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DATE: April 8, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
GOVERNMENTAL OPERATIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/SB 1144 (1st Engrossed)

RELATING TO: Rulemaking authority of the Department of Management Services and other agencies

SPONSOR(S): Committee on Governmental Reform and Oversight and Senator Gutman

COMPANION BILL(S): None

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

- (1) GOVERNMENTAL OPERATIONS
 - (2)
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

During the 1996 Regular Legislative Session a comprehensive rewrite of the Florida Administrative Procedures Act (APA) occurred. In order to temporarily shield a rule or portion of a rule from challenge under the new APA, agencies were to report rules which they believed did not meet the more rigorous criteria by October 1, 1997.

The Joint Administrative Procedures Committee (JAPC) reports that 5,850 rules or portions of rules were reported as exceeding agencies' rulemaking authority under s. 120.536(1), F.S. The Department of Management Services reported 125 rules to JAPC, which the department found did not meet the new APA rulemaking requirements. Of the 125 rules reported, 39 are addressed in CS/SB 1144, with the remaining 86 rules slated for repeal. CS/SB 1144 addresses department rules relating to personnel, facilities, and purchasing.

This bill does not have a fiscal impact on state or local governments.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Florida Administrative Procedures Act

During the 1996 Regular Legislative Session a comprehensive rewrite of the Florida Administrative Procedures Act (APA) occurred. See CS/SBs 2290 and 2288, ch. 96-159, L.O.F. Among many other changes, the revised APA modified the standards which authorize rulemaking and included provision for periodic review of rules by agencies with rulemaking authority.

In the past, a number of court decisions held that a rule did not exceed the legislative grant of rulemaking authority if it was reasonably related to the stated purpose of the enabling legislation. Additionally, it was accepted that a rule was valid when it implemented general legislative intent or policy. Agencies had wide discretion to adopt rules irrespective of whether the statutory basis for a rule was clearly conferred or was simply implied from the enabling statute.

Section 120.536, F.S., effectively overturned this line of cases and imposed a much stricter standard for rulemaking authority. Under the revised APA, existing rules and proposed rules must **implement, interpret, or make specific** the particular powers and duties granted by the enabling statute. It is important to note that the revised APA is not intended to eliminate administrative rules or even to discourage rulemaking, but to ensure that administrative rules are no broader than the enabling statute. A grant of rulemaking authority by the Legislature is necessary but not enough by itself for an agency to adopt a rule. Likewise, agencies need more than a statement of general legislative intent as the basis for implementing a rule. Rules must be based on specific grants of powers and not address subjects on which the Legislature was silent.

In order to temporarily shield a rule or portion of a rule from challenge under the new APA, agencies were to report rules which they believed did not meet the more rigorous criteria by October 1, 1997. The Joint Administrative Procedures Committee (JAPC) reports that 5,850 rules or portions of rules were reported as exceeding agencies' rulemaking authority under s. 120.536(1), F.S. Of these, 3,610 rules were identified by various local school boards, whose rules are not contained in the Florida Administrative Code (FAC). However, 2,240 rules contained in the FAC were reported by various agencies as exceeding statutory authority for rulemaking under s. 120.536, F.S.

Section 120.536(2), F.S., requires legislative review of the rules identified by the agencies and reported to JAPC:

The Legislature shall, at the 1998 Regular Session, consider whether specific legislation authorizing the identified rules, or portions thereof, should be enacted. By January 1, 1999, each agency shall initiate proceedings pursuant to s. 120.54, F.S., to repeal each rule, or portion thereof, identified as exceeding the rulemaking authority permitted by this section for which authorizing legislation does not exist.

Thus, during the 1998 Regular Session, each agency has the responsibility to bring forward legislative proposals, as appropriate, which will provide statutory authorization for existing rules or portions thereof which the agency deems necessary but which

currently exceed the agency's rulemaking authority. The Legislature is directed to consider whether such legislation authorizing the identified rules should be enacted.

According to JAPC, there are 3500-3600 grants of rulemaking authority contained in the Florida Statutes which fall roughly into two categories: specific grants and general grants. Most grants are specific grants of authority, that is, the grant of authority is found coupled in a sentence with a specific power or duty of the agency. General grants of rulemaking authority authorize rulemaking in the context of the agency's mission or as it pertains to the stated purpose of the enabling legislation. Most agencies have a general grant of rulemaking authority and numerous specific grants of rulemaking authority. In most cases, it appears that existing rules exceed statutory authority because a "specific law to be implemented" is missing from the statute, not a legislative grant of rulemaking authority.

