

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 Rules

BILL: SB 2012

INTRODUCER: Senator Stargel

SUBJECT: Promoting Equality of Athletic Opportunity

DATE: April 12, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sagues</u>	<u>Bouck</u>	<u>ED</u>	Favorable
2.	<u>Smith</u>	<u>Brown</u>	<u>HP</u>	Favorable
3.	<u>Sagues</u>	<u>Phelps</u>	<u>RC</u>	Pre-meeting

I. Summary:

SB 2012 creates the Promoting Equality of Athletic Opportunity Act with the intent of providing female athletes opportunities to demonstrate their strength, skills, and athletic abilities and enabling them to realize the long-term benefits that result from participating and competing in athletic endeavors. Specifically, the bill:

- Requires interscholastic, intercollegiate, intramural, or club athletic teams that are sponsored by, or that compete against, a public school or public postsecondary institution to be designated as male, female, or coed.
- Prohibits athletic teams designated for females to be open to students of the male sex.
- Establishes that persons who transition from male to female are eligible to compete in the female category if the student has declared a female gender identity to her school or institution and demonstrates a total testosterone level in serum below 10 nmol/L for at least 12 months before her first competition and throughout the period of desired eligibility.

The bill requires the Board of Governors to adopt regulations and the State Board of Education to adopt rules regarding the receipt and timely resolution of disputes by schools and institutions relating to provisions in the bill.

The bill provides private causes of action for injunctive relief, damages, and any other relief available under law for students, schools, and public postsecondary institutions harmed by a violation of the bill's provisions. All such civil actions must be initiated within two years after the alleged harm occurred.

The impact of state revenues or expenditures is indeterminate. *See* Section V.

The bill provides an effective date of July 1, 2021.

II. Present Situation:

Athletic Programs

The Florida High School Athletic Association (FHSAA) indicates that middle and high school interscholastic athletic programs play a vital role in the education of students who participate in them.¹ Through their participation in interscholastic athletics, students are provided character-building opportunities to demonstrate honesty, integrity, respect, caring, cooperation, trustworthiness, leadership, tolerance, and personal responsibility. These fundamental values enable participants to realize and fulfill their potential as students, athletes, individuals, and citizens.²

Athletics programs are widely accepted as integral parts of the college experience as well.³ The National Collegiate Athletic Association (NCAA) indicates that the benefits of athletics participation include many positive effects on physical, social, and emotional well-being. Playing sports can teach student-athletes important lessons about self-discipline, teamwork, success, and failure and allow student athletes to experience the joy and shared excitement that being a member of a sports team can bring.⁴

Title IX and Sex Discrimination

Title IX is a federal civil rights law passed as part of the Education Amendments of 1972.⁵ This law protects people from discrimination based on sex in education programs or activities that receive federal financial assistance. Title IX states that:⁶

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

Athletic programs are considered educational programs and activities.⁷ Title IX gives women athletes the right to equal opportunity in sports in educational institutions that receive federal funds, from elementary schools to colleges and universities. While there are few private elementary schools, middle schools, or high schools that receive federal funds, almost all colleges and universities, private and public, receive such funding.⁸

¹ Florida High School Athletic Association, *Bylaws of the Florida High School Athletic Association, Inc. (2020-2021)* (2020), at 6, available at https://s3.amazonaws.com/fhsaa.org/documents/2020/10/1/2021_handbook_website_1001.pdf (last visited Mar. 26, 2021).

² *Id.*

³ National Collegiate Athletic Association, *NCAA Inclusion of Transgender Student-Athletes* (2011), available at https://www.ncaa.org/sites/default/files/Transgender_Handbook_2011_Final.pdf (last visited Mar. 26, 2021).

⁴ *Id.*

⁵ Harvard University, *What is Title IX*, available at <https://titleix.harvard.edu/what-title-ix> (last visited Mar. 26, 2021).

⁶ U.S. Department of Education, Title IX and Sex Discrimination, available at https://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html#:~:text=No%20person%20in%20the%20United%20States%20s hall,%20on,education%20program%20or%20activity%20receiving%20Federal%20financial%20assistance (last visited Mar. 26, 2021).

⁷ Women’s Sports Foundation, *What is Title IX*, available at <https://www.womenssportsfoundation.org/advocacy/what-is-title-ix/> (last visited Mar. 26, 2021).

