

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/HB 225 Interscholastic Activities

SPONSOR(S): Education & Employment Committee and Education Quality Subcommittee, Hawkins, Canady and others

TIED BILLS: None. **IDEN./SIM. BILLS:** CS/CS/SB 308

FINAL HOUSE FLOOR ACTION: 93 Y's 22 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/CS/HB 225 passed the House on March 17, 2023. The bill was amended in the Senate on April 3, 2023, and returned to the House. The House concurred in the Senate amendment as amended by the House on May 3, 2023. The Senate concurred with the House amendments and passed the bill as amended on May 4, 2023. Part of the bill also passed the House and Senate in CS/SB 190 on April 20, 2023.

The bill streamlines the Florida High School Athletic Association (FHSAA) board of directors by reducing its membership from 16 to 13 members comprised of the Commissioner of Education, or his or her designee, eight members appointed by the Governor and confirmed by the Senate, and four members elected by FHSAA member schools. The bill requires that FHSAA's executive director, budget, and bylaws be approved by the State Board Education.

The bill expands the ability of traditional public school, charter school, Florida Virtual School full-time, and private school students to participate in interscholastic and intrascholastic activities and athletics. The bill also requires that students who transfer between schools during the school year be permitted to complete the interscholastic and intrascholastic activities in which they participated at the school from which they transferred.

The bill requires the FHSAA to adopt bylaws, policies, or procedures that provide schools participating in a high school championship contest or series, under the direction and supervision of the association, an opportunity to make brief opening remarks.

This bill does not appear to have a fiscal impact on state or local governments.

The bill was approved by the Governor on May 17, 2023, ch. 2023-97, L.O.F., and will become effective on July 1, 2023.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

Florida High School Athletic Association

The Florida High School Athletic Association (FHSAA) is statutorily designated as the governing nonprofit organization for interscholastic athletics for grades 6 through 12 in Florida public schools.¹ Any high school, middle school, or combination school,² including charter schools, virtual schools, private schools, and home education cooperatives,³ may become a member of the FHSAA.⁴ However, membership in the FHSAA is not mandatory and the FHSAA must allow private schools the option of maintaining full membership or membership by sport.⁵ The FHSAA may not deny or discourage a private school from simultaneously maintaining membership in another athletic association.⁶ The FHSAA may allow public schools the option of applying for consideration to join another athletic association.⁷ The FHSAA is prohibited from denying or discouraging interscholastic competition between its member schools and non-FHSAA member schools in Florida and may not take discriminatory or retributory action against a member school that engages in interscholastic competition with non-FHSAA member schools.⁸

The FHSAA is required to adopt bylaws regulating student eligibility, recruiting, and member schools' interscholastic competition in accordance with applicable law.⁹ 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 (SBE).¹⁰

FHSAA Governance

The FHSAA operates as a representative democracy in which its member schools hold authority, through their elected representatives, and the FHSAA is governed by its bylaws.¹¹ Each member school must designate a representative that is either the school principal or athletic director. FHSAA membership is divided into four administrative regions, with roughly an equal number of member schools to ensure equitable representation.¹²

The executive authority of the FHSAA is vested in the board of directors.¹³ The FHSAA board of directors consists of 16 members selected in the following manner:¹⁴

¹ Section 1006.20(1), F.S.

² A "combination school" is any school that provides instruction to 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.

³ 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 6-12. Bylaw 3.2.2.4, FHSAA.

⁴ Section 1006.20(1), F.S.

⁵ Section 1006.20(1), F.S.; Bylaws 3.2.1.4-5, FHSAA.

⁶ Section 1006.20(1), F.S.

⁷ *Id.*

⁸ *Id.*

⁹ Section 1006.20(2), F.S.

¹⁰ Section 1006.20(1), F.S.

¹¹ Section 1002.20(3)(a), F.S. See FHSAA, *2022-23 FHSAA Handbook*, revised Dec. 13, 2022,

https://fhsaa.com/documents/2022/12/7//2223_handbook_update_December.pdf?id=3768 (last visited May 5, 2023). The FHSAA Handbook contains the bylaws and administrative procedures, as adopted and amended by the board of directors, that govern the FHSAA.

¹² Section 1006.20(3), F.S.

¹³ Section 1006.20(4)(a), F.S.

¹⁴ Section 1006.20(4)(a)1.-6., F.S.

