

STORAGE NAME: s1336a.ep

DATE: April 8, 1998

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

BILL #: SB 1336 (First Engrossed)

RELATING TO: Asbestos Removal/Rulemaking/DEP

SPONSOR(S): Senator Latvala

COMPANION BILL(S):

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

- (1) SENATE NATURAL RESOURCES YEAS 8 NAYS 0
 - (2) HOUSE ENVIRONMENTAL PROTECTION YEAS 10 NAYS 0
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

The bill authorizes the Department of Environmental Protection (DEP) to establish, by rule, a fee schedule based on the size of the asbestos removal project.

This bill provides that the act 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 to adhere more closely to statutory authority with 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 that have inadequate rulemaking authority have been identified by the DEP. The department is proposing several bills to provide adequate rulemaking authority in these program areas.

The asbestos removal program inspection and notification fee has been identified by the DEP as having inadequate rulemaking authority. Currently, the department charges a fee based on the project size. As stipulated in s. 376.60, F.S., the fee may not exceed \$300 for a small business (as defined in s. 288.703(1), F.S.), or \$1,000 for any other project. The statute does not allow the DEP to charge lower fees for smaller projects nor does it authorize them to establish a fee schedule by rule.

B. EFFECT OF PROPOSED CHANGES:

The bill would provide the necessary rulemaking authority for the DEP to establish a fee schedule and would authorize them to charge lower fees for smaller projects.

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?

The bill would provide the department with the necessary rulemaking authority to develop a fee schedule allowing the flexibility needed to correlate project size and complexity with associated fees.

(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:

(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:

S. 376.60, Florida Statutes

E. SECTION-BY-SECTION RESEARCH:

Section 1: Amends s. 376.60, F.S., to authorize the department to establish a fee schedule, by rule, for the asbestos removal program inspection and notification.

Section 2: Provides that this 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:

The proposed legislation would allow the DEP to charge lower fees for smaller projects.

3. Effects on Competition, Private Enterprise and Employment Markets:

None

D. FISCAL COMMENTS:

N/A

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 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:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The bill was reported favorably by the Senate Natural Resources Committee on March 13, 1998.

The Senate passed SB 1336 by unanimous vote, on April 1, 1998. (YEAS 31 - NAYS 0)

The House Committee on Environmental Protection passed SB 1336 by unanimous vote, on April 6, 1998.

STORAGE NAME: s1336a.ep

DATE: April 8, 1998

PAGE 8

VII. SIGNATURES:

COMMITTEE ON ENVIRONMENTAL PROTECTION:

Prepared by:

Legislative Research Director:

Barbara Snyder Clampett

Wayne Kiger