

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 Committee on Education

BILL: CS/SB 1164

INTRODUCER: Committee on Education and Senator Stargel

SUBJECT: High School Athletics

DATE: April 22, 2013 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|---------------|
| 1. | Hand | Klebacha | ED | Fav/CS |
| 2. | | | RC | |
| 3. | | | | |
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| 5. | | | | |
| 6. | | | | |

Please see Section VIII. for Additional Information:

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|------------------------------|-------------------------------------|---|
| 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:

CS/SB 1164 would expand student rights regarding eligibility, transfers, and due process protections during Florida High School Athletic Association (FHSAA) investigations and eligibility determinations.

The bill would allow a student that attends a public or private school that does not offer an extracurricular activity to participate in that activity at another public or private school, limited to one additional extracurricular activity at a different school each academic year, and subject to other requirements. The bill would prohibit student ineligibility if the student plays on a non-school team affiliated with a school, or participates in activities sponsored by a member school, if the student subsequently enrolls at such school (i.e., summer league or out-of-season/league team).

The bill would restructure the FHSAA governing board, and would terminate the FHSAA's designation as the governing nonprofit organization of athletics in Florida public schools on July 1, 2017. The bill would require the FHSAA to conduct a comprehensive review of its bylaws, policies, and procedures, and would void noncompliant bylaws, policies and procedures.

The bill takes effect on July 1, 2013.

This bill substantially amends the following sections of the Florida Statutes: 1002.20, 1006.15, and 1006.20.

II. Present Situation:

Florida High School Athletic Association

The Florida High School Athletic Association (FHSAA) has been codified in law and designated as the governing nonprofit organization of athletics in Florida public schools.¹ The FHSAA's sixteen member Board of Directors (board) is the organization's executive governing body and hires the executive director.² The FHSAA is required to adopt bylaws regulating student eligibility, residency, transfer, and recruiting in accordance with applicable law.³

Student Eligibility

To be eligible for participation in interscholastic extracurricular activities, a high school student must meet certain academic and conduct requirements.⁴ An eligible student may participate in high school athletics at the school in which he or she first enrolls each school year or, at the school in which the student becomes a candidate for an athletic team by engaging in a practice prior to enrolling in the school.⁵ A high school student may be eligible to participate in interscholastic extracurricular activities in the school to which the student has transferred during the school year if the transfer is made by a deadline established by the FHSAA.⁶

Eligibility Investigations and Determinations

Investigations

The FHSAA must adopt bylaws that regulate persons who conduct investigations on behalf of the FHSAA.⁷ The bylaws must require an investigator, in part, to undergo level 2 background screening, carry a photo identification card that shows the FHSAA name, logo, and the investigator's official title, and to adhere to specified guidelines.⁸

The guidelines require investigators to: investigate only those alleged violations assigned by the executive director or the board of directors, conduct interviews on Monday through Friday between the hours of 9 a.m. and 7 p.m., allow the parent of any student being interviewed to be

¹ Section 1006.20, F.S. Florida High School Athletic Association, *About the FHSAA*, <http://www.fhsaa.org/about> (last visited April 18, 2013).

² Section 1006.20(4), F.S.

³ Section 1006.20, F.S.

⁴ Section 1006.15(3)(a), F.S.

⁵ Section 1006.20(2)(a), F.S.

⁶ Section 1006.20(2), F.S.

⁷ Section 1006.20(2)(e), F.S.

⁸ *Id.*

present during the interview, and search residences or other private areas only with the consent of the student's parent and only with a parent or a representative of the parent present.⁹

Determinations

The FHSAA must adopt bylaws for the process and standards for FHSAA student eligibility determinations.¹⁰ The bylaws must provide that:

- Ineligibility must be established by clear and convincing evidence;
- Student athletes, parents, and schools must have notice of the initiation of any investigation or other eligibility inquiry and may present information or evidence to the investigator and to the individual making the eligibility determination;
- Eligibility determinations must be made by the executive director or designee for an unbiased and objective determination of eligibility; and
- A determination of ineligibility must be made in writing, setting forth the findings of fact and specific violation upon which the decision is based.¹¹

A student may be declared ineligible based upon violation of recruiting rules only if the student or parent has falsified any enrollment or eligibility document, accepted any benefit or promise not generally available to the school's students or family members, or accepted any benefit or promise that is based on athletic interest, potential, or performance.¹²

The FHSAA may not prospectively limit the competition of student athletes for rule violations of their adult representatives, their school or its coaches, nor may a student athlete be unfairly punished for eligibility or recruiting violations perpetrated by a teammate, coach, or administrator.¹³

III. Effect of Proposed Changes:

CS/SB 1164 would expand student rights regarding eligibility, transfers, and due process protections during FHSAA investigations and eligibility determinations.

