

STORAGE NAME: h1695a.sa.doc
DATE: April 23, 2001

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
STATE ADMINISTRATION
ANALYSIS**

BILL #: HB 1695
RELATING TO: Public Records/Student Assessments
SPONSOR(S): Representative(s) Alexander
TIED BILL(S): None

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

- (1) EDUCATION INNOVATION YEAS 13 NAYS 0
- (2) STATE ADMINISTRATION YEAS 5 NAYS 0
- (3) COUNCIL FOR LIFELONG LEARNING
- (4)
- (5)

I. SUMMARY:

This bill amends s. 229.57(11)(e), F.S., by adding a provision exempting from the public records laws material held by the Department of Education and the State Board of Education, which discloses identifying information about a teacher or instructional personnel in regards to the "effects" of that individual's instruction on students.

The public records exemption created by this bill will be repealed on October 2, 2006, under the Open Government Sunset Review Act of 1995, unless the Legislature reenacts the exemption.

This bill provides a statement of public necessity.

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

This bill takes effect upon becoming law.

Please see "Other Comments" section for comments by the Committee on State Administration.

On April 23, 2001, the Committee on State Administration reported HB 1695 favorably with one amendment. Please see "Amendment or Committee Substitute Changes" 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 checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input 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. According to the statute:

"The primary purposes of the statewide assessment program are to provide information needed to improve the public schools by maximizing the learning gains of all students and to inform parents of the educational progress of their public school children. The program must be designed to:

- a. Assess the annual learning gains of each student toward achieving the Sunshine State Standards appropriate for the student's grade level.
- b. Provide data for making decisions regarding school accountability and recognition.
- c. Identify the educational strengths and needs of students and the readiness of students to be promoted to the next grade level or to graduate from high school with a standard high school diploma.
- d. Assess how well educational goals and performance standards are met at the school, district, and state levels.
- e. Provide information to aid in the evaluation and development of educational programs and policies.
- f. Provide information on the performance of Florida students compared with others across the United States."

Section 229.57(3)(c), F.S., provides for the annual assessment of students in grades 3 through 10. This assessment is primarily done through the Florida Comprehensive Assessment Test (FCAT). The FCAT is a combination of norm-referenced and criterion-referenced items that measure student skills and competencies in reading, writing, math, and science (science proficiency will be measured statewide beginning in 2003).

Section 229.57(11)(e)1., F.S., specifies that data from the FCAT must “measure the differences in student prior year achievement against the current year achievement or lack thereof, such that the ‘effects’ of instruction to a student by a teacher, school, and school district may be estimated on a per-student and constant basis.”

State Interest in Individual Teacher Student Gain Information

The 2000 Legislature passed CS/CS/HBs 63 and 77, which created s. 231.17(15), F.S. Section 231.17(15), F.S., specifies that beginning with the 2003-2004 school year, the Department of Education must conduct a longitudinal study to compare the performance of teacher certificate holders who are employed in Florida school districts. The study must compare a sampling of educators who have qualified for a professional certificate since July 1, 2002, based on the following:

- a. Graduation from a state-approved teacher preparation program.
- b. Completion of a state-approved professional preparation and education competency program.
- c. A valid standard teaching certificate issued by a state other than Florida.

The comparisons must be made to determine if there is any significant difference in the performance of these groups of teachers, as measured by their students’ achievement levels and learning gains as measured by s. 229.57, F.S.

According to the Department of Education, in order to measure the “effects of instruction” on students, pursuant to s. 229.57(11)(e), F.S., the FCAT must be given for two consecutive years to the same group of students. DOE will have this information in the summer of 2002, and will at that time have the ability to determine the “effects” of individual teacher instruction on students. This information will be accumulated into an understandable format and will be part of the public record.

Public Records Laws

Article I, section 24(a), Florida Constitution, expresses Florida’s public policy regarding access to government records. This section provides that:

“Every person has the right to inspect or copy any public record 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.”

Article I, section 24, Florida Constitution, also provides that the Legislature may, by general law, exempt public records from the requirements of section 24(a). Such a general law exempting records from public disclosure must state with specificity the public necessity justifying the exemption and can be no broader than necessary to accomplish the stated purpose of the law.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07, 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.”

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, states that an exemption to public records laws may be created or maintained only if it serves an identifiable public purpose and may be no broader than necessary to meet that public purpose.

Pursuant to s. 119.15(4)(b), F.S., an identifiable public purpose is served if the exemption meets one of the following purposes:

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.

Also, the Legislature must find that the purpose is sufficiently compelling to override the strong public policy of open government and that such purpose cannot be accomplished without the exemption.

