

**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.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/SB 1026

INTRODUCER: Education Pre-K - 12 Committee and Senator Simmons

SUBJECT: High School Athletics

DATE: February 17, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bailey</u>	<u>Klebacha</u>	<u>ED</u>	<b>Fav/CS</b>
2.	<u>Sikes</u>	<u>Elwell</u>	<u>AED</u>	<b>Recommend: Fav/CS</b>
3.	<u>Sikes</u>	<u>Kynoch</u>	<u>AP</u>	<b>Pre-meeting</b>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1026 modifies the membership, oversight, and related fees required by the Florida High School Athletic Association (FHSAA), the governing nonprofit organization for athletics in Florida public schools. Specifically, the bill:

- Allows member schools to join the FHSAA on a per-sport basis;
- Authorizes the commissioner to identify the other associations that govern interscholastic athletic competition in compliance with law;
- Prohibits the FHSAA from discouraging schools from simultaneously maintaining membership in the FHSAA and another athletic association;
- Provides for an informal and formal appeals process for resolving student eligibility disputes; and
- Prohibits the FHSAA special event fees, sanctioning fees, third party sanctioning fees, or contest receipts collected annually by the FHSAA from exceeding the actual cost of performing the function that is the basis of the fee.

The bill has no impact on state funds.

The bill takes effect on July 1, 2016.

## II. Present Situation:

### Florida High School Athletics

The Florida High School Athletic Association (FHSAA) is statutorily designated as the governing nonprofit organization of athletics in Florida public schools in grades 6 through 12.<sup>1</sup> The FHSAA is not a state agency, but is assigned quasi-governmental functions.<sup>2</sup>

#### *Membership in the FHSAA*

Any high school in the state, including charter schools, virtual schools, and home education cooperatives,<sup>3</sup> may become a member of the FHSAA and participate in the activities of the FHSAA.<sup>4</sup> A private school that wishes to engage in high school athletic competition with a public high school may become a member of the FHSAA.<sup>5</sup> Membership in the FHSAA is not mandatory for any school.<sup>6</sup> The FHSAA is a membership-driven organization, encompassing 702 member combination schools<sup>7</sup> and senior high schools,<sup>8</sup> and 102 middle schools.<sup>9</sup>

The FHSAA may not deny or discourage interscholastic<sup>10</sup> competition between its member schools and non-FHSAA member schools, including members of another athletic governing organization, and is prohibited from taking retributory or discriminatory actions against member schools who participate in interscholastic competition with non-FHSAA member schools.<sup>11</sup>

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<sup>1</sup> Section 1006.20, F.S.

<sup>2</sup> *Id.*

<sup>3</sup> A home education cooperative is defined by the FHSAA as a parent-directed group of individual home education students that provides opportunities for interscholastic athletic competition to those students and may include students in grades 6-12. Bylaw 3.2.2.4, FHSAA. Florida High School Athletic Association, *2015-16 FHSAA Bylaws* (2015-16), available at [http://www.fhsaa.org/sites/default/files/attachments/2010/09/16/node-235/1516\\_handbook\\_bylaws.pdf](http://www.fhsaa.org/sites/default/files/attachments/2010/09/16/node-235/1516_handbook_bylaws.pdf).

<sup>4</sup> Section 1006.20, F.S.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> A combination school is defined by the FHSAA as any traditional public school, charter school, virtual school, private school, or university laboratory school that provides instruction to students in both middle/junior high school grades and/or senior high school grades under the direction of a single principal and located on the same campus, except for 9-12 high schools which have 9th grade centers at a separate location, with participation and enrollment based on a single campus site. A combination school must hold membership as a middle school if its terminal grade is grade 6 through 8, as a junior high school if its terminal grade is grade 9, or as a senior high school if its terminal grade is grade 10 through 12. Bylaw 3.2.2.3, FHSAA. Florida High School Athletic Association, *2015-16 FHSAA Bylaws* (2015-16), available at [http://www.fhsaa.org/sites/default/files/attachments/2010/09/16/node-235/1516\\_handbook\\_bylaws.pdf](http://www.fhsaa.org/sites/default/files/attachments/2010/09/16/node-235/1516_handbook_bylaws.pdf).

