

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 Health Regulation Committee

BILL: SB 746

INTRODUCER: Senator Hays

SUBJECT: Florida Clean Indoor Air Act

DATE: January 12, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Steele	Stovall	HR	Pre-meeting
2.			CA	
3.				
4.				
5.				
6.				

I. Summary:

This bill enables municipalities to place restrictions on outdoor smoking on municipal property, and counties to place restrictions on outdoor smoking on county property.

This bill substantially amends the following sections of the Florida Statutes: 386.209.

II. Present Situation:

The Florida Clean Indoor Air Act (FCIAA) was first enacted into law in 1985. As currently written, the stated purpose of the FCIAA is to protect people from the health hazards of secondhand tobacco smoke and to implement the Florida health initiative in s. 20, Art. X, of the Florida Constitution.¹ Despite the title of the FCIAA indicating that the act applies solely to “indoor” smoking, the act regulates both indoor and outdoor smoking, because the Florida Legislature (Legislature) has preempted the regulation of smoking to the state.²

In 1996, the Legislature authorized local law enforcement officers to issue citations to persons under the age of 18 for smoking in, on, or within 1000 feet of school property.³ The 2003 Legislature amended the FCIAA in part II of ch. 386, F.S., as a result of passage of a citizens’ initiative in 2002 that became s. 20, Art. X of the State Constitution. In 2011, the Legislature enacted an exception to the state preemption to allow school districts to further restrict smoking by persons on school property.⁴

¹ Section 386.202, F.S.

² Section 386.209, F.S.; Also see, AGO 2005-63; AGO 2010-53; and AGO 2011-15.

³ Section 386.212, F.S.

⁴ Section 386.209, F.S.; ch. 2011-108, L.O.F.

The Department of Health (DOH), or the Division of Hotels and Restaurants or the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation (DBPR) is responsible for enforcement of the FCIAA.⁵ Enforcement of the FCIAA by these agencies is complaint driven through a toll free telephone number.⁶ Civil penalties for individuals who violate the act may be imposed up to \$100 for the first violation and up to \$500 for any subsequent violations.⁷ School districts are able to enforce any further restrictions on smoking enacted by a School Board, because of each school board's inherent authority to discipline employees and control visitors.⁸ However, school boards cannot impose penalties for violations of their restrictions beyond those contained in the FCIAA.⁹

Section 386.209, F.S., preempts regulation of smoking to the state, and supersedes any municipal or county ordinance.¹⁰ The preemption precludes both local regulation and local enforcement that falls outside the provisions of the FCIAA.¹¹ Absent legislative authority the FCIAA appears to preclude a county or municipality from otherwise regulating smoking on their respective properties.¹² Though municipalities have broad "home rule" powers, that power is limited by the Florida Constitution or by general law.¹³ Neither municipalities, nor counties, may act in an area preempted by the Legislature.¹⁴

III. Effect of Proposed Changes:

This bill amends s. 386.209, F.S., adding an exception to state preemption of smoking regulation by allowing municipalities to further restrict outdoor smoking on municipal property and allowing counties to further restrict outdoor smoking on county property. This bill provides an effective date of July 1, 2012.

⁵ Section 386.207, F.S.

⁶ The hotline number is (800) 337-3724. Found at: <<http://www.doh.state.fl.us/environment/community/indoor-air/>> (last visited Jan. 17, 2012).

⁷ Section 386.208, F.S.

⁸ Florida Senate, Committee on Regulated Industries, Senate Bill 1430 Analysis, 2 (Mar. 25, 2011) (on file with the Senate Committee on Health Regulation); Also see, AGO 2011-15.

⁹ See generally, Thomas v. State, 614 So.2d 468, 470 (Fla. 1993); Also see, AGO 2010-53 (noting 'the "home-rule" power granted to district school boards has been analogized to the grant of home rule powers to municipalities...').

¹⁰ Section 386.209, F.S.; AGO 92-89; AGO 2010-53; AGO 2011-15; Also see generally, Florida Power Corp. v. Seminole County, 579 So.2d 105, 107 (Fla. 1991).

¹¹ AGO 92-89.

¹² See generally, AGO 2010-53.

¹³ See Art. VIII, § 2, Fla. Const.; Section 166.021(1), F.S.; City of Boca Raton v. State, 595 So.2d 25, 27 (Fla. 1992); Florida Power Corp. at 107; AGO 89-24.

¹⁴ Tribune Co. v. Cannella, 458 So.2d 1075, 1077 (Fla. 1984); AGO 81-76; Judge James R. Wolf, Sarah Harley Bolinder, The Effectiveness of Home Rule: A Preemption and Conflict Analysis, Fla. B.J., June 2009, at 92.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of the bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

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

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

It is not apparent whether municipalities and counties have enforcement authority for any restrictions on outdoor smoking on municipal or county property. Section 386.207, F.S., assigns responsibility to the DOH or the DBPR to enforce part II of ch. 386, F.S., based upon each department's specific areas of regulatory authority. Section 386.212, F.S., provides explicit authority for enforcement of that section to a law enforcement officer. Although s. 901.15(1), F.S., authorizes a law enforcement officer to enforce a municipal or county ordinance, the preemption to regulating smoking might apply to enforcement as well.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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