

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 463 Pub. Rec. & Meetings/Drug Tests  
**SPONSOR(S):** Llorente and others  
**TIED BILLS:** HB 461 **IDEN./SIM. BILLS:** SB 2202

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Education Innovation &amp; Career Preparation</u>	<u>8 Y, 0 N</u>	<u>White</u>	<u>White</u>
2) <u>Schools &amp; Learning Council</u>	<u></u>	<u>White</u>	<u>Cobb</u>
3) <u>Policy &amp; Budget Council</u>	<u></u>	<u></u>	<u></u>
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5) <u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

This bill provides a public record exemption for the following:

- Drug test results of high school student athletes that are generated by the steroid testing program created in House Bill 461.
- Public meetings at which a challenge or appeal is made.

The bill includes a repeal date of October 2, 2012, and a public necessity statement for the public records exemption.

This bill is linked to House Bill 461, which requires the Florida High School Athletic Association to establish a one-year random anabolic steroids testing program for high school athletes who participate in football, baseball, and weightlifting.

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

The bill requires a two-thirds vote of the members present and voting for passage.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

**Provide limited government** – The bill decreases access to records and meetings concerning the Florida High School Athletic Association (FHSAA) anabolic steroid testing program for certain high school athletes.

**Safeguard individual liberty** – The bill prevents the release of sensitive, personal information regarding the anabolic steroid testing of student athletes.

#### B. EFFECT OF PROPOSED CHANGES:

##### 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.

**House Bill 461 (2007):** House Bill 461 establishes a one-year, random, anabolic steroids testing program for students in grades 9 through 12, who participate in football, baseball, and weightlifting. The program is to be administered by the Florida High School Athletic Association (FHSAA) during the 2007-2008 school year. Public and private schools must participate in the program as a prerequisite to FHSAA membership. The bill provides program requirements, penalties, and challenge and appeal procedures.

### **Effect of Proposed Changes**

This bill creates a public records exemption relating to the Florida High School Athletic Association's (FHSAA) steroid testing program that is created by House Bill 461 (2007) and that provides for the random testing of high school students who participate in football, baseball, and weightlifting for steroid use.

This bill makes drug test findings held by a school or the FHSAA confidential and exempt from public disclosure. Meetings for challenge and appeal procedures of positive drug test findings or a student's ineligibility to participate are made exempt by the bill.

A public necessity statement is included. With regard to drug test findings, the bill indicates that the finding:

- Is of a sensitive, personal nature;
- Could be used to discriminate against a student; and
- Could cause harm to a student's reputation.

Regarding exempted meetings, the public necessity statement provides that the exemption will minimize the potential of unnecessary scrutiny by the public or media concerning sensitive, personal information about a student. Further, it states that release of the drug test findings in a meeting would defeat the purpose of making the findings confidential and exempt.

The bill repeals the exemption for the drug test findings and for the challenge and appeal meetings on October 2, 2011, unless the exemption is reviewed and saved from repeal through reenactment by the Legislature.

This bill is linked to HB 461.

### **C. SECTION DIRECTORY:**

**Section 1.** Amends s. 1006.20, F.S.; creates a public records exemption for test results; provides that challenge and appeal proceedings are not open meetings.

**Section 2.** Provides a statement of public necessity.

**Section 3.** Provides that this act shall take effect upon the passage of House Bill 461.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

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

#### 2. Expenditures:

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

### 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:

None.

## 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.

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

#### 2. Other:

None.

### B. RULE-MAKING AUTHORITY:

This bill does not appear to create, modify, or eliminate rulemaking authority.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

Note: The following comments relate to the bill as filed and have been addressed in the amendments adopted on March 6, 2007, for this bill and the linked bill, HB 461.

The bill provides that drug test findings are confidential and exempt and it provides that the meetings for challenge and appeal procedures are exempt from open meeting requirements. Consideration may be

given to providing that the records associated with challenge and appeal procedures are also confidential and exempt in order to fully insure the privacy of the student.

This bill is linked to House Bill 461, which provides for the implementation of the FHSAA anabolic steroid drug testing program for certain high school student athletes for a period of one-year. Consideration might be given to repealing the exemptions created by this bill when the drug testing will no longer be conducted and challenge and appeal procedure proceedings are no longer necessary.

#### D. STATEMENT OF THE SPONSOR

### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 6, 2007, the Education Innovation and Career Preparation Committee adopted one amendment and reported the bill favorably with recommended council substitute.

The amendment modifies s. 1006.20(10)(b)6., F.S., which under the bill only made drug test findings confidential and exempt, to provide that records relating to drug tests and to challenges and appeals are confidential and exempt from public records requirements. Further, the amendment provides that the confidential and exempt records may only be disclosed to: (a) the FHSAA; (b) the student; (c) the student's parent; (d) the administration of the student's school; and (e) the administration of any school to which the student may transfer during a suspension from participation in interscholastic athletics resulting from a positive drug test finding. Entities or persons receiving records are required to maintain the confidential and exempt status of the information.

The amendment also adds in s. 1006.20(10)(b)7., F.S., that the portions of a meeting at which the confidential and exempt records are discussed or presented are exempt from public meetings requirements.

Finally, the amendment makes conforming changes to the statement of public necessity.