The bill would allow a student that attends a public or private school that does not offer an extracurricular activity to participate in that activity at another public or private school, limited to one additional extracurricular activity at a different school each academic year, and subject to other requirements. The bill would prohibit student ineligibility if the student plays on a non-school team affiliated with a school, or participates in activities sponsored by a member school, if the student subsequently enrolls at such school (i.e., summer league or out-of-season/league team).

The bill would restructure the FHSAA governing board, and would terminate the FHSAA's designation as the governing nonprofit organization of athletics in Florida public schools on July

⁹ Section 1006.20(2)(e), F.S.

¹⁰ Section 1006.20(2)(g), F.S.

¹¹ *Id.*

¹² Section 1006.20(2)(b), F.S.

¹³ Section 1006.20(2)(i), F.S.

1, 2017. The bill would require the FHSAA to conduct a comprehensive review of its bylaws, policies, and procedures, and would void noncompliant bylaws, policies and procedures.

Florida High School Athletic Association

The bill would terminate the Legislature's designation of the FHSAA as the governing nonprofit organization of athletics in Florida public schools, effective July 1, 2017. If the FHSAA fails to meet the provisions of s. 1006.20, F.S., or if the Legislature does not timely designate a successor, the Commissioner of Education (Commissioner), with the approval of the State Board of Education, would designate a nonprofit organization to govern athletics in Florida public schools.

Effective October 1, 2013, the bill would reorganize board membership. New membership would be:

- One charter school representative, elected from among its public school representatives.
- One nonpublic member school representative, elected from among its nonpublic school representative members.
- Four representatives appointed by the commissioner, one appointed from each of the four administrative regions.
- Two district school superintendents, one elected from the two northernmost administrative regions by the members in those regions and one elected from the two southernmost administrative regions by the members in those regions (this provision is in existing law and remains unchanged).
- Two district school board members, one elected from the two northernmost administrative regions by the members in those regions and one elected from the two southernmost administrative regions by the members in those regions (this provision is in existing law and remains unchanged).
- Two county athletic directors, one elected from the two northernmost administrative regions by the members in those regions and one elected from the two southernmost administrative regions by the members in those regions.
- The commissioner or his or her designee from the department executive staff (this provision is in existing law and is unchanged).
- One representative appointed by the President of the Senate.
- One representative appointed by the Speaker of the House of Representatives.
- One representative appointed by the Executive Director of the Florida Athletic Coaches Association.
- One home school member representative elected from among its home school representative members.

The FHSAA and its divisions, boards, and advisory councils, or similar entities created or managed by the FHSAA would be subject to the provisions of chapter 119, F.S., relating to public records, and to chapter 286, F.S., relating to public meetings.

Each nonprofit organization that operates for the purpose of supervising and controlling interscholastic activities of public high schools (which would include the FHSAA) would have to:

- Undergo an annual financial and compliance audit in accordance with rules adopted by the Auditor General. The audit would include a report on financial statements in accordance with generally accepted accounting principles. The audit would be submitted to the Auditor General, the Speaker of the House of Representatives, and the Senate President within 180 days of each fiscal year.
- Report the number of appeals and other cases involving the FHSAA and the disposition of those matters. The report would include: how many cases were filed; the number of cases that the FHSAA's initial decision was affirmed, reversed, or otherwise resolved; and a summary of the nature of the issues in dispute.

Employment of the FHSAA's executive director would be subject to Senate confirmation. The executive director's salary would not exceed that set by law for the Governor. The executive director would not receive per diem and travel expenses. Public Liaison Advisory Committee members would receive per diem and travel expenses per s. 112.061, F.S.

By October 1, 2013, the FHSAA would conduct a comprehensive review of its bylaws, policies, and administrative procedures. The FHSAA would provide a detailed report to the Commissioner, the Governor, the President of the Senate, and the Speaker of the House of Representatives articulating how each violation or requirement in the bylaws, policies, and administrative procedures is substantially related to an identified, important objective and any necessary corrective action. Noncompliant bylaws, policies, or administrative procedures would be void as of July 1, 2013.

