SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Health Care Committee

BILL:	CS/SB 2082
INTRODUCER:	Health Care Committee and Senator Peaden
SUBJECT:	High School Drug Testing/Public Meetings
DATE:	April 26, 2006
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Matthews	ED	**Favorable**
2.	Munroe	Wilson	HE	**Fav/CS**
3.			JU	
4.			GO	
5.			RC	
6.				

I. Summary:

The bill creates an exemption from the Public Meetings Law for meetings at which a challenge or an appeal to the findings of a student's drug test, as described in the bill relating to the drug testing of certain high school students, is discussed. The public meetings exemption is scheduled to repeal on October 2, 2011, in accordance with the Open Government Sunset Review Act. The bill contains a public necessity statement for the public meetings exemption created in the bill.

This bill is linked to Committee Substitute for Senate Bill 1928, which requires the Florida High School Athletic Association to establish a three-year drug testing program for use of anabolic steroids by certain high school student athletes.

This bill amends section 1006.20, Florida Statutes.

II. Present Situation:

Public Records

Florida has a long history of providing public access to the records and meetings of governmental and other public entities. The Florida Legislature enacted the first law affording access to public records in 1909. In 1992, Floridians voted to adopt an amendment to the Florida Constitution that raised the statutory right of public access to public records to a constitutional level.

The Public Records Law, ch. 119, F.S., specifies the conditions under which public access must be provided to governmental records. Section 286.011, F.S., the Public Meetings Law, specifies the requirements for meetings of public bodies to be open to the public. While the State

Constitution provides that records and meetings are to be open to the public, it also provides that the Legislature may create exemptions to these requirements by general law if a public need exists and certain procedural requirements are met. Article I, s. 24, of the Florida Constitution, governs the creation and expansion of exemptions to provide, in effect, that any legislation that creates a new exemption or that substantially amends an existing exemption must also contain a statement of the public necessity that justifies the exemption. Article I, s. 24, of the Florida Constitution, provides that any bill that contains an exemption may not contain other substantive provisions, although it may contain multiple exemptions.

The Open Government Sunset Review Act (s. 119.15, F.S.), provides for the repeal and prior review of any public records or meetings exemptions that are created or substantially amended in 1996 and subsequently. The chapter defines the term "substantial amendment" for purposes of triggering a repeal and prior review of an exemption to include an amendment that expands the scope of the exemption to include more records or information or to include meetings as well as records. The law clarifies that an exemption is not substantially amended if an amendment limits or narrows the scope of an existing exemption. The law was amended by ch. 2005-251, Laws of Florida, to modify the criteria under the Open Government Sunset Review Act so that consideration will be given to reducing the number of exemptions by creating a uniform exemption during the review of an exemption subject to repeal.

Under the Open Government Sunset Review Act, an exemption may be created or maintained only if it serves an identifiable public purpose. An identifiable public purpose is served if the exemption:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, the administration of which would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

Educational Records

Section 1002.22, F.S., provides for the rights of students and their parents regarding the student's educational records in Florida. The parent of any student who attends or has attended any public school, career center, or public postsecondary educational institution shall have the following rights with respect to any records or reports created, maintained, and used by any public educational institution in Florida. However, whenever a student has attained 18 years of age, or is attending a postsecondary educational institution, the permission or consent required of, and the rights accorded to, the parents of the student shall thereafter be required of and accorded to the student only, unless the student is a dependent student of such parents as defined in 26 U.S.C.

s. 152 (s. 152 of the Internal Revenue Code of 1954). The State Board of Education must adopt rules whereby parents or students may exercise these rights.[1]

Under s. 1002.22(3), F.S., every student has a right of privacy with respect to the educational records kept on him or her. Personally identifiable records or reports of a student, and any personal information contained therein, are *confidential and exempt* from the Public Records Law. A state or local educational agency, board, public school, career center, or public postsecondary educational institution may not permit the release of such records, reports, or information without the written consent of the student's parent, or of the student himself or herself if he or she is qualified as provided in this subsection, to any individual, agency, or organization. There is a difference between records that the Legislature has made exempt from public inspection and those that are exempt and confidential. If the Legislature makes a record confidential, with no provision for its release such that its confidential status will be maintained, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.[2] If a record is not made confidential but is simply exempt from mandatory disclosure requirements, an agency has discretion to release the record in all circumstances.[3]