C. EFFECT OF PROPOSED CHANGES:

This bill provides an exemption from the public records laws for materials held by DOE and the State Board of Education which disclose identifying information about a teacher or instructional personnel in regards to the "effects" of that individual's instruction on students.

The public records exemption created by this bill is subject to the Open Government Sunset Review Act of 1995, s. 119.15, F.S., and will be repealed on October 2, 2006, unless the Legislature reenacts the exemption.

This bill provides a statement of public necessity, which meets the statutory requirement of an identifiable public purpose under s. 119.15(4)(b)2., F.S. The statement of public necessity cites the need to ensure the privacy of individual teacher records at the state level so that DOE can collect information in order to effectively administer the statewide student assessment program.

This bill takes effect upon becoming law.

D. SECTION-BY-SECTION ANALYSIS:

SECTION 1: Amends section 229.57(11)(e), F.S., providing for an exemption from the public records laws data disclosing identifying information about a teacher or any other instructional personnel regarding the effects such teacher's or instructional personnel's instruction has on a student; provides that the Department of Education and State Board of Education may keep such records; provides that this subparagraph will stand repealed on October 2, 2006, unless reenacted by the Legislature.

Section 2: Includes a statement of public necessity.

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

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not appear to have a fiscal impact on state revenues.

2. Expenditures:

This bill does not appear to have a fiscal impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have a fiscal impact on local revenues.

2. Expenditures:

This bill does not appear to have a fiscal impact on local expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

See above.

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 which requires 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.

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 does not appear to violate any constitutional provisions.

B. RULE-MAKING AUTHORITY:

This bill does not provide any additional rule making authority.

C. OTHER COMMENTS:

Committee on State Administration

Student Records

Section 228.093, F.S., disallows access to student records, with certain exceptions, in order to protect the rights of pupils¹ and students² and their parents or guardians with respect to pupil and student records and reports as created, maintained, and used by public educational institutions in the state. Additionally, federal law restricts disclosure of student records.³

Use of Student Records

In addition to the use of student achievement scores for the longitudinal study regarding teachers, as described in this analysis,⁴ student scores are used in other ways as described in s. 229.57, F.S., regarding the student assessment program, to evaluate the school and its instructional staff.

Concerns

This public records exemption raises several concerns. The exemption begins by stating that "data disclosing personal identifying information about a teacher or any other instructional personnel" held by the Department of Education, must not be disclosed. Personal identifying information is not usually described as data. The bill goes on to state that the "effects of instruction by such teacher or other instructional personnel on a student" must not be disclosed. The meaning of the "effects of instruction" is not clear, and student tests scores are already exempt from disclosure. The public necessity statement states that the public records exemption is necessary "in order to ensure the privacy of individual teacher records at the state level." The exemption does not exempt "individual teacher records." It exempts "data disclosing personal identifying information about a teacher or any other instructional personnel and the effects of instruction by such teacher or other instructional personnel on a student." The public necessity statement also mentions the highly sensitive nature of "personal information about the effects of instruction by teachers and instructional personnel." It does not state the meaning of personal information when pertaining to the effects of instruction.

The sponsor has filed a strike-all amendment that appears to remediate these concerns.

¹ Section 228.093(2)(d), F.S., defines "pupil" as "any child who is enrolled in any instructional program or activity conducted under the authority and direction of a district school board."

² Section 228.093(2)(f), F.S., defines "student" as "any child or adult who is enrolled or who has been enrolled in any instructional program or activity conducted under the authority and direction of an institution comprising a part of the state system of public education and with respect to whom an educational institution maintains educational records and reports or personally identifiable information, but does not include a person who has not been in attendance as an enrollee at such institution."

³ "Release of education records; parental consent requirement . . . No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of educational records . . . of students without the written consent of their parents." 20 U.S.C. § 1232g (2000).

⁴ See "State Interest in Individual Teacher Student Gain Information."

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 23, 2001, the Committee on State Administration heard HB 1695, and adopted a strike-everything amendment.

The strike-everything amendment eliminates the Whereas Clauses, which are not used in public records exemption bills. It clarifies which records are confidential and exempt, as well as clarifies who holds the records. The amendment also makes technical changes in order to conform with standard from drafting conventions.

The bill was reported favorably with one amendment.

VII. SIGNATURES:

COMMITTEE ON EDUCATION INNOVATION:

Prepared by:

Floyd Faglie

Staff Director:

Daniel Furman

AS REVISED BY THE COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

Heather A. Williamson, M.S.W.

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