

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 Education Pre-K -12

BILL: SB 308

INTRODUCER: Senators Collins and Grall

SUBJECT: Interscholastic and Intrascholastic Activities

DATE: March 3, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jahnke	Bouck	ED	Pre-meeting
2.			JU	
3.			RC	

I. Summary:

SB 308 amends provisions regarding the Florida High School Athletic Association (FHSAA) and student participation in interscholastic and intrascholastic extracurricular activities. Specifically, the bill:

- Defines an “approved athletic association” as the FHSAA and other nonprofit athletic associations approved by the SBE and operating under a contract with the SBE.
- Clarifies that any school, including public, private, charter, and virtual, and home education cooperatives may join an approved athletic association, either through full membership or membership by sport.
- Requires approved athletic associations to comply with law that currently applies to the FHSAA regarding the establishment of bylaws relating to student eligibility and due process, and health and wellness for student extracurricular activities and athletics.
- Authorizes home education, private school, and virtual school students to participate at any public high school in the school district where the student resides or could attend through controlled open enrollment, subject to roster capacity and a determination of the student’s skill and ability.
- 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.

Additionally, the bill creates s. 1006.185, F.S., requiring approved athletic associations to adopt bylaws, policies, or procedures allowing opening remarks during high school championship series contests, with specified conditions for those remarks.

The bill has no impact on state revenues or expenditures.

The bill takes effect on July 1, 2023.

II. 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, but membership in the FHSAA is not mandatory.⁴ The FHSAA may not deny or discourage a private school from simultaneously maintaining membership in another athletic association, and may allow a public school the option of applying for consideration to join another athletic association.⁵ 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.⁶

The FHSAA is required to adopt bylaws regulating student eligibility, recruiting, student safety and member schools' interscholastic competition in accordance with applicable law.⁷ 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).⁸

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.⁹ 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.¹⁰

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). Florida High School Athletic Association, *Bylaws of the Florida High School Athletic Association, Inc., 2022-23 Edition*, at Bylaw 3.2.2.3.

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. FHSAA, *supra*, note 2, at Bylaw 3.2.2.4.

⁴ Section 1006.20(1), F.S.

⁵ *Id.*

⁶ *Id.*

⁷ Section 1006.20(2), F.S.

⁸ Section 1006.20(1), F.S.

⁹ 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 Feb. 27, 2023). The FHSAA Handbook contains the bylaws and administrative procedures, as adopted and amended by the board of directors, that govern the FHSAA.

¹⁰ Section 1006.20(3), F.S.

The executive authority of the FHSAA is vested in the board of directors (board).¹¹ The FHSAA board consists of 16 members, as follows:¹²

- 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.¹³ The membership of the representative assembly is similar to that of the board.¹⁴

School Membership in the FHSAA

An accredited school may become a member school of the FHSAA under its eligibility requirements, which include approval by the school's governing body and adoption of the FHSAA bylaws, paying all dues and other fees, maintaining insurance coverage, and election by the FHSAA board.¹⁵

Among other responsibilities, the FHSAA board approves schools or home education cooperatives for initial and continuing membership in the FHSAA, adopts and amends administrative regulations for its programs, and serves as the FHSAA's appellate authority.¹⁶

The FHSAA authorizes full membership schools to compete in FHSAA championships, vote in FHSAA elections, seek election to positions in FHSAA governance, and apply and serve as hosts of multi-school events.¹⁷ 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.¹⁸ Participation is voluntary in the Florida High School State

¹¹ Section 1006.20(4)(a), F.S.

¹² Section 1006.20(4)(a)1.-6., F.S.

¹³ Section 1006.20(5)(a), F.S.

¹⁴ 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.

¹⁵ FHSAA, *supra* note 2, at Bylaw 3.3.1. Similar qualifications and conditions apply to home education cooperatives seeking to become members in the FHSAA. FHSAA, *supra* note 2, at Bylaw 3.3.2.

¹⁶ Section 1006.20(4)(e), F.S.; FHSAA, *supra* note 2, at Bylaws 3.7 and 4.3.2.