⁸ *Id.*

Approximately 16,500 local school districts, 7,000 postsecondary institutions, as well as charter schools, for-profit schools, libraries, and museums are receiving federal financial assistance that requires them to observe Title IX regulations. Also included are vocational rehabilitation agencies and education agencies of 50 states, the District of Columbia, and territories and possessions of the United States.⁹

Title IX regulations require institutions that receive federal education funds to provide equal opportunities in athletics for both sexes.¹⁰ Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes is considered when determining whether an institution has provided equal opportunities for both sexes.¹¹ With respect to scholarships, Title IX regulations require educational institutions that award athletic scholarships or grants-in-aid to provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics.¹²

Title IX regulations also authorize educational institutions to sponsor separate athletics teams for members of each sex.¹³

According to the NCAA, there are three areas where Title IX applies to athletics. Title IX:¹⁴

- Requires institutions to offer both sexes an equal opportunity to play but does not require both sexes to be offered identical sports;
- Requires that female and male student-athletes receive athletics scholarship dollars proportional to their participation; and
- Requires equal treatment of female and male athletes in the following: provision of equipment and supplies; scheduling of games and practice times; travel and daily allowance and per diem; access to tutoring; coaching; locker rooms, practice and competitive facilities; medical and training facilities and services; housing and dining facilities and services; publicity and promotions; support services; and recruitment of student-athletes.¹⁵

⁹ U.S. Department of Education, *Title IX and Sex Discrimination*, available at https://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html (last visited Mar. 26, 2021).

¹⁰ See U.S. Department of Education, Office of Civil Rights, *Athletics*, available at <https://www2.ed.gov/about/offices/list/ocr/frontpage/pro-students/issues/sex-issue04.html> (last visited Mar. 26, 2021).

¹¹ 34 C.F.R. s 106.41(c).

¹² 34 C.F.R. s 106.37(c).

¹³ 34 C.F.R. s 106.41(c).

¹⁴ NCAA, *Title IX Frequently Asked Questions*, available at <https://www.ncaa.org/about/resources/inclusion/title-ix-frequently-asked-questions#how> (last visited Mar. 26, 2021).

¹⁵ *Id.*

Transgender Participation in Athletic Programs

The number of students who identify as transgender¹⁶ has steadily increased during the last decade. One estimate indicates that approximately 150,000 students 13 to 17 years of age identify as transgender in the United States.¹⁷

Federal Legislation

Currently, there is no federal law governing transgender participation in sports.¹⁸ However, the U.S. Supreme Court recently ruled that discrimination in employment based on gender identity is illegal.¹⁹ In addition, the U.S. Eleventh Circuit recently affirmed that a Florida school district's policy barring a transgender male student from the boys' restroom did not comport with the Constitution's guarantee of equal protection and Title IX's prohibition of sex discrimination.²⁰

Currently, 25 states are proposing legislation related to transgender student athletics.²¹ Both the NCAA and the FHSAA have issued guidance for transgender participation in athletic programs.

NCAA Inclusion of Transgender Student Athletes

Providing equal opportunities in all aspects of school programming is a core value in education. According to the NCAA, college athletic programs, as integral parts of higher educational institutions, are responsible and accountable for reflecting the goals and values of the educational institutions of which they are a part.²²

The NCAA recommends that policies governing the participation of transgender student-athletes be informed by the following principles and be included in the institution's transgender student-athlete policy statement:²³

- Participation in intercollegiate athletics is a valuable part of the education experience for all students.
- Transgender student-athletes should have equal opportunity to participate in sports.
- The integrity of women's sports should be preserved.
- Policies governing sports should be based on sound medical knowledge and scientific validity.

¹⁶ Transathlete.com, *Trans Terminology*, <https://www.transathlete.com/starthere> (last visited Mar. 26, 2021). NCAA, *NCAA Inclusion of Transgender Student-Athletes* (2011), available at https://www.ncaa.org/sites/default/files/Transgender_Handbook_2011_Final.pdf (last visited Mar. 26, 2021).

¹⁷ UCLA School of Law, Williams Institute, *LGBT FAQs*, <https://williamsinstitute.law.ucla.edu/quick-facts/lgbt-faqs/> (last visited Mar. 26, 2021).

