

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB EDC 15-02 Extracurricular Activities

**SPONSOR(S):** Education Committee

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1480

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Education Committee		Beagle	Mizereck

### SUMMARY ANALYSIS

The bill increases the accountability of the Florida High School Athletic Association (FHSAA) by:

- Providing that special event fees, sanctioning fees, and gate receipts annually collected by FHSAA must reflect its actual cost in performing the function that is the basis of the fee;
- Repealing provisions requiring FHSAA to have a board of directors, representative assembly, committees on appeals, and public liaison advisory committee;
- Requiring FHSAA to instead establish a 16 member governing board that proportionately represents public schools, schools of choice, private schools, home education, and parents of student athletes, as well as regions of the state. Any other policy-making bodies it establishes must be similarly constituted;
- Requiring members of policy-making bodies to annually complete governance training;
- Requiring FHSAA to provide for resolution of eligibility disputes through an informal conference procedure and neutral third party review;
- Prohibiting a student from being declared ineligible until the neutral third party review is completed;
- Requiring eligibility proceedings to be conducted in the county where the student resides;
- Allowing member schools to participate in FHSAA on a per sport basis;
- Requiring FHSAA to develop sportsmanship training which member schools must administer annually to coaches, administrators, and student athletes;
- Requiring operational audits by the Auditor General every three years;
- Requiring the Commissioner of Education, with approval of the State Board of Education, to designate a nonprofit association to regulate interscholastic athletics by July 1, 2017;
- Removing statutory references to FHSAA, effective upon the commissioner's designation of the nonprofit governing organization; and
- Thereafter requiring the commissioner to review the designated association's performance of duties in each year an operational audit is conducted, i.e., three-year intervals.

The bill authorizes any public school student; home education student; or student enrolled in an unaffiliated private school, e.g., a non-FHSAA member private school that has an enrollment of 125 or fewer students in grades 6 through 12, to participate in extracurricular activities offered by a public school if the activity is not offered by the student's school or program. All students participating under these provisions must meet established academic and conduct standards and register with the public school of participation before the beginning date of the activity. Regarding participation in interscholastic athletics, students enrolled in an unaffiliated private school, home education, full-time public virtual education, or any public school that does not offer any athletic programs may only participate at the public school in which the student is first registered. The parent of a student participating under these provisions is responsible for transporting the student to and from the public school.

Additionally, the bill establishes guiding principles for student participation in extracurricular activities; limits the reasons a student may be declared ineligible for interscholastic athletics; and prohibits school boards and private schools from establishing transfer eligibility policies that are more stringent than the policies established by FHSAA.

The bill does not have a fiscal impact on state or local governments.

Except as otherwise provided, the bill takes effect July 1, 2015.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### 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 in Florida public schools in grades 6 through 12. The FHSAA is not a state agency, but is assigned quasi-governmental functions. 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.<sup>1</sup>

#### Membership

Any high school, middle school, or combination school,<sup>2</sup> including charter schools, virtual schools, private schools and home education cooperatives,<sup>3</sup> may become a member of the FHSAA and participate in FHSAA activities. Membership is not mandatory for any school.<sup>4</sup> FHSAA may not deny or discourage interscholastic competition between member and nonmember Florida schools, including members of another athletic governing organization.<sup>5</sup> However, FHSAA member schools may not join other athletic governing associations or participate in FHSAA sanctioned activities on a per sport basis.<sup>6</sup>

Among other things, the FHSAA bylaws require each member school to adopt policies for sportsmanship and ethical conduct in its interscholastic athletic programs. A member school must provide on-going education regarding these policies to all individuals associated with the school's interscholastic athletic programs.<sup>7</sup>

#### Revenue and Fiscal Accountability

FHSAA receives revenue from a variety of sources, including membership dues, administrative fees, fines, corporate sponsorships, royalties, sanctioning fees, athletic event and ticket sales, and interest on investments. FHSAA has made efforts to reduce dues charged to member schools, in favor of other sources of revenue.<sup>8</sup> Among other things, FHSAA charges sanctioning fees for multi-team athletic events involving member schools held by a corporation or promoter. These fees range from \$2,300 per every two teams for football jamborees to \$50 per every four teams in sports like bowling or cheerleading. FHSAA plays little or no role in the conduct of these events, but often receives a large share of the revenue generated by the event.<sup>9</sup>

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<sup>1</sup> Section 1006.20(1), F.S.

<sup>2</sup> A combination school is any school that serves both 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. Bylaw 3.2.2.3, FHSAA.

<sup>3</sup> 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 through 12. Bylaw 3.2.2.4, FHSAA.

<sup>4</sup> Bylaws 3.2.2 (types of member schools) and 3.7, FHSAA (procedures for admittance).