<sup>8</sup> A senior high school is defined by the FHSAA as any traditional public school, charter school, virtual school, private school, or university laboratory school that provides instruction to students at one or more grade levels from 9 through 12. Bylaw 3.2.2.1, FHSAA. Florida High School Athletic Association, *2015-16 FHSAA Bylaws* (2015-16), available at [http://www.fhsaa.org/sites/default/files/attachments/2010/09/16/node-235/1516\\_handbook\\_bylaws.pdf](http://www.fhsaa.org/sites/default/files/attachments/2010/09/16/node-235/1516_handbook_bylaws.pdf).

<sup>9</sup> Florida High School Athletic Association, *Who we are* (2015), available at <http://www.fhsaa.org/about>.

<sup>10</sup> Bylaw 8.1.1, FHSAA defines an interscholastic contest as any competition between organized teams or individuals of different schools in a sport recognized or sanctioned by the FHSAA and is subject to all regulations pertaining to such contests. Florida High School Athletic Association, *2015-16 FHSAA Bylaws* (2015-16), available at [http://www.fhsaa.org/sites/default/files/attachments/2010/09/16/node-235/1516\\_handbook\\_bylaws.pdf](http://www.fhsaa.org/sites/default/files/attachments/2010/09/16/node-235/1516_handbook_bylaws.pdf).

<sup>11</sup> Section 1006.20, F.S.

### ***Membership in the National Federation of State High School Associations***

The National Federation of State High School Associations (NFSH) is the national leadership organization for high school athletic and performing arts activities.<sup>12</sup> The voting members must be state high school athletic associations.<sup>13</sup> The FHSAA is the voting member of the NFHS for Florida.<sup>14</sup> The FHSAA has been a member of the NFHS since 1926.<sup>15</sup> Affiliate membership, with rights of participation in meetings and activities, but without voting privileges, or eligibility for elected or appointed offices or assignments, may be granted to various organizations.<sup>16</sup> Affiliate members do not have sanctioning authority, as that lies with the voting member.<sup>17</sup>

A state high school athletic association may not become an affiliate member without the state's voting member approving of such affiliate membership.<sup>18</sup> Likewise, Florida statute provides that the FHSAA may not unreasonably withhold approval of an application to become an affiliate member of the NFHS that is submitted by an organization that governs interscholastic athletic competition in Florida.<sup>19</sup>

### ***Appeals Process***

The FHSAA procedures provide each student the opportunity to appeal an unfavorable ruling with regard to his or her eligibility to compete.<sup>20</sup>

The initial appeal is made to a committee on appeals within the administrative region where the student lives.<sup>21</sup> The FHSAA bylaws establish the number, size, and composition of each committee on appeals.<sup>22</sup> The bylaws specify the process and standards for eligibility determinations.<sup>23</sup>

The appeals process for eligibility violations are as follows:

- An appeal must be filed with the executive director to make the initial determination of ineligibility.<sup>24</sup>

<sup>12</sup> NFHS membership includes, but is not limited to state high school athletic associations. Membership is divided into voting members and affiliate members National Federation of State High School Associations, *NFHS Brochure*, available at <http://www.nfhs.org/media/885655/nfhs-company-brochure.pdf>. See, ss. 2.1-2.2, NFHS Handbook.

<sup>13</sup> See s. 2.1, NFSH Handbook 2015-2016. National Federation of State High School Associations, *NFHS Annual Report 2015-2016*, available at <https://www.nfhs.org/media/1015824/2015-16-nfhs-handbook.pdf>.