Student records and reports under s. 1002.22, F.S., are *confidential and exempt* and are accorded a unique status regarding their disclosure. Section 1002.22(2), F.S., defines "records and reports" to mean official records, files, and data directly related to students that are created, maintained, and used by public educational institutions, including all material that is incorporated into each student's cumulative record folder and intended for school use or to be available to parties outside the school or school system for legitimate educational or research purposes. Materials that shall be considered as part of a student's record *include, but are not necessarily limited to*: identifying data, including a student's social security number; academic work completed; level of achievement records, including grades and standardized achievement test scores; attendance data; scores on standardized intelligence, aptitude, and psychological tests; interest inventory results; *health data*; family background information; teacher or counselor ratings and observations; verified reports of serious or recurrent behavior patterns; and any other evidence, knowledge, or information recorded in any medium, including, but not limited to, handwriting, typewriting, print, magnetic tapes, film, microfilm, and microfiche, and maintained and used by an educational agency or institution or by a person acting for such agency or institution. However, the terms "records" and "reports" do not include:

- Records of instructional, supervisory, and administrative personnel, and educational personnel ancillary to those persons, that are kept in the sole possession of the maker of the record and are not accessible or revealed to any other person except a substitute for any of such persons. An example of records of this type is instructor's grade books;
- Records of law enforcement units of the institution that are maintained solely for law enforcement purposes and that are not available to persons other than officials of the institution or law enforcement officials of the same jurisdiction in the exercise of that jurisdiction;

[1] See Rule 6A-1.0955, Florida Administrative Code.
[2] Attorney General Opinion 85-62.
[3] *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

- Records made and maintained by the institution in the normal course of business that relate exclusively to a student in his or her capacity as an employee and that are not available for use for any other purpose;
- Records created or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional or paraprofessional capacity, or assisting in that capacity, that are created, maintained, or used only in connection with the provision of treatment to the student and that are not available to anyone other than persons providing such treatment. However, such records shall be open to a physician or other appropriate professional of the student's choice;
- Directory information as defined in s.1002.22, F.S.;
- Other information, files, or data that do not permit the personal identification of a student;
- Letters or statements of recommendation or evaluation that were confidential under Florida law and that were received and made a part of the student's educational records prior to July 1, 1977; and
- Copies of the student's fingerprints. No public educational institution shall maintain any report or record relative to a student that includes a copy of the student's fingerprints.

The Fifth District Court of Appeal has held that a school board may not disclose student records, even with personally identifying information redacted.[4] The Fifth District Court of Appeal certified a question of great public importance to the Florida Supreme Court on whether s. 228.093(3)(d), F.S. (2002),[5] creates an exemption from the Public Records Law for the entire contents of a student's record within which there is a student's personally identifiable information or does it create an exemption only for such personally identifiable information within that record so that upon a proper request, the custodian must redact the personally identifiable information and produce the balance of the record for inspection under the Public Records Law? The Florida Supreme Court denied to review the case.[6]

However, personally identifiable records or reports of a student under s. 1002.22, F.S., may be released to the following persons or organizations *without the consent of the student or the student's parent*:

- Officials of schools, school systems, career centers, or public postsecondary educational institutions in which the student seeks or intends to enroll; and a copy of such records or reports shall be furnished to the parent or student upon request;
- Other school officials, including teachers within the educational institution or agency, who have legitimate educational interests in the information contained in the records;
- The United States Secretary of Education, the Director of the National Institute of Education, the Assistant Secretary for Education, the Comptroller General of the United States, or state or local educational authorities who are authorized to receive such information subject to the conditions set forth in applicable federal statutes and

[4] See *WFTV, Inc. v. School Board of Seminole County*, 874 So.2d 48 (5th DCA 2004), review denied, 892 So.2d 1015 (Fla. 2004).
[5] Section 1058, Chapter 2002-387, Laws of Florida, repealed s. 228.093, F.S., effective January 7, 2003. Section 228.093, F.S., was recodified as s. 1002.22, F.S. The recodification of the law did not amend the provisions of s. 228.093, F.S.
[6] See *WFTV, Inc. v. School Board of Seminole County*, 874 So.2d 48 (5th DCA 2004), review denied, 892 So.2d 1015 (Fla. 2004), supra.

regulations of the United States Department of Education, or in applicable state statutes and rules of the State Board of Education;