¹⁸ Boston College Journal of Law and Social Justice, *Hurdling Gender Identity discrimination: The Implications of State Participation Policies on Transgender Youth Athletes Ability to Thrive* (2017), available at <https://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=1108&context=jlsj> (last visited Mar. 26, 2021).

¹⁹ *Bostock v. Clayton County, Georgia*, 140 S. Ct. 1731 (2020).

²⁰ *Adams by & through Kasper v. Sch. Bd. of St. Johns County*, 968 F.3d 1286 (11th Cir. 2020).

²¹ The New York Times, *How Some States Are Moving to Restrict Transgender Women in Sports*, available at <https://www.nytimes.com/2021/03/11/sports/transgender-athletes-bills.html> (last visited Mar. 26, 2021).

²² NCAA, *NCAA Inclusion of Transgender Student-Athletes* (2011), at 6, available at https://www.ncaa.org/sites/default/files/Transgender_Handbook_2011_Final.pdf (last visited Mar. 26, 2021).

²³ *Id* at 10.

- Policies governing sports should be objective, workable, and practicable and should also be written, available, and equitably enforced.
- Policies governing the participation of transgender students in sports should be fair in light of the tremendous variation among individuals in strength, size, musculature, and ability.
- The legitimate privacy interests of all student-athletes should be protected.
- The medical privacy of transgender students should be preserved.
- Athletics administrators, staff, parents of athletes, and student-athletes should have access to sound and effective educational resources and training related to the participation of transgender and gender-variant²⁴ students in athletics.
- Policies governing the participation of transgender students in athletics should comply with state and federal laws protecting students from discrimination based on sex, disability, and gender identity²⁵ and expression.

The NCAA has published policies to clarify participation of transgender student-athletes undergoing hormonal treatment for gender transition:²⁶

- A transgender male, a female transitioning to a male, student-athlete who has received a medical exception for treatment with testosterone²⁷ for diagnosed Gender Identity Disorder or gender dysphoria²⁸ and/or Transsexualism,²⁹ for purposes of NCAA competition, may compete on a men's team but is no longer eligible to compete on a women's team without changing that team status to a mixed team.³⁰
- A transgender female, a male transitioning to a female, student-athlete being treated with testosterone suppression medication for Gender Identity Disorder or gender dysphoria and/or Transsexualism, for the purposes of NCAA competition, may continue to compete on a men's team but may not compete on a women's team without changing it to a mixed team status until completing one calendar year of testosterone suppression treatment.

²⁴ Gender-variant refers to gender nonconforming. Merriam-Webster Dictionary, *gender variance*, available at <https://www.merriam-webster.com/dictionary/gender%20variance> (last visited Mar. 26, 2021).

²⁵ Gender Identity is defined as a person's internal sense of being male, female, some combination of male and female, or neither male nor female. Merriam-Webster Dictionary, *gender identity*, available at <https://www.merriam-webster.com/dictionary/gender%20identity> (last visited Mar. 26, 2021).

²⁶ NCAA, *NCAA Inclusion of Transgender Student-Athletes* (2011), at 13, available at https://www.ncaa.org/sites/default/files/Transgender_Handbook_2011_Final.pdf (last visited Mar. 26, 2021).

²⁷ Testosterone is defined as a hormone that is hydroxy steroid ketone C₁₉H₂₈O₂ produced especially by the testes or made synthetically and that is responsible for inducing and maintaining male secondary sex characters. Merriam-Webster Dictionary, *testosterone*, available at <https://www.merriam-webster.com/dictionary/testosterone> (last visited Mar. 26, 2021).

²⁸ Gender Identity Disorder and gender dysphoria are defined as a distressed state arising from conflict between a person's gender identity and the sex the person has or was identified as having at birth. Merriam-Webster Dictionary, *gender dysphoria*, available at <https://www.merriam-webster.com/dictionary/gender%20dysphoria> (last visited Mar. 26, 2021). Merriam-Webster Dictionary, *gender identity disorder*, available at <https://www.merriam-webster.com/dictionary/gender%20identity%20disorder> (last visited Mar. 26, 2021).

²⁹ Transsexual is defined as of, relating to, or being a person whose gender identity is opposite the sex the person had or was identified as having at birth. Merriam-Webster Dictionary, *transsexual*, available at <https://www.merriam-webster.com/dictionary/transsexualism> (last visited Mar. 26, 2021).

