

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB EEG 23-10 OGSR/Marjory Stoneman Douglas High School Public Safety Commission/Safe-School Officers

**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	18 Y, 0 N	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.

The Marjory Stoneman Douglas High School Public Safety Commission (MSD Commission) monitors implementation of school safety legislation. The MSD Commission is housed within the Florida Department of Law Enforcement (FDLE). The Commissioner of FDLE must use his or her subpoena power to compel the production of any books, papers, records, documentary evidence, and other items, including confidential information, relevant to the performance of the duties of the MSD Commission or to the exercise of its powers. The MSD Commission may also request and must be provided with access to any information or records, which pertain to the Marjory Stoneman Douglas High School shooting and prior mass violence incidents in Florida being reviewed by the commission and which are necessary for the commission to carry out its duties. Information or records obtained by the MSD Commission which are otherwise exempt or confidential and exempt must retain such exempt or confidential and exempt status, and the commission may not disclose any such information or records.

Current law requires district school boards and school district superintendents to partner with law enforcement or security agencies to establish or assign one or more safe-school officers at each school facility within the district, including charter schools. A safe-school officer may be school resource officer, school safety officer, school guardian, or a school security guard. Each of these safe-school officers must meet specified training and eligibility requirements and be certified for a specified safe-school officer position.

In 2018, the Legislature created a public meeting exemption for any portion of a meeting of the MSD Commission at which exempt or confidential and exempt information is discussed, exempting such information from public meeting requirements, as well as created 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 safe-school officer. Such identifying information is exempt from public record requirements.

The bill saves from repeal the public meeting and public record exemptions, which will repeal on October 2, 2023, if the bill does not become law.

The bill does not appear to have 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)<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.

##### Marjory Stoneman Douglas High School Public Safety Commission

In 2018, the Legislature created the Marjory Stoneman Douglas High School Public Safety Commission (MSD Commission) and placed the commission within the Florida Department of Law Enforcement (FDLE).<sup>5</sup> The MSD Commission monitors implementation of school safety legislation in several ways, including:

- Evaluating the activities of the Office of Safe Schools to provide guidance to school districts, identifying areas of noncompliance and mechanisms used to achieve compliance.
- Reviewing the findings of the Auditor General regarding school district school safety policies and procedures that need improvement to ensure and demonstrate compliance with state law.
- Assessing efforts by local governments to improve communication and coordination among regional emergency communications systems.
- Investigating any failures in incident responses by local law enforcement agencies and school resource officers; identifying existing policies and procedures for active assailant incidents on school premises and evaluating the compliance with such policies and procedures in the execution of incident responses; evaluating the extent to which any failures in policy, procedure, or execution may contribute to an inability to prevent deaths and injuries; and making specific

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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> Section 943.687(1), F.S. The MSD Commission is composed of 16 members. The President of the Senate, the Speaker of the House of Representatives, and the Governor each appoint five members, and the Commissioner of FDLE serves as a member. The Secretary of Children and Families, the Secretary of Juvenile Justice, the Secretary of Health Care Administration, and the Commissioner of Education serve as ex officio, nonvoting members. FDLE staff assists the MSD Commission in performing its duties. *See ss.*

943.687(2)(a)-(c), F.S.

recommendations for improving law enforcement and school resource officer responses to incidents.

- Investigating any failures in interactions with perpetrators preceding incidents of violence; evaluating the extent to which any such failures contributed to an inability to prevent deaths and injuries; and making specific recommendations for improving communication and coordination among entities with knowledge of indicators of risk or possible threats of violence.<sup>6</sup>

The MSD Commission has the power to investigate and may delegate to its investigators the authority to administer oaths and affirmations.<sup>7</sup> The Commissioner of FDLE must use his or her subpoena power to compel the attendance of witnesses to testify before the MSD Commission, as well as use such subpoena power to compel the production of any books, papers, records, documentary evidence, and other items, including confidential information, relevant to the performance of the duties of the MSD Commission or to the exercise of its powers.<sup>8</sup> The MSD Commission may also request and must be provided with access to any information or records, including those which are exempt or confidential and exempt, which pertain to the Marjory Stoneman Douglas High School shooting and prior mass violence incidents in Florida being reviewed by the MSD Commission and which are necessary for the commission to carry out its duties.<sup>9</sup> Information or records obtained by the MSD Commission which are otherwise exempt or confidential and exempt must retain such exempt or confidential and exempt status, and the commission may not disclose such information or records.<sup>10</sup>

