

STORAGE NAME: h0879s1.gg

DATE: March 28, 1997

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GENERAL GOVERNMENT APPROPRIATIONS
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 879

RELATING TO: Agency Accountability Act of 1997;Administrative Procedure

SPONSOR(S): Committee on Governmental Rules & Regulations and Representative(s) Posey and Feeney

STATUTE(S) AFFECTED: s. 120.571 F.S.

COMPANION BILL(S):

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

- (1) GOVERNMENTAL RULES AND REGULATIONS YEAS 8 NAYS 0
- (2) GENERAL GOVERNMENT APPROPRIATIONS
- (3)
- (4)
- (5)

I. SUMMARY:

Presently, Ch. 120 F.S., the Florida Administrative Procedures Act, does not provide for the recovery of actual damages where the agency is found by a court, on appeal of a final agency action, to be liable for a grossly negligent determination of a material fact, done within the agency's exercise of delegated discretion, that has caused actual financial damage to an appellant.

HB 879 would provide that a court, upon a finding of gross negligence by an agency in determining a fact, done within the agency's exercise of delegated discretion, shall enter an order finding the agency liable for any actual financial damages to and attorney's fees incurred by the injured party.

HB 879 would take effect July 1, 1997. It would apply to all administrative proceedings for which final agency action has been rendered on or after that date.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The Florida Administrative Act (APA) was enacted to govern rulemaking and certain administrative adjudicatory activities. The modern version of the APA was enacted in 1974. It was not significantly amended until 1991, when the discretion of administrative agencies to develop policy positions through orders and other non-rulemaking means was curtailed, and the Legislature adopted a preference for rulemaking and a procedure for parties to enforce that preference. Arthur J. England and L. Harold Levinson, Florida Administrative Practice Manual §1.02(b), (Johnny Burris, ed.)(1994)

The APA was extensively rewritten and reorganized in 1996. The Administrative Procedures Act provides for the award of reasonable attorney's fees and costs if the court finds, among other things, that the agency action which precipitated the appeal was a gross abuse of agency discretion. §120.595(5) F.S. (1996 Supp.)

Presently, the APA does not allow for the recovery of actual damages as a result of the gross negligence of an agency in making a factual assessment.

B. EFFECT OF PROPOSED CHANGES:

This bill provides that where the court finds that an agency, in determining a fact within the agency's exercise of delegated discretion, has made a grossly negligent factual assessment that causes financial harm to a party, the court shall enter an order finding the agency liable for any actual financial damages to and attorney's fees incurred by the injured party.

As provided for in s. 13, Art. X, Fla. Const., sovereign immunity is to waived for the express and limited purpose of this section.

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?

No.

(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?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Allows injured parties a means to redress financial injuries that may have been caused by gross negligence of an agency in determining a material fact.

- 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?

N/A

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

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. SECTION-BY-SECTION ANALYSIS:

Please see II.A. and B. for section analysis.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

The amount is indeterminate. In each case that the agency is found liable under this section, it must pay for the actual damages to and attorney's fees accrued by the injured party.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

The expenditure amount is indeterminate

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Injured parties will have to front the costs associated with an appeal of a final agency action.

2. Direct Private Sector Benefits:

Injured parties could potentially recover actual financial damages that are attributable to the gross negligence of the agency in determining a material fact.

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require the 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 revenue 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:

1. Section 13, Art. X, Fla. Const. reads:

Provision may be made by general law for bringing suit against the state as to all liabilities now existing or hereafter originating.

2. A person has a substantial interest where: (1) that person will suffer an injury-in-fact which is of sufficient immediacy to entitle that person to a hearing under §120.75 F.S., and (2) the substantial injury is of a type or nature which the proceeding is designed to protect.

An injury-in-fact is an actual injury sustained at time of filing of the petition, and the person is immediately in danger of sustaining some direct injury as a result of the challenged agency action.

3. An administrative action is subject to judicial review only if the action is final, the agency is subject to provision of the APA, appellant was party to the action, and appellant was adversely affected by the action.

4. Fla. Stat. ch. 120 (1996) defines a "Final Order" to "[mean] a written final decision which results from a proceeding under s. 120.56, s. 120.565, s. 120.569, s. 120.57, s. 120.573, or s. 120.574 which is not a rule, and which is not excepted from the definition of a rule, and which has been filed with the agency clerk, and includes final agency actions which are affirmative, negative, injunctive, or declaratory in form. A final order includes all materials explicitly adopted in it."

5. Gross negligence is that course of conduct which a reasonable and prudent [person] would know would probably and most likely result in injury to persons or property. Clements v. Deebes, 88 So.2d 505 (Fla. 1957).

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The committee substitute includes one amendment.

Amendment No. 1, by Representative Goode, corrected a typographical error. On page one, line 29, the word "Agent" was removed and "Agency" was inserted.

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL RULES AND REGULATIONS:

Prepared by:

Legislative Research Director:

David M. Greenbaum

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AS REVISED BY THE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS:

Prepared by:

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Cynthia P. Kelly

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