- Four public member school representatives, one elected from among its public school representative members within each of the four administrative regions.
- Four nonpublic member school representatives, one elected from among its nonpublic school representative members within each of the four administrative regions.
- Three representatives appointed by the commissioner, one appointed from the two northernmost administrative regions and one appointed from the two southernmost administrative regions. The third representative shall be appointed to balance the board for diversity or state population trends, or both.
- Two district school superintendents, one elected from the two northernmost administrative regions by the members in those regions and one elected from the two southernmost administrative regions by the members in those regions.
- Two district school board members, one elected from the two northernmost administrative regions by the members in those regions and one elected from the two southernmost administrative regions by the members in those regions.
- The commissioner or his or her designee from the department executive staff.

The legislative authority of the FHSAA is vested in its representative assembly.¹⁵ The representative assembly shall be composed of the following:¹⁶

- An equal number of member school representatives from each of the four administrative regions.
- Four district school superintendents, one elected from each of the four administrative regions by the district school superintendents in their respective administrative regions.
- Four district school board members, one elected from each of the four administrative regions by the district school board members in their respective administrative regions.
- The commissioner or his or her designee from the department executive staff.

FHSAA Membership in the National Federation of State High School Associations

The FHSAA is a member of the National Federation of State High School Associations (NFHS).¹⁷ NFHS is a nonprofit organization that provides leadership for the administration of high school athletics and activities by writing rules, publishing guidance materials, and offering educational courses for coaches, officials, student-athletes, parents, and school administrators.¹⁸ The FHSAA requires that interscholastic athletic competitions involving its member schools adhere to the rules published by or approved by the NFHS.¹⁹ NFHS educational materials are available as resources and standards for individuals involved in interscholastic athletics. In particular, NFHS Learn Courses cover many topics, ranging from “Sudden Cardiac Arrest” to “Engaging Effectively with Parents” to “Student Mental Health and Suicide Prevention.”²⁰ The FHSAA requires student-athletes and coaches to complete the following NFHS Learn courses: “Concussion in Sports,” “Concussion for Students,” “Heat Illness Prevention,” and “Sudden Cardiac Arrest.”²¹

¹⁵ Section 1006.20(5)(a), F.S.

¹⁶ Section 1006.20(5)(b), F.S. The specific number of representatives and the method of their selection must be established in the FHSAA bylaws. Section 1006.20(5)(c), F.S.

¹⁷ Nate Perry, *State High School Associations Come in All Shapes and Sizes*, National Federation of State High School Associations (Jan. 14, 2020), <https://www.nfhs.org/articles/state-high-school-associations-come-in-all-shapes-and-sizes/> (last visited May 5, 2023); National Federation of State High School Associations, *State Association Listing*, <https://www.nfhs.org/resources/state-association-listing> (last visited May 5, 2023).

¹⁸ National Federation of State High School Associations, *About Us*, <https://www.nfhs.org/who-we-are/aboutus> (last visited May 5, 2023).

¹⁹ Bylaw 8.2.1, FHSAA. A two-thirds vote by the FHSAA Board of Directors may waive the requirement to utilize NFHS rules for a sport.

²⁰ National Federation of State High School Associations Learning Center, *Courses*, <https://nfhslearn.com/courses> (last visited May 5, 2023).

²¹ Florida High School Athletic Association, *NFHS Resources*, https://fhsaa.com/sports/2020/5/1/NFHS_Resources.aspx (last visited May 5, 2023); Policies 40.1.1, 41.1.1 and 42.1.1, FHSAA.

Currently, no other Florida athletic associations are affiliate members of the NFHS.²² Florida law prohibits the FHSAA from unreasonably withholding its approval of an application submitted by another organization governing interscholastic athletic competition in the state that seeks to become an affiliate member of the NFHS.²³

School Membership in the FHSAA

Qualifications, contained in the FHSAA bylaws, for an accredited Florida secondary school, registered with the DOE, to attain membership in the FHSAA include, but are not limited to:²⁴

- The school's governing body approving the school's membership in the FHSAA and adopting the FHSAA bylaws each year as the rules governing interscholastic athletic programs;
- Paying dues and fees required of member schools;
- Maintaining the insurance coverage required of member schools; and
- Being elected by the FHSAA Board of Directors for FHSAA membership.