³⁰ A mixed team is a varsity intercollegiate sports team on which at least one individual of each gender competes. A mixed team must be counted as one team. A male participating in competition on a female team makes the team a mixed team. Such a team is ineligible for a women's NCAA championship but is eligible for a men's NCAA championship. A female on a men's team is eligible for a men's NCAA championship. NCAA, *NCAA Inclusion of Transgender Student-Athletes* (2011), at 12, available at https://www.ncaa.org/sites/default/files/Transgender_Handbook_2011_Final.pdf (last visited Mar. 26, 2021).

- Any transgender student-athlete who is not taking hormone treatment related to gender transition may participate in sex-separated sports activities in accordance with his or her assigned birth gender.
- A transgender male student-athlete who is not taking testosterone related to gender transition may participate on a men's or women's team.
- A transgender female student-athlete who is not taking hormone treatments related to gender transition may not compete on a women's team.

FHSAA Policies for Transgender Athletes

The FHSAA is designated by law as the governing nonprofit organization of athletics in Florida public schools.³¹ The FHSAA is not a state agency but performs similar functions.³² The FHSAA is required to adopt bylaws regulating student eligibility, student residency and transfer, recruiting, and health and safety. Such bylaws include requiring all students participating in interscholastic athletic competition or who are candidates for an interscholastic athletic team, to satisfactorily pass a medical evaluation each year before participating in interscholastic athletic competition or engaging in any practice, tryout, workout, conditioning, or other physical activity associated with the student's candidacy.³³ The bylaws of the FHSAA govern high school athletic programs in its member schools, unless otherwise specifically provided by law.³⁴

The FHSAA's bylaws state that the FHSAA will not discriminate in its governance policies, programs, and employment practices on the basis of age, color, disability, gender, national origin, race, religion, creed, sexual orientation, or educational choice.³⁵ The FHSAA bylaws further state the FHSAA will conduct its activities in a manner free of gender bias and will adopt rules that enhance schools' efforts to comply with applicable gender-equity laws.³⁶

The FHSAA bylaws³⁷ on athletic participation by gender state the following:

- Girls may play on a boys' team in a sport if the school does not sponsor a girls' team in that sport.
- Team sports that have boys on a girls' team are required to compete in the boys division in that sport.
- Team sports that have both boys and girls on a mixed team are required to compete in the boys division in that sport.
- In an individual sport, girls may not participate on boys' teams in the Florida High School State Championship Series when a sport is offered in the Florida High School State Championship Series for girls.

Under the FHSAA administrative policies, all eligible students should have the opportunity to participate in interscholastic athletics in a manner that is consistent with their gender identity and

³¹ Section 1006.20(1), F.S.

³² *Id.*

³³ Section 1006.20(2), F.S.

³⁴ Section 1006.20(1), F.S.

³⁵ Florida High School Athletic Association, *Bylaws of the Florida High School Athletic Association, Inc. (2020-2021)* (2020), at 7, available at https://s3.amazonaws.com/fhsaa.org/documents/2020/10/1/2021_handbook_website_1001.pdf (last visited Mar. 26, 2021).

³⁶ *Id.*

³⁷ *Id.* at 23.

expression, irrespective of the gender listed on a student's birth certificate or records.³⁸ Under this situation, a student may seek review of his or her eligibility for participation through the following process:³⁹

- The student and his or her parent(s) must contact the school administrator or athletic director, prior to the official start date of the sport season, indicating the student has a consistent gender identity and expression different than the gender listed on the student's school registration records and the student desires to participate in a gender-segregated athletic sport in a manner consistent with his or her gender identity and expression.
- The student must provide the principal or athletic director, and the FHSAA, with specified documentation.⁴⁰
- The school administrator must contact the FHSAA, which will assign a facilitator to assist the school and student in preparation and completion of the process.
- The student will be scheduled for a review hearing before a committee⁴¹ specifically established to preside over gender identity reviews.

An appeal process is available to any school on behalf of a student-athlete who is denied participation. If a student is granted eligibility consistent with his or her gender identity and expression, the eligibility is binding for the duration of the student's participation in every sport season of every school year.⁴²

The Role of Testosterone in Athletic Performance

Both males and females produce testosterone naturally in their bodies, males primarily in the testes and females primarily in the ovaries.⁴³ Starting from the onset of male puberty, generally about age 11, testes begin to produce much more testosterone than ovaries. From that point forward, the normal female range is between 0.06 and 1.68 nanomoles⁴⁴ per liter (nmol/L), and

³⁸ *Id.* at 73.

