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DATE: April 15, 1998

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
GENERAL GOVERNMENT APPROPRIATIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 1509

RELATING TO: Administrative Procedures

SPONSOR(S): Committee on Governmental Rules and Regulations and Representative Spratt

STATUTE(S) AFFECTED: Chapter 120

COMPANION BILL(S):

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

- (1) ENVIRONMENTAL PROTECTION (W/D)
- (2) GOVERNMENTAL RULES AND REGULATIONS YEAS 4 NAYS 0
- (3) GENERAL GOVERNMENT APPROPRIATIONS YEAS 9 NAYS 0
- (4)
- (5)

I. SUMMARY:

CS/HB 1509 would provide a statutory duty for agencies to review petitions for hearing under s. 120.569 or s. 120.57, F.S., for completeness. It provides for certain information to be included in the petition. Finally, CS/HB 1509 provides that upon a motion to relinquish jurisdiction, an administrative law judge, if finding that there exists no issues of disputed material fact, may relinquish jurisdiction back to the agency for disposition on the disputed issues of law.

The act shall take effect upon becoming law.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Chapter 120, F.S., the Administrative Procedure Act (APA), provides adjudicatory procedures for a person who seeks redress of an agency decision effecting that person's substantial interests or for those who wish to address an agency action. The type of procedure is predicated upon whether there are disputed issues of material fact or whether a person's substantial interests are affected. The Uniform Rules of Procedure, adopted pursuant to s. 102.54(5), F.S., provide, in part, that certain information must be submitted in the petition. The petitioner must state:

- The name, address, and telephone number of the petitioner or the petitioner's representative;
- A statement of when and how the petitioner received notice of the agency decision;
- A statement of all disputed issues of material fact, and when there are none, the petition must so indicate;
- A concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle the petitioner to relief; and
- A demand for relief.

See Rules 28-106.201 and 28-106.301, F.A.C. (1997).

Under the uniform rules, a petitioner is not required to provide any technical or scientific information which supports the petitioner's position on those disputed issues of material fact found in the petition. It is only after the commencement of proceedings, and only where there are disputed issues of material fact, that parties may obtain discovery and that process is governed by Rules 1.280 through 1.400, Florida Rules of Civil Procedure. See rule 28-106.206, F.A.C. (1997). Discovery is the process by which one party can obtain facts and information about the case from the other party in order to assist the party's preparation for litigation. Blacks Law Dictionary 418-9 (5th Ed.).

B. EFFECT OF PROPOSED CHANGES:

CS/HB 1509 would have the practical effect of placing in statute provisions already incorporated in the uniform rules relating to petition requirements, but only for those cases filed pursuant to s. 120.569 or s. 120.57, F.S. It would require a more precise statement of revised agency action by the petitioner in the demand for relief.

The bill would create a statutory duty for agencies to review petitions for completeness pursuant to the standards to be created in s. 102.54(5)(b)4., F.S. It would also provide a bar to the continued filing a petition if the subsequent amended petitions do not cure the identified defect.

The bill would provide for a summary proceeding that allows where the ALJ makes a determination that no disputed issues of material fact exist, the case may be returned to the agency for informal hearing for resolution. It would bar the submittal of any additional issues of disputed material fact if such issues were not initially brought before the ALJ.

Finally, the bill provides for an effective date of upon becoming law.

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?

No

(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?

None

(2) what is the cost of such responsibility at the new level/agency?

None

(3) how is the new agency accountable to the people governed?

None

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?

NA

(2) Who makes the decisions?

NA

(3) Are private alternatives permitted?

NA

(4) Are families required to participate in a program?

NA

(5) Are families penalized for not participating in a program?

NA

b. Does the bill directly affect the legal rights and obligations between family members?

No

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?

NA

(2) service providers?

NA

(3) government employees/agencies?

