

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: March 5, 1998 Revised: _____

Subject: Rulemaking Authority for the Department of Citrus

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Luken</u>	<u>Poole</u>	<u>AG</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill authorizes the Department of Citrus to refer to national or state requirements in its administrative rules relating to the issuance and use of symbols and marks regulated by the department. It further grants the department the power to provide by rule a list of forms used by the department which shall be deemed sufficient notice to the public of the existence of such forms.

This bill substantially amends section 601.10, Florida Statutes and creates section 601.9918, Florida Statutes.

II. Present Situation:

Currently the department requires applicants for the use of symbols or marks regulated by the department to be in compliance with certain state or federal labeling requirements. Under s. 120.54, F.S., an agency may incorporate material (such as other state or federal requirements) by reference, but only as the material exists on the date the rule is adopted. Changes in the material incorporated by reference are not effective unless the rule is amended to incorporate such changes.

Also, the department currently has a list of forms used in conducting its business which was adopted through the rulemaking process. However, this practice is not presently specifically authorized by statute.

Currently, notice to the public of the existence of a form is addressed under s. 120.55, F.S., which provides that any form which meets the definition of a rule shall be incorporated by reference into the appropriate rule, and must specifically state the number, title, effective date and how the form

may be obtained. A form meets the definition of a rule if the form imposes any requirement or solicits information not specifically required by statute or an existing rule (s. 120.52, F.S.).

Thus, if any of the forms listed in the department's rule themselves meet this definition of a "rule" then it must be incorporated by reference into the appropriate rule, and must include specific information about the form. In addition, any amendments to the form require that the rule which refers to the form be amended as well.

III. Effect of Proposed Changes:

Section 1: Creates a new section, s. 601.9918, F.S. This section would explicitly authorize the Department of Citrus to require, by rule, that applicants for use of symbols or marks comply with all federal or state requirements prior to receiving a license to use such symbols or marks from the commission. It does not appear that any substantive change would result from the adoption of this section, insofar that applicants are likely to already be in compliance with other state or federal labeling standards. As noted, according to s. 120.54, F.S., a rule may incorporate material by reference but only as the material exists on the date the rule is adopted, and changes in the material are not effective unless the rule is amended to incorporate the changes. This section of the bill does not appear to change that requirement for the Department of Citrus.

Section 2: Amends section 601.10 by granting an additional power to the Department of Citrus. This section permits the department to provide by rule a list of forms used in conducting its business, and provides that the adoption of such a rule should be deemed sufficient notice to the public of the existence of the forms, negating the need to place specific citation to the list throughout the related chapters of the Florida Administrative Code. This section would appear to change the notice requirements already delineated in Chapter 120, F.S. for the Department of Citrus.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Section 1: As applicants for the use of symbols or marks regulated by the commission currently must meet federal guidelines regardless of their application to the Department of Citrus, it appears there will be minimal or no private sector impact as a result of this section of the bill.

Section 2: Insofar as the list of forms has already been adopted by the Department of Citrus through the rulemaking process, the public has already been given access to this information. Therefore, any affected individual should already have knowledge of the forms listed in the rule, and there would be minimal or no private sector impact as a result of this section of the bill.

C. Government Sector Impact:

Section 1: The Department of Citrus would be permitted to make general references to state or national requirements that an applicant for the use of symbols or marks would be required to meet regardless of the application applied for. It does not appear that any significant government sector impact would result from this section.

Section 2: The Department of Citrus would be permitted to provide by rule a list of forms used in conducting its business and such a rule would be considered sufficient notice to the public of the existence of the forms. This would negate the current need for the department to amend every rule that requires a form each time the form is amended.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