³⁹ This policy does not apply to a private school member of the FHSAA which, because of its strongly held religious beliefs, would be entitled to the exemption provided to educational institutions of religious organizations by law. *Id.*

⁴⁰ Documentation includes current transcript and school registration information; information required for participation and eligibility in FHSAA athletics; written statement from the student affirming the consistent identity and expression to which the student self-relates; documentation from individuals such as, but not limited to, parents, friends and teachers, which affirm that the actions, attitudes, dress and manner demonstrate the student's consistent gender identification and expression; a complete list of all the student's prescribed, non-prescribed or over the counter, treatments or medications; written verification from an appropriate health-care professional of the student's consistent gender identification and expression; and any other pertinent documentation or information which the student or parent believe relevant and appropriate. *Id.*

⁴¹ The committee must be comprised of a minimum of three of the following categories, one of which must be from the physical or mental health profession category: Physician with experience in gender identity health care and the World Professional Association for Transgender Health (WPATH) Standards of Care; psychiatrist, psychologist, or licensed mental health professional familiar with the WPATH Standards of Care; school administrator from outside the member school's FHSAA administrative section; athletic director from outside the member school's FHSAA administrative section; an athletic coach of the sport in which participation is desired, from outside the member school's FHSAA administrative section; an individual selected by the FHSAA familiar with Gender Identity and Expression issues. *Id.*

⁴² *Id.*

⁴³ Women's Sports Policy Working Group, *Frequently Asked Questions – About Science and Sex* (2020), available at <https://womenssportspolicy.org/wp-content/uploads/2021/01/faq-q09-male-and-female-range-testosterone.pdf> (last visited Mar. 26, 2021).

⁴⁴ One mole contains exactly $6.02214076 \times 10^{23}$ elementary entities; an elementary entity may be an atom, a molecule, an ion, an electron, any other particle or specified group of particles. National Institute of Standards and Technology, *Definitions of SI Base Units*, available at <https://www.nist.gov/si-redefinition/definitions-si-base-units> (last visited Mar. 26, 2021). A

the normal male range is between 7.7 and 29.4 nmol/L. The gap between the top of the female range and the bottom of the male range is 6.02 nmol/L.⁴⁵

International experts⁴⁶ in the sports science and sports medicine communities agree that males and females are materially different with respect to the main physical attributes that contribute to athletic performance and that the primary reason for sex differences in these attributes is exposure in gonadal males to much higher levels of testosterone during growth and development, and throughout the athletic career.⁴⁷

The Connecticut Interscholastic Athletics Conference (CIAC)⁴⁸ permits transgender girls to compete in girls' events even if they have not yet gone on puberty blockers⁴⁹ or gender affirming hormones.⁵⁰ Two transgender girls who used to compete on their schools' boys' teams moved to the girls' teams when they began to identify as transgender.⁵¹ Cisgender⁵² female high school students have sued the CIAC and their respective boards of education alleging that the defendants' practice of permitting biological males who claim a female gender identity to compete in girls' athletic competitions violates Title IX because it displaces girls from track events and excludes them from honors and opportunities to compete at higher levels critical to college recruitment and scholarship opportunities.⁵³

A study⁵⁴ conducted on transgender males and females in the United States Air Force with an average age of 26.2 years, concluded that transgender females displayed a 15 to 31 percent athletic advantage displayed over cisgender females prior to the commencement of gender-affirming hormones. This advantage declined with feminizing therapy. However, transgender

Nanomole is defined as one billionth of a mole. Merriam-Webster Dictionary, *nanomole*, available at <https://www.merriam-webster.com/medical/nanomole> (last visited Mar. 26, 2021).

⁴⁵ Women's Sports Policy Working Group, *Frequently Asked Questions – About Science and Sex* (2020), available at <https://womenssportspolicy.org/wp-content/uploads/2021/01/faq-q09-male-and-female-range-testosterone.pdf> (last visited Mar. 26, 2021).

