

STORAGE NAME: h1129a.hr.doc
DATE: April 12, 2001

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
HEALTH REGULATION
ANALYSIS**

BILL #: HB 1129
RELATING TO: Nursing Education
SPONSOR(S): Representative(s) Greenstein
TIED BILL(S): None

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

- (1) COLLEGES AND UNIVERSITIES YEAS 11 NAYS 0
 - (2) HEALTH REGULATION YEAS 8 NAYS 0
 - (3) EDUCATION APPROPRIATIONS
 - (4) COUNCIL FOR LIFELONG LEARNING
 - (5)
-

I. SUMMARY:

Under current law, the Florida Board of Nursing (Board) has the authority to adopt rules relating to the state approval of nursing programs. In the event that such rules have an adverse programmatic, administrative and/or financial impact on educational institutions or instructional programs, there is presently no requirement for express approval of such by any other entity, such as the State Board of Education, except to the extent that the institutions and programs have the right to participate in the rulemaking and rule challenge processes provided under chapter 120, F.S.

HB 1129 requires that any proposed rule by the Board of Nursing that would adversely affect instructional programs or educational institutions administratively or fiscally must have prior approval by the State Board of Education.

This bill may increase the costs of the rulemaking process. HB 1129 may impact the ability of certain postsecondary education institutions to secure performance funding.

HB 1129 takes effect July 1, 2001.

On April 2, 2001, the Committee on Colleges and Universities adopted a strike-everything amendment. The amendment removes the requirement for prior approval of the State Board of Education for all rules that adversely affect, administratively or financially, an instructional program or an educational institution. The amendment requires that the Board of Nursing hold in abeyance until July 1, 2002, any rule, which relates to the establishment of faculty/student clinical ratios. The amendment additionally requires the Board of Nursing and the Department of Education to submit an implementation plan that details both the impact and cost of any such proposed rule change to the President of the Senate and to the Speaker of the House of Representatives by December 31, 2001. The strike-everything amendment is traveling with the bill.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

HB 1129 adds a requirement for the State Board of Education to approve any proposed rules of the Board of Nursing that may adversely affect, administratively or fiscally, an institutional program or educational institution. This adds another layer to the rulemaking process.

B. PRESENT SITUATION:

Approval of Nursing Programs by the Board of Nursing

Section 464.019(1), F.S., requires an institution desiring to conduct an approved nursing program for the education of professional or practical nurses to apply to the Department of Health and submit evidence that demonstrates compliance with the Nurse Practice Act (Part I of ch. 464, F.S.) and with rules of the Board of Nursing. The application must include a program review fee that may not exceed \$1,000.

The Department of Health must survey each institution applying for approval and submit its findings to the Board of Nursing. If the Board of Nursing is satisfied that the program meets the requirements of the Nurse Practice Act and rules pursuant thereto, the Board of Nursing must certify the program for approval and the Department of Health must approve the program. Provisional approval of new programs may be granted pending the licensure results of the first graduating class.

Section 464.019(2), F.S., requires the Board of Nursing to adopt rules regarding educational objectives, faculty qualifications, curriculum guidelines, administrative procedures, and clinical training as are necessary to ensure that approved programs graduate nurses capable of competent practice under the Nurse Practice Act. In addition, Board of Nursing rules prescribe student/faculty ratios for clinicals and acceptable minimum performance of graduates on the licensing examination. The Board further stipulates "no institution shall deviate from these rules unless it has received permission from the Board, beforehand, and can show that the variance is necessary, appropriate, and is otherwise consistent with the purposes and application of this chapter."

In addition to delineating minimum curriculum guidelines and administrative procedures, the Board also prohibits certain activities without prior approval of the Board. Rule 64B9-2.006(4), F.A.C., provides that permission of the Board must be granted before any of the following can be changed:

- Number of credit or clock hours, theoretical or clinical instruction in a course
- Sequence of courses in the program

- Number of courses in the program
- Content alterations between courses

Rule 64B9-2.007(12), F.A.C., states that permission of the Board must also be obtained prior to increasing enrollment of full-time students in a year. This rule allows programs with part-time students to equate part-time student admissions to approved full-time student admissions on a two-to-one basis.

According to the Board of Nursing, an educational institution that wants to increase the enrollment in its nursing program must follow the following process:

The director of the program must submit the following information to the Board:

- The additional or total number of students the program wishes to enroll per class;
- When the increased number of students will begin (some schools enter classes two or three times per year);
- A clinical rotation schedule showing the availability of appropriate clinical experiences;
- Documentation of sufficient qualified faculty to teach the increased number of students; and
- Letters of understanding or support from other approved schools sharing the same clinical sites.

The information is then validated by the Board of Nursing Education Unit staff (consisting of master's prepared nurses with nursing education backgrounds), and a report is prepared that outlines whether or not the request meets requirements as stated in the Approved Program rules (64B9-2, FAC).

