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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: March 23, 1998 Revised: \_\_\_\_\_

Subject: Rule Authorizing Bill - Department of Labor and Employment Security

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Schmeling</u>	<u>Austin</u>	<u>CM</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

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### I. Summary:

This committee substitute is the Florida Department of Labor and Employment Security rule authorizing bill.

This committee substitute authorizes the Division of Blind Services to adopt rules and forms related to vocational rehabilitation services and the establishment of vending facilities programs.

This committee substitute defines and clarifies specific terms relating to the administration of unemployment compensation, and authorizes the Division of Unemployment Compensation to develop criteria to determine a claimants ability to work and availability for work. The committee substitute further authorizes the Division of Unemployment Compensation to approve training in accordance with criteria prescribed by rule; to adopt rules regarding total succession; to adopt by rule procedures for changing methods of reporting; to develop by rule application of partial payments; and to adopt rules regarding monetary and nonmonetary investigations.

This committee substitute authorizes the Division of Jobs and Benefits, to adopt rules to carry out its duties under ch. 450, F.S., relating to the Farm Labor Registration Law and Child Labor Law. This committee substitute further requires any insurance carrier that is licensed to operate in this state and that has issued a policy of liability insurance to operate a vehicle used to transport farm workers to notify the division when it intends to cancel such policy.

This committee substitute amends ss. 413.011, 413.051, 443.036, 443.091, 443.131, 443.141, 443.151, 450.121, 450.30, 450.33 and 450.38, Florida Statutes.

## II. Present Situation:

During the 1996 legislative session a comprehensive rewrite of the Florida Administrative Procedures Act (APA) 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 rule making 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 for 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 Florida Administrative Code (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., 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, F.S., 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.

Section 413.011, F.S., provides for the internal organizational structure of the Division of Blind Services. The division is designed for the purpose of insuring the greatest possible efficiency and effectiveness of services to the blind, specifically including, but not limited to, maintaining a complete register of the blind in the state, providing for the examination and treatment of the blind, and aid the blind in finding employment.

Section 413.051, F.S., is the Little Randolph Sheppard Act providing for the operation of vending stands by eligible blind people. Blind licensees must be given the first opportunity to participate in the operation of vending stands on all state properties acquired after July 1, 1979, when such facilities are operated under the supervision of the Division of Blind Services. The division is required to periodically survey all state properties and, where feasible, establish vending facilities to be operated by blind licensees.

Chapter 443, F.S., the unemployment compensation law, was established to implement the provisions of the Federal Unemployment Tax Act (FUTA), Chapter 23 of the Internal Revenue Code. The chapter delineates how Florida carries out these federal requirements especially with regard to the tax on businesses, the duration and amount of benefits paid to eligible claimants, procedures to appeal benefit and tax determinations, and the regulation of the Unemployment Compensation Trust Fund. The Division of Unemployment Compensation is responsible for implementing the provisions of ch. 443, F.S. Section 443.036, F.S., provides definitions for use in interpreting ch. 443, F.S.

Section 443.091, F.S., provides conditions under which a claimant could be eligible for unemployment compensation benefits. Section 443.131, F.S., establishes procedures for employer's contributions, or payments, to the unemployment compensation program and s. 443.141, F.S., provides for the collection and application of past due contributions paid by employers.

Section 443.151, F.S., establishes procedures for claims including employer posting of information, filing of claims, determinations, appeals and payment of benefits.

Chapter 450, Part I, F.S., is the "Child Labor Law." Section 450.121, F.S., requires the Division of Jobs and Benefits to administer the chapter, specifically requiring the division to enforce the provisions of the chapter, to make complaints against persons violating its provisions, and to

prosecute violations of the same. This section authorizes the division and its agents to enter and inspect at any time any place or establishment covered by this chapter and to have access to age certificates kept on file by the employer and such other records as may aid in the enforcement of this chapter.

Chapter 450, Part III, F.S., is the "Farm Labor Registration Law." Section 450.30, F.S., prohibits any person from acting as a farm labor contractor until the Division of Jobs and Benefits has issued a certificate of registration to such person. The division is required to provide a program of education and examination for applicants under this part. Section 450.33, F.S., provides for duties of a farm labor contractor, specifically requiring the contractor to take out a policy of insurance with any insurance carrier which insures such contractor against liability for damage to persons or property arising out of the operation or ownership of any vehicle or vehicles for the transportation of individuals in connection with his or her business, activities, or operations as a farm labor contractor.

