

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 891 Regulation of Smoking

**SPONSOR(S):** Health & Human Services Committee; Rulemaking & Regulation Subcommittee; 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	16 Y, 0 N, As CS	Mathieson	Gormley
3) Education Committee			

### SUMMARY ANALYSIS

In 2002, the Florida Constitution was amended to require the Legislature to outlaw smoking in enclosed, indoor workplaces in Florida. The 2003 Florida Legislature enacted The Florida Clean Indoor Act (Act) as part II of ch. 396, F.S. The stated purpose of the Act is to protect people from the health hazards of secondhand tobacco smoke.

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

The bill appears to have no fiscal impact on state or local governments.

The bill will become effective upon becoming law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

The Florida Clean Indoor Air Act<sup>1</sup> (the Act) was originally passed by the Florida Legislature in 1985. At the November 2002 general election, s. 20, Art. X 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 implemented this amendment in part II of ch. 386, F.S., which states the purpose was to protect people from the health hazards of secondhand tobacco smoke.<sup>2</sup>

Section 386.209, F.S., preempts regulation of smoking to the state and supersedes any municipal or county ordinance.<sup>3</sup> The Legislature has specifically addressed smoking as it relates to school property in s. 386.212, F.S. This section of law allows a law enforcement officer to issue a citation to a person who is smoking on, or within 1,000 feet of school grounds, and not in a vehicle or private residence, between the hours of 6am and midnight.<sup>4</sup>

In December 2010, the Florida Attorney General (AG) issued an opinion finding the preemption section in the Act precluded the Palm Beach County School District from regulating smoking on school property.<sup>5</sup> The AG reasoned that the Act demonstrated the Legislature's intent to expressly preempt the regulation on school property.<sup>6</sup> An AG opinion is not binding on anyone.<sup>7</sup>

##### Effect of Proposed Changes

The bill provides for school districts to further restrict smoking on school district property. The bill removes any ambiguity as to whether s. 386.212(2), F.S., preempts such authority.

The bill will become effective upon becoming law.

#### B. SECTION DIRECTORY:

Section 1: Amends s. 386.209, F.S.; regulation of smoking preempted to the state.

Section 2: Provides that the bill will become effective upon becoming law.

### 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:

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<sup>1</sup> Part II, ch. 386, F.S.

<sup>2</sup> S. 386.202, F.S.

<sup>3</sup> S. 386.209, F.S.

<sup>4</sup> S. 386.212, F.S.

<sup>5</sup> Op. Atty. Gen. 2010-53.

<sup>6</sup> Op. Atty. Gen. 2010-53.

<sup>7</sup> *Browning v. Florida Prosecuting Attorneys Ass'n, Inc.*, 2011 WL 831139, \*2 (Fla. 1<sup>st</sup> DCA March 10, 2011); *Beverly v. Division of Beverage, etc.*, 282 So. 2d 657, 660 (Fla. 1<sup>st</sup> DCA 1973).

Indeterminate, but insignificant. There may be an insignificant cost to a school board as it adopts 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.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None

**D. FISCAL COMMENTS:**

None

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

Counties and municipalities are political subdivisions of the state authorized and created under the Florida Constitution.<sup>8</sup> School districts are separate units of government created under the Constitution.<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup>

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

**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.

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<sup>8</sup> S. 1 & 2, Art. VIII, Fla. Const.

<sup>9</sup> S. 4, Art. IX, Fla. Const.; *Dunbar Electric Supply, Inc. v. School Board of Dade County*, 690 So. 2d 1339 (Fla. 3d DCA 1997).

<sup>10</sup> *Forsythe v. Longboat Key Beach Erosion Control District*, 604 So. 2d 452, 454 (Fla. 1992); *Saunders v. Saunders*, 796 So. 2d 1253, 1254 (Fla. 1<sup>st</sup> DCA 2001).

<sup>11</sup> S. 120.536(1), F.S.; *Sloban v. Florida Board of Pharmacy*, 982 So. 2d 26, 29-30 (Fla. 1<sup>st</sup> DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, 794 So. 2d 696, 704 (Fla. 1<sup>st</sup> DCA 2001).

On April 25, 2011, the Health and Human Services Committee adopted one amendment to CS/HB 891, providing that the bill will be become effective upon becoming law.

The bill was reported favorably as a Committee Substitute. This analysis reflects the Committee Substitute.