

STORAGE NAME: s1334.ep

DATE: April 3, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
ENVIRONMENTAL PROTECTION
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: SB 1334 (First Engrossed)

RELATING TO: Rulemaking Authority/DEP/Environmental Data

SPONSOR(S): Senator Latvala

COMPANION BILL(S):

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

- (1) SENATE NATURAL RESOURCES YEAS 7 NAYS 0
 - (2) HOUSE ENVIRONMENTAL PROTECTION
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

The proposed legislation creates s.403.0623, F.S., which authorizes the Department of Environmental Protection to adopt rules relating to quality assurance requirements for environmental data submitted, and establishes criteria by which environmental data may be rejected by the department.

The bill shall take effect upon becoming law.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

The Administrative Procedures Act (APA) was amended in 1996 to require state agencies more closely adhere to statutory authority in regard to the adoption of rules. Among the 1996 APA amendments was a new section, s. 120.536(1), F.S., which required existing and proposed rules to implement, interpret or make specific the particular powers and duties granted by the enabling statute. This provision was to ensure that agency rules closely relate to the enabling statute, thus yielding a more stringent standard.

By virtue of a new statutory standard to determine the validity of rules, previously adopted rules under the older standard, could become invalid. Rather than immediately invalidate existing rules, the 1996 reform legislation required each agency to examine all of its rules which had been adopted prior to the effective date of the 1996 APA in light of the new provision. Agencies were required to report to the Joint Administrative Procedures Committee by October 1, 1997, a list of rules which exceeded the standard.

Rules placed on the list, that are invalid under the new provision, are temporarily *shielded* from legal challenges. The *shield* leaves the rules in place during the 1998 legislative session, allowing the Legislature to examine the policy established by rule and to determine if it is good public policy. If legislation is enacted during the 1998 Session which provides statutory support for the rule, it will remain in effect. The statute, s.120.536(2), F.S., also directs the agency to initiate repeal of any rule for which there is no authorizing legislation by January 1, 1999. Any existing agency rule successfully challenged under the new APA for lack of statutory authority, requires that the agency discontinue its reliance on the rule, leaving agencies liable for attorney's fees and costs in regard to a challenge.

A number of program areas have been identified as having inadequate rulemaking authority, and the DEP is proposing several bills to provide the required rulemaking authority.

One of the program areas involves quality assurance requirements for environmental data submitted to the DEP and the criteria for rejecting that data. Public or private parties, such as environmental laboratories or sampling firms, who collect samples for a specified DEP activity are to follow procedures outlined in activity-specific standard operating procedures manual. Among the "Data Quality Objectives" are a set of qualitative and quantitative requirements that environmental data must achieve to be acceptable for use in a specific program. The requirements pertain to the quality of data in terms of precision, accuracy, completeness, representativeness and comparability, as well as, non-measurable qualifiers such as legally defensible data. Currently, ch. 62-160, F.A.C., provides the quality assurance requirements for the submission of environmental data to DEP. The statutory authority for existing rules in ch. 62-160, F.A.C., is the general grant of rulemaking authority provided in s. 403.061, F.S. Under the more stringent standards of the new APA, a general grant of rulemaking authority is insufficient.

B. EFFECT OF PROPOSED CHANGES:

The bill provides DEP with the necessary statutory authority to maintain the existing rules that address the quality assurance requirements for environmental data submitted to the DEP.

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?

This bill provides the DEP with the necessary authority to maintain its existing rules with regard to quality assurance requirements for submission of environmental data and establishes criteria by which environmental data may be rejected.

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

None

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

None

b. If an agency or program is 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:

(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:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Creates s. 403.0623, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1: Creates s. 403.0623, F.S., authorizing the DEP to adopt rules relating to quality assurance requirements for the environmental data submitted and the criteria by which environmental data may be rejected. This authority is in addition to any laboratory certification provisions under ss. 403.0625 and 403.863, F.S.

Section 2: Provides that the act shall 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:

None

2. Recurring Effects:

None

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:

None

D. FISCAL COMMENTS:

An existing agency rule which lacks statutory authority could be challenged under the new APA, requiring the department to pay attorney's fees and costs.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF FLORIDA CONSTITUTION:

A. APPLICABILITY OF MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditures of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the revenue-raising authority of cities or counties.

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

This bill does not reduce the amount of state tax shared with cities and counties.

V. COMMENTS:

Without passage of the proposed legislation, the DEP would be unable to assure the quality of environmental data being submitted and, thus, would be unable to ensure compliance with it's rules and regulations.

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Senate Natural Resources Committee reported SB 1334 favorably on March 13, 1998.

On April 1, 1998, the Senate passed SB 1334 by unanimous vote. (YEAS 35 - NAYS 0)

VII. SIGNATURES:

COMMITTEE ON ENVIRONMENTAL PROTECTION:

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