

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7039 PCB EDC 16-01 Extracurricular Activities

**SPONSOR(S):** Education Committee, Diaz, Jr.

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Education Committee	15 Y, 0 N	Fudge	Mizereck
1) Education Appropriations Subcommittee	13 Y, 0 N	Dobson	Heflin

### SUMMARY ANALYSIS

The Florida High School Athletic Association (FHSAA) governs high school athletics in grades 6 through 12. The bill increases accountability for the FHSAA by:

- Providing that special event fees, sanctioning fees, and gate receipts annually collected by FHSAA must reflect its actual cost in performing the function that is the basis of the fee;
- Requiring admission prices based upon the day, multiple-days or per-event basis;
- Requiring FHSAA to provide for resolution of eligibility disputes through an informal conference procedure, including waiver of its bylaws, and neutral third party review;
- Prohibiting a student from being declared ineligible until the neutral third party review is completed;
- Requiring eligibility proceedings to be conducted in the county where the student resides;
- Establishing escalating penalties for recruiting; and
- Allowing member schools to participate in FHSAA on a per-sport basis.

The bill authorizes any public school student, home education student, or student enrolled in an unaffiliated private school to participate in extracurricular activities offered by a school if the activity is not offered by the student's school or program. All students participating under these provisions must meet established academic and conduct standards. Regarding participation in interscholastic athletics, students enrolled in an unaffiliated private school, home education, full-time public virtual education, or any public school that does not offer any athletic programs may participate only at the public school where the student is first registered. The parent of a student participating under these provisions is responsible for transporting the student to and from the public school.

Additionally, the bill limits the reasons a student may be declared ineligible for interscholastic athletics and prohibits school boards and private schools from establishing transfer eligibility policies that are more stringent than the policies established by FHSAA or that treat transfers by student athletes differently than transfers by other students.

The bill does not have a fiscal impact on state or local governments.

Except as otherwise provided, the bill takes effect July 1, 2016.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Florida High School Athletic Association

##### **Present Situation**

The Florida High School Athletic Association (FHSAA) is statutorily designated as the governing nonprofit organization for interscholastic athletics in Florida public schools in grades 6 through 12. The FHSAA is not a state agency, but is assigned quasi-governmental functions. If the FHSAA fails to meet its obligations and responsibilities, the Commissioner of Education (commissioner) is directed to designate a nonprofit organization to manage interscholastic athletics with the approval of the State Board of Education.<sup>1</sup>

##### Membership

Any high school, middle school, or combination school,<sup>2</sup> including charter schools, virtual schools, private schools and home education cooperatives,<sup>3</sup> may become a member of the FHSAA and participate in FHSAA activities. Membership is not mandatory for any school.<sup>4</sup> FHSAA may not deny or discourage interscholastic competition between member and nonmember Florida schools, including members of another athletic governing organization.<sup>5</sup> However, FHSAA member schools may not join other athletic governing associations or participate in FHSAA sanctioned activities on a per sport basis.<sup>6</sup>

##### Appeals of Eligibility Disputes

The FHSAA must adopt bylaws specifying the process and standards for eligibility determinations. 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.<sup>7</sup>

The appeals process for eligibility violations is as follows:

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

<sup>2</sup> A combination school is any school that serves both students in high school and the middle school grades; elementary, middle or high school grades combined; or elementary and middle grades combined, e.g., K-12, K-8, 6-12, or 7-12. Bylaw 3.2.2.3, FHSAA.

<sup>3</sup> A “home education cooperative” is 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 through 12. Bylaw 3.2.2.4, FHSAA.

<sup>4</sup> Bylaws 3.2.2 (types of member schools) and 3.7, FHSAA (procedures for admittance).

<sup>5</sup> Section 1006.20(1), F.S. FHSAA has adopted bylaws that require non-FHSAA member Florida schools that compete with FHSAA member schools to verify, among other things, that the school holds liability insurance coverage and that their student athletes meet the same eligibility requirements as member school student athletes, undergo medical evaluations, have medical insurance coverage, and submit liability waivers. Bylaw 8.3.1, FHSAA.

<sup>6</sup> Bylaw 3.3.1, FHSAA. Member schools must adopt the FHSAA bylaws annually as the rules governing its interscholastic athletic programs. *Id.*

<sup>7</sup> Section 1006.20(2)(g), F.S. As an alternative, the law authorizes FHSAA to instead provide the procedural safeguards of ss. 120.569 and 120.57, F.S., making appropriate provision for appointment of unbiased and qualified hearing officers. Section 1006.20(2)(h), F.S.