¹⁷ FHSAA, *supra* note 2, at Bylaw 3.9.1.

¹⁸ FHSAA, *supra* note 2, at Bylaws 8.7.1.1; FHSAA, *supra* note 2, at Policy 10.1.1.

Championship, however, the FHSAA board preference is that all eligible schools participate.¹⁹ The FHSAA does provide an option for member schools to exercise independent status for “legitimate reasons”²⁰ 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.²¹ The FHSAA requires any independent status member schools to receive the FHSAA board’s approval for any championship playoff occurring after the conclusion of the FHSAA-approved regular season.²²

Student Extracurricular Activities and Athletics

Florida law outlines numerous standards and requirements relating to student extracurricular activities and athletics.²³ Such extracurricular activities and athletics include a student participating in tryouts, off-season conditioning, summer workouts, preseason conditioning, in-season practice, or contests.²⁴ A student must satisfy eligibility requirements to be deemed eligible to participate, which specify a minimum grade point average and adherence to academic performance standards and standards of conduct.²⁵

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 that apply specifically to the FHSAA. 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; a sports medical advisory committee; and the general operational provisions of the FHSAA.²⁶ 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.²⁷

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.²⁸ A home education program student may 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

¹⁹ FHSAA, *supra* note 2, at Policy 10.1.2.

²⁰ 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. FHSAA, *supra* note 2, at Policy 10.1.3.

²¹ FHSAA, *supra* note 2, at Policy 10.1.3.

²² *Id.*

²³ See Chapter 1006, Part 1, Section D, F.S.

²⁴ Section 1006.15(3)(a), F.S.

²⁵ *Id.*

²⁶ Section 1006.195(2)(a), F.S.

²⁷ *Id.*

²⁸ Section 1006.15(3)(c), F.S.

school, subject to an agreement with that private school.²⁹ A home education program student's participation is subject to the following conditions:³⁰

- 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.
- The student registers with the school his or her intent to participate in interscholastic extracurricular activities before participation.³¹

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:³²

- 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.³³

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.

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, with exceptions specified in law.³⁴

²⁹ Section 1006.15(3)(c), F.S.

³⁰ *Id.*

³¹ 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.

³² Section 1006.15(3)(e), F.S.

³³ 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.

³⁴ Section 1006.15(9)(b), F.S.

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.³⁵ A private school student must be eligible to participate in interscholastic athletics at the public middle school, public high school or public 6-12 school for which he or she 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.³⁶

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.³⁷ Eligible students must apply using the FHSAA application process.³⁸ The parents of a participating student are responsible for transporting the student to and from the public school at which he or she participates.³⁹

Other Florida Athletic Associations

Although the FHSAA is the largest school athletic association in Florida, other associations are in operation and oversee their respective member schools' athletics and interscholastic competitions.⁴⁰ These associations primarily serve private and independent schools but some of the associations' school memberships are growing to include more public schools and sanctioned sports that may overlap or differ from the FHSAA.⁴¹ The overlap between the FHSAA sanctioned sports and the sports offered by other associations, as well as the sanctioning of new sports formerly unique to a particular association, can cause membership and oversight questions for schools and athletic associations.⁴² For example, prior to 2020, the Sunshine State Athletic Commission (SSAC) was the primary association sanctioning women's sand volleyball and

³⁵ Section 1006.15(8), F.S.

³⁶ Section 1006.15(8)(a), F.S.

³⁷ Section 1006.15(8)(g), F.S.

³⁸ Section 1006.15(8)(f), F.S.

³⁹ 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.

⁴⁰ See Sunshine State Athletic Conference, *Our Members*, <https://www.sunshinestateathletics.com/page/show/5114535-our-members> (last visited Feb. 27, 2023); Florida Independent Christian Athletic Association, *Regions & Members*, <https://ficia.org/members> (last visited Feb. 27, 2023); Florida Independent High School Athletic Association, *School Links*, <https://fihhsaa.org/schools/> (last visited Feb. 27, 2023); Sunshine Independent Athletic Association, <https://www.siaa1.com/> (last visited Feb. 27, 2023) (click "Member Schools" in menu).

