

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1279 High School Athletics

SPONSOR(S): Metz

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Choice & Innovation Subcommittee	12 Y, 0 N	Fudge	Fudge
2) Education Appropriations Subcommittee			
3) Education Committee			

SUMMARY ANALYSIS

The bill revises the policies and procedures the Florida High School Athletic Association (FHSAA) and its investigators must follow when conducting investigations and eligibility determinations. The FHSAA must adopt bylaws regarding the eligibility status of students who are enrolled and assigned to that public school or who transfer from another public school or private school. The bylaws must ensure the student remains eligible as long as the student has complied with enrollment and transfer deadlines, and rule, eligibility, and recruiting violations by a teammate, coach, administrator, school, or adult representative may not be used against a student.

Bylaws must specify that a student is ineligible if the student or parent intentionally and knowingly falsifies an enrollment or eligibility document or accepts a significant benefit or promise of such benefit that is not available to other students or family members at the school. The bylaws must apply ineligibility requirements equally to transfer students, public school students, and private school students. The FHSAA must also adopt bylaws establishing the process and standards for determining sanctions or eligibility determinations against a coach or school.

The bill revises investigative procedures by:

- Requiring an investigation to be completed within 90 days of its onset and limiting contracts or payments to no more than 520 hours per investigation.
- Requiring FHSAA to provide specific notification to the affected student, parent, coach and school within two days of the assignment of an investigation and the results, including recommendations, within 5 business days upon completion of the investigation.
- Requiring investigators to maintain a valid class "C" license as established in Chapter 493.
- Requiring investigators to advise one or more of the parents that they are entitled to accompany the student during interviews.
- Prohibiting investigators from searching residences or other private areas during the investigation.

The bill increases the FHSAA's Board of Directors from 16 to 25 with specific assignments by the Commissioner of Education, Speaker of the House of Representatives, and the Senate President. It revises term limits, requires the Commissioner of Education to appoint the Executive Director, and limits the Executive Director's salary and compensation for travel.

The bill requires the FHSAA to conduct a compliance audit and include a report on financial statements presented in accordance with generally accepted accounting principles. The audits must also determine compliance with specific statutory eligibility and expenditure requirements and be submitted to the Auditor General, the Speaker of the House of Representatives, and the Senate President within 180 days after the end of each fiscal year.

The bill will have a fiscal impact on state government. SEE FISCAL COMMENTS.

The effective date of the bill is July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida High School Athletic Association

Present Situation

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*.

Effect of Proposed Changes

In addition to the financial audit required by s. 1006.19, the FHSAA must conduct a compliance audit. The audits must be conducted in compliance with generally accepted auditing standards and include a report on financial statements presented in accordance with generally accepted accounting principles. The audits must also determine compliance with statutory eligibility and expenditure requirements of s. 1006.20. These audits must be submitted to the Auditor General, the Speaker of the House of Representatives, and the Senate President within 180 days after the end of each fiscal year.

The bill revises the membership of the Board of Directors by increasing the number of members from 16 to 25. One additional member is appointed by the commissioner from each of the four administrative regions for a total of four. Four representatives appointed by the President of the Senate, one appointed from each of the four administrative regions. Four representatives appointed by the Speaker of the House of Representatives, one appointed from each of the four administrative regions.

Members may no longer serve successive terms and may only serve a maximum of three years. The executive director is no longer appointed by the board, but by the commissioner and the executive director's salary may be no greater than that set by law for the Governor. The executive director may not receive a car allowance or cellular telephone as a result of his or her employment, nor may the executive director receive per diem and travel expenses in excess of the rate provided for state employees under s. 112.061.

Beginning with the 2013-14 fiscal year, all dues, fees and percentages of contest receipts shall be fifty percent of the amount established in the FHSAA bylaws for 2012-13 and may not be increased. Fines, sanctions, and penalties may not exceed the cost to investigate reported violations and the cost of associated appeals processes. The board must submit to the department, by October 1 each year, a report that reconciles the costs of investigations and appeals with the fines, penalties, and sanctions charged to member schools and coaches for each fiscal year.

