

STORAGE NAME: s1438.wrm

DATE: March 31, 1998

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

BILL #: SB 1438

RELATING TO: Aquatic Preserves/Rulemaking

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
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

SB 1438 amends ss. 258.42 and 258.43, F.S., to create statutory authority for existing rules of the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees) to consider cumulative impacts when approving or denying requests for private activities in aquatic preserves.

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 January 1, 1999, if the agency submits them on a list to the Legislature and persuades the Legislature to adopt enabling law.

SB 1438 is one of six bills sought by DEP in the 1998 session to give the agency specific rulemaking authority for existing rules.

The bill 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 providing statutory support for the rule is enacted during the 1998 session, the rule 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.

Discussion of substantive issue

Part 2 of Chapter 258 originated as Chapter 75-172, the Florida Aquatic Preserves Act. Section 258.43, F.S., part of the original bill, gave the agency now called DEP general rulemaking authority to regulate human activities within preserves, in such a manner as not to interfere with lawful and traditional public uses of the preserve. Section 258.42, F.S., another original section of the 1975 act, specifies the type of activities which may be allowed, with a permit or lease, in an aquatic preserve. The only rulemaking authority mentioned in this latter section relates to establishing criteria for siting commercial docking facilities, and to a cross-reference to aquaculture activities.

Over the years, the Board of Trustees has fleshed out the statutory guidelines on aquatic preserves management by adopting policies and rules. The prime example is the consideration of cumulative impacts of human activities on aquatic preserves.

The Board of Trustees for many years has operated under rule 18-20.006, Florida Administrative Code (F.A.C.), which allows it to consider the cumulative impacts from activities within aquatic preserves when determining whether to approve or deny requests for authorization for private activities. The Board also has rules which require it to impose the stricter standards of local governments on docking facilities within the preserve, rule 18-20.004(5)(a)4, F.A.C., and allow it to consider applications in light of local ordinances and comprehensive plans, rules 18-20.004(5)(d)7 and 18-20.006(5), F.A.C.

B. EFFECT OF PROPOSED CHANGES:

SB 1438 grants explicit rulemaking authority to the Board of Trustees to consider cumulative impacts when deciding whether to issue permits for activities within aquatic preserves.

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?

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?

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:

Sections 258.42 and 258.43, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1: Amends s. 258.42, F.S., to provide that the Board of Trustees may consider the cumulative impacts of activities on aquatic preserves. Allows the Board of Trustees to adopt and enforce stricter rules, regulations, and orders of a local government in the jurisdiction where they apply when such standards are consistent with chapter 258, F.S., and any approved management plan for the preserve, and if the Board of Trustees approves them by rule.

Section 2: Provides authority for the Board to adopt and enforce rules addressing the cumulative effect of activities on aquatic preserves.

Section 3: Provides an effective date.

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 1438 because the bill does not require cities or counties to expend funds, or to take actions requiring the expenditure of funds.

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B. REDUCTION OF REVENUE RAISING AUTHORITY:

SB 1438 does not reduce the revenue-raising authority of counties or municipalities.

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

SB 1438 does not reduce state tax revenues shared with counties and municipalities.

V. COMMENTS:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON WATER & RESOURCE MANAGEMENT:

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Joyce Pugh

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