<sup>5</sup> Section 1006.20(1), F.S. FHSAA has adopted bylaws that require non-FHSAA member Florida schools that compete with FHSAA member schools to verify, among other things, that the school holds liability insurance coverage and that their student athletes meet the same eligibility requirements as member school student athletes, undergo medical evaluations, have medical insurance coverage, and submit liability waivers. Bylaw 8.3.1, FHSAA.

<sup>6</sup> Bylaw 3.3.1, FHSAA. Member school must adopt the FHSAA bylaws annually as the rules governing its interscholastic athletic programs. *Id.*

<sup>7</sup> Bylaw 2.3, FHSAA.

<sup>8</sup> Understanding the Financial Structure of the FHSAA, *Hearing before the House Education Committee* (Feb. 18, 2015).

<sup>9</sup> FHSAA, *2014-15 Event Sanction Fees for Third Party Direct Contract with FHSAA* (2014-15), available at [http://www.fhsaa.org/sites/default/files/orig\\_uploads/forms/thirdpartyfees\\_2014.pdf](http://www.fhsaa.org/sites/default/files/orig_uploads/forms/thirdpartyfees_2014.pdf).

The law requires the FHSAA to have an annual financial audit<sup>10</sup> of its accounts and records by an independent certified public accountant retained by it and paid from its funds. The accountant must furnish a copy of the audit report to the Auditor General. Additionally, FHSAA must keep adequate and complete records of all revenue and expenditures, including salaries, fees, expenses, travel allowances, and other expenses. These records must be open for inspection by the Auditor General.<sup>11</sup>

## Governance

The FHSAA operates as a representative democracy in which the sovereign authority is within the member schools. FHSAA member schools are divided along existing county lines into four administrative regions. Each region contains approximately the same number of member schools. Each member school appoints an official representative to the organization who must be the principal, an assistant principal, or an in-house athletic director.<sup>12</sup>

FHSAA's governance structure consists of:

- **A board of directors that serves as FHSAA's executive branch:**
  - Purpose: Levy dues and fees, formulate administrative policies, and act as final decision-maker in disputes regarding student eligibility, member sanctions, and other FHSAA bylaws and policies, among other things.
  - Membership: The 16 member board is comprised of the commissioner or his or her designee, four public member school representatives elected from each of the four administrative regions, four nonpublic member school representatives elected from each of the four administrative regions, three representatives appointed by the commissioner, two district school superintendents, and two district school board members.<sup>13</sup>
- **A representative assembly that serves as FHSAA's legislative branch:**
  - Purpose: Consider, adopt, or reject new FHSAA bylaws or amendments to existing bylaws.
  - Membership: The 60 member assembly is comprised of 30 public high school delegates, 16 private high school delegates, five middle school delegates, four district school superintendents elected from each of the four administrative regions, four district school board members elected from each of the four administrative regions, and the commissioner or his or her designee.<sup>14</sup>
- **Committees on appeals that serve as FHSAA's judicial branch.**<sup>15</sup> There are two types of appeals committees:
  - Sectional appeals committees:
    - Purpose: The four sectional appeals committees are geographically-based and issue decisions on student eligibility cases and other requests for waivers of rules or appeals filed by member schools.
    - Membership: Each sectional appeals committee is comprised of two elected public school representatives, one elected nonpublic school representative, one elected member representing public school districts, one elected nonpublic school accrediting association representative, an at-large member from an under-represented gender or race appointed by the Board of Directors, and one attorney living within the section.<sup>16</sup>
  - Infractions appeals committees:

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<sup>10</sup> "Financial audit" means an examination of financial statements in order to express an opinion on the fairness with which they are presented in conformity with generally accepted accounting principles and an examination to determine whether operations are properly conducted in accordance with legal and regulatory requirements. Section 11.45(1)(c), F.S.

<sup>11</sup> Section 1006.19, F.S.

<sup>12</sup> Section 1006.20(3), F.S.; Articles 3 and 4 of the bylaws, FHSAA. FHSAA annually publishes its bylaws and administrative policies and procedures in the FHSAA Handbook. See FHSAA, *2014-15 FHSAA Handbook*, (Jan. 2014), available at <http://www.fhsaa.org/rules/fhsaa-handbook>.

<sup>13</sup> Section 1006.20(4), F.S.

<sup>14</sup> Section 1006.20(5), F.S.; see also FHSAA, *2014 Representative Assembly Roster of Delegates*, (2014), available at [http://www.fhsaa.org/sites/default/files/orig\\_uploads/gov/assembly/2014/14\\_delegates.pdf](http://www.fhsaa.org/sites/default/files/orig_uploads/gov/assembly/2014/14_delegates.pdf).

<sup>15</sup> Section 1006.20(7), F.S.

<sup>16</sup> Bylaw 4.5, FHSAA.

