

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 311 Pub. Rec./Assessment Instruments

SPONSOR(S): Post-Secondary Education & Lifelong Learning Subcommittee, Silvers

TIED BILLS: None **IDEN./SIM. BILLS:** SB 1456

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Post-Secondary Education & Lifelong Learning Subcommittee	14 Y, 0 N, As CS	Wolff	Kiner
2) Government Operations Subcommittee		Roth	Smith
3) Education & Employment Committee			

SUMMARY ANALYSIS

In order to protect proprietary information contained in assessments as well as their related materials and to combat cheating, plagiarism, and academic dishonesty, the bill expands the scope of the existing public records exemption for the assessments and developmental materials related to the student assessment program for public schools. While current law protects some of the examinations and assessments administered by the Florida Department of Education (DOE), Florida College System (FCS) institutions, and state universities from release pursuant to Florida's public records laws, the bill expands such protections to cover a number of specific examinations and assessments required by law.

The bill creates a new public record exemption that protects all examinations and assessments, including developmental materials and workpapers that are prepared, prescribed, or administered by FCS institutions, the state universities, or DOE. The State Board of Education and the Board of Governors of the State University System shall make rules and regulations, respectively, governing the appropriate management of the protected materials.

The bill provides that the public record exemptions are subject to the Open Government Sunset Review Act and will repeal on October 2, 2026, unless the Legislature reviews and reenacts the exemption by that date. The bill provides a public necessity statement as required by the State Constitution.

The bill does not appear to have a fiscal impact.

The bill provides an effective date of July 1, 2021.

Article I, section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public meeting or public record exemption. The bill expands a current public record exemption and creates a new one; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Public Records

Article I, s. 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This 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).¹ The general law must state with specificity the public necessity justifying the exemption² and must be no more broad than necessary to accomplish its purpose.³

Public policy regarding access to government records is addressed further statute which guarantees every person a right to inspect and copy any state, county, or municipal record.⁴ Furthermore, the Open Government Sunset Review Act (OGSR)⁵ provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no more broad than necessary to meet one of the following purposes:

- allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- protect 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
- protect trade or business secrets.⁶

The OGSR also provides that when a public records exemption is created, or an existing exemption is substantially amended, it must be automatically repealed on October 2nd of the 5th year after enactment unless it is reviewed and reenacted by the Legislature.⁷

Public Record Exemption for Assessment Instruments

Current law provides for an exemption from public records requirements for examination and assessment instruments, along with related development materials and workpapers, for the student assessment program for public schools.⁸ The public records exemption is limited to only the examinations and assessment instruments prepared, prescribed, or administered pursuant to ss. 1008.22 and 1008.25, F.S., including the statewide, standardized comprehensive assessments, end-of-course assessments, and the Florida Alternate Assessment.⁹ The State Board of Education (SBE) is responsible for adopting rules governing access, maintenance and destruction of such instruments and related materials.¹⁰

¹ Art. I, s. 24(c), Fla. Const.

² This portion of a public record exemption is commonly referred to as a "public necessity statement."

³ Art. I, s. 24(c), Fla. Const.

⁴ Section 119.07(1), F.S.

⁵ Section 119.15, F.S.

⁶ Section 119.15(6)(b), F.S.

⁷ Section 119.15(3), F.S.

⁸ Section 1008.23, F.S.

⁹ Sections 1008.23 and 1008.22, F.S.

¹⁰ Section 1008.23, F.S.

Additionally, examinations, including developmental materials and workpapers, for teacher certification are exempt from disclosure.¹¹ The SBE is responsible for adopting rules governing access, maintenance and destruction of such instruments and related materials.¹²

Additional Assessments Provided for in Law

Apart from the assessments provided for in s. 1008.22, F.S., the following additional assessments are provided for in law:

- a statewide kindergarten screening assessment;¹³
- an assessment to measure learning gains of those students in a Department of Juvenile Justice education program;¹⁴
- an assessment for the identification of limited English proficient students;¹⁵
- a civic literacy assessment to be administered by Florida College System institutions and state universities to all incoming students;¹⁶ and
- the Preliminary SAT/National Merit Scholar Qualifying Test (PSAT/NMSQT) and the PreACT assessments administered under the Florida Partnership for Minority and Underrepresented Student Achievement.¹⁷

Effect of Proposed Changes

In order to protect proprietary information contained in assessments and their related material and to combat cheating, plagiarism, and academic dishonesty, the bill expands the scope of the existing public records exemption for the assessments and developmental materials related to the student assessment program for public schools. The bill adds exemptions¹⁸ for the statewide kindergarten screening assessment, the assessment of learning gains for students in a Department of Juvenile Justice education program, any assessment for the identification of limited English proficient students, the civic literacy assessment administered by Florida College System (FCS) institutions and state universities, teacher certification assessments, and the PSAT/NMSQT and PreACT.

The bill creates a new public record exemption that covers all assessments, including developmental materials and workpapers, prepared, proscribed, or administered by an FCS institution, a state university, and the Florida Department of Education. The FCS, Board of Governors and the State Board of Education are responsible for implementing rules or regulation governing access, maintenance, and destruction of the assessments and related records.

The bill provides that the public record exemptions are subject to the Open Government Sunset Review Act and will repeal on October 2, 2026, unless the Legislature reviews and reenacts the exemptions by that date. The bill provides a public necessity statement as required by the State Constitution.

B. SECTION DIRECTORY:

¹¹ Section 1012.56, F.S.

¹² Sections 1008.23 and 1012.56, F.S.

¹³ Section 1002.69, F.S.

¹⁴ Section 1003.52, F.S.

¹⁵ Section 1003.56, F.S.

¹⁶ Section 1007.25, F.S.

¹⁷ Section 1007.35(5), F.S.

¹⁸ There is a difference between records the Legislature designates 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 statute. (See Attorney General Opinion 85-62, Aug. 1, 1985).

Section 1. Amends s. 1008.23, F.S.; expanding the examination and assessment instruments which are confidential and exempt from public record requirements; providing for future review and repeal of the exemption.

Section 2. Provides legislative findings.

Section 3. Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

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. The bill does not appear to affect county or municipal governments.

2. Other:

Vote Requirement

Article I, section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill expands a current public record exemption and creates a new one; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands a current public record exemption, creates a new one and includes the requisite public necessity statement.

Breadth of Exemption

Article I, section 24(c) of the Florida Constitution requires a newly created or expanded public records or public meeting exemption to be no broader than necessary to accomplish the law's stated purpose. In order to protect proprietary information contained in assessments and their related material and to combat cheating, plagiarism, and academic dishonesty, the bill expands the scope of the existing public records exemption for the assessments and developmental materials related to the student assessment program for public schools. As such, the exemptions do not appear to be in conflict with the constitutional requirement that the exemptions be no broader than necessary to accomplish the stated purpose.

B. RULE-MAKING AUTHORITY:

The bill requires rulemaking and the implementation of regulations by the State Board of Education and the Board of Governors, respectively, to implement the expanded and new public record exemptions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 9, 2021, the Post-Secondary Education & Lifelong Learning Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- adds the PSAT/NMSQT and the PreACT assessments administered under the Florida Partnership for Minority and Underrepresented Student Achievement to the public record exemption for assessments provided under specific sections of law; and
- provides additional background for the mandatory public necessity statement.

The bill analysis is drafted to the committee substitute adopted by the Post-Secondary Education & Lifelong Learning Subcommittee.