

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Education

BILL: SB 138

INTRODUCER: Senator Brandes

SUBJECT: Interstate Compact on Educational Opportunity for Military Children

DATE: January 31, 2013      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Spaulding	Ryon	MS	<b>Favorable</b>
2.	Hand	Klebacha	ED	<b>Favorable</b>
3.			AP	
4.				
5.				
6.				

**I. Summary:**

Senate Bill 138 reenacts provisions of law establishing and implementing the Interstate Compact on Educational Opportunity for Military Children.

The bill provides for future legislative review and repeal of the Interstate Compact on Educational Opportunity for Military Children three years following the effective date of the act, which is upon becoming a law.

The bill repeals section 3, chapter 2010-52, Laws of Florida, which provides for a future repeal of sections 1000.36, 1000.37, 1000.38, and 1000.39 of the Florida Statutes.

**II. Present Situation:**

**Interstate Compact on Educational Opportunity for Military Children**

Children in active-duty military families face unique educational challenges. The average military child transfers to a different state or school district six to nine times during kindergarten through grade 12. When a parent is reassigned, military children may be impacted by:

- Record transfer issues;
- Varied course sequencing and academic placement policies;
- Varied graduation requirements;
- Exclusion from extracurricular activities;
- Redundant or missed entrance or exit testing;
- Varied kindergarten and first grade entrance ages; and

- The need to appoint temporary guardians while the child's parent is deployed.<sup>1</sup>

The Interstate Compact on Educational Opportunity for Military Children assists member states in uniformly addressing educational transition issues faced by active-duty military families. The compact governs member states in several areas, including school placement, enrollment, records transfer, participation in academic programs and extracurricular activities, and on-time-graduation for children of active-duty military families. The compact was developed by the Council of State Governments, in cooperation with the U.S. Department of Defense.<sup>2</sup> A compact is essentially a contract between sovereigns.<sup>3</sup>

States were required to enact the compact into law in order to join the compact, which the Florida Legislature did in the 2008 General Session.<sup>4</sup> Enactment by ten states was required in order for the compact to take effect and be binding on member states, which occurred when Delaware became the tenth state to adopt the compact on July 9, 2008.<sup>5</sup> Currently, 43 states and the District of Columbia are members of the compact.<sup>6</sup>

The compact establishes an Interstate Commission on Educational Opportunity for Military Children (Commission) to provide national-level oversight of the compact. The Commission may adopt and enforce bylaws and compact rules and perform various administrative functions necessary to day-to-day operations.<sup>7</sup> The Commission is comprised of one voting representative, or Compact Commissioner, from each member state. Each state is entitled to one vote on compact rule adoption or other business matters.<sup>8</sup> The Commission must meet at least once per year.<sup>9</sup>

### **Compact Rule Adoption**

The Commission is authorized to promulgate compact rules which govern member states in the areas addressed by the compact. The compact rules have the force and effect of statutory law in member states and supersede conflicting member state laws to the extent of the conflict.<sup>10</sup> Compact rules must not exceed the scope of authority granted by the compact. A majority of member state legislatures may invalidate a compact rule by legislative action.<sup>11</sup>

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<sup>1</sup> Military Interstate Children's Compact Commission, *Interstate Compact on Educational Opportunity for Military Children: Legislative Resource Kit*, at 6-7 (Jan. 2011), available at

<http://www.mic3.net/pages/commissioners/documents/2011LegislativeResourceKit-Final.pdf> (last viewed January 25, 2013).

<sup>2</sup> *Id.* at 7-10.

<sup>3</sup> See, *Florida House of Representatives v. Crist*, 999 So.2d 601, 609 (Fla. 2008).

<sup>4</sup> Chapter 2008-225, L.O.F.; CS/HB 1203 (2008); ss. 1000.36, 1000.37, 1000.38, and 1000.39, F.S.

<sup>5</sup> Article XV, s. B. of the Compact, s. 1000.36, F.S.; 76 Del. Laws 327 (2008).

<sup>6</sup> Military Interstate Children's Compact Commission, *Member and Nonmember States Map* (July 2012), available at <http://mic3.net/pages/resources/documents/MIC3ColorMapJul1.pdf>.

