

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/CS/CS/HB 1403 (CS/SB 1704)	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Education Committee, Rules & Calendar Committee, and K-20 Competitiveness Subcommittee and Stargel (Education Pre-K – 12 and Wise)	78 Y's	34 N's
COMPANION BILLS:	CS/SB 1704	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

CS/CS/CS/HB 1403 passed the House on March 2, 2012, and subsequently passed the Senate on March 8, 2012. The bill establishes new due process standards that the Florida High School Athletic Association (FHSAA) must follow when making student eligibility determinations and permits student transfers during the school year without loss of eligibility, if the transfer is approved by the receiving school district or private school. The bill reforms recruiting sanctions and investigations by requiring that the FHSAA bylaws:

- Provide that a school may be required to pay a fine and participate in a higher competitive division for the sport in which a recruited student competes;
- Establish sanctions for coaches who have committed major violations such as knowingly allowing an ineligible student to participate in a contest representing a member school or violating FHSAA's recruiting or sportsmanship policies;
- Require coaches to reimburse a member school assessed a financial penalty due to the coach's violation of FHSAA policies;
- Prevent unfair punishment of students for the violations of adults;
- Prevent student ineligibility for violating recruiting rules unless the student or parent falsifies documents or accepts a prohibited benefit; and
- Regulate investigators and establish guidelines investigators must follow when conducting investigations.

Additionally the bill states that any high school in the state, including charter schools, virtual schools, and home education cooperatives may become a member of FHSAA and that membership in FHSAA is not mandatory for any school. The bill requires FHSAA to allow competition between FHSAA member schools and non-member schools and prohibits FHSAA from penalizing member schools for such competition. The bill also prohibits FHSAA from unreasonably withholding its approval of an application for membership in the National Federation of State High School Associations.

The bill does not have a direct fiscal impact on state or local governments; however, the bill requires investigators who conduct investigations on behalf of FHSAA to undergo background screenings. Investigators will have to pay for a background screening, unless FHSAA chooses to pay for screenings or the investigator meets an exception.

The bill was approved by the Governor on April 27, 2012, ch.2012-188, Laws of Florida. The effective date of the bill is July 1, 2012.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Florida High School Athletic Association

Governance

Founded in 1920, the Florida High School Athletic Association (FHSAA) is a non-profit organization that governs interscholastic athletics in Florida public schools serving grades 6 through 12. Private schools that wish to engage in interscholastic athletic competition are authorized to become FHSAA member schools. In 1997, the Florida Legislature codified FHSAA's organizational structure and governing authority in statute.¹

FHSAA's sixteen member Board of Directors (board) is the organization's executive governing body. Board membership is statutorily required to include representatives of public schools, nonpublic schools, school superintendents, school board members, and each administrative region. The Commissioner of Education (or designee) also sits on the board. Among other things, the board is responsible for organizing, establishing the rules for, and conducting statewide interscholastic athletic competitions, including those competitions that lead to state championships. The board is also required to appoint FHSAA's Executive Director.²

FHSAA has broad authority to adopt bylaws governing member school and student participation in interscholastic athletics, unless regulation of a particular matter is specifically provided by statute.³ The law specifically requires FHSAA to adopt bylaws regulating student eligibility, residency and transfer, and recruiting.⁴ The bylaws are developed and adopted by FHSAA's Representative Assembly.⁵

FHSAA bylaws "are to be the rules by which high school athletic programs, and the students who participate in them, are governed."⁶ Each member school must, as a condition of membership in FHSAA, annually adopt the bylaws as the rules governing its interscholastic athletic programs.⁷ The adoption of the bylaws acts as a contract between the FHSAA and the member school.⁸

Member schools that violate the bylaws are subject to any disciplinary action determined to be appropriate by FHSAA.⁹ In this context, FHSAA bylaws define a member school to include not just the institution, but also "its administration, faculty, athletic staff, students, student body, and any other individual or group engaged in activities representing, supporting or promoting the athletic interests of the school."¹⁰ FHSAA member schools may only compete against other member schools, non-member schools approved by the FHSAA's board, or out-of-state schools that are members of the state's high school athletic association.¹¹

¹ Section 1006.20(1), F.S.; Florida High School Athletic Association, *About the FHSAA*, <http://www.fhsaa.org/about> (last visited Feb. 1, 2012).

