

# 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 1762  
 SPONSOR: Senator Sullivan  
 SUBJECT: Public Records/Student Assessments  
 DATE: March 4, 2002      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	O'Farrell	ED	Favorable
2.	_____	_____	GO	_____
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

This bill creates a public records exemption for data disclosing personal identifying information about a teacher or any other instructional personnel held by the Department of Education and the State Board of Education. Also exempt are the effects of instruction on the student by the teacher and other instructional personnel. The bill provides for the release of the information to specified parties. The State Board of Education and the department must maintain the confidential and exempt status of the data. Additionally, the bill subjects the exemption to the Open Government Sunset Review Act of 1995 and provides for repeal on October 2, 2007, unless reviewed and saved from repeal through reenactment by the Legislature.

This bill substantially amends s. 229.57, F.S., and the effective date is upon becoming a law.

## II. 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 3 through 10. The FCAT measures a student's skills and competencies in reading, writing, mathematics, and science.<sup>1</sup> The FCAT is used to measure the differences in a student's

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

prior year achievement against the current year achievement.<sup>2</sup> FCAT scores are also used to evaluate the school and its instructional staff.

Section 229.57(6), F.S., requires the Commissioner of Education to prepare annual reports on the statewide assessment program that describes student achievement in the state, each district, and each school. The law also provides that the provisions of s. 228.093, F.S., for student records apply to s. 229.57, F.S. Section 228.093(3)(d), F.S., provides that personally identifiable student records and reports are confidential and exempt from the public records law. Level of achievement records, including grades and standardized achievement test scores are considered to be a part of a student's record. The release of personally identifiable student records or reports to any individual, agency, or organization is prohibited unless a student's parent or guardian consents in writing.<sup>3</sup>

### **Instructional Personnel**

The law (s. 228.041(9), F.S.), defines the term "instructional personnel" as any staff member whose function includes the provision of direct instructional services to students. The term also includes personnel whose functions provide direct support in the learning process of students. The classification of instructional personnel includes classroom teachers, pupil personnel services, librarians/media specialists, other instructional staff, and instructional paraprofessionals.

### **Public Records and Public Meetings**

The Public Records Law, chapter 119, F.S., and the Public Meetings Law, s. 286.011, F.S., specify the conditions under which public access must be provided to governmental records and meetings of the executive branch and other governmental agencies. The law (s. 119.011(1), F.S.) defines public records as all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. Section 119.011(2), F.S., defines an "agency" as any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

Section 286.011, F.S., provides that all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the state constitution at which official acts are to be taken are public meetings open to the public at all times. No resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

Section 119.15, F.S., the "Open Government Sunset Review Act of 1995," establishes a review and repeal process for exemptions to public records or meetings requirements. In the fifth year

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

<sup>3</sup> The prohibition applies to state or local educational agency, board, public school, area technical center, community college, or institution of higher education in the State University System.

after enactment of a new exemption or the substantial amendment of an existing exemption, the exemption is repealed on October 2nd, unless the Legislature acts to reenact the exemption.

Section 119.15(3)(a), F.S., requires a law that enacts a new exemption or substantially amends an existing exemption to state that the exemption is repealed at the end of 5 years and that the exemption must be reviewed by the Legislature before the scheduled repeal date. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. An exemption is not substantially amended if the amendment narrows the scope of the exemption.

Additionally, under s. 119.15(4)(b), F.S., 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:

(a) Does the exemption allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption?

(b) Does the exemption protect 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,

(c) Does the exemption protect 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?

### **III. 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 held by the Department of Education and the State Board of Education. Also exempt are the effects of instruction on the student by the teacher and other instructional personnel. The bill allows the Department of Education to release the data to the State Board of Education. The State Board of Education and the department must maintain the confidential and exempt status of the data.

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 to ensure the privacy of individual teacher records at the state level, since personal information about the effects of instruction by teachers and instructional personnel is highly sensitive. Also, the statement provides that the release of this information to the public would serve as a deterrent to the participation of teachers and others in the assessment program and might discourage qualified persons from entering the teaching field. The collection of information is needed by the Department of Education to effectively administer a statewide program.

Additionally, the bill subjects this exemption to the Open Government Sunset Review Act of 1995 and provides for repeal on October 2, 2007, unless reviewed and saved from repeal through reenactment by the Legislature. The bill is effective upon becoming a law.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

The bill states that the Legislature intends to protect the privacy of individual teacher records at the state level. However, the proposed exemption does not make these specific records confidential and exempt.

##### **C. Trust Funds Restrictions:**

None.

##### **D. Other Constitutional Issues:**

The bill may raise a constitutional concern about the breadth of the proposed public records exemption, in that it creates an exemption for the personal identifying information of not only teachers but also other instructional personnel. The inclusion of all instructional personnel appears to extend beyond the bill's stated legislative intent.

#### **V. Economic Impact and Fiscal Note:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

None.

##### **C. Government Sector Impact:**

None.

#### **VI. Technical Deficiencies:**

Personal identifying information is not usually described as data. The meaning of the term "effects of instruction" is unclear.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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

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