

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1592

SPONSOR: Senator Siplin

SUBJECT: FCAT/Access to Assessment Instruments

DATE: April 1, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matthews</u>	<u>O'Farrell</u>	<u>ED</u>	<u>Favorable</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>AED</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill creates an exception to the public records exemption provided under s. 1008.23, F.S., by authorizing a student's parent, accompanied by anyone whose assistance the parent wishes, to review at the student's school and within 21 calendar days after making the request:

- Each section of the Florida Comprehensive Assessment Test (FCAT) given to the student;
- Questions on other state-required academic assessment tests given to the student; and
- The student's answers to the questions.

The bill requires the Department of Education (DOE) to ensure that DOE personnel and the school district, in which the child resides or is enrolled, fully and timely respond to each request.

Each parent shall receive damages in the amount of \$100 per day from DOE until DOE fully complies with the request. In addition, the bill authorizes attorney's fees and costs incurred by the parent in seeking compliance with the access provisions of the bill.

The bill retroactively applies to the FCAT or any other state-required academic test given after January 1, 2004.

This bill substantially amends s. 1008.23, F.S.

II. Present Situation:

The Florida Comprehensive Assessment Test (FCAT)

The FCAT was first administered in 1997-1998 as part of the statewide assessment program. The 1999 Legislature expanded the statewide assessment program to cover grades 3 through 10.¹ Students may not be promoted to the 4th grade unless they pass the reading portion of the grade 3 FCAT. The district school board may only exempt 3rd grade students from mandatory retention for good cause. Students may not graduate from high school with a standard high school diploma if they do not meet the required credits, grade point average, and pass the grade 10 FCAT in reading, writing, and mathematics, unless they are exempt or subject to a waiver of the assessment requirement. State Board of Education rule designates the passing scores for each part of the FCAT.

The FCAT is comprised of two components. A criterion-referenced test measures the student's achievement of benchmarks in reading, writing, science, and mathematics in accordance with the Sunshine State Standards. The second component is a norm-referenced test that measures the student's performance against national norms.

Florida administrative rule requires the FCAT to be administered to students in grades 3 through 9 no less than once a year on a schedule approved by the Commissioner of Education and up to three times each year for students who do not attain minimum performance expectations on the grade 10 FCAT.

The FCAT relies on upon a combination of anchor questions, field test questions, and questions contained in the FCAT test bank to create several versions of the test each year. Although the student takes the entire test, the field test and anchor questions are not scored as part of the student's score. The student does not know which questions are scored. The test bank questions are scored and are continually used throughout each test cycle. The field test questions that are approved for use in the FCAT may ultimately become questions in the FCAT test bank.

The state currently has a contract with Harcourt Assessment, Inc., for the development of additional test items. An increase in the quantum of test development would necessitate a renegotiation of the contract terms and price.

The state currently has a contract with Pearson Educational Measurement, Inc., which warehouses original test booklets and scores the actual student assessment.

Other State-Required Academic Assessment Tests

Although not intended to be an exhaustive list, there are many state-required assessments administered to students in the K-20 education system. All school districts must administer the school readiness uniform screening to each kindergarten student in the district school system.² The Scholastic Achievement Test of the College Entrance Examination Board (SAT) and the American College Testing Program (ACT) were approved for the 2002-2003 school year as an alternate assessment to the grade 10 FCAT.³ The college-level communication and mathematic

¹ "A+ Plan" ch. 99-398, L.O.F.

² Section 1008.21, F.S.

³ Section 1008.22(9), F.S.

skills test (CLAST) is a prerequisite for students to enter upper-division undergraduate instruction programs unless exempted.⁴ As a condition of admission to the state universities, each student must submit a test score from the SAT or ACT.⁵ The state authorizes the Commissioner of Education to require school districts to participate in the National Assessment of Educational Progress (NAEP).⁶ There are other examples of state-required assessments.

Confidentiality of Assessment Instruments

All examination and assessment instruments, including developmental materials and workpapers directly related thereto, which are prepared, prescribed, or administered pursuant to ss. 1003.43, 1008.22, and 1008.25, F.S., are confidential and exempt from s. 119.07(1), F.S., and from s. 1001.52, F.S.⁷ An individual that violates test security such as by giving examinees access to test questions prior to testing or copying or reproducing a secure test booklet commits a misdemeanor of the first degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.

