

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 345 Criminal Justice Standards and Training Commission
SPONSOR(S): Justice Appropriations Subcommittee; Criminal Justice Subcommittee; Asencio and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 350

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|------------------|---------|---------------------------------------|
| 1) Criminal Justice Subcommittee | 14 Y, 0 N, As CS | White | White |
| 2) Justice Appropriations Subcommittee | 13 Y, 0 N, As CS | Welty | Gusky |
| 3) Judiciary Committee | | | |

SUMMARY ANALYSIS

The Criminal Justice Standards and Training Commission (Commission), within the Florida Department of Law Enforcement (FDLE), is required to ensure that applicants entering a criminal justice basic recruit program have passed a Commission-approved basic abilities examination. This examination is formally referred to as the Basic Abilities Test (BAT).

To implement this responsibility, the Commission currently contracts with two out-of-state vendors and Miami Dade College to develop and administer the BAT. Each vendor administers a different test; training and selection centers have the discretion to choose which test to administer. The FDLE reports the current system has resulted in inconsistency throughout the state with respect to the difficulty levels of the BATs and fees assessed for the exam. Currently, fees for the BAT range from \$18 for tests administered at state correctional facilities to \$75 for tests administered at other locations, with a statewide average of \$46.

The federal Department of Justice reviewed BAT test scores from 2010 to 2015, and found that the tests had an adverse impact on minority test takers. With respect to this finding, the FDLE reports that changes to the BAT have been implemented and lower passage rates for the BAT have been retroactively applied. If the state does not correct the deficiencies identified by the OCR, there is a risk that the state may lose all or a portion of federal funding received from the Justice Assistance Grant (JAG) Program (also known as "Byrne Grants") and Residential Substance Abuse Treatment for State Prisoners (also known as "RSAT Grants") Program.

The bill amends s. 943.12, F.S., to require the Commission, on or before January 1, 2019, to implement, administer, maintain, and revise a BAT for all applicants for basic recruit training in law enforcement and corrections. The Commission must adopt rules establishing procedures for the BAT administration, and must establish standards for acceptable performance on the test.

The bill authorizes the Commission to establish a basic abilities examination fee in rule that solely offsets department costs to design, implement, maintain, revise, and administer the examination. The nonrefundable fee shall not exceed \$23 for one scheduled BAT attempt. Fees collected for the BAT must be deposited in the Criminal Justice Standards and Training Trust Fund (CJSTTF). Revenues from the fee will generate up to \$460,000 per year. The bill provides that the fee shall take effect upon the implementation of the revised BAT on or before January 1, 2019.

Individuals who seek entrance into a criminal justice basic recruit program will have to pay a fee of up to \$23 to take the BAT, which may be an increase or decrease from the fee currently charged by a vendor.

The bill does not appear to have any impact on local government revenues or expenditures.

The bill provides an effective date of July 1, 2017.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0345b.JUA

DATE: 4/18/2017

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Criminal Justice Standards and Training Commission (Commission),¹ is established within the Florida Department of Law Enforcement (FDLE). The Commission is statutorily-assigned responsibilities relating to the training, certification, and discipline of full-time, part-time, and auxiliary law enforcement officers,² correctional officers,³ and correctional probation officers,⁴ which include:

- Certifying, and revoking the certification of, officers, instructors, including agency in-service training instructors, and criminal justice training schools.⁵
- Establishing uniform minimum employment standards for the various criminal justice disciplines.
- Establishing uniform minimum training standards for the training of officers in the various criminal justice disciplines.
- Establishing minimum curricular requirements for criminal justice training schools.
- Making, publishing, or encouraging 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.
- Implementing, administering, maintaining, and revising a job-related officer certification examination for each criminal justice discipline.⁶

Basic Abilities Test

Section 943.17, F.S., requires the Commission, in relevant part, to ensure that applicants entering into a criminal justice basic recruit program have passed a Commission-approved basic abilities test (BAT).⁷ The BAT must be administered in Florida and tailored to the applicable discipline for which the recruit is seeking program admission.⁸

Currently, the Commission contracts with three vendors for the development and administration of the BAT. Two of the providers, I/O Solutions and Morris & McDaniel, are out-of-state vendors. The third provider is Miami Dade College. Each of the vendors administers a different test. Training centers and selection centers have the discretion to choose which test to administer.⁹

¹ See s. 943.11(1)(a), F.S. (providing that the commission must consist of 19 members, including: the Secretary of Corrections 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 who are employed in specified law enforcement roles.).

² Section 943.10(1), F.S., defines “law enforcement officer” to mean any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state.

³ Section 943.10(2), F.S., defines “correctional officer” to mean any person who is appointed or employed full time by the state or any political subdivision thereof, or by any private entity which has contracted with the state or county, and whose primary responsibility is the supervision, protection, care, custody, and control, or investigation, of inmates within a correctional institution.

