

# 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.)

**BILL:** CS/SB 1546

**SPONSOR:** Criminal Justice Committee and Senator Brown-Waite

**SUBJECT:** Rules Authorization Bill

**DATE:** April 11, 2000                      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>RC</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

**I. Summary:**

In 1996, the Legislature enacted s. 120.536, F.S., which eliminates an agency’s ability to rely on broad statutory authority for its rules and requires specific statutory authority for the powers exercised in a rule.

Pursuant to s. 120.536, F.S., the Florida Department of Law Enforcement (FDLE) identified the areas of current rule making authority where specific grants of power by the Legislature are necessary to continue implementation of the department’s rules. The Committee Substitute for Senate Bill 1546 provides statutory authorization for existing FDLE rules or portions thereof which FDLE deems necessary but which, in the department’s estimation, currently exceed the department’s rulemaking authority.

Committee Substitute for Senate Bill 1546 provides legislative authorization for rulemaking by the Florida Department of Law Enforcement relevant to:

- Procedures for notification and claims of rewards for reports of false bombs, as well as defining acts of misconduct and setting standards of disciplinary action for its employees.
- Discipline of instructors in criminal justice training schools.
- Criteria and procedures for exemption from completion of a basic recruit training program approved by the Criminal Justice Standards and Training Commission.
- The Implied Consent Program, including definitions, inspection and registration of breath testing instruments, criteria and qualifications for a breath test operator and agency inspector, qualification for instructors, criteria and qualifications for blood alcohol permits and analysts, specifications for the renewal of blood alcohol permits and analysts, and criteria for denying, revoking, or suspending permits.

This CS substantially amends, creates, or repeals the following sections of the Florida Statutes: 316.1932; 322.63; 327.352; 943.03; 943.131; and 943.14.

**II. Present Situation:**

In enacting Chapter 99-379, L.O.F., the Legislature amended Chapter 120, F.S., (the Administrative Procedures Act) to clarify an agency's authority to adopt rules. Subsection (1) of s. 120.536, F.S., as amended, provides that a grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required.

An agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statute. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious or is within the agency's class of powers and duties, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the same statute.

To ensure compliance with s. 120.536(1), F.S., s. 120.536(2)(b), F.S., requires that each agency, by October 1, 1999, provide to the Administrative Procedures Committee a list of each rule or portion of a rule adopted by that agency prior to June 18, 1999, which exceeds the rulemaking authority permitted by s. 120.536, F.S. For those rules of which only a portion exceeds the rulemaking authority permitted by this section, the agency must also identify the language of the rule which exceeds this authority.

The Administrative Procedures Committee will combine the lists and provide the cumulative listing to the President of the Senate and the Speaker of the House of Representatives. The Legislature shall, at the 2000 Regular Session, consider whether specific legislation authorizing the identified rules, or portions thereof, should be enacted. By January 1, 2001, each agency must initiate proceedings pursuant to s. 120.54, F.S., to repeal each rule, or portion thereof, identified as exceeding the rulemaking authority permitted by this section for which authorizing legislation does not exist. By February 1, 2001, the Administrative Procedures Committee must submit to the President of the Senate and the Speaker of the House of Representatives a report identifying those rules that an agency had previously identified as exceeding its rulemaking authority for which proceedings to repeal the rule have not been initiated.

As of July 1, 2001, the Administrative Procedures Committee or any substantially affected person may petition an agency to repeal any rule, or portion thereof, because it exceeds the rulemaking authority permitted by this section. Not later than 30 days after the date of filing the petition if the agency is headed by an individual, or not later than 45 days if the agency is headed by a collegial body, the agency must initiate rulemaking proceedings to repeal the rule, or portion thereof, or deny the petition, giving a written statement of its reasons for the denial.

The Florida Department of Law Enforcement (FDLE) has reported that several provisions of its rules may exceed the statutory authority granted by the Legislature. The rules at issue, and the

FDLE's recommendations regarding amendments to current law to provide specific legislative authorization for these rules, are provided as follows:

**Chapter 11-2 Reports of False Bombing, Etc., Rewards For Information Relating Thereto--**

- 11-2.001 Purpose**
- 11-2.002 Form of Claim and Endorsements**
- 11-2.003 Notification of Competing Claims**
- 11-2.004 Judicial Review**
- 11-2.005 Payment of reward**
- 11-2.006 Construction and Alternative Procedure**

**FDLE Summary:** Amend s. 943.03(4), F.S., to authorize rulemaking for statutory duties in rules regarding procedures for notification and claims of rewards for reports of false bombs. Currently, s. 790.164(c), F.S., states: "The Department of Law Enforcement *shall establish procedures* to be used by all reward applicants, and the circuit judge in whose jurisdiction the action occurs shall review all such applications and make final determination as to those applicants entitled to receive an award."

