

STORAGE NAME: h2019a.hhs

DATE: April 5, 2000

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
HEALTH AND HUMAN SERVICES APPROPRIATIONS
ANALYSIS**

BILL #: HB 2019 **(PCB CA 00-03)**

RELATING TO: Rulemaking Authority of the Department of Veterans' Affairs

SPONSOR(S): Committee on Community Affairs and Representative Gay

TIED BILL(S): None

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

- (1) COMMUNITY AFFAIRS (PRC) YEAS 6 NAYS 0
 - (2) HEALTH AND HUMAN SERVICES APPROPRIATIONS YEAS 11 NAYS 0
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

This bill is a Rule Authorization Bill (RAB) for the Florida Department of Veterans' Affairs (FDVA). This bill provides statutory authority for existing eligibility criteria included in FDVA rules for admittance to the Veterans' Domiciliary Home of Florida and the Veterans' Nursing Home(s) of Florida. The bill also adds an additional criterion for admission to the Veteran's Nursing Home(s) of Florida.

The bill may increase revenues to the Domiciliary and the Nursing Homes or assist in reducing costs of the facilities.

The bill has no fiscal impact on local government.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Florida Department of Veterans' Affairs

The Florida Department of Veterans' Affairs (FDVA) facilities in Florida consist of a Domiciliary Home, and two Nursing Homes. The purpose of the Robert H. Jenkins Domiciliary Home of Florida in Lake City (Columbia County), is to provide care on an ambulatory self-care basis for veterans disabled by age or disease who are not in need of acute hospitalization and who do not need the skilled nursing services provided in a nursing home. Veterans admitted must be able to feed and clothe themselves, be residents of the state for three consecutive years prior to admission, and have limited financial resources. Eligibility requirements for veterans of the various military services include discharge for a disability or are in receipt of disability compensation and suffering from a permanent disability, have no adequate means of support, are incapacitated from earning a living and meet certain other requirements. Veterans with nonservice-connected disabilities that incapacitate them from earning a living, but are not so severe as to require hospitalization, are also eligible if they are unable to defray the expenses of domiciliary care and if they meet certain other requirements for residence in a domiciliary.

Nursing homes receiving state financial assistance include the Emory L. Bennett State Veterans' Nursing Home, in Daytona Beach (Volusia County) and the Baldomero Lopez State Veterans' Nursing Home, in Land O' Lakes (Pasco County). The nursing homes provide skilled or intermediate type nursing care and related medical care. Normally, care is not provided for periods in excess of six months. For admission or transfer to a veteran affiliated Nursing Home Care Unit, the requirements are essentially the same as hospitalization. Direct admission to private nursing homes at VA expense is limited to: (1) veterans' who require nursing care for service-connected disabilities after a medical determination has been rendered by the US Department of Veterans' Affairs (VA), and (2) any person in an Armed Forces hospital who requires a protracted period of nursing care and who will become a veteran upon discharge from the Armed Forces. The Department of Veterans' Affairs may transfer hospitalized veterans who need a protracted period of nursing care to a private nursing home at VA expense. Normally VA authorized care may not be provided in excess of six months except for veterans whose hospitalization was primarily for a service-connected disability.

Section 296.32, F.S., states the purpose of the Veterans' Nursing Home of Florida Act. The purpose of this part is to provide for the establishment of basic standards for the operation of the Veterans' Nursing Home of Florida for eligible veterans in need of such services.

The Florida Department of Veterans' Affairs states that each veteran receives per diem of fifty-five dollars and fifty cents (\$55.50) from the US Department of Veterans' Affairs. Ms. Linda McCauslin, Program Director, Florida Veterans' Home Program states that there may be additional governmental revenues for which veterans are qualified such as social security, social security disability, veteran pensions, etc. and many homeless veterans are not interested in applying for these benefits when they learn the money goes to the domicile or the nursing home and not directly to them.

Section 296.04(2), F.S., relating to rulemaking authority for the Veterans' Domiciliary Home Act of Florida states, in part,

the administrator shall have the power to determine the eligibility and admission of applicants to the home in accordance with the provisions of this chapter and, together with the director, shall adopt all rules necessary for the preservation of order and enforcement of discipline in the home.

Section 296.34(3), F.S., relating to rulemaking authority for the Veterans' Nursing Home of Florida Act states, in part,

the administrator shall determine the eligibility of applicants for admission to the home in accordance with provisions of this part and, together with the director, shall adopt all rules necessary for the proper administration of the home, including rules for the preservation of order and enforcement of discipline in the home.