In 2002, a parent filed a lawsuit against DOE to gain access to his son's FCAT under s. 1002.22, F.S. The First District Court of Appeal held that the FCAT test instruments, consisting of the test booklet and questions, are not student records under s. 1002.22, F.S.⁸ In effect, the court upheld s. 1008.23, F.S., which provides that the test booklet and questions are exempt and confidential and are therefore not subject to public disclosure.⁹

III. Effect of Proposed Changes:

This bill creates an exception to the public records exemption provided under s. 1008.23, F.S., by authorizing a student's parent, accompanied by anyone whose assistance the parent wishes to have, to review at the student's school and within 21 calendar days after making the request:

- Each section of the Florida Comprehensive Assessment Test (FCAT) given to the student;
- Questions on other state-required academic assessment tests given to the student; and
- The student's answers to the questions.

The bill requires DOE to ensure that DOE personnel and the school district, in which the child resides or is enrolled, fully and timely respond to each request.

The bill authorizes the parent to receive damages in the amount of \$100 per day from DOE if the request is not fully and timely responded to until DOE complies. In addition, the bill authorizes attorney's fees and costs incurred by the parent in seeking such compliance and payment of damages.

The bill retroactively applies to the FCAT or any other state-required academic test given after January 1, 2004.

⁴ Section 1008.29, F.S.

⁵ Section 1007.261(1)(c), F.S.

⁶ Section 1008.22(2), F.S.

⁷ Section 1008.23, F.S.

⁸ *Florida Department of Education v. Cooper*, 858 So.2d 394, 395 (Fla. 1st DCA 2003)

⁹ See *id.* at 396.

Timing

The access requirements of the bill are not likely to be met within the requested 21-day deadline. A parent could conceivably make a request for access to the exam and the answers the day following the administration of the FCAT to his or her student. According to the plain language of the bill, DOE would be required to produce the exam instrument and answer sheets within 21 calendar days or be subject to damages, attorney's fees, and costs. Current scoring practice requires more than 21 calendar days to score a student's test.

In addition, Pearson Educational Measurement, Inc. warehouses the text booklet. The bill requires DOE to ensure that the review of the student's exam and scores takes place at the student's school. If many or all the students who failed the FCAT were to request access at the same time, it is unlikely that DOE would be able to comply with each request within the 21-day deadline.

Finally, the bill retroactively applies to all state required assessments administered after January 1, 2004. This provision makes it unlikely that DOE could meet all the anticipated requests within the 21-day timeframe for those exams administered within the last six months, thereby triggering the sanctions provided for in the bill.

Test security

This bill would likely require DOE to expend additional funds and accelerate question development methods to meet the requirements of the test bank. Otherwise, DOE would need to reuse known test questions, which would undermine the confidence in the instrument.

Moreover, there is no limit to the number of times that a parent can request access to the exam. This could allow an individual to essentially recreate the exam outside of the review room.

The bill does not restrict the method of review of the exam instrument. The bill does not limit photocopying or taking notes. The bill does not limit which additional persons may attend the review of the exam. The individual could be a student required to take the FCAT in the future.

Finally, the bill is silent on whether a representative of the school district or DOE may remain in the room when the exam is reviewed. Accordingly, test security may be compromised.

Contract/Copyright concerns

The bill is not specifically limited to the FCAT; rather, it applies to any state-required assessment. DOE does not hold the copyrights for many of these state-required exams. Therefore, DOE may not currently have the authority to permit review of these exams.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The costs to the state and the school districts' costs would be dependent on the number of requests.

According to DOE, school districts would be expected to incur costs for printing request forms, collecting and submitting forms to DOE, receiving and securely storing test books and student answers, monitoring reviews, and returning materials. DOE has estimated that school districts would incur approximately \$143,100 per year if one parent per school requested access.

If the release of the tests were restricted to review by the parents but copying or distribution in the public domain were prohibited, DOE estimates that the state would incur annual costs ranging between approximately \$31,800 and \$47,700 if only one parent per school requests review of the test. If 10 parents per school requested review of the test exam, DOE estimates a state cost between \$91,800 and \$597,000 per year. These cost estimates do not include the cost of storing test exams for other state-required assessments.

If the state had to create the FCAT each year because the test was released in the public domain, the cost associated with the release of the FCAT in its entirety would be \$5,500,000 per year. This annual cost is based on a recent FCAT item and test development contract for \$1,835 per item to develop, review, and test new items.

The cost to the state in terms of sanctions, attorney's fees and costs is indeterminate based on whether the state is able to successfully negotiate with those test makers who maintain a copyright on their assessments.

VI. Technical Deficiencies:

On page 1, line 31, the bill refers to a student's parent or guardian. For purposes of the education code, s. 1000.21(5), F.S., defines, in pertinent part, a parent to include any guardian of a student. Accordingly, the reference to guardian creates a potential ambiguity.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
