

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 Authority With Respect to Water Treatment Facilities

	<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/2 amendments</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

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

The bill creates s. 403.095, F.S.

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, 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 those programs relates to water and wastewater treatment plant classification and staffing. Chapter 62-699, 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. Under the more stringent standards of the new APA, the department has determined this chapter may exceed statutory authority granted to the agency.

III. Effect of Proposed Changes:

The bill would ensure the continued benefits associated with proper operation and maintenance of public health and environmental infrastructure. This bill does not, however, create any new authority for the department to regulate water and wastewater treatment facilities, facility operators, or activities associated with drinking water and wastewater treatment. Failure to provide the department with the proper rulemaking authority would strip the department’s ability to ensure the proper operation of more than 10,000 water and wastewater facilities throughout Florida.

Section 1. Requires the department 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; it 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); and it directs the department to adopt necessary rules.

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:

Improper operation of water and wastewater facilities by any of the 500 or so local governments themselves, or by the many thousands of private facilities that operate within their political boundaries, could result in mechanical problems at the facilities, improperly treated drinking water (public health threat), and improperly treated wastewater (environmental and public health threat). Passage of this bill will provide continued protection of public health and the environment through proper operation of water and wastewater facilities. These benefits translate directly into economic benefits.

In addition to its public health and environmental protection benefits, passage of this proposal would ensure continued viability of a professional operator licensing and certification program in Florida. The department's ability to require that only qualified individuals operate water and wastewater treatment facilities promotes professionalism in the field and competitiveness in the employment market.

C. Government Sector Impact:

The bill would have no direct impact on state funds. However, water and wastewater treatment plant classification and staffing are closely linked to operator certification, which is a fee-based state program. Should this bill not pass and the department were to lose the authority to require qualified operators for the various levels of treatment facilities, the need for the operator certification could be called into question.

If the operator certification program were to be discontinued, the department would lose 20 percent of the federal government's annual appropriation from the "drinking water treatment revolving loan fund" pursuant to s. 1452(a)(1)(G)(ii) of the federal Safe Drinking Water Act. That would translate to a loss of approximately \$4.5 million annually.

To the extent that the department would have to address the public health and environmental consequences associated with improperly operated facilities, the fiscal impact to the state could be enormous.

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. 403.88, F.S., rather than s. 403.095, F.S. (WITH TITLE AMENDMENT)

#2 by Natural Resources:

While the bill contains the same language, this amendment creates s. 403.88, F.S., rather than s. 403.095, F.S.