

**STORAGE NAME:** h0769.ge.doc

**DATE:** February 10, 2002

**HOUSE OF REPRESENTATIVES  
AS REVISED BY THE COMMITTEE ON  
GENERAL EDUCATION  
ANALYSIS**

**BILL #:** HB 769

**RELATING TO:** Public Records / Student Assessments

**SPONSOR(S):** Representative(s) Alexander

**TIED BILL(S):**

**ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:**

- (1) STATE ADMINISTRATION YEAS 5 NAYS 0
- (2) GENERAL EDUCATION
- (3) COUNCIL FOR LIFELONG LEARNING
- (4)
- (5)

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**I. SUMMARY:**

This bill creates a public records exemption for data disclosing personal identifying information about a teacher or any other instructional personnel, and the effects of instruction by a teacher or other instructional personnel on a student when held by the Department of Education (DOE). DOE can release the information made confidential and exempt by this bill to the State Board of Education. The State Board of Education must maintain the confidential and exempt status of that information.

This bill provides a public necessity statement, as required by the Florida Constitution, which states that the release of the confidential and exempt information might discourage qualified persons from entering the field of teaching.

This bill provides for future review and repeal of the public records exemption. The bill does not provide for retroactive application of the exemption.

This bill does not appear to have a fiscal impact on state or local governments.

On February 7, 2002, the Committee on State Administration reported this bill favorably with a strike-all amendment. That amendment is traveling with the bill. The strike-all amendment addresses a number of issues found in the bill. See "Amendments or Committee Substitute Changes" section for further details.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |                              |                             |   |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

**Student Assessment Program**

Section 229.57, F.S., provides for a statewide student assessment program. The purpose of the program is to provide information needed to improve public schools by maximizing the learning gains of all students and to inform parents of their children's educational progress.

Section 229.57(3), F.S., requires the Education Commissioner to develop and implement a student achievement testing program to be used as part of the statewide student assessment program.

Each year the Florida Comprehensive Assessment Test (FCAT) is administered to students in grades three through 10. The FCAT measures a student's skills and competencies in reading, writing, math, and science<sup>1</sup>. The FCAT is used to measure the differences in a student's prior year achievement against the current year achievement.<sup>2</sup> FCAT scores are also used to evaluate the school and its instructional staff.

**Public Records Law**

Florida Constitution

Article I, s. 24(a), Florida Constitution, expresses Florida's public policy regarding access to government records as follows:

Every person has the right to inspect or copy any public records made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer,

<sup>1</sup> Beginning in 2003, science proficiency will be measured statewide.

<sup>2</sup> Section 229.57(11)(a), F.S.

board, and commission, or entity created pursuant to law or this Constitution.

Article I, s. 24(c), Florida Constitution, does, however, permit the Legislature to provide by general law for the exemption of records from the requirements of s. 24. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

#### Florida Statutes

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07(1)(a), F.S., provides:

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at a reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

#### Open Government Sunset Review Act of 1995

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, provides that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes, and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or
3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

#### C. EFFECT OF PROPOSED CHANGES:

This bill creates a public records exemption for *data* disclosing personal identifying information about a teacher or any other instructional personnel<sup>3</sup> held by the Department of Education (DOE).

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<sup>3</sup> Section 228.041(9), F.S., defines "instructional personnel" as "any staff member whose function includes the provision of direct instructional services to students. Instructional personnel also includes personnel whose functions provide direct support in the learning process of students. Included in the classification of instructional personnel are:

The bill allows DOE to release the *data* to the State Board of Education. The State Board of Education must maintain the confidential and exempt status of that *data*. Personal identifying information is not usually described as data. Also, the exemption pertains to a “teacher” or “any other instructional personnel”. “Teacher” is included in the definition of instructional personnel; therefore, the reference to teacher is superfluous. This bill may raise a constitutional concern. The exemption also appears to be overly broad in that it creates a public records exemption for the personal identifying information of “other instructional personnel” and the effects of instruction by such personnel. “Other instructional personnel” includes librarians, media specialists, instructional paraprofessionals, and guidance counselors. It is unclear as to how such personnel participates in the teaching of a student and how such personnel’s involvement with a student is measured. Inclusion of such personnel creates an overly broad public records exemption. *The Committee on State Administration adopted an amendment that addresses those concerns.*

This bill also creates a public records exemption for the “effects of instruction” by a teacher or instructional personnel on a student, held by DOE. This bill allows DOE to release the “effects of instruction” to the State Board of Education. The State Board of Education must maintain the confidential and exempt status of that information. It is unclear as to what the “effects of instruction” means. There is no definition of that term. Additionally, student test scores are already exempt from public disclosure. *The Committee on State Administration adopted an amendment that addresses this concern.*

This bill provides a public necessity statement, as required by s. 24, Art. I of the State Constitution, which states that the exemption is necessary “in order to ensure the privacy of individual teacher records at the state level.” The exemption does not make confidential and exempt “individual teacher records”. *The Committee on State Administration adopted an amendment that addresses this concern.* Also, the public necessity statement provides that the release of such information might discourage qualified persons from entering the field of teaching.