The FHSAA Board of Directors approves schools or home education cooperatives for initial and continuing membership in the Association, adopts and amends administrative regulations for FHSAA programs, and serves as the Association's highest appellate authority.²⁵

The FHSAA lists the privileges of full membership as including competing in FHSAA championships, voting in Association elections, seeking election to positions in FHSAA governance, and applying and serving as hosts of multi-school events.²⁶ Participation in the Florida High School State Championship Series is limited to senior high schools, combination schools, and home education cooperatives with full membership in the FHSAA.²⁷ Participation is voluntary in the Florida High School State Championship, however, the FHSAA Board of Directors' preference is that all eligible schools participate.²⁸ The FHSAA does provide an option for member schools to exercise independent status for "legitimate reasons"²⁹ but expressly states that this status is not intended as a vehicle for schools to organize in protest of the FHSAA's policies or establish a postseason championship separate from the Florida High School State Championship Series.³⁰ The FHSAA requires any independent status member schools to receive the FHSAA Board of Directors' approval for any championship playoff occurring after the conclusion of the FHSAA-approved regular season.³¹

Student Extracurricular Activities and Athletics

Florida law outlines numerous standards and requirements relating to student extracurricular activities and athletics.³² Current law provides that "eligible to participate," for purposes of extracurricular activities and athletics, includes a student participating in tryouts, off-season conditioning, summer

²² The largest, most comprehensive organization governing high school sports in a state is a "member" of NFHS and other state associations may join NFHS as "affiliate associations." Nate Perry, *State High School Associations Come in All Shapes and Sizes*, National Federation of State High School Associations (Jan. 14, 2020), <https://www.nfhs.org/articles/state-high-school-associations-come-in-all-shapes-and-sizes/> (last visited May 5, 2023); National Federation of State High School Associations, *State Association Listing*, <https://www.nfhs.org/resources/state-association-listing> (last visited May 5, 2023) (Click "NFHS Affiliate Associations").

²³ Section 1006.20(1), F.S.

²⁴ Bylaw 3.3.1, FHSAA. Similar qualifications and conditions apply to home education cooperatives seeking to become members in the FHSAA. Bylaw 3.3.2, FHSAA.

²⁵ Section 1006.20(4)(e), F.S.; Bylaws 3.7 and 4.3.2, FHSAA.

²⁶ Bylaw 3.9.1, FHSAA.

²⁷ Bylaws 8.7.1.1, FHSAA; Policy 10.1.1, FHSAA.

²⁸ Policy 10.1.2, FHSAA.

²⁹ The FHSAA policies outline legitimate reasons as including, but not limited to, a newly opened school, consistent inability to compete in the assigned FHSAA classification, geographic isolation that creates financial burdens for participation, educational philosophies that prohibit extended athletic participation, and religious reasons preventing competition. Policy 10.1.3, FHSAA.

³⁰ Policy 10.1.3, FHSAA.

³¹ *Id.*

³² See ch. 1006, pt. 1, s. D, F.S.

workouts, preseason conditioning, in-season practice, or contests.³³ Additionally, a student must satisfy the following requirements to be deemed eligible to participate:³⁴

- Maintain a grade point average of 2.0 or above on a 4.0 scale, or its equivalent, in the previous semester or a cumulative grade point average of 2.0 or above on a 4.0 scale, or its equivalent, in the courses required for a standard high school diploma.
- Execute and fulfill the requirements of an academic performance contract between the student, the district school board, the appropriate governing association, and the student's parents, if the student's cumulative grade point average falls below 2.0, or its equivalent, on a 4.0 scale in the courses required for a standard high school diploma.³⁵
- Have a cumulative grade point average of 2.0 or above on a 4.0 scale, or its equivalent, in the courses required for a standard high school diploma during their junior or senior year.
- Maintain satisfactory conduct, including adherence to appropriate dress and other codes of student conduct.³⁶

Any student who is exempt from attending a full school day based on rules adopted by the district school board must maintain the grade point average required of full school day students and pass each class for which he or she is enrolled.³⁷

Any entity that governs interscholastic extracurricular activities of public schools is prohibited from discriminating against any eligible student based on their education choice of public, private, or home education.³⁸ No public school may join an organization that regulates interscholastic activities and discriminates against otherwise eligible students in public, private, or home education.³⁹

Home Education Student's Participation in Extracurricular Activities

Students participating in a home education program may be eligible to participate in extracurricular activities at a Florida public school or private school.⁴⁰ Current law permits a home education program student to participate at the public school to which the student would be assigned according to district school board attendance area policies, any public school that the student could choose to attend pursuant to Florida's controlled open enrollment processes, or a private school, subject to an agreement with that private school.⁴¹ A home education program student's participation is subject to the following conditions:⁴²

- The home education student satisfies the requirements of Florida's home education program.
- During the period of participation at a school, the home education student demonstrates educational progress.
- The home education student meets the same residency requirements as other students in the school at which he or she participates.
- The home education student meets the same standards of acceptance, behavior, and performance as required of other students in extracurricular activities.

