

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: February 26, 1998 Revised: 03/13/98 _____

Subject: Rulemaking Authorization for Rules on Quality-Assurance Requirements for Environmental Data

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Green</u>	<u>Voigt</u>	<u>NR</u>	<u>Fav/1 amendment</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill authorizes the Department of Environmental Protection to adopt rules relating to quality assurance requirements for environmental data submitted to the department and the criteria by which environmental data may be rejected by the department.

The bill amends section 403.061, Florida Statutes.

II. Present Situation:

The 1996 amendments to the Administrative Procedure Act (APA) were designed to require executive branch agencies to more closely adhere to statutory authority when agencies adopt rules. The 1996 amendments contained a new section, s. 120.536(1), F.S., requiring existing and proposed rules to implement, interpret or make specific the particular powers and duties granted by the enabling statute. This “map-tack” provision ensures that agency rules closely relate to the enabling statute and, thus, imposes a more stringent standard.

The Legislature recognized that imposing a new statutory standard to determine the validity of rules might suddenly invalidate many rules which had previously been adopted by the agency in good faith under the older, more lenient standard. Rather than immediately invalidate existing rules, the 1996 reform legislation required each agency to examine all of its rules that had been adopted prior to the effective date of the 1996 amendments in light of the new “map-tack” provision. Agencies were required to report to the Joint Administrative Procedures Committee the list of rules which exceeded the new “map-tack” standard.

Rules placed on the list are temporarily “shielded” from legal challenges that they are invalid under the new “map-tack” provision. This “shield” leaves the rules in place during the 1998 legislative session, allowing the Legislature to examine the policy established by rule 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. On the other hand, the statute directs the agency to initiate repeal of any rule for which there is no authorizing legislation by January 1, 1999. Notably, an existing agency rule successfully challenged under the new APA for lack of statutory authority requires that the agency discontinue its reliance on the rule and the agency may have to pay attorney’s fees and costs.

The Department of Environmental Protection identified a number of program areas that have inadequate rulemaking authority and the department is proposing several bills to provide adequate rulemaking authority.

One of the program areas involves quality assurance requirements for environmental data submitted to the department and the criteria for rejecting that data. Currently, ch. 62-160, F.A.C., provides the quality assurance requirements for the submission of environmental data to the department. These rules are in addition to any laboratory certification provisions. 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.

III. Effect of Proposed Changes:

The bill provides the department with the necessary authority to maintain its existing rules that address the quality assurance requirements for environmental data submitted to the department. Without this bill, the department would be unable to assure the quality of environmental data being submitted and, thus, would be unable to ensure compliance with the rules and regulations of the department.

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

Section 2. Provides an effective date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There are no fiscal impacts because this is an existing rule of the department.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Natural Resources:

While the bill contains the same language, this amendment creates s. 403.0623, F.S., rather than amending s. 403.061, F.S. (WITH TITLE AMENDMENT)