

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB KTS 13-02 Interstate Compact on Educational Opportunity for Military Children

SPONSOR(S): K-12 Subcommittee

TIED BILLS: **IDEN./SIM. BILLS:** SB 138

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: K-12 Subcommittee	13 Y, 0 N	Beagle	Ahearn

SUMMARY ANALYSIS

In 2008, the Florida Legislature enacted the Interstate Compact on Educational Opportunity for Military Children. The purpose of the compact is to enable member states to uniformly address educational transition issues faced by military families. The compact governs member states in several areas, including school placement, enrollment, records transfer, and graduation for children of active-duty military families. Currently, 43 states and the District of Columbia are members of the compact.

The compact establishes an Interstate Commission on Educational Opportunity for Military Children (Commission) to provide national-level oversight of the compact. The Commission is comprised of one voting representative, or Compact Commissioner, from each member state. Among other things, the Commission may adopt and enforce compact rules which govern member states in the areas addressed by the compact. The compact rules supersede conflicting member state laws to the extent necessary to accomplish the purposes of the compact.

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. 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. The Legislature last reauthorized the compact in 2010, and provided for repeal of the compact in three years, which is May 11, 2013.

The bill reauthorizes Florida's compact legislation and eliminates the existing repeal provision. The bill adds a new automatic repeal provision effective three years after the bill becomes effective.

The bill has an insignificant fiscal impact on state government. The bill does not appear to have a fiscal impact on local governments. (See Fiscal Comments).

The bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Background

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. The compact governs member states in several areas, including school placement, enrollment, records transfer, participation in academic programs and extracurricular activities, and graduation for children of active-duty military families. The compact was developed by the Council of State Governments, in cooperation with the U.S. Department of Defense.²

States must enact the compact into law in order to join the compact, which the Florida Legislature did in the 2008 General Session.³ Enactment by ten states is 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, 2008.⁴ Currently, 43 states and the District of Columbia are members of the compact.⁵

The compact establishes an Interstate Commission on Educational Opportunity for Military Children (Commission) to provide national-level oversight of the compact. The Commission may adopt and enforce bylaws and compact rules and perform various administrative functions necessary to day-to-day operations.⁶ 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.⁷ The Commission must meet at least once per year.⁸

Compact Rule Adoption

¹ Council of State Governments, *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>.

² *Id.* at 7-10.

³ Chapter 2008-225, L.O.F.; CS/HB 1203 (2008); ss. 1000.36, 1000.37, 1000.38, and 1000.39, F.S.

⁴ Article XV, s. B. of the Compact, s. 1000.36, F.S.; 76 Del. Laws 327 (2008).

⁵ Military Interstate Children's Compact Commission, *Member and Nonmember States Map* (July 2012), available at <http://mic3.net/pages/resources/documents/MIC3ColorMapJul1.pdf>.

⁶ Article X, of the Compact, s. 1000.36, F.S.

⁷ Article IX, s. B. of the Compact, s. 1000.36, F.S.

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

The Commission is authorized to promulgate compact rules which govern member states in the areas addressed by the compact. The 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.⁹ 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.¹⁰

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.¹¹ The repeal provision addresses concerns regarding unconstitutional delegation of legislative authority under Article II, s. 3, of the Florida Constitution.¹² 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 avoids a claim that the Legislature has delegated its authority.¹³

The Legislature last reauthorized the compact in 2010, and provided for repeal of the compact in three years, which is May 11, 2013.¹⁴ 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.¹⁵

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

Effect of Proposed Changes

The bill reauthorizes Florida's compact legislation and eliminates the existing repeal provision. The bill adds a new automatic repeal provision effective three years after the bill becomes effective.

B. SECTION DIRECTORY:

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 that the bill takes effect upon becoming law.

⁹ Article X, s. B. and XVIII, s. B. of the Compact, s. 1000.36, F.S.

¹⁰ Article XII of the Compact, s. 1000.36, F.S.

¹¹ See, e.g., s. 3, ch. 2010-52, L.O.F.

