

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

BILL: SB 350

INTRODUCER: Senator Clemens

SUBJECT: Criminal Justice Standards and Training Commission

DATE: February 23, 2017

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|------------------|-----------------|------------|--------------------|
| 1. | <u>Erickson</u> | <u>Hrdlicka</u> | <u>CJ</u> | Favorable |
| 2. | <u>McAuliffe</u> | <u>Sadberry</u> | <u>ACJ</u> | Pre-meeting |
| 3. | _____ | _____ | <u>AP</u> | _____ |

I. Summary:

SB 350 requires the Criminal Justice Standards and Training Commission (CJSTC) to implement, administer, maintain, and revise a basic abilities examination for all applicants for basic recruit training in law enforcement and corrections. This examination is formally referred to as the Basic Abilities Test (BAT). The CJSTC must also establish by rule procedures for administering the BAT and standards for acceptable performance on the BAT.

The CJSTC must set a nonrefundable fee, not to exceed \$50, for the BAT. Funds collected from the examination fee must be deposited in the Criminal Justice Standards and Training Commission Trust Fund. The fee does not take effect until implementation of the revised BAT, which must occur on or before January 1, 2019. Current fees range from \$18 to \$75 with a statewide average of \$45.60.

The FDLE proposed the provisions of the bill in a recent report on the BAT. If the bill becomes law, the FDLE will develop and maintain the BAT and contract with Miami Dade College to administer the BAT statewide.

The Florida Department of Law Enforcement (FDLE) estimates that the bill will result in an additional \$800,000 to the Criminal Justice Standards and Training Trust Fund. Of that amount, \$400,000 will be used to contract with Miami-Dade College for the administration of the BAT. The FDLE will absorb the costs of data transfer modifications using current FDLE staff and resources.

The bill takes effect July 1, 2017.

II. Present Situation:

The Criminal Justice Standards and Training Commission

The 19-member Criminal Justice Standards and Training Commission (CJSTC) is established pursuant to s. 943.11, F.S.¹ The CJSTC has a number of responsibilities relating to the training, certification, and discipline of full-time, part-time, and auxiliary law enforcement officers, correctional officers, and correctional probation officers. Relevant to training responsibilities, s. 943.12, F.S., requires the CJSTC to:

- Adopt rules for the administration of ss. 943.085-943.255, F.S. (relating to officer standards, employment, training, certification, and discipline);
- Certify and revoke the certification of officers, instructors, including agency in-service training instructors, and criminal justice training schools;²
- Establish uniform minimum training standards for the training of officers in the various criminal justice disciplines;
- Consult and cooperate with municipalities or the state or any political subdivision of the state and with universities, colleges, community colleges, and other educational institutions concerning the development of criminal justice training schools and programs or courses of instruction, including education and training in the areas of criminal justice administration and all allied and supporting disciplines;
- Conduct official inquiries or require criminal justice training schools to conduct official inquiries of criminal justice training instructors who are certified by the CJSTC;
- Establish minimum curricular requirements for criminal justice training schools;
- Make, publish, or encourage studies on any aspect of criminal justice education and training or recruitment, including the development of defensible and job-related psychological, selection, and performance evaluation tests;
- With the approval of the FDLE Commissioner, make and enter into contracts and agreements with other agencies, organizations, associations, corporations, individuals, or federal agencies as the CJSTC determines are necessary, expedient, or incidental to the performance of its duties or the execution of its powers; and
- Adopt rules for the certification, maintenance, and discipline of officers who engage in those specialized areas found to present a high risk of harm to the officer or the public at large and which would in turn increase the potential liability of an employing agency.³

Additionally, s. 943.17, F.S., requires the CJSTC to assure that entrance into the basic recruit training program for law enforcement and correctional officers is limited to those who have

¹ The 19 members include: the Secretary of the Department of Corrections (DOC) or a designated assistant; the Attorney General or a designee; the Director of the Division of the Florida Highway Patrol; and 16 members appointed by the Governor. The Governor's appointees include: three sheriffs; three police chiefs; five law enforcement officers who are of the rank of sergeant or below within the employing agency; two correctional officers, one of whom is an administrator of a state correctional institution and one of whom is of the rank of sergeant or below within the employing agency; one training center director; one person who is in charge of a county correctional institution; and one resident of the state who falls into none of the foregoing classifications. Prior to appointment, the sheriff, police chief, law enforcement officer, and correctional officer members must have had at least four years' experience as law enforcement officers or correctional officers.

² Section 943.10(16), F.S., defines "criminal justice training school" as any private or public criminal justice training school certified by the CJSTC.