### Safe-school Officers

District school boards and school district superintendents are required to partner with law enforcement or security agencies to establish or assign one or more safe-school officers at each school facility within the district, including charter schools.<sup>11</sup> To assist charter schools with fulfilling this requirement, a district school board must collaborate with charter school governing boards to facilitate charter school access to all safe-school officer options.<sup>12</sup>

A safe-school officer may be a school resource officer, school safety officer, school guardian, or a school security guard.<sup>13</sup> A school district may implement any combination of the following options based upon the needs of the school district and charter schools:<sup>14</sup>

- *School Resource Officer*: Establish school resource officer programs through a cooperative agreement with law enforcement agencies. A school resource officer is a certified law enforcement officer<sup>15</sup> who is employed by a law enforcement agency and is required to undergo criminal background checks, drug testing, and a psychological evaluation.<sup>16</sup> School resource officers abide by school board policies and consult with and coordinate activities through the school principal. They are responsible to the law enforcement agency in all matters relating to the employment, subject to agreements between a school board and a law enforcement agency. Activities conducted by the school resource officer, which are part of the regular instructional program of the school, are under the school principal's direction.<sup>17</sup>
- *School Safety Officer*: Commission one or more school safety officers as recommended by the district school superintendent and appointed by the district school board. A school safety officer is a certified law enforcement officer<sup>18</sup> who may be employed by a district school board or law enforcement agency and is required to undergo criminal background checks, drug testing, and a

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<sup>6</sup> Section 943.687(3), F.S.

<sup>7</sup> Section 943.687(4), F.S.

<sup>8</sup> Section 943.687(5), F.S.

<sup>9</sup> Section 943.687(7), F.S.

<sup>10</sup> *Id.*

<sup>11</sup> Section 1006.12, F.S.

<sup>12</sup> *Id.*

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

<sup>14</sup> *Id.*

<sup>15</sup> *See s.* 943.10(1), F.S.

<sup>16</sup> Section 1006.12(1)(a)

<sup>17</sup> Section 1006.12(1)(b), F.S.

<sup>18</sup> *See* 943.10(1), F.S.

psychological evaluation.<sup>19</sup> A school safety officer has and must exercise the power to make arrests for violations of law on school board property or on property owned or leased by a charter school under a charter contract. The officer may also make arrests off school board property if the law violation occurred on such property and may carry weapons when performing his or her official duties.<sup>20</sup> A school safety officer's salary may be paid jointly by the school board and the law enforcement agency, as mutually agreed.<sup>21</sup>

- *School Guardian*: Appoint a school guardian under the Coach Aaron Feis School Guardian Program<sup>22</sup> who is certified by the sheriff after completing a psychological evaluation, drug testing, and specified training, which includes firearm instruction.<sup>23</sup> A guardian may be a school district employee or charter school employee who volunteers to serve as a guardian, in support of school sanctioned activities, in addition to his or her official job duties, or an employee of a school district or a charter school who is hired for the specific purpose of serving as a school guardian qualifying.<sup>24</sup> Guardians do not have arrest powers.<sup>25</sup>
- *School Security Guard*: Contract with a security agency<sup>26</sup> to employ a school security guard. A school security guard is an individual who is employed by a security agency and serves on a school facility as safe-school officer in support of school sanctioned activities.<sup>27</sup> Security guards are required to hold a concealed carry weapon permit and undergo drug testing and a psychological evaluation.<sup>28</sup> An individual serving in this capacity must also complete guardian program training, including 144 training hours.<sup>29</sup> A security guard must aid in the prevention or abatement of active assailant incidents on school premises,<sup>30</sup> but does not have arrest powers.<sup>31</sup>

#### Public Meeting and Public Record Exemptions under Review

In 2018, the Legislature created<sup>32</sup> certain public meeting and public record exemptions for the MSD Commission and safe-school officers. Any portion of a meeting of the MSD Commission at which exempt or confidential and exempt information is discussed was made exempt from public meeting requirements.<sup>33</sup> 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 safe-school officer was made exempt<sup>34</sup> from public record requirements.<sup>35</sup>

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<sup>19</sup> Section 1006.12(2)(a), F.S.

<sup>20</sup> Section 1006.12(2)(b), F.S.

<sup>21</sup> Section 1006.12(2)(d), F.S.

<sup>22</sup> See s. 30.15, F.S.

<sup>23</sup> Section 30.15(1)(k), F.S.