- Other school officials, in connection with a student's application for or receipt of financial aid;
- Individuals or organizations conducting studies for or on behalf of an institution or a board of education for the purpose of developing, validating, or administering predictive tests, administering student aid programs, or improving instruction, if the studies are conducted in a manner that does not permit the personal identification of students and their parents by persons other than representatives of such organizations and if the information will be destroyed when no longer needed for the purpose of conducting such studies;
- Accrediting organizations, in order to carry out their accrediting functions;
- Early learning coalitions and the Agency for Workforce Innovation in order to carry out their assigned duties;
- For use as evidence in student expulsion hearings conducted by a district school board under chapter 120, F.S.;
- Appropriate parties in connection with an emergency, if knowledge of the information in the student's educational records is necessary to protect the health or safety of the student or other individuals;
- The Auditor General and the Office of Program Policy Analysis and Government Accountability in connection with their official functions; however, except when the collection of personally identifiable information is specifically authorized by law, any data collected by the Auditor General and the Office of Program Policy Analysis and Government Accountability is confidential and exempt from the Public Records Law and must be protected in a way that does not permit the personal identification of students and their parents by other than the Auditor General, the Office of Program Policy Analysis and Government Accountability, and their staff, and the personally identifiable data shall be destroyed when no longer needed for the Auditor General's and the Office of Program Policy Analysis and Government Accountability's official use;
- A court of competent jurisdiction in compliance with an order of that court or the attorney of record in accordance with a lawfully issued subpoena, upon the condition that the student and the student's parent are notified of the order or subpoena in advance of compliance therewith by the educational institution or agency;
- A person or entity in accordance with a court of competent jurisdiction in compliance with an order of that court or the attorney of record pursuant to a lawfully issued subpoena, upon the condition that the student, or his or her parent if the student is either a minor and not attending a postsecondary educational institution or a dependent of such parent as defined in 26 U.S.C. s. 152 (s. 152 of the Internal Revenue Code of 1954), is notified of the order or subpoena in advance of compliance therewith by the educational institution or agency;
- Credit bureaus, in connection with an agreement for financial aid that the student has executed, if the information is disclosed only to the extent necessary to enforce the terms or conditions of the financial aid agreement. Credit bureaus shall not release any information obtained under this paragraph to any person;
- Parties to an interagency agreement among the Department of Juvenile Justice, school and law enforcement authorities, and other signatory agencies for the purpose of reducing

juvenile crime and especially motor vehicle theft by promoting cooperation and collaboration, and the sharing of appropriate information in a joint effort to improve school safety, to reduce truancy and in-school and out-of-school suspensions, and to support alternatives to in-school and out-of-school suspensions and expulsions that provide structured and well-supervised educational programs supplemented by a coordinated overlay of other appropriate services designed to correct behaviors that lead to truancy, suspensions, and expulsions, and that support students in successfully completing their education. Information provided in furtherance of the interagency agreements is intended solely for use in determining the appropriate programs and services for each juvenile or the juvenile's family, or for coordinating the delivery of the programs and services, and as such is inadmissible in any court proceedings before a dispositional hearing unless written consent is provided by a parent or other responsible adult on behalf of the juvenile; and

- Consistent with the Family Educational Rights and Privacy Act, the Department of Children and Family Services or a community-based care lead agency acting on behalf of the Department of Children and Family Services, as appropriate.

Section 1002.22, F.S., does not prohibit any educational institution from publishing and releasing to the general public directory information relating to a student if the institution elects to do so. However, an educational institution is prohibited from releasing, to any individual, agency, or organization that is not listed in s. 1002.22, F.S., directory information relating to the student body in general or a portion thereof unless it is normally published for the purpose of release to the public in general. Any educational institution making directory information public must give public notice of the categories of information that it has designated as directory information for all students attending the institution and shall allow a reasonable period of time after the notice has been given for a parent or student to inform the institution in writing that any or all of the information designated should not be released.

Florida High School Athletic Association

The Florida High School Athletic Association (FHSAA) is designated as the governing nonprofit organization of Florida public school athletics.[7] The FHSAA governs athletic competitions at member schools for students attending grades 6 through 12. The membership structure of the FHSAA is such that the organization is a representative democracy in which the sovereign authority is vested in its member schools.[8] The school principal or designated assistant principal or athletic director is the official representative of each member school.[9]

The FHSAA is required to comply with Florida law to preserve its designation.[10] An annual, independent financial audit is required of FHSAA accounts and records, and a copy of the report is required to be submitted to the Auditor General.[11] Private schools are eligible for membership in the FHSAA where they engage in competitions with public high schools.[12]

[7] Section 1006.20(1), F.S.
[8] Section 1006.20(3)(a), F.S.
[9] Section 1006.20(3)(b), F.S.
[10] Section 1006.20(1), F.S.
[11] s. 1006.19, F.S.
[12] s. 1006.20(1), F.S.

The FHSAA bylaws establish eligibility criteria for all students who participate in high school athletic competition in its member schools.[13] Included in the bylaws is a requirement that all student participants satisfactorily pass a medical evaluation each year before competing in interscholastic athletics.[14] Requirements for obtaining a student's medical history and performing the medical evaluation are to be established in bylaw, to include a physical assessment of the student's physical capabilities to participate in interscholastic athletic competitions.[15] The assessment is to be recorded on a uniform pre-participation physical evaluation and history form. Students are not authorized to compete, until the medical evaluation results have been approved by the school.[16] Section 1006.20(2)(d), F.S., provides an exception, however, where based on religious beliefs, a parent objects in writing to the medical evaluation.

