

STORAGE NAME: s1720.cfe

DATE: April 3, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
Children and Family Empowerment
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: SB 1720 (RAB)

RELATING TO: Rulemaking authority for the Department of Children and Family Services

SPONSOR(S): Senator Rossin

COMPANION BILL(S): None

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

- (1) Children and Family Empowerment
 - (2)
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

Senate Bill 1720 is a result of the Department of Children and Family Services' review of its rules and enabling law. The department found that many rules contained in Chapter 65, Florida Administrative Code, were not sufficiently authorized by statute. Senate Bill 1720 allows the department to continue its authority in these areas by authorizing the department to adopt certain rules.

Provisions in the bill require or allow the department to adopt rules in the following areas:

- Community services and treatment for persons who are developmentally disabled.
- Behavioral programs, certification of behavior analysts, and fees for programs for persons who are developmentally disabled.
- Residential care for psychotic and emotionally disturbed children.
- Operation and administration standards for community alcohol, drug abuse, and mental health services.
- Standards for employee assistance programs for employees of state government, local governments, and private business.
- Medication service providers.
- Optional state supplementation program.
- Hearings and appeals in the area of public assistance.

The bill becomes effective upon becoming law.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

During the 1996 legislative session, a comprehensive rewrite of the Florida Administrative Procedures Act (APA) was adopted (see CS/SBs 2290 and 2288). Among many other changes, the revised APA modifies the standards which authorize rule making and includes a provision for periodic review of rules by agencies with rule making 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 regardless of whether the statutory basis for a rule was clearly conferred or merely implied from the enabling statute.

Section 120.536, F.S., effectively overturns this line of cases by imposing a much stricter standard for rule making 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 rule making, but to ensure that administrative rules are no broader than the enabling statute allows. A grant of rule making 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 a specific grant of power and not address those 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, by October 1, 1997 agencies were to report rules that they believed did not meet the new criteria. The Joint Administrative Procedures Committee (JAPC) reports that some 5,850 rules or portions thereof were reported as exceeding the agency's rule making 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); 2,240 rules contained in the Florida Administrative Code were reported by various agencies as exceeding statutory authority for rule making under s. 120.536, F.S.

Section 120.536(2), F.S., also lays out the second step in the process. This step is that of legislative review. The relevant subsection reads as follows:

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 rule making 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, to provide statutory authorization for existing rules--rules which the agency deems necessary but which currently exceed the agency's rule making authority. The Legislature is directed to consider whether the legislation authorizing the identified rules should be enacted.

B. EFFECT OF PROPOSED CHANGES:

Senate Bill 1720 is a result of the Department of Children and Family Services' review of its rules and enabling law. The department found that many rules contained in Chapter 65, Florida Administrative Code, were not sufficiently authorized by statute. Senate Bill 1720 allows the department to continue its authority in these areas by authorizing the department to adopt certain rules.

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?

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?

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?

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?

N/A

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(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Sections 393.066, 393.17, 394.4781, 394.78, 394.879, 397.321, 397.427, 409.212, and 409.285., F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1. Amends subsection (9) of s. 393.066, F.S., relating to community services and treatment for persons who are developmentally disabled allowing the department to adopt rules to ensure compliance with federal laws or regulations.

Section 2. Amends s. 393.17, F.S., relating to behavioral programs, certification of behavior analysts, and fees for programs for persons who are developmentally disabled clarifying that certification and recertification minimum standards must comply with departmental rules; the remaining existing language in this section lists standards for initial certification.

Section 3. Creates subsection (4) of s. 394.4781, F.S., relating to residential care for psychotic and emotionally disturbed children to clarify that the department has the authority to make rules concerning licensing requirements as well as minimum standards for various aspects in the provision of client care and treatment, client admission and eligibility, facility operation and administration, infection control and sanitation, and the establishment and operation of the licensed facility.

Section 4. Amends subsection (1) of s. 394.78, F.S., relating to operation and administration standards for community alcohol, drug abuse, and mental health services so that the department may adopt various financial rules specifically relating to conflicts of interest, related party transactions, charts of accounts, benefits packages, nonpayment and suspended payments regarding client service reports, and client financial eligibility requirements.

Section 5. Amends subsection (1) of s. 394.879, F.S., relating to mental health requiring the department's to adopt rules to ensure that facility construction and design requirements are consistent with the patient's condition and that the operation and purposes of these facilities ensure the individual's health, safety and welfare.

Section 6. Amends subsection (12) of s. 397.321, F.S., requiring the department to develop standards for employee assistance programs for employees of state government, local governments, and private business.

Section 7. Amends subsection (3) of s. 397.427, F.S., regarding medication service providers requiring the department to adopt rules prescribing criteria and procedures for administering any federally required rules, regulations, or procedures.

Section 8. Amends subsection (12) of s. 397.321, F.S., regarding optional state supplementation allowing the department may adopt rules relating to eligibility for this program.

Section 9. Amends subsection (9) of s. 409.285, F.S., relating to a hearing and appeal in the area of public assistance allowing the department to adopt rules to administer this section of law but that the rules for the Temporary Assistance for Needy Families must be similar to the federal requirements for the Medicaid program.

Section 10. Provides that this act shall take effect 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:

None.

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

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.

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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:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This 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:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

Bill History

03/03/98 S Filed

03/11/98 S Introduced, referred to Children, Families and Seniors -SJ 00155

03/13/98 S On Committee agenda-- Children, Families and Seniors, 03/18/98, 9:00 am, Room-A(LL-37)

03/18/98 S Comm. Action:-Favorable with 1 amendment(s) by Children, Families and Seniors -SJ 00222

03/19/98 S Placed on Calendar -SJ 00222

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03/25/98 S Placed on Special Order Calendar -SJ 00303; Read second time -SJ 00278;
Amendment(s) adopted -SJ 00278; Ordered engrossed -SJ 00278
04/01/98 S Read third time -SJ 00328; Passed as amended; YEAS 36 NAYS 0
-SJ 00329; Immediately certified -SJ 00329
04/01/98 H In Messages
04/02/98 H Received, referred to Children & Family Empowerment (GSC) -HJ 00440;
On Committee agenda-- Children & Family Empowerment (GSC), 04/08/98, 10:00 am,
317C

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON CHILDREN AND FAMILY EMPOWERMENT:

Prepared by:

Legislative Research Director:

Bob Barrios

Bob Barrios