

**HOUSE OF REPRESENTATIVES  
AS FURTHER REVISED BY  
COUNCIL FOR LIFELONG LEARNING  
ANALYSIS**

**BILL #:** CS/HB 769

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

**SPONSOR(S):** Committee on General Education and Representative(s) Alexander

**TIED BILL(S):**

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

- (1) STATE ADMINISTRATION YEAS 11 NAYS 0
- (2) GENERAL EDUCATION YEAS 11 NAYS 0
- (3) COUNCIL FOR LIFELONG LEARNING
- (4)
- (5)

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THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

**I. SUMMARY:**

CS/HB 769 creates a public records exemption for disclosing personal identifying information about a teacher when the information is held by the Department of Education (DOE). The DOE, in the course of its duties and responsibilities, may 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 committee substitute provides a public necessity statement, as required by the Florida Constitution, which states that the release of the confidential and exempt information is a public necessity because "personal identifying information regarding teachers is of a sensitive, personal nature." The collection of personal identifying information by the DOE is crucial to the effective administration of the statewide assessment program. The statewide assessment program is intended to improve the quality of teachers. Releasing the personal identifying information of teachers may lower, instead of increase, a teacher's motivation towards excellence. The release of personal identifying information could result in discriminatory practices against certain teachers. In addition, qualified persons could be discouraged from entering the field of teaching. The release of personal identifying information would result in harm that far outweighs any possible public benefit of such release.

This committee substitute provides for future review and repeal of the public records exemption. The bill provides for retroactive application of the exemption.

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

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

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

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

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:

CS/HB 769 creates a public records exemption for disclosing personal identifying information about a teacher<sup>3</sup> when the information is held by the Department of Education (DOE).

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<sup>3</sup> Subsection 228.041(9)(a), F.S., defines "classroom teacher" as 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.

The committee substitute allows DOE, in the course of its duties and responsibilities, to release the personal identifying information to the State Board of Education. The State Board of Education must maintain the confidential and exempt status of that information.

This committee substitute provides a public necessity statement, as required by s. 24, Art. I of the Florida Constitution, which states that the exemption is necessary because "personal identifying information regarding teachers is of a sensitive, personal nature." The collection of personal identifying information by the DOE is crucial to the effective administration of the statewide assessment program. The statewide assessment program is intended to improve the quality of teachers. Releasing the personal identifying information of teachers could lower, instead of increase, a teacher's motivation towards excellence. The release of personal identifying information may result in discriminatory practices against certain teachers. Qualified persons could be discouraged from entering the field of teaching. The release of personal identifying information would result in harm that far outweighs any possible public benefit of such release.

The committee substitute provides 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.

**D. SECTION-BY-SECTION ANALYSIS:**

**Section 1:** Amends s. 229.57, F.S., providing an exemption from public records requirements for the personal identifying information regarding teachers held by the Department of Education; providing for disclosure of such information to the State Board of Education; providing for retroactive application; and providing for future review and repeal.

**Section 2:** Provides a finding of public necessity.

**Section 3:** Provides this act will take effect upon becoming law.

**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.

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<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.

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:

None.

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>

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:

- 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

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

instead of personal identifying information about a teacher, guidance counselor, social worker, school psychologist, and librarian.

- Retains the exception to the exemption for the State Board of Education.
- Provides for retroactive application of the exemption.
- Conforms the public necessity statement to the public records exemption.

The strike-all amendment traveled with the bill to the Committee on General Education.

On February 12, 2002, the Committee on General Education adopted a technical amendment to the strike-all amendment, inserting an effective date for the bill. The Committee on General Education reported the bill favorably as a committee substitute.

VII. SIGNATURES:

COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

Heather A. Williamson, M.S.W.

Staff Director:

J. Marleen Ahearn, Ph.D., J.D.

AS REVISED BY THE COMMITTEE ON GENERAL EDUCATION:

Prepared by:

Elsie J. Rogers

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AS FURTHER REVISED BY THE COUNCIL FOR LIFELONG LEARNING:

Prepared by:

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