⁴¹ See Sunshine State Athletic Conference, *About Us*, <https://www.sunshinestateathletics.com/page/show/5084878-about-us> (last visited Feb. 27, 2023).

⁴² See Florida High School Athletic Association, <https://fhsaa.com/index.aspx> (last visited Feb. 27, 2023) (Click "Sports" in menu); Sunshine State Athletic Conference, *Sports*, <https://www.sunshinestateathletics.com/page/show/5084880-sports> (last visited Feb. 27, 2023); Florida Independent Christian Athletic Association, *Sports*, <https://ficia.org/sports> (last visited Feb. 27, 2023); Florida Independent High School Athletic Association, *Sports Offered*, <https://fihhsaa.org/sports/> (last visited Feb. 27, 2023).

running an official league.⁴³ In June 2020, the FHSAA Board of Directors voted to recognize⁴⁴ sand volleyball as a spring sport beginning in the 2021-2022 school year.⁴⁵ This presents potential conflicts for schools formerly participating in the SSAC sand volleyball league and their simultaneous memberships in the FHSAA as it relates to eligibility to continue playing in alternative leagues and retaining FHSAA championship eligibility in other sports.

Other States with Multi-Association Formats

Other states have a variety of structures and formats for athletic associations and the governance of interscholastic athletic competition. At least 12 states have more than one state-based association for governing high school sports and activities.⁴⁶ The rationales for division in governance vary but most are based on different oversight bodies for athletic competitions in independent schools, private schools, and public schools.⁴⁷ Notably, California and New York employ a federation format, in which sections retain some autonomy in regulation but still must comply with overarching federation rules and standards.⁴⁸ Texas has four organizations governing private schools' interscholastic athletics and the University Interscholastic League, which is primarily comprised of public schools and open enrollment charter schools.⁴⁹

Federal Law Regarding Opening Remarks at Interscholastic Athletic Events

Establishment Clause

The U.S. Constitution prevents the government from establishing a religion and protects privately initiated expression and activities from government interference and discrimination.⁵⁰ 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.⁵¹

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

⁴³ Adam Regan, *FHSAA approves girls wrestling, sand volleyball as varsity sports for 2021-2022 school year*, Fort Meyers News-Press, June 9, 2020, <https://www.news-press.com/story/sports/high-school/2020/06/09/fhsaa-approves-girls-wrestling-sand-volleyball-start-2021-2022-school-year/5327586002/> (last visited Feb. 27, 2023).

⁴⁴ The FHSAA defines "recognized sports" as those that must abide by Association bylaws, rules, and contest regulations in regards to student eligibility and sportsmanship. FHSAA, *supra* note 2, at Bylaw 8.5.1.1. "Sanctioned sports" may be subject to stricter guidelines. FHSAA, *supra* note 2, at Bylaw 8.5.1.2. FHSAA recognized and sanctioned sports may be eligible for Florida High School State Championship Series dependent upon the FHSAA Board of Directors' determination. FHSAA, *supra* note 2, at Bylaw 8.7.1.

⁴⁵ Adam Regan, *FHSAA approves girls wrestling, sand volleyball as varsity sports for 2021-2022 school year*, Fort Meyers News-Press, June 9, 2020, <https://www.news-press.com/story/sports/high-school/2020/06/09/fhsaa-approves-girls-wrestling-sand-volleyball-start-2021-2022-school-year/5327586002/> (last visited Feb. 2, 2023).

⁴⁶ 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 Feb. 27, 2023).

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ See U.S. Const., Amend. 1.