<sup>24</sup> Section 1006.12(3), F.S.

<sup>25</sup> Section 30.15(1)(k), F.S.

<sup>26</sup> See s. 493.6101(18), F.S.

<sup>27</sup> Section 1006.12(4)(c), F.S.

<sup>28</sup> Section 1006.12(4)(a), F.S.

<sup>29</sup> Section 1006.12(4)(a)1., F.S.

<sup>30</sup> Section 1006.12(4)(c), F.S.

<sup>31</sup> Section 30.15(1)(k), F.S.

<sup>32</sup> Chapter 2018-01, L.O.F., codified as ss. 943.687(8) and 1006.12(8), F.S.

<sup>33</sup> Section 943.687(8), F.S.

<sup>34</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>35</sup> Section 1006.12(8), F.S.

The 2018 public necessity statements<sup>36</sup> for the public meeting and public record exemptions provide the following:

The purpose of the commission is to investigate failures in the Marjory Stoneman Douglas High School shooting and prior mass violence incidents in Florida and develop recommendations for system improvements. In order to fulfill its directive, the commission must be able to discuss exempt or confidential and exempt information that it receives as part of its investigation. The public meetings exemption will allow the commission to review and discuss exempt or confidential and exempt information that will be useful in forming meaningful recommendations for system improvements for prevention and response to mass violence incidents. As such, it is a necessity that those portions of meetings wherein exempt or confidential and exempt information is discussed be made exempt from public meetings requirements. If such portions of meeting are not closed, then the public records exemptions would be negated.

School security and student safety are fundamental priorities in this state. In light of the tragic events at Marjory Stoneman Douglas High School, in which 14 students and 3 adults were shot and killed on February 14, 2018, school districts in this state must be allowed to provide a supplemental security presence. To maximize the effectiveness of safe-school officers as a deterrent and responsive factor to situations threatening the lives of students and school staff, safe-school officers may perform their school-related duties while carrying a concealed weapon. Disclosure of the identity of a safe-school officer can affect his or her ability to adequately respond to an active assailant situation.<sup>37</sup>

Pursuant to the OGSR Act, the public meeting and public record exemptions will repeal on October 2, 2023, unless reenacted by the Legislature.<sup>38</sup>

During the 2022 interim, House and Senate staff conducted a review of the exemptions under the OGSR Act. As part of the review of the public meeting exemption for the MSD Commission, House and Senate staff met with FDLE. FDLE stated there had been about 20 commission meetings so far and such meetings have only been closed a few times. FDLE further stated there has been no litigation related to the interpretation of the exemption, as well as no administrative or interpretative issues with the exemption. As such, FDLE requested that the public meeting exemption be reenacted as is.

As part of the review of the public record exemption for information identifying an individual as a safe-school officer, House and Senate staff met with FDLE and DOE. DOE stated it receives public record requests for the exempt information, but the exempt information is not provided. Both agencies were unaware of any litigation pertaining to the exemption and suggested the exemption be reenacted as is. Further, House and Senate staff also sent questionnaires<sup>39</sup> to school districts, police departments, and sheriffs' offices. Of the respondents recommending action, the majority recommended the exemption be re-enacted as is, and no respondents recommended the exemption be repealed. No responses indicated having received any complaints regarding the exemption.<sup>40</sup>

## **Effect of the Bill**

The bill removes the scheduled repeal of the exemptions; thereby maintaining the public meeting exemption for any portion of a meeting of the MSD Commission at which exempt or confidential and

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<sup>36</sup> Article I, s. 24(c), FLA. CONST., requires each public record exemption to “state with specificity the public necessity justifying the exemption.”

<sup>37</sup> Chapter 2018-1, ss.3 and 4, L.O.F.

<sup>38</sup> Sections 943.687(8) and 1006.12(8), F.S.

<sup>39</sup> Open Government Sunset Review Questionnaire, FortifyFL Information and Safe-School Officers, responses on file with the Ethics, Elections & Open Government Subcommittee.

<sup>40</sup> However, one school district response provided that it had received an email from a requestor disagreeing with the school district's interpretation of the exemption.

exempt information is discussed, as well as maintaining the 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 safe-school officer.

**B. SECTION DIRECTORY:**

Section 1 amends s. 943.687, F.S., relating to Marjory Stoneman Douglas High School Public Safety Commission.

Section 2 amends s. 1006.12, F.S., relating to safe-school officers at each public school.

Section 3 provides an effective date of October 1, 2023.

**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 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.

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.