- FHSAA’s executive director makes the initial determination of ineligibility.
- The member school principal may appeal the ruling if the principal takes issue with the ruling or the student requests an appeal.<sup>8</sup>
- Initial appeals of ineligibility determinations are heard by the Sectional Appeals Committee.
- An unfavorable decision on the initial appeal may be appealed to the Sectional Appeals Committee if the student athlete wishes to submit new evidence in his or her defense.
- An unfavorable decision on the initial appeal may be appealed to the FHSAA Board of Directors if the student athlete has no new evidence to submit in his or her defense.<sup>9</sup>
- A member school may request mediation in lieu of appealing to the Board of Directors. The mediator is selected by FHSAA from a panel of mediators established by the Board of Directors. If an agreement is not reached through mediation, the school may proceed with the appeal to the Board of Directors.<sup>10</sup>
- The decision of the Board of Directors is final.<sup>11</sup>

At no stage in the appeals process is the determination regarding eligibility issued by a neutral third party.

### **Effect of Proposed Changes**

The bill increases the accountability of the FHSAA by, among other things, limiting certain fees to actual costs and providing for neutral third party review of eligibility disputes. The bill also limits the reasons a student may be declared ineligible for interscholastic athletics and expands student opportunities to participate in extracurricular activities as a whole.

### Membership

The bill authorizes schools to join FHSAA on a per-sport basis. Schools would also be allowed to join other organizations for some sports, while maintaining membership in FHSAA for others. The FHSAA is prohibited from discriminating against its member schools that join other associations for a sport for which they are not a member of the FHSAA. The commissioner may identify other associations that govern interscholastic athletic competition that comply with the requirements of the National Federation of State High School Associations (NFSHA) and the FHSAA may not withhold its approval of an application to become a member of the NFSHA filed by an association that meets the requirements of the NFSHA.

### Appeals of Eligibility Disputes

The bill requires FHSAA to provide an opportunity to resolve ineligibility determinations through an informal conference, which may include waiver of the bylaws governing the eligibility determination. The conference must be held within 10 days of the initial ineligibility determination. If the eligibility dispute is not resolved at the informal conference, FHSAA must provide for a cost-effective and timely neutral third-party review, which may include use of retired or former judges, mediation, or arbitration. The neutral third party must be selected by the parent and the review must be completed within 30 days of the informal conference. A student athlete may not be declared ineligible until the neutral third-party review is completed. All eligibility proceedings must be conducted in the county where the student resides. Informal conferences and neutral third party hearings may be conducted by telephone, videoconference, or other electronic means.

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<sup>8</sup> Bylaw 10.4.1, FHSAA.

<sup>9</sup> Bylaws 10.5.5 and 10.5.6, FHSAA.

<sup>10</sup> Bylaw 10.6.5, FHSAA.

<sup>11</sup> Bylaw 10.7.3.1, FHSAA.

## Participation in Extracurricular Activities

### **Present Situation**

Florida law defines interscholastic extracurricular activities as any school-authorized athletic or education-related student activity that occurs during or outside of the regular instructional school day.<sup>12</sup> Extracurricular activities include such activities as interscholastic and intramural athletics, drama, marching band, chorus, and academic and social clubs.

Florida law requires all students participating in extracurricular activities to meet basic academic and conduct requirements. It also provides opportunities for students enrolled in home education, certain public schools of choice, and certain private schools to participate in extracurricular activities at a traditional public school, because the extracurricular activities available to these students are limited due to their choice of school or program.<sup>13</sup> Outside these statutory requirements, nonathletic activities are largely governed by district school board or private school policies. Governance of interscholastic athletics is shared by the FHSAA and its member public and private schools. The law provides specific direction to FHSAA on such eligibility matters as residency, transfer, recruiting, and medical evaluations. FHSAA has discretion to adopt any other regulations on eligibility, provided they do not conflict with statutory requirements.<sup>14</sup> FHSAA bylaws authorize member schools and school districts to adopt more stringent eligibility requirements for interscholastic athletics than FHSAA's requirements.<sup>15</sup>

### General Eligibility

Florida law specifies general academic and conduct requirements a student must meet in order to be eligible for participation in any extracurricular activity. To be eligible, a high school student<sup>16</sup> must:

- Maintain either a 2.0 grade point average (GPA) or above on a 4.0 scale in the semester preceding participation;<sup>17</sup>
- Execute and fulfill the requirements of an academic performance contract if the student's GPA falls below 2.0;<sup>18</sup>
- Have a cumulative GPA of 2.0 or above in his or her junior or senior year; and
- Maintain satisfactory conduct in accordance with the school's code of student conduct.<sup>19</sup>

The law authorizes a school district to set additional eligibility requirements, but the requirements must not make participation less accessible to home education students than to other students.<sup>20</sup>

### Eligibility and School Choice

Florida law authorizes students who are enrolled in a charter school, the Florida Virtual School (FLVS), or a home education program to participate in extracurricular activities at a traditional public school, if requirements are met.<sup>21</sup> Additionally, FHSAA has adopted a bylaw allowing a student enrolled in a magnet school, alternative school, or other public school of choice to participate in interscholastic

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<sup>12</sup> See s. 1006.15(2), F.S.

<sup>13</sup> Section 1006.15(3)(b), (c), (d), and (e), F.S.

<sup>14</sup> Section 1006.20(1) and (2)(a)-(c), F.S.

<sup>15</sup> Bylaw 9.1.1.1, FHSAA.

<sup>16</sup> For purposes of athletics in public K-12 schools, high school includes grade six through 12. Section 1006.20(1), F.S.

<sup>17</sup> A home education student must submit form EL9, which requires the parent to list courses taken by the student and calculate a GPA. FHSAA, *Form EL9- Home Education Student Academic Progress Report* (June 2010), available at [http://www.fhsaa.org/sites/default/files/el09\\_home\\_rep.pdf](http://www.fhsaa.org/sites/default/files/el09_home_rep.pdf).

<sup>18</sup> An academic performance contract is an agreement between the student, the district school board, the appropriate governing association, and the student's parents, which at a minimum requires the student to attend summer school or its graded equivalent, between grades nine and 10 or grades 10 and 11, as necessary. Section 1006.15(3)(a), F.S.

<sup>19</sup> Section 1006.15(3)(a), F.S. The eligibility of a student who is convicted of, or found to have committed, a felony or delinquent act that would have been a felony if committed by an adult is governed by district school board policy. *Id.*

<sup>20</sup> Section 1006.15(4), F.S.

<sup>21</sup> Section 1006.15(3)(c), (d), and (e), F.S. (home education, charter schools, and FLVS).

athletics at a traditional public school.<sup>22</sup> Such eligibility is provided because these choice options offer limited or no extracurricular activities. Generally speaking, such students must:

- Demonstrate educational progress or meet GPA requirements;
- Meet the same residency requirements as other students in the school;
- Meet the same standards of acceptance, behavior, and performance required of other participating students; and
- Register their intent to participate in extracurricular activities before the beginning date of the activity with the public school where the student wishes to participate.<sup>23</sup>

The conditions placed upon participation vary. For example FLVS and home education students may participate in any extracurricular activity offered by the traditional public school. Charter school students may participate in any activity offered by the traditional public school that is not offered by the charter school. Fewer options are available to magnet school and alternative school students. They may only play a sport at a traditional public school if their school does not offer any sport programs at all.<sup>24</sup>

The law also authorizes a student attending a private middle school or high school to participate in interscholastic or intrascholastic sports at a public school that is zoned for the physical address at which the student resides if the private school where the student is enrolled is not a member of the FHSAA, has an enrollment of less than 125 students, and does not offer any interscholastic or intrascholastic athletic programs.<sup>25</sup>

The FHSAA and district school board must adopt guidelines that establish:

- Registration deadlines and procedures for each sport; and
- Student participation requirements that include, but are not limited to, the same standards of eligibility, acceptance, behavior, educational progress, and performance which apply to students attending FHSAA member public and private schools.<sup>26</sup>

A private school student may only participate at the public school in which the student first registers or is a candidate for participation by engaging in a practice. The parents of a participating private school student are responsible for transporting the student to and from the public school. The student's private school, the public school where the student participates in athletics, the district school board, and the FHSAA are exempt from liability arising from any injury that occurs during such transportation.<sup>27</sup>

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<sup>22</sup> Bylaws 9.2.2.4 and 9.2.2.4.1, FHSAA (alternative schools and magnet schools).

<sup>23</sup> Section 1006.15(3)(c), (d), and (e), F.S.

<sup>24</sup> Section 1006.15(3)(c), (d), and (e), F.S.; bylaw 9.2.2.4, FHSAA.

<sup>25</sup> Section 1006.15(8), F.S.