- **Purpose:** The infractions appeals committee is appointed by the Board of Directors to decide appeals of schools found to have committed major violations.
- **Membership:** The infractions appeals committee is comprised of one public school administrator; one public school member who is either a school administrator or district administrator; one private school administrator; one private school member, who is either a school administrator or a regional- or state-level administrator in a private school accrediting organization recognized by FHSAA; and one attorney.<sup>17</sup>

The law also requires FHSAA to establish a public liaison advisory committee to facilitate public input regarding FHSAA decision making processes. This committee annually conducts public meetings in each of the four administrative regions and annually evaluates the FHSAA and reports its findings, conclusions, and recommendations to the FHSAA Board of Directors, the commissioner, and to the respective education committees of the Florida Senate and the Florida House of Representatives. The 15 member public liaison advisory committee is comprised of the commissioner or his or her designee; a member public school principal; a member private school principal; a member school principal who is a member of a racial minority; an active athletic director; an active coach, who is employed full time by a member school; a student athlete; a district school superintendent; a district school board member; a member of the Florida House of Representatives; a member of the Florida Senate; a parent of a high school student; a member of a home education association; a representative of the business community; and a representative of the news media.<sup>18</sup>

The public liaison advisory committee, which does not formulate official association policy, is the only one of these bodies that includes parents of student athletes. The membership of all four bodies is weighted heavily in favor of traditional public schools because the majority of FHSAA's member schools are public schools.

### Appeals of Eligibility Violations

The FHSAA must adopt bylaws specifying the process and standards for eligibility determinations. The bylaws must provide that:

- Ineligibility must be established by clear and convincing evidence;
- Student athletes, parents, and schools must have notice of the initiation of any investigation or other eligibility inquiry and may present information or evidence to the investigator and to the individual making the eligibility determination;
- Eligibility determinations must be made by the executive director or designee for an unbiased and objective determination of eligibility; and
- A determination of ineligibility must be made in writing, setting forth the findings of fact and specific violation upon which the decision is based.<sup>19</sup>

The appeals process for eligibility violations is as follows:

- FHSAA's executive director makes the initial determination of ineligibility.
- The member school principal may appeal the ruling if the principal takes issue with the ruling or the student requests an appeal.<sup>20</sup>
- Initial appeals of ineligibility determinations are heard by the Sectional Appeals Committee.
- An unfavorable decision on the initial appeal may be appealed to the Sectional Appeals Committee if the student athlete wishes to submit new evidence in his or her defense.
- An unfavorable decision on the initial appeal may be appealed to the FHSAA Board of Directors if the student athlete has no new evidence to submit in his or her defense.<sup>21</sup>

<sup>17</sup> Bylaws 10.5.7.1, FHSAA. Bylaw 10.5.7.1.2, FHSAA.

<sup>18</sup> Section 1006.20(6), F.S.

<sup>19</sup> Section 1006.20(2)(g), F.S. As an alternative, the law authorizes FHSAA to instead provide the procedural safeguards of ss. 120.569 and 120.57, F.S., making appropriate provision for appointment of unbiased and qualified hearing officers. Section 1006.20(2)(h), F.S.

<sup>20</sup> Bylaw 10.4.1, FHSAA.

<sup>21</sup> Bylaws 10.5.5 and 10.5.6, FHSAA.

- A member school may request mediation in lieu of appealing to the Board of Directors. The mediator is selected by FHSAA from a panel of mediators established by the Board of Directors. If an agreement is not reached through mediation, the school may proceed with the appeal to the Board of Directors.<sup>22</sup>
- The decision of the Board of Directors is final.<sup>23</sup>

At no stage in the appeals process is the the determination regarding eligibility issued by a neutral third party.

## Participation in Extracurricular Activities

Research indicates that student participation in extracurricular activities:

- Increases student engagement in the classroom and parental involvement in the school.
- Increases opportunities to build relationships with peers and coaches, mentors, and other supervising adults.
- Provides a safe, structured, and supervised environment for students during non-school hours.
- Promotes healthy physical, psychological, emotional, and social health.<sup>24</sup>

Florida law defines interscholastic extracurricular activities as any school-authorized athletic or education-related student activity that occurs during or outside of the regular instructional school day.<sup>25</sup> Extracurricular activities include such activities as interscholastic and intramural athletics, drama, marching band, chorus, and academic and social clubs.