⁴⁶ International Experts Statement of the Role of Testosterone in Athletic Performances. Duke Law Center for Sports Law and Policy, *Sex in Sport*, available at <https://law.duke.edu/sports/sex-sport/> (last visited Mar. 26, 2021). Duke Law, *The Role of Testosterone in Athletic Performance* (2019), available at https://web.law.duke.edu/sites/default/files/centers/sportslaw/Experts_T_Statement_2019.pdf (last visited Mar. 26, 2021).

⁴⁷ Duke Law, *The Role of Testosterone in Athletic Performance* (2019), available at https://web.law.duke.edu/sites/default/files/centers/sportslaw/Experts_T_Statement_2019.pdf (last visited Mar. 26, 2021).

⁴⁸ CIAC, *CIAC Statement on Office of Civil Rights Decision*, available at <http://ciacsports.com/site/?p=14508> (last visited Mar. 26, 2021).

⁴⁹ A puberty blocker is a type of medicine that is used to prevent puberty from happening. Macmillian Dictionary, *puberty blocker*, available at <https://www.macmillandictionary.com/dictionary/british/puberty-blocker> (last visited Mar. 26, 2021).

⁵⁰ Women's Sports Policy Working Group, *Frequently Asked Questions – About Science and Sex*, (2020), available at <https://womenssportspolicy.org/wp-content/uploads/2021/01/faq-q21-impact-of-trans-girls-on-hs-sports.pdf> (last visited Mar. 26, 2021) *Soule et al v. Connecticut Association of Schools, Inc. et al*, 3:20-CV-00201 (2020).

⁵¹ *Id.*

⁵² Cisgender is defined as of, relating to, or being a person whose gender identity corresponds with the sex the person had or was identified as having at birth. Merriam-Webster Dictionary, *cisgender* available at <https://www.merriam-webster.com/dictionary/cisgender> (last visited Mar. 26, 2021).

⁵³ Justia Dockets & Filings, *Soule et al v. Connecticut Association of Schools, Inc. et al*, available at <https://dockets.justia.com/docket/connecticut/ctdce/3:2020cv00201/137997> (last visited Mar. 26, 2021). *Soule et al v. Connecticut Association of Schools, Inc. et al*, 3:20-CV-00201 (2020).

⁵⁴ Roberts T.A., Smalley J., Ahrendt D., *Effect of gender affirming hormones on athletic performance in transwomen and transmen: implications for sporting organisations and legislators*. *British Journal of Sports Medicine* (2020), available at <https://bjsm.bmj.com/content/early/2020/11/06/bjsports-2020-102329> (last visited Mar. 26, 2021).

females still had a nine percent faster mean run speed after the one year period of testosterone suppression that is recommended by World Athletics (WA)⁵⁵ or the International Olympic Committee (IOC)⁵⁶ for inclusion in women's events.⁵⁷ The study confirmed that use of gender-affirming hormones are associated with changes in athletic performance and demonstrated that the pretreatment differences between transgender and cisgender women persist beyond the 12-month time requirement currently being proposed for athletic competition by the WA and the IOC. The study suggests that more than 12 months of testosterone suppression may be needed to ensure that transgender women do not have an unfair competitive advantage when participating in elite level athletic competition.⁵⁸

WA also requires that for a transgender female to be eligible she must demonstrate to the satisfaction of an expert panel that the concentration of testosterone in her serum has been less than 5 nmol/L continuously for a period of at least 12 months and she must keep her serum testosterone concentration below 5 nmol/L for so long as she wishes to maintain eligibility to compete in the female category of competition.⁵⁹

The IOC requires that for a transgender female to be eligible, she:⁶⁰

- Must have declared that her gender identity is female. The declaration cannot be changed, for sporting purposes, for a minimum of four years.
- Must demonstrate that her total testosterone level in serum has been below 10 nmol/L for at least 12 months prior to her first competition.

III. Effect of Proposed Changes:

SB 2012 creates s. 1006.205, F.S., the Promoting Equality of Athletic Opportunity Act. The bill specifies that it is the intent of the Legislature to provide opportunities for female athletes to demonstrate their strength, skills, and athletic abilities and to provide them with opportunities to obtain recognition and accolades, college scholarships, and the numerous other long-term benefits that result from participating and competing in athletic endeavors. The bill makes a Legislative finding that promoting the equality of athletic opportunity is an important state interest and that requiring the designation of separate sex-specific athletic teams or sports is necessary to promote such equality.