³³ Section 1006.15(3)(a), F.S.

³⁴ *Id.*

³⁵ Any such academic performance contract must, at a minimum, require that the student attend summer school between grades 9 and 10 or grades 10 and 11, as appropriate. Section 1006.15(3)(a)2., F.S.

³⁶ Continued participation in extracurricular activities by a student convicted of felony or a delinquent act that would be a felony if committed by an adult, regardless of whether adjudication is withheld, shall be governed by published school district policies. Section 1006.15(3)(a)4., F.S.

³⁷ Section 1006.15(3)(b), F.S. Examples of such programs include double session schools or programs, experimental schools, or schools operating under emergency conditions.

³⁸ Section 1006.15(5), F.S.

³⁹ Section 1006.15(6), F.S.

⁴⁰ Section 1006.15(3)(c), F.S.

⁴¹ *Id.*

⁴² *Id.*

- The student registers with the school his or her intent to participate in interscholastic extracurricular activities before participation.⁴³

Charter School Student's Participation in Extracurricular Activities

A student attending a public charter school may participate in any interscholastic extracurricular activity at the public school to which the student would be assigned according to district school board attendance area policies or which the student could choose to attend pursuant to Florida's controlled open enrollment processes, provided that the activity is not offered by the charter school the student attends, if the student:⁴⁴

- Meets the requirements of the charter school education program as determined by the charter school governing board.
- Demonstrates educational progress.
- Meets the same residency requirements as other students in the school at which he or she participates.
- Meets the same standards of acceptance, behavior, and performance that are required of other students in extracurricular activities.
- Registers his or her intent to participate in interscholastic extracurricular activities with the school before participation.⁴⁵

Charter school students are neither expressly authorized nor prohibited from entering into agreements with private schools to participate in interscholastic extracurricular activities. However, because home education students are expressly authorized to enter into such agreements, the statute has been interpreted to prohibit use of these agreements by charter school students.

Florida Virtual School Student's Participation in Extracurricular Activities

A student of the Florida Virtual School full-time program may participate in any interscholastic extracurricular activity at the public school to which the student would be assigned according to district school board attendance area policies or which the student could choose to attend pursuant to Florida's controlled open enrollment processes, if the student:⁴⁶

- During the period of participation at the school, meets the grade point average and student conduct requirements generally required for students to be "eligible to participate."
- Meets any requirements established by the board of trustees of the Florida Virtual School.
- Meets the same residency requirements as other students in the school at which he or she participates.
- Meets the same standards of acceptance, behavior, and performance that are required of other students in extracurricular activities.
- Registers his or her intent to participate in interscholastic extracurricular activities with the school before participation.⁴⁷

As with charter school students, FLVS full-time program students are neither expressly authorized nor prohibited from entering into agreements with private schools to participate in interscholastic extracurricular activities and, therefore, due to the authorization provided to home education students, the statute would be interpreted to prohibit use of these agreements by FLVS full-time program students.

⁴³ The school at which the home education program student participates in an extracurricular activity must permit the student to participate in any curricular activities necessary for full participation in the extracurricular activity. Section 1006.15(3)(c)5., F.S.

⁴⁴ Section 1006.15(3)(d), F.S.

⁴⁵ The school at which the charter school student participates in an extracurricular activity must permit the student to participate in any curricular activities necessary for full participation in the extracurricular activity. Section 1006.15(3)(d)5., F.S.

⁴⁶ Section 1006.15(3)(e), F.S.

⁴⁷ The school at which the Florida Virtual School student participates in an extracurricular activity must permit the student to participate in any curricular activities necessary for full participation in the extracurricular activity. Section 1006.15(3)(e)5., F.S.

Traditional Public School Student's Participation in Extracurricular Activities

Current law is silent as to a traditional public school student's participation in interscholastic activities offered at schools other than the public school she or he attends. Therefore, traditional public school students do not participate in interscholastic activities at other public or private schools.