Rulemaking Authority

In 1996, the Legislature significantly revised the Administrative Procedure Act (APA) which was designed to require executive branch agencies to more closely adhere to statutory authority when agencies adopt rules. The 1996 amendments contained a new section, s. 120.536(1), F.S., requiring existing and proposed rules to implement, interpret or make specific the particular powers and duties granted by the enabling statute. This "map-tack" provision ensures that agency rules closely relate to the enabling statute and, thus, imposes a more stringent standard.

The Legislature recognized that imposing a new statutory standard to determine the validity of rules might suddenly invalidate many rules which had previously been adopted by the agency in good faith under the older, more lenient standard. Rather than immediately invalidate existing rules, the 1996 reform legislation required each agency to examine all of its rules that had been adopted prior to the effective date of the 1996 amendments in light of the new "map-tack" provision. Agencies were required to report to the Joint Administrative Procedures Committee the list of rules which exceeded the new "map-tack" standard.

Rules placed on the list were temporarily "shielded" from legal challenges that they are invalid under the new "map-tack" provision. This "shield" left the rules in place during the 1998 legislative session, allowing the Legislature to examine the policy established by rule to determine if it is good public policy. If legislation enacted during the 1998 session provided statutory support for the rule, it remained in effect. On the other hand, the statute directed the agency to initiate repeal of any rule for which there is no authorizing legislation

by January 1, 1999. Notably, an existing agency rule successfully challenged under the new APA for lack of statutory authority requires that the agency discontinue its reliance on the rule and the agency may have to pay attorney's fees and costs.

Subsequent to the 1996 amendments to the APA, several appellate cases have sought to interpret the "map-tack" standard. In *St. Johns River Water Management District v. Consolidated-Tomoka Land Co., et al*, 717 So.2d 72 (Fla. 1st DCA July 29, 1998), the petitioner land owners challenged proposed rules of the District that would create a regulatory subdistrict in the Spruce Creek and Tomoka River Hydrologic Basins, and would create new standards for managing and storing surface waters in developments within this basin. *Tomoka* at 717 So.2d 75. An Administrative Law Judge (ALJ) in the Division of Administrative Hearings held that although the proposed rules were not arbitrary or capricious, were supported by competent and substantial evidence, and substantially accomplish the statutory objectives, the rules were invalid as a matter of law because the rules lacked the underlying statutory detail required by the new rulemaking standard in ss. 120.52(8) and 120.536(1), F.S. *Id.* at 76. The District appealed on this issue.

The First District Court of Appeal reversed the ALJ's final order, holding the proposed rules valid. In doing so, the court applied a "functional test based on the nature of the power or duty at issue and not on the level of detail in the language of the applicable statute." *Tomoka* at 717 So.2d 80.

The question is whether the rule falls within the range of powers the Legislature has granted to the agency for the purpose of enforcing or implementing the statutes within its jurisdiction. A rule is a valid exercise of delegated legislative authority if it regulates a matter directly within the class of powers and duties identified in the statute to be implemented.

Id. In applying this test, the court found that delegated legislative authority was to identify geographic areas that require greater environmental protection and to impose more restrictive permitting requirements in those areas. *Id.* at 81. The challenged rules fell within the class of powers delegated by the statute and therefore were a valid exercise of delegated legislative authority. *Id.*

The 1999 legislature amended the Administrative Procedure Act (APA) to provide that an agency may adopt only rules that implement or interpret "specific powers and duties" granted by statute. Chapter 99-370, Laws of Florida, clarified the rulemaking standard to reflect the legislature's intent to limit the authority of agencies to adopt rules. The 1999 revision rejected the judicial interpretation in the *Consolidated-Tomoka* case which created a functional test to determine whether a challenged agency rule is directly within their class of powers and duties. The legislature again recognized that revising the standard to determine the validity of rules might suddenly invalidate many rules which had been adopted or reviewed under a different interpretation of the 1996 standard. Consequently, ch. 99-370 provided for another round of rule review and authorization. Agencies reviewed existing rules and provided in October 1999, to the Joint Administrative Procedures Committee (JAPC) a list of rules adopted before June 18, 1999, which exceed the new standards for rulemaking authority found in s. 120.536(1), F.S. The Legislature will consider in the 2000 Regular Session specific legislation that would authorize the identified rules. For those rules not authorized, the agencies are to initiate repeal proceedings by January 1, 2001. The JAPC or any substantially affected person may petition for repeal of an identified rule after July 1, 2001.

Rules Identified by the Department of Veterans' Affairs:

On October 1, 1999, the Florida Department of Veterans' Affairs (FDVA) complied with the legislative requirement by notifying Joint Administrative Procedures Committee (JAPC) that it had identified rules for which the FDVA had no