<sup>26</sup> *Id.*

<sup>27</sup> Section 1006.15(8)(b), F.S.

Extracurricular Eligibility by School Type <sup>28</sup>		
Educational Choice Program	The district school at which the student may participate:	Activity the student may participate in:
<b>FLVS</b>	Zoned school or any public school they could attend through controlled open enrollment	Any activity (because FLVS does not offer any extracurriculars)
<b>Homeschool</b>	Zoned school or any public school they could attend through controlled open enrollment	Any activity (because the student does not attend a school)
<b>Charter School</b>	Zoned school or any public school they could attend through controlled open enrollment	<ul style="list-style-type: none"> <li>Any activity that is not offered by the charter school</li> <li>May participate in that particular activity <u>even if the charter school offers other activities</u></li> </ul>
<b>Magnet School or Alternative School</b>	Zoned school or any public school they could attend through controlled open enrollment	Any <u>SPORT</u> , but <u>only if</u> their school does not offer any sports programs
<b>FHSAA Non-Member Private School</b>	Zoned school	Any <u>SPORT</u> , but <u>only if</u> the school: <ul style="list-style-type: none"> <li>Is not an FHSAA member;</li> <li>Enrolls 125 students or less; and</li> <li>Does not offer any sports programs</li> </ul>

### Residency and Transfer

A student may participate in interscholastic 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.<sup>29</sup>

A student may also be eligible to participate in interscholastic athletics 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,<sup>30</sup> which may not be prior to the date authorized for the beginning of practice for the sport.<sup>31</sup>

Although the law requires FHSAA to allow transfer eligibility in its bylaws, it authorizes each district school board and private school to adopt policies regarding such transfers.<sup>32</sup> Consequently, some school districts have adopted policies that require transfer students to wait one calendar year before being eligible to compete in athletics, only allow transfer eligibility if the student makes a full and complete move with all members of his or her household, or require transfer students to compete at the junior varsity level for a period of one year.<sup>33</sup> Some courts have held that school district transfer policies that are more stringent than FHSAA's transfer policies conflict with state law.<sup>34</sup>

### 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." The bylaws set forth specific behaviors that

<sup>28</sup> Section 1006.15(3) and (8), F.S.; bylaw 9.2.2.4, FHSAA.

<sup>29</sup> Section 1006.20(2)(a), F.S.

<sup>30</sup> The FHSAA is the designated governing nonprofit organization of athletics in Florida public schools. Section 1006.20(1), F.S.

<sup>31</sup> Section 2, ch. 2012-188, L.O.F.; 1006.20(2)(a), F.S.

<sup>32</sup> Section 1006.20(2)(a), F.S.

<sup>33</sup> See, e.g., Policy 4.43, Clay County School Board, Policy 8.801, Bay County School Board, and Policy 2431.01, Hillsborough County School Board. These types of residency and transfer policies are similar to the FHSAA residency and transfer bylaws that resulted in the creation of the Student Athlete Recruiting Task Force and recent legislative changes requiring the FHSAA to change its bylaws regarding recruiting.

<sup>34</sup> See *School Board of Hillsborough County v. Kayla Jo Fernandez*, 151 So.3d 1251 (Fla. 2d DCA 2014)(Affirming circuit court order granting transfer student injunctive relief regarding school board determination of ineligibility).

constitute recruiting, as well as identify persons who are considered to represent a school's athletic interests.<sup>35</sup>

A student may only be declared ineligible based upon violation of recruiting rules if the student or parent has:

- Falsified any enrollment or eligibility document; or
- Accepted an impermissible benefit, i.e., 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.<sup>36</sup>

The law places certain limitations on recruiting penalties. 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 contests that the coaches and adult representatives responsible for the violations are prospectively suspended.<sup>37</sup>

## **Effect of Proposed Changes**

### Eligibility and School Choice

Currently, the law only addresses eligibility for extracurricular activities for home education, charter school, FLVS, and certain non-FHSAA-member private school students. The bill repeals these provisions and consolidates them under one provision that accounts for all public school choice options, as well as home education and certain private schools. Accordingly, the bill defines:

- "Public school student" to mean a student who is attending a traditional public school, charter school, magnet school, alternative school, developmental research laboratory school, other public school of choice, or public virtual school.
- "Unaffiliated private school" to mean a private school that is not a member of FHSAA.

Under the bill, a public school student, a student attending an unaffiliated private school, or a home education student is eligible to participate in an extracurricular activity that is not offered by the student's school or home education program. Participation may occur at any public school in the school district in which the student resides or a public school in another school district which the student could choose to attend pursuant to an interdistrict controlled open enrollment policy. A home education student may also develop an agreement to participate at a private school.