Florida law requires all students participating in extracurricular activities to meet basic academic and conduct requirements. It also provides opportunities for students enrolled in home education, certain public schools of choice, and certain private schools to participate in extracurricular activities at a traditional public school, because the extracurricular activities available to these students are limited due to their choice of school or program.<sup>26</sup> Outside these statutory requirements, nonathletic activities are largely governed by district school board or private school policies. Governance of interscholastic athletics is shared by the FHSAA and its member public and private schools. The law provides specific direction to FHSAA on such eligibility matters as residency, transfer, recruiting, and medical evaluations. FHSAA has discretion to adopt any other regulations on eligibility, provided they do not conflict with statutory requirements.<sup>27</sup> For example, FHSAA has adopted bylaws that provide for ineligibility if a student athlete reaches a maximum age for athletic participation,<sup>28</sup> commits unsportsmanlike conduct,<sup>29</sup> enrolls in a school coached by the same coach the student played for during a non-school sponsored activity,<sup>30</sup> follows a coach to another school,<sup>31</sup> or forfeits his or her amateur status.<sup>32</sup> FHSAA bylaws authorize member schools and school districts to adopt more stringent eligibility requirements for interscholastic athletics than FHSAA's requirements.<sup>33</sup>

## General Eligibility

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<sup>22</sup> Bylaw 10.6.5, FHSAA.

<sup>23</sup> Bylaw 10.602, FHSAA.

<sup>24</sup> See, e.g., Fredricks, J. & Eccles, J., *Is Extracurricular Participation Associated with Beneficial Outcomes*, *Developmental Psychology*, vol. 42, No. 4, 698-713 (2006); Lumpkin, A. & Favor, J. *Comparing the Academic Performance of High School Athletes and Non-Athletes in Kansas 2008-09*, *Journal of Sport Administration & Supervision*, vol. 4, No. 1 41-62 (May 2012).

<sup>25</sup> See s. 1006.15(2), F.S.

<sup>26</sup> Section 1006.15, F.S.

<sup>27</sup> Section 1006.20(1) and (2)(a)-(c), F.S.

<sup>28</sup> Bylaw 9.6.1, FHSAA.

<sup>29</sup> Bylaw 7.2, FHSAA

<sup>30</sup> Bylaw 9.2.4, FHSAA.

<sup>31</sup> Bylaw 9.2.5, FHSAA.

<sup>32</sup> Bylaw 9.9, FHSAA.

<sup>33</sup> Bylaw 9.1.1.1, FHSAA.

Florida law specifies general academic and conduct requirements a student must meet in order to be eligible for participation in any extracurricular activity. To be eligible, a high school student<sup>34</sup> must:

- Maintain either a 2.0 grade point average (GPA) or above on a 4.0 scale in the semester preceding participation;<sup>35</sup>
- Execute and fulfill the requirements of an academic performance contract if the student's GPA falls below 2.0;<sup>36</sup>
- Have a cumulative GPA of 2.0 or above in his or her junior or senior year; and
- Maintain satisfactory conduct in accordance with the school's code of student conduct.<sup>37</sup>

The law authorizes a school district to set additional eligibility requirements, but the requirements must not make participation less accessible to home education students than to other students.<sup>38</sup>

### Eligibility and School Choice

Florida law authorizes students who are enrolled in a charter school, the Florida Virtual School (FLVS), or a home education program to participate in extracurricular activities at a traditional public school, if requirements are met.<sup>39</sup> Additionally, FHSAA has adopted a bylaw allowing a student enrolled in a magnet school, alternative school, or other public school of choice to participate in interscholastic athletics at a traditional public school.<sup>40</sup> Such eligibility is provided because these choice options offer limited or no extracurricular activities. Generally speaking, such students must:

- Demonstrate educational progress or meet GPA requirements;
- Meet the same residency requirements as other students in the school;
- Meet the same standards of acceptance, behavior, and performance required of other participating students; and
- Register their intent to participate in extracurricular activities before the beginning date of the activity with the public school where the student wishes to participate.<sup>41</sup>

The conditions placed upon participation vary. For example FLVS and home education students may participate in any extracurricular activity offered by the traditional public school. Charter school students may participate in any activity offered by the traditional public school that is not offered by the charter school. Fewer options are available to magnet school and alternative school students. They may only play a sport at a traditional public school if their school does not offer any sport programs at all.<sup>42</sup>

The law also authorizes a student attending a private middle school or high school to participate in interscholastic or intrascholastic sports at a public school that is zoned for the physical address at which the student resides if the private school where the student is enrolled is not a member of the FHSAA, has an enrollment of less than 125 students, and does not offer any interscholastic or intrascholastic athletic programs.<sup>43</sup>

The FHSAA and district school board must adopt guidelines that establish:

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<sup>34</sup> For purposes of athletics in public K-12 schools, high school includes grade six through 12. Section 1006.20(1), F.S.

<sup>35</sup> A home education student must submit form EL9, which requires the parent to list courses taken by the student and calculate a GPA. FHSAA, *Form EL9- Home Education Student Academic Progress Report* (June 2010), available at [http://www.fhsaa.org/sites/default/files/el09\\_home\\_rep.pdf](http://www.fhsaa.org/sites/default/files/el09_home_rep.pdf).

