

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 891 Regulation of Smoking
SPONSOR(S): Hager and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1430

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Rulemaking & Regulation Subcommittee	15 Y, 0 N, As CS	Jensen	Rubottom
2) Health & Human Services Committee			
3) Education Committee			

SUMMARY ANALYSIS

In 2002, the people of Florida amended their constitution to require the Legislature to outlaw smoking in enclosed, indoor workplaces in Florida. The 2003 Florida Legislature enacted The Florida Clean Indoor Act effective July 1, 2003. Part II of Ch. 386 F.S. stated purpose in part is to protect people from the health hazards of secondhand tobacco smoke.

The bill amends 386.209, F.S., expressly providing for a school district to restrict smoking by persons on school district property.

The bill has an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Florida Clean Indoor Air Act was originally passed by the Florida Legislature in 1985. At the November 2002 General Election, Article X, Section 20 of the Florida Constitution was created by the passage of Amendment No. 6, a citizens' initiative. The amendment required the Legislature to outlaw smoking in enclosed, indoor workplaces in Florida. The 2003 Florida Legislature enacted The Florida Clean Indoor Air Act in part II of Ch. 386 F.S., which states the purpose of this part is to protect people from the health hazards of secondhand tobacco smoke and to implement the Florida health initiative in s.20, Art. X of the State Constitution.¹

Section 386.209, F.S., preempts regulation of smoking to the state and supersedes any municipal or county ordinance.² On December 29, 2010, the Florida Attorney General issued an opinion finding the preemption section in the Act precluded the School District of Palm Beach County from regulating smoking on school property.³

Effect of Proposed Changes

The bill makes it clear that School Boards have the authority to regulate smoking on their own property. The bill also removes any ambiguity as to whether section 386.212(2) preempts such authority. The bill provides no enforcement authority. To enforce smoking restrictions, a School Board would use its inherent authority to discipline employees and controls visitors. The bill provides an effective date of July 1, 2011.

B. SECTION DIRECTORY:

Section 1: Amends 386.209, F.S.; authorizing school districts to restrict smoking on school property.

Section 2: Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. No new revenue sources are authorized by the bill.

2. Expenditures:

Indeterminate, but insignificant. There would be some insignificant cost to schools boards in adopting rules to implement the statutory authority.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. The bill authorizes no new revenue sources and existing revenues would not be increased.

2. Expenditures:

None. The bill requires no expenditures by local governments.

¹ S. 386.202, F.S.

² S. 386.209, F.S.

³ Op. Atty. Gen. 2010-53.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Counties and municipalities are political subdivisions of the state authorized and created under the Florida Constitution.⁴ School districts are separate units of government created under the Constitution.⁵ The preemption section of the Florida Clean Indoor Air Act specifically supersedes the ordinances of two distinct, constitutionally-recognized governmental bodies but is silent as to school districts. A statute which is clear, certain, and unambiguous is not subject to further construction beyond the plain meaning of its specific words.⁶ Given the constitutional distinction between school districts and counties or municipalities, and the plain meaning of the words used in the preemption statute, school districts in fact may not be preempted and have sufficient authority to regulate smoking on school campuses.

B. RULE-MAKING AUTHORITY:

The bill provides school districts with general rulemaking authority and appears to provide sufficient standards and guidelines for the exercise of such authority.⁷

C. DRAFTING ISSUES OR OTHER COMMENTS:

On December 29, 2010 the Florida Attorney General issued an Advisory Legal Opinion (AGO 2010-53) stating that the Florida's Clean Indoor Air Act preempts the regulation of smoking to the state and has concluded that in Part II, Chapter 386 the Legislature has preempted the field of smoking regulation and in 386.212, F.S.; *Smoking prohibited near school property; penalty*, has specifically addressed smoking on school property. The opinion is not binding on anyone.⁸

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

The original bill was amended by the Rulemaking & Regulation Subcommittee to allow school districts to restrict smoking by adults on school district property.

⁴ Art. VIII, s. 1 & 2, Fla. Const.

⁵ Art. IX, s. 4, Fla. Const.; *Dunbar Electric Supply, Inc. v. School Board of Dade County*, 690 So. 2d 1339 (Fla. 3d DCA 1997).

⁶ *Forsythe v. Longboat Key Beach Erosion Control District*, 604 So. 2d 452, 454 (Fla. 1992); *Saunders v. Saunders*, 796 So. 2d 1253, 1254 (Fla. 1st DCA 2001).

⁷ S. 120.536(1), F.S.; *Sloban v. Florida Board of Pharmacy*, 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, 794 So. 2d 696, 704 (Fla. 1st DCA 2001).

⁸ *Browning v. Florida Prosecuting Attorneys Ass'n, Inc.*, 2011 WL 831139 (Fla. 1st DCA March 10, 2011); *Beverly v. Division of Beverage, etc.*, 282 So. 2d 657 (Fla. 1st DCA 1973).