⁴ Section 943.10(3), F.S., defines “correctional probation officer” to mean a person who is employed full time by the state whose primary responsibility is the supervised custody, surveillance, and control of assigned inmates, probationers, parolees, or community controllees within institutions of the Department of Corrections or within the community.

⁵ Section 943.10(16), F.S., defines “criminal justice training school” to mean any private or public criminal justice training school certified by the Commission.

⁶ s. 943.12, F.S.

⁷ s. 943.17(1)(g), F.S. and Rule 11B-35.0011(1), F.A.C.

⁸ Rule 11B-35.0011(1), F.A.C. The rule includes references to law enforcement, correctional, or correctional probation disciplines.

⁹ FDLE, Agency Analysis of HB 345 (2017), pp. 2-3 (July 1, 2017) (on file with the Justice Appropriations Subcommittee).

As a result of the current system, the difficulty levels among the BATs lack consistency across the state. There is also inconsistency across the state as to the fee a student is responsible to pay for taking the BAT. Fees for the BAT currently range from \$18 to \$75 with a statewide average of \$46. Additionally, some testing administration sites charge an additional surcharge of \$25. All fees and surcharges collected are retained by the three providers and test administration sites.¹⁰

Department of Justice Review of the BAT

In 2015, the Office of Civil Rights (OCR) within the Department of Justice reviewed test results from each of the three providers for 2010-2015, for the law enforcement BAT. Subsequently, in October 2015, the OCR sent a letter to the FDLE indicating that each of the three law enforcement BATs had a statistically significant adverse impact¹¹ on minority test takers; however, the OCR further indicated that the I/O Solutions' test exhibited a higher degree of adverse impact to minority test takers compared to the other two law enforcement BATs provided by Morris & McDaniel and Miami Dade College. Due to this finding, the OCR recommended that the FDLE discontinue use of the I/O Solutions' test and expand use of the BAT offered by the other two providers.¹²

Fiscal Year 2016-2017 Proviso Language

During the 2016 Regular Session, proviso language was adopted, as follows:

From the funds in Specific Appropriations 1267 through 1276, the Department of Law Enforcement shall report 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. The report and recommendations shall be provided to the Governor, President of the Senate, and Speaker of the House of Representatives by January 1, 2017.¹³

In its report on December 30, 2016, the FDLE indicated with respect to the issue raised by OCR that:

OCR recommended FDLE discontinue using I/O Solutions; however, this would have left a large void in service throughout the state. After several communications with OCR and I/O Solutions, the parties agreed I/O Solution would change its test and lower the passing rate. FDLE also agreed to retroactively apply the new passing rate to applicants who had taken the test during the previous five years. OCR is aware of the proposal for FDLE to develop a single test and sees this as a major part of the solution to address adverse impact. They continue to monitor the situation.¹⁴

The report further indicated that FDLE will develop a single BAT to be administered throughout the state. Specifically, the report stated:

FDLE will assume the role of content development for the BAT and evaluate each question's validity based on the performance of the test takers. ... FDLE also determined Miami Dade College, a current provider, is capable of fulfilling the requirements for administration of the BAT statewide. ... FDLE has been in formal discussion with college representatives and has

¹⁰ *Id.*

¹¹ Adverse impact means "[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 will generally not be regarded by Federal enforcement agencies as evidence of adverse impact." 29 C.F.R. 1607.4 D.

¹² Letter from the U.S. Department of Justice, Office of Justice Programs, Office for Civil Rights to the FDLE (October 23, 2015) (on file with the Florida House of Representatives, Criminal Justice Subcommittee).

¹³ HB 5001 (2016), Specific Appropriations 1267-1276.

¹⁴ FDLE, *Report on the Status of Development of the Basic Abilities Test*, pp. 2-3 (December 30, 2016) (on file with the Florida House of Representatives, Criminal Justice Subcommittee).

a tentative agreement with them through a proposed Memorandum of Understanding Under the agreement, Miami Dade College assumes sole responsibility for administration of the BAT ... and will ensure the test is consistently and fairly administered.¹⁵

With regard to fees for the BAT, the report proposed a test fee capped at \$50, which includes an allowance for up to a \$10 administrative fee. The report stated, "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. It is based on expected costs for both Miami Dade College and FDLE. Miami Dade College has proposed a fee of \$20 per test to cover their costs and the department estimates its costs will also be covered by receiving \$20 per test."¹⁶

Finally, the report proposed draft legislation that is substantively the same as this bill.¹⁷

Effect of Bill

The bill amends s. 943.12, F.S., which specifies the Commission's powers and duties, to require the Commission, on or before January 1, 2019, to implement, administer, maintain, and revise a BAT for all applicants for basic recruit training in law enforcement and corrections. The Commission must adopt rules establishing procedures for the administration of the BAT, and must establish standards for acceptable performance on the test.