⁵¹ *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971).

school premises.⁵² 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.⁵³ 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.⁵⁴ However, the Supreme Court cautioned that not all public speech becomes government speech simply because it is made using public facilities at government sponsored events.⁵⁵ Santa Fe school district's policy failed the *Lemon Test* because the Court found the policy did not have a 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.⁵⁶

Free Speech Clause

Speech is protected by the First Amendment of the United States Constitution.⁵⁷ The government or a public actor may nevertheless regulate an individual's freedom of speech within constitutional limits.⁵⁸ The First Amendment's free speech clause restricts government regulation of private speech but does not regulate government speech.⁵⁹ To determine whether speech is government speech or private speech, courts consider three 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 exercises direct control over the speech.⁶⁰

In 2015, the FHSAA had a policy that prohibited teams from praying over the loudspeaker before a game. Cambridge Christian School, a private Christian school in Tampa, complained that the policy was a violation of Free Speech and Free Exercise Clauses of the United States and Florida Constitutions.⁶¹ The district court held that all speech over the loudspeaker was government speech and dismissed the case. The Eleventh Circuit Court of Appeals held that:

[T]he question of whether all speech over the microphone was government speech is a heavily fact-intensive one that looks at the history of the government's use of the medium for communicative purposes, the implication of government endorsement of messages carried over that medium, and the degree of government control over those messages.⁶²

The appeals court returned the case to the district court to allow the case to proceed to determine whether "the multitude of messages delivered over the loudspeaker should be viewed as private,

⁵² See *Santa Fe Independent Sch. District v. Doe*, 530 U.S. 290, 314 (2000).

⁵³ *Id.* at 317.

⁵⁴ *Id.* at 302.

⁵⁵ *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).

⁵⁶ *Santa Fe Independent Sch. District*, 530 U.S. at 302-10.

⁵⁷ U.S. Const., Amend. 1.

⁵⁸ *Int'l Soc'y for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672, 678 (1992).

⁵⁹ See *Pleasant Grove City v. Summum*, 555 U.S. 460, 467 (2009).

⁶⁰ 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).

⁶¹ *Cambridge Christian Sch., Inc. v. Florida High Sch. Athletic Ass'n, Inc.*, 942 F.3d 1215 (11th Cir. 2019).

⁶² *Id.*, at 1223.

not government, speech,” and whether Cambridge Christian was “arbitrarily and haphazardly denied access to the forum in violation of the First Amendment.”⁶³

After hearing the merits of the case as presented by both parties, the district court ruled that the FHSAA’s viewpoint neutral regulation of the speech over the loudspeaker was constitutional.⁶⁴ The case is now again before the Eleventh Circuit Court of Appeals and is tentatively scheduled to be heard the week of June 26, 2023.⁶⁵

Federal Guidance

According to updated guidance from the U.S. Department of Education on constitutionally protected prayer and religious expression in public elementary and secondary schools, student speakers at noncurricular activities such as sporting events may not be selected on a basis that either favors or disfavors religious perspectives. To avoid any mistaken perception that a school endorses student speech that is not in fact attributable to the school, school officials may make appropriate, neutral disclaimers to clarify that such speech, whether religious or nonreligious, is the speaker’s and not the school’s speech.⁶⁶

Florida Law Regarding Opening Remarks at Interscholastic Athletic Events

The Florida Constitution closely replicates the First Amendment’s protections against the establishment of religion.⁶⁷ The scope of the Florida Constitution’s protection of free speech is the same as required under the First Amendment.⁶⁸

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.⁶⁹

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.⁷⁰ The FHSAA limits participation

⁶³ *Cambridge Christian Sch., Inc. v. Florida High Sch. Athletic Ass’n, Inc.*, 942 F.3d 1215 (11th Cir. 2019), at 1223.

⁶⁴ *Cambridge Christian Sch., Inc. v. Florida High Sch. Athletic Ass’n, Inc.*, 8:16-CV-2753-CEH-AAS, 2022 WL 971778 (M.D. Fla. Mar. 31, 2022).

⁶⁵ Notice of Tentative Calendar Assignment, *Cambridge Christian Sch., Inc. v. Florida High Sch. Athletic Ass’n, Inc.*, No. 22-11222 (11th Cir. Feb. 16, 2023).

⁶⁶ U.S. Department of Education, *Updated Guidance on Constitutionally Protected Prayer and Religious Expression in Public Elementary and Secondary Schools* (Jan. 21, 2020), 85 FR 3257, available at <https://www.federalregister.gov/documents/2020/01/21/2020-00876/updated-guidance-on-constitutionally-protected-prayer-and-religious-expression-in-public-elementary>, at 3268.