³ This responsibility includes adopting rules relating to firearms proficiency by law enforcement officers.

passed a basic skills examination and assessment instrument, based on a job task analysis in each discipline and adopted by the CJSTC.⁴ This examination is formally referred to as the Basic Abilities Test (BAT). The BAT predicts the likelihood for success in basic recruit training and the State Officer Certification Examination (SOCE).⁵ The BAT assesses written comprehension and expression, information ordering, spatial orientation, memorization, problem sensitivity, and inductive and deductive reasoning.⁶ The BATs is administered in Florida and tailored to the applicable discipline for which the recruit is seeking program admission.⁷

2017 FDLE Report on the BAT

Proviso language in the 2016-17 General Appropriations Act required the FDLE, on or before January 1, 2017, to report to the Governor and the Legislature “on the status of development of the basic abilities test for all applicants for basic recruit training in law enforcement and corrections. The report shall include recommendations regarding statutory language necessary for implementation of the basic abilities test, including establishment of a standardized fee structure that does not deter low-income and middle-income persons from taking the test.”⁸

The FDLE submitted its report to the Governor and the Legislature on December 30, 2016.⁹ The report, which is discussed in detail in this section of the analysis, includes but is not limited to, a brief legislative history regarding the basic skills examination; a discussion of the current system of developing and administering the BAT test and its fee structure; problems the FDLE identified with the current system; and the FDLE’s proposed changes to the current system, including proposed statutory language.

Current Status of the BAT and Problems Identified by the FDLE

The CJSTC, through the FDLE, contracted with three providers to develop and administer the BAT. Two of the providers, I/O Solutions and Morris & McDaniel, are out-of-state vendors. The third provider is Miami Dade College. The providers follow basic contractual requirements established by the FDLE.

The FDLE stated that the goal of the contract is to standardize testing between providers; however, the exam development process does not lend itself to extensive regulation and contract requirements are limited. The contract:

⁴ See Rule 11B-35.0011, F.A.C. This requirement does not apply to correctional probation officers. Correctional probation officers must have a bachelor’s degree. See “Officer Requirements,” Florida Department of Law Enforcement, available at <http://www.fdle.state.fl.us/cms/CJSTC/Officer-Requirements/How-to-Become-an-Officer.aspx> (last visited on February 3, 2017).

⁵ “Basic Abilities Test (BAT),” Florida Department of Law Enforcement, available at <http://www.fdle.state.fl.us/cms/CJSTC/Officer-Requirements/Basic-Abilities-Test.aspx> (last visited on February 3, 2017).

⁶ *Id.*

⁷ See Rule 11B-35.0011, F.A.C.

⁸ Proviso for specific appropriations 1267-1276, ch. 2016-66, L.O.F.

⁹ *Report on the Status of Development of the Basic Abilities Test*, Florida Department of Law Enforcement, and report transmittal letters to the Governor, President of the Senate, and Speaker of the House of Representatives (December 30, 2017) (on file with the Senate Committee on Criminal Justice). Unless otherwise indicated, all information in this section of the analysis is from this report.

- Specifies that the providers must develop and maintain a test that will measure minimum competency of individuals seeking enrollment in an academy or employment in Florida's criminal justice system;
- Requires that the test specifically assess an applicant's written comprehension and expression, as well as abilities in organizing information, spatial orientation, memorization, problem sensitivity, and inductive and deductive reasoning; and
- Specifies that items on the test must be based on a Florida job task analysis adopted by the CJSTC.

Although the FDLE provides the job task analysis to each provider, the department does not play a role in designing, administering, or delivering the BAT or the selection of exam site locations. This is the responsibility of the providers. The FDLE assists the CJSTC by providing oversight of the BAT providers to ensure compliance with the basic contractual requirements for development and delivery of the BAT. The FDLE also collects required data from each provider to ensure entry of examination results into the officer records system and correct errors in the data.¹⁰

The FDLE identified three problems with providers developing and administering the BAT:

- Three unique tests, each with their own level of difficulty cause confusing and unnecessary problems for the schools and agencies that administer the test, the test takers, and the employing agencies;
- Disparate testing standards and procedures result from training and selection centers having the discretion to choose which test to administer or endorse; and
- Because of these disparities and miscommunication, test centers and applicants often misunderstand the process, and these misunderstandings are time-consuming to resolve and unduly complicate the program.¹¹

Although the tests are developed and defended by the three providers, there are occasions when the FDLE can be held accountable for the providers' actions. The FDLE stated that this problem has been most pronounced in its interaction with the Department of Justice, Office for Civil Rights (OCR). On June 23, 2015, the OCR sent a letter to the FDLE requesting data concerning test results for the BAT. The OCR subsequently raised a concern that I/O Solutions' test exhibited a higher degree of adverse impact¹² compared to those of Morris & McDaniel and

¹⁰ When applicants register to take the BAT, they contact the school or agency that administers the test. The provider is responsible for providing applicant information and test results to the FDLE, including demographic information that is entered into the FDLE's Automated Training Management System. This produces the initial record of the applicant in the CJSTC officer records system and follows the applicant throughout his or her entire law enforcement or corrections career. Before manually uploading this key information, the FDLE must review the applicant information in detail to ensure its accuracy. The FDLE is required to troubleshoot any discrepancies in the data and respond to inquiries regarding test results. Any errors created by the provider must be resolved by the FDLE.