<sup>14</sup> National Federation of State High School Associations, *NFHS Annual Report 2015-2016*, Directory of Member State Associations and Staff members, available at <https://www.nfhs.org/media/1015824/2015-16-nfhs-handbook.pdf>. Bylaw 1.1.4, FHSAA.

<sup>15</sup> National Federation of State High School Associations, *NFHS Annual Report 2015-2016*, Directory of Member State Associations and Staff members, available at <https://www.nfhs.org/media/1015824/2015-16-nfhs-handbook.pdf>.

<sup>16</sup> See s. 2.2, NFHS Handbook 2015-2016. National Federation of State High School Associations, *NFHS Annual Report 2015-2016*, available at <https://www.nfhs.org/media/1015824/2015-16-nfhs-handbook.pdf>.

<sup>17</sup> See s. 2.21(c), NFHS Handbook 2015-2016. National Federation of State High School Associations, *NFHS Annual Report 2015-2016*, available at <https://www.nfhs.org/media/1015824/2015-16-nfhs-handbook.pdf>.

<sup>18</sup> See ss. 2.2(e), 2.21(b) NFHS Handbook 2015-2016. National Federation of State High School Associations, *NFHS Annual Report 2015-2016*, available at <https://www.nfhs.org/media/1015824/2015-16-nfhs-handbook.pdf>.

<sup>19</sup> Section 1006.20(1), F.S.

<sup>20</sup> Section 1006.20(7), F.S.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Bylaw 10.4.1, FHSAA.

<sup>24</sup> Bylaw 10.6.1, FHSAA.

- An initial appeal is heard by the Sectional Appeals Committee.<sup>25</sup>
- Unfavorable decisions found on the initial appeal rendered by the Sectional Appeals Committee can be heard by the committee again, if new information is provided, or by the board of directors.<sup>26</sup>
- A request for mediation must be made in writing to the executive director, within 5 business days of the Sectional Appeals Committee hearing.<sup>27</sup>
- If the matter is unresolved, the notice of appeal must be in writing and received by the board of directors within 5 business days following the mediation session.<sup>28</sup>
- The decision of the board of directors in each case is by a majority vote and is final.<sup>29</sup>

### *Finances*

The executive authority of the FHSAA is vested in its board of directors.<sup>30</sup> One of the duties of the board of directors, acting as a body and in accordance with the FHSAA's bylaws, is to levy annual dues and other fees and to set the percentage of contest receipts to be collected by the FHSAA.<sup>31</sup> The board of directors establishes policies for the approval of hosting interscholastic multi-team athletic events, tournaments, and sanctioned events.<sup>32</sup>

FHSAA receives revenue from a variety of sources, including membership dues, special event fees,<sup>33</sup> fines, corporate sponsorships, sanctioning fees,<sup>34</sup> third party sanctioning fees,<sup>35</sup> contest receipts,<sup>36</sup> and interest on investments.<sup>37</sup> Among other things, FHSAA charges sanctioning fees for third party athletic events involving member schools held by a corporation or promoter.<sup>38</sup>

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<sup>25</sup> Bylaw 10.5.5, FHSAA.

<sup>26</sup> Bylaw 10.5.6, FHSAA.

<sup>27</sup> Bylaw 10.6.5.1, FHSAA.

<sup>28</sup> Bylaw 10.6.5.6, FHSAA.

<sup>29</sup> Bylaw 10.7.3.1, FHSAA.

<sup>30</sup> Section 1006.20(4), F.S.

<sup>31</sup> Section 1006.20(4)(e)4., F.S.

<sup>32</sup> Policy 7 and 9.9, FHSAA. *Administrative Policies of the Florida High School Athletic Association, Inc.* (2015-16), available at [http://www.fhsaa.org/sites/default/files/attachments/2010/09/16/node-235/1516\\_handbook\\_policies.pdf](http://www.fhsaa.org/sites/default/files/attachments/2010/09/16/node-235/1516_handbook_policies.pdf).