² Section 1006.20(4), F.S.

³ Section 1006.20(1), F.S.; *see also* Florida High School Athletic Association, *About the FHSAA*, <http://www.fhsaa.org/about> (last visited Jan. 27, 2012).

⁴ Section 1006.20(2), F.S.

⁵ Section 1006.20(5), F.S.

⁶ Section 1006.20(1), F.S. Senior high schools, middle/junior high schools, combination schools, or home education cooperatives may be members of FHSAA. Section 3.1.1 of Bylaw 3.1, *FHSAA Handbook*. Member senior high schools, middle/junior high schools, and combination schools may include traditional public schools, charter schools, private schools, and university lab schools. Section 3.2.2 of Bylaw 3.2, *FHSAA Handbook*.

⁷ Section 3.3.1(d) of Bylaw 3.3, *FHSAA Handbook*.

⁸ *Sult v. Gilbert*, 148 Fla. 31, 35 (1941).

⁹ *Sult*, 148 Fla. at 35; Bylaw 2.6, *FHSAA Handbook*.

¹⁰ Section 3.2.1 of Bylaw 3.2, *FHSAA Handbook*.

¹¹ Section 8.3.1 of Bylaw 8.3, *FHSAA Handbook*.

Recruiting

The Student Athlete Recruiting Task Force

In January 2006, FHSAA revised its student athlete residency and transfer bylaws in an effort to address the issue of recruiting. The bylaws prohibited students who transfer to another school from participating in varsity athletics for one calendar year. The student would be permitted to participate in junior varsity athletics during this time. After one calendar year, the student would be deemed to have established residency at the new school and permitted to participate in varsity athletics.¹²

Several stakeholders voiced concerns that the 2006 residency and transfer bylaws would inhibit parental school choice. The House PreK-12 Committee held a meeting in 2006 to investigate those concerns.¹³ As a result of the meeting, legislation was enacted¹⁴ that:

- Held the residency and transfer bylaws in abeyance until July 1, 2007;
- Established a Student Athlete Recruiting Task Force; and
- Directed the Office of Program Policy Analysis and Government Accountability (OPPAGA) to independently review secondary school recruiting violations among FHSAA member schools.¹⁵

The Student Athlete Recruiting Task Force was directed to study student athlete recruiting and review FHSAA's 2006 residency and transfer bylaws and “make recommendations that preserve the parental right to school choice while protecting the integrity of Florida’s interscholastic athletic programs.”¹⁶ The legislation also required that the task force be comprised of proponents and opponents of the new bylaws and required the Governor to appoint the chair. The task force recommended that FHSAA:

- Clarify the definition of recruiting;
- Require parents, students, and others to sign affidavits that explain what recruiting is and certify that they have not engaged in recruiting;
- Hire trained investigators to investigate recruiting violations;
- Modify penalties so that coaches who are found guilty of recruiting not be allowed to coach in any event, competition, game, or match between FHSAA member schools;
- Adopt progressively more rigorous sanctions for multiple violations; and
- Withdraw its proposed bylaw on residency and transfer.¹⁷

After the Task Force report was issued, FHSAA adopted many of the Task Force’s recommendations, including recruiting affidavits, use of trained investigators, and a definition of recruiting. In addition, FHSAA withdrew the proposed residency and transfer bylaw and subsequently adopted a residency and transfer bylaw that removed the calendar year prohibition on varsity eligibility and instead authorized a transfer student to be eligible at the beginning of the school year following transfer. However, FHSAA did not adopt tough recruiting penalties for coaches who commit recruiting violations. Additionally, residency and transfer bylaws adopted after the Task Force report maintain the bias against student transfers as a means of controlling recruiting, which continues to result in students being declared ineligible based solely upon the fact that they transfer schools, even though no recruitment is evidenced.¹⁸

¹² Staff of the Florida House of Representatives, *Legislative Bill Analysis for HB 7119* (2006).