Transfer Student's Participation in Extracurricular Activities

A student who transfers to a school during the school year may seek to immediately participate in an extracurricular activity if the roster for the activity has not reached its maximum size and if the coach or sponsor for the activity determines that the student has the requisite skill and ability to participate. The FHSAA and school district or charter school may not declare such a student ineligible because the student did not have the opportunity to comply with established qualifying requirements.⁴⁸

With regard to eligibility for participation in sports, a transfer student may not participate in a sport if he or she participated in that same sport at another school during that school year, except when the student is:⁴⁹

- A dependent child of active duty military personnel whose move resulted from military orders.
- A child who was relocated due to a foster care placement in a different school zone.
- A child who moved as a result of a court-ordered change in custody due to separation or divorce, or the serious illness or death of a custodial parent.
- Authorized to participate for good cause in district or charter school policy.

Private School Student Participation in Interscholastic Athletics

The FHSAA and member school districts are required to establish a program through which private school students may participate in interscholastic sports at public schools.⁵⁰ A private school student shall be eligible to participate in interscholastic athletics at the public middle school, public high school or public 6-12 school for which they would be assigned by the local school district or at any public school that the student could attend pursuant to Florida's controlled open enrollment processes, if the private school that he or she attends is not a member of the FHSAA and he or she meets the guidelines for such participation established by the FHSAA and the district school board.⁵¹ Each academic year, a student participating in this program may only participate at the public school where the student first registers or makes himself or herself a candidate for an athletic team by engaging in a practice.⁵²

The private school the participating student attends is required to share any of the participating student's education records necessary for the operation of the program with the FHSAA, upon request.⁵³ The athletic director at the public school where the private school student participates is required to maintain any necessary education records.⁵⁴

Only students attending private schools that are not members of the FHSAA and that have 125 or fewer students are authorized to participate in this program.⁵⁵ Eligible students must apply using the FHSAA

⁴⁸ Section 1006.15(9)(a), F.S.

⁴⁹ Section 1006.15(9)(b), F.S.

⁵⁰ Section 1006.15(8), F.S.

⁵¹ Section 1006.15(8)(a), F.S.

⁵² Section 1006.15(8)(c), F.S.

⁵³ Section 1006.15(8)(e), F.S.

⁵⁴ Section 1006.15(8)(d), F.S.

⁵⁵ Section 1006.15(8)(g), F.S.

application process.⁵⁶ The parents of a participating student are responsible for transporting the student to and from the public school at which he or she participates.⁵⁷

Responsibilities of the FHSAA

Among the provisions relating to student extracurricular activities and athletics, there are student eligibility, governance, transparency, and student-athlete health requirements specifically for the FHSAA. Florida law establishes that the FHSAA retains jurisdiction over school membership in the FHSAA; recruiting prohibitions and violations; student medical evaluations; investigations; sanctions for coaches; school eligibility and forfeiture of competitions; student concussions and head injuries; the sports medical advisory committee; and the general operational provisions of the FHSAA.⁵⁸ However, the FHSAA's implementation of these provisions may not contradict statutory requirements regarding district school boards' and charter schools' responsibilities in determining student eligibility for extracurricular participation.⁵⁹

Regarding governance, the FHSAA is required to adopt bylaws outlining requirements for student eligibility, recruiting violations, investigations, and appeals.⁶⁰ The FHSAA is also required to establish two committees: the Sports Medicine Advisory Committee (SMAC) and the Public Liaison Advisory Committee, which acts as a conduit for the general public to provide input in the FHSAA's decisions and conducts annual evaluations of the FHSAA.⁶¹

Federal Law Regarding Opening Remarks at Interscholastic Athletic Events

Establishment Clause

The U.S. Constitution prevents the government from establishing religion and protects privately initiated expression and activities from government interference and discrimination.⁶² In order to determine whether a challenged state statute is permissible under the Establishment Clause, courts apply the *Lemon Test*, which requires that the challenged statute have a secular legislative purpose, have a principal or primary effect that neither advances nor inhibits religion, and avoid excessive government entanglement with religion.⁶³

The Supreme Court's analysis in *Santa Fe Independent School District v. Doe* provides insight to how the Court applies the *Lemon Test* when evaluating opening remarks at athletics events on school premises.⁶⁴ The Court held that the school district's policy permitting student-led, student-initiated prayer over the loudspeaker at high school football games on the school's property violated the Establishment Clause.⁶⁵ The Court concluded that the pre-game invocations at issue were government speech because the invocations were specifically authorized by government policy and took place on government property at government-sponsored, school related events.⁶⁶ However, the Supreme Court cautioned that not all public speech becomes government speech simply because it is made using public facilities at

⁵⁶ Section 1006.15(8)(f), F.S.

