

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** CS/HB 845 Higher Education

**SPONSOR(S):** Post-Secondary Education & Lifelong Learning Subcommittee, Smith, D. and others

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

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**FINAL HOUSE FLOOR ACTION:** 114 Y's      2 N's      **GOVERNOR'S ACTION:** Pending

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### SUMMARY ANALYSIS

CS/HB 845 passed the House on April 21, 2021. The bill was amended in the Senate on April 30, 2021, and was returned to the House. The House concurred in the Senate amendment as amended by the House on April 30, 2021. The Senate concurred with the House amendment and passed the bill as amended on April 30, 2021. Part of the bill also passed the House and Senate in CS/CS/SB 1028 on April 28, 2021.

Chapter 2020-28, Laws of Florida, authorized intercollegiate athletes to earn compensation for the use of their name, image, or likeness (NIL), effective July 1, 2021.

The Board of Governors and State Board of Education were required to adopt regulations and rules, respectively, to implement the law's provisions.

During the 2021 Legislative Session, the Legislature passed CS/CS/SB 1028 to, among other things, delay the effective date of the NIL law to July 1, 2022, due to uncertainty concerning the law's implementation and to protect Florida's state university student athletes.

Based on information clarifying the impacts of implementation of the NIL law, the bill restores the original effective date of the NIL law to July 1, 2021.

The bill also prohibits state funds from being used to join or maintain membership in an association whose decisions or proposed decisions are a result of, or in response to, actions proposed or adopted by the Legislature, if such decisions or proposed decisions will result in a negative fiscal impact to the state. The Board of Governors must notify any association if the association's actions or proposed actions may require public postsecondary institutions to withdraw from such association.

The fiscal impact is indeterminate.

Subject to the Governor's veto powers, the effective date of this bill is upon becoming a law, except as otherwise provided.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### Present Situation

##### *Name, Image, Likeness*

During the 2020 Legislative Session, the Florida Legislature passed, and the Governor signed, CS/CS/SB 646. The law was enacted as Chapter 2020-28, Laws of Florida, and authorizes intercollegiate athletes to earn compensation for the use of their name, image, or likeness (NIL), effective July 1, 2021.

The Board of Governors and State Board of Education were required to adopt regulations and rules, respectively, to implement the law's provisions.

During the 2021 Legislative Session, the Legislature passed CS/CS/SB 1028 to, among other things, delay the effective date of the NIL law to July 1, 2022, due to uncertainty concerning the law's implementation and to protect Florida's state university student athletes.

##### *National Collegiate Athletic Association*

The National Collegiate Athletic Association (NCAA) is a nonprofit organization whose voluntary membership includes colleges, universities, athletic conferences, and other affiliated organizations. The NCAA regulates intercollegiate athletic competitions in various sports across three divisions (Division I, Division II, and Division III). As the governing body for the majority of intercollegiate athletic programs, the NCAA provides that its basic purpose is to "maintain intercollegiate athletics as an integral part of the educational program and the athlete as an integral part of the student body and, by so doing, retain a clear line of demarcation between intercollegiate athletics and professional sports."<sup>1</sup>

The NCAA issues and enforces rules governing athletic competitions among its member schools. The rules are developed by a member-led governance system in which members introduce and vote on proposed rules. The rules touch on issues intertwined with athletics such as admissions, financial aid, eligibility and recruiting.<sup>2</sup>

##### *NCAA Membership*

The NCAA has two classes of membership for Division I.<sup>3</sup> These classes are active and conference.<sup>4</sup> An active member is a four-year college or university that is accredited by the appropriate accrediting agency and duly elected to active membership in accordance with NCAA bylaws.<sup>5</sup> A member conference is a group of colleges, universities, or combination of both, that conducts competition among its members and determines a conference champion in one or more sports in which the NCAA conducts championships or for which it is responsible for providing playing rules for intercollegiate competition and duly elected to conference membership in accordance with NCAA bylaws.<sup>6</sup>

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<sup>1</sup> 2020-2021 NCAA Division I Manual, Constitution Article 1, 1.3.1., <https://web3.ncaa.org/lstdbi/reports/getReport/90008> (last visited May 6, 2021).

<sup>2</sup> 2020-2021 NCAA Division I Manual, Constitution Article 1, 1.3.2., <https://web3.ncaa.org/lstdbi/reports/getReport/90008> (last visited May 6, 2021).

<sup>3</sup> 2020-2021 NCAA Division I Manual, Constitution Article 3, 3.01.1., <https://web3.ncaa.org/lstdbi/reports/getReport/90008> (last visited May 6, 2021).

<sup>4</sup> Id.

<sup>5</sup> 2020-2021 NCAA Division I Manual, Constitution Article 3, 3.02.3.1., <https://web3.ncaa.org/lstdbi/reports/getReport/90008> (last visited May 6, 2021).

<sup>6</sup> 2020-2021 NCAA Division I Manual, Constitution Article 3, 3.02.3.2., <https://web3.ncaa.org/lstdbi/reports/getReport/90008> (last visited May 6, 2021).

There are various requirements, conditions, and obligations governing NCAA membership, including membership dues and procedures relating to termination, suspension, and reinstatement.<sup>7</sup>

In addition to any membership dues required by the NCAA, an institution that seeks membership for Division I must meet and maintain requirements related to the number of sports and teams sponsored, scheduling, attendance, and minimum financial aid requirements relating to grants-in-aid.

### *State University Auxiliary Operations*

Auxiliary services are integral activities of a university that furnish to its faculty, staff and students goods, services, or both, that are necessary or desirable but not readily available elsewhere in terms of costs, quality, quantity, timeliness, convenience, or other similar considerations.<sup>8</sup> These activities must support the educational endeavor of the university and enhance its functioning and may not detract or distract from such endeavor in any way, financially or otherwise.<sup>9</sup>

A university's athletics program is one such auxiliary service.<sup>10</sup> Florida Board of Governors (BOG) regulations require athletics to be self-supporting.<sup>11</sup> Funding for auxiliary services is generated from student athletics fees as well as ticket sales to athletics events, game guarantees, NCAA distributions, sponsorships, Title IX funding, waivers and scholarships, a statutory tax on ticket sales to support women's sports, and private support.<sup>12</sup>

### Effect of the Bill

Based on information clarifying the impacts of implementation of the NIL law, the bill restores the original effective date of the NIL law to July 1, 2021.

While BOG regulations require athletics to be self-supporting, the bill prohibits the use of state funds to join or maintain membership in an association whose decisions or proposed decisions are a result of, or in response to, actions proposed or adopted by the Legislature, if such decisions or proposed decisions will result in a negative fiscal impact to the state. Expenditures subject to this prohibition would include any membership fee as well as any costs associated with maintaining membership such as the number of sports and teams sponsored, scheduling, attendance, and minimum financial aid requirements relating to grants-in-aid. The Board of Governors must notify any association if the association's actions or proposed actions may require public postsecondary institutions to withdraw from such association.

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

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

#### **1. Revenues:**

None.

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<sup>7</sup> 2020-2021 NCAA Division I Manual, Bylaws Article 20, 20.01.1., <https://web3.ncaa.org/lstdbi/reports/getReport/90008> (last visited May 6, 2021).

<sup>8</sup> Florida Board of Governors Regulation 9.013 – Auxiliary Operations.

<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> Id.

<sup>12</sup> See Florida Board of Governors, 'Glossary of Budget and Finance Terms' at <https://www.flbog.edu/finance/university-budget-information/glossary-of-budget-and-finance-terms-terms/> (last visited May 6, 2021).

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:

None.