¹³ Hearing before the House PreK-12 Committee, Feb. 7, 2006.

¹⁴ Chapter 2006-14, L.O.F.

¹⁵ *Id.*; see also Office of Program Policy Analysis and Government Accountability, *Public and Private High Schools Had About the Same Number of Student Athlete Recruiting Violations*, Report No. 06-65 (Oct. 2006), available at <http://www.oppaga.state.fl.us/reports/pdf/0665rpt.pdf>.

¹⁶ Chapter 2006-14, L.O.F.

¹⁷ Student Athlete Recruiting Task Force, *Final Report*, at 25-30 (Dec. 2006).

¹⁸ Section 9.3.1 of Bylaw 9.3, *FHSAA Handbook*.

Existing Regulation of Recruiting

FHSAA is statutorily required to adopt bylaws prohibiting recruiting and establishing penalties and an appeals process for recruiting violations. The law does not prescribe the types of penalties that must be established or identify persons who must be penalized for such violations.¹⁹ The details of FHSAA's recruiting policy are set forth in an administrative policy adopted by its board.²⁰ The recruiting policy defines recruiting²¹ and the individuals, including coaches, who may not engage in recruiting behavior;²² prohibits student receipt of impermissible benefits;²³ and establishes penalties for member schools and students involved in recruiting.²⁴ "Athletic recruiting" is broadly defined as "any effort by a school employee, athletic department staff member, or representative of a school's athletic interests to pressure, urge, or entice a student to attend that school for athletic reasons."²⁵ "Impermissible benefits" are defined as any "arrangement, assistance, or benefit that is not generally available to other students in the school or their families or that is based in any way on athletic ability."²⁶ The definition of recruiting tends to bring all communication about participation, even casual communication between students or "third parties" not acting on behalf of the school, under the scrutiny of recruiting restrictions.²⁷

Recruiting is also classified as an "act of unsportsmanlike conduct."²⁸ However, FHSAA's penalties for recruiting are not consistent with those for other forms of unsportsmanlike conduct. FHSAA bylaws classify ejection from contests, violations of the alcohol and tobacco use policy, and recruiting as "unsportsmanlike conduct."²⁹ Coaches who are ejected from contests or who violate the alcohol and tobacco use policy are subject to suspension.³⁰ Coaches who commit recruiting violations are not subject to suspension or other direct penalty although FHSAA has the authority to do so. Only member schools and students are penalized for recruiting.³¹

A member school may be penalized for recruiting actions taken by its employees, boosters, or other individuals closely associated with the school. Member schools are subject to the following penalties:

- Mandatory forfeiture of games or championships won in which the recruited athlete participated;
- Public reprimand;
- A minimum fine of \$2,500;
- Probation;
- Disqualification from participation in the sport in which the violation occurred; or
- Expulsion or restricted membership in FHSAA for a period of one or more years.³²

Students who are recruited or found to have accepted impermissible benefits are ineligible for athletic competition for a period of one or more years. All games in which an ineligible student competes must be forfeited by his or her school. There is no allowance for the severity of the student's recruitment offense, which

¹⁹ Section 1006.20(2)(b), F.S.

²⁰ Bylaw 6.3, *FHSAA Handbook*; Policy 36, *FHSAA Handbook*. The law authorizes the FHSAA board of directors to adopt administrative policies, as authorized by the bylaws. Section 1006.20(4)(e)2., F.S. The administrative policy on recruiting is incorporated by reference by the bylaw. Bylaw 6.3, *FHSAA Handbook*.

²¹ Section 36.3.2 of Policy 36, *FHSAA Handbook*.