<sup>36</sup> An academic performance contract is an agreement between the student, the district school board, the appropriate governing association, and the student's parents, which at a minimum requires the student to attend summer school or its graded equivalent, between grades nine and 10 or grades 10 and 11, as necessary. Section 1006.15(3)(a), F.S.

<sup>37</sup> Section 1006.15(3)(a), F.S. The eligibility of a student who is convicted of, or found to have committed, a felony or delinquent act that would have been a felony if committed by an adult is governed by district school board policy. *Id.*

<sup>38</sup> Section 1006.15(4), F.S.

<sup>39</sup> Section 1006.15(3)(c), (d), and (e), F.S. (home education, charter schools, and FLVS).

<sup>40</sup> Bylaws 9.2.2.4 and 9.2.2.4.1, FHSAA (alternative schools and magnet schools).

<sup>41</sup> Section 1006.15(3)(c), (d), and (e), F.S.

<sup>42</sup> Section 1006.15(3)(c), (d), and (e), F.S.; bylaw 9.2.2.4, FHSAA.

<sup>43</sup> Section 1006.15(8), F.S.

- Registration deadlines and procedures for each sport; and
- Student participation requirements that include, but are not limited to, the same standards of eligibility, acceptance, behavior, educational progress, and performance which apply to students attending FHSAA member public and private schools.<sup>44</sup>

A private school student may only participate at the public school in which the student first registers or is a candidate for participation by engaging in a practice. The parents of a participating private school student are responsible for transporting the student to and from the public school. The student's private school, the public school where the student participates in athletics, the district school board, and the FHSAA are exempt from liability arising from any injury that occurs during such transportation.<sup>45</sup>

<b>Extracurricular Eligibility by School Type<sup>46</sup></b>		
<b>Educational Choice Program</b>	<b>The district school at which the student may participate:</b>	<b>Activity the student may participate in:</b>
<b>FLVS</b>	Zoned school or any public school they could attend through controlled open enrollment	Any activity (because FLVS does not offer any extracurriculars)
<b>Homeschool</b>	Zoned school or any public school they could attend through controlled open enrollment	Any activity (because the student does not attend a school)
<b>Charter School</b>	Zoned school or any public school they could attend through controlled open enrollment	<ul style="list-style-type: none"> <li>• Any activity that is not offered by the charter school</li> <li>• May participate in that particular activity <u>even if the charter school offers other activities</u></li> </ul>
<b>Magnet School or Alternative School</b>	Zoned school or any public school they could attend through controlled open enrollment	Any <u>SPORT</u> , but <u>only if</u> their school does not offer any sports programs
<b>FHSAA Non-Member Private School</b>	Zoned school.	Any <u>SPORT</u> , but <u>only if</u> the school: <ul style="list-style-type: none"> <li>• Is not an FHSAA member;</li> <li>• Enrolls 125 students or less; and</li> <li>• Does not offer any sports programs</li> </ul>

### Residency and Transfer

A student may participate in interscholastic athletics at the school in which he or she first enrolls each school year or, at the school in which the student becomes a candidate for an athletic team by engaging in a practice prior to enrolling in the school.<sup>47</sup>

A student may also be eligible to participate in interscholastic athletics in the school to which the student has transferred during the school year if the transfer is made by a deadline established by the FHSAA,<sup>48</sup> which may not be prior to the date authorized for the beginning of practice for the sport.<sup>49</sup>

Although the law requires FHSAA to allow transfer eligibility in its bylaws, it authorizes each district school board and private school to adopt policies regarding such transfers.<sup>50</sup> Consequently, some school districts have adopted policies that require transfer students to wait one calendar year before

<sup>44</sup> Section 1006.15(8), F.S.

<sup>45</sup> *Id.*

<sup>46</sup> Section 1006.15(3) and (8), F.S.; bylaw 9.2.2.4, FHSAA.

<sup>47</sup> Section 1006.20(2)(a), F.S.

<sup>48</sup> The FHSAA is the designated governing nonprofit organization of athletics in Florida public schools. Section 1006.20(1), F.S.

<sup>49</sup> Section 2, ch. 2012-188, L.O.F.; 1006.20(2)(a), F.S.

