

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB EDC 13-01 Public Records/Student Learning Growth Data

**SPONSOR(S):** Education Committee

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Education Committee	13 Y, 5 N	Brink	Mizereck

### SUMMARY ANALYSIS

Performance evaluations of instructional personnel and school administrators of Florida's public school system are confidential and exempt from public records requirements. This exemption expires at the end of the school year following the school year in which the evaluation was made. However, a recent lawsuit filed against the Florida Department of Education (DOE) challenged whether a certain component used in instructional personnel and school administrator evaluations, student learning growth data, is subject to the same public records exemption.

The bill creates a specific exemption from public records requirements for student learning growth data held by the DOE or a school district for use in the evaluation of an educator that personally identifies a specific educator.

The bill limits the duration of the exemption to the completion of the third school year following the school year during which the evaluation was completed. This codifies the court's ruling in the lawsuit that both single-year and three-year aggregated Value Added Model (VAM) reports containing student learning growth data constitute distinct evaluations that are confidential and exempt from disclosure. Under the bill, the three-year aggregated VAM data report will remain subject to disclosure at the end of the school year immediately following the year in which it is made.

The bill provides for repeal of the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

The bill has no fiscal impact on state or local governments. See Fiscal Comments.

The bill provides an effective date of October 1, 2013.

**Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill expands current public record exemptions; thus, it requires a two-thirds vote for final passage.**

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Present Situation**

##### Public Records Law

Article I, s. 24(a) of the State 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 State 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,<sup>2</sup> which guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>3</sup> provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects 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
- Protects trade or business secrets.

##### Public School Personnel Evaluations

All instructional personnel and school administrators employed by Florida's public school districts must undergo an annual performance evaluation based on sound educational principles and contemporary research in effective educational practices.<sup>4</sup> The evaluation criteria for instructional personnel include student performance, instructional practice, and professional and job responsibilities.<sup>5</sup> Likewise, the evaluation criteria for school administrators includes student performance and professional and job responsibilities. In addition, instructional leadership practices are also included in school administrator evaluations.<sup>6</sup>

At least 50 percent of an instructional personnel or school administrator's evaluation must be based upon data and indicators of student learning growth as demonstrated by annual statewide or school district assessments.<sup>7</sup> Student learning growth is measured under a formula approved by the Commissioner of Education (commissioner) and as adopted in rule by the State Board of Education (SBE).<sup>8</sup> The formula is known as the "value added model" (VAM).<sup>9</sup>

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<sup>1</sup> Art. I, s. 24(c), Fla. Const.

<sup>2</sup> Section 119.07(1), F.S.

<sup>3</sup> Section 119.15, F.S.

<sup>4</sup> Section 1012.34(3)(a), F.S. Newly hired classroom teachers are evaluated twice in their first year of teaching in a school district.

<sup>5</sup> Section 1012.34(3)(a)1., 2., and 4., F.S. School administrator evaluation criteria includes instructional leadership. Section 1012.34(3)(a)3., F.S.

<sup>6</sup> Section 1012.34(3)(a)3., F.S.

<sup>7</sup> Section 1012.34(3)(a)1., F.S.

<sup>8</sup> Section 1012.34(8), F.S.

<sup>9</sup> See Department of Education, Proposed Rule 6A-5.0411.

The student learning growth data calculated under the VAM is used, in part, to designate instructional personnel and school administrators as “highly effective,” “effective,” “needs improvement” (for instructional personnel in the first three years of employment who need improvement, “developing”), or “unsatisfactory.” Instructional personnel and school administrators whose students’ learning growth data exceeds the predicted learning growth are eligible to be rated “highly effective” or “effective” in their summative evaluation rating. If the student learning growth data is sufficiently low, the instructional personnel or school administrator must be rated as “unsatisfactory.”<sup>10</sup> This student learning growth portion of the instructional personnel or school administrator evaluation must include learning growth data for students assigned to the teacher or school, respectively, over the course of at least three years.<sup>11</sup> If less than three years of data are available for the instructional personnel or school administrator, the years for which data are available must be used and the percentage of the evaluation based on student learning growth may be reduced to not less than 40 percent.<sup>12</sup>

Current law provides that instructional personnel and school administrator evaluations are confidential and exempt from public records requirements until the end of the school year immediately following the school year in which the evaluation was made.<sup>13</sup>

On March 11, 2013, the Second Judicial Circuit Court found that “VAM student data reports are themselves employee evaluations ‘prepared pursuant to . . . s. 1012.34’ and, therefore, are confidential and exempt from public disclosure until the end of the school year immediately following the school year in which the evaluation was made.”<sup>14</sup> Further, the court explained that, because the DOE uses an average of three years of VAM data when determining whether an instructional personnel or school administrator may be rated “highly effective” or “effective” or must be rated as “unsatisfactory,” the three-year aggregate VAM report likewise is an exempt evaluation and is confidential until the end of the school year after the school year in which the three-year aggregate report is used.<sup>15</sup> In so stating, the court recognized as two distinct evaluations the single-year VAM data report and the three-year, aggregated VAM data report. The court provided the following example:

Assuming the evaluation took place when the changes to section 1012.34, Florida Statutes, became effective, teachers should have been evaluated at the end of the 2011-2012 school year. The three-year aggregate report would have included the following years of data: 2009-2010, 2010-2011, 2011-2012. This three-year aggregate report will be exempt from disclosure until the end of the 2012-2013 school year. In addition, at the end of the 2012-2013 school year, the individual VAM report for the 2009-2010 school year also will no longer be exempt. However, the individual VAM reports for the 2010-2011 and 2011-2012 school years shall remain exempt because they will be part of the three-year aggregate VAM report used for the 2012-2013 school year evaluations.<sup>16</sup>

According to the court’s order, “the three-year aggregate report will be available for release at the end of the school year immediately following the school year in which the evaluation was made. At that same time, the earliest year of the three years in the aggregate report will also be available for release.”<sup>17</sup> Thus, the decision protects single-year VAM data reports, considered exempt evaluations by the court, from disclosure until the end of the third year following the year in which they are made. It also provides that the aggregated three-year VAM data reports become subject to public records requirements at the end of the school year immediately following the year in which they are made.

## Effect of Proposed Changes

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<sup>10</sup> Section 2012.34(8), F.S.

<sup>11</sup> Section 1012.34(3)(a)1.a., F.S.

<sup>12</sup> Section 1012.34(3)(a)1.a. and c., F.S.

<sup>13</sup> Section 1012.31(3)(a)2., F.S.

<sup>14</sup> Final Order in *Morris Publishing Group, LLC, d/b/a The Florida Times-Union v. Florida Dep’t of Ed.*, Case No.: 2013-CA-307 (quoting s. 1012.31(3)(a)2., F.S.).

<sup>15</sup> *See Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

The bill codifies the court's decision holding that VAM student data reports constitute confidential employee evaluations. Specifically, the bill provides that student learning growth data held by the DOE or a school district for use in an evaluation, that is educator-specific and personally identifies an educator,<sup>18</sup> is confidential and exempt from public records requirements. In conformity with the court's decision, the bill limits the duration of the exemption to the completion of the third school year following the school year during which the evaluation was completed.

The bill does not change the requirement under current law that the aggregated VAM data report becomes subject to public disclosure as an evaluation at the end of the school year following the year in which that evaluation is completed.<sup>19</sup>

The bill specifies certain instances in which the public records exemption does not apply to the student learning growth data. The exemption does not apply when:

- The disclosure is expressly required by federal or state law or a court order;
- The disclosure is to another governmental entity and the disclosure is necessary for the entity to perform its required duties and responsibilities;
- The instructional personnel or school administrator consents in writing to the disclosure of his or her student learning growth data and the release of the data would not otherwise violate state or federal law or a court order; or
- The disclosure is to an organization conducting research or other studies for, or on behalf of, the DOE or school district.

The bill provides that the exemption is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2018, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also provides a statement of public necessity, which in part finds that the confidentiality allows school districts to more effectively and efficiently administer the required evaluation program and adjust interim training based on student data. The statement also warns that early release of growth data interferes with the ongoing process of improving instruction because it allows isolated information to unduly represent an educator's performance and could create unwarranted damage to the good name or reputation of such an educator if data were released prematurely.

#### B. SECTION DIRECTORY:

Section 1. Amends s. 1012.31, F.S.; creating a public records exemption for personally identifying, educator-specific, student learning growth data held by the Department of Education or a school district.

Section 2. Provides a statement of public necessity.

Section 3. Provides an effective date of October 1, 2013.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

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

##### 1. Revenues:

None.

##### 2. Expenditures:

None.

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<sup>18</sup> The bill defines the term "educator" to include instructional personnel and school administrators.

<sup>19</sup> Section 1012.34(3)(a)2., F.S.

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

1. Revenues:

None.

2. Expenditures:

None.

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

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meetings exemption. The bill creates a public meetings exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meetings exemption. The bill creates a public records exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meetings exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill provides that student growth data held by the DOE or a school district that personally identifies specific educators is exempt from public records requirements. Further, the bill provides several instances in which the data may be disclosed. It also limits the duration of the exemption to the end of the third year following the school year during which the single-year VAM data report is completed. Pursuant to current law, the aggregated three-year VAM data reports remain subject to disclosure at the end of the school year following the year in which the reports were made. Accordingly, there are no anticipated constitutional issues relating to the breadth of the exemption provided in the bill.

**B. RULE-MAKING AUTHORITY:**

None.

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

None.

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.