⁵⁷ Section 1006.15(8)(b), F.S. Additionally, this provision shields the FHSAA, the public school at which the student is participating, the district school board operating the school, and the private school the student attends from civil liability for any injuries that occur during such transportation.

⁵⁸ Section 1006.195(2)(a), F.S.

⁵⁹ *Id.*

⁶⁰ Section 1006.20(2) and (7), F.S.

⁶¹ Section 1006.20(2)(m) and (6), F.S.

⁶² See U.S. Const., Amend. 1.

⁶³ *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971).

⁶⁴ See *Santa Fe Independent Sch. District v. Doe*, 530 U.S. 290, 314 (2000).

⁶⁵ *Id.* at 317.

⁶⁶ *Id.* at 302.

government sponsored events.⁶⁷ Santa Fe school district's policy failed the *Lemon Test* because the Court found the policy did not have secular purpose and advanced certain religion at the expense of other religions given the narrow speaker selection process and criteria; and entangled the government with religion given the school district's specific encouragement of prayer and the history of the policy.⁶⁸

Free Speech Clause

Speech is protected by the First Amendment of the United States Constitution.⁶⁹ The government or a public actor may nevertheless regulate an individual's freedom of speech within constitutional limits.⁷⁰ The First Amendment's free speech clause restricts government regulation of private speech but does not regulate government speech.⁷¹ To determine whether speech is government speech or private speech, courts consider 3 primary factors: the history and tradition of the speech; whether a reasonable observer could conclude that the government endorses the speech; and whether the government exercise direct control over the speech.⁷²

In 2019, the Eleventh Circuit held that the FHSAA's application of its Public-Address Protocol⁷³ prohibiting two schools from using the loudspeaker for a pre-game prayer at the 2A Florida High School State Championship game may have violated constitutional free speech protections.⁷⁴ The court's analysis hinged on whether the speech over the loudspeaker was considered government or private speech. The court determined that inconsistencies in the record and indications that the FHSAA allowed prayer over the loudspeaker at past championships suggested the factors of history and tradition of the speech and the government's direct control over the speech leaned toward a potential finding of private speech that warranted further deliberation at the district court level.⁷⁵

The ability to regulate private speech on government-owned property is determined, in part, by the characterization of the type of public forum created.⁷⁶ There are three types of public forums: traditional public forums, limited public forums, and closed public forums.⁷⁷ A "traditional" or "open public forum" is a place with a longstanding tradition of freedom of expression, such as a public park, sidewalk, or street corner.⁷⁸ In an open public forum, the government may only impose content-neutral restrictions on the time, place, and manner of expression.⁷⁹ A limited public forum is a venue opened only for certain groups or topics.⁸⁰ A public actor may regulate the subject area content or categories of organizations allowed in limited public forums but may not restrict expression based on a favorable or unfavorable viewpoint of a speaker or organization.⁸¹ Finally, a "closed public forum" is a place that is not traditionally open to public expression, such as the teacher's school mailroom or a military base. Restrictions on speech in a closed public forum may only be reasonable and may not be designed to silence an unfavorable viewpoint.⁸²

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⁶⁷ *Id.* See *Rosenberger v. Rector*, 515 U.S.819 (1995) (holding that the University of Virginia must provide financial subsidy to a student religious organization on the same basis as other student publications).

⁶⁸ *Santa Fe Independent Sch. District*, 530 U.S. at 302-10.

⁶⁹ U.S. Const., Amend. 1.

⁷⁰ *Int'l Soc'y for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672, 678 (1992).

⁷¹ See *Pleasant Grove City v. Summum*, 555 U.S. 460, 467 (2009).

⁷² See *Pleasant Grove City*, 555 U.S. at 460; *Walker v. Texas Division, Sons of Confederate Veterans, Inc.*, 135 S. Ct. 2239 (2015); *Mech v. Sch. Bd. of Palm Beach Cnty.*, 806 F.3d 1070 (11th Cir. 2015).

⁷³ See *supra* text accompanying notes 33-37.