**Chapter 11B-20 Certification of Criminal Justice Instructors--**  
**11B-20.0012 Revocation of Certification**

**FDLE Summary:** Amend s. 943.14(3), F.S., to authorize rule authority for the discipline of instructors in criminal justice training schools. Currently, there exists no statutory authority for the Criminal Justice Standards and Training Commission to discipline instructors in criminal justice training schools. The law provides only for certification of instructors. Rule 20.0012 delineates the disciplinary procedures for instructors accused of violating rule requirements.

**Chapter 11B-35 Certification of Criminal Justice Instructors--**  
**11B-35.010(4)(e) Exemption from Basic Recruit Training for Out of State or Federal Officers; Policy and Exemption Procedures**

**FDLE Summary:** Amend s. 943.131, F.S., to provide for criteria and procedures for exemption from completion of a commission-approved-basic-recruit-training program. Currently, s. 943.131, F.S., requires the Criminal Justice Standards and Training Commission to approve exemptions but the rule delegates that authority to the Commission's staff.

**Chapter 11D-8 Implied Consent Program**

- 11D-8.002 Definitions**
- 11D-8.004 Department Inspection and Registration of Breath Test Instruments**
- 11D-8.008 Breath Test Operator and Inspector**
- 11D-8.010 Qualifications for Instructors**
- 11D-8.013 Blood Alcohol Permit - Analyst**
- 11D-8.014 Blood Alcohol Permit - Analyst: Renewal**
- 11D-8.015 Denial, Revocation and Suspension of Permits**

**FDLE Summary:** Amend s. 943.03(4), F.S., to authorize rulemaking for statutory duties in rules regarding the Implied Consent Program. Further, amend ss. 316.1932, 322.63 and 327.352, F.S., to authorize rule authority for definitions in Rule 8.002, department inspection and registration of breath testing instruments in Rule 8.004, criteria and qualifications for permitting breath testing operator and agency inspector in Rule 8.008, establishing qualifications for instructors in Rule 8.010, criteria and qualifications for permitting blood alcohol permits and analysts in Rule 8.013, specifications regarding the renewal of blood alcohol permits and analysts in Rule 8.014, and criteria regarding the denial, revocation and suspension of permits in Rule 8.015.

**Chapter 11I-1 Disciplinary Procedures and Standards**

- 11I-1.1001 Purpose**
- 11I-1.1002 Disciplinary Actions: Definitions**
- 11I-1.1003 Authority for Disciplinary Actions**
- 11I-1.1004 Type of Discipline - Procedure**
- 11I-1.1005 Disciplinary Investigations**
- 11I-1.1005 Procedure for Suspension or Dismissal**
- 11I-1.010 Appeals to the Public Employees Relations Commission**
- 11I-1.011 Acts of Misconduct and Work Standard Violations for Department Employees**
- 11I-1.012 Standards of Disciplinary Action**
- 11I-1.013 Repeal**
- 11I-1.014 Savings Clause**

**FDLE Summary:** Amend s. 943.03(4), F.S., to authorize rulemaking authority for definitions pertaining to misconduct of agency employees. Previously, rulemaking authority was authorized in s. 110.201(2), F.S., but has since been repealed, leaving the agency without the authority to provide definitions for employee misconduct that would specifically relate to this agency.

**III. Effect of Proposed Changes:**

Committee Substitute for Senate Bill 1546 provides legislative authorization for rulemaking by the Florida Department of Law Enforcement relevant to:

- Procedures for notification and claims of rewards for reports of false bombs, as well as defining acts of misconduct and setting standards of disciplinary action for its employees.
- Discipline of instructors in criminal justice training schools.
- Criteria and procedures for exemption from completion of a basic recruit training program approved by the Criminal Justice Standards and Training Commission.
- The Implied Consent Program, including definitions, inspection and registration of breath testing instruments, criteria and qualifications for a breath test operator and agency inspector, qualification for instructors, criteria and qualifications for blood alcohol permits and analysts, specifications for the renewal of blood alcohol permits and analysts, and criteria for denying, revoking, or suspending permits.

Provided in the following section-by-section analysis is a more specific summary of the features of CS/SB 1546:

### **Section 1.**

The CS amends paragraph (a) of subsection (1) of s. 316.1932, F.S. (Breath, blood, and urine tests for alcohol, chemical substances, or controlled substances; implied consent; right to refuse), to provide that the Alcohol Testing Program within the FDLE is responsible for the regulation of the operation, inspection, and registration of breath test instruments utilized under the driving and boating under the influence provisions and related provisions located in Chapter 316, F.S., Chapter 322, F.S., or Chapter 327, F.S.

It is further provided that the program is responsible for the regulation of the individuals who operate, inspect, and instruct on breath test instruments utilized under the driving and boating under the influence provisions and related provisions located in Chapter 316, F.S., Chapter 322, F.S., or Chapter 327, F.S. The program is further responsible for the regulation of blood analysts who conduct blood testing to be utilized under the driving and boating under the influence provisions and related provisions located in Chapter 316, F.S., Chapter 322, F.S., or Chapter 327, F.S.