All students participating under these provisions must:

- Meet the same academic and conduct standards applicable to other students participating in the activity; and
- Register with the public school his or her intent to participate in extracurricular activities before the beginning date of the activity.

In general, a student may only participate at another public school in extracurricular activities not offered by his or her home school. However, students enrolled in an unaffiliated private school, a home education program, a full-time public virtual school, or a public school that does not offer any

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<sup>35</sup> Section 1006.20(2)(b), F.S.; Policy 36, FHSAA.

<sup>36</sup> Section 1006.20(2)(b), F.S. 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.

*Id.*

<sup>37</sup> Section 1006.20(2)(i), F.S.

interscholastic athletic programs may only participate in athletics at the school in which the student first engages in practice. Thus, if such a student seeks participation in athletics, they must choose one school that offers all of the sports the student seeks to play. Students enrolled in a school that has athletic programs must play the sports offered by their school at that school, but may participate at another public school for sports not offered by their school.

The parent of a student who participates pursuant to these provisions is responsible for transporting the student to and from the school at which the student participates.

### Recruiting

The bill limits the grounds for declaring a student ineligible to participate in interscholastic athletics to:

- Failure to meet medical, academic and conduct requirements;
- Exhaustion of four years of athletic eligibility, graduation from high school, or attainment of the maximum age established by a nonprofit association, whichever occurs first;
- Forfeiture of amateur status;<sup>38</sup> or
- Recruitment when sanctions have been imposed against the responsible parties.

The bill clarifies that a home education student is academically eligible to participate in extracurricular activities if he or she has a satisfactory evaluation of educational progress conducted in accordance with the home education law, rather than meeting GPA requirements. The bill prohibits district school boards or private schools from establishing policies regarding transfer student eligibility for extracurricular activities which are more stringent than the policies established by the governing nonprofit association. Any additional requirements placed on participation in extracurricular activities must be applied equally to all students, regardless of the type of activity, and may not make participation less accessible to a transfer student or a student enrolled in a public school of choice, an unaffiliated private school, or a home education program.

The bill establishes the following escalating penalties for adults who are found, by a preponderance of the evidence, to have committed recruiting:

- First offense, a \$5,000 fine.
- Second offense, a \$7,500 fine, and if the individual is employed by the school district, suspension without pay from any coaching, directing, or promoting any extracurricular activity.
- Third offense, a \$10,000 fine, and revocation, for a period of three years, of any temporary or professional certificate held by the individual.

No school board, alumni association, foundation, parent-teacher association, or booster association may pay the fine or penalty assessed against the individual.

### B. SECTION DIRECTORY:

**Section 1.** Amends s. 1002.20, F.S., conforming cross-references; revising provisions related to participation in extracurricular activities.

**Section 2.** Amends s. 1002.33, F.S., conforming cross-references; revising provisions related to participation in extracurricular activities.

**Section 3.** Amends s. 1006.15, F.S., providing definitions; revising academic eligibility requirements; specifying grounds for student ineligibility for participation in interscholastic athletics; specifying conditions under which students who are enrolled in public schools, certain private schools, or home education programs may participate in the extracurricular activities; deleting obsolete provisions.

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<sup>38</sup> FHSAA bylaws prohibit a student athlete from participating in interscholastic athletics if he or she competes for money or other monetary compensations; receives any award or prize of monetary value which has not been approved by the FHSAA; capitalizes on athletic fame by receiving money or gifts of a monetary nature; signs a professional playing contract in any sport or hires an agent to manage his/her athletic career; or competes under an assumed name. Bylaw 9.9, FHSAA.

**Section 4.** Amends s. 1006.20, F.S., providing requirements regarding fees and admission prices; authorizing member schools to join other associations; revising provisions regarding eligibility, transfer, and recruiting; providing procedures for resolving student eligibility disputes.

**Section 5.** Amend s. 1012.795, F.S., authorizing the Education Practices Commission to suspend the educator certificate of any person who has committed a third recruiting violation.

**Section 6.** Amends s. 1012.796, F.S., prohibiting the commissioner from entering a deferred prosecution agreement if there is probable cause to believe the person engaged in recruiting.

**Section 7.** Provides an effective date of July 1, 2016.

## 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 may reduce FHSAA revenues by limiting certain fees to the actual cost of administering athletic events.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.