Department of Management Services

The Department of Management Services reported 125 rules to JAPC, which the department found did not meet the new APA rulemaking requirements. Of the 125 rules reported, 39 are addressed in CS/SB 1144, with the remaining 86 rules slated for repeal. CS/SB 1144 addresses department rules relating to personnel, facilities and purchasing¹.

B. EFFECT OF PROPOSED CHANGES:

CS/SB 1144 addresses 39 of the 125 rules identified by the Department of Management Services to the Joint Administrative Procedures Committee. If this bill does not pass, s. 120.536(2), F.S., requires that the department initiate rulemaking proceedings by January 1, 1999, to repeal each rule, or portion thereof, identified as exceeding the rulemaking authority permitted by s. 120.536(1), F.S. If this bill passes, the requirements of s. 120.536, F.S., are presumptively satisfied.

For greater specificity concerning this bill's provisions, see the "Section-By-Section Research".

C. APPLICATION OF PRINCIPLES:

1. Less Government:

- a. Does the bill create, increase or reduce, either directly or indirectly:

¹ The rules addressed by CS/SB 1144 are: 60-6.007; 60A-7.005; 60K-1.002(5); 60K-8.001-.002; 60K-8.0021; 60K-8.003; 60K-9.004; 60L-14.001-.007; 60L-2.001-.006; 60L-26.001-.002; 60L-3.001-.005; 60L-7.001-7.005; 60L-9.001-.006.

(1) any authority to make rules or adjudicate disputes?

Yes.

(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:

An agency or program is not 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?

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?

No.

5. Family Empowerment:

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

This 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?

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:

This 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:

creates s. 110.224; amends ss. 110.1095, 110,207, 110.227, 216.262, 946.515

E. SECTION-BY-SECTION RESEARCH:

Section 1 -- Creates s. 110.224, F.S. -- sets forth the department's responsibilities regarding the establishment of a review and performance planning system with regard to the state's workforce; provides that the department may adopt rules to administer the review and performance planning system which establish procedures for performance evaluation, procedures to be followed in case of failure to meet performance standards, review periods, and forms. (Rules affected: 60K-8.001, .002, .003; 60K-8.0021; 60-6.007.)

Section 2 -- Amends s. 110.1095, F.S., regarding the department's supervisory and management training and continuing education responsibilities --

to require the department to provide a standard set of fundamental supervisory skills, technically assist agencies in the development and evaluation of training programs, and annually review, monitor for compliance, and evaluate all state training programs;

to authorize the department to adopt rules establishing procedures for the annual review, monitoring, evaluation, oversight of state training programs, and agency reporting requirements; and,

to require that each agency is responsible for the development, implementation, administration, and evaluation of agency training programs for supervisors and managers. (Rules affected: 60L-14.001 through 14.007)

Section 3 -- Amends s. 110.207, F.S., regarding the department's establishment and maintenance of a uniform classification plan for all positions in the career service -- to provide that no action may be taken to fill any position until it has been classified in accordance with the classification plan. (Rule affected: 60K-1.002)

Section 4 -- Amends s. 110.227, F.S., regarding suspensions, dismissals, reductions in pay, demotions, layoffs, and transfers -- to include grievances, and to require that a grievance process be available to career service employees; defines "grievance"; and, provides that the department shall adopt rules for administration of the grievance process for career-service employees. Such rules shall establish agency grievance procedures, eligibility, filing deadlines, forms, and review and evaluation governing the grievance process. (Rule affected: 60K-9.004)

Section 5 -- Amends s. 216.262, F.S., regarding authorized positions --

to authorize the department to adopt uniform rules applicable to the executive branch agencies to implement certain provisions;

to specify permissible perquisites and other perquisite requirements; to provide that the department may adopt uniform rules regarding perquisites;

to describe what "goods and services" may include; and

to authorize the department to adopt uniform rules regarding goods and services to be sold to officers and employees of a state agency or judicial branch. (Rules affected: 60L-2.001 through 2.006; 60L-3.001 through 3.005; 60L-9.001 through 60L-9.006; 60L-7.001 through 60L-7.005; 60L-26.001 and .002)

Section 6 -- Amends s. 946.515, F.S., regarding use of goods and services produced in correctional work programs -- to require agencies to provide a written determination of needs, pricing, and quality requirements relating to the purchase of corporation products; and, setting forth certain requirements with regard to such determinations. (Rule affected: 60A-7.005)

Section 7 -- Provides that the bill will take effect upon becoming law.

III. 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:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

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:

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 to 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 would not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

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