<sup>33</sup> A special event is, but not limited to, a preseason jamboree game or tournament, preseason classic game or tournament, spring football jamboree or classic, football post season game, and third party organized or sponsored games or tournaments. Policy 7.1.3, FHSAA. *Administrative Policies of the Florida High School Athletic Association, Inc.* (2015-16), available at [http://www.fhsaa.org/sites/default/files/attachments/2010/09/16/node-235/1516\\_handbook\\_policies.pdf](http://www.fhsaa.org/sites/default/files/attachments/2010/09/16/node-235/1516_handbook_policies.pdf).

<sup>34</sup> A sanctioned event is any event that requires a sanction application by the FHSAA and/or the NFHS as part of the requirement for the event. Policy 7.1.4, FHSAA. *Administrative Policies of the Florida High School Athletic Association, Inc.* (2015-16), available at [http://www.fhsaa.org/sites/default/files/attachments/2010/09/16/node-235/1516\\_handbook\\_policies.pdf](http://www.fhsaa.org/sites/default/files/attachments/2010/09/16/node-235/1516_handbook_policies.pdf).

<sup>35</sup> A third party is any entity that is not a member of the FHSAA and is organizing, producing, or managing an event that involves FHSAA member schools or NFHS schools from out of state, regardless of where the event is held. Policy 7.8, FHSAA. *Administrative Policies of the Florida High School Athletic Association, Inc.* (2015-16), available at [http://www.fhsaa.org/sites/default/files/attachments/2010/09/16/node-235/1516\\_handbook\\_policies.pdf](http://www.fhsaa.org/sites/default/files/attachments/2010/09/16/node-235/1516_handbook_policies.pdf).

<sup>36</sup> An interscholastic contest is any competition between organized teams of different schools in a sport recognized or sanctioned by the FHSAA. All contests must have a fully executed contract as stated in Bylaw 8.4, FHSAA.

<sup>37</sup> Florida High School Athletic Association, *2015-16 Fiscal Year Budget*, available at [http://www.fhsaa.org/sites/default/files/orig\\_uploads/finance/finalbudget2015-16.pdf](http://www.fhsaa.org/sites/default/files/orig_uploads/finance/finalbudget2015-16.pdf).

<sup>38</sup> A third party direct event is any high school athletic event conducted by a corporation or promoter using one or more FHSAA member schools or one or more NFHS member schools or a combination thereof, where the event sponsor is requesting FHSAA or NFHS sanction of the event. Florida High School Athletic Association, *2015-16 Event Sanction Fees*

These fees range from \$2,300 per every two teams for football jamborees to \$50 per every four teams in sports like bowling or cheerleading.<sup>39</sup> During the 2015-2016 fiscal year, the FHSAA will receive in revenue approximately \$62,000 from tournaments, \$328,800 from special events, and \$149,000 in third-party sanctioning fees.<sup>40</sup>

Current law requires the FHSAA to have an annual financial audit<sup>41</sup> of its accounts and records by an independent certified public accountant retained by the FHSAA and paid from its funds.<sup>42</sup> The accountant must furnish a copy of the audit report to the Auditor General.<sup>43</sup>

Additionally, the FHSAA, as the designated governing nonprofit organization of athletics in Florida public schools, must keep adequate and complete records of all revenues and expenditures.<sup>44</sup> All records from the FHSAA must be open for inspection by the Auditor General.<sup>45</sup>

### III. Effect of Proposed Changes:

#### Florida High School Athletics

This bill modifies the membership provisions, oversight, and related fees required by the governing nonprofit organization of athletics in Florida. Specifically, the bill:

- Allows member schools to join the Florida High School Athletic Association (FHSAA) on a per-sport basis;
- Authorizes the commissioner to identify the other associations that govern interscholastic athletic competition in compliance with law;
- Prohibits the FHSAA from discouraging schools from simultaneously maintaining membership in the FHSAA and another athletic association;
- Provides for an informal and formal appeals process for resolving student eligibility disputes; and
- Requires any special event fees, sanctioning fees, or contest receipts collected annually by the FHSAA to not exceed the actual cost of performing the function that is the basis of the fee.