<sup>50</sup> Section 1006.20(2)(a), F.S.

being eligible to compete in athletics, only allow transfer eligibility if the student makes a full and complete move with all members of his or her household, or require transfer students to compete at the junior varsity level for a period of one year.<sup>51</sup> Some courts have held that school district transfer policies that are more stringent than FHSAA's transfer policies conflict with state law.<sup>52</sup>

## Recruiting

Florida law requires the FHSAA to adopt bylaws prohibiting the recruitment of student athletes. Currently, the bylaws prohibit member schools from recruiting student athletes for athletic purposes. "Athletic recruiting" is "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." The bylaws set forth specific behaviors that constitute recruiting, as well as identify persons who are considered to represent a school's athletic interests.<sup>53</sup>

A student may only be declared ineligible based upon violation of recruiting rules if the student or parent has:

- Falsified any enrollment or eligibility document; or
- Accepted an impermissible benefit, i.e., any benefit or any promise of benefit not generally available to the school's students or family members or is based in any way on athletic interest, potential, or performance.<sup>54</sup>

The law places certain limitations on recruiting penalties. The bylaws may not prospectively limit the competition of student athletes for rule violations of their adult representatives, their school or its coaches. A student athlete may not be unfairly punished for eligibility or recruiting violations perpetrated by a teammate, coach, or administrator. Contests may not be forfeited for inadvertent eligibility violations unless the coach or a school administrator should have known of the violation. Contests may not be forfeited for other eligibility violations or recruiting violations in excess of the number of contests that the coaches and adult representatives responsible for the violations are prospectively suspended.<sup>55</sup>

## Effect of Proposed Changes

Among other things, the bill increases the accountability of the FHSAA by:

- Limiting its ability to collect certain fees;
- Revising its governance structure to allow parents of student athletes to participate in formulating FHSAA policy;
- Providing for neutral third party review of eligibility disputes; and
- Requiring operational audits by the Auditor General and review by the Commissioner of Education of its performance of duties in governing interscholastic athletics.

Additionally, the bill limits the reasons a student may be declared ineligible for interscholastic athletics and expands student opportunities to participate in extracurricular activities as a whole.

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<sup>51</sup> See, e.g., Policy 4.43, Clay County School Board, Policy 8.801, Bay County School Board, and Policy 2431.01, Hillsborough County School Board. These types of residency and transfer policies are similar to the FHSAA residency and transfer bylaws that resulted in the creation of the Student Athlete Recruiting Task Force and recent legislative changes requiring the FHSAA to change its bylaws regarding recruiting.

<sup>52</sup> See, *School Board of Hillsborough County v. Kayla Jo Fernandez*, 151 So.3d 1251 (Fla. 2d DCA 2014)(Affirming circuit court order granting transfer student injunctive relief regarding school board determination of ineligibility).

<sup>53</sup> Section 1006.20(2)(b), F.S.; Policy 36, FHSAA.

<sup>54</sup> Section 1006.20(2)(b), F.S. 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, in addition to any other appropriate fine and sanction imposed on the school, its coaches, or adult representative.

*Id.*

<sup>55</sup> Section 1006.20(2)(i), F.S.

# Florida High School Athletic Association

## Governance

The bill repeals statutory provisions requiring FHSAA to have a board of directors, representative assembly, committees on appeals, and a public liaison advisory committee and specifying their composition and duties. Instead, the bill establishes a 16 member governing board comprised proportionately of representatives from:

- Traditional public schools;
- Public schools of choice;
- Private schools;
- Home education cooperatives; and
- Parents of student athletes who are enrolled in such schools or programs.

The board's membership must also be equitably drawn from the various regions of the state where member schools are located. Any additional policy making bodies established by the FHSAA must provide for similar representation of schools, programs, parents, and regions of the state. Each member of the governing board or any other policy making body established by FHSAA must attend nonprofit governance training, which must include government in the sunshine, conflicts of interest, ethics, and student athlete-centered decision making consistent with the guiding principles for participation in extracurricular activities.

By July 1, 2017, the Commissioner of Education, with approval of the State Board of Education, must designate a nonprofit association to regulate interscholastic athletics. The Commissioner must review the association's performance of duties in each year an operational audit is conducted, i.e., three-year intervals. The nonprofit association designated by the commissioner will be the state's governing body for purposes of membership in the National Federation of State High School Associations.

Several sections of the bill take effect upon approval of a governing nonprofit association by the commissioner in 2017, for the purpose of removing references to the FHSAA from statute, i.e., ss. 943.0438, 1006.165, 1006.18, 1012.467, 1012.468, 1012.55, and 1006.20, F.S.

## Appeals of Eligibility Disputes

The bill requires FHSAA to provide an opportunity to resolve ineligibility determinations through an informal conference. The conference must be held within 10 days of the initial ineligibility determination. If the eligibility dispute is not resolved at the informal conference, FHSAA must provide for a cost-effective and timely neutral third party review, which may include use of retired or former judges, mediation, or arbitration. The neutral third party must be selected by the parent and the review must be completed within 30 days of the informal conference. A student athlete may not be declared ineligible until the neutral third party review is completed, unless the reason for ineligibility involves academic ineligibility, a student code of conduct violation, or the student has exceeded four years of eligibility, reached the maximum age for participation, or graduated from high school. All eligibility proceedings must be conducted in the county where the student resides. Informal conferences and neutral third party hearings may be conducted by telephone, videoconference, or other electronic means.

