

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 Governmental Operations Committee

BILL: CS/SB 2546

INTRODUCER: Education Pre-K - 12 Committee and Senator Storms and Others

SUBJECT: Educational Opportunity/Military Children

DATE: April 14, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	Matthews	ED	Fav/CS
2.	Pardue	McElroy	MS	Favorable
3.	McKay	Wilson	GO	Pre-meeting
4.			EA	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill creates the Compact on Educational Opportunity for Military Children, which is designed to assist the educational continuity of students, whose parents are military service members.

The compact also provides for the creation of an Interstate Commission on Educational Opportunity for Military Children. The bill authorizes the Governor to designate a Compact Commissioner and Military Family Education Liaison and creates the State Advisory Council to make recommendations for compliance with the compact.

The act sunsets two years following the effective date of the act, which is July 1, 2008, or upon enactment of the interstate compacts, whichever occurs later.

This bill creates sections 1000.36, 1000.37, 1000.38, and 1000.39 of the Florida Statutes.

II. Present Situation:

According to the Council of State Governments (CSG), the average military student faces transition challenges more than twice during high school and most military children will have six to nine different school systems in their lives from kindergarten to 12th grade.¹ With more than half of all military personnel supporting families, the challenges of reassignment and long deployments are key considerations when making long-term life choices for military children and include the following:²

- Transfer of records;
- Course sequencing;
- Graduation requirements;
- Exclusion from extracurricular activities;
- Redundant or missed entrance/exit tests;
- Kindergarten and first grade entrance age variations; and
- Power of custodial parents while parents are deployed.

The CSG, in cooperation with the U.S. Department of Defense's Office of Personnel and Readiness, drafted an interstate compact that addresses the educational transition issues of children of military families, including eligibility, enrollment, placement, and graduation.³ In addition, the compact provides for a detailed governance structure at both the state and national levels with enforcement and compliance mechanisms.⁴ According to the CSG, eighteen states have introduced a measure related to this compact.⁵

Florida is a party to various compacts with other states, including the Interstate Compact on the Placement of Children,⁶ the Interstate Compact on Adoption and Medical Assistance,⁷ the Interstate Compact on Mental Health,⁸ and the Interstate Compact on Juveniles.⁹

¹ Council of State Governments, See <http://www.csg.org/programs/ncic/EducatingMilitaryChildrenCompact.aspx>

² *Id.*

³ Mary Branham Dusenberry, *Military Moves: New Compact Aims to Ease Education Challenges Faced by Military Children After Parent's Transfer*, Council of State Governments, 2008. See also U.S. Department of Defense: <http://www.defenselink.mil/news/newsarticle.aspx?id=46783> and http://www.usa4militaryfamilies.dod.mil/portal/page/mhf/USA4/USA4_HOME_1?current_id=22.60.30.0.0.0.0.0&content_id=242181

⁴ See <http://www.csg.org/programs/ncic/documents/FinalCompactLanguage011108.pdf>

⁵ Council of State Government, *State-by-State Status Chart*, March 20, 2008. See <http://www.csg.org/programs/ncic/EducatingMilitaryChildrenCompact.aspx> and <http://www.csg.org/programs/ncic/documents/State-by-statechart3-20-08.pdf>

⁶ Section 409.401, F.S.

⁷ Section 409.406, F.S., authorizes the Department of Children and Family Services, by and through its secretary, to participate in the development of and negotiate and enter into interstate compacts on behalf of the state.

⁸ Section 394.479, F.S.

⁹ Sections 985.801 through 985.807, F.S.

III. Effect of Proposed Changes:

The bill creates the Compact on Educational Opportunity for Military Children, which is designed to remove barriers to educational success imposed on children of military families because of frequent moves and the deployment of their parents.

Application

The compact applies to school districts as well as children of the following:

- Active duty members of the uniformed services, including members of the National Guard and Reserve on active duty orders;
- Members or veterans of the uniformed services who are severely injured and medically discharged or retired for a period of one year after medical discharge or retirement; and
- Members of the uniformed services who die on active duty or as a result of injuries sustained on active duty for a period of one year after death.