Beginning in the 2013-2014 school year, all dues, fees, and contest receipts that the FHSAA may collect would be capped at the amount established in the FHSAA bylaws as of 2012-2013. The dues, fees and receipts may be increased once annually to reflect changes in the consumer price index. These monies would be allocated so that:

- Up to 55 percent would be remitted to the FHSAA for organization operations.
- At least 30 percent would be for the FHSAA to provide postsecondary scholarships to students who meet FHSAA qualifications.
- At least 15 percent would be provided for the FHSAA to coordinate with the National Center for Sports Safety and provide for education of coaches, parks and recreation staff, parents, and other volunteers on the basics of sports safety, injury prevention, and the well-being and health, safety and welfare of athletes.

Student Eligibility

The bill would prohibit student ineligibility if the student plays on a non-school team affiliated with a school, or participates in activities sponsored by a member school, if the student subsequently enrolls at such school (i.e., summer league or out-of-season/league team).

A student would be presumed eligible to participate in interscholastic extracurricular activities and would remain eligible if the student complies with existing eligibility criteria. A student

would remain eligible so long as the student remains enrolled in school and complies with applicable requirements.

Student residence and transfer approvals would be determined by the school district, in the case of a public school student, or by the private school, in the case of a private school student. Once the student residence or transfer is approved, the student would remain eligible to participate in competitions under the jurisdiction of the FHSAA. The FHSAA would be able to challenge the eligibility determination by filing a petition for a hearing with the Division of Administrative Hearings. The FHSAA would need to demonstrate by clear and convincing evidence that the student is ineligible. If the student remained eligible, the final order would award all reasonable costs and attorney fees to be paid by the FHSAA. The FHSAA would not be able to recoup these costs from any other person, entity, or party.

Participating in Extracurricular Activities

The bill would allow a student at a public or private school that does not offer a particular extracurricular activity to participate in that activity on a space-available basis if: (1) the activity is offered at any public school that the student could choose to attend pursuant to district or interdistrict controlled open enrollment provisions; or (2) the student develops an agreement to participate in that activity at a private school. This ability is limited to one additional activity at a different school each academic year.

The student would have to meet certain conditions, such as demonstrating progress at the school of attendance, paying participation fees, and registering intent with the participating school before the season for such activity begins. If required to participate in a curricular activity as a condition of participating in an extracurricular activity, the student could choose to participate in the curricular activity at the attending school or participating school. The student's parent would be responsible for transportation among the schools.

The bill would allow students attending a full-time virtual instruction program and a virtual charter school to participate in extracurricular activities by including the program or school within the presumption of student eligibility for public school students.

The bill would include a conversion charter school within the definition of a public school, which would allow a charter school student to participate in an extracurricular activity at a conversion charter school, if the student resides in the charter school's attendance zone.

The bill bifurcates existing requirements so that non-FHSAA member private schools consisting of 125 students or fewer in the middle school grades, or 125 students or fewer in the high school grades, would be able to allow an eligible student to participate in public school activities under certain conditions.

Eligibility Investigations and Determinations

The bill would require the FHSAA bylaws to establish a process and standards for FHSAA investigations against a student, coach or school. The bylaws would address initial investigations, informal investigations, and formal investigations.

Initial Investigations

Initial investigations would be initiated only if supported by credible information from an identified source or from an anonymous source with credible corroboration and which, if proven true, would reasonably rebut the presumption of ineligibility.

Informal Investigations

An informal investigation would be limited to: (1) determining whether there is a sufficient evidentiary basis to initiate a formal investigation; and (2) producing the sworn testimony or affidavit necessary for a formal investigation.

Formal Investigations

A formal investigation would not be initiated unless supported by sworn testimony or affidavit which, if proven true, would reasonably demonstrate ineligibility by clear and convincing evidence. A formal investigation would be completed within 90 days, and would prohibit the FHSAA from contracting or paying for more than 520 hours of work for any investigation.

During these investigations, the investigator and the individual making the determination would receive and consider evidence. This evidence would be admissible in the proceeding, whether or not admissible in a trial court.

Investigator

The bill would prohibit investigators, or other agents of the FHSAA, from conducting searches of residences or other private areas during the course of an investigation.

The bill would require investigators to maintain a valid class "C" private investigator license pursuant to ch. 493, F.S., but would exempt the investigator from violations identified in section 493.6120, F.S.¹⁴

The student, parent, coach, and school would be provided notice of the assignment of an investigation within two business days, unless the executive director certifies in writing that a compelling need to withhold notice exists. The executive director would provide a copy of the certification to the Commissioner within one business day after signing the certification.

If necessary for the parent to attend the interview, and upon the good-faith request of the parent for a reasonable period of time, the bill would require an investigator to provide at least 24 hour notice to at least one custodial parent of the right to be present during the interview.

