

STORAGE NAME: s2000s1z.edk
DATE: June 2, 1998

****FINAL ACTION****
****SEE FINAL ACTION STATUS SECTION****

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
EDUCATION K-12
FINAL BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/SB 2000
RELATING TO: Education/Rulemaking Authority (RAB)
SPONSOR(S): Education Committee and Senator Lee
COMPANION BILL(S): HB 3939 (compare)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) SENATE EDUCATION YEAS 10 NAYS 0
- (2)
- (3)
- (4)
- (5)

I. FINAL ACTION STATUS:

PASSED BY THE LEGISLATURE - CHAPTER #98-163, Laws of Florida

On April 23, 1998, CS/SB 2000 was placed on the Special Order Calendar and was read a second time. The bill was read a third time on April 24, 1998, with an amendment relating to the ESOL "banking" provision, allowing a teacher to bank hours toward the *subsequent validity periods*, as opposed to the next validity period. CS/SB 2000 passed the Senate as amended [YEAS 39, NAYS 0] on April 24, 1998, and was immediately certified to the House.

On April 29, 1998, the House received and read CS/SB 2000 a second and third time and passed the bill without amendments [YEAS 120, NAYS 0].

The bill was presented to the Governor on May 6, 1998, and on May 22, 1998, became law without the Governor's signature.

II. SUMMARY:

The bill provides specific rulemaking authority in the following areas:

- teacher certification and certificate renewal;
- dual-enrollment programs for high school students; and
- articulation of foreign-language competency between secondary and postsecondary institutions.

III. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Administrative Procedures Act

In 1996, the Legislature substantially revised chapter 120, the Administrative Procedure Act (APA). These revisions included, among other changes, standards regarding rulemaking authority and provisions for periodic review of rules by agencies with rulemaking authority.

Prior to the 1996 revisions, a line of court decisions held that a rule did not exceed the legislative grant of rulemaking authority if it was reasonably related to the stated purpose of the enabling legislation. Additionally, it was accepted that a rule was valid when it implemented general legislative intent or policy. Therefore, agencies had wide discretion to adopt rules whether the statutory basis for a rule was clearly conferred or implied from the enabling statute.

The 1996 APA revisions effectively overturned this line of cases and imposed a much stricter standard for rulemaking authority. The Legislature created section 120.536(1), F.S., which provides for a strict standard for adopting rules as well as a process addressing existing rules that may exceed this standard. The section requires the agency to rely on a specific law, rather than a general grant of rulemaking authority. It states that “[a]n agency may adopt only rules that implement, interpret, or make specific the particular powers and duties granted by the enabling statute.” Further, “[n]o agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary or capricious nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy.” It is important to note that the revised APA is not intended to eliminate administrative rules or discourage rulemaking, but to ensure that administrative rules are no broader than the enabling statute.

According to the Joint Administrative Procedures Committee (JAPC), there are 3500-3600 grants of rulemaking authority contained in the Florida Statutes falling roughly into two categories: specific grants and general grants. Most of the grants are specific, which means the grant of authority is found in a sentence with a specific power or duty of the agency. General grants of rulemaking authority authorize rulemaking in the context of the agency’s mission or as it pertains to the stated purpose of the enabling legislation. Most agencies have a general grant of rulemaking authority and numerous specific grants of rulemaking authority.

Section 120.536, F.S., also provides a method to address existing rules that may exceed the rulemaking standard described therein. Section 120.536(2), F.S., directs each agency for which the APA is applicable to identify those rules, or portions thereof, that exceed rulemaking authority as described in s. 120.536, F.S., and provide this information to JAPC by October 1, 1997. The rules identified are shielded from challenge as to validity so that the Legislature may consider legislation to authorize these rules during the 1998 Session. Each agency has the responsibility to submit legislative proposals, as appropriate, which will provide statutory authorization for existing rules, or portions thereof, which the agency deems necessary but which currently exceed the agency’s rulemaking authority. For those rules not authorized in the 1998 Session, the adopting agency must initiate repeal proceedings by January 1, 1999. The shield is lifted on July 1, 1999, for all rules identified in the October 1997 report.

JAPC reports that some 5,850 rules or portions of rules were reported by agencies as exceeding the agency’s rulemaking authority under s. 120.536(1), F.S. One hundred and fourteen state agencies identified 2236 rules or portions thereof, that exceed the standard for rulemaking. In most cases, it appears that existing rules exceed statutory authority because a “specific law to be implemented” is missing from the statute, not because a statute does not contain a legislative grant of rulemaking authority. However, only 19 of the 67 school boards submitted timely reports to JAPC but these school boards identified 3,610 rules that exceed the district school boards’ rulemaking authority.

Section 231.17, F.S., contains the prescribed requirements of the three step process applicants must complete to qualify for a Florida teaching certificate. One of these requirements is documentation of the receipt of a bachelor's degree or higher from an institution of higher learning. The term "institution of higher learning" is not defined for this purpose; however, Florida institutions accredited by an accrediting association that is a member of the Commission on Recognition of Postsecondary Accreditation (CORPA) satisfy the requirement.

Under the authority granted in s. 231.1725, F.S., Florida public school boards may employ part-time and full-time non-certificated teachers in critical teacher shortage areas. These teachers must have training in the competencies of the teaching assignment, file a complete set of fingerprints as required by s. 231.02, F.S., of all school district employees. The boards are responsible for identifying the critical teacher shortage areas in the districts and must annually report the number, qualifications and areas of assignment of the non-certificated teachers employed. Also, s. 231.15, F.S., directs the State Board of Education to adopt rules authorizing districts to employ non-certificated personnel to provide instructional services in the individual's area of specialty.

Section 231.24, F.S., contains the requirements teachers must meet for the renewal of their teaching certificates. Certificates are valid for a 5-year period and may be renewed by completing 6 semester hours of college credit or 120 hours of inservice work, or some combination of the two. Teachers may also meet renewal requirements by passing a state approved subject area test or completing a department approved, teaching related summer work program. Teachers who are required to complete training in teaching students with limited English proficiency must complete 15 semester hours or 300 inservice hours of ESOL training. Until 1995, teachers were allowed to apply training already completed to meet the ESOL requirement for certificate renewal. The rule authorizing this "banking" feature sunset in 1995, and the State Department of Education lacks the specific statutory authority to reinstate it.

B. EFFECT OF PROPOSED CHANGES:

The bill amends s. 231.17, F.S., to authorize the Commissioner of Education to make decisions regarding the certification of an individual in the event of extenuating circumstances that are not covered by law or agency rule.

The bill requires the State Board of Education to approve rules for the use of training to teach students with limited English proficiency for certificate renewal purposes. Also, the bill restores the provision for "banking" inservice hours and college credits that were completed to fulfill ESOL training requirements that was previously authorized by state board rule. A teacher possessing a professional certificate would be able to apply the college credits and inservice points earned through ESOL training that are in excess of 6 semester hours during one certificate validity period toward renewal of the certificate during the subsequent validity periods. A teacher with a temporary certificate would be able to apply credits and inservice points earned during ESOL training toward renewal of the first professional certificate; however, the ESOL training must have been completed outside the teacher's degree program and the temporary and professional certificates must be issued for consecutive years.

The bill authorizes the State Board of Education to adopt rules for the submission, review, and approval of school districts' instructional personnel assessment systems.

The State Board of Education is also given specific rulemaking authority in s. 240.116, F.S., to adopt rules for dual-enrollment programs regarding requirements for high school graduation, and in s. 240.233, F.S., for the articulation of foreign-language competency and equivalency between secondary and postsecondary institutions.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

The bill provides specific rulemaking authority in the following areas: teacher certification and certificate renewal; dual-enrollment programs for high school students; and articulation of foreign-language competency between secondary and postsecondary institutions.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

The bill amends ss. 231.17, 231.24, 231.29, 240.116, and 240.233, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1. Amends s. 231.17, F.S., relating to official statements of eligibility and certificates granted on application to those meeting prescribed requirements; authorizing the Commissioner of Education to make decisions regarding an applicant's certification under extenuating circumstances not otherwise provided for in statute or by rule.

Section 2. Amends s. 231.24, F.S., relating to the process for renewal of professional certificates; authorizing the State Board to approve rules for the use of training to teach students with limited English proficiency for certificate renewal purposes; and restores the provision for "banking" inservice hours and college credits that were completed to fulfill ESOL training requirements that was previously authorized by State Board rule.

Section 3. Amends s. 231.29, F.S., relating to assessment procedures and criteria; authorizing the State Board to adopt rules for submission, review, and approval of school districts' instructional personnel assessment systems.

Section 4. Amends s. 240.116, F.S., relating to articulated acceleration; authorizes the State Board to adopt rules for any dual-enrollment programs involving requirements for high school graduation.

Section 5. Amends s. 240.233, F.S., relating to universities; admission of students; authorizes the State Board to adopt rules for the articulation of foreign-language competency and equivalency between secondary and postsecondary institutions.

IV. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

Allowing teachers to bank ESOL training hours for use in prospective certificate renewal could save these teachers the cost of taking additional college-credit courses for renewal.

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

N/A

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V. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to expend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

VI. COMMENTS:

N/A

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 14, 1998, SB 2000 passed favorably out of the Senate Education Committee and was made a committee substitute.

VIII. SIGNATURES:

FINAL RESEARCH PREPARED BY COMMITTEE ON EDUCATION K-12:

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