

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: March 14, 1998 Revised: _____

Subject: Education/Rulemaking Authority (RAB)

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	O'Farrell	O'Farrell	ED	Favorable/CS
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill provides specific statutory authority for a number of rules submitted by the Department of Education to the Joint Administrative Procedures Committee as being promulgated under the agency's general rulemaking authority and, therefore, not meeting the rule validity criteria established by s. 120.536, F.S. The subjects affected by the rules authorizations include: teacher certification and certificate renewal, dual-enrollment programs for high school students, and the articulation of foreign-language competency between secondary and postsecondary institutions.

This bill amends sections 231.17, 231.24, 231.29, 240.116, and 240.233 of the Florida Statutes.

II. Present Situation:

During the 1996 Legislative Session, a comprehensive rewrite of the Florida Administrative Procedures Act was adopted as CS/SBs 2290 & 2288. Among many other changes, the revised APA modified the standards which authorize rulemaking and included provision for periodic review of rules by agencies with rulemaking authority.

In the past, a number 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. Agencies had wide discretion to adopt rules whether the statutory basis for a rule was clearly conferred or implied from the enabling statute.

Section 120.536, F.S., effectively overturned this line of cases and imposed a much stricter standard for rulemaking authority. Under the new APA, existing rules and proposed rules must **implement, interpret, or make specific** the particular powers and duties granted by the enabling

statute. It is important to note that the revised APA is not intended to eliminate administrative rules or even to discourage rulemaking, but to ensure that administrative rules are no broader than the enabling statute. A grant of rulemaking authority by the Legislature is necessary but not enough by itself to for an agency to adopt a rule. Likewise, agencies need more than a statement of general legislative intent for implementing a rule. Rules must be based on specific grants of powers and not address subjects on which the Legislature was silent.

In order to temporarily shield a rule or portion of a rule from challenge under the new provisions, agencies were to report rules which they believed did not meet the new criteria by October 1, 1997.

The Joint Administrative Procedures Committee (JAPC) reports that some 5,850 rules or portions of rules were reported as exceeding the agency's rulemaking authority under s. 120.536(1), F.S. Of these, 3,610 rules were identified by various local school boards, whose rules are not contained in the FAC. However, 2,240 rules contained in the FAC were reported by various agencies as exceeding statutory authority for rulemaking under s. 120.536, F.S.

Section 120.536(2), F.S., also lays out the second step in the process, that of legislative review. The subsection provides:

The Legislature shall, at the 1998 Regular Session, consider whether specific legislation authorizing the identified rules, or portions thereof, should be enacted. By January 1, 1999, each agency shall initiate proceedings pursuant to s. 120.54 to repeal each rule, or portion thereof, identified as exceeding the rulemaking authority permitted by this section for which authorizing legislation does not exist.

Thus, during the 1998 Legislative Session, each agency has the responsibility to bring forward 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 agencies' rulemaking authority. The Legislature is directed to consider whether such legislation authorizing the identified rules should be enacted.

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 them are specific grants of authority, that is, the grant of authority is found coupled 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. In most cases, it appears that existing rules exceed statutory authority because a "specific law to be implemented" is missing from the statute, not a legislative grant of 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.

III. Effect of Proposed Changes:

Section 231.17, F.S., would be amended to give the Commissioner of Education the authority 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 legislation would require 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 would restore 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 next validity period. 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.

Section 231.29, F.S., would give the State Board of Education specific authority to adopt rules for the submission, review, and approval of school districts' instructional personnel assessment systems.

The State Board of Education would be 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. 240.33, F.S., for the articulation of foreign-language competency and equivalency between secondary and postsecondary institutions.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

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

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
