

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7119 CS PCB PKT 06-02 Student Athlete Recruiting
SPONSOR(S): PreK-12 Committee and Arza
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: PreK-12 Committee	8 Y, 0 N	Beagle	Mizereck
1) Education Appropriations Committee	15 Y, 0 N, w/CS	Eggers	Hamon
2) Education Council	9 Y, 0 N, w/CS	Beagle	Cobb
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The bill requires the Florida High School Athletic Association (FHSAA) to hold in abeyance certain newly adopted bylaws governing student athlete residence and transfer. The bill creates a task force to review issues concerning student athlete recruiting and make recommendations that preserve parents' rights to school choice and protect the integrity of Florida's interscholastic athletic programs.

The bill requires the Office of Program Policy Analysis and Government Accountability (OPPAGA) to conduct an independent review of documented recruiting violations by FHSAA member schools.

The bill appropriates \$60,000 from the General Revenue Fund to OPPAGA to support the work of the Student Athlete Recruiting Task Force. See Fiscal Impact on State Government.

In addition, the bill establishes a one-year random anabolic steroids testing program for student athletes in grades 9 through 12 who participate in the football, baseball, or weightlifting postseason. The bill requires the Florida High School Athletic Association (FHSAA) to administer the program during the 2006-2007 school year. Public and private schools must agree to participate in the program as a prerequisite to FHSAA membership. The bill provides program requirements, penalties, challenge and appeal procedures, and requires FHSAA to submit a report of program results to the Legislature.

The bill provides that implementation of the anabolic steroids testing program is contingent upon funding. See Fiscal Comments.

This bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government-- The bill requires the FHSAA to hold in abeyance certain bylaws governing student athlete residence and transfer. The bill requires FHSAA member schools and certain student athletes to participate in a random steroid testing program as a prerequisite to athletic participation.

B. EFFECT OF PROPOSED CHANGES:

Student Athlete Recruiting:

Background:

Founded in 1920, the FHSAA is a non-profit organization that governs interscholastic athletics among Florida's public and private secondary schools. In 1997, the Florida Legislature enacted section 1006.20, F.S., which sets forth FHSAA's organizational structure and governing authority in statute.

Section 1006.20, F.S. grants FHSAA authority to adopt bylaws governing participation of member schools and individual student athletes unless specifically provided for in statute. Statute specifically requires FHSAA bylaws governing student athlete residence and transfer to allow student athletes to be eligible for participation in athletics in the school the student first enrolls in each year.¹ Statute also requires FHSAA to adopt bylaws that specifically prohibit recruiting of student athletes for athletic purposes.²

In January of 2006, the FHSAA Representative Assembly voted to adopt revisions to sections 11.01, 11.02, 11.2, 11.3, and 11.4 of the FHSAA bylaws governing student athlete residence and transfer. The revised bylaws are intended to curtail recruiting of student athletes by placing certain penalties on student athletes who transfer to another school. The revised bylaws apply to all transfers except a move by the student and all members of the student's household that necessitates a change in schools.³ According to the revised bylaws, student athletes who transfer to another school may not participate in varsity athletics for one calendar year but may participate in junior varsity athletics during this time.⁴ Upon the expiration of one calendar year, the student athlete is deemed to have established residency at the new school and may participate in varsity athletics. The revised bylaws contain several exceptions which, if applicable, allow student athletes to transfer without penalty. The receiving school must first make an application for waiver to the FHSAA on the student's behalf. The FHSAA commissioner reviews the waiver application to determine whether the exception applies and the waiver is justified. Subsequent procedures are available for appealing waiver denials and for undue hardship requests. This rule becomes effective for the 2007-2008 school year.

At its February 7, 2006 meeting, the PreK-12 Committee heard public testimony from proponents and opponents of the new FHSAA residence and transfer bylaws. Opponents of the bylaws testified that the new rules violate the statutory provisions on residence and transfer bylaws contained in s.1006.20(2)(a) and impede parents' rights to school choice. Proponents of the bylaws stated that the rules were necessary to prevent student athletes from "shopping" for better teams and more advantageous opportunities for playing time, as well as to curtail illegal recruiting of student athletes.

¹ Section 1006.20(2)(a), F.S.

² Section 1006.20(2)(b), F.S.

³ Section 11.4, Proposed 2006 revisions to the Bylaws of the Florida High School Athletic Association, Inc.

⁴ Id.

Effect of Proposed Changes:

The bill requires FHSAA to hold in abeyance sections 11.01, 11.02, 11.2, 11.3, and 11.4 of the FHSAA bylaws until July 1, 2007. The bill creates a balanced task force comprised of home school and public and private secondary school proponents and opponents of the revised bylaws. The task force must make recommendations to the Governor and the Legislature that preserve parents' rights to school choice and protect the integrity of Florida's interscholastic athletic programs. The bill requires OPPAGA to provide administrative support and staff for the task force.

The bill also requires OPPAGA to conduct an independent review of secondary school recruiting violations among FHSAA member schools. The bill requires FHSAA to grant full access to its records for purposes of OPPAGA's review.

