

STORAGE NAME: h0691a.go

DATE: March 2, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
GOVERNMENTAL OPERATIONS
ANALYSIS**

BILL #: HB 691

RELATING TO: Florida Clean Indoor Air Act

SPONSOR(S): Representative Casey and others

COMPANION BILL(S): SB 56 (similar)

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

- (1) GOVERNMENTAL OPERATIONS YEAS 2 NAYS 2
- (2) BUSINESS REGULATION & CONSUMER AFFAIRS
- (3) COMMUNITY AFFAIRS
- (4) GENERAL GOVERNMENT APPROPRIATIONS
- (5)

I. SUMMARY:

This bill changes the current statewide maximum code regulating tobacco smoking in public places and meetings to a minimum statewide code. This bill also deletes the provision preempting all smoking regulation to the state and authorizes local regulation beyond the statewide minimum code.

No fiscal impact on the state budget is anticipated.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Background

According to the Centers for Disease Control (CDC), about 24 percent of adults in the U.S. smoke cigarettes. In Florida, about 22 percent of adults smoke.

The American Cancer Society reports that 430,700 Americans die each year from the effects of cigarette smoking; according to the CDC, just over 29,000 of these are Floridians. Approximately 1 in 5 of all deaths in the U.S. each year are smoking related. Cigarette smoking is the major cause of emphysema, chronic bronchitis, and lung cancer; in fact, 90% of lung cancer is attributable to smoking.

In 1993, the Environmental Protection Agency (EPA) issued its report, *Respiratory Health Effects of Passive Smoking: Lung Cancer and Other Disorders*. The EPA concluded that environmental tobacco smoke (ETS) is a human lung carcinogen, and that each year, about 3,000 nonsmoking adults die of lung cancer as a result of breathing the smoke of others' cigarettes. On July 21, 1993, the EPA announced voluntary guidelines on smoking in public buildings.

Currently, ch. 386, part II, F.S., establishes a uniform maximum state code regulating the use of tobacco at public places and meetings. Local governments in Florida are currently unable to enact ordinances that regulate smoking because Florida has expressly preempted the subject to the state (s. 386.209, F.S.).

State Preemption

A preemptive law is one that prevents any local jurisdiction from enacting restrictions that are more stringent than the state law or restrictions that may vary from the state law. Thirty states have preemptive tobacco-control laws. Thirteen of these states, including Florida, expressly preempt **all** smoking regulation to the state (see e.g. s. 386.209, F.S.). In Florida, counties and municipalities are prohibited from adopting local ordinances which enforce the provisions of the Florida Clean Indoor Air Act or further regulate in areas not covered by the Act (see AGO 92-89).

The Florida Constitution grants to charter counties the power to enact ordinances not inconsistent with general law (see Art. VIII, s. 1(g)). Non-charter counties also have authority under statute to carry on county government to the extent not inconsistent with general or special law (see s. 125.01(1) and (3)). In addition, ch. 166, F.S., which implements the state constitution's grant of power to municipalities, provides that municipalities may enact legislation concerning any subject except, among others, those subjects expressly preempted to state or county government (See Art. VIII, s. 2(b), and s. 166.021(3), F.S.). Thus, while municipal ordinances are inferior to laws of the state, municipalities and the state may legislate concurrently in areas that are not expressly preempted by the state. Finally, a municipality's concurrent legislation must not conflict with state law.

Because the state has preempted smoking, local enforcement of ch. 386, F.S., is problematic. Section 386.208, F.S., declares that a person who violates s. 386.204, F.S., commits a non-criminal violation, punishable by a fine of not more than \$100 for the first violation and not more than \$500 for each subsequent violation. However, enforcement of a non-criminal violation requires that there be a citation/enforcement/record-keeping mechanism in place. Chapter 386, F.S., provides no such mechanism. (Compare ch. 386, F.S., with the express procedures for the enforcement of non-criminal statewide and local traffic violations detailed in ch. 316 and 318, F.S.). Because local governments are forbidden to enact ordinances permitting enforcement of the act, and because no such system has been established or funded, the statute is virtually non-enforceable.

B. EFFECT OF PROPOSED CHANGES:

This bill changes the current uniform statewide maximum code of regulation of tobacco smoke in public places and meetings to a statewide minimum code. The removal of express state preemption allows local governments to regulate smoking in public forums and create additional restrictions beyond the state's minimum level of restriction. As a result of this bill, the current uniform statewide law may be replaced with a multitude of differing local smoking ordinances.