The FHSAA is required to establish an appeal procedure to provide due process to students to appeal unfavorable rulings of the committee on appeals regarding eligibility to compete. Student athletes and member schools may appeal unfavorable rulings to the board of directors. The board of directors is authorized to issue a final decision, to uphold, reverse, or modify the ruling of the committee on appeals.[17]

III. Effect of Proposed Changes:

The bill creates public meetings exemptions relating to FHSAA's duty to establish a three-year drug testing program for the use of anabolic steroids by certain high school students. Under CS/SB 1928, the board of directors of FHSAA must establish procedures for the anabolic steroid drug testing program based on minimum criteria specified in the bill. Each member school in FHSAA must report the names of students who will represent the school in interscholastic athletics during that year. A student is ineligible to participate in interscholastic athletics in a member school until the student's name has been reported to FHSAA by the school in the year in which the participation is to occur.

Each year, FHSAA must provide to the testing agency which performs the random drug tests all names of students that are submitted by its member schools. The testing agency must make its random selections for testing from these names. The testing agency must notify the schools and FHSAA no fewer than 7 days in advance of the date on which its representatives will be present at the school to collect a specimen from a randomly selected student. The name of the student from whom the specimen is to be collected may not be disclosed.

The records containing the findings of a student's drug test held by the testing agency that contracts with FHSAA for the testing program under CS/SB 1982 must be maintained separately from a student's educational record in accordance with s. 1002.22, F.S., and requires disclosure by the testing agency only to FHSAA, the student, the student's parent, the administration of the student's school, and the administration of any school to which the student may transfer during a suspension from participation in interscholastic athletics resulting from a positive drug finding.

[13] s. 1006.20(2)(a), F.S.
[14] s. 1006.20(2)(c), F.S.
[15] *Id.*
[16] *Id.*
[17] s. 1006.20(7), F.S.

CS/SB 1928 creates an exception to the public records exemption for student records under s. 1002.22(3), F.S., to authorize the disclosure of student records to FHSAA, the administration of the student's school, the administration of any school to which the student may transfer during a suspension from participation in interscholastic athletics resulting from a positive finding, the student, and the student's parent only in accordance with the requirements of s. 1006.20(10), F.S., which relates to the drug testing program to randomly test for anabolic steroids in students grades 9 through 12 who participate in interscholastic athletics in member schools of FHSAA.

CS/SB 1928 specifies requirements for challenge and appeal of the drug testing in the event of a positive test by the member schools of FHSAA and students.

This bill creates an exemption from the Public Meetings Law for meetings at which a challenge or an appeal to the findings of a student's drug test, as described in the bill relating to the drug testing of certain high school students, is discussed. The public meetings exemption is scheduled to repeal on October 2, 2011, in accordance with the Open Government Sunset Review Act. This bill specifies a public necessity statement for the creation of the public meetings exemption for meetings at which a challenge or appeal of a positive drug test finding is made as described in CS/SB 1928. The Legislature finds that the exemption from the Public Meetings Law for these proceedings minimizes the possibility of unnecessary scrutiny by the public or media of sensitive, personal information concerning a student. Without such an exemption, the release of the information would otherwise defeat the purpose of the exemption.

This bill takes effect on the same date that SB 1982 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

This bill is linked to CS/SB 1928, which provides for the three-year anabolic steroid drug testing program for high school student athletes implemented by FHSAA.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

This bill is linked to CS/SB 1928, which provides for the implementation of the Florida High School Athletic Association (FHSAA) anabolic steroid drug testing program for high school student athletes for a period of three years. Therefore, it may be prudent to have any exemptions to the Public Meetings Law expire when additional meetings are no longer held for the FHSAA anabolic steroid drug testing program.

CS/SB 1928 creates an exception to the public records exemption for student records under s. 1002.22(3), F.S., to authorize the disclosure of student records to FHSAA, the administration of the student's school, the administration of any school to which the student may transfer during a suspension from participation in interscholastic athletics

resulting from a positive drug finding, the student, and the student's parent only in accordance with the requirements of s. 1006.20(10), F.S., which relates to the drug testing program to randomly test for anabolic steroids in students grades 9 through 12 who participate in interscholastic athletics in member schools of FHSAA. CS/SB 1928 specifies requirements for challenge and appeal of the drug testing in the event of a positive test by the member schools of FHSAA and students.

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The exemption from the Public Meetings Law contained in this bill should be narrowed to exempt only those portions of a meeting during which a challenge or an appeal are being discussed in order to comply with the constitutional requirement that the exemption be no broader than necessary to accomplish the stated purpose of the law.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.