## Membership

The bill authorizes schools to join FHSAA on a per sport basis. Schools would also be allowed to join other organizations for some sports, while maintaining membership in FHSAA for others. Additionally, FHSAA must adopt guidelines, provide resources, and develop training to educate coaches, administrators and athletes about sportsmanship. Member schools must develop sportsmanship policies and administer FHSAA-developed sportsmanship training to coaches, administrators and

athletes. Member schools must annually certify compliance with sportsmanship requirements by a deadline established by FHSAA.

### Fiscal Accountability

The bill provides that special event fees, sanctioning fees, and contest receipts collected annually by the FHSAA may not exceed its actual costs to perform the function or duty that is the subject of or justification for the fee. It also requires FHSAA to offer spectators seeking admission to athletic competitions the option of purchasing a single-day or multi-day pass at a cost below that which one would pay on a per event basis for the same number of contests.

Additionally, the bill requires the Auditor General to conduct an operational audit of FHSAA every three years. Among other things, an operational audit examines whether internal controls are in place to prevent and detect fraud, waste, and abuse, and whether an organization is administering assigned responsibilities in accordance with applicable laws, administrative rules, contracts, grant agreements, and other guidelines.<sup>56</sup>

## **Participation in Extracurricular Activities**

### Guiding Principles for Student Eligibility

The bill establishes the following guiding principles for student eligibility for extracurricular activities:

- Extracurricular activities are an important complement to the academic curriculum and provide students with incentives to succeed academically.
- Participation in a comprehensive extracurricular and academic program contributes to development of the social and intellectual skills necessary to become a well-rounded adult.
- Extracurricular activities promote teamwork and collaboration, expose students to individuals from diverse backgrounds, and enhance parental engagement in the school.
- Policies governing student eligibility for extracurricular activities should not impede parental school choice.
- A student's school attendance zone or choice of educational program should not be a barrier to participation in extracurricular activities that are not offered by the student's school or program.

### Eligibility and School Choice

Currently, the law only addresses eligibility for extracurricular activities for home education, charter school, FLVS, and certain non-FHSAA-member private school students. The bill repeals these provisions and consolidates them under one provision that accounts for all public school choice options, as well as home education and certain private schools. Accordingly, the bill defines:

- "Public school student" to mean a student who is attending a traditional public school, charter school, magnet school, alternative school, developmental research laboratory school, other public school of choice, or public virtual school.
- "Unaffiliated private school" to mean a private school that has an enrollment of 125 or fewer students in grades 6 through 12 and that is not a member of FHSAA.

Under the bill, a public school student, a student attending an unaffiliated private school, or a home education student is eligible to participate in an extracurricular activity that is not offered by the student's school or home education program. Participation may occur at any public school in the school district in which the student resides or a public school in another school district which the student could choose to attend pursuant to an interdistrict controlled open enrollment policy. A home education student may also develop an agreement to participate at a private school.

All students participating under these provisions must:

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<sup>56</sup> Section 11.45(1)(g), F.S.  
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- Meet the same academic and conduct standards applicable to other students participating in the activity.
- Register with the public school his or her intent to participate in extracurricular activities before the beginning date of the activity.

In general, a student may only participate at another public school in extracurricular activities not offered by his or her home school. However, students enrolled in an unaffiliated private school, a home education program, a full-time public virtual school, or a public school that does not offer any interscholastic athletic programs may only participate in athletics at the public school in which the student is first registered. Thus, if such a student seeks participation in athletics, they must choose one school that offers all of the sports the student seeks to play. Students enrolled in a school that has athletic programs must play the sports offered by their school at that school, but may participate at another public school for sports not offered by their school.

The parent of a student who participates pursuant to these provisions is responsible for transporting the student to and from the school at which the student participates. The school the student attends, the school at which the student participates in the extracurricular activity, the district school board, and the nonprofit governing association are exempt from civil liability arising from any injury to the student which occurs during such transportation.

### Eligibility

The bill limits the grounds for declaring a student ineligible to participate in interscholastic athletics to:

- Failure to meet academic and conduct requirements;
- Falsification of an enrollment or eligibility document by the student or parent;
- Acceptance of an impermissible benefit by the student or parent;
- Commission of a flagrant act of unsportsmanlike conduct or violation of substance abuse policies established by a nonprofit association;<sup>57</sup>
- Exhaustion of four years of athletic eligibility, graduation from high school, or attainment of the maximum age established by a nonprofit association, whichever occurs first;
- Failure to pass a required medical examination;
- Forfeiture of amateur status;<sup>58</sup> or
- Failure to meet transfer eligibility requirements.

The bill defines "impermissible benefit" to mean a benefit or promise of benefit that is based in any way on athletic interest, potential, or performance and is a benefit not generally available to the school's students or family members that induces a student athlete to participate in the athletic programs of a member school.