The bill amends s. 943.17(1), F.S., to authorize the Commission to establish a basic abilities examination fee in rule that solely offsets department costs to design, implement, maintain, revise, and administer the examination. The nonrefundable fee shall not exceed \$23 for one scheduled BAT attempt. Fees collected for the BAT must be deposited in the Criminal Justice Standards and Training Trust Fund (CJSTTF).¹⁸ The bill provides that the fee shall take effect upon the implementation of the revised BAT on or before January 1, 2019.

Finally, the bill reenacts and amends s. 943.25, F.S., to change a cross-reference so that it allows expenditures from the CJSTTF for the BAT, and reenacts s. 943.173, F.S., to incorporate the amendments made by the bill to s. 943.17, F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 943.12, F.S., relating to powers, duties, and functions of the Commission.

Section 2. Amends s. 943.17, F.S., relating to basic recruit, advanced, and career development training programs.

Section 3. Provides an effective date for the fee authorized in the bill.

Section 4. Reenacts s. 943.173, F.S., relating to examinations.

Section 5. Reenacts and amends s. 943.25, F.S., relating to criminal justice trust funds.

Section 6. Provides an effective date.

¹⁵ *Id.* at 3-4.

¹⁶ *Id.* at 4.; FDLE, Agency Analysis of HB 345 (2017) at p. 4.

¹⁷ *Id.* at 5.

¹⁸ Section 943.25, F.S., establishes the Criminal Justice Standards and Training Trust Fund within the FDLE for purposes that include providing for the payment of: (a) necessary and proper expenses incurred by the operation of the Commission and the Criminal Justice Professionalism Program; and (b) commission-approved criminal justice advanced and specialized training and criminal justice training school enhancements.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The FDLE projects that 20,000 individuals will take the BAT annually, which would generate approximately \$460,000 of additional revenue if the Commission establishes the fee at the statutory maximum amount of \$23. These funds will be deposited in the Criminal Justice Standards and Training Trust Fund to solely offset the department's costs to design, implement, maintain, revise, and administer the BAT.

2. Expenditures:

The FDLE will incur initial start-up costs and on-going annual costs to develop, maintain, and administer the BAT. These costs will be offset, in part, by the examination fee authorized by the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: The bill does not appear to have any impact on local government revenues.

2. Expenditures: The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: Individuals who seek entrance into a criminal justice basic recruit program will have to pay a fee of up to \$23 to take the BAT, which may be an increase or decrease from the fee currently charged by a vendor. Two of the current test vendors, I/O Solutions and Morris and McDaniel, will no longer receive fees for developing the BAT once the Commission assumes that responsibility.

D. FISCAL COMMENTS:

The Office of Civil Rights (OCR) expressed concerns regarding the Basic Abilities Test in Florida for its disparate impact on Blacks and Hispanics.¹⁹ Recipients of federal funding under the Safe Streets Act may not use a selection device that is inconsistent with the federal guidelines for selection. If the state does not correct the deficiencies identified by the OCR, there is a risk that the state may lose all or a portion of federal funding from the Justice Assistance Grant (JAG) Program (also known as "Byrne Grants") and Residential Substance Abuse Treatment for State Prisoners (also known as "RSAT Grants") Program.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other: None.

¹⁹ Michael L. Alston, Director Office of Civil Rights. Concerns and Recommendations Regarding Fla. Dep't of Law Enforcement's Law Enforcement Basic Abilities Test (15-OCR-0783) October 23, 2015. (on file with Justice Appropriations Subcommittee).

B. **RULE-MAKING AUTHORITY:** The bill requires the Commission to adopt rules establishing procedures for the administration of the BAT.

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

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 15, 2017, the Criminal Justice Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute (CS). The CS differs from the bill as filed in that the CS:

- Extended the deadline for the CJSTC's requirement to implement, administer, maintain, and review the BAT from January 1, 2018, to January 1, 2019.
- Provides that the BAT fee is nonrefundable; whereas, the bill provided that it was nonrefundable if the applicant does not appear for the examination or does not achieve an acceptable score on the exam.
- Provides that the fees collected for the BAT are to be deposited in the CJSTTF; whereas, the bill provided that the fees would be disbursed according to CJSTC rule.

This analysis is drafted to the CS as passed by the Criminal Justice Subcommittee.

On April 17, 2017, the Justice Appropriations Subcommittee adopted an amendment and reported the bill favorably as a committee substitute (CS). The CS authorizes the Commission to establish a basic abilities examination fee in rule that solely offsets department costs to design, implement, maintain, revise, and administer the BAT and caps the fee at \$23, rather than \$50, per examination.

This analysis is drafted to the CS/CS as passed by the Justice Appropriations Subcommittee.