

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 20, 1998 Revised: _____

Subject: Independent Colleges & Universities (RAB)

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

I. Summary:

The State Board of Independent Colleges and Universities (SBICU) reported 8 administrative rules to the Joint Administrative Procedures Committee (JAPC) as lacking appropriate statutory authorization, as required by s. 120.536, F.S. Subsection (2) of s. 120.536, F.S., also directs the Legislature to determine whether specific legislation should be enacted to authorize the rules, or portions of rules, identified by the agency. All of the rules reported by SBICU are addressed in SB 2316, and relate to the board's role in overseeing the establishment and operation of nonpublic colleges and centers of out-of-state institutions in Florida.

This bill substantially amends sections 246.081, 246.085, 246.087, 246.091, and 246.095 and creates section 246.093 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 and 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) 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.

The State Board of Independent Colleges and Universities complied with the rule review provisions of s. 120.536, F.S., by reporting 8 rules as exceeding or lacking the appropriate statutory grant of rulemaking authority. The board has addressed this problem and submitted a legislative proposal to correct the identified deficiencies.

III. Effect of Proposed Changes:

Senate Bill 2316 is the State Board of Independent Colleges and Universities' legislative proposal to provide rulemaking authority for the following administrative rules: 6E-1.0032, 6E-0035, 6E-2.003(5), 6E-2.0041, 6E-2.0042, 6E-2.007(4), 6E-2.009, and 6E-2.010, F.A.C. If the measure does not pass the Legislature, s. 120.536(2), F.S., requires that the State Board of Education initiate rulemaking proceedings by January 1, 1999, to repeal each rule, or portion of a rule, identified as exceeding the rulemaking authority permitted by s. 120.536(1), F.S. If the bill is passed by the Legislature, the requirements of s. 120.536, F.S., are presumed to have been satisfied.

The bill would make the necessary statutory changes to augment the SBICU's authority to adopt rules on the following topics: conditions under which students of foreign medical schools may serve clinical clerkships in Florida, the review of a college's certificate of exemption from licensure, conditions affecting the licensure of agents for a college, change in ownership or the closing of a college, and the fair consumer practices required of a college.

A new section of law would be created to give the board specific authority to adopt rules regarding the granting of permission to an out-of-state college to have a minimal presence in Florida. The proposed law would define minimal presence as maintaining a business office, providing an occasional seminar that would award college credit, arranging an occasional clinical clerkship for a foreign medical student, or other operations of a non-regular, non-credit bearing nature. The current SBICU rule on this issue was previously adopted under the board's general rulemaking authority.

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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.