

### 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 WAGES Program (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 1762 emerges from the Department of Children and Family Services' review of its rules and enabling law. In the present case, the department found that the specific authority for two public assistance-related rules had been repealed. These two rules concern the specific dates on which certain individuals will become eligible for temporary cash assistance or Medicaid coverage and provisions regarding protective payees. Senate Bill 1762 will enable the department to perpetuate its authority in this area by basically republishing their rules in the law.

This bill substantially amends section 414.095, Florida Statutes.

#### 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 1762 emerges from this process and is the result of the Department of Children and Family Services' review of its rules in conjunction with the enabling law. In the present case, the department found that both its rulemaking authority and the law implementing this authority were repealed. Therefore, two amendments were suggested for s. 414.095, F.S.

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

Section 1 amends two subsections of s. 414.095, F.S., relating to the determination of eligibility for the WAGES program. In Senate Bill 1762, the department has virtually republished eligibility language from the public assistance rules found at Chapter 65A-1.502, Florida Administrative Code. This language concerns: the beginning eligibility date for receipt of temporary cash assistance; the add date for a newborn child; the add date for other individuals; and the date of eligibility for Medicaid coverage. Additionally, a section is added to justify the rule stated at 65A-

1.505, Florida Administrative Code, providing that the protective payee for purposes of temporary cash assistance is the caretaker relative with whom the child resides and who assumes primary responsibility for the child's daily care and supervision.

Section 2 provides that this act shall take effect upon becoming law.

**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:

The department states that failure to pass a bill could result in the loss of federal matching funds.

**VI. Technical Deficiencies:**

The department notes that federal law (42 C.F.R. 435.914) requires, under certain circumstances, that the state provide for retroactive Medicaid coverage. While federal requirements would prevail in the event of a state-federal conflict, the department recommends that the legislature further amend this section of law to clarify situations involving federal eligibility requirements.

**VII. Related Issues:**

None.

**VIII. Amendments:**

#1 by Children, Families, and Seniors:

This amendment provides that Medicaid coverage for recipients of temporary cash assistance shall include any eligibility required by federal law.

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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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