

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 17, 1998 Revised: _____

Subject: Parole Commission (RAB)

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Barrow</u>	<u>Miller</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Section 120.536 (2), F.S., requires the Legislature to determine whether specific legislation should be enacted authorizing the rules, or portions thereof, identified by the respective agency. Of the rules reported to the Joint Administrative Procedures Committee by the Parole Commission, the rules that have been identified by the Parole Commission are addressed by this CS. This CS would be effective upon becoming a law.

This CS would substantially amend the following section of the Florida Statutes: 947.07.

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 a 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 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 approximately 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. The Parole Commission reported primarily that it did not have authority for it to have rules relating to minority business enterprise procurement.

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 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 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.

Current law states that the Parole Commission has power to "make such rules and regulations as it deems best for its governance, including among other things rules of practice and procedure and

rules prescribing qualifications to be possessed by its employees” pursuant to s. 947.071, F.S. The main statutory programs that are operated by the Parole Commission are: parole, conditional release, clemency investigations, control release, and conditional medical release.

Chapter 23 of the *Florida Administrative Code* pertains to the regulations of the Florida Parole Commission. Following is a list of rules regulating the administration and functions of the Parole Commission:

CHAPTER 23-4. INTERSTATE COMPACT FOR PAROLE AND PROBATION SUPERVISION

- 23-4.001 Purpose.
- 23-4.002 Required.
- 23-4.003 Basic Procedures.
- 23-4.004 General Rule.
- 23-4.005 Agreement.

CHAPTER 23-15. PRACTICES AND PROCEDURES (of the Commission)

- 23-15.002 Notice of Meeting and Proposed Rules.
- 23-15.003 Agenda of Meetings and Workshops.
- 23-15.004 Emergency Meetings.
- 23-15.005 Public Access.
- 23-15.006 General Requirements for Declaratory Statement.
- 23-15.007 Petition for Declaratory Statement.
- 23-15.008 Purpose and Use of Declaratory Statement.
- 23-15.009 Commission Disposition of Declaratory Statements.
- 23-15.010 Adoption of Model Rules of Procedure.
- 23-15.011 Commission Voting.
- 23-15.015 Indexing of Orders.
- 23-15.020 Designation of Agency Clerk.
- 23-15.026 Removal or Termination of Senior Management or Selected Exempt Service Employees.
- 23-15.030 Standards of Conduct and Standards for Disciplinary Action for Career Service Employees.
- 23-15.031 Commissioner Leave Time Held in Abeyance.
- 23-15.040 Definitions.
- 23-15.041 Purpose and Scope.
- 23-15.042 Goals for Minority Business Enterprise Procurement.
- 23-15.043 Procedures for Minority Business Enterprise Procurement.
- 23-15.050 Loss Control Management.
- 23-15.055 Florida Clean Indoor Air Act.
- 23-15.060 Resolution of Disputes Arising from the Contract Bidding Process.

CHAPTER 23-19. OBJECTIVE PAROLE CRITERIA

23-19.001 Offense Severity Rating.

CHAPTER 23-20. MUTUAL PARTICIPATION PROGRAM

23-20.001 Definitions.

23-20.002 Scope of Responsibility.

23-20.003 Criteria for Program Eligibility.

23-20.004 Mutual Participation Program Agreement Provisions.

23-20.005 Criteria for Parole Under the Mutual Participation Program.

23-20.006 Processing of Mutual Participation Program Agreements.

23-20.007 Procedures.

CHAPTER 23-21. COMMISSION OPERATIONS

23-21.001 General.

23-21.002 Definitions.

23-21.003 Commission Organization.

23-21.004 Commission Meetings.

23-21.005 Parole Application. (REPEALED)

23-21.0051 Full Commission Reviews.

23-21.006 Initial Interview Procedure.

23-21.007 Salient Factor Scoring.

23-21.008 Severity of Offense Behavior.

23-21.009 Matrix Time Ranges.

23-21.010 Decisions Outside the Matrix Time Range.

23-21.011 Calculating Time in Custody.

23-21.012 Inmate Initiated Review of Presumptive Parole Release Date.

23-21.013 Biennial Interview Procedure.

23-21.014 Special Interviews.

23-21.015 Effective Parole Release Data Interview Procedure.

23-21.0155 Extraordinary Interview and Review Procedures.

23-21.016 Notice to Local Agencies.

23-21.0165 Conditions of Parole.

23-21.017 Review of Term and Conditions of Parole.

23-21.018 Disposition of Special Types of Cases Under the Guidelines.

23-21.019 Parole Rescission.

23-21.020 Early Termination of Parole.

23-21.021 Warrant and Arrest.

23-21.022 Revocation of Parole and Compulsory Conditional Release; Preliminary Hearings; Final Hearings.