¹¹ The FDLE stated that it has conducted workshops and distributed memorandums to make the testing process more clear; however, in spite of explaining that a passing score from any of the providers qualifies the applicant to enter an academy, some academies are still hesitant to enroll the recruit unless he or she can show a passing score from a particular provider. Similarly, some agencies are reluctant to hire applicants unless they can show a passing score from a preferred provider.

¹² Federal Uniform Guidelines on employee selection procedures define "adverse impact" as "[a] selection rate for any race, sex, or ethnic group which is less than four-fifths (4/5) (or eighty percent) of the rate for the group with the highest rate will generally be regarded by the Federal enforcement agencies as evidence of adverse impact, while a greater than four-fifths rate

Miami Dade College. The OCR recommended that the FDLE discontinue using I/O Solutions; however, this would have left a large void in service throughout the state. After several communications with the OCR and I/O Solutions, the parties agreed that I/O Solutions would change its test and lower the passing rate. The FDLE also agreed to retroactively apply the new passing rate to applicants who had taken the test during the previous five years.¹³

Because the providers are responsible for the entire development and delivery of the BAT, they establish and collect all examination fees. The FDLE does not recover any costs; the providers and test sites retain all revenue. The FDLE and the CJSTC do not currently have statutory authority to collect funds generated from the BAT or direct those funds to the Criminal Justice Standards and Training Commission Trust Fund.

The FDLE stated that the BAT fees are generally inconsistent, and in most cases, based on what the market can bear.¹⁴ The fees range from \$18 to \$75 and the statewide average is \$46. Two of the providers, I/O Solutions and Morris & McDaniel, rely on CJSTC-certified training schools and agencies to administer the test. Miami Dade College administers the BAT on campus but relies on CJSTC-certified training schools and agencies to administer the BAT at other locations. The training schools and agencies often apply a surcharge fee to administer the test. While this surcharge is also inconsistent statewide, a majority of test sites charge \$25. The DOC charges the lowest BAT fee, \$18, at test sites for its applicants. The DOC does not include an administrative surcharge.

FDLE's Proposed Changes

Based on the problems the FDLE identified, it concluded that the best alternative is to establish a single test developed and maintained by the FDLE,¹⁵ thereby eliminating a role of third-party providers in developing and maintaining the BAT. The FDLE would develop and maintain the BAT and contract for administrative services with a single provider.¹⁶

The FDLE's role in developing the BAT would include:

- Evaluating each question's validity based on the performance of the test takers;

will generally not be regarded by Federal enforcement agencies as evidence of adverse impact.” 29 CFR 1607.4 (Information on Impact).

¹³ The FDLE stated that the OCR is aware of the proposal to develop a single test and sees this as a major part of the solution to address adverse impact. The OCR will continue to monitor the situation.

¹⁴ The FDLE stated that the fees and administrative charges are comparable to other similar exams. Examples cited by the FDLE include: the Test of Essential Academic Skills (TEAS), an assessment of entry-level skills and abilities required to enter a nursing program (standardized fee of \$55 and surcharges ranging from \$10 to \$55); the National Criminal Justice Officer Selection Inventory (NCJOSI), a cognitive abilities exam designed to measure minimum competency of people attempting to enter the field of criminal justice (fees ranging from \$50 to \$75); and the ACT and SAT, college-readiness exams (fees of \$43 and \$45, respectively, and substantial additional fees for scores, phone registration, test date changes, location changes, etc.).

¹⁵ Based on its prior experience in delivering both paper-and-pencil testing and computer-based testing, the FDLE determined computer-based testing is the best option.

¹⁶ As previously noted, the FDLE, through the CJSTC, already has oversight of the development and administration of the BAT and the contractual agreement with the vendors currently administering the examinations. This change would move FDLE's responsibility from contract monitoring for compliance to development and administration of the examinations. The CJSTC currently is responsible for the development and administration of the SOCE, so this added responsibility would be an extension of existing functions.