⁶⁷ 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).

⁶⁸ 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).

⁶⁹ Section 1006.20(4)(d)6., F.S.

⁷⁰ Bylaw 2.10, FHSAA.

in the State Championship Series to schools that are full members of the Association.⁷¹ The FHSAA Board of Directors determines in which sports⁷² a State Championship Series will be offered and establishes the terms and conditions for the competition series.⁷³

Public Address Protocol

The FHSAA's Public Address Protocol applies to all State Championship Series. The public address announcer must maintain neutrality. The announcer is required to follow the FHSAA script for promotional announcements, player introductions, and awards ceremonies. The procedure limits other announcements to:⁷⁴

- 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.

In addition, 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.⁷⁵

For regular season events, the FHSAA's Public Address Protocol states that the public address announcer must maintain neutrality.⁷⁶ 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.⁷⁷

III. Effect of Proposed Changes:

Approved Athletic Associations

SB 308 amends s. 1006.20, F.S., to expand the designation of a governing nonprofit athletic association for public schools from the Florida High School Athletic Association (FHSAA) to include any athletic association. The bill requires nonprofit athletic associations to operate under

⁷¹ *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.

⁷² 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.

⁷³ Section 1006.20(4)(e)6., F.S.; Bylaw 2.10, FHSAA.

⁷⁴ 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.

⁷⁵ *Id.*

⁷⁶ 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.

⁷⁷ *Id.*

a contract with the State Board of Education, which must, prior to entering into a contract with an association, must annually review the association's bylaws, policies, and dues and fees for compliance with the law.

The bill specifies that an approved athletic association is not a state agency and requires all approved athletic associations and their member schools to meet governance, fair play, and student health and wellness requirements, outlined in ss. 1006.15-1006.19, F.S., which formerly was limited to the FHSAA. The bill assigns to approved athletic associations the requirements in law that currently apply to the FHSAA. However, under the bill other athletic associations are not required to maintain the governance structure required of the FHSAA, and an approved association that does not rely on recommendations of the FHSAA sports medicine advisory committee must establish a sports medicine advisory committee that meets statutory requirements.

The bill authorizes private schools, traditional public schools, charter schools, virtual schools, and home education cooperatives to become a member of any approved athletics association. However, no public school may maintain membership in or pay dues or fees to any athletic association that is not operated in accordance with a contract with the SBE.

Student Participation in Interscholastic and Intrascholastic Extracurricular Activities

The bill expands participation by home education, private school, and virtual school students at any public high school to authorize participation in the school district where the student resides or could attend through controlled open enrollment, rather than the school to which the student would be assigned. However, for each, the student's participation is contingent on the roster for the activity not having reached its maximum size and the coach or sponsor of the activity determining that the student has the requisite skill and ability to participate.

The bill requires that a home education program student that wishes to participate at a public school must meet the same conditions that currently apply to participation at a private school.

The bill applies to any approved association the requirement to facilitate participation by a private school middle or high school student at a member public school, without regard for the public school to which the student would be assigned. The bill retains all other eligibility requirements for the student and the private school.

While current law protects a transfer student's ability to participate in activities at the new school, the bill also protects a transfer student's ability to complete the activities in which they participated in before transferring from a public school. When a student participating in an interscholastic or intrascholastic activity transfers from a public school, he or she must be permitted to continue participating in that activity, at the school from which he or she 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.

The bill also provides protections to the school the transfer student attends, the school at which the transfer student participates in the activity, and the district school board from civil liability arising from an injury that occurs to the student during parent transportation.

Opening Remarks

The bill creates s. 1006.185, F.S., which requires approved athletic associations, whose memberships include public schools, to adopt bylaws, policies, or procedures that provide schools participating in a high school championship contest or series of contests, 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 two 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 specifies that athletic associations 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.

This bill is effective July 1, 2023.

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:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1006.20, 1006.15, 768.135, 1002.20, 1002.42, 1006.165, 1006.18, 1006.195, 1012.468, 1012.795, and 1012.796.

This bill creates section 1006.185 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.