NA

D. SECTION-BY-SECTION RESEARCH:

Section 1. Amends s. 120.54(5), F.S., to provide additional uniform rules of procedure for filing petitions for formal or informal administrative hearing under s. 120.569, F.S. (decisions which affect substantial interests) or 120.57, F.S. (providing additional procedures for particular cases). In addition to stating particulars about the petitioning party, the petition must provide:

- an explanation of how the petitioner's substantial interests are or will be affected by the agency proposed action or action;
- a statement of all material facts disputed by the petitioner or a statement that there are no disputed facts;
- a statement of ultimate facts alleged including the specific facts that the petitioner contends warrant reversal or modification of the agency's action; and
- a statement of relief that states precisely the action petitioner wishes the agency to take with respect to the proposed action.

Section 2. Amends s. 120.569(2), F.S. to provide additional duties for the agency receiving a petition.

- Creates s. 120.569(2)(c), F.S., that upon receiving the petition, the agency shall conduct a careful review of the petition to determine that the requirements of s. 120.54(5)(b)4, F.S. (discussed above) are met. If, upon this careful review, the agency determines that the petition has not substantially complied with those requirements, the agency shall dismiss the petition without prejudice to the petitioner's filing of a timely amended petition. The agency may dismiss with prejudice where it conclusively appears on the face of the petition that the defect cannot be cured. When dismissing a petition, the agency shall give written notice stating its particular reasons for dismissal and providing, when applicable, a deadline for filing an amended petition.

- Creates s. 120.569(2)(d), F.S., that when, in a proceeding where there are disputed issues of material fact conducted under s. 120.57(1), F.S., a dispute of material fact no longer exists, any party may move for the administrative law judge (ALJ) to relinquish jurisdiction back to the agency based on the position that there exists no disputed issues of material fact. In ruling on this motion, the ALJ shall consider the pleadings, depositions, answers to interrogatories, and admissions on file as well as affidavits submitted in support of or in opposition to the motion to relinquish jurisdiction. The order relinquishing jurisdiction need not contain findings of fact, conclusions of law, or a recommended penalty or disposition. If the motion is ruled upon favorably, the case is then relinquished to the agency and may be heard in an informal hearing under s. 120.57(2), F.S. However, the parties may not raise any issues of disputed fact that could have been raised before the ALJ.

Section 3. Provides for an effective date of 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:

Indeterminate and most likely insubstantial. Agencies may see a reduction in the period of time until the resolution of an administrative case and that may result in a reduction in the costs associated with litigation.

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:

As with state agencies, local governments too may realize some cost savings associated with a decrease in the time until resolution of an administrative case.

3. Long Run Effects Other Than Normal Growth:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Indeterminate. There may be some costs associated with the affidavit requirements describe in the bill.

2. Direct Private Sector Benefits:

There may be some reduction in the time until the resolution of an administrative case and this may provide for a reduction in the costs associated with such litigation.

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

None

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the revenue raising authority of counties or municipalities.

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

The bill does not reduce the amount of a state tax shared with counties and municipalities.

V. COMMENTS:

This bill was carried over from the 1997 Legislative Session pursuant to House Rule 96. It resided in the Committee on Environmental Protection and was withdrawn from that committee on March 12, 1998.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Governmental Rules and Regulations passed a strike-everything amendment that is described in the body of this document. There were amendments to the strike-everything correcting technical deficiencies and clarifying certain provisions. These amendments to the strike-everything were adopted without objection and are incorporated into the committee substitute.

Major differences between the original bill and the committee substitute:

- codifies petition requirements;

- provides for an summary procedure before an administrative law judge that upon motion, would have the case sent back to the agency upon a determination that there exist no issues of disputed material fact; and
- removes the requirement that the petitioner submit concurrent with the filing of the petition, scientific and technical information in support of the alleged violation of ch. 373 or 403, Florida Statutes.

The Committee on General Government Appropriations adopted one amendment to CS/HB 1509 at its meeting on April 14, 1998. The amendment added the substance of Senate Bill 2240 which clarifies agency rulemaking authority by eliminating unnecessarily broad grants of general rulemaking authority and retaining specific statutory authority to adopt rules.

VII. SIGNATURES:

COMMITTEE ON ENVIRONMENTAL PROTECTION:

Prepared by:

Legislative Research Director:

Wayne S. Kiger

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AS REVISED BY THE COMMITTEE ON GOVERNMENTAL RULES AND REGULATIONS:

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