

**STORAGE NAME:** s1436a.wrm

**DATE:** April 7, 1998

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
WATER & RESOURCE MANAGEMENT  
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

**BILL #:** SB 1436

**RELATING TO:** Water/Wastewater Facility/Rules

**SPONSOR(S):** Senator Latvala

**COMPANION BILL(S):** None

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

- (1) SENATE NATURAL RESOURCES COMMITTEE YEAS 8 NAYS 0
  - (2) HOUSE WATER & RESOURCE MANAGEMENT COMMITTEE YEAS 5 NAYS 2
  - (3)
  - (4)
  - (5)
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**I. SUMMARY:**

SB 1436 provides the necessary rulemaking authority for the Department of Environmental Protection (DEP) to set the criteria for categorizing water and wastewater treatment plants. This bill also grants the necessary rulemaking authority for DEP to establish the level of certified operator required to operate the various categories of facilities.

The bill satisfies the requirements of s. 120.536, F.S., which specifies that agency rules which lack specific legislative authority may be shielded from administrative challenge until July 1, 1999, if the agency submits them on a list to the Legislature and persuades the Legislature to adopt enabling law.

SB 1436 would take effect upon becoming a law.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Background on need for enabling legislation

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, 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.

Over the interim, DEP identified nearly two dozen rules for which the agency has inadequate or non-existent statutory authority. DEP originally proposed nine bills to provide enabling authority, but after discussions with substantive committee staff and its general counsel, reduced the number of bills to six. The scope of the enabling legislation also was reduced.

Substantive issue

Chapter 62-699, Florida Administrative Code (F.A.C.), sets forth the criteria for categorizing water and wastewater treatment plants based on permitted flow or treatment capacity, risk to public health or the environment, and complexity. It also establishes the level of certified operator required to operate the various categories of facilities. These are long-standing rules of the department.

**B. EFFECT OF PROPOSED CHANGES:**

SB 1436 creates s. 403.095, F.S., to give DEP explicit rulemaking authority to classify water and wastewater treatment plants on the basis of size, complexity and level of treatment, and to establish levels of certification and staffing for such plants.

**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.

(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?

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:

Creates section 403.095, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1: Creates s. 403.095, F.S., to require DEP to classify water and wastewater treatment plants by size, complexity, and level of treatment necessary to render the wastewater or source water suitable for its intended purpose. Requires the department to establish levels of certification and the staffing requirements for water and wastewater operators certified under ss. 403.865 - 403.876, F.S. (operator certification provisions). Directs DEP to adopt necessary rules.

Section 2. 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:

None.

2. Recurring Effects:

Indeterminate.

3. Long Run Effects Other Than Normal Growth:

Indeterminate.

4. Total Revenues and Expenditures:

Indeterminate.

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:

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The mandates provision is not applicable to a research discussion of SB 1436 because the bill does not require cities or counties to expend funds, or to take actions requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

SB 1436 does not reduce the revenue-raising authority of counties or municipalities.

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

SB 1436 does not reduce state tax revenue shared with counties or municipalities.

V. COMMENTS:

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON WATER & RESOURCE MANAGEMENT:

Prepared by:

Legislative Research Director:

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Joyce Pugh

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