

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GVOPS 14-06 OGSR Investigation of Allegation of Testing Impropriety

SPONSOR(S): Government Operations Subcommittee

TIED BILLS: **IDEN./SIM. BILLS:** SB 656

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|--------|------------|--|
| Orig. Comm.: Government Operations Subcommittee | | Williamson | Williamson |

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

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 school districts. A district school superintendent or president of a public or nonpublic postsecondary educational institution must cooperate with the Commissioner of Education in any investigation concerning the administration of a test administered pursuant to state statute or rule.

Current law provides a public record exemption for certain information obtained or reported to the Department of Education pursuant to an investigation regarding an allegation of testing impropriety. Specifically, the identity of a school or postsecondary educational institution, personal identifying information of any personnel of any school district or postsecondary educational institution, or any specific allegations of misconduct are confidential and exempt from public record requirements. The information remains confidential and exempt until the conclusion of the investigation or until such time as the investigation ceases to be active.

The bill reenacts the public record exemption, which will repeal on October 2, 2014, if this bill does not become law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act 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.
- Protects trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.² If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created³ then a public necessity statement and a two-thirds vote for passage are not required.

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 school districts.⁴ Violations include, in part, giving examinees access to test questions prior to testing; copying reproducing, or using in any manner inconsistent with test security rules all or any portion of any secure test booklet; coaching examinees during testing; or making answer keys available to examinees.⁵ A district school superintendent or president of a public or nonpublic postsecondary educational institution must cooperate with the Commissioner of Education in any investigation concerning the administration of a test administered pursuant to state statute or rule.⁶

Public Record Exemption under Review

In 2009, the Legislature created a public record exemption for certain information obtained or reported to the Department of Education pursuant to an investigation regarding an allegation of testing impropriety.⁷ Specifically, the identity of a school or postsecondary educational institution, personal identifying information of any personnel of any school district or postsecondary educational institution,

¹ Section 119.15, F.S.

² Section 24(c), Art. I of the State Constitution.

³ An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.

⁴ Section 1008.24(1), F.S.

⁵ See s. 1008.24(1)(a)-(g), F.S.

⁶ Section 1008.24(4)(a), F.S.

⁷ Chapter 2009-143, L.O.F.; codified as s. 1008.21(3)(b), F.S., however, the section has since been amended and the public record exemption can now be found at paragraph (4)(b).

or any specific allegations of misconduct are confidential and exempt⁸ from public record requirements.

The information remains confidential and exempt until the conclusion of the investigation or until such time as the investigation ceases to be active. An investigation is deemed concluded upon:

- A finding that no impropriety has occurred;
- The conclusion of any resulting preliminary investigation;
- The completion of any resulting investigation by a law enforcement agency; or
- Referral of the matter to an employer who has the authority to take disciplinary action against an individual who is suspected of a testing impropriety.⁹

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.¹⁰

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2014, unless reenacted by the Legislature.¹¹

During the 2013 interim, subcommittee staff met with staff of the Department of Education as part of the Open Government Sunset Review process.¹² Staff of the Department of Education recommended reenactment of the public record exemption.

Effect of the Bill

The bill removes the repeal date, thereby reenacting the public record exemption for certain information obtained or reported to the Department of Education pursuant to an investigation regarding an allegation of testing impropriety. The bill also makes editorial changes.

B. SECTION DIRECTORY:

Section 1 amends s. 1008.24, F.S., to save from repeal the public record exemption for certain information obtained or reported to the Department of Education pursuant to an investigation regarding an allegation of testing impropriety.

Section 2 provides an effective date of October 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

⁸ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption. *See* Attorney General Opinion 85-62 (August 1, 1985).

⁹ Section 1008.24(4)(b), F.S.

¹⁰ *Id.*

¹¹ *Id.*

¹² Meeting on December 18, 2013, between House staff of the Government Operations Subcommittee, K-12 Subcommittee, and Choice & Innovation Subcommittee and staff of the Department of Education.

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:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.