²² Sections 36.1.2. and 36.2.1.1 of Policy 36, *FHSAA Handbook*.

²³ Section 36.4 of Policy 36, *FHSAA Handbook*.

²⁴ Section 36.8 of Policy 36, *FHSAA Handbook*.

²⁵ Section 36.2.1 of Policy 36, *FHSAA Handbook*.

²⁶ Section 36.4.2 of Policy 36, *FHSAA Handbook*. The section lists specific examples; the quotation comes from a catch-all provision in subsection 36.4.2.14.

²⁷ Section 36.3.1 of Policy 36, *FHSAA Handbook*.

²⁸ Section 6.3.1 of Bylaw 6.3, *FHSAA Handbook*.

²⁹ Section 6.3.1 of Bylaw 6.3., *FHSAA Handbook*; s. 30.3.1 of Policy 30, *FHSAA Handbook*; s. 31.1 of Policy 31, *FHSAA Handbook*.

³⁰ Section 30.3.1 of Policy 30, *FHSAA Handbook*; s. 31.1 of Policy 31, *FHSAA Handbook*.

³¹ Section 36.8 of Policy 36, *FHSAA Handbook*.

³² *Id.*

could involve nothing more than deciding to participate based on the encouragement of fellow students involving no impermissible benefit or deceit.³³

The head coach of each varsity sport offered by a member school must certify that he or she has reviewed FHSAA's recruiting policy, agree to comply with the policy, and agree to review the policy with the coaching staff and players.³⁴ Although the recruiting policy prohibits coaches from engaging in recruiting, there are no direct consequences for coaches who are found guilty of recruiting.³⁵

Students who change schools after beginning ninth grade must file an affidavit, under penalty of perjury, that they have not been recruited or accepted any impermissible benefit, while coaches carry no equivalent responsibility. In a case of true recruiting, a student who signs such an affidavit can risk criminal sanction if he or she tells the truth to a FHSAA investigator, while a coach or booster can misrepresent the facts, without risk of criminal sanction. Moreover, when recruitment has been determined, the student is declared ineligible for one year, regardless of whether he or she had any intent to violate the rules.³⁶

Residency and Transfer

FHSAA must adopt bylaws that establish eligibility requirements for all students who participate in high school athletics at member schools. The bylaws governing residency and transfer must allow the student to be eligible in the school in which he or she first enrolls each school year or makes himself or herself a candidate for an athletic team by engaging in practice prior to enrolling in the school.³⁷ Under FHSAA bylaws, a student who transfers during the school year is ineligible to participate in athletics at the new school until the beginning of the next school year. Thus, all mid-year transfers are treated with suspicion, without scrutinizing whether the transfer was made in good faith or was induced by impermissible benefits or recruiting.³⁸

There are four exceptions to ineligibility resulting from a mid-year transfer:

- Reassignment of the student by the school board;
- A full and complete residence move;
- Necessary relocation after the death or imprisonment of a household member or placement of the student under court-ordered guardianship; or
- The marriage of the student.³⁹

A "full and complete move" occurs when the former residence is no longer occupied by the student and all members of the household; all personal belongings are moved from the former residence; mail is received at the new residence; all utilities are transferred to the new residence; and driver's license, voter registration, and other forms of legal identification are changed to the new residence.⁴⁰ Thus, a student whose mid-year transfer is caused by divorce or domestic violence is ineligible to participate in athletics if he or she moves with the custodial parent but the noncustodial parent remains at the former residence. Likewise, a student whose family moves in with relatives due to financial hardship would be ineligible to participate in athletics if his or her family moves out of the relative's home upon overcoming the hardship.⁴¹

Any student who has a prior player/coach relationship with a coach, whether at a prior school (within one year of a coach's move)⁴² or through non-school athletic teams, e.g., American Legion or church league teams, is

³³ *Id.*

³⁴ Section 36.7.1 of Policy 36.7, *FHSAA Handbook*.

