

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1256

SPONSOR: Health, Aging and Long Term Care Committee and Senator Campbell

SUBJECT: Nursing Education

DATE: April 11, 2001                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Wilson	HC	Favorable/CS
2.	White	O'Farrell	ED	Favorable
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

The bill requires the Board of Nursing to hold in abeyance until July 1, 2002, the development of any rule pursuant to s. 464.019, F.S., regarding educational objectives, faculty qualifications, curriculum guidelines, administrative procedures, and clinical training for approved nursing programs, which relates to the establishment of faculty/student clinical ratios. The Board of Nursing and the Department of Education must submit to the President of the Senate and the Speaker of the House of Representatives by December 31, 2001, an implementation plan that details both the impact and the cost of any such proposed rule change.

This bill creates one undesignated section of law.

**II. Present Situation:**

***Regulation of Nursing Practice***

Part I, chapter 464, F.S., provides for the regulation of nursing practice by the Board of Nursing within the Department of Health. The part provides licensure requirements for licensed practical nurses and registered nurses, and certification requirements for advanced registered nurse practitioners. The part requires any institution wishing to conduct an approved nursing program in Florida to apply to the Department of Health and to show compliance with the requirements of the part and any applicable administrative rules adopted by the board (Section 464.019, F.S.). The part requires professional or practical nursing licensure applicants to graduate from an approved nursing program as a prerequisite to being allowed to sit for the nursing licensure examination (Section 464.008). The part grants the board authority to adopt rules regarding educational objectives, faculty qualifications, curriculum guidelines, administrative procedures,

and clinical training as are necessary to ensure that approved nursing programs graduate nurses capable of competent practice (64B9-2, *Florida Administrative Code*).

### ***Department of Health's Standing to Challenge Board Rules***

Chapter 456, F.S., provides the general regulatory provisions for health care professions within the Department of Health. The Secretary of the Department of Health has standing to challenge any rule or proposed rule of a board under its jurisdiction pursuant to s. 120.56, F.S.<sup>1</sup> In addition to challenges for any invalid exercise of delegated legislative authority, the administrative law judge, upon such challenge by the secretary, may declare all or part of a rule invalid if it: (a) does not protect the public from any significant and discernible harm or damages; (b) unreasonably restricts competition or the availability of professional services in the state or in a significant part of the state; or (c) unnecessarily increases the cost of professional services without a corresponding or equivalent public benefit. The Secretary of the Department of Health or the board shall be a substantially interested party for purposes of s.120.54(7), F.S. The board may, as an adversely affected party, initiate and maintain an action pursuant to s. 120.68, F.S., challenging the final agency action.

The State Board of Education does not have the authority to adopt or approve administrative rules for nursing programs in Florida.

### ***Administrative Procedure Act***

The Administrative Procedure Act (APA), contained in ch. 120, F.S., sets forth the general standards and procedures that all agencies must follow when adopting administrative rules. Agencies do not have inherent rulemaking authority.<sup>2</sup> Shaping public policy through lawmaking is the exclusive power of the Legislature.<sup>3</sup> The Legislature, however, may delegate to agencies the authority to adopt rules<sup>4</sup> that implement, enforce, and interpret a statute.<sup>5</sup> An enabling statute that delegates rulemaking authority to an agency cannot provide unbridled authority to an agency to decide what the law is,<sup>6</sup> but must be complete,<sup>7</sup> must declare the legislative policy or standard,<sup>8</sup> and must operate to limit the delegated power.<sup>9</sup>

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<sup>1</sup> Section 456.012, Florida Statutes

<sup>2</sup> *Grove Isle, Ltd. v. State Dept. of Envtl. Reg.*, 454 So.2d 571, 573 (Fla. 1st DCA 1984).

<sup>3</sup> *Jones v. Department of Rev.*, 523 So.2d 1211, 1214 (Fla. 1st DCA 1988).

<sup>4</sup> A rule is defined by s. 120.52(15), F.S., to mean, “. . . each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule. The term also includes the amendment or repeal of a rule. . . .”

<sup>5</sup> *State v. Atlantic C.L.R. Co.*, 47 So. 969 (1909).

<sup>6</sup> *State ex rel. Davis v. Fowler*, 114 So. 435, 437 (Fla. 1927).