The bill clarifies that a home education student is academically eligible to participate in extracurricular activities if he or she has a satisfactory evaluation of educational progress conducted in accordance with the home education law, rather than meeting GPA requirements. The bill prohibits district school boards or private schools from establishing policies regarding transfer student eligibility for

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<sup>57</sup> FHSAA bylaws define "unsportsmanlike conduct" as an act of malicious or hateful nature toward a contest official, opponent, or spectator, including without limitation profanity, striking or threatening a contest official, physical contact with an opponent, spitting on a contest official or opponent, gender, ethnic, or racial slurs, or other unacceptable conduct. Violations of FHSAA's recruiting and alcohol, tobacco, and performance enhancing drug policies are also classified as unsportsmanlike conduct. Coaches and student athletes who commit an unsportsmanlike act that results in ejection from a contest may be suspended, which range in duration from two games for a first violation to up to one-year for flagrant or repeated violations. Bylaws 6.3.1 and 7.2.1, FHSAA; Policies 30 and 31, FHSAA.

<sup>58</sup> FHSAA bylaws prohibit a student athlete from participating in interscholastic athletics if he or she competes for money or other monetary compensations; receives any award or prize of monetary value which has not been approved by the FHSAA; capitalizes on athletic fame by receiving money or gifts of a monetary nature; signs a professional playing contract in any sport or hires an agent to manage his/her athletic career; or competes under an assumed name. Bylaw 9.9, FHSAA.

extracurricular activities which are more stringent than the policies established by the governing nonprofit association. Any additional requirements placed on participation in extracurricular activities must be applied equally to all students, regardless of the type of activity, and may not make participation less accessible to a transfer student or a student enrolled in a public school of choice, an unaffiliated private school, or a home education program.

The bill makes several conforming changes to existing provisions of law, including relocating or consolidating provisions. This includes provisions:

- Prohibiting academically ineligible students from transferring schools to gain eligibility,
- Regarding insurance coverage provided to home education and unaffiliated private school students who participate in public school extracurricular activities; and
- Placing certain limitations on recruiting penalties.

## B. SECTION DIRECTORY:

**Section 1.** Amends s. 1006.20, F.S.; relating to Athletics in public K-12 schools; revises FHSAA governance structure, appeals process, and membership requirements.

**Section 2.** Amends s. 1006.15, F.S.; relating to Student Standards for participation in extracurricular activities; limits grounds for declaring a student ineligible; expands student opportunities to participate in public school extracurricular activities.

**Section 3.** Amends s. 1006.16, F.S.; relating to Insuring school students in athletic activities; conforms provisions.

**Section 4.** Amends s. 1006.19, F.S.; relating to Audit of records on nonprofit corporations and associations handling interscholastic activities; requires FHSAA to submit to an operational audit by the Auditor General every three years.

**Section 5.** Amends s. 768.135, F.S.; relating to Volunteer team physicians; immunity; conforms provisions.

**Section 6.** Amends s. 943.0438, F.S.; relating to Athletic coaches for independent sanctioning authorities; conforms provisions.

**Section 7.** Amends s. 1002.20, F.S.; relating to K-12 student and parent rights; conforms provisions.

**Section 8.** Amends s. 1002.33, F.S.; relating to Charter schools; conforms provisions.

**Section 9.** Amends s. 1002.42, F.S.; relating to Private schools; conforms provisions.

**Section 10.** Amends s. 1006.165, F.S.; relating to Automated external defibrillators; conforms provisions.

**Section 11.** Amends s. 1006.18, F.S.; relating to Cheerleader safety standards; conforms provisions.

**Section 12.** Amends s. 1012.467, F.S.; relating to Noninstructional contractors background screening; conforms provisions.

**Section 13.** Amends s. 1012.468, F.S.; relating to Exceptions to certain background screening requirements; conforms provisions.

**Section 14.** Amends s. 1012.55, F.S.; relating to Positions for which certificates are required; conforms provisions.

**Section 15.** Creates an unnumbered section of law requiring the Commissioner of Education to designate a nonprofit association to govern interscholastic athletics.

**Section 16.** Amends s. 1006.20, F.S.; relating to Athletics in public K-12 schools; provides for contingent effect; removes statutory references to FHSAA.

**Section 17.** Provides an effective date of July 1, 2015, except as otherwise provided.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

### **D. FISCAL COMMENTS:**

The bill requires special event fees, sanctioning fees, and gates receipts collected annually by FHSAA to reflect the actual cost of the activity or justification for the fee. This may result in reduced sanctioning fees for corporate sponsors and promoters that organize high school athletic events.

## **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:

None.

### **B. RULE-MAKING AUTHORITY:**

None.

### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

## **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

Not applicable.