³⁵ Sections 36.1.2. and 36.2.1.1 of Policy 36 and s. 36.8 of Policy 36, *FHSAA Handbook*.

³⁶ Section 36.7.2 of Policy 36, *FHSAA Handbook*.

³⁷ Section 1006.20(2), F.S.

³⁸ Bylaw 9.3, *FHSAA Handbook*.

³⁹ Sections 9.3.2.1, 9.3.2.2, 9.3.2.3. and 9.3.2.4 of Bylaw 9.3, *FHSAA Handbook*.

⁴⁰ Section 9.3.2.1.1 of Bylaw 9.3, *FHSAA Handbook*.

⁴¹ *See* s. 9.3.2.1.1 of Bylaw 9.3, *FHSAA Handbook*.

⁴² Section 9.2.5. of Bylaw 9.2, *FHSAA Handbook*.

ineligible for one calendar year if he or she transfers to the coach's school regardless of the reason for the transfer. This includes new ninth graders at all private schools, charter schools, or any public school where the student has a right to enroll other than the student's zoned school.⁴³

The House Rulemaking and Regulation Subcommittee received anecdotal reports of students being declared ineligible to participate in interscholastic athletics because the coach: 1) moved to the same school selected by the student when his former school closed, or 2) coached a non-school athletic team for eighth grade athletes and two of the athletes chose to attend the private school where the coach was employed. In both cases, the ineligibility hinged solely on the student's transfer and did not involve any evidence that the student was recruited or chose the school to join the coach.⁴⁴

Zero tolerance forfeiture is mandated for all contests in which an ineligible student participates, regardless of whether the athlete's participation is inadvertent or ineligibility is unknown to coaches or school administrators. Thus, all members of the team are penalized for the violations of others.⁴⁵

Due Process

FHSAA bylaws purport to provide due process to students, coaches, and schools in the investigation, determination, and punishment of violations.⁴⁶ When a member school accuses another school of using an ineligible player or violating other rules, a full written statement of the facts must be submitted to the Executive Director. The Executive Director must provide the accused party with a copy of the accusation and determine if the allegations warrant an investigation.⁴⁷ Investigative findings must be disclosed to the school or person alleged to have committed a violation.⁴⁸ The bylaws do not provide a student with an opportunity to present evidence to an unbiased decision-maker in determinations regarding ineligibility or other rule violations. The bylaws provide no standards for investigators or the conduct of investigations.⁴⁹

When a student is determined ineligible by the student's school or the Executive Director, the principal may appeal and must do so at the request of the student.⁵⁰ The student may not individually appeal an eligibility determination. In contrast, students, coaches, administrators, or schools are entitled to individually appeal other rule violations.⁵¹

In addition to appeals of ineligibility determinations, a school may file an undue hardship waiver on behalf of a student.⁵² However, to seek a waiver, the student and school must admit ineligibility and cannot both appeal ineligibility and seek a waiver in the alternative. The only standards defining "undue hardship" stated in the bylaws pertain to students who are declared ineligible for academic reasons. Otherwise, the bylaws state that appeals committees and the board shall be guided by "other criteria contained in these bylaws and FHSAA policies, and their respective experience related to high school athletics." Thus, it appears that the decision to grant a waiver is entirely arbitrary.⁵³ The school must pay the cost of the proceeding if the waiver is not granted. According to testimony from FHSAA's Executive Director, the costs assessed average approximately \$240.00 per appeal. The testimony indicated that approximately two-thirds of waiver requests are granted, which may indicate that the bylaws are too restrictive.⁵⁴

⁴³ Sections 9.2.4 and 9.2.5 of Bylaw 9.2., *FHSAA Handbook*.

⁴⁴ Consideration of CS/HB 1191, Hearing before the House Rulemaking and Regulation Subcommittee (Feb. 20, 2012).

⁴⁵ Bylaw 10.2, *FHSAA Handbook*.