Recruiting

Florida law requires the FHSAA to adopt bylaws prohibiting the recruitment of student athletes. Currently, the bylaws prohibit member schools from recruiting student athletes for athletic purposes. "Athletic recruiting" is "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 the purpose of participating in interscholastic athletics."¹² The bylaws set forth specific behaviors that constitute recruiting, as well as identify persons who are considered to represent a school's athletic interests.¹³

If it is determined that a school has recruited a student in violation of FHSAA bylaws, the FHSAA may require the school to participate in a higher classification for the sport in which the recruited student competes for a minimum of one classification cycle, in addition to any other appropriate fine and sanction imposed on the school, its coaches, or adult representative.¹⁴ 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; or
- Accepted any benefit or any promise of benefit not generally available to the school's students or family members or is based in any way on athletic interest, potential, or performance.¹⁵

The bylaws may not prospectively limit the competition of student athletes for rule violations of their adult representatives, their school or its coaches. A student athlete may not be unfairly punished for eligibility or recruiting violations perpetrated by a teammate, coach, or administrator. Contests may not be forfeited for inadvertent eligibility violations unless the coach or a school administrator should have known of the violation. Contests may not be forfeited for other eligibility violations or recruiting violations in excess of the number of

¹² Section 36.2.1 of Policy 36 of the *FHSAA Handbook*.

¹³ Policy 36 of the *FHSAA Handbook*.

¹⁴ Section 1006.20(2)(b), F.S.

¹⁵ *Id.*

contests that the coaches and adult representatives responsible for the violations are prospectively suspended.¹⁶

Effect of Proposed Changes

The bill declares that a student is presumed eligible to participate in interscholastic extracurricular activities and remains eligible if the student remains in compliance with the eligibility criteria. The FHSAA must adopt bylaws that ensure that a student remains eligible once enrolled in school so long as the student remains enrolled and complies with applicable requirements. Any rule, eligibility, and recruiting violations by a teammate, coach, administrator, school, or adult representative may not be used against a student.

A student may be declared ineligible if the student or parent has 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.

Ineligibility requirements must be applied to public and private school students as well as to transfer and nontransfer students equally. Violations must be substantially related to specific, important objectives and must be limited to address only the minimal requirements necessary to accomplish the objectives.

By October 1, 2013, the FHSAA must conduct a comprehensive review of its bylaws, policies, and administrative procedures to determine compliance with these requirements. The FHSAA must provide to the Commissioner, the Governor, the President of the Senate, and the Speaker of the House of Representatives a detailed report 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. Any bylaws, policies, or administrative procedures that are noncompliant are void as of July 1, 2013.

Process and Standards for Eligibility Determinations

Present Situation

The FHSAA must adopt bylaws that regulate persons who conduct investigations on behalf of the FHSAA. The bylaws must require an investigator to:

- Undergo level 2 background screening under s. 435.04, F.S., establishing that the investigator has not committed any disqualifying offense listed in s. 435.04, F.S.;¹⁷
- Be appointed as an investigator by the executive director;
- Carry a photo identification card that shows the FHSAA name, logo, and the investigator's official title; and
- Adhere to specified guidelines.

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. only, unless previously agreed to by the interviewee, allow the parent of any student being interviewed to be 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.

¹⁶ Section 1006.20(2)(h), F.S.

¹⁷ The investigator may provide proof of compliance with level 2 screening standards submitted within the previous 5 years to meet any professional licensure requirements so long as the investigator has not had a break in service from a position that requires level 2 screening for more than 90 days, and the investigator submits, under penalty of perjury, an affidavit verifying that the investigator has not committed any disqualifying offense listed in s. 435.04 and is in full compliance with s. 1006.20(2)(e).

