

STORAGE NAME: s2314z.ccc

DATE: May 6, 1998

**\*\*FINAL ACTION\*\***

**\*\*SEE FINAL ACTION STATUS SECTION\*\***

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
COMMUNITY COLLEGES & CAREER PREP  
FINAL BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

**BILL #:** SB 2314

**RELATING TO:** Community College Board of Trustees (RAB)

**SPONSOR(S):** Senator Grant

**COMPANION BILL(S):** No House Bill Companion

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

(1) Senate Education Committee YEAS 10 NAYS 0

(2)

(3)

(4)

(5)

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I. FINAL ACTION STATUS:

**PASSED BY THE LEGISLATURE - CHAPTER 98-208, LAWS OF FLORIDA**

Senate Bill 2314 was taken up off Special Order Calendar in the Senate and read a second time on April 14, 1998. The bill was read a third time and passed out of the Senate on April 22, 1998, with a vote of 33 Yeas and 0 Nays, and was sent to the House. The House read the bill a second and third time on May 1, 1998 and passed it with a vote of 117 Yeas and 0 Nays.

II. SUMMARY:

Senate Bill 2314 contains provisions related to rulemaking authority for community college boards of trustees. It revises and clarifies the rulemaking authority of community college boards of trustees specified in s. 240.319, Florida Statutes, as required by Administrative Procedures Act provisions pursuant to s. 120.536, F.S.

This bill clarifies the rulemaking authority for community college boards of trustees. Prior to the 1997 Legislative Session, community colleges adopted rules, policies, and procedures based on the general authority in s. 240.319, F.S. The enactment of the APA required specific rather than general authority. The bill provides the specific authority required by the APA, but without granting further authority than what is currently in law.

This bill has no fiscal impact.

III. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

The Administrative Procedures Act (APA), as amended by CS/SB 2290 and SB 2288 in the 1996 legislative session, changed the authority of state agencies related to rulemaking. Prior to this, many judicial decisions had allowed agencies to adopt rules which were reasonably related to the purpose of the enabling legislation or general legislative intent or policy.

The new section of the APA, s. 120.536 (the "map-tack" provision), required a closer connection between statutes and rules. Section 120.536(1), F.S., clarified that a grant of rulemaking authority was a necessary but insufficient provision; it mandated that an agency adopt only rules that implement, interpret, or make specific the particular powers and duties granted by the enabling statute.

In order to avoid invalidating existing rules which had been adopted under the earlier, more lenient standard, and to avoid altering potentially good public policy, s. 120.536(2), F.S., directed all state agencies to submit to the Joint Administrative Procedures Committee (JAPC) listings of rules or portions of rules which exceeded rulemaking authority as permitted by s. 120.536, F.S., on or before October 1, 1997. The provision also allowed existing rules to be temporarily shielded from legal challenges. Five community college boards of trustees submitted lists of rules which they believe lack appropriate statutory authority as specified in s. 120.536, F.S.

Section 120.536(2), F.S., further directs the Legislature, during the 1998 Regular Session, to consider whether specific legislation authorizing the identified rules, or portions thereof, should be enacted.

HB 1545, as passed by the 1997 Legislative Session, amended s. 240.319, F.S., concerning community college boards of trustees. It provides the rulemaking authority of community college boards of trustees, with specific authority to adopt rules in the areas of "governance, personnel, budget and finance, administration, programs, curriculum and instruction, buildings and grounds, travel and purchasing, technology, students, contracts and grants, and college property."

B. EFFECT OF PROPOSED CHANGES:

This bill would not expand the authority of community colleges beyond their current authority. Rather, the bill would codify current practice in a manner that provides the specific statutory authority required by the APA.

The bill would address the subject matter of the rules submitted by community colleges and would expand the rulemaking authority for community college boards of trustees permitted in s. 240.319, F.S. General language such as "shall provide for" and "authorized to establish a policy for" would be replaced with language providing authority to adopt rules to perform specific actions or services.

Section 240.319(4), F.S., would be amended to clarify rulemaking authority for community college boards of trustees to adopt rules, procedures, and policies in the following areas: contracts and contract management; appointment, employment, and removal of personnel; enrollment of students and student activities; risk management, safety, security; and contracting for goods, materials, and services required by the college.

In addition, community college boards of trustees would be authorized to adopt rules, procedures, and policies related to:

- compliance with federal laws, regulations, and requirements.
- institutional governance, administration, and management.
- technology and information systems.

- use, maintenance, protection, and control of buildings and grounds, college property, or equipment.

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?

Community college boards of trustees would be authorized to continue to adopt rules, policies, and procedures in the same areas that they have in the past.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

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?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

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?

Yes, if institutions are considered in the same capacity as individuals. The proposed changes would give local entities more flexibility in their respective individual operations in regard to rule making.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

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 section 240.319, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1: Amends s. 240.319, F.S., relating to rulemaking authority for community college boards of trustees.

Section 2: Provides that the act shall take effect upon becoming a law.

IV. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

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

None.

D. FISCAL COMMENTS:

V. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

VI. COMMENTS:

N/A

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VIII. SIGNATURES:

**COMMITTEE ON COMMUNITY COLLEGES AND CAREER PREP:**

Prepared by:

Legislative Research Director:

Derek E. Hemenway

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**FINAL RESEARCH PREPARED BY COMMITTEE ON COMMUNITY COLLEGES & CAREER PREP:**

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