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## 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: April 21, 1998 Revised: \_\_\_\_\_

Subject: Tax Administration (RAB)

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Fournier</u>	<u>Smith</u>	<u>WM</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

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### I. Summary:

CS/SB 1698 provides specific statutory authority for provisions of Department of Revenue rules subject to repeal under s. 120.536, F.S. These rules all relate to tax administration.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: 72.011, 199.052, 213.21, 220.222, 220.32, 624.515, and 896.102.

### II. Present Situation:

During the 1996 Legislative Session a comprehensive rewrite of the Florida Administrative Procedures Act was adopted as CS/SBs 2290 and 2288. Among many other changes, the revised APA modified the standards which authorize rulemaking and included provision for periodic review of rules by agencies with rulemaking authority.

In the past, a number of court decisions 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.

Section 120.536, F.S., effectively overturned this line of cases and imposed a much stricter standard for rulemaking authority. Under the new APA, existing rules and proposed rules must **implement, interpret, or make specific** the particular powers and duties granted by the enabling statute. It is important to note that the revised APA is not intended to eliminate administrative rules or even to discourage rulemaking, but to ensure that administrative rules are no broader than the enabling statute. A grant of rulemaking authority by the Legislature is necessary but not

enough by itself to allow an agency to adopt a rule. Likewise, agencies need more than a statement of general legislative intent for implementing a rule. Rules must be based on specific grants of powers and not address subjects on which the Legislature was silent.

In order to temporarily shield a rule or portion of a rule from challenge under the new provisions, agencies were to report rules which they believed did not meet the new criteria by October 1, 1997.

The Joint Administrative Procedures Committee (JAPC) 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 FAC. However, 2,240 rules contained in the FAC were reported by various agencies as exceeding statutory authority for rulemaking under s. 120.536, F.S.

Section 120.536(2), F.S., also lays out the second step in the process, that of legislative review. The subsection provides:

The Legislature shall, at the 1998 Regular Session, consider whether specific legislation authorizing the identified rules, or portions thereof, should be enacted. By January 1, 1999, each agency shall initiate proceedings pursuant to s. 120.54 to repeal each rule, or portion thereof, identified as exceeding the rulemaking authority permitted by this section for which authorizing legislation does not exist.

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

According to the Joint Administrative Procedures Committee (JAPC), there are 3500-3600 grants of rulemaking authority contained in the Florida Statutes falling roughly into two categories: specific grants and general grants. Most of them are specific grants of authority, that is, the grant of authority is found coupled in a sentence with a specific power or duty of the agency. General grants of rulemaking authority authorize rulemaking in the context of the agency's mission or as it pertains to the stated purpose of the enabling legislation. Most agencies have a general grant of rulemaking authority and numerous specific grants of rulemaking authority. In most cases, it appears that existing rules exceed statutory authority because a "specific law to be implemented" is missing from the statute, not a legislative grant of rulemaking authority.

In response to the requirements of s. 120.536, F.S., the Department of Revenue identified 78 rules or portions of rules which they found exceeded their rulemaking authority and for which they recommended that the Legislature grant such authority. This bill addresses a number of these

issues. The current situation and the effect of the changes proposed by this bill are detailed in the following section.

### **III. Effect of Proposed Changes:**

#### **Rules 12--26.005 and 26.006 Denial of Refunds (Section 1.)**

##### *Present Situation:*

Rules 12--26.005 and 26.006 provide for informal conferences for dispute resolution dealing with refund denials. (Such informal conferences are specifically allowed by current law in disputes involving assessments, penalties, and interest.) The Department of Revenue has identified parts of these rules as not meeting the criteria set forth in s. 120.536, F.S., and will initiate proceedings pursuant to that statute to amend them if no authorizing legislation is enacted by January 1, 1999. If authorizing legislation is not passed, conferences could still be conducted, but they would not stay time periods for circuit court filings.