<sup>7</sup> Articles IX and X, of the Compact, s. 1000.36, F.S.

<sup>8</sup> Article IX, s. B. of the Compact, s. 1000.36, F.S.

<sup>9</sup> Article IX, s. D. of the Compact, s. 1000.36, F.S.

<sup>10</sup> Article X, s. B. and XVIII, s. B. of the Compact, s. 1000.36, F.S. The Compact also provides that if any part of the compact exceeds the constitutional limits imposed on the legislature of any member state, the provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state. See, Article XVIII, s. E., of the Compact, s. 1000.36, F.S. Through a formal process of regular review and reauthorization, the Florida Legislature has mitigated potential conflicts that might arise within the context of a delegation of authority challenge.

<sup>11</sup> Article XII of the Compact, s. 1000.36, F.S.

Since enactment in 2008, Florida's compact legislation has included a repeal provision which requires automatic repeal of the compact after a period of time, unless reauthorized by the Legislature.<sup>12</sup> The repeal provision addresses concerns regarding unconstitutional delegation of legislative authority under Article II, s. 3, of the Florida Constitution.<sup>13</sup> Because membership in the compact entails an agreement to be bound by rules promulgated by a non-legislative entity, i.e., the Commission, the repeal provision allows the Legislature to periodically review the compact rules and determine whether it agrees with any new rules or rule amendments adopted during the period. Reauthorization of the compact after such review diminishes a claim that the Legislature has delegated its authority.<sup>14</sup>

The Legislature last reauthorized the compact in 2010, and provided for repeal of the compact in three years, which is May 11, 2013.<sup>15</sup> Since then, two rule amendments have been adopted by the Commission:

- Compact rule 2.104, which provides the compact membership dues formula, was amended in November 2011 to establish a minimum dues obligation of \$2,000 and a maximum dues obligation of \$60,000.
- Compact rule 3.102, relating to kindergarten and first grade entrance age, was amended in November 2012 to clarify that a student must "*physically attend*" kindergarten in the sending state in order to transfer into kindergarten in the receiving state.<sup>16</sup>

Neither amendment impairs Florida's continued participation in the compact.

### III. Effect of Proposed Changes:

**Section 1** repeals s. 3, ch. 2010-52, L.O.F., which provides for automatic repeal of the compact legislation.

**Section 2** provides for repeal of ss. 1000.36, 1000.37, 1000.38, and 1000.39, F.S., the "Interstate Compact on Educational Opportunity for Military Children," three years after the effective date of the bill unless reviewed and reenacted by the Legislature.

**Section 3** provides that the bill takes effect upon becoming law.

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<sup>12</sup> See, ss. 5, ch. 2008-225; 3, ch. 2010-52, L.O.F.

<sup>13</sup> Article II, s. 3 of the Florida Constitution provides for separation of powers among the executive, legislative, and judicial branches of state government. The Florida Supreme Court has held that it is an unconstitutional delegation of legislative authority for the Legislature to prospectively adopt rules not yet promulgated by federal administrative bodies. See, *Freimuth v. State*, 272 So.2d 473, 476 (Fla. 1972); *Fla. Indus. Commission v. State ex rel. Orange State Oil Co.*, 21 So.2d 599, 603 (Fla. 1945).

<sup>14</sup> See, Florida Senate, Legislative Bill Analysis for SB 1060 (2010).

<sup>15</sup> Sections 3 and 4, ch. 2010-52, L.O.F.

<sup>16</sup> Interstate Commission on Educational Opportunity For Military Children, Rules (Nov. 2012), available at <http://mic3.net/pages/commissioners/documents/MIC3CommissionRules-Final-amendedNov2012.pdf> (see rules 2.104 and 3.102).