<sup>7</sup> *Spencer v. Hunt*, 147 So. 282, 286 (Fla. 1933); accord *Florida Beverage Corp. V. Wynne*, 306 So.2d 200, 202 (Fla. 1st DCA 1975).

Agencies are not authorized to determine whether or not they want to adopt rules.<sup>10</sup> They are required by law to adopt as a rule each agency statement that meets the definition of a rule as soon as feasible and practicable. Rulemaking is presumed to be feasible and practicable unless the agency proves certain statutory standards. Whenever an act of the Legislature requires implementation by rule, an agency has 180 days after the effective date of the act to do so, unless the act provides otherwise.<sup>11</sup>

Any person substantially affected by a rule or a proposed rule may seek an administrative determination of the invalidity of the rule on the ground that the rule is an invalid exercise of delegated legislative authority.<sup>12</sup> Any substantially affected person may seek an administrative determination of the invalidity of any proposed rule by filing a petition seeking such a determination with the Division of Administrative Hearings within 21 days after the date of publication of the notice required by s. 120.54(3)(a), F.S., within 10 days after the final public hearing is held on the proposed rule as provided by s. 120.54(3)(c), F.S., within 20 days after the preparation of a statement of estimated regulatory costs required by s. 120.541, F.S., if applicable, or within 20 days after the date of publication of the notice required by s. 120.54(3)(d), F.S.

An “invalid exercise of delegated legislative authority” is defined to mean agency action beyond the powers, functions, and duties delegated by the legislature.<sup>13</sup> A proposed or existing rule is an invalid exercise of delegated authority if any one or more of the following criteria are satisfied: (1) there is a material failure to follow rulemaking procedures required by s. 120.54, F.S.; (2) the action is in excess of statutorily conferred rulemaking authority; (3) the rule enlarges, modifies, or contravenes the provision of law it implements; (4) the rule is vague, does not establish adequate standards, or vests unbridled discretion in the agency; or (5) the rule is arbitrary or capricious.

### III. Effect of Proposed Changes:

The bill requires the Board of Nursing to hold in abeyance until July 1, 2002, the development of any rule pursuant to s. 464.019, F.S., regarding educational objectives, faculty qualifications, curriculum guidelines, administrative procedures, and clinical training for approved nursing programs, which relates to the establishment of faculty/student clinical ratios. The Board of Nursing and the Department of Education must submit to the President of the Senate and the Speaker of the House of Representatives by December 31, 2001, an implementation plan that details both the impact and the cost of any such proposed rule change.

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<sup>8</sup> *Chiles v. Children A, B, C, D, E, & F*, 589 So.2d 260, 268 (Fla. 1991).

<sup>9</sup> *Palm Beach Jockey Club, Inc. v. Florida State Racing Comm'n.*, 28 So.2d 330 (Fla. 1946).

<sup>10</sup> Section 120.54(1)(a), F.S.

<sup>11</sup> Section 120.54(1)(b), F.S.

<sup>12</sup> Section 120.56(1)(a), F.S.

<sup>13</sup> Section 120.52(8), F.S.

The effective date of the bill is July 1, 2001.

**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 Art. VII, s. 18 of the Florida Constitution.

**B. Public Records/Open Meetings Issues:**

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Art. I, s. 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 Art. III, s. 19(f) of the Florida Constitution.

**V. Economic Impact and Fiscal Note:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The Department of Health and the Department of Education may incur additional costs to complete an implementation plan that details both the impact and the cost of any proposed rule change which relates to the Board of Nursing's establishment of faculty/student clinical ratios for approved nursing programs.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

In rule 64B9-2.008, F.A.C., the Board of Nursing establishes the clinical student/teacher ratio as "no more than twelve students . . . to a faculty member." Recently the board proposed decreasing the ratio to eight to one or 10 to one. The proposal was announced in September, after the divisions within the Department of Education had already submitted their budget requests. According to an electronic mail survey, decreasing the ratio to eight to one would increase the training costs borne by community college nursing programs by \$4 to \$5 million. Under the bill,

the colleges could be notified of an impending change in the training requirements in time to request state funds to recover their costs.

**VIII. Amendments:**

None.

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

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