The Florida Senate

PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Education Pre-K - 12 Committee

BILL:	SB 2202
INTRODUCER:	Senator Villalobos
SUBJECT:	Public Records/Drug Test/HS Athletics
DATE:	April 4, 2007
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	deMarsh-Mathues	Matthews	ED	**Favorable**
2.			GO	
3.			RC	
4.				
5.				
6.				

I. Summary:

This bill is linked to Senate Bill 2200, which requires the Florida High School Athletic Association (FHSAA) to establish a one-year random drug testing program for the use of anabolic steroids by high school student athletes in grades 9 through 12 who participate in football, baseball, and weightlifting competitions under the FHSAA.

The bill creates an exemption from the Public Records Law for a finding of each drug test held by a school or the FHSAA that relates to the drug testing program. The bill creates an exemption from the Public Meetings Law for meetings at which a challenge or an appeal to the findings of a student's drug test is discussed. The exemptions are scheduled to repeal on October 2, 2012, in accordance with the Open Government Sunset Review Act. The bill contains a public necessity statement for the public records and public meetings exemptions created in the bill.

This bill substantially amends section 1006.20 of the Florida Statutes.

II. Present Situation:

Public Records Law, Generally

Florida has a long history of providing public access to the records of governmental and other public entities. The Legislature enacted its first law affording access to public records in 1909. In 1992, Floridians adopted an amendment to the state constitution that raised the statutory right of access to public records to a constitutional level. Article I, s. 24(a) of the State Constitution provides that:

> Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

The Public Records Law[1] also specifies conditions under which the public must have access to governmental records. Section 119.011(11), F.S., defines the term "public records" to include:

> All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition of public records to include all materials made or received by an agency in connection with official business which are used "to perpetuate, communicate, or formalize knowledge."[2] Unless the Legislature makes these materials exempt, they are open for public inspection, regardless of whether they are in final form.[3]

Under Article I, s. 24(c) of the State Constitution, the Legislature may provide for the exemption of records from the open government requirements provided: (1) the law creating the exemption states with specificity the public necessity justifying the exemption; and (2) the exemption is no broader than necessary to accomplish the stated purpose of the law.

Open Government Sunset Review Act

The Open Government Sunset Review Act of 1995, s. 119.15, F.S., establishes a review and repeal process for public records exemptions. In the fifth year after enactment of a new exemption or the substantial amendment of an existing exemption, the exemption is repealed on October 2, unless the Legislature reenacts the exemption. An "exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. An exemption is not substantially amended if the amendment narrows the scope of the exemption."[4]

Under s. 119.15(2), F.S., an exemption may be maintained only if it meets one of the following:

- The exempted record or meeting is of a sensitive, personal nature concerning individuals;

[1] Chapter 119, F.S.
[2] *Shevin v. Byron, Harless, Schaffer, Reid, and Assocs., Inc.*, 379 So.2d 633, 640 (Fla. 1980).
[3] *See Wait v. Florida Power & Light Co.*, 372 So.2d 420 (Fla. 1979).
[4] s. 119.15(3)(b), F.S.

- The exemption is necessary for the effective and efficient administration of a governmental program; or
- The exemption affects confidential information concerning an entity.

Section 119.15(6)(a), F.S., requires, as part of the review process, the consideration of the following questions:

1. What specific records or meetings are affected by the exemption?
2. Whom does the exemption uniquely affect, as opposed to the general public?
3. What is the identifiable public purpose or goal of the exemption?
4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
5. Is the record or meeting protected by another exemption?
6. Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

An exemption may be maintained only if it serves an identifiable public purpose, and it may be no broader than necessary to meet that purpose. An identifiable public purpose is served if the exemption meets one of the following purposes and the Legislature finds that the purpose is sufficiently compelling to override the strong policy of open government and cannot be accomplished without the exemption:

- The exemption allows "the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption."
- The exemption protects "information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals."
- The exemption protects "information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace."[5]

Section 286.011, F.S., provides that all meetings of any board or commission of any state agency or authority of any agency, or any county, municipality, or political subdivision, at which official acts are taken, are considered public meetings. As meetings open to the public, these meetings must be properly noticed and recorded, and open to public inspection.[6]

Educational Records

Section 1002.22, F.S., provides for the rights of a student and his or her parents regarding the student's educational records in Florida. The student who attends or has attended any public

[5] s. 119.15(4)(b), F.S.
[6] s. 286.011(1) and (2), F.S.

school, career center, or public postsecondary educational institution has a right of privacy with respect to the educational records kept on him or her.[7] Personally identifiable records or reports of a student, and any personal information contained therein, are confidential and exempt from the Public Records Law.[8] A state or local educational agency, board, public school, career center, or public postsecondary educational institution may not permit the release of such records, reports, or information without the written consent of the student's parent or qualified student to any individual, agency, or organization.[9] The Fifth District Court of Appeal has held that a school board may not disclose student records, even with personally identifying information redacted.[10]

However, personally identifiable records or reports of a student under s. 1002.22, F.S., may be released to certain persons or organizations without the consent of the student or the student's parent under certain limited circumstances.[11] In addition, an educational institution may publish and release to the general public directory information relating to a student under certain conditions.[12]

Section 1002.22(2), F.S., defines "records and reports" to mean official records, files, and data directly related to students that are created, maintained, and used by public educational institutions, including all material that is incorporated into each student's cumulative record folder and intended for school use or to be available to parties outside the school or school system for legitimate educational or research purposes.[13]

Florida High School Athletic Association

The FHSAA is designated as the governing nonprofit organization of Florida public school athletics.[14] The FHSAA governs athletic competitions at member schools for students attending grades 6 through 12. The membership structure of the FHSAA is such that the organization is a representative democracy in which the sovereign authority is vested in its member schools.[15] The school principal, designated assistant principal, or athletic director is the official representative of each member school.[16]

The FHSAA is required to comply with Florida law to preserve its designation.[17] An annual, independent financial audit is required of FHSAA accounts and records, and a copy of the report

[7] s. 1002.22(3)(d), F.S.
[8] *Id.*
[9] *Id.*
[10] *WFTV, Inc. v. School Board of Seminole County*, 874 So.2d 48 (5th DCA 2004), review denied, 892 So.2d 1015 (Fla. 2004).
[11] s. 1002.22(3)(d), F.S.
[12] *Id.*
[13] s. 1002.22(2)(c), F.S.
[14] s. 1006.20(1), F.S.
[15] s. 1006.20(3)(a), F.S.
[16] s. 1006.20(3)(b), F.S.
[17] s. 1006.20(1), F.S.

is required to be submitted to the Auditor General.[18] Private schools are eligible for membership in the FHSAA where they engage in competitions with public high schools.[19]

The FHSAA bylaws establish eligibility criteria for all students who participate in high school athletic competition in its member schools.[20] Included in the bylaws is a requirement that all student participants satisfactorily pass a medical evaluation each year before competing in interscholastic athletics.[21] Requirements for obtaining a student's medical history and performing the medical evaluation are to be established in bylaw, to include a physical assessment of the student's physical capabilities to participate in interscholastic athletic competitions.[22] The assessment is to be recorded on a uniform pre-participation physical evaluation and history form. Students are not authorized to compete, until the medical evaluation results have been approved by the school.[23] Section 1006.20(2)(d), F.S., provides an exception, however, where based on religious beliefs, a parent objects in writing to the medical evaluation.

The FHSAA is required to establish a procedure to provide due process to students to appeal unfavorable rulings of the committee regarding eligibility to compete. Student athletes and member schools may appeal unfavorable rulings to the board of directors. The board of directors is authorized to issue a final decision, to uphold, reverse, or modify the ruling of the committee on appeals.[24]

III. Effect of Proposed Changes:

This bill is linked to Senate Bill 2200, which requires the FHSAA to establish a one-year random drug testing program for the use of anabolic steroids by high school student athletes in grades 9 through 12 who participate in football, baseball, and weightlifting competitions under the FSHAA. Under SB 2200, the board of directors of FHSAA must establish procedures for the drug testing program based on minimum criteria specified in the bill. Each member school in FHSAA must report the names of students who will represent the school in football, baseball, and weightlifting during the year. A student is ineligible to participate in interscholastic athletics in a member school until the student's name has been reported to FHSAA by the school.

The FHSAA must provide to the testing agency which performs the random drug tests all names of students that are submitted by its member schools. The testing agency must make its random selections for testing from these names. The testing agency must notify the schools and FHSAA in advance of the date on which its representatives will be present at the school to collect a specimen from a randomly selected student. The name of the student from whom the specimen is to be collected may not be disclosed. This bill creates a public records exemption for a finding of each drug test held by a school or the FHSAA that relates to the drug testing program.

[18] s. 1006.19, F.S.
[19] s. 1006.20(1), F.S.
[20] s. 1006.20(2)(a), F.S.
[21] s. 1006.20(2)(c), F.S.
[22] *Id.*
[23] *Id.*
[24] s. 1006.20(7), F.S.

SB 2200 specifies the requirements for the FHSAA member schools and students to challenge and appeal a positive test. This bill creates an exemption from the Public Meetings Law for meetings at which a challenge or an appeal to the findings of a student's drug test is discussed. The bill contains a public necessity statement for the exemptions created in the bill. Both exemptions are scheduled to repeal on October 2, 2012, in accordance with the Open Government Sunset Review Act.

This bill takes effect on the same date that an unspecified Senate Bill or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Article I, s. 24(c) of the State Constitution requires a law providing for an exemption from the public records and public meetings requirements must state with specificity the public necessity justifying the exemption and may not be broader than necessary to accomplish the stated purpose of the law.

This bill creates a public records exemption for a finding of each drug test held by a school or the FHSAA that relates to the drug-testing program. It is unclear as to whether this means information that would identify the student, the actual drug test results, or both. Additionally, the bill creates an exemption from the Public Meetings Law for meetings at which a challenge or an appeal to the findings of a student's drug test, as described in the bill relating to the drug testing of certain high school students, is discussed. The public meetings exemption may need to be narrowed to exempt only those portions of a meeting during which a challenge or an appeal are being discussed, in order to comply with the constitutional requirement that the exemption be no broader than necessary to accomplish the stated purpose of the law.

This bill specifies a public necessity statement for the creation of the public records and public meetings exemption. Namely, the information is of a sensitive and personal nature and could harm a student's reputation. Accordingly, the bill indicates that the harm caused by the release of the information outweighs any public benefit in disclosure.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

On page 1, line 18, the bill number should be changed from HB 461 to SB 2200. On page 5, line 5, the related bill number, SB 2200, should be inserted.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.