The compact does not apply to children of the following:

- Inactive members of the National Guard and military reserves;
- Members of the uniformed services now retired not covered above;
- Veterans of the uniformed services not covered above; and
- Other U.S. Department of Defense personnel and other federal agency civilian and contract employees not defined as active duty members of the uniformed services.

Enrollment

For enrollment of a student, the compact:

- Provides that schools must share educational records in a timely manner and allows the sending school to provide the parent with an unofficial copy that may be used until the official record is verified;
- Provides specific timelines for students to obtain required immunizations in the receiving state; and
- Provides that a student must be allowed to continue their enrollment at grade level in the receiving state commensurate with his or her grade level in the sending state at the time of transition.

Placement

For placement of the student, the compact:

- Provides that when a student transfers before or during the school year, the receiving state school must initially honor placement of the student in educational courses (e.g., honors, International Baccalaureate, Advanced Placement, and vocational, technical and career pathways courses), based on the student's enrollment in the sending state's school or educational assessments conducted at the school in the sending state if the courses are offered; however, the school in the receiving state may perform subsequent evaluations to ensure appropriate placement and continued enrollment of the student;
- Requires the receiving state to initially provide comparable services to a student with disabilities based on his or her current Individualized Education Plan; however, this does

- not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student;
- Provides school districts with flexibility in waiving course or program prerequisites or other preconditions for placement in courses or programs offered under the jurisdiction of the district; and
 - Provides that a student whose parent is an active duty member of the uniformed services and has been called to duty for, is on leave from, or immediately returned from deployment to a combat zone or combat support posting, must be granted additional excused absences at the discretion of the district superintendent to visit with his or her parent relative to such leave or deployment.

Graduation

For graduation of a student, the compact:

- Requires school districts to waive specific courses required for graduation if similar course work has been satisfactorily completed in a local education agency in another state;
- Requires districts to provide an alternative means of acquiring required coursework for the student to graduate on time, if a waiver is not granted to a student who would qualify to graduate from the sending school;
- Requires states to accept exit or end-of-course exams required for graduation from the sending state, national norm-referenced achievement tests, or alternative testing, in lieu of testing requirements for graduation in the receiving state; and
- Requires the sending and receiving districts to ensure the receipt of a diploma from the sending district, if the student transfers in his or her senior year, is ineligible to graduate from the receiving district after considering all alternatives, and meets the graduation requirements of the sending district.

State Coordination

Each compact state member must establish a state council to coordinate government agencies, school districts, and military installations for the state to participate and comply with the compact.

Governance

The compact also provides for the creation of an Interstate Commission on Educational Opportunity for Military Children to provide general oversight of the agreement, create and enforce rules governing the compact's operation, and provide a venue for solving interstate issues and disputes. Under the terms of the compact, the executive, legislative, and judicial branches of state government are compelled to enforce the agreement. Any amendment to the compact is not effective or binding on the commission and the member states until it is enacted into law by unanimous consent of the member states. A member state may withdraw from the compact by repealing the statute that enacted the compact. A state's withdrawal does not take effect until one year after the effective date of the repealed statute and until the Governor of each member state has received written notice.

Effective Date

The compact would be effective when ten or more states adopt the compact into law. The bill directs the Secretary of State to provide a copy of the act to the states that approve the compact. The bill provides that the effective date of the compact may be no earlier than December 1, 2007.

Other Compact Provisions

In addition to the creation of the compact, the bill also provides for the following:

- Authorizes the Governor to designate a Compact Commissioner, the voting member representing the state in the commission, and a state Military Family Education Liaison;
- Creates the State Advisory Council to make recommendations for complying with the compact and provides that chapter 119, F.S., and s. 286.011, F.S., relating to public records and public meetings, apply to the proceedings and records of the council; and
- Provides for future legislative review and repeal of ss. 1000.36, 1000.37, 1000.38, and 1000.39, F.S., two years after the effective date of the bill, which is the later of the effective date of the compact or July 1, 2008.

In the newly created s. 1003.39, F.S., the bill specifies that the department must provide administrative support to the council but does not indicate the name of the agency. Presumably, this means the Department of Education (DOE).

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:**Delegation**

The bill delegates authority to the Interstate Commission to adopt rules to achieve the purposes of the Interstate Compact on Educational Opportunity for Military Children. The bill also provides that rules adopted under the compact “have the force and effect of statutory law.”

