

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 895 Pub. Rec./Education Testing/Investigation by DOE

**SPONSOR(S):** PreK-12 Policy Committee

**TIED BILLS:** **IDEN./SIM. BILLS:**

	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
Orig. Comm.:	PreK-12 Policy Committee	11 Y, 0 N, As CS	Paulson	Ahearn
1)				
2)				
3)				
4)				
5)				

**SUMMARY ANALYSIS**

The bill creates a public records exemption for the following information relating to an investigation of testing impropriety: the identity of a school or postsecondary institution; the personally identifiable information of any personnel; or any specific allegations of misconduct.

The bill stipulates that these records remain confidential as long as the investigation is active. An investigation is considered active "so long as it is ongoing and there is a reasonable, good faith anticipation that an administrative finding will be made in the foreseeable future." An investigation is considered concluded:

- Upon a finding that no impropriety has occurred;
- Upon the completion of any law enforcement investigation; or
- Upon the referral to an employer with the authority to take disciplinary action.

The bill provides the constitutionally required public necessity statement.

This public records exemption is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2014, unless it is reenacted by the Legislature.

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

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### Public Records Law

Article I, s. 24(a) of the Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the Florida Constitution. 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.<sup>1</sup>

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>2</sup> provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or
- Protecting trade or business secrets.

##### Test Security

It is unlawful for anyone to knowingly and willfully violate test security rules set by the State Board of Education for mandatory tests administered by or through the State Board of Education or the Commissioner of Education to students, educators, or applicants for certification or administered by

---

<sup>1</sup> Article I, s. 24(c) of the Florida Constitution.

<sup>2</sup> Section 119.15, F.S.

school districts.<sup>3</sup> The proper authority, including a district school superintendent or president of a public or nonpublic postsecondary educational institution, is required to cooperate with the Commissioner of Education in any investigation involving test security for a test administered pursuant to state statute or rule.<sup>4</sup>

### Effect of Proposed Changes

The bill creates a public records exemption for the following information relating to an investigation of testing impropriety: the identity of a school or postsecondary institution; the personally identifiable information of any personnel; or any specific allegations of misconduct.

The bill stipulates that these records remain confidential as long as the investigation is active. An investigation is considered active “so long as it is ongoing and there is a reasonable, good faith anticipation that an administrative finding will be made in the foreseeable future.” An investigation is considered concluded:

- Upon a finding that no impropriety has occurred;
- Upon the completion of any law enforcement investigation; or
- Upon the referral to an employer with the authority to take disciplinary action.

This public records exemption is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2014, unless it is reenacted by the Legislature.

The bill provides the constitutionally required public necessity statement.<sup>5</sup> More particularly, the public necessity statement provides that decisions relating to testing in Florida are of statewide interest and there is a strong public interest in the circumstances surrounding an investigation of a testing impropriety, including the identity of a school or postsecondary institution and the actions by teachers, administrators, paraprofessionals, or other individuals which must be uncovered through a comprehensive investigation that may involve statistical and other analyses. The release of information before an investigation is concluded may reveal sensitive or personal information that could cause unwarranted damage to the names or reputations of the individuals involved.

#### B. SECTION DIRECTORY:

**Section 1:** Amends s. 1008.24, F.S.; provides a public records exemption for personally identifiable information or allegations of misconduct obtained or report in connection with an investigation of testing impropriety; limits the duration of the exemption; provides for future review and repeal.

**Section 2:** Provides a public necessity statement.

**Section 3:** Provides an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

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

##### 2. Expenditures:

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

---

<sup>3</sup> Section 1008.24(1), F.S. Violations include, but are not limited to, giving examinees access to test questions before the exam, making answer keys available to examinees, or copying a secure test booklet. *See also* 6A-10.042, F.A.C.

<sup>4</sup> Section 1008.24(3), F.S.

<sup>5</sup> *See infra* note 1 and accompanying text.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

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

2. Expenditures:

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

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require a city or county to expend funds or take any action requiring the expenditure of funds. The bill does not appear to reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

DOE Comments:

The Department has given significant consideration to the requirements of Art. I, section 24 of the State Constitution. That provision requires that an exemption created shall be no broader than necessary to accomplish the purpose of the law. This bill balances the interests of the public with the need to protect the integrity of investigations of testing impropriety.<sup>6</sup>

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

DOE Comments:

When information and evidence supports that a certified educator violated testing protocol, breached testing security or actually tampered with test results, the assessment office will refer this information to the Office of Professional Practices Services for investigation to determine if the educator's certificate should be sanctioned. Active investigations conducted by the Office of Professional Practices (PPS) are provided a statutory exemption from public record until the conclusion of the investigation. This confidentiality is vital to the integrity of the investigative process. Outside interferences can taint the findings of an investigation and create unnecessary and disruptive obstacles to the investigative process.

---

<sup>6</sup> Analysis of HB 895, Department of Education, March 16, 2009.

In PPS investigations, the information is open to the public upon conclusion of the preliminary investigation, a juncture which ensures the truth and accuracy of the process. Requiring the assessment office to release information, while another Department investigation is ongoing could potentially taint the results of the subsequent or concurrent investigation and result in inaccurate outcomes for the educator, the students, the public and/or the Department. Investigations by the Office of Assessment may also involve school board personnel who are not certified educators. In those cases, the protections provided by this bill would be extended to those individuals.<sup>7</sup>

#### **IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

On March 25, 2009, the PreK-12 Policy Committee met and reported the bill favorable with a Committee Substitute (CS).

The CS more narrowly defines the public records exemption. Instead of creating an exemption for all records obtained pursuant to an investigation of a testing impropriety, the CS specifies that the exemption applies to the following information obtained or reported pursuant to an investigation conducted by the Department of Education of a testing impropriety:

- The identify of a school or postsecondary institution;
- The personally identifiable of any personnel of any school or postsecondary institution; and
- Any specific allegations of misconduct.

In relation to the bill's provision that records remain confidential until the conclusion of the investigation, the CS:

- Adds the phrase "or ceases to be active;"
- Defines an investigation as "active" so long as it is ongoing and there is a reasonable, good faith anticipation that an administrative finding will be made in the foreseeable future; and
- Defines an investigation as "concluded" upon a finding that no impropriety has occurred; upon the completion of any law enforcement investigation; or upon the referral to an employer with the authority to take disciplinary action.

---

<sup>7</sup> *Id.*