¹⁴ A class "C" licensed investigator is permitted to bear a firearm, if required by his or her duties. Section 493.6115(2)-(3), F.S.

The student, parent, coach, and school would be provided a copy of the investigation report and any recommendation made by the investigator, executive director, or board, within five business days after completion of the investigation.

Determinations

The FHSAA bylaws would have to ensure that violations would be substantially related to specific, important objectives and would only address the minimal requirements necessary to accomplish the objectives. Ineligibility requirements would be applied equally to public and private school students as well as to transfer and non-transfer students.

A student would be declared ineligible if the student or parent had intentionally and knowingly:

- Falsified an enrollment or eligibility document; or
- Accepted any significant benefit or a promise of significant benefit not reasonably available to the school's students or family members and is provided based primarily on the student's athletic interest, potential, or performance.

The bill would require the FHSAA bylaws to ensure that an otherwise eligible student athlete from being unfairly punished for rule, eligibility, or recruiting violations committed by a teammate, coach, administrator, school, or adult representative. Additionally, competition of an otherwise eligible student athlete would not be prospectively limited for rule, eligibility, or recruiting violations of a teammate, coach, administrator, school, or adult representative.

The bill would require the FHSAA bylaws to include as a major violation, a coach colluding with another coach to prevent a member or non-member school from scheduling competitions among themselves.

The bill would limit the FHSAA's authority to levy fines, penalties and sanctions against schools and coaches found to be in violation of student eligibility requirements and recruiting practices. The fines would not exceed the cost to investigate reported violations and the cost of associated appeals. The FHSAA board of directors would, by October 1 each year, submit a report to the Department of Education that reconciles the costs of investigations and appeals, with the fines, penalties and sanctions charges to member schools and coaches each fiscal year.

The bill would require the FHSAA to notify a student, coach, or school found to be ineligible of the ability to challenge the ineligibility determination through the FHSAA appeal process, or pursuant to ss. 120.569 and 120.57, F.S. In the latter appeal, the Division of Administrative Hearings would be able to assess a fee, payable to the nonprevailing party, sufficient to cover the cost of administering the proceedings.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

It is unknown whether the appeals process in the bill would result in increased or decreased costs for the parties should the FHSAA challenge the eligibility of a transfer student, or a student, coach or school challenge an eligibility or other determination by the FHSAA.

The FHSAA may incur additional costs from payment of per diem travel costs for Public Liaison Advisory Committee members.

The FHSAA may reduce costs from the cap on the executive director's salary, and the prohibitions on a car allowance, cellular telephone allowance, per diem expense, and travel expense.

The bill limits the ability of the FHSAA to increase the levy of dues, fees, and contest receipts, and allocates the use of such revenues collected. This may result in decreased revenue available for the FHSAA's operations.

C. Government Sector Impact:

It is unknown whether the appeals process in the bill would result in increased or decreased costs for the school district should the FHSAA challenge the eligibility of a transfer student, or should a student, coach or school challenge a FHSAA decision.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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 Committee on Education on April 22, 2013:

The committee substitute:

- Prohibits student ineligibility based on recruitment or because the student participated on a non-school team, or member school, if the student subsequently enrolls in the school.
- Allows a public or private school student whose school does not offer a particular activity to participate in an activity at a public school or other private school.
 - Limits participation to one additional activity at a different school each academic year.
 - Provides that parents are responsible for transportation to and from the schools.
- Terminates the Legislature’s designation of FHSAA as the governing nonprofit organization of athletics in Florida, effective July 1, 2017, and allows the Legislature to designate the successor governing organization.
- Caps future dues, fees, and contest receipts at the amount set by the FHSAA for 2012-2013, with the ability to increase the amount based on the consumer price index.
 - Specifies the purpose of the funds (55 percent for FHSAA for operations, 30 percent for FHSAA scholarships, and 15 percent for education efforts).
 - Caps FHSAA fines at the actual cost of investigation and appeal.
- Requires the FHSAA policy to prohibit collusion between coaches to prevent a member or non-member school from scheduling competition among themselves.
- Subjects the FHSAA to public records and public meetings laws.
- Makes the FHSAA executive director subject to Senate confirmation.
- Limits formal investigations to 90 days and 520 hours contract work, and requires investigators to have a class “C” private investigator license.
- Creates an initial investigation, informal investigation, and a formal investigation process for the FHSAA and limits the scope of each type of investigation.
- Authorizes a coach, school, or student to challenge an eligibility decision through the existing FHSAA process or through the Division of Administrative Hearings.

- B. **Amendments:**

None.