

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS FOR HB 463 Public Records/Drug Test/HS Athletics  
**SPONSOR(S):** Committee on Education Innovation & Career Preparation  
**TIED BILLS:** **IDEN./SIM. BILLS:**

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Schools & Learning Council	11 Y, 0 N	White	Cobb
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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**SUMMARY ANALYSIS**

The Council Substitute for House Bill 463 (bill) creates a public records exemption for records related to the steroid drug tests and challenge and appeal proceedings authorized by House Bill 461. It also creates a public meetings exemption for the portions of meetings at which the exempt records are discussed.

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

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 in each house 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 (FHSA) 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 steroid testing program that is created by House Bill 461 (2007). This program provides for the random testing of high school students who participate in football, baseball, and weightlifting and includes penalties and procedures for challenges and appeals.

This bill makes records relating to the steroid drug tests and to the challenge and appeal proceedings confidential and exempt from public disclosure. It also provides an exemption from public meeting requirements for the portions of meetings at which the exempt records are discussed or presented.

A public necessity statement is included. Regarding records related to drug tests and challenge and appeal proceedings, the statement indicates that such records:

- Are 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 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 exempted records in a meeting would defeat the purpose of making the findings confidential and exempt.

The bill repeals the exemptions on October 2, 2012, unless they are 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 record and a public meeting exemption.

**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:

None.

D. STATEMENT OF THE SPONSOR

### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES