

STORAGE NAME: h4335.grr

DATE: April 13, 1998

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL RULES AND REGULATIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 4335

RELATING TO: District School System

SPONSOR(S): Representative Bullard

COMPANION BILL(S): SB 1772 (compare)

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

- (1) EDUCATION K-12 YEAS 11 NAYS 0
 - (2) GOVERNMENTAL RULES AND REGULATIONS
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

The bill amends s. 230.22, F.S., relating to the general powers of school boards, to include a list of specified areas in which the school boards would be authorized to adopt rules in the absence of specific statutory rulemaking authority. The areas include: governance and operations, general school administration, fiscal management, support services, facilities management, personnel, instructional programs, student management, parent relations, school-community relations, court orders, and federal mandates.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Chapter 120, Florida Statutes, The Administrative Procedure 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 strict standard for rulemaking authority. The Legislature created section 120.536(1), F.S., which provides for a more 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 was directed 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.

School Board Authority

Article IX, section 4, of the Florida Constitution provides local school boards with the authority to control, operate, and supervise the public schools within the district.

According to section 230.22, F.S., school boards also have the general powers to adopt such rules and regulations to supplement those prescribed by the state board and the Commissioner which in its opinion will contribute to the more orderly and efficient operation of the district school system. Section 230.23, F.S., provides a more extensive and detailed description of school boards' powers and duties ranging from the requirement to maintain records and minutes of meetings to the directive to implement a system of school improvement and accountability. Some portions of this law contain very specific instructions for school board action. For example, s. 230.23(6)(c)1, F.S., directs school boards to adopt rules for the control, discipline, in-school suspension, suspension, and expulsion of students.

B. EFFECT OF PROPOSED CHANGES:

The bill amends s. 230.22, F.S., to include a list of specified areas in which the school boards would be authorized to adopt rules in the absence of specific statutory rulemaking authority. The areas include: governance and operations, general school administration, fiscal management, support services, facilities management, personnel, instructional programs, student management, parent relations, school-community relations, court orders, and federal mandates. The listing of areas for which rulemaking authority is authorized attempts to bring local school board rules into compliance with s. 120.536, F.S.

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?

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(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:

Amends s. 230.22, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1. Amends s. 230.22, relating to the general powers of school boards; providing authority for school boards to adopt rules pursuant to the APA for governance and operations, general school administration, fiscal management, support services, facilities management, parent relations, school-community relations, court orders, and federal mandates.

Section 2. Provides an effective date upon becoming law.

III. 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:

N/A

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

N/A

D. FISCAL COMMENTS:

N/A

IV. 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.

V. COMMENTS:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 2, 1998, the Committee on Education K-12, adopted an amendment, that now travels with the bill, that removed from the bill the following subjects: parent relations and school-community relations. HB 4335, as amended, was then reported favorably by the Committee on a unanimous vote.

VII. SIGNATURES:

COMMITTEE ON EDUCATION K-12:

Prepared by:

Legislative Research Director:

M. Elizabeth Atkins

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PAGE 9

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