⁵⁵ World Athletics, *World Athletics Eligibility Regulations for Transgender Athletes* (2019), available at http://www.athletics.org.tw/Upload/Web_Page/WA/Eligibility%20Regulations%20for%20Transgender%20Athletes.%20.pdf (last visited Mar. 27, 2021).

⁵⁶ Those who transition from female to male are eligible to compete in the male category without restriction. International Olympic Committee, *IOC Consensus Meeting on Sex Reassignment and Hyperandrogenism* (2015), available at https://stillmed.olympic.org/Documents/Commissions_PDFfiles/Medical_commission/2015-11_ioc_consensus_meeting_on_sex_reassignment_and_hyperandrogenism-en.pdf (last visited Mar. 26, 2021).

⁵⁷ Roberts T.A., Smalley J., Ahrendt D., *Effect of gender affirming hormones on athletic performance in transwomen and transmen: implications for sporting organisations and legislators*. *British Journal of Sports Medicine* (2020), available at <https://bjsm.bmj.com/content/early/2020/11/06/bjsports-2020-102329> (last visited Mar. 26, 2021).

⁵⁸ *Id.*

⁵⁹ *Supra* note 56.

⁶⁰ International Olympic Committee, *IOC Consensus Meeting on Sex Reassignment and Hyperandrogenism* (2015), available at https://stillmed.olympic.org/Documents/Commissions_PDFfiles/Medical_commission/2015-11_ioc_consensus_meeting_on_sex_reassignment_and_hyperandrogenism-en.pdf (last visited Mar. 26, 2021).

The bill provides a pathway for transgender females to participate on female teams while also protecting competition for female athletes. Specifically, the bill:

- Requires interscholastic, intercollegiate, intramural, or club athletic teams that are sponsored by a public school or public postsecondary institution, or any school or institution whose students or teams compete against a public school or public postsecondary institution, to be designated as one of the following based on the biological sex of the team members:
 - Males, men, or boys;
 - Females, women, or girls; or
 - Coed or mixed, including both males and females.
- Prohibits athletic teams or sports designated for females to be open to students of the male sex.
- Specifies that persons who transition from male to female are eligible to compete in the female category if the student has declared a female gender identity to her school or institution and meets both of the following conditions:
 - The student demonstrates that her total testosterone level in serum has been below 10 nanomoles per liter (nmol/L) for at least 12 months before her first competition and monthly throughout the period of desired eligibility; and
 - The student's total testosterone level remains below 10 nmol/L throughout the period of desired eligibility.

If the student does not meet both conditions the student must be suspended from female competition for 12 months.

The bill requires the Board of Governors to adopt regulations and the State Board of Education to adopt rules regarding the receipt and timely resolution of disputes by schools and institutions relating to provisions in the bill.

The bill provides protections for educational institutions by prohibiting a governmental entity, a licensing or accrediting organization, or an athletic association or organization from entertaining a complaint, opening an investigation, or taking any other adverse action against any school or public postsecondary institution in Florida for maintaining separate athletic teams or sports for female students.

The bill also provides private causes of action to any student who is deprived of an athletic opportunity, or to a school or institution that suffers harm, as a result of a violation of the bill's provisions and to a student who is subject to retaliation by a school or athletic association for reporting a violation. All such civil actions must be initiated within two years after the alleged harm occurred.

The bill provides an effective date of July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Classifications based on transgender status are subject to heightened scrutiny under the Equal Protection Clause of the Fourteenth Amendment.⁶¹ The Equal Protection Clause does not require courts to disregard the physiological differences between men and women.⁶²

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The fiscal impact of the bill is indeterminate. School districts, postsecondary institutions, the State Board of Education, and the Board of Governors may incur costs to establish and administer transgender policies required by the Act.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁶¹ Amend. XIV, U.S. Const. *See also Hecox v. Little*, 479 F. Supp. 3d 930, 975 (D. Idaho 2020) citing *Karnoski v. Trump*, 926 F.3d 1180, 1201 (9th Cir. 2019).

⁶² *Hecox v. Little*, 479 F. Supp. 3d 930, 976 (D. Idaho 2020) (citing *Michael M. v. Superior Court of Sonoma County*, 450 U.S. 464, 481 (1981)).

VIII. Statutes Affected:

This bill creates section 1006.205 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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