Section 450.38, F.S., provides for the enforcement of farm labor contractor laws. Any person who commits a violation of this part or of any rule adopted thereunder may be assessed a civil penalty of not more than \$1,000 for each such violation, as determined by the Division of Jobs and Benefits, and provides for criminal penalties for specified persons.

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

**Section 1** of the committee substitute amends s. 413.011, F.S., to specifically authorize the Division of Blind Services to adopt procedures, by rule, for providing vocational rehabilitation services to the blind. The section also authorizes rule adoption relating to forms and instructions for use in administration by the division.

**Section 2** of the committee substitute amends s. 413.051, F.S., to specifically authorize the Department of Labor and Employment Security's Division of Blind Services rule authority to establish and maintain vending facilities, issue licenses, establish and maintain a vending-facility training program, provide vendors access to financial data of the program, set aside funds from net proceeds of the vending facility, provide for the transfer and promotion of vendors, establish a vendors committee, provide for an operation agreement, provide duties and responsibilities of the division with respect to the vending facility program, and provide procedures for newspaper vending sales.

**Section 3** of the committee substitute amends s. 443.036, F.S., to define the terms: able to work; available for work; leave of absence; monetary determination; nonmonetary determination; reasonable assurance; and temporary layoff. This section clarifies the term "domestic service" to include work performed as a maid, cook, maintenance worker, chauffeur, social secretary, caretaker, private yacht crew, butler and houseperson. This section also includes step relationships for the purpose of defining exclusions to the term "employment," as service performed by an individual in the employ of his or her son, daughter, or spouse, and service performed by a child under the age of 21 in the employ of his or her father or mother.

**Section 4** of the committee substitute amends s. 443.091, F.S., to specifically authorize the Division of Unemployment Compensation to develop criteria to determine a claimants ability to work and availability for work, and further authorizes the division to approve training in accordance with criteria prescribed by rule. This section further defines a “fixed contract” as a written agreement of employment for a specified period of time, and a “continuing contract” as an agreement which is automatically renewed until terminated by one of the parties to the contract.

**Section 5** of the committee substitute amends s. 443.131, F.S., to specifically authorize the Division of Unemployment Compensation to adopt rules regarding total succession, the process by which employment records are transferred to a surviving business entity upon a business merger, consolidation, or other form or reorganization. The section further authorizes the division to adopt rules establishing procedures to be used when state and political subdivisions of the state choose to change their method of payment for unemployment compensation.

**Section 6** of the committee substitute amends s. 443.141, F.S., to specifically authorize the Division of Unemployment Compensation to prescribe by rule the process by which the division applies partial payment to the employer’s account.

**Section 7** of the committee substitute amends s. 443.151, F.S., to specifically require the Division of Unemployment Compensation to notify claimants and employers regarding monetary and nonmonetary determinations and authorizes the division to adopt rules for investigations of issues raised in connection with a claimant that may affect a claimant’s eligibility for benefits or charges to an employer’s account.

**Section 8** of the committee substitute amends s. 450.121, F.S., to specifically authorize the Division of Jobs and Benefits, to adopt rules relating to the enforcement of the Child Labor Law which:

- Define words, phrases, or terms used in the child labor rule or chapter 405, part I, F.S.;
- Prescribe additional documents that may be used to prove the age of a minor and the procedure to be followed before a person who claims his or her disability of nonage has been removed by a court of competent jurisdiction may be employed;
- Require certain safety equipment and a safe work place environment for minors;
- Prescribe deadlines applicable to a response to a request for employment records; and,
- Provide an official address from which child labor forms, rules, laws, and posters may be requested and prescribing the forms to be used in connection with the Child Labor Law.

**Section 9** of the committee substitute amends s. 450.30, F.S., to specifically authorize the Division of Jobs and Benefits to adopt rules which prescribe the procedures to be followed to register as a farm labor contractor.

**Section 10** of the committee substitute amends s. 450.33, F.S., to require any insurance carrier that is licensed to operate in this state and that has issued a policy of liability insurance to operate a vehicle used to transport farm workers to notify the Division of Jobs and Benefits when it intends to cancel such policy.

**Section 11** of the committee substitute amends s. 450.38, F.S., to specifically authorize the Division of Jobs and Benefits to adopt rules which prescribe the criteria to be used to determine the amount of civil penalty assessed against an individual who commits a violation of the Farm Labor Registration Law or associated rules and to provide notification to such persons.

**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:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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