This bill does not provide for retroactive application<sup>4</sup> of the public records exemption. Additionally, this exemption is made subject to the Open Government Sunset Review Act of 1995 and will repeal on October 2, 2007, unless reviewed and saved from repeal through reenactment by the legislature.

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(a) Classroom teachers.—Classroom teachers are staff members assigned the professional activity of instructing students in courses in classroom situations, including basic instruction, exceptional student education, and vocational-technical and adult education, including substitute teachers.

(b) Pupil personnel services.—Pupil personnel services include staff members responsible for: advising students with regard to their abilities and aptitudes, educational and occupational opportunities, and personal and social adjustments; providing placement services; performing educational evaluations; and similar functions. Included in this classification are guidance counselors, social workers, occupational/placement specialists, and school psychologists.

(c) Librarians/media specialists.—Librarians/media specialists are staff members responsible for providing school library media services. These employees are responsible for evaluating, selecting, organizing, and managing media and technology resources, equipment, and related systems; facilitating access to information resources beyond the school; working with teachers to make resources available in the instructional programs; assisting teachers and students in media productions; and instructing students in the location and use of information resources.

(d) Other instructional staff.—Other instructional staff are staff members who are part of the instructional staff but are not classified in one of the categories specified in paragraphs (a)-(c). Included in this classification are primary specialists, learning resource specialists, instructional trainers, adjunct educators certified pursuant to s. 231.1726, and similar positions.

(e) Instructional paraprofessionals.—Instructional paraprofessionals are individuals who are under the direct supervision of an instructional staff member, aiding the instructional process. Included in this classification are classroom paraprofessionals in regular instruction, exceptional education paraprofessionals, career education paraprofessionals, adult education paraprofessionals, library paraprofessionals, physical education and playground paraprofessionals, and other school-level paraprofessionals.”

<sup>4</sup> On April 26, 2001, the Supreme Court of Florida ruled that a public records exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied retroactively. *Memorial Hospital-West Volusia, Inc. vs. News-Journal Corporation*, 26 Fla. L. Weekly S268.

D. SECTION-BY-SECTION ANALYSIS:

See "Effect of Proposed Changes".

III. 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.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

This bill may raise a constitutional concern. The exemption appears to be overly broad in that it creates a public records exemption for the personal identifying information of "other instructional personnel" and the effects of instruction by such personnel. "Other instructional personnel" includes librarians, media specialists, instructional paraprofessionals, and guidance counselors. It is unclear as to how such personnel participates in the teaching of a student and how such personnel's involvement with a student is measured. Inclusion of such personnel creates an overly broad public records exemption. *The Committee on State Administration adopted an amendment that addresses the concern.*

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

The First Amendment Foundation is opposed to this bill. The First Amendment Foundation is worried about "the effect such an exemption might have on the public's right of oversight-such information goes to the heart of not only the effectiveness of our teachers, but the effectiveness of the statewide student assessment program."<sup>5</sup>

The amendment traveling with the bill from the Committee on State Administration to the Committee on General Education does not provide an effective date; therefore, a technical amendment is needed.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 7, 2002, the Committee on State Administration reported HB 769 favorably with a strike-all amendment. That amendment is traveling with the bill. The strike-all amendment narrows the public records exemption contained in the bill by only exempting a teacher's personal identifying information contained in records held by the Department of Education instead of personal identifying information about a teacher, guidance counselor, social worker, school psychologist, and librarian. The amendment retains the exception to the exemption for the State Board of Education. The amendment provides for retroactive application of the exemption. The strike-everything amendment conforms the public necessity statement to the public records exemption.

VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

Heather A. Williamson, M.S.W.

Staff Director:

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<sup>5</sup> Email from the President of the First Amendment Foundation, February 1, 2002.

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AS REVISED BY THE COMMITTEE ON GENERAL EDUCATION:

Prepared by:

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