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

- Ineligibility must be established by clear and convincing evidence;¹⁸
- 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;¹⁹
- Eligibility determinations must be made by the executive director or designee for an unbiased and objective determination of eligibility;²⁰ 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.^{21;22}

Appeals of ineligibility determinations must be expedited so that disposition of the appeal can be made before the end of the applicable sports season, if possible.²³ A school or student filing the appeal may present information and evidence that was not available at the time of the initial determination or if the determination was not made by an unbiased, objective individual using a process allowing full due process rights to be heard and to present evidence. If such evidence is presented, a de novo decision must be made by the committee on appeals or board hearing the appeal; or the determination may be suspended and remanded for a new determination based on all the evidence. A de novo decision made on appeal must set forth, in writing, the findings of fact and specific violation upon which the decision is based. If a de novo decision is not required, the decision appealed must be set aside if the ineligibility determination was not based on clear and convincing evidence. Any further appeal must be considered on a record that includes all evidence presented.²⁴

Effect of Proposed Changes

In addition to the requirements stated above, investigators retained by the FHSAA must maintain a valid class "C" license as established in chapter 493. The investigator must advise at least one parent of any student being interviewed that one or more parents are entitled to be present during the interview. The bill prohibits an investigator or other employee of the FHSAA to conduct searches of residences or other private areas during the course of an investigation.

The student, parent, coach, and school must 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 must provide a copy of the certification to the commissioner within one business day after signing the certification.

During the investigation, the investigator and the individual making the determination must receive and consider all evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs and such evidence shall be admissible in the proceeding even if it would not be admissible in a trial court.

The student, parent, coach, and school must 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.

The bill requires an investigation conducted by the FHSAA to be completed within 90 days after the onset of the investigation, and prohibits the FHSAA from contracting or paying for more than 520 hours of work for any investigation.

¹⁸ Section 1006.20(2)(g)1., F.S.

¹⁹ Section 1006.20(2)(g)2., F.S.

²⁰ Section 1006.20(2)(g)3., F.S.

²¹ Section 1006.20(2)(g)4., F.S.

²² In lieu of the bylaws the FHSAA may adopt bylaws providing as a minimum the procedural safeguards of ss. 120.569 and 120.57, making appropriate provision for appointment of unbiased and qualified hearing officers. Section 1006.20(2)(h), F.S.

²³ Section 1006.20(7)(f), F.S.

²⁴ Section 1006.20(7)(g), F.S.

Student residence and transfer approvals must 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 remains eligible to participate in competitions under the jurisdiction of the FHSAA. The FHSAA may challenge eligibility determinations by filing a petition for a hearing with the Division of Administrative Hearings, with a copy provided to the student, parent, coach, and school. The FHSAA must demonstrate by clear and convincing evidence that the student is ineligible. The student remains eligible unless a final order finding the student ineligible is rendered. If the student remains eligible, the final order shall award all reasonable costs and attorney fees to be paid to all respondents by the FHSAA. The FHSAA may not seek to recoup these costs from any other person, entity, or party.

B. SECTION DIRECTORY:

Section 1. Reenacts and amends s. 1002.20(17), F.S.; making technical changes.

Section 2. Amends s. 1006.15, F.S.; revising criteria for student eligibility for participation in extracurricular activities to include students in charter schools.

Section 3. Amends s. 1006.20, F.S.; revising the criteria for bylaws, policies, or guidelines adopted by the Florida High School Athletic Association; requiring the association to complete a review by a specified date; requiring that the association submit a report to the Commissioner of Education, the Governor, and the Legislature; providing requirements for investigations and investigators; establishing notice requirements to specified parties; providing procedures for student residence and transfer approvals; providing that the burden is on the FHSAA to demonstrate by clear and convincing evidence that a student is ineligible to participate in a high school athletic competition; requiring that the FHSAA pay costs and attorney fees in certain circumstances; revising the composition of the board of directors of the association and terms of office; revising what constitutes a quorum of the board of directors; providing for the appointment of an executive director; providing restrictions for the salary, benefits, per diem, and travel expenses of the association's executive director; providing that members of the association's public liaison advisory committee are entitled to reimbursement for per diem and travel expenses at the same rate as state employees; providing restrictions on the levy of dues and fees and the collection of contest receipts; providing authority to levy fines, penalties, and sanctions against schools and coaches; providing for expiration of the terms of members of the 2012-2013 board of directors.

Section 4. Provides an effective date of July 1, 2013.

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:

The bill provides restrictions on the levy of dues and fees and the collection of contest receipts which should reduce expenditures for local school districts.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.