- Ensuring that test questions meet the rules and requirements in Florida Statutes and administrative rules;
- Reviewing the content on a regular basis to ensure the validity and applicability of the test questions to standardize the content and difficulty level of the BAT;
- Eliminating much of the confusion that now exists between stakeholders; and
- Having direct control over the management of adverse impact, which would make the FDLE better positioned to address any legal challenges to the test.

The FDLE's role in maintaining the BAT would include:

- Item development;
- Standards setting;
- Validation studies;
- Statistical analysis;
- Legal defensibility;
- Customer service to examinees;
- The processing of all public records requests; and
- Oversight and maintenance of the BAT results in the Automated Training Management System.

The FDLE determined that contracting with Miami Dade College, a current provider, would be the best option to administer to the BAT statewide.¹⁷ Miami Dade College would be responsible for registration and administration of the test; directing and managing the work efforts of subcontractor personnel and ensuring the quality of their work; and ensuring the security of the test items during testing. The FDLE stated that the existence of a single examination administrator would reduce execution errors; help prevent mistakes in the collection and dissemination of testing data; and increase the efficiency, expediency, and consistency of the testing process. If, for any reason, the FDLE is unable to finalize an agreement with Miami Dade College, it would seek an alternative vendor.

The FDLE proposed to cap the test fee for applicants at \$50, which includes an allowance for up to \$10 for the administrative surcharge. The fee is structured to allow all parties responsible for the development and administration of the BAT to recover some, if not all, of their costs. The fee is based on expected costs for both Miami Dade College¹⁸ and the FDLE.¹⁹ Miami Dade College proposed a fee of \$20 per test to cover their costs and the FDLE estimated its costs will also be covered by receiving \$20 per test.

III. Effect of Proposed Changes:

This bill adopts the proposed statutory language in the 2017 FDLE report on the BAT. The bill amends s. 943.12, F.S., to require the Criminal Justice Standards and Training Commission

¹⁷ The FDLE has been in formal discussion with college representatives and has a tentative agreement with them through a proposed memorandum of understanding. Under the agreement, Miami Dade College will assume sole responsibility for administration of the BAT and will ensure the test is consistently and fairly administered. As with any test proctoring, Miami Dade College will be responsible for ensuring security of the test items during testing.

¹⁸ Further details are provided in the "Private Sector Impact" statement in this analysis.

¹⁹ Further details are provided in the "Government Sector Impact" statement in this analysis.

(CJSTC) to implement, administer, maintain, and revise the BAT. The CJSTC must also establish by rule procedures for administering the BAT and standards for acceptable performance on the BAT.

The bill also amends s.943.17, F.S., to require the CJSTC to set a nonrefundable fee, not to exceed \$50, for the BAT. Funds collected from the examination fee must be deposited in the Criminal Justice Standards and Training Commission Trust Fund. The fee does not take effect until implementation of the revised BAT, which must occur on or before January 1, 2019.

The bill also amends s. 943.25, F.S., relating to criminal justice trust funds, to correct a reference to conform to changes made to s. 943.12, F.S., and reenacts s. 943.173(3), F.S.

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The FDLE reports that the bill will not have any impact on local government revenues or expenditures.²⁰ BAT fees are paid by the individuals taking the test.

B. Private Sector Impact:

The FDLE will contract for administrative services with Miami Dade College. Miami Dade College will be responsible for registration and administration of the test, as well as managing the relationship with all subcontractor organizations. Costs of administering the examinations will be borne by Miami-Dade College.

The two out-of-state vendors currently used, I/O Solutions and Morris & McDaniel, will no longer administer their tests for entrance into a basic recruit training program, which may impact their revenue from Florida.

²⁰ 2017 FDLE Legislative Bill Analysis (SB 350) (January 20, 2017) (on file with the Senate Committee on Criminal Justice). All information in this section of the analysis is from this document.

C. Government Sector Impact:

The bill caps the test fee for applicants at \$50, which includes an allowance for up to \$10 for the administrative surcharge. According to the FDLE, the fee is structured to allow all parties responsible for the development and administration of the BAT to recover some, if not all, of their costs. The fee is based on expected costs for both Miami Dade College and the FDLE. Miami Dade College proposes a fee of \$20 per test to cover their costs and the FDLE estimates its costs will also be covered by receiving \$20 per test. Current fees range from \$18 to \$75 with a state-wide average of \$45.60.

The FDLE estimates that the bill will result in an additional \$800,000 to the Criminal Justice Standards and Training Trust Fund, assuming 20,000 examinees per year with an aggregate \$40 fee. From this sum, roughly \$400,000 will be used to contract with Miami-Dade College, and the remainder will be retained in the trust fund.

The FDLE will absorb the costs of data transfer modifications using current FDLE staff and resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 943.12, 943.17, and 943.25.

This bill also reenacts section 943.173 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.