

FINAL BILL ANALYSIS

BILL #: CS/CS/SB1430

FINAL HOUSE FLOOR ACTION:
117 Y, 0 N

SPONSOR: Education Pre-K-12 and Regulated Industries
and Altman (Health & Human Services,
Rulemaking & Regulation and Hager)

GOVERNOR'S ACTION: Approved
(July 1, 2011 effective date)
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COMPANION BILLS: CS/CS/HB 891

SUMMARY ANALYSIS

CS/CS/SB 1430 passed the Senate on May 3, 2011 and subsequently passed the House on May 4, 2011. The bill was approved by the Governor on June 2, 2011, Chapter 2011-108, Laws of Florida, and becomes effective July 1, 2011. The bill amends in s. 386.209, F.S. to clarify as an exception to the State's preemption of smoking regulation that district school boards have authority to restrict smoking on school district property.

In 2002, the Florida Constitution was amended to require the Legislature to outlaw smoking in enclosed, indoor workplaces in Florida. The 2003 Florida Legislature enacted The Florida Clean Indoor Act (Act) as part II of ch. 396, F.S. The stated purpose of the Act is to protect people from the health hazards of secondhand tobacco smoke.

The bill appears to have no fiscal impact on state or local governments.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

The Florida Clean Indoor Air Act¹ (the Act) was originally passed by the Florida Legislature in 1985. At the November 2002 general election, s. 20, Art. X of the Florida Constitution was created by the passage of Amendment No. 6, a citizens' initiative. The amendment required the Legislature to outlaw smoking in enclosed, indoor workplaces in Florida. The 2003 Florida Legislature implemented this amendment in part II of ch. 386, F.S., which states the purpose was to protect people from the health hazards of secondhand tobacco smoke.²

¹ Part II, ch. 386, F.S.

² S. 386.202, F.S.

Section 386.209, F.S., preempts regulation of smoking to the state and supersedes any municipal or county ordinance.³ The Legislature has specifically addressed smoking as it relates to school property in s. 386.212, F.S. This section of law allows a law enforcement

officer to issue a citation to a person who is smoking on, or within 1,000 feet of school grounds, and not in a vehicle or private residence, between the hours of 6am and midnight.⁴

In December 2010, the Florida Attorney General (AG) issued an opinion finding the preemption section in the Act precluded the Palm Beach County School District from regulating smoking on school property.⁵ The AG reasoned that the Act demonstrated the Legislature's intent to expressly preempt the regulation on school property.⁶ An AG opinion is not binding on anyone.⁷

Effect of Proposed Changes

The bill provides for school districts to further restrict smoking on school district property. The bill removes any ambiguity as to whether s. 386.212(2), F.S., preempts such authority.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. No new revenue sources are authorized by the bill.

2. Expenditures:

Indeterminate, but insignificant. There may be an insignificant cost to a school board as it adopts rules to implement the statutory authority.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. The bill authorizes no new revenue sources and existing revenues would not be increased.

³ S. 386.209, F.S.

⁴ S. 386.212, F.S.

⁵ Op. Atty. Gen. 2010-53.

⁶ Op. Atty. Gen. 2010-53.

⁷ *Browning v. Florida Prosecuting Attorneys Ass'n, Inc.*, 2011 WL 831139, *2 (Fla. 1st DCA March 10, 2011); *Beverly v. Division of Beverage, etc.*, 282 So. 2d 657, 660 (Fla. 1st DCA 1973).

2. Expenditures:

None. The bill requires no expenditures by local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.