##### *Effect of Proposed Changes:*

This bill amends s. 72.011, F.S., to provide for informal conferences for dispute resolution dealing with refund denials. It also amends s. 213.21, F.S., allowing the Department of Revenue to adopt rules for informal conferences relating to the denial of refunds.

#### **Rule 12C--2.006 Intangibles Tax Situs (Section 2.)**

##### *Present Situation:*

Rule 12C--2.006 provides that a trust with a majority of the trustees out of state is not subject to intangibles tax. A trust with 50 percent of the trustees in Florida is 50 percent taxable. A trust with a majority of trustees in Florida is fully taxable. The Department of Revenue has identified parts of this rules as not meeting the criteria set forth in s. 120.536, F.S., and will initiate proceedings pursuant to that statute to amend it if no authorizing legislation is enacted by January 1, 1999. Unless authorizing legislation is passed, any trust with at least one Florida trustee will be fully taxable.

##### *Effect of Proposed Changes:*

SB 1698 amends s. 199.052, F.S., to provide that a trust with a majority of the trustees out of state is not subject to intangibles tax; a trust with 50 percent of the trustees in Florida is 50 percent taxable; and a trust with a majority of trustees in Florida is fully taxable. The bill also goes beyond the current rule to provide that the annual tax is not levied on the assets of a trust if the settlor is not a Florida resident.

### **Rule 12-13.009 Informal Closing Agreements (Section 3.)**

#### ***Present Situation:***

Rule 12-13.009 provides that compromises of taxes related to audit assessments or billing less than \$30,000 do not require a written closing agreement. The Department of Revenue has identified parts of this rules as not meeting the criteria set forth in s. 120.536, F.S., and will initiate proceedings pursuant to that statute to amend it if no authorizing legislation is enacted by January 1, 1999. Unless authorizing legislation is passed, all compromises of tax will require formal written closing agreements.

#### ***Effect of Proposed Changes:***

This bill amends s. 213.21, F.S., to provide that compromises of taxes related to audit assessments or billing less than \$30,000 do not require a written closing agreement unless deemed appropriate by the department or requested by the taxpayer.

### **Rule 12C--1.0222 Underpayment of Corporate Income Tax (Section 4.)**

#### ***Present Situation:***

Rule 12C--1.0222 provides that if a taxpayer underpays his or her tentative estimated tax by \$500 or 10 percent of the tax shown on the return, whichever is greater, the taxpayer is not eligible for an extension. The Department of Revenue has identified parts of this rules as not meeting the criteria set forth in s. 120.536, F.S., and will initiate proceedings pursuant to that statute to amend it if no authorizing legislation is enacted by January 1, 1999. Unless authorizing legislation is passed, if a taxpayer underpays his or her tentative tax by any amount he or she is not eligible for an extension.

#### ***Effect of Proposed Changes:***

This bill amends s. 220.222, F.S., to provide that if a taxpayer underpays his or her tentative estimated tax by \$2,000 or 30 percent of the tax shown on the return, whichever is greater, the taxpayer is not eligible for an extension. These limits exceed those provided currently in rule.

### **Rule 12B--8.006 State Fire Marshall Regulatory Assessment and Surcharge (Section 5.)**

#### ***Present Situation:***

Rule 12B--8.006 sets the State Fire Marshall Regulatory Assessment at a fixed percentage of certain kinds of insurance coverage that include fire coverage and other kinds of insurance coverage. The Department of Revenue has identified parts of this rule as not meeting the criteria set forth in s. 120.536, F.S., and will initiate proceedings pursuant to that statute to amend it if no authorizing legislation is enacted by January 1, 1999. Unless authorizing legislation is passed,

there will be no guidance for insurers in determining what a one percent assessment on fire coverage actually amounts to when policies are written for multiple perils.

***Effect of Proposed Changes:***

This bill amends s. 624.515, F.S., to allow the Department of Revenue to determine by rule the percentage of fire insurance contained within multiple-peril insurance coverage, and to amend the percentages in response to industry changes.