⁴⁶ See ch. 10 of the Bylaws, *FHSAA Handbook*.

⁴⁷ Section 10.3.1 of Bylaw 10.3, *FHSAA Handbook*.

⁴⁸ Section 10.1.1 of Bylaw 10.1, *FHSAA Handbook*.

⁴⁹ See Article 10, *FHSAA Handbook*.

⁵⁰ Section 10.4.1 of Bylaw 10.4, *FHSAA Handbook*.

⁵¹ Sections 10.4.2, and 10.4.3 of Bylaw 10.4, *FHSAA Handbook*.

⁵² Section 10.4.4 of Bylaw 10.4, *FHSAA Handbook*.

⁵³ Section 10.4.4.2 of Bylaw 10.4, *FHSAA Handbook*.

⁵⁴ Section 10.4.4 of Bylaw 10.4, *FHSAA Handbook*; Consideration of CS/HB 1191, Hearing before the House Rulemaking and Regulation Subcommittee (Feb. 20, 2012)(testimony of FHSAA Executive Director).

The bylaws do not set forth the burden of proof or evidentiary requirements for initial determinations of ineligibility or other violations. The bylaws supply inconsistent guidance for evidence and burdens of proof in appeals proceedings. In one place the burden is on the appellant or waiver applicant who must provide a brief statement of the facts supported by "any relevant documentary evidence available."⁵⁵ Another provision states that an appeals committee "may set aside findings of fact ... only if the school shows that ... the finding of FHSAA staff is clearly not supported by evidence that is credible, persuasive and of a kind on which reasonably prudent persons rely in the conduct of serious affairs."⁵⁶ Thus, the provision of evidence by the appellant may not even be considered if FHSAA staff relied on reasonable evidence. The burden of proof on appeal is not "probably unsupported by the evidence" but "clearly not supported" (similar to a clear and convincing standard).⁵⁷ Finally, the appeals committee "can act only on the basis of the record in the case [consisting] of the notice of inquiry and/or allegations to the school, the report of the investigator, and the written response by the school. The committee cannot consider information that was not available to FHSAA staff when issuing its finding."⁵⁸ Thus, the high burden of proof on appeal can only be established based upon the record included in the investigator's report or a "written response" that the bylaws do not at any point invite or guarantee.

If incomplete or inaccurate information is supplied by an appellant or waiver applicant, "sanctions provided by these bylaws shall apply."⁵⁹ This implies that the appeal or waiver request can be denied based upon a mistake regardless of how meritorious the appeal or request. Similarly, when the Executive Director makes a determination of eligibility when requested by a school, a later determination that incomplete or inaccurate information was provided subjects the school to a retraction of the eligibility determination and to "such penalties as deemed appropriate" regardless of whether the inaccuracy or incompleteness would have affected the ruling.⁶⁰

The bylaws allow, but do not require, a stay of any determination and reference of the matter "back to the FHSAA staff for review" when relevant new information is introduced in an appeal proceeding.⁶¹ Thus, it is possible to have all relevant evidence considered, but there is no guaranteed right to such consideration at any point in the process.

The bylaws provide for two types of appeals. Appeals of "secondary cases" are heard by one of four sectional committees.⁶² Appeals of "major cases" are reviewed by a statewide "Infractions Appeals Committee."⁶³ The bylaws do not define or distinguish "secondary" and "major" cases. Appeals from either type of panel may be made to FHSAA's board.⁶⁴

The bylaws do provide more procedure for the appeals, but lack certain safeguards. In some cases, a student can be required to appear at an appeal, but the bylaws do not state how that is communicated to the student or how much notice must be provided to the student. A student, whose eligibility is under review, or any person found to have committed an infraction, as well as any school involved, may appear at an appeal. When a student appears at an appeal the school must send a representative, which entails travel costs to the appeals hearing in most cases. When a student is required to appear, an attorney may not appear in lieu of the student, although a student is granted a right to counsel.⁶⁵

⁵⁵ Section 10.5.2 of Bylaw 10.5, *FHSAA Handbook*.