All information/data is presented to the Board for its consideration. Board staff reports that the Board approves requests that are accompanied by sufficient information to support that the program can provide appropriate facilities and experiences. If the documentation is not available, the Board may give the program additional time to collect the necessary data. The Board denies the request if the program cannot document the necessary clinical space.

Board of Nursing staff indicate that when there is a request for an enrollment increase where there are several schools using the same clinical facilities, the Board confirms that other programs are NOT adversely affected by requesting letters of understanding or support from other programs.

At the April 2001 meeting, the Board will consider requests from three programs for increases in enrollments. The Education Unit staff has recommended approval of each request. The total of all three requests is 180 - 200 students. One institution's request accounts for over half of the requested enrollment increase.

Nursing Programs within the State University System

Academic Program Approval:

Section 240.209(3)(c), F.S., authorizes the Board of Regents (B.O.R.) to approve new degree programs for all state universities, subject to s. 240.2095, F.S. In approving a new degree program, the B.O.R. considers 25 criteria in the evaluation process: strategic plan; program duplication; planning process; appropriate timetable; needs assessment; headcount/FTE estimates; appropriate course of study; appropriate credit hours; common prerequisites; institutional strengths; recent program review follow-up; exploration of distance learning; faculty availability; faculty experience;

commitment to hire new faculty; library resources; facilities; equipment; scholarship and assistantships; clinical and internship sites identified; impact of institutional resource shifting; budget; community college articulation; accreditation; and faculty productivity. In addition to B.O.R. approval, current law requires approval of the Legislature to implement new colleges, schools, or functional equivalents that offer a degree that is a credential for specific licensure.

Therefore, a new nursing program within the State University System (S.U.S.) would first request approval from the B.O.R. to offer the degree. The university would then seek approval or provisional approval from the Board of Nursing prior to the graduation of its first class. Pursuant to s. 464.019(5), F.S., provisional approval of new programs may be granted pending the licensure results of the first graduating class.

Nursing Programs within the Community College System and Vocational-Technical Centers

Community colleges and vocational-technical centers do not require the same program approval required of the S.U.S. institutions. For the Community College System, community college (local) boards of trustees fill the same function as the Florida Board of Regents when it comes to approving new programs at an institution. However, community colleges would be required to follow the same approval path as the universities when it comes to Department of Health/Board of Nursing approvals. The statutes also provide for the State Board of Community Colleges, to conduct periodic program reviews.

Section 240.312, F.S., requires the review of every major program within the Florida Community College System "every five years or whenever effectiveness or efficiency of a program is jeopardized." Additionally, s. 240.311(3)(c), F.S., requires the State Board of Community Colleges to "conduct periodic reviews of existing programs," and s. 240.311(4), F.S., requires the executive director to "conduct system-wide program reviews for board approval." Rule 6A-10.039(1), Florida Administrative Code, requires the Division of Community Colleges annually to submit to the Postsecondary Education Planning Commission "a five-year review plan or annual update of the current five-year plan."

Vocational-Technical Centers that are operated by school districts also decide at the local level whether to offer a program. Program standards and competencies are developed at a state level.

All nursing programs at both community colleges and vocational-technical centers are funded based on performance outcomes; for example, how many students are graduated and placed.

Currently Existing Nursing Programs

Professional Nursing Programs

The Board of Nursing indicated that there are currently 42 professional nursing programs (ADN and BSN) to educate registered nurses (RN). There are 15 baccalaureate programs at state universities, 26 community colleges programs, and 1 private college ADN program. Only one community college, North Florida Community College, does not have an ADN program, but they are currently considering initiating one. The Board of Nursing approved two new programs during the past 2 years (1999 and 2000) - St. Johns River Community College, which came on-line in Fall 2000 and Okaloosa-Walton Community College, which will come on-line in Fall 2001. As of Fall 2001, there will be 43 approved programs educating RNs in Florida.

The total number of graduates from the baccalaureate degree programs and associate degree programs for 1999-2000 was 3,939. The number of students in pipeline in these programs was 6,674. The pass rate for the graduates was approximately 82%, and the pass rate on the licensure examination ranged from 67% to 100%. The Board of Nursing requires programs whose graduates fall 10% below the national pass rate to develop a remedial plan to demonstrate strategies that will be implemented in order to improve graduates' performance on the licensure examination.

Practical Nursing Programs

There are 45 practical nursing programs at public community colleges and vocational technical centers, military units, and other private institutions. Several of the institutions have more than one campus. The Board recently approved Miami-Dade Community College's request to open a practical nursing program. They have already admitted their first class, which will graduate in Summer 2001.

The practical nursing programs graduated 2,208 in 1999-2000, and there were 2,342 students currently enrolled as of June 30, 2000. The pass rate for graduates was approximately 83% with the range being 33% to 100%.

The total approved capacity within these programs was not available.

State Board of Education

The State Board of Education does not have a statutorily-created role in the approval of Board of Nursing rules related to nursing programs.

