

STORAGE NAME: s1332.go

DATE: April 8, 1998

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

BILL #: CS/SB 1332

RELATING TO: Public Funds Investment (RAB)

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

COMPANION BILL(S): HB 3661(c)

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

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

Under the 1996 amendments to the Florida Administrative Procedures Act (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, 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 for implementing a rule. Rules must be based on specific grants of powers, and not address subjects on which the Legislature is, or has been, silent.

The State Board of Administration (SBA) reported 12 administrative rules to the Joint Administrative Procedures Committee (JAPC) pursuant to s. 120.536, F.S. Section 120.536(2), F.S., requires the Legislature to determine whether specific legislation should be enacted authorizing the rules, or portions thereof, identified by the agency. CS/SB 1332 addresses SBA rules relating to the investment of public funds.

The bill also provides authority to the SBA to assess certain fees, govern certain contract disputes, and to establish a reserve fund to purchase certain bonds.

The act will take effect upon becoming law, and does not appear to have a fiscal impact on either state or local governments.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

During the 1996 legislative session, a comprehensive rewrite of the APA was adopted as CS/SBs 2290 and 2288. Among 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 whether the statutory basis for a rule was clearly conferred, or merely implied by the enabling statute.

The provisions contained in Section 120.536, F.S., effectively overturned this line of cases and imposed a much stricter standard for rulemaking authority. Under the new APA, existing rules and proposed rules must **implement, interpret, or make specific** the particular powers and duties granted by the enabling statute. The revised APA is not intended to eliminate administrative rules, 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 for implementing a rule. Rules must be based on specific grants of powers, and may not address subjects on which the Legislature is, or has been, silent.

In order to temporarily shield a rule or portion of a rule from challenge under the new provisions, agencies were to report, by October 1, 1997, rules which they believed did not meet the new criteria. The Joint Administrative Procedures Committee (JAPC) reports that some 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 (F.A.C.). However, 2,240 rules contained in the F.A.C. were reported by various agencies as exceeding statutory authority for rulemaking under s. 120.536, F.S.

Section 120.536(2), F.S., lays out the legislative review element of the process. The section provides:

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 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 legislative 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 agencies' rulemaking authority. The Legislature is directed to consider whether such legislation authorizing the identified rules should be enacted.

According to the JAPC, there are 3500-3600 grants of rulemaking authority contained in the Florida Statutes, falling roughly into two categories: specific grants, and general grants.

Most of them 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.

B. EFFECT OF PROPOSED CHANGES:

CS/SB 1332 provides statutory authority for administrative rules: 19-4.0082; 19-5.001; 19-7.001; 19-7.010-.017; and 19B-14.003(5) and (6), F.A.C. If the 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 the bill passes, the requirements of s. 120.536, F.S., are presumptively satisfied.

The committee substitute includes changes providing supplementary rulemaking authority, pursuant to ch. 120, F.S., for existing rules relating to bond terms, Local Government Surplus Funds Trust Fund, local government investment authority, administration of the trust fund, and the Florida Prepaid Postsecondary Education Expense Program. See the SECTION-BY-SECTION RESEARCH section for details.

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. This bill grants general rulemaking, or decision making, authority for the SBA in ss. 215.835, 159.825, 218.405, 218.409, and 240.551, F.S.

(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:

Not applicable.

- (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?

Yes. The bill provides for a fee to be charged on any transaction that is not in accord with the close of business as set by the SBA.

- 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?

Yes, to the extent to which the SBA may assert fees for transactions outside the "close of business", as set by the SBA.

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:

Not applicable.

- (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:

Not applicable.

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

- (3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

This bill amends: ss. 215.835, 159.825, 218.405, 218.407, 218.409, and 240.551, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1 - Amends s. 215.835, F.S., adding general rulemaking authority to the SBA.

Section 2 - Amends s. 159.825, F.S., renumbering the section, conforming terms, and providing rulemaking authority.

Section 3 - Amends s. 218.405, F.S., providing rulemaking authority.

Section 4 - Amends s. 218.407, F.S., removing the requirement that an independent trustee holding funds on behalf of a local government, state the approximate cash flow of the local government for surplus funds to be invested; generally requiring that qualified units of government have surplus funds deposited into a pooled investment account.

Section 5 - Amends s. 218.409, F.S., providing authority to the SBA to charge fees on certain transactions; to establish a reserve fund to purchase certain bonds; establish a maximum number of accounts allowable for participants; and to provide reporting to pool participants beyond that already provided for.

STORAGE NAME: s1332.go

DATE: April 8, 1998

PAGE 7

Section 6 - Amends s. 240.551, F.S., providing authority to the SBA to adopt procedures to govern contract dispute proceedings between the SBA and its vendors.

Section 7 - Provides an effective date of upon becoming a law.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

No direct fiscal impact.

3. Long Run Effects Other Than Normal Growth:

Unknown, but not likely to be either direct, or significant.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Unknown.

3. Long Run Effects Other Than Normal Growth:

Unknown, but effects would be indirect, and not likely to be significant..

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Unknown.

STORAGE NAME: s1332.go

DATE: April 8, 1998

PAGE 8

2. Direct Private Sector Benefits:

Unknown.

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 counties or municipalities 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 a state tax shared with counties or municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

STORAGE NAME: s1332.go

DATE: April 8, 1998

PAGE 9

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

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