outweighs  
135 any public benefit derived from disclosure and that the  
136 exemption of public postsecondary applicant records from public  
137 disclosure will enhance the ability of applicants and public  
138 postsecondary educational institutions to protect the privacy  
139 rights that otherwise attach to such information outside the  
140 admission process.

141       (4) Public disclosure of a public school student's  
142 educational information, especially sensitive information,  
143 including, but not limited to, academic achievement, diagnostic  
144 tests, and the existence of mental and physical disabilities,  
145 would significantly inhibit the educational process, the  
146 functions of the school, and the ability of parents to oversee  
147 their children's education. Although the Legislature has  
148 historically provided for significant mandatory disclosure and  
149 public reporting of information on student achievement and other  
150 factors, the disclosure and public reporting are released in  
151 aggregate form and do not personally identify students or  
152 disclose their education records.

153       (5) The Legislature finds that in order to comply with the  
154 applicable federal requirements regarding the collection, use,  
155 and release of education records, such records must be made  
156 confidential and exempt from public disclosure. Therefore, the  
157 Legislature finds that state law must be updated to maintain  
158 consistency with federal requirements, including newly  
159 promulgated exemptions to public disclosure.

160       Section 4. This act shall take effect on the same date  
161 that HB \_\_\_\_ or similar legislation takes effect, if such  
162 legislation is adopted in the same legislative session or an  
163 extension thereof and becomes law.