



The First Amendment Foundation opposes three statutes subject to Open Government Sunset Review during the 2022 legislative session.

Section 119.15(6)(a) of the Florida Statutes states that, when evaluating whether to reinstate an exemption, the legislature must consider the following:

1. What specific records and meetings are affected by the exemption?
2. Whom does the exemption uniquely affect, as opposed to the general public?
3. What is the identifiable public purpose of the exemption?
4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
5. Is the record or meeting protected by another exemption?
6. Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

The legislature may maintain an exemption only if it serves an identifiable public purpose, and the exemption is no broader than is necessary to meet the public purpose it serves. Fla. Stat. § 119.15(6)(b).

The First Amendment Foundation has reviewed the exemptions scheduled to sunset in October 2022 if not reinstated. Staff researched whether any exemptions had been challenged in court and sent public records to determine how often the exemptions were used. Staff spoke to journalists and individuals who have been denied records based on the exemptions and government employees who work with public records.

FAF recommends allowing **Fla. Stat. § 1004.0962** to sunset because the exemption is broader than necessary to serve its identified purpose. The statute exempts campus emergency response plans held by a state university or college, law enforcement agency, or emergency management agencies. The public necessity statement suggested that public dissemination of an emergency response plan could hinder an institution's response to an act of terrorism or other public safety crisis or emergency.

Despite the stated intent, the statute has been used to deny access to university and college's pandemic response plans. Public records provided to FAF and [news reports](#) reveal that Florida State University, University of Central Florida, University of North Florida, University of South Florida and Santa Fe College all denied access to their pandemic plans citing the exemption. Students, parents, faculty, and staff had no way to assess an institution's response to the pandemic. Notably, the sponsor of the House bill, then-representative Byron Donalds, told reporters that the law was never meant to exempt a school's pandemic protocols and encouraged school officials to release the documents. The statute was intended to apply to

security and law enforcement information related to thwarting or responding to terror attacks and similar emergencies – not pandemics. It is being misapplied and misinterpreted because the language is vague and "broader than is necessary." Therefore, the exemption does not meet constitutional requirements and should sunset.

Fla. Stat. § 1004.055 exempts and makes confidential records held by a state university or college that identify detection, investigation, or response practices for suspected or confirmed security incidents. While FAF does not oppose this exemption, FAF recommends the statute be amended to permit release of reports after confirmed security incidents occur, in a redacted form that would not threaten security or release law enforcement strategy or procedure. A release of reports balances the security interests of institutions and the public's right to know how a college or university responded to a security breach.

In addition, FAF recommends repealing or narrowing **Fla. Stat. § 744.2111**, which exempts information held by the Department of Elder Affairs in connection with a complaint filed against a guardian. Reports of [fraud](#) perpetrated by guardians and [conflicts of interests](#) within Florida's guardianship system are not uncommon. Such reporting has led to local and statewide reforms. More transparency is needed to ensure that wards are not taken advantage of by guardians and the Department is accountable for investigations. The exemption should be narrowed to exempt only identifying information of a ward and personal health and financial records of a ward to further the statute's purpose – protecting the ward from retaliation by a guardian. While the records may be disclosed if required by court order, the statute lacks a standard for disclosure and does not provide that the records may be produced upon "a showing of good cause before a court of competent jurisdiction" as included in Fla. Stat. § 119.071(3)(a)3.d. If the exemption is reinstated, FAF recommends including this language to allow disclosure if a disability advocate, journalist, or member of the public can show good cause before a court to make the information available in a manner consistent with the Public Records Act.

In the alternative, the exemption could merge with **Fla. Stat. § 744.2104**, which shields from public view medical, financial, or mental health records held by an agency made as part of an investigation of a guardian filed with the Office of Public and Professional Guardians. These exemptions could be combined for clarity and consistency.

Finally, FAF recommends that **Fla. Stat. § 110.12301(3)** sunset because the exemption no longer serves an identifiable public purpose. The staff analysis for SB 2510 (2017) explained that the exemption was intended to protect financial records and personal documents submitted to the Department of Management Services (DMS) for the purposes of verifying dependent eligibility for state insurance programs. The records were submitted as part of an audit funded in the General Appropriations Act of 2017.

In an email to FAF, Jimmy Cox, the director of DMS's People First division, explained that the audit was completed in June 2018. Cox also explained that the agency conducts an on-going audit on all newly registered dependents. Further, Cox noted that documents submitted to prove a dependent is eligible for coverage are exempted by Fla. Stat. § 110.123(9). Because the audit tied to the records exemption has been completed, the exemption is no longer justified and should sunset.