Under current law, the Florida Board of Nursing has the authority to adopt rules relating to the state approval of nursing programs. In the event that such rules have an adverse programmatic, administrative and/or financial impact on educational institutions or instructional programs, there is presently no provision for appeal or intervention by any other entity, such as the State Board of Education. Although public hearings are held every time there is a proposed rule change and all affected persons are able to participate in the development of the rules as well as challenge provisions of the rule which they are unhappy with, there is no requirement that the Board of Nursing seek out the input of the educational institutions being directly affected by the rules.

Nursing Shortages

According to a June 2000 study conducted by the Florida Hospital Association (FHA), there is a statewide and nationwide shortage of nurses. The study reported that as of February 2000, there were 1,708 open RN positions in the 55 hospitals reporting vacancies. Shortages in Florida were found to mirror the shortage problems on the national level. "The American Organization of Nurse Executives concludes that the solutions to address this current nursing shortage will require actions by nurse education programs to increase the supply and the skill of graduating nurses to assure an adequate, appropriate skill mix for the future."

Instructional programs and educational institutions in Florida are finding it difficult to react quickly to community needs and requests to produce more nurses. One institution reported approximately 470 spaces available in their nursing programs but no students to fill the seats. A health care facility being served by that institution is hiring over 200 nurses from out of the country. Conversely, another institution, with high demand in the county served, reports admissions of 450 students per year and 400 students on a waiting list.

C. EFFECT OF PROPOSED CHANGES:

HB 1129 requires that any proposed rule by the of the Board of Nursing that would adversely affect instructional programs or educational institutions administratively or fiscally must have prior approval by the State Board of Education.

D. SECTION-BY-SECTION ANALYSIS:

Please see the Effect of Proposed Changes section.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

See Fiscal Comments section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Efforts that allow instructional programs and educational institutions to produce more qualified nurses may enable the private sector to fulfill employment needs.

D. FISCAL COMMENTS:

This bill could increase the costs associated with promulgating rules as another governmental entity would participate in the process.

HB 1129 could have a positive fiscal impact for some postsecondary institutions and nursing programs by increasing their ability to receive performance funds.

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 action which requires the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues.

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

This bill does not reduce the percentage of state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

The issue of unlawful delegation of legislative authority may arise without further clarification and definition of the term "prior approval" relating to the State Board of Education's role in approving or disapproving of Board of Nursing rules.

B. RULE-MAKING AUTHORITY:

HB 1129 requires the State Board of Education to approve or disapprove any proposed rule of the Board of Nursing if the rule would adversely affect administratively or fiscally instructional programs or educational institutions. However, the bill does not address who has the responsibility and authority to determine whether a rule has an adverse affect. The bill does not set forth a procedure by which the rule would be suspended from being heard by the Board of Nursing until the State Board of Education could hear it. The Administrative Procedures Act, chapter 120, F.S., does not appear to contemplate one state agency having the power to override another state agency's rules.

C. OTHER COMMENTS:

In spite of a reported statewide shortage of nurses, admissions waiting lists, and requests by local health facilities to produce more nurses, one institution has asserted that it has had repeated difficulties in receiving approval from the Board of Nursing to increase enrollment. The inability to increase enrollment could be problematic for programs that are funded based on performance outcomes such as graduations and placements.

The Board of Nursing indicates that it is concerned about the nursing shortage problem, but it is also concerned about the protection of the public health, safety, and welfare. Concern has been expressed about the quality of students entering the profession, a decline in the pass rate on the licensure exam over the past few years, and the number of applicants for examination that must appear before the Board due to criminal histories. Thus, although the *quantity* of nurses may be more readily addressed by simply increasing enrollment in nursing programs, the issue of ensuring *quality* nurses who practice safely within the approved standard of care and who do not pose a danger to the public health, safety, and welfare must be addressed concurrently.

Spokespersons from the State University System, the Community College System and the Department of Education support the proposed legislation.

At its meeting held on February 7, 2001, the Board of Nursing voted unanimously to oppose the proposed legislation.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 2, 2001, the Committee on Colleges and Universities adopted a strike-everything amendment. The amendment removes the requirement for prior approval of the State Board of Education for all rules

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that adversely affect, administratively or financially, an instructional program or an educational institution. The amendment requires that the Board of Nursing hold in abeyance until July 1, 2002, any rule, which relates to the establishment of faculty/student clinical ratios. The amendment additionally requires the Board of Nursing and the Department of Education to submit an implementation plan that details both the impact and cost of any such proposed rule change to the President of the Senate and to the Speaker of the House of Representatives by December 31, 2001. The strike-everything amendment is traveling with the bill.

VII. SIGNATURES:

COMMITTEE ON COLLEGES AND UNIVERSITIES:

Prepared by:

Staff Director:

Maria L. Eckard

Betty H. Tilton, Ph.D.

AS REVISED BY THE COMMITTEE ON HEALTH REGULATION:

Prepared by:

Staff Director:

Wendy Smith Hansen, Senior Attorney

Lucretia Shaw Collins