⁵⁶ Section 10.6.5.2.1(a) of Bylaw 10.6, *FHSAA Handbook*.

⁵⁷ *Id.*

⁵⁸ Section 10.6.5.2.3 of Bylaw 10.6, *FHSAA Handbook*.

⁵⁹ Section 10.5.3 of Bylaw 10.5, *FHSAA Handbook*.

⁶⁰ Section 10.5.4 of Bylaw 10.5, *FHSAA Handbook*.

⁶¹ Section 10.6.5.2.3.1 of Bylaw 10.6, *FHSAA Handbook*.

⁶² Section 10.6.5.1.1 of Bylaw 10.6, *FHSAA Handbook*.

⁶³ Section 10.6.5.1.2, *FHSAA Handbook*.

⁶⁴ Section 10.6.5.3 of Bylaw 10.6, *FHSAA Handbook*.

⁶⁵ Sections 10.6.3, 10.6.3.1, and 10.6.3.2 of Bylaw 10.6, *FHSAA Handbook*.

Any appeal must be "filed [in a case of the Executive Director's findings] so that it is received in the office of FHSAA within ten business days of the receipt of the finding or notification of the imposition of penalty"⁶⁶ or within ten days of receipt "of the FHSAA staff's decision in secondary cases, or ... of the infractions report in major cases."⁶⁷ Any delay waives the appeal right. The "received in the office" aspect of appeal petitions appears more difficult to comply with than many similar legal proceedings. There does not appear to be any requirement that the organization note the time of receipt or even acknowledge receipt of the appeal.

Effect of Proposed Changes

The bill revises student eligibility requirements regarding transfers, establishes standards for FHSAA investigators, focuses sanctions for recruiting and other violations on coaches and other adults, and establishes new due process standards that FHSAA must follow when making student eligibility determinations. FHSAA must adopt bylaws implementing these changes.

Residency and Transfer

The bill requires FHSAA residency and transfer bylaws to allow a student to be eligible in the school to which the student has transferred pursuant to district school board policies or private school policies, thereby restricting the authority of FHSAA to determine whether a "full and complete" move has occurred. Such transfers must occur by a transfer deadline set by FHSAA, which may not be before the date the bylaws authorize practices in the sport to begin. FHSAA must apply residence and transfer requirements similarly to public and private schools.

If FHSAA determines that a school has recruited a transfer student, FHSAA may require the school to participate in a higher class of competition for the sport in which the student competes and pay any appropriate fine. Placement of a school in a higher class of competition as a penalty for recruiting is limited to one classification cycle, i.e., two years.

Sanctions for Recruiting and Eligibility Violations

The bill shifts the focus of sanctions for recruiting and eligibility violations away from students to coaches and responsible adults by requiring FHSAA to adopt bylaws establishing sanctions for coaches who commit major violations. Major violations include knowingly allowing an ineligible student to compete in an interscholastic athletic contest or violations of FHSAA's recruiting or sportsmanship policies. Sanctions for coaches include suspending or prohibiting the coach from coaching, participating in, or attending any athletic activity sponsored, recognized, or sanctioned by FHSAA and the member school for which the coach committed the violation. Such sanctions remain in full force and effect during the term of the sanction even if the coach transfers to another member school. A student may not be declared ineligible for a recruiting violation unless the student or parent falsified documents or accepted an impermissible benefit.

A coach from a FHSAA member school must reimburse the school for fines assessed as a result of the coach's violation in order to coach in, participate in, or attend an athletic activity sponsored, recognized, or sanctioned by FHSAA and a member school. FHSAA must establish a due process procedure for sanctioned coaches consistent with FHSAA's current appeals procedure.

The bill limits the extent that team members may be penalized for the actions of others by prohibiting forfeiture of contests for ineligible athletes unless the coach or school administrator should have known the athlete was ineligible to participate. Contests forfeited for recruiting or other eligibility violations may not exceed the number of contests that responsible coaches or other adults are prospectively suspended.