⁷⁴ *Cambridge Christian Sch., Inc. v. Fla. High School Athletics Ass'n*, 942 F.3d 1215 (11th Cir. 2019).

⁷⁵ *Id.* at 1231.

⁷⁶ *Int'l Soc'y for Krishna Consciousness*, 505 U.S. at 678-79.

⁷⁷ *Id.*

⁷⁸ *Perry Educ. Ass'n v. Perry Local Educators Ass'n*, 460 U.S. 37, 45-46 (1992).

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Pleasant Grove City*, 555 U.S. at 470.

⁸² *Perry*, 460 U.S. at 37.

The Florida Constitution closely replicates the First Amendment's protections against the establishment of religion.⁸³ The scope of the Florida Constitution's protection of free speech is the same as required under the First Amendment.⁸⁴

Florida law designates the FHSAA as the governing nonprofit organization for interscholastic competition for grades 6 through 12 in Florida public schools.⁸⁵ Florida law establishes that the FHSAA's authority to organize and conduct statewide interscholastic competition includes the potential for state championships and the FHSAA also has authority to establish terms and conditions for those contests.⁸⁶

FHSAA Florida High School State Championship Series

The FHSAA's Florida High School State Championship Series (State Championship Series) determines official state champions, among the Association's member schools, in sports sanctioned or recognized by the FHSAA Board of Directors.⁸⁷ The FHSAA limits participation in the State Championship Series to schools that are full members of the Association.⁸⁸ The FHSAA Board of Directors determines in which sports⁸⁹ a State Championship Series will be offered and establishes the terms and conditions for the competition series.⁹⁰

The FHSAA's Public Address Protocol applies to all State Championship Series.⁹¹ The public address announcer must maintain neutrality.⁹² The announcer is required to follow the FHSAA script for promotional announcements, player introductions, and awards ceremonies.⁹³ The procedure limits other announcements to:⁹⁴

- Those of an emergency nature;
- Those of a "practical" nature (e.g. a vehicle with lights on);
- Teams' starting lineups or entire lineups';
- Messages provided by host school management;
- Announcements about the sale of FHSAA souvenir merchandise;
- Players attempting or making a play;
- Penalties as signaled by the referee; and
- Substitutions and timeouts.

⁸³ Art. 1, s. 3, Fla. Const. *See Council for Secular Humanism, Inc. v. McNeil*, 44 So. 3d 112, 119 (Fla. 1st DCA 2010) (explaining that the Florida Constitution's establishment clause is consistent with the First Amendment and imposes additional restrictions on state actors through the no-aid provision).

⁸⁴ Art. 1, s. 4, Fla. Const. *See Cafe Erotica v. Fla. Dep't of Transp.*, 830 So. 2d 181, 183 (Fla. 1st DCA 2002) (stating that the scope of free speech protections in the Florida Constitution is the same as the First Amendment).

⁸⁵ Section 1006.20(1), F.S. If the FHSAA fails to meet its obligations and responsibilities, the commissioner is directed to designate a nonprofit organization to manage interscholastic athletics with the approval of the SBE. *Id.*

⁸⁶ Section 1006.20(4)(d)6., F.S.

⁸⁷ Bylaw 2.10, FHSAA.

⁸⁸ *Id.* The FHSAA must allow private schools the option of maintaining full membership in the Association or membership by sport. The FHSAA may allow public schools the option of applying for consideration to join another athletic association. Section 1006.20(1), F.S.

⁸⁹ The FHSAA currently conducts State Championship Series in the following sports: baseball, basketball, bowling, competitive cheerleading, cross country, flag football, football, golf, lacrosse, soccer, softball, swimming and diving, tennis, track and field, volleyball, water polo, weightlifting, and wrestling. FHSAA, *2022-2023 FHSAA Administrative Procedures*, available at https://fhsaa.com/documents/2022/8/22/2223_admin_procedures.pdf?id=3362.

⁹⁰ Section 1006.20(4)(d)6., F.S.; Bylaw 2.10, FHSAA.