The CS also provides that the program shall:

- Establish uniform criteria for the issuance of permits to breath test operators, agency inspectors, instructors, and blood analysts, and instruments.
- Have the authority to permit breath test operators, agency inspectors, instructors, and blood analysts, and instruments.
- Have the authority to discipline and suspend, revoke, or renew the permits of breath test operators, agency inspectors, instructors, blood analysts, and instruments.
- Establish uniform requirements for instruction and curricula for the operation and inspection of approved instruments.
- Have the authority to specify one approved curriculum for the operation and inspection of approved instruments.
- Establish a procedure for the approval of breath test operator and agency inspector classes.
- Have the authority to approve or disapprove breath test instruments and accompanying paraphernalia for use pursuant to the driving and boating under the influence provisions and related provisions located in Chapter 316, F.S., Chapter 322, F.S., or Chapter 327, F.S.
- With the approval of the executive director of the FDLE, make and enter into contracts and agreements with other agencies, organizations, associations, corporations,

individuals, or federal agencies as are necessary, expedient, or incidental to the performance of duties.

- Issue final orders which include findings of fact and conclusions of law and which constitute final agency action for the purpose of Chapter 120, F.S.
- Enforce compliance with the provisions of this section through civil or administrative proceedings.
- Make recommendations concerning any matter within the purview of Chapter 316, F.S., Chapter 322, F.S., or Chapter 327, F.S.
- Adopt rules for the administration and implementation of this section, including definitions of terms.
- Consult and cooperate with other entities for the purpose of implementing the mandates of this section.
- Have the authority to approve the type of blood test utilized under the driving and boating under the influence provisions and related provisions located in Chapter 316, F.S., Chapter 322, F.S., or Chapter 327, F.S.
- Have the authority to specify techniques and methods for breath alcohol testing and blood testing utilized under the driving and boating provisions and related provisions located in Chapter 316, F.S., Chapter 322, F.S., or Chapter 327, F.S.
- Have the authority to approve repair facilities for the approved breath test instruments, including the authority to set criteria for approval.

It is also provided that nothing in this section shall be construed to supersede provisions in Chapter 316, F.S., Chapter 322, F.S., or Chapter 327, F.S. The specifications in this section are derived from the power and authority previously and currently possessed by the FDLE and are enumerated to conform with the mandates of Chapter 99-379, L.O.F.

## **Section 2.**

The CS amends subsection (3) of s. 322.63, F.S. (Alcohol or drug testing; commercial motor vehicle operators). The CS repeals language in paragraph (a) of subsection (3) providing that rules adopted by the FDLE relevant to the physical and chemical tests authorized in this section shall be adopted after public hearing, shall specify the tests that are approved, and shall provide an approved method of administration. Also repealed is language in paragraph (b) of subsection (3) providing that the FDLE is authorized to approve techniques or methods of administering such physical and chemical tests.

The remainder of the changes to this section mirror the changes described in the summary of Section 1.

**Section 3.**

The CS amends paragraphs (b) and (e) of subsection (1) of s. 327.352, F.S. (Breath, blood, and urine tests for alcohol, chemical substances, or controlled substances; implied consent; right to refuse). The CS repeals language in subparagraph 2. of paragraph (b) that provides that the FDLE may approve satisfactory techniques or methods (for breath analysis).

The CS further repeals language in subparagraph 1. of paragraph (e) that provides that FDLE rules relevant to the tests determining the weight of alcohol in the defendant's blood or breath must specify precisely the test or tests that are approved by the FDLE for reliability of result and ease of administration, and must provide an approved method of administration which must be followed in all such tests given under this section.

The remainder of the changes to this section mirror the changes described in the summary of Section 1.

**Section 4.**

The CS amends subsection (4) of s. 943.03, F.S. (Department of Law Enforcement), to provide that the FDLE shall adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to implement the provisions of law conferring powers or duties upon it. Further, the FDLE may adopt rules defining acts of misconduct and setting standards of disciplinary action for its employees.

**Section 5.**

The CS amends subsection (2) of s. 943.131, F.S. (Temporary employment or appointment; minimum basic recruit training exemption), to provide that the Criminal Justice Standards and Training Commission (Commission) shall adopt rules that establish criteria and procedures to determine if the applicant is exempt from completing the commission-approved basic recruit training program and, upon making a determination, shall notify the employing agency.

**Section 6.**

The CS amends subsection (3) of s. 943.14, F.S. (Criminal justice training schools; certificates and diplomas; exemptions; injunctive relief; fines), to provide that the Commission shall establish, by rule, procedures for the certification and discipline of all instructors in any criminal justice training school.

**Section 7.**

The effective date of this CS is upon becoming a 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:**

There should be no direct impact, as the changes will only authorize rules that are currently in effect.

**C. Government Sector Impact:**

There should be no direct impact, as the changes will only authorize rules that are currently in effect.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

CS/SB 1546 is identical to HB 2111.

**VIII. Amendments:**

None.