#### *Membership in the FHSAA*

The bill:

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for Third Party Direct Contract with FHSAA (2014-15), available at

[http://www.fhsaa.org/sites/default/files/orig\\_uploads/forms/2015-16\\_third\\_party\\_fees.pdf](http://www.fhsaa.org/sites/default/files/orig_uploads/forms/2015-16_third_party_fees.pdf).

<sup>39</sup> Florida High School Athletic Association, *2015-16 Event Sanction Fees for Third Party Direct Contract with FHSAA* (2014-15), available at [http://www.fhsaa.org/sites/default/files/orig\\_uploads/forms/2015-16\\_third\\_party\\_fees.pdf](http://www.fhsaa.org/sites/default/files/orig_uploads/forms/2015-16_third_party_fees.pdf).

<sup>40</sup> Florida High School Athletic Association, *2015-16 Fiscal Year Budget*, available at [http://www.fhsaa.org/sites/default/files/orig\\_uploads/finance/finalbudget2015-16.pdf](http://www.fhsaa.org/sites/default/files/orig_uploads/finance/finalbudget2015-16.pdf).

<sup>41</sup> “Financial audit” means an examination of financial statements in order to express an opinion on the fairness with which they are presented in conformity with generally accepted accounting principles and an examination to determine whether operations are properly conducted in accordance with legal and regulatory requirements. Section 11.45(1)(c), F.S.

<sup>42</sup> Section 1006.19(1), F.S.

<sup>43</sup> *Id.*

<sup>44</sup> Section 1006.19(2), F.S.

<sup>45</sup> *Id.*

- Allows a school to join FHSAA as a full-time member or on a per-sport basis. This offers a school the option of joining other athletic associations by individual sport while maintaining membership in FHSAA for other sports; and
- Prohibits the FHSAA from taking retributory or discriminatory actions against members seeking membership in other associations for a sport for which they are not a member of the FHSAA.

### ***Membership in the National Federation of State High School Associations***

The bill limits the means by which the FHSAA may withhold approval of an association applying for a National Federation of State High School Associations affiliate membership by providing that the Commissioner of Education, not the FHSAA, may determine whether the applicant that governs interscholastic athletic competition does so in compliance with law.

### ***Appeals Process***

The bill requires the FHSAA to provide an opportunity to resolve ineligibility determinations through an informal and formal appeal process.

The bill creates a new informal conference procedure to be held within 10 days of the initial ineligibility determination. The new informal process allows for a more timely resolution of student eligibility disputes. The bill allows for the informal conference to be held by telephone or by video conference, removing the requirement for a student to appear in person.

The bill specifies that the FHSAA must provide for a formal appeals process for the timely and cost-effective resolution of an eligibility dispute by a mutually agreed upon neutral third party. In effect, this could eliminate the cost of mediation which is currently shared equally by both parties.<sup>46</sup>

The bill requires the final determination to be issued no later than 30 days after the informal conference, unless there is an agreed upon extension.

### ***Finances***

The bill prohibits the FHSAA special event fees, sanctioning fees, third party sanctioning fees, or contest receipts collected annually by the FHSAA from exceeding the actual cost of performing the function that is the basis of the fee.

In effect, the bill limits actual costs, public spending on athletic events, and fees for corporate sponsors and promoters that organize high school athletic events.

The bill takes effect on July 1, 2016.

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<sup>46</sup> Bylaw 10.6.5.7, FHSAA.

**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:

Under CS/SB 1026, the Florida High School Athletics Association (FHSAA) may experience additional costs in adopting and implementing the eligibility appeals process required in the bill.

## C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 1006.20 of the Florida Statutes.

**IX. 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 January 14, 2016:**

The committee substitute revises the current process and standards for FHSAA

determinations of eligibility and specifies for an informal and formal appealing process for resolving student eligibility disputes.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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