While this bill expands the power of local governments to pass local ordinances which surpass the state's minimal restrictions, this bill is subject to the limitations that local governments may not impose greater sanctions than the state for these types of violations. See *Thomas v. State*, 614 So.2d 468 (Fla. 1993). Therefore, local governments may only impose sanctions for violations of the Florida Clean Air Act up to the amounts currently authorized in s. 386.208, F.S.

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?

Yes. The creation of minimum state standards and repeal of state preemption would empower county and municipal governments to enact stricter local standards regulating smoking in public places. These local governments would then be responsible for enforcing those ordinances.

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

Local governments would have the responsibility of enforcing ordinances supplementing the Clean Indoor Air Act.

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

No.

b. If an agency or program is eliminated or reduced:

This bill does not eliminate or reduce an agency or program.

(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?

Possibly. If local governments choose to restrict smoking, the costs of enforcement may be assessed locally.

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?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

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

This bill allows local governments to further restrict smoking in public places, including areas in which smoking may currently be permitted.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

The bill does not purport 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?

No.

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:

The bill does not create or change a program providing services to families or children.

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Ch. 386, Part II, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 386.202, F.S., to declare that the Florida Clean Indoor Air Act establishes uniform minimum state standards for smoking in public places and meetings.

Section 2: Repeals s. 386.209, F.S., to remove the preemption of smoking regulation to the state. This allows local governments to enact ordinances further restricting smoking, so long as the local ordinances are not inconsistent with state law.

Section 3: Provides an effective date of October 1 of the year in which enacted.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Indeterminate. There may be some long-term health care savings to the state, particularly Medicaid costs, due to the health benefits of not inhaling second hand smoke in public places.

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:

Indeterminate. There may be some increased costs in enforcement of local ordinances.

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:

Indeterminate. As a result of some local governments increasing the restrictions on smoking in "public places" and "meetings," non-smokers may increase their utilization of those areas. On the other hand, individuals who smoke may be less inclined to use these same areas.

D. FISCAL COMMENTS:

None.

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 spend funds or take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

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

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:

Local Government Impacts

The removal of express state preemption would allow local governments to enact concurrent legislation so long as the legislation does not conflict with the Florida Clean Indoor Air Act. Locally, however, a county and its municipalities may each enact ordinances that conflict with each other. A charter county's ordinance prevails in the event of any conflict between the county and municipal ordinances (Art. VIII, s. 1(g)). However, in a non-charter county, a municipal ordinance prevails to the extent of conflict with a county ordinance (Art. VIII, s. 1(f)). In short, a charter county is in a better position to establish uniform county-wide regulation of smoking as their ordinances prevail over municipal ordinances in case of conflict. In a non-charter county, there may indeed be several municipal ordinances that prevail over a county ordinance in case of conflict.

List of Charter Counties

Alachua, Brevard, Broward, Charlotte, Clay, Dade, Duval, Hillsborough, Lee, Orange, Osceola, Palm Beach, Pinellas, Sarasota, Seminole, and Volusia.

As alluded to above, the ability of municipalities to enact local ordinances that further restrict smoking, particularly in non-charter counties, may create confusion as people travel from one town to the next. The Legislature may want to consider amending this bill to include a "notice" provision. That is, the state could require local governments that pass such ordinances to place a notice of the ordinance outside the building or area that is affected. This would reduce confusion for those who travel between cities and counties with differing standards.

1998 and 1997 Legislative Sessions

This bill is identical to HB 3379 and SB 148 of the 1998 Legislative Session. On May 5, 1998, HB 3379 died in the House Committee on Community Affairs.

Additional Comments

- *Florida Association of Counties:* The Florida Association of Counties supports the bill as introduced.
- *Florida League of Cities:* The Florida League of Cities supports the bill as introduced.
- *American Cancer Society:* The American Cancer Society supports the bill as introduced.

STORAGE NAME: h0691a.go

DATE: March 2, 1999

PAGE 8

- *American Heart Association:* The American Heart Association supports the bill as introduced.
- *American Lung Association:* The American Lung Association supports the bill as introduced.
- *Florida Medical Association:* The Florida Medical Association supports the bill as introduced.
- *Florida Tobacco & Candy Association:* The Florida Tobacco & Candy Association is opposed to the bill as introduced.
- *Florida Restaurant Association:* The Florida Restaurant Association is opposed to the bill as introduced.

On March 1, 1999, the Committee on Governmental Operations failed to report this bill favorably, by a vote of 2 in favor and 2 opposed.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:

Staff Director:

Jen Girgen

Jimmy O. Helms