If the bill is enacted into law, the state will have effectively bound itself to rules not yet promulgated by the Interstate Commission. The Florida Supreme Court has held that while it is within the province of the Legislature to adopt federal statutes enacted by Congress and rules promulgated by federal administrative bodies that are in existence at the time the Legislature acts, it is an unconstitutional delegation of legislative power for the Legislature to prospectively adopt federal statutes not yet enacted by Congress and

rules not yet promulgated by federal administrative bodies.^{10 11} Under this holding, the constitutionality of the bill's adoption of prospective rules could be challenged.

The most relevant Florida court discussion of this issue appears in *Department of Children and Family Services*, wherein the First District Court of Appeals considered an argument that the substance of regulations adopted by the Association of Administrators for the Interstate Compact on Placement of Children (ICPC) required a finding on appeal that a circuit court's order permitting a mother and child to move was in violation of the ICPC.¹² The court denied this appeal and held that: (1) the Association's regulations were invalid to the extent that they conflicted with the ICPC itself; and (2) the regulations did not apply to facts of the case.¹³

The court also noted that the ICPC confers to its compact administrators the power to promulgate rules and regulations to more effectively carry out the compact, and stated that, "The precise legal effect of the ICPC compact administrators' regulations in Florida is unclear, but we need not reach the problematic general question in order to decide the present case."¹⁴ Continuing on in a footnote, the court stated:

Any regulations promulgated before Florida adopted the ICPC did not, of course, reflect the vote of a Florida compact administrator, and no such regulations were ever themselves enacted into law in Florida. When the Legislature did adopt the ICPC, it did not (and could not) enact as the law of Florida or adopt prospectively regulations then yet to be promulgated by an entity not even covered by the Florida Administrative Procedure Act. See *Freimuth v. State*, 272 So.2d 473, 476 (Fla.1972); *Fla. Indus. Comm'n v. State ex rel. Orange State Oil Co.*, 155 Fla. 772, 21 So.2d 599, 603 (1945) ("[I]t is within the province of the legislature to approve and adopt the provisions of federal statutes, and all of the administrative rules made by a federal administrative body, that are in existence and in effect at the time the legislature acts, but it would be an unconstitutional delegation of legislative power for the legislature to adopt in advance any federal act or the ruling of any federal administrative body that Congress or such administrative body might see fit to adopt in the future."); *Brazil v. Div. of Admin.*, 347 So.2d 755, 757-58 (Fla. 1st DCA 1977), disapproved on other grounds by *LaPointe Outdoor Adver. v. Fla. Dep't of Transp.*, 398 So.2d 1370, 1370 (Fla.1981). The ICPC compact administrators stand on the same footing as federal government administrators in this regard.¹⁵

¹⁰ *Freimuth v. State*, 272 So.2d 473, 476 (Fla.1972); *Fla. Indus. Comm'n v. State ex rel. Orange State Oil Co.*, 155 Fla. 772, 21 So.2d 599, 603 (1945).

¹¹ This prohibition is based upon the Separation of Powers Doctrine, set forth in Article II, section 3 of the Florida Constitution, which has been construed in Florida to require the Legislature, when delegating the administration of legislative programs, to establish minimal standards and guidelines ascertainable by reference to the enactment creating the program. See *Avatar Development Corp. v. State*, 723 So.2d 199 (Fla. 1998).

¹² *Department of Children and Family Services v. L.G.*, 801 So.2d 1047 (Fla. 1st DCA 2001).

¹³ *Id.* at 1052-1053.

¹⁴ *Id.* at 1052.

¹⁵ *Id.*

Under the court's footnote discussion, it might be argued that the bill's delegation of rule-making authority to the Interstate Commission is like the delegation to the ICPC compact administrators, and, thus, it constitutes an unlawful delegation. This case, however, does not appear to be binding precedent as the court's footnote was dicta,¹⁶ e.g., the court itself stated that the, ". . . effect of the ICPC compact administrators' regulations in Florida is unclear" ¹⁷

Public Records and Public Meetings

Article I, section 24 of the Florida Constitution, provides that every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by the Constitution. All meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public, except with respect to meetings exempted pursuant to this section or specifically closed by the Constitution.

