

STORAGE NAME: s1346s1.fs

DATE: April 6, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
FINANCIAL SERVICES
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/SB 1346

RELATING TO: Rulemaking authority with respect to occupational safety and health (RAB)

SPONSOR(S): Committee on Banking and Insurance and Senator Diaz-Balart

COMPANION BILL(S):

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

(1) FINANCIAL SERVICES

(2)

(3)

(4)

(5)

I. SUMMARY:

Some of the rules of the Division of Safety of the Department of Labor and Employment Security are not clearly authorized by statute and have been deemed by the division to exceed the authority of the division to make rules.

CS/SB 1346 provides statutory authority for the Division of Safety of the Department of Labor and Employment Security to adopt certain rules. The division would be given authority to adopt rules regarding:

- investigations of public-sector employers;
- record keeping responsibilities for public-sector employers;
- adoption of federal regulations and standards for public-sector employees; and
- workplace-safety program requirements for a help-supply-services company.

This bill appears to have no fiscal impact.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Rule authorization requirements

In 1996, the Legislature substantially revised the Administrative Procedure Act (APA).¹ Among many other changes, the revised APA modified the standards which authorize rulemaking and provided for periodic review of rules by agencies with rulemaking authority.²

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

The Joint Administrative Procedures Committee (J.A.P.C.) reports that some 5,850 rules or portions of rules were reported as exceeding the agency's 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.

Division of Safety

The following rules relate to the Division of Safety of the Department of Labor and Employment Security:

- Rule 38I-60.005, F.A.C., sets out the procedures for investigations of compliance, complaints and fatalities.
- Rule 38I-60.090, F.A.C., requires every public sector employer to maintain a log and summary of all occupational injuries, diseases and illnesses for three calendar years.
- Rule 38I-20.003, F.A.C., adopts federal Occupational Safety and Health standards and regulations.
- Rule 38I-17.005, F.A.C., requires clients of help-supply-service companies to comply with the requirements of a workplace safety program in order to receive a safe workplace workers' compensation premium credit.

¹ See Ch. 96-159, Laws of Florida.

² Prior to these revisions of the APA, it was generally 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 implied from the enabling statute.

B. EFFECT OF PROPOSED CHANGES:

The Division of Safety of the Department of Labor and Employment Security would be given statutory authority to adopt rules. The division would be given rulemaking authority regarding investigations, record-keeping requirements for public-sector employers, workplace-safety program requirements for help-supply-service companies, and the adoption of federal regulations and standards.

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. The Division of Safety of the Department of Labor and Employment Security would be given statutory authority to adopt certain specific rules.

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

N/A

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

N/A

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?

N/A

- b. Does the bill require or authorize an increase in any fees?

N/A

- c. Does the bill reduce total taxes, both rates and revenues?

N/A

- d. Does the bill reduce total fees, both rates and revenues?

N/A

- e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

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:

Amends ss. 442.006, 442.008, 442.011, 442.20, and 627.0915, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1 amends s. 442.006, F.S., to allow the Division of Safety of the Department of Labor and Employment Security to adopt procedures by rule for conducting investigations of public-sector employers.

Section 2 amends s. 442.008, F.S., to require the division to adopt rules prescribing record keeping requirements for public-sector employers, which may include rules for maintaining a log and summary of occupational injuries, diseases, and illnesses and for producing, on request, a notice of injury and employee accident investigation records, and prescribing a retention schedule for such records.

Section 3 amends s. 442.011, F.S., to eliminate the requirement that each carrier, self-insurer, and self-insurer fund must report each year on its safety and health programs and consultations.

Section 4 amends s. 442.20, F.S., to allow the division to adopt by rule OSHA federal regulations and other standards for public-sector employers.

Section 5 amends s. 627.0915, F.S., to allow the division to adopt a rule to require a client of a help-supply-services company (temporary staffing agency) to comply with the essential requirements of a workplace-safety program in order to receive a premium credit.

Section 6 provides that this act shall take effect upon becoming a law.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

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:

N/A

2. Direct Private Sector Benefits:

N/A

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

N/A

D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

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B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

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

N/A

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

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