⁹¹ FHSAA, *2022-2023 FHSAA Administrative Procedures*, Procedure 3.1.8, at 13, available at https://fhsaa.com/documents/2022/8/22/2223_admin_procedures.pdf?id=3362.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

Public address announcers may not provide play-by-play commentary as if announcing a radio or television broadcast, make comments that offer an unfair advantage to one team, make comments critical of contest participants, schools, or officials.⁹⁵

For regular season events, the FHSAA's Public Address Protocol states that the public address announcer must maintain neutrality.⁹⁶ The FHSAA encourages schools to abide by the additional requirements of the Public Address Protocol for the State Championship Series but does not require compliance for regular season events.⁹⁷

Effect of the Bill

FHSAA Governance

The bill reduces the number of members of the FHSAA board of directors from 16 to 13. In addition to the commissioner, eight members of the board of directors will be appointed by the Governor and confirmed by the Senate and shall represent the FHSAA membership as follows:

- Two public member school representatives from different administrative regions.
- Two nonpublic member school representatives from different administrative regions from each other and the public member school representatives.
- Two representatives, one from the northernmost two administrative regions and one from the southernmost two administrative regions.
- One district school superintendent from the northernmost two administrative regions.
- One district school board member from the southernmost administrative regions.

The final four members of the board of directors must be elected by FHSAA member schools representing the FHSAA membership as follows:

- Two public member school representatives, from a different administrative region, elected from among its public school representative members.
- Two nonpublic member school representatives, from different administrative regions from each other and the public member school representatives, elected from nonpublic school representative members.

The bill vests the legislative authority of the FHSAA with the board of directors. The representative assembly now serves in an advisory capacity to the board of directors and must make nonbinding recommendations to the board regarding amendments to the FHSAA bylaws.

Additionally, the bill requires that the SBE approve the FHSAA bylaws, and any amendments thereto, the FHSAA budget, and the FHSAA board of directors' selection of an executive director. The commissioner, at any time, is authorized to direct the FHSAA board of directors to amend its bylaws. No amendment to the bylaws shall be effective until approved by the SBE.

The bill requires that the FHSAA bylaws authorize schools to join by sport to participate in the championship contest or series of contests for that sport.

Student Extracurricular Activities and Athletics

The bill authorizes traditional public school and charter school students, if the activity is not offered at the school the student attends, and Florida virtual school full-time program students to enter into agreements with private schools to participate in extracurricular activities and athletics. Additionally, a traditional public

⁹⁵ *Id.*

⁹⁶ FHSAA, 2022-2023 FHSAA Administrative Procedures, Procedure 2.2.1, at 11, available at https://fhsaa.com/documents/2022/8/22/2223_admin_procedures.pdf?id=3362.

⁹⁷ *Id.*

school student may participate in activities at any public school in the school district in which the student resides, if the activity is not offered by the student's traditional public school.

The bill expands the program governing a private school student's participation in interscholastic sports. The FHSAA's program must be designed to permit an otherwise eligible private school student to participate in sports at any member public school or member private school, as appropriate for the student's grade level. The student's participation is contingent on the roster for the sport not having reached its maximum size and the coach determining that the student has the requisite skill and ability to participate. The bill retains a maximum size limit for private schools to be eligible for the program, but increases the cap from 125 to 200 enrolled students.

The bill protects a transfer student's ability to complete the activities in which they participated prior to transferring from a public school. When a student participating in an interscholastic or interscholastic activity transfers from a public school, he or she must be permitted to continue participating in that activity, at the school from which they transferred, until the end of the school year if:

- During the period of participation, the student continues to meet all of the general eligibility requirements related to grade point average, academic progress, and compliance with codes of student conduct.
- The student continues to meet the same standards of acceptance, behavior, and performance that are required of other participants, except for enrollment requirements at the school at which the student participates.
- The parents of the student provide transportation to and from the school at which the student participates.

Opening Remarks

The bill requires the FHSAA to adopt bylaws, policies, or procedures that provide schools participating in a high school championship contest or series, under the direction and supervision of the association, an opportunity to make brief opening remarks at the event. If requested by the school, a speaker from the school may give remarks, no longer than 2 minutes, using the public address system at the event. Prior to the opening remarks from school speakers, the association must make an announcement that the school's opening remarks are not endorsed by the association nor do they reflect the views and opinions of the association.

The bill establishes that FHSAA may not control, monitor, or review the content of schools' opening remarks, nor may the associations control the schools' choice of speaker. The bill provides that the decision to allow opening remarks before regular season contests is at the discretion of each school. The bill prohibits the FHSAA from unreasonably withholding its approval of an approved athletic association's application to become an affiliate member of the NFHS.

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:

None.

D. FISCAL COMMENTS:

None.