

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 Appropriations

BILL: CS/CS/SB 684

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Education); Education Pre-K - 12 Committee; and Senators Gaetz and Stargel

SUBJECT: Choice in Sports

DATE: February 18, 2016 **REVISED:** _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Bailey	Klebacha	ED	Fav/CS
2. Sikes	Elwell	AED	Recommend: Fav/CS
3. Sikes	Kynoch	AP	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 684 revises student eligibility requirements for participation in interscholastic and intrascholastic extracurricular activities, expands Florida High School Athletic Association (FHSAA) membership options for private schools, establishes escalating penalties for recruiting violations, and increases educational choice and controlled open enrollment options.

Specifically, the bill:

- Allows students to be immediately eligible to join an existing team if the activity roster has not reached maximum size and the student has the requisite skills and abilities to participate;
- Prohibits a school district from delaying or preventing student participation in interscholastic and intrascholastic extracurricular activities;
- Allows a private school the option of joining the FHSAA on a per-sport basis;
- Prohibits the FHSAA from discouraging private schools from simultaneously maintaining membership in another athletic association;
- Authorizes the FHSAA to allow a public school to apply for consideration to join another athletic association;
- Establishes escalating penalties for recruiting violations;
- Requires an educator certificate to be revoked for a third recruiting offense in violation of FHSAA bylaws; and
- Expands the scope of controlled open enrollment options available to parents beyond school district boundaries, subject to capacity and maximum class size limits.

The bill is expected to have an insignificant impact on state funds. Individual school districts may experience an increase or decrease in Florida Education Finance Program (FEFP) funding based on shifts in student enrollment.

The bill takes effect on July 1, 2016.

II. Present Situation:

Florida High School Athletics

The Florida High School Athletic Association (FHSAA) is statutorily designated as the governing nonprofit organization of athletics in Florida public schools in grades 6 through 12.¹ The FHSAA is not a state agency, but is assigned quasi-governmental functions.²

Student Eligibility

To be eligible for participation in interscholastic³ extracurricular activities,⁴ a student must meet certain academic and conduct requirements.⁵ Each student must meet the other requirements for participation established by the district school board.⁶ The FHSAA is required to adopt bylaws that, unless specifically provided by statute, establish eligibility requirements for all students who participate in high school athletic competition in its member schools.⁷

The FHSAA bylaws governing residence allow students to be eligible to participate in high school athletic competitions in the schools in which he or she:⁸

- First enrolls each school year; or
- Makes himself or herself a candidate for an athletic team by engaging in practice before enrolling.⁹

The FHSAA bylaws governing student transfers:¹⁰

- Allow a student to be eligible in the school to which the student transferred during the school year if the transfer was made by a deadline established by the FHSAA, which may not be prior to the date authorized for the beginning of practice for the sport.¹¹
- Require transfers to be allowed pursuant to the district school board policies in the case of transfer to a public school, or pursuant to the private school policies in the case of transfer to

¹ Section 1006.20, F.S.

² *Id.*

³ The FHSAA defines an “interscholastic contest” as any competition between organized teams or individuals of different schools in a sport recognized or sanctioned by the FHSAA, and is subject to all regulations pertaining to such contests. Bylaw 8.1.1, FHSAA.

⁴ “Extracurricular” means any school-authorized or education-related activity occurring during or outside the regular instructional school day. Section 1006.15(2), F.S.

⁵ Section 1006.15(3)(a), F.S.

⁶ Section 1006.15(4), F.S.

⁷ Section 1006.20(2)(a), F.S.

⁸ Section 1006.20(2)(a), F.S.

⁹ Section 1002.20(17), F.S.

¹⁰ Section 1006.20(2), F.S.

¹¹ Section 1006.20(2)(a), F.S.

a private school. The student shall remain eligible in that school so long as he or she is enrolled in that school.¹²

- Allow a student who transfers from a home education program, charter school, or from the Florida Virtual School full-time program to a public school before or during the first grading period of the school year to be academically eligible to participate in interscholastic extracurricular activities during the first grading period provided the student had a successful evaluation from the previous year.¹³
- Provide that requirements governing eligibility and transfer between member schools be applied similarly to public school students and private school students.¹⁴

The FHSAA, in cooperation with each district school board, facilitates a program for middle or high school students who attend a private school to be eligible to participate in an interscholastic or intrascholastic sport at a public high school, for which the student is zoned, if the private school is not a member of the FHSAA and does not offer an interscholastic or intrascholastic athletic program.¹⁵

Membership in the FHSAA

Any high school in the state, including charter schools, virtual schools, and home education cooperatives,¹⁶ may become a member of the FHSAA and participate in FHSAA activities.¹⁷ A private school that wishes to engage in high school athletic competition with a public high school may become a member of the FHSAA.¹⁸ Membership in the FHSAA is not mandatory for any school.¹⁹

The FHSAA may not deny or discourage interscholastic competition between its member schools and non-FHSAA member Florida schools, including members of another athletic governing organization.²⁰ The FHSAA is prohibited from taking retributory or discriminatory actions against member schools who participate in interscholastic competition with non-FHSAA member schools.²¹ The bylaws of the FHSAA are the rules by which high school athletic programs in its member schools, and the students who participate in them are governed, unless otherwise specified in statute.²² The FHSAA member schools may only engage in interscholastic contests with schools which are members of the FHSAA or with non-member schools that meet specific requirements designated in the FHSAA bylaws.²³

¹² *Id.*

¹³ Section 1006.15(3)(c)6.- (d)6 and (f), F.S.

¹⁴ Section 1006.20(2), F.S.

¹⁵ Section 1006.15(8), F.S.

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

¹⁷ Section 1006.20, F.S.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id. at* (1)

²² *Id.*

²³ Bylaw 8.3, FHSAA. Florida High School Athletic Association, *2015-16 FHSAA Bylaws* (2015-16), available at http://www.fhsaa.org/sites/default/files/attachments/2010/09/16/node-235/1516_handbook_bylaws.pdf.

Recruitment of Student Athletes

Florida law requires the FHSAA to adopt bylaws prohibiting the recruitment of student athletes.²⁴ Currently, the bylaws prohibit member schools from recruiting student athletes for athletic purposes.²⁵ “Athletic recruiting” is defined by the FHSAA as any effort by a school employee, athletic department staff member or representative of a school’s athletic interests to pressure, urge, or entice a student to attend that school for the purpose of participating in interscholastic athletics.²⁶ The FHSAA sets forth specific behaviors that constitute recruiting, as well as identifying persons who are considered to represent a school’s athletic interests.²⁷

If it is determined that a school has recruited a student in violation of FHSAA bylaws, the FHSAA may require the school to participate in a higher classification for the sport in which the recruited student competes for a minimum of one classification cycle.²⁸

In addition to any other appropriate fine and sanction imposed on the school, its coaches, or adult representatives, the following penalties may be imposed against a school for recruiting violations:²⁹

- Public reprimand;
- Financial penalty of a minimum of \$2,500;
- Probation for one or more years;
- Prohibition against participating in certain interscholastic competitions;
- Prohibition against participating in any interscholastic competition for one or more years in the sport(s) in which the violation(s) occurred;
- Restricted membership for one or more years during which time some or all of the school’s membership privileges may be restricted or denied; and
- Expulsion from membership in the FHSAA for one or more years.

The FHSAA must adopt bylaws that establish sanctions for coaches who have committed major violations of the FHSAA’s bylaws and policies.³⁰ The bylaws prescribe penalties and an appeals process for athletic recruiting violations.³¹

²⁴ Section 1006.20(2)(b), F.S.

²⁵ The FHSAA defines recruiting as the use of undue influence or special inducement by anyone associated with the school in an attempt to encourage a prospective student to attend or remain at that school for the purpose of participating in interscholastic athletics. Bylaw 6.3, FHSAA.

²⁶ Policy 36.2.1, FHSAA. *Administrative Policies of the Florida High School Athletic Association, Inc.* (2015-16), available at http://www.fhsaa.org/sites/default/files/attachments/2010/09/16/node-235/1516_handbook_policies.pdf.

²⁷ Policy 36, FHSAA.

²⁸ Section 1006.20(2)(b), F.S.

²⁹ Policy 36.5, FHSAA; Bylaw 10.1.2, FHSAA.

³⁰ Section 1006.20(2)(f), F.S. Major violations include, but are not limited to: knowingly allowing an ineligible student to participate in a contest representing a member school in an interscholastic contest; or committing a violation of the FHSAA’s recruiting or sportsmanship policies.

³¹ *Id.*

The FHSAA must adopt bylaws for the process and standards for FHSAA student eligibility determinations.³² The bylaws must provide that student ineligibility must be established by clear and convincing evidence.³³

Controlled Open Enrollment

Controlled open enrollment is a public education delivery system that allows school districts to make student school assignments using parents' indicated preferential school choice as a significant factor.³⁴ School districts have the option to offer controlled open enrollment within the public schools in addition to existing choice programs such as virtual instruction programs, magnet schools, alternative schools, special programs, advanced placement, and dual enrollment.³⁵ The district school board must adopt by rule and post on the district website a controlled open enrollment plan.³⁶ The controlled open enrollment plan must:³⁷

- Adhere to federal desegregation requirements;
- Require an application process to participate in the controlled open enrollment program that allows parents to declare school preferences and includes placements of siblings within the same school;
- Use a lottery procedure to determine student assignment and establish an appeal process for hardship cases;
- Afford students in multiple session schools preferred access;
- Maintain socioeconomic, demographic, and racial balance; and
- Address the availability of transportation.

District school boards must annually report the number of students attending the various types of public schools of choice in the district.³⁸

III. Effect of Proposed Changes:

This bill revises student eligibility requirements for participation in interscholastic and intrascholastic extracurricular activities, expands Florida High School Athletic Association (FHSAA) membership options for private schools, establishes escalating penalties for recruiting violations, and increases educational choice and controlled open enrollment options.

Specifically, the bill:

- Allows students to be immediately eligible to join an existing team if the activity roster has not reached maximum size and the student has the requisite skills and abilities to participate;
- Prohibits a school district from delaying or preventing student participation in interscholastic and intrascholastic extracurricular activities;

³² Section 1006(2)(g), F.S.

³³ Section 1006.20(2)(g), F.S. Bylaw 4.6.2.3, FHSAA. The FHSAA defines clear and convincing evidence as the evidence that is precise, explicit, lacking in confusion, and of such weight that it produces a firm belief or conviction, without hesitation, about the matter in issue. Bylaw 1.4.33, FHSAA.

³⁴ Section 1002.31, F.S.

³⁵ *Id.*

³⁶ *Id.*

³⁷ Section 1002.31(3), F.S.

³⁸ Section 1002.31(4), F.S.

- Allows a private school the option of joining the FHSAA on a per-sport basis;
- Prohibits the FHSAA from discouraging private schools from simultaneously maintaining membership in another athletic association;
- Authorizes the FHSAA to allow a public school to apply for consideration to join another athletic association;
- Establishes escalating penalties for recruiting violations;
- Requires an educator certificate to be revoked for a third recruiting offense in violation of FHSAA bylaws; and
- Expands the scope of controlled open enrollment options available to parents beyond school district boundaries, subject to capacity and maximum class size limits.

Florida High School Athletics

Student Eligibility

The bill revises student eligibility requirements by:

- Prohibiting a school district from delaying eligibility or otherwise preventing a student participating in controlled open enrollment or a school choice program from being immediately eligible to participate in interscholastic and intrascholastic extracurricular activities;
- Defining “eligible to participate” to include, but not be limited to, a student participating in tryouts, off-season conditioning, summer workouts, preseason conditioning, in-season practice, or contests, and does not require a student to be placed on any specific team for interscholastic or intrascholastic extracurricular activities; and
- Allowing a student who transfers during the school year to join an existing team if the activity roster has not reached maximum size and if the coach determines the student has the required skill and ability to participate.

Additionally, the bill increases student eligibility options by:

- Prohibiting the FHSAA and school district from declaring a transfer student ineligible due to the student’s inopportunity to comply with qualifying requirements;
- Enabling a private school student the option to participate at the public school zoned for the physical address, regardless of whether or not the school offers an interscholastic or intrascholastic athletic program; and
- Changing level of proof in an eligibility determination from “clear and convincing evidence” to “a preponderance of evidence.”³⁹

Membership in the FHSAA

The bill requires the FHSAA to allow a private school to join the FHSAA on a full-time or a per sport basis. This offers a private school the option of joining other athletic associations by individual sport while maintaining membership in FHSAA for other sports. In addition, the bill

³⁹ Preponderance of evidence is defined to mean the evidence which is at the greater weight or more convincing than the evidence which is offered in opposition to it. Black, Henry Campbell. A Dictionary of Law: Containing Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern ... New York, NY: Lawbook Exchange, 1991.

prohibits the FHSAA from discouraging private schools from simultaneously maintaining membership in another athletic association.

The bill authorizes the FHSAA to allow a public school to apply for consideration to join another athletic association.

Recruitment of Student Athletes

The bill establishes escalating penalties for the recruitment of student athletes. Specifically, the bill enhances current recruitment penalties found in the FHSAA bylaws by adding stringent penalties for the recruitment of a student athlete by a school district employee or contractor. The bill requires the following penalties:

- First offense is a \$5,000 forfeiture of pay.
- Second offense includes suspension without pay for 12 months from coaching, directing, or advertising an extracurricular activity and a \$5,000 forfeiture of pay.
- Third offense includes:
 - \$5,000 forfeiture of pay for the employee or contractor who committed the violation; and
 - For an individual who holds an educator certificate:
 - The FHSAA will refer the violation for review to determine if probable cause exists;
 - The Commissioner of Education will file a formal complaint against the individual if there is a finding of probable cause; and
 - If the complaint is upheld, the individual's educator certificate will be revoked by the Education Practices Commission for 3 years, in addition to FHSAA penalties. The Department of Education will also revoke any adjunct teaching certificates issued under s. 1012.57, F.S. and all permissions under s. 1012.39, F.S. and 1012.43, F.S. The educator will be ineligible for such certificates or permissions for a period of time equal to the period of revocation of his or her state-issued certificate.

The bill also specifies that, in instances in which a student is recruited by an adult who is not a school district employee or contractor, a school will forfeit every competition in which the recruited student participates.

Controlled Open Enrollment

The bill expands the scope of a school district's controlled open enrollment options by:

- Allowing a parent from any district in the state, whose child is not subject to a current expulsion order or suspension order, to enroll and transport the child to any public school that has not reached capacity in the district, subject to maximum class size limits, including charter schools;
- Requiring the receiving school district to accept the student and report the student for funding;
- Allowing a student who transfers to remain at the school chosen by the parent until the student completes the highest grade level at the school; and
- Permitting a school district to provide transportation for students participating in a controlled open enrollment program.

The bill elevates the transparency of the district school board controlled open enrollment plans by requiring the district to adopt by rule and visibly post on its website the process required to participate in controlled open enrollment. Additionally, the bill requires that the controlled open enrollment process must:

- Provide preferential treatment to:
 - Dependent children of active duty military personnel whose move resulted from military orders;
 - Children who have been relocated due to a foster care placement in a different school zone;
 - Children who move due to a change in custody due to separation, divorce, the serious illness of a custodial parent, the death of a parent, or a court order; or
 - Students residing in the school district;
- Maintain existing academic eligibility criteria for public school choice programs; and
- Identify schools that have not reached capacity.⁴⁰

The bill takes effect on July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under CS/CS/SB 684, school district employees or contractors in violation of FHSAA recruiting bylaws will experience forfeiture of pay in the amount of \$5,000 for each offense; potential suspension without pay for 12 months for a second offense; and revocation of the individual's educator certificate for a third offense.

⁴⁰ In determining the capacity of each school, the district school board shall incorporate the specifications, plans, elements, and commitments contained in the school district educational facilities plan and the long-term work programs required under s. 1013.35. The bill.

C. Government Sector Impact:

The bill is expected to have an insignificant impact on state funds. Individual school districts may experience an increase or decrease in Florida Education Finance Program (FEFP) funding based on shifts in student enrollment.

The Education Practices Commission (EPC) may experience an increase in workload as a result of educator discipline cases associated with the recruiting penalties specified in the bill. Since the number of additional cases which may occur as a result of this bill is not known, the impact on the EPC is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 1002.20, 1002.31, 1006.15, 1006.20, 1012.795, and 1012.796.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

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

CS/CS by Appropriations on February 18, 2016:

The committee substitute specifies that, in addition to an expulsion order, a student must not be subject to a suspension order to be guaranteed enrollment under the controlled open enrollment options.

CS by Education Pre-K – 12 on January 14, 2016:

The committee substitute modifies the bill as follows:

- Omits the authority for public schools to join the FHSAA on a per sport basis; and
- Authorizes the FHSAA to allow a public school the option to apply for consideration to join another athletic association.

B. Amendments:

None.