23-21.023 Compulsory Conditional Release.

CHAPTER 23-22. CONTROL RELEASE

- 23-22.001 General.
- 23-22.002 Notice of Meetings, Workshops and Proposed Rules.
- 23-22.003 Agenda of Meetings and Workshops.
- 23-22.004 Emergency Meetings.
- 23-22.005 Commission Meetings and Workshops Pertaining to Control Release.
- 23-22.006 Control Release Definitions.
- 23-22.007 Victim Input.
- 23-22.008 Control Release Evaluation Procedure.
- 23-22.009 Disposition of Special Types of Cases Involving Control Release.
- 23-22.010 Advancing or Extending Control Release Dates.
- 23-22.011 Notice of Release by Control Release.
- 23-22.012 Review of Control Release Dates.
- 23-22.013 Control Release Supervision.
- 23-22.014 Revocation of Control Release.
- 23-22.015 Control Release Forms.

CHAPTER 23-23. CONDITIONAL RELEASE PROGRAM

- 23-23.001 General.
- 23-23.002 Notice of Meetings, Workshops and Proposed Rules.
- 23-23.003 Agenda of Meetings and Workshops.
- 23-23.004 Emergency Meetings.
- 23-23.005 Commission Meetings and Workshops Pertaining to Conditional Release.
- 23-23.006 Conditional Release Definitions.
- 23-23.007 Victim Information.
- 23-23.008 Conditional Release Evaluation Procedure.
- 23-23.009 Notice of Release by Conditional Release.
- 23-23.010 Conditional Release Supervision.
- 23-23.011 Revocation of Conditional Release.
- 23-23.012 Conditional Release Forms.

CHAPTER 23-24. CONDITIONAL MEDICAL RELEASE PROGRAM

- 23-24.010 General.
- 23-24.015 Notice of Meetings, Workshops and Proposed Rules.
- 23-24.020 Conditional Medical Release Eligibility.
- 23-24.025 Victim Input into Commission Decisions.
- 23-24.030 Conditions of Conditional Medical Release.
- 23-24.040 Conditional Medical Release Recision.

23-24.050 Revocation of Conditional Medical Release.
23-24.060 Conditional Medical Release Forms.

SUBTITLE 23A. PAROLE AND PROBATION COMMISSION QUALIFICATIONS
COMMITTEE

CHAPTER 23A-1. PROCEDURAL RULES OF THE PAROLE COMMISSION
QUALIFICATIONS COMMITTEE

23A-1.001 Definitions.
23A-1.002 Committee Description and Purpose.
23A-1.003 Procedures for Applications.
23A-1.004 Plan for Evaluation of Qualifications.
23A-1.005 Rulemaking.
23A-1.006 Notice of Meeting or Workshop.
23A-1.007 Agenda of Meetings and Workshops.
23A-1.008 Emergency Meetings.

III. Effect of Proposed Changes:

According to the Parole Commission, SB 1714 would provide statutory authority for the rules that were identified by the Parole Commission pursuant to the exercise that was described above in Part II of this analysis. The authority that would be provided to the Parole Commission would be more specific than current statutory authority.

The general grant of rule making authority would be deleted. The items listed in the CS that would provide specific rule making authority would be:

- a. The statutory programs under the jurisdiction and authority of the commission, including, but not limited to, parole, mutual participation program, control release, conditional release, and conditional medical release.
- b. Additionally, authority regarding the following as it relates to the commission's programs:
 1. Definitions;
 2. Eligibility for programs, eligibility criteria and determinations, interview procedures, objective criteria and guidelines, salient-factor scoring;
 3. Parole, mutual participation program, control release and conditional medical release, and determination of release dates;
 4. Commission voting;

5. Decisions outside matrix time ranges which involve aggravation or mitigation;
6. Actions regarding special types of cases;
7. Time in custody calculations;
8. Administrative review;
9. Commission notification;
10. Terms and conditions of supervision;
11. Arrest, revocation, and rescission procedures and hearings;
12. Early termination of supervision;
13. Victim participation, input, and information;
14. Forms; and
15. Minority Business Procurement.

Some of the above items are not clear as to how they are connected to one or more programs operated by the Parole Commission.

If this CS does not pass, s. 120.536 (2), F.S., would require that the Parole Commission initiate rulemaking proceedings by January 1, 1999, to repeal each rule, or portion thereof, for those rules, if any, that are identified as exceeding the rulemaking authority permitted by s. 120.536 (1), F.S. If the CS passes, the requirements of s. 120.536, F.S., would be presumptively satisfied by the Legislature providing specific statutory authority with regard to the particular powers and duties of the Parole Commission.

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 are anticipated as long as the statutory changes contained herein are not perceived as an additional grant of authority to the Parole Commission that would result in an increase in its functions and activities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.