Anabolic Steroids Testing Program

Background:

A 2004 Information Brief by the Office of Program Policy Analysis and Government Accountability (OPPAGA) indicates that steroid use among high school students is relatively low (about 2% of students report use), but has increased over time. Although survey data indicate that steroid use in Florida is slightly below the national rate, steroid use remains a concern, particularly for young athletes. Steroid use has been linked to more than 70 physical and psychological side effects, many of which are irreversible.⁵

Eleven Florida school districts have implemented drug testing programs for students; however, none of these programs specifically test for steroid use. Current law does not explicitly authorize school boards to require students to submit to drug testing.⁶

Quest Diagnostics and Lab Corporation of America, two companies that perform steroid testing, report that steroid screens or panels can test for at least 20 different steroid drugs or their metabolites. OPPAGA reports that testing for steroids ranges from \$50.00 to \$250.00 per test and that testing facilities are limited. Steroid testing is done in the form of a urinalysis test, but it is a more extensive test that requires sophisticated equipment that many labs do not have. Therefore, the test must be sent to the few labs in the United States that do this type of testing. Additional costs include specimen collection and processing, as well as staff time, specimen collection equipment, and mailing costs.⁷

The constitutionality of random drug testing programs is governed by the provisions of Section 12 of Article I, Florida Constitution and the Fourth Amendment of the Federal Constitution which protect individuals from unreasonable government searches and seizures. Generally, reasonable school district policies requiring random drug testing of student athletes have been upheld by federal courts.⁸

Section 1006.20, F.S., sets forth the organizational structure and governing authority of the FHSAA. Statutes provide that FHSAA is not a state agency and grant FHSAA authority to adopt bylaws governing participation of member schools and individual student athletes unless specifically provided for in statute. Student athletes are required to pass a medical examination and cardiovascular screening and provide medical history information prior to participating in interscholastic athletics. Currently, there is no statewide requirement that high school student athletes be tested for anabolic steroids.

⁵ OPPAGA Information Brief, Report No. 04-72, *Though the Option is Available, School Districts Do Not Test Students for Steroids*. October, 2004.

⁶ *Id.*

⁷ *Id.*

⁸ *Vernonia School District v. Acton*, 515 U.S. 646 (1995), *Earls v. Board of Education*, 242 F.3d. 984 (7th Cir. 1998), and *Schail by Kross v. Tippecanoe County School Corp.*, 864 F.2d. 1309 (7th Cir. 1988).

Effect of Proposed Changes:

Contingent upon funding, and to the extent funded, the bill establishes a one-year random anabolic steroids testing program for student athletes who participate in the 2006-2007 football, baseball, or weightlifting postseason. The bill requires the FHSAA to administer the program during the 2006-2007 school year. The bill provides that public and private schools must participate in the program as a prerequisite to FHSAA membership. Student athletes in grades 9 through 12 in the specified sports are subject to random testing as a prerequisite to participation in interscholastic athletics.

The bill requires the FHSAA to contract with a testing agency accredited by the World Anti-Doping Agency to administer required steroid tests. The testing agency must randomly select a maximum of one percent of total student athletes for testing in each year. In addition, the bill specifies several program requirements:

- Member schools must report the name of each student athlete participating in the school's football, baseball, and weightlifting programs to FHSAA. The FHSAA must then report the names of these athletes to the testing agency.
- The testing agency must provide member school administrations seven days' notice of its intent to test selected student athletes.
- Test results are excluded from the student's educational records.
- Student athletes and their parents must provide written consent to testing as a prerequisite to eligibility to participate in interscholastic athletics.
- School administrators must immediately suspend the eligibility of a student selected for testing who refuses to provide a testing sample or who tests positive for anabolic steroids. School officials must notify the student athlete and his or her parents of the positive test result and schedule a meeting to discuss penalties and appeal procedures.

The bill provides that student athletes who test positive for anabolic steroids are subject to immediate suspension of their eligibility to participate in athletics. Prior to the end of the suspension, the student is subject to a mandatory exit test. If the result of this test is negative, the school must reinstate the student athlete's eligibility at the end of the original suspension period. Student athletes who test positive on the exit test remain suspended until they register a negative result on a subsequent retest and must submit to regular testing for the duration of their remaining high school athletic eligibility. All student athletes registering a positive test result must complete a mandatory drug education program.

The bill provides a detailed procedure for challenging positive test results and appealing prescribed penalties and requires FHSAA to submit a report of steroid testing program results to the Legislature.

The bill states that all FHSAA and member school officials and employees are exempt from civil liability arising from administration of the steroid testing program.

The steroid testing provisions of the bill expire on June 30, 2007 or when appropriated funds are exhausted.

C. SECTION DIRECTORY:

Section 1. Creates an unnumbered section of law requiring FHSAA to hold in abeyance certain bylaws; creates a task force.

Section 2. Requires OPPAGA to review recruiting violations.

Section 3. Provides an appropriation.

Section 4. Amends s. 1006.20, F.S.; establishing a random steroid testing program to be administered by FHSAA; providing that program implementation is contingent on appropriation of funds; providing program requirements; providing penalties; providing appeal and challenge procedures; providing an expiration date for the testing program.

Section 5. Provides that the bill takes effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

The bill appropriates \$60,000 from the General Revenue Fund to OPPAGA to support the work of the Student Athlete Recruiting Task Force.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

This bill does not appear to have a fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a fiscal impact on the private sector.

D. FISCAL COMMENTS:

Implementation of the steroids testing program is contingent upon funding by the Legislature in the 2006-2007 General Appropriations Act. The bill states that the program shall be conducted to the extent funded by the Legislature and authorizes FHSAA to implement the program in only one or two of the named sports in order to stay within the appropriation. All expenses of the program shall be paid with funds appropriated by the Legislature.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a city or county to expend funds or to take any action requiring the expenditure of funds.

The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

This bill does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 4, 2006, the Education Appropriations Committee adopted an amendment deleting the \$50,000 appropriation from the General Revenue Fund to OPPAGA to fund its independent review of secondary school recruiting violations. OPPAGA staff stated that they could do the review within existing resources.

On April 10, 2006, the Education Council adopted one amendment and reported the bill favorably. The amendment adds the one-year random anabolic steroids testing program (section 4) to the bill. This bill analysis is written to the bill as amended.