**Rule 12--19.001 through 19.006 Large Currency Transactions (Section 7.)**

***Present Situation:***

Rule 12--19.001 through 19.006 prescribe procedures by which large currency transactions must be reported to the Department of Revenue as required under s. 896.102, F.S. The Department of Revenue has identified these rules as not meeting the criteria set forth in s. 120.536, F.S., and will initiate proceedings pursuant to that statute to repeal it if no authorizing legislation is enacted by January 1, 1999. Unless authorizing legislation is passed, the law will require transactions to be reported to the department but the department will have no authority to prescribe how such reports are to be filed.

***Effect of Proposed Changes:***

SB 1698 amends s. 896.102, F.S., to authorize the Department of Revenue to promulgate rules to administer and enforce reporting requirements.

**Section 8.** Provides a July 1, 1998 effective date.

**IV. Constitutional Issues:**

**A. Municipality/County Mandates Restrictions:**

Article VII, section 18(b) of the Florida Constitution requires a two-thirds vote of the membership of each house of the Legislature to enact general laws if the anticipated effect is to reduce revenue raising authority of counties or municipalities, as such authority existed on February 1, 1989. Since the revenue raising authority addressed in this bill results from rules to be repealed in 1999, the bill does not affect local revenue raising authority as it existed in 1989 and therefore does not qualify as a mandate under section 18.

**B. Public Records/Open Meetings Issues:**

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

This bill provides statutory authority for a number of the rules identified by the Department of Revenue as exceeding their rulemaking authority permitted by s. 120.536, F.S. If these rules are allowed to be repealed, as current law requires, there would be an increase in intangibles tax revenue beginning in the 1999-00 fiscal year. This bill provides statutory authority for these rules and would have the effect of eliminating any revenue increases caused by the rule repeal process. The following table shows estimates of the fiscal impact of providing statutory authorization for these rules. While these estimates show a revenue decrease, passage of the bill will not affect the budget process. The revenue estimates being used for the appropriations bill have not recognized any revenue impact from these issues.

Issue/Fund	General Revenue		Trust		Local		Trust	
	1st Year	Recurring	1st Year	Recurring	1st Year	Recurring	1st Year	Recurring
Refund Denials	0	0	0	0	0	0	0	0
Situs of Trusts	0	(\$7.9)	0	0	0	(\$4.0)	0	(\$11.9)
Closing Agreements	0	**	0	**	0	**	0	**
CIT--Underpayment	0	**	0	0	0	0	0	**
Insurance-Assessment	0	**	0	0	0	0	0	**
Large Currency Transactions	0	0	0	0	0	0	0	0
Total	0	(\$7.9)	0	0	0	(\$4.0)	0	(\$11.9)

\* Insignificant  
\*\* Indeterminate

The committee substitute provides an additional intangibles tax exemption for trusts the settlor of which is not a Florida resident. This provision goes beyond the approval of a current department rule, and has a significant negative fiscal impact. The exact impact cannot be determined at this time.

Issue/Fund	General Revenue		Trust		Local		Total	
	1st Year	Recurring	1st Year	Recurring	1st Year	Recurring	1st Year	Recurring
Trust exemption	(**)	(**)	0	0	(**)	(**)	(**)	(**)

\* Insignificant  
\*\* Indeterminate

**B. Private Sector Impact:**

Repeal of the rules identified by the Department of Revenue as exceeding their rulemaking authority permitted by s. 120.536, F.S., would cause significant hardships for taxpayers who would not have clear guidance in complying with the tax statutes. Passage of this bill will enable taxpayers to understand and comply with these laws and reduce the likelihood of errors in the payment of taxes.

**C. Government Sector Impact:**

This bill will enable the Department of Revenue to continue current practices in administering state tax laws.

**VI. Technical Deficiencies:**

The term “settlor” used in section 2 of the bill is not defined for purposes of ch. 199, F.S.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.