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

## D. Other Constitutional Issues:

The Florida Supreme Court has held that it is an unconstitutional delegation of legislative authority for the Legislature to prospectively adopt rules not yet promulgated by federal administrative bodies.<sup>17</sup> To address concerns regarding delegation of legislative authority, the bill provides for automatic repeal of Florida's compact legislation three years after the bill takes effect, unless reauthorized by the Legislature. The repeal provision allows the Legislature to determine whether it agrees with any new compact rules or rule amendments adopted during the three year period and consider reauthorization of the compact. Reauthorizing the compact periodically accounts for any new compact rules and amendments adopted by the Commission since the last reauthorization, thereby diminishing a claim that the Legislature has agreed to be bound by compact rules not yet promulgated.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

The compact requires the Commission to levy membership dues from each member state to finance Commission operations and staffing.<sup>18</sup> Membership dues are based upon \$1 per dependent child of active-duty military personnel residing in a member state.<sup>19</sup> According to the Department of Education (DOE), there are approximately 31,000

<sup>17</sup> *Freimuth v. State*, 272 So.2d 473, 476 (Fla. 1972); *Fla. Indus. Commission v. State ex rel. Orange State Oil Co.*, 21 So.2d 599, 603 (Fla. 1945).

<sup>18</sup> Article XIV of the Compact, s. 1000.36, F.S.

<sup>19</sup> *Id.*; Section 2.104, Interstate Commission Rules. There is a minimum dues obligation of \$2,000 and a maximum of \$60,000.

children of active-duty military personnel living in Florida. DOE's legislative budget request for FY 2013-14 requests a total of \$62,911 to fund membership dues. Of this amount, \$30,911 is requested to cover dues owed for FY 2012-13 and \$32,000 is requested to cover dues for FY 2013-14.<sup>20</sup>

Florida has failed to timely pay its annual compact membership dues each year since enactment of the compact in 2008. DOE routinely requests funding for dues in its annual Legislative budget requests, but has received no funding through the General Appropriations Act specifically for membership dues.<sup>21</sup> However, DOE has found other funding sources to pay the dues. In 2010, federal grant funds held by the Department of Veterans Affairs were used to pay dues owed through FY 2009-10.<sup>22</sup> In 2012, Florida's past-due membership dues for FYs 2010-11 and 2011-12 were paid by Enterprise Florida (at the direction of the Governor).<sup>23</sup>

Subsequent to the DOE legislative budget request, DOE was notified that the FY 2012-13 membership dues were paid by the Department of Economic Opportunity. More recently, the Department of Defense has notified DOE that the FY 2013-14 membership dues will be \$42,813 (\$10,813 higher than previously identified).<sup>24</sup>

#### **VI. Technical Deficiencies:**

None.

#### **VII. Related Issues:**

None.

#### **VIII. Additional Information:**

##### **A. Committee Substitute – Statement of Substantial Changes:** (Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

##### **B. Amendments:**

None.

<sup>20</sup> Florida Department of Education, *2013-14 Operating Legislative Budget Request*, 184 (Oct. 2012), available at [http://www.fldoe.org/board/meetings/2012\\_10\\_09/lbr.pdf](http://www.fldoe.org/board/meetings/2012_10_09/lbr.pdf).

<sup>21</sup> See, e.g., Florida Department of Education, *2010-2011 Operating Legislative Budget Request*, 208-209 (Sept. 2009), available at [http://www.fldoe.org/board/meetings/2009\\_09\\_15/2010-11OperatingLegislativeBudgetRequest.pdf](http://www.fldoe.org/board/meetings/2009_09_15/2010-11OperatingLegislativeBudgetRequest.pdf) [Requesting \$66,604 to fund dues for FYs 2009-10 (past-due) and 2010-11]; see, e.g., Florida Department of Education, *2012-13 Operating Legislative Budget Request*, 199-201 (August 2011), available at [http://www.fldoe.org/board/meetings/2011\\_08\\_23/fdoelbr.pdf](http://www.fldoe.org/board/meetings/2011_08_23/fdoelbr.pdf) [Requesting \$97,311 to cover dues for FYs 2010-11 (past-due), 2011-12 (past-due), and 2012-13].

<sup>22</sup> Department of Education, Senate Bill 138 Agency Legislative Bill Analysis (January 18, 2013). On file with the Senate Committee on Education.

<sup>23</sup> Id.

<sup>24</sup> Id.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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