⁶⁶ Section 10.6.4 of Bylaw 10.6, *FHSAA Handbook*.

⁶⁷ Section 10.6.5.1 of Bylaw 10.6, *FHSAA Handbook*.

Investigations

The bill also requires FHSAA to adopt bylaws that regulate individuals who conduct investigations on behalf of FHSAA. The bylaws must:

- Require the investigator to undergo level 2 background screening,⁶⁸ unless the investigator:
 - Proves that within the previous 5 years, he or she already successfully underwent a level 2 screening as part of some professional licensure requirement, having been engaged in such profession without a break in licensed service for more than 90 days; and
 - Submits an affidavit of compliance with the provisions of chs. 435 and 1006, F.S.
- Require an investigator to carry photo identification showing his or her FHSAA credentials.
- Require that an investigator, when conducting investigations:
 - Be appointed by the Executive Director.
 - Only investigate matters assigned by the Executive Director.
 - Only conduct interviews on weekdays between the hours of 9 a.m. and 7 p.m. unless otherwise agreed to by the interviewee.
 - Allow the parent of any student to be present during an interview.
 - Only search residences or other private areas with written consent of the student's parents and in the presence of the parent or a representative.

Due Process

The bill strengthens the due process protections of students involved in initial eligibility determinations by requiring FHSAA to:

- Prove ineligibility by clear and convincing evidence;
- Provide the student with notice of an investigation and a right to present evidence in defense to an unbiased decision maker;
- Prohibit an investigator from making the actual determination that a violation has occurred; and
- Provide the student with a written determination of ineligibility that states specific facts supporting the determination.

In addition, FHSAA must also allow a student to present new evidence on appeal if such evidence was not available at the time of the initial determination or if full due process was not afforded the student. FHSAA must provide a *de novo*⁶⁹ hearing on appeal if new evidence is introduced or a full and fair hearing was not available on the initial determination. In the alternative, the case may be remanded to the Executive Director for a full and fair determination based on all the evidence. FHSAA must expedite the appeals process to enable the student an opportunity to play out the remainder of the sports season. As an alternative to the bill's due process requirements, FHSAA may choose the due process provided for enforcement proceedings in Florida's Administrative Procedures Act.⁷⁰

Membership

The bill expressly states that any high school⁷¹ in the state, including charter schools, virtual schools, and home education cooperatives may become a member of FHSAA and that membership in FHSAA is not mandatory for any school. The bill requires FHSAA to allow competition between FHSAA member schools and non-member schools and prohibits FHSAA from penalizing member schools for such competition. The bill also

⁶⁸ A Level 2 screening consists of a fingerprint-based search of FDLE and the Federal Bureau of Investigation databases for state and national criminal arrest records. Any person undergoing a Level 2 screening must not have been found guilty of any of the disqualifying offenses. Section 435.04, F.S.

⁶⁹ In a "de novo" hearing, the reviewing tribunal suspends the lower tribunal's findings and determination and reviews the matter as though for the first time. Black's Law Dictionary 287 (9th ed. 2009).

⁷⁰ Sections 120.569 and 120.57, F.S.

⁷¹ High school is defined for purposes of FHSAA law, as grades 6 through 12. Section 1006.20(1), F.S.

prohibits FHSAA from unreasonably withholding its approval of an application for membership in the National Federation of State High School Associations.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires investigators who conduct investigations on behalf of FHSAA to undergo background screenings. Investigators will have to pay for a background screening, unless FHSAA chooses to pay for the screening or the investigator meets an exception. The cost of a state and federal criminal history check is \$43.25.

D. FISCAL COMMENTS:

The administrative workload associated with the maintenance of student records for eligibility, compliance, and program participation is indeterminate; however, it is not expected to have a significant fiscal impact on the school districts or FHSAA.