The bill provides that the Interstate Commission must establish bylaws and rules providing for making its records available, and may exempt from disclosure information or records "to the extent they would adversely affect personal privacy rights or proprietary interests." The Interstate Commission must give public notice of all meetings, which must be open to the public, except as set forth in the rules or as otherwise provided in the compact. The Interstate Commission may close a meeting where it determines by vote that an open meeting would be likely to "relate solely to the Interstate Commission's internal personnel practices and procedures," among other reasons.

The bill provides that the Governor must designate a Compact Commissioner to serve as the state's voting representative on the Interstate Commission, and Military Family Education Liaison to assist military families. Both positions would be subject to applicable Florida's public meetings and records laws, and because the bill provides that the Interstate Commission may exempt some records from disclosure, and may close some meetings, potential conflict exists with Florida law.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

¹⁶ Statements of a court that are not essential to determination of the case before it are not part of the law of the case, and, therefore, are not precedentially binding in future cases. See *Myers v. Atlantic Coast Line R. Co.*, 112 So.2d 263 (Fla. 1959).

¹⁷ *Department of Children and Family Services*, 801 So.2d at 1052.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the DOE, the bill would have a fiscal impact on local school districts for identifying and placing children of military families but the cost cannot be determined precisely without further information about the number of children involved.

Additionally, the DOE estimates that total state costs associated with the creation of the State Advisory Council would be \$42,600 for meeting materials, travel, and per diem each year. The department notes that these expenses could be covered by several state agencies, not all necessarily by the DOE.

A second component that will require funding support is the Interstate Commission on Educational Opportunity for Military Children. The compact becomes effective upon ratification by ten member states. The compact grants the Interstate Commission the authority to levy and collect an annual assessment from each member state to cover the cost of operations and activities. The compact further authorizes the commission to develop an assessment formula by rule. The estimated initial budget for the Interstate Commission is \$ 630,389.¹⁸ Assuming each member state is assessed an equal share at inception, the initial annual assessment would be approximately \$63,000.¹⁹ The assessment share could decrease as more member states join the compact. However, should the commission adopt a formula based on population proportion, some member states' assessments may exceed \$63,000. Florida ranks sixth highest among 56 states and territories with an estimated population of 56,185 military family minor school age dependents (age 5-18) out of a total population of 1,112,527.²⁰ The top six states account for approximately 41 percent of the total population.

Any assessment levy is contingent upon establishment of the Interstate Commission after ratification by a minimum of ten states, adoption of a commission budget, and adoption of an assessment formula. It is uncertain whether Florida's 2008-2009 Fiscal Year will be impacted by this bill but subsequent fiscal years will certainly be affected should the compact be adopted by Florida and a sufficient number of other states.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill provides that withdrawal from the compact occurs when a state enacts a statute repealing its membership, but does not "take effect" until one year after the effective date of the statute and

¹⁸ Council of State Governments, *See* Legislative Resource kit at <http://www.csg.org/programs/ncic/EducatingMilitaryChildrenCompact.aspx>

¹⁹ \$630,389 divided among 10 member states.

²⁰ Source: Council of State Governments, *See* Legislative Resource kit at <http://www.csg.org/programs/ncic/EducatingMilitaryChildrenCompact.aspx>

until written notice of the withdrawal has been given by the withdrawing state to the Governor of each other member state. The effect of this provision appears to be that a state would be obligated to perform its duties under the terms of the compact for a full year after withdrawal.

VIII. Additional Information:

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

CS by Education Pre-K – 12 on March 26, 2008:

- Authorizes the Governor to designate a Compact Commissioner, who is the state's voting representative before the interstate commission, and a state Military Family Education Liaison;
- Creates the State Advisory Council to make recommendations for compliance with the compact;
- Specifies that the provisions of chapter 119, F.S., and s. 286.011, F.S., relating to public records and public meetings, apply to the proceedings and records of the council;
- Provides for administrative support to the council; and
- Provides for future legislative review and repeal of ss. 1000.36, 1000.37, 1000.38, and 1000.39, F.S.

B. Amendments:

None.