

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/SB 138

INTRODUCER: Appropriations Committee and Senator Brandes

SUBJECT: Interstate Compact on Educational Opportunity for Military Children

DATE: February 22, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Spaulding	Ryon	MS	Favorable
2.	Hand	Klebacha	ED	Favorable
3.	Elwell	Hansen	AP	Fav/CS
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

CS/SB 138 reenacts provisions of law establishing and implementing the Interstate Compact on Educational Opportunity for Military Children (compact) and provides for future legislative review and repeal of the compact three years following the effective date of the act (which is, for the bill, upon becoming a law).

The bill provides a recurring appropriation to the Department of Education (DOE) in the amount of \$42,813 from the General Revenue Fund for the Fiscal Year 2013-2014 membership dues for the Interstate Commission on Educational Opportunity for Military Children.

The bill repeals section 3, chapter 2010-52, Laws of Florida, which provides for a future repeal of sections 1000.36, 1000.37, 1000.38, and 1000.39 of the Florida Statutes.

II. Present Situation:

Interstate Compact on Educational Opportunity for Military Children

Children in active-duty military families face unique educational challenges. The average military child transfers to a different state or school district six to nine times during kindergarten through grade 12. When a parent is reassigned, military children may be impacted by:

- Record transfer issues;
- Varied course sequencing and academic placement policies;
- Varied graduation requirements;
- Exclusion from extracurricular activities;
- Redundant or missed entrance or exit testing;
- Varied kindergarten and first grade entrance ages; and
- The need to appoint temporary guardians while the child's parent is deployed.¹

The Interstate Compact on Educational Opportunity for Military Children assists member states in uniformly addressing educational transition issues faced by active-duty military families. Developed by the Council of State Governments, in cooperation with the U.S. Department of Defense,² the compact governs member states in several areas, including school placement, enrollment, records transfer, participation in academic programs and extracurricular activities, and on-time-graduation for children of active-duty military families. A compact is essentially a contract between sovereigns.³

States were required to enact the compact into law in order to join the compact, which the Florida Legislature did in the 2008 General Session.⁴ Enactment by ten states was required in order for the compact to take effect and be binding on member states, which occurred when Delaware became the tenth state to adopt the compact on July 9, 2008.⁵ Currently, 43 states and the District of Columbia are members of the compact.⁶

The compact establishes an Interstate Commission on Educational Opportunity for Military Children (Commission) to provide national-level oversight of the compact, adopt and enforce bylaws and compact rules, and perform various administrative functions necessary to day-to-day operations.⁷ The Commission is comprised of one voting representative, or Compact Commissioner, from each member state. Each state is entitled to one vote on compact rule adoption or other business matters.⁸ The Commission must meet at least once per year.⁹

¹ Military Interstate Children's Compact Commission, *Interstate Compact on Educational Opportunity for Military Children: Legislative Resource Kit*, at 6-7 (Jan. 2011), available at <http://www.mic3.net/pages/commissioners/documents/2011LegislativeResourceKit-Final.pdf> (last viewed January 25, 2013).

² *Id.* at 7-10.

³ See, *Florida House of Representatives v. Crist*, 999 So.2d 601, 609 (Fla. 2008).

⁴ Chapter 2008-225, L.O.F.; CS/HB 1203 (2008); ss. 1000.36, 1000.37, 1000.38, and 1000.39, F.S.

⁵ Article XV, s. B. of the Compact, s. 1000.36, F.S.; 76 Del. Laws 327 (2008).

⁶ Military Interstate Children's Compact Commission, *Member and Nonmember States Map* (July 2012), available at <http://mic3.net/pages/resources/documents/MIC3ColorMapJul1.pdf>.

⁷ Articles IX and X, of the Compact, s. 1000.36, F.S.

⁸ Article IX, s. B. of the Compact, s. 1000.36, F.S.

⁹ Article IX, s. D. of the Compact, s. 1000.36, F.S.

Compact Rule Adoption

The Commission is authorized to promulgate compact rules which govern member states in the areas addressed by the compact. Compact rules have the force and effect of statutory law in member states and supersede conflicting member state laws to the extent of the conflict.¹⁰ Compact rules must not exceed the scope of authority granted by the compact. A majority of member state legislatures may invalidate a compact rule by legislative action.¹¹

Since enactment in 2008, Florida's compact legislation has included a repeal provision which requires automatic repeal of the compact after a period of time, unless reauthorized by the Legislature.¹² The repeal provision addresses concerns regarding unconstitutional delegation of legislative authority under Article II, s. 3, of the Florida Constitution.¹³ Because membership in the compact entails an agreement to be bound by rules promulgated by a non-legislative entity, i.e., the Commission, the repeal provision allows the Legislature to periodically review the compact rules and determine whether it agrees with any new rules or rule amendments adopted during the period. Reauthorization of the compact after such review diminishes a claim that the Legislature has delegated its authority.¹⁴

The Legislature last reauthorized the compact in 2010, and provided for repeal of the compact in three years, which is May 11, 2013.¹⁵ Since then, two rule amendments have been adopted by the Commission:

- Compact rule 2.104, which provides the compact membership dues formula, was amended in November 2011 to establish a minimum dues obligation of \$2,000 and a maximum dues obligation of \$60,000.
- Compact rule 3.102, relating to kindergarten and first grade entrance age, was amended in November 2012 to clarify that a student must "*physically attend*" kindergarten in the sending state in order to transfer into kindergarten in the receiving state.¹⁶

Neither amendment impairs Florida's continued participation in the compact.

¹⁰ Article X, s. B. and XVIII, s. B. of the Compact, s. 1000.36, F.S. The Compact also provides that if any part of the compact exceeds the constitutional limits imposed on the legislature of any member state, the provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state. See, Article XVIII, s. E., of the Compact, s. 1000.36, F.S. Through a formal process of regular review and reauthorization, the Florida Legislature has mitigated potential conflicts that might arise within the context of a delegation of authority challenge.

¹¹ Article XII of the Compact, s. 1000.36, F.S.

¹² See, ss. 5, ch. 2008-225; 3, ch. 2010-52, L.O.F.

¹³ Article II, s. 3 of the Florida Constitution provides for separation of powers among the executive, legislative, and judicial branches of state government. The Florida Supreme Court has held that it is an unconstitutional delegation of legislative authority for the Legislature to prospectively adopt rules not yet promulgated by federal administrative bodies. See, *Freimuth v. State*, 272 So.2d 473, 476 (Fla. 1972); *Fla. Indus. Commission v. State ex rel. Orange State Oil Co.*, 21 So.2d 599, 603 (Fla. 1945).

¹⁴ See, Florida Senate, Legislative Bill Analysis for SB 1060 (2010).

¹⁵ Sections 3 and 4, ch. 2010-52, L.O.F.

¹⁶ Interstate Commission on Educational Opportunity For Military Children, Rules (Nov. 2012), available at <http://mic3.net/pages/commissioners/documents/MIC3CommissionRules-Final-amendedNov2012.pdf> (see rules 2.104 and 3.102).

III. Effect of Proposed Changes:

Section 1 repeals s. 3, ch. 2010-52, L.O.F., which provides for automatic repeal of the compact legislation.

Section 2 provides for repeal of ss. 1000.36, 1000.37, 1000.38, and 1000.39, F.S., the “Interstate Compact on Educational Opportunity for Military Children,” three years after the effective date of the bill unless reviewed and reenacted by the Legislature.

Section 3 provides a recurring appropriation of \$42,813 to the DOE from the General Revenue Fund to pay Florida’s Fiscal Year 2013-2014 dues to the commission.

Section 4 provides that the bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The Florida Supreme Court has held that it is an unconstitutional delegation of legislative authority for the Legislature to prospectively adopt rules not yet promulgated by federal administrative bodies.¹⁷ To address concerns regarding delegation of legislative authority, the bill provides for automatic repeal of Florida’s compact legislation three years after the bill takes effect, unless reauthorized by the Legislature. The repeal provision allows the Legislature to determine whether it agrees with any new compact rules or rule amendments adopted during the three year period and consider reauthorization of the compact. Reauthorizing the compact periodically accounts for any new compact rules and amendments adopted by the Commission since the last reauthorization, thereby diminishing a claim that the Legislature has agreed to be bound by compact rules not yet promulgated.

¹⁷ *Freimuth v. State*, 272 So.2d 473, 476 (Fla. 1972); *Fla. Indus. Commission v. State ex rel. Orange State Oil Co.*, 21 So.2d 599, 603 (Fla. 1945).

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The compact authorizes the Commission to levy membership dues from each member state to finance Commission operations and staffing.¹⁸ Membership dues are based upon \$1 per dependent child of active-duty military personnel residing in a member state.¹⁹ According to the DOE, there are approximately 31,000 children of active-duty military personnel living in Florida.

Since enactment of the compact in 2008, the DOE has requested funding for dues annually in the legislative budget requests, but a specific appropriation for this purpose has not been provided.²⁰ The Department of Veterans Affairs paid the dues through Fiscal Year 2009-2010.²¹ Membership dues for Fiscal Years 2010-2011 through 2012-2013 were paid by Enterprise Florida, Inc.²²

The DOE's legislative budget request for Fiscal Year 2013-2014 requests a total of \$62,911 to fund membership dues. Of this amount, \$30,911 was requested to cover dues owed for Fiscal Year 2012-2013 and \$32,000 is requested to cover dues for Fiscal Year 2013-2014.²³ The \$30,911 amount for Fiscal Year 2012-2013 was paid subsequent to the agency budget request.

For Fiscal Year 2013-2014, the Governor's Recommended Budget for the State Board of Education includes \$32,000 for compact membership dues.²⁴ The Department of Defense has since notified the DOE that the Fiscal Year 2013-2014 membership dues will be \$42,813, \$10,813 greater than the \$32,000 amount requested by the agency and

¹⁸ Article XIV of the Compact, s. 1000.36, F.S.

¹⁹ *Id.*; Section 2.104, Interstate Commission Rules. There is a minimum dues obligation of \$2,000 and a maximum of \$60,000.

²⁰ See, e.g., Florida Department of Education, *2010-2011 Operating Legislative Budget Request*, 208-209 (Sept. 2009), available at http://www.fldoe.org/board/meetings/2009_09_15/2010-11OperatingLegislativeBudgetRequest.pdf [Requesting \$66,604 to fund dues for FYs 2009-10 (past-due) and 2010-11]; see, e.g., Florida Department of Education, *2012-13 Operating Legislative Budget Request*, 199-201 (August 2011), available at http://www.fldoe.org/board/meetings/2011_08_23/fdoelbr.pdf [Requesting \$97,311 to cover dues for FYs 2010-11 (past-due), 2011-12 (past-due), and 2012-13].

²¹ Department of Education, Senate Bill 138 Agency Legislative Bill Analysis (January 18, 2013). On file with the Senate Committee on Education.

²² *Id.*

²³ Florida Department of Education, *2013-14 Operating Legislative Budget Request*, 184 (Oct. 2012), available at http://www.fldoe.org/board/meetings/2012_10_09/lbr.pdf.

²⁴ <http://www.floridafamiliesfirst.com/content/Current/rptMain.htm>

recommended by the Governor.²⁵ The bill provides a recurring appropriation to the DOE in the amount of \$42,813 from the General Revenue Fund for Fiscal Year 2013-2014 for the dues.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by the Appropriations Committee on February 21, 2013:

The committee substitute provides a recurring appropriation to the Department of Education in the amount of \$42,813 from the General Revenue Fund for the Fiscal Year 2013-2014 membership dues for the Interstate Commission on Educational Opportunity for Military Children.

- B. **Amendments:**

None.

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

²⁵ Id.