

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 12, 1998 Revised: 03/18/98 _____

Subject: Rulemaking Authority for the Department of Children and Family Services (RAB)

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Crosby</u>	<u>Whiddon</u>	<u>CF</u>	<u>Fav/1 amendment</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Senate Bill 1720 is the result of the Department of Children and Family Services' review of rule authority and the enabling law. During this review, the department found that the language in many of the rules contained in portions of Chapter 65, Florida Administrative Code, is not sufficiently authorized by statute. Therefore, a number of amendments are suggested for various sections of the Florida Statutes.

This bill substantially amends the following sections of the Florida Statutes: 393.066, 393.17, 394.4781, 394.78, 394.879, 397.427, 409.212, and 409.285.

II. 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 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.

Senate Bill 1720 emerges from this process and is the result of the Department of Children and Family Services' review of rule and enabling law. Here, the department found that the language in many of the rules contained in portions of Chapter 65, Florida Administrative Code, is not sufficiently authorized by statute. Therefore, a number of amendments are suggested for various sections of the Florida Statutes.

III. Effect of Proposed Changes:

Section 1 amends the section of law relating to community services and treatment for persons who are developmentally disabled and will allow the department to adopt rules to ensure compliance with federal laws or regulations.

Section 2 amends the section of law relating to behavioral programs, certification of behavior analysts, and fees for programs for persons who are developmentally disabled. Though the department thought existing statutory authority would probably be sufficient to justify its rule authority in this area, this amendment clarifies 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 amends the section of law 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 the section of law 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 a section of law regarding rules which is found in the chapter of law relating to mental health. This amendment provides that the department's rules shall provide standards 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, regarding medication service providers, is amended to provide that the department will adopt rules prescribing criteria and procedures for administering any federally required rules, regulations, or procedures.

Section 7 amends the section of law regarding optional state supplementation to provide that the department may adopt rules relating to eligibility for this program.

Section 8 amends the section of law relating to a hearing and appeal in the area of public assistance. This amendment provides that the department may adopt rules to administer this section of law but that these rules must be similar to the federal requirements for the Medicaid program.

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:

#1 by Children, Families, and Seniors:

This amendment clarifies the department's rulemaking authority in developing standards for the employee assistance programs.