¹² Article II, s. 3 of the Florida Constitution provides for separation of powers among the executive, legislative, and judicial branches of state government. Courts construing this provision have held that the Legislature, when delegating the administration of legislative programs to executive agencies or other entities, must establish minimal standards and guidelines ascertainable by reference to the legislation creating the program. See *Avatar Development Corp. v. State*, 723 So.2d 199 (Fla. 1998).

¹³ Staff of the Florida House of Representatives, *Legislative Bill Analysis for HB 521* (2010).

¹⁴ Sections 3 and 4, ch. 2010-152, L.O.F.

¹⁵ Military Interstate Children's Compact Commission, *Commission Rule Change, Rule 3.102(b) defining "Kindergarten enrollment,"* at 1 (Nov. 2012), available at <http://www.mic3.net/documents/MIC3CommissionRules-Final-amendedNov2012.pdf>; Military Interstate Children's Compact Commission, *Adopted Rules* (Nov. 2012), available at <http://mic3.net/pages/commissioners/documents/MIC3CommissionRules-Final-amendedNov2012.pdf> (see rules 2.104 and 3.102).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The compact requires the Commission to levy membership dues from each member state to finance Commission operations and staffing.¹⁶ Membership dues are based upon \$1 per dependent child of active-duty military personnel residing in a member state. There is a minimum dues obligation of \$2,000 and a maximum of \$60,000.¹⁷ According to the Department of Education (DOE), the number of children of active-duty military personnel living in Florida typically fluctuates between 30,000 and 33,000 from year to year.¹⁸

The Commission has authority to impose sanctions against member states that fail to pay annual membership dues, including suspending or terminating a state's compact membership or imposing reasonable damages or costs. The Commission, by majority vote, may sue a member state in federal court for failure to pay membership dues. Costs and attorney fees must be awarded to the prevailing party.¹⁹

Florida has failed to timely pay its annual compact membership dues each year since enactment of the compact in 2008. DOE routinely requests funding for dues in its annual Legislative budget requests, but has received no funding through the General Appropriations Act specifically for membership dues.²⁰ However, DOE has found other funding sources to pay the dues. In 2010, federal grant funds held by the Department of Veterans Affairs were used to pay dues owed through FY 2009-10.²¹ In 2012,

¹⁶ Article XIV of the Compact, s. 1000.36, F.S.

¹⁷ Section 2.102, Interstate Commission Rules.

¹⁸ Quarterly Meeting, State Council on Educational Opportunity for Military Children, Oct. 19, 2012.

¹⁹ Article XIII, s. D.-I. of the Compact, s. 1000.36, F.S. The Commission's power to enforce the compact extends to any failure by a member state to perform any obligation required by the compact, compact rules, and Commission bylaws. The Commission may bring suit in the U.S. District Court for the Eastern District of Kentucky, which is the federal court that serves the Commission's principal office, or in the U.S. District Court for the District of Columbia. *Id.*

²⁰ *See, e.g.*, Florida Department of Education, *2010-2011 Operating Legislative Budget Request*, 208-290 (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 Quarterly Meeting, State Council on Educational Opportunity for Military Children, July 9, 2010.

Florida's past-due membership dues for FYs 2010-11 and 2011-12 were paid by Enterprise Florida (at the direction of the Governor).²²

DOE's legislative budget request for FY 2013-14 requests a total of \$62,911 to fund membership dues. Of this amount, \$30,911 is requested to cover dues owed for FY 2012-13 and \$32,000 is requested to cover dues for FY 2013-14.²³

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

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.²⁴ However, there is no binding Florida case law that addresses this issue in the context of interstate compacts.²⁵

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 avoiding a claim that the Legislature has agreed to be bound by compact rules not yet promulgated.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

²² Quarterly Meeting, State Council on Educational Opportunity for Military Children, Oct. 19, 2012.

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 *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).

²⁵ A First District Court of Appeals opinion construing the provisions of the Interstate Compact on the Placement of Children mentions this issue in a footnote but the court did not rule on the merits. *Department of Children and Family Services v. L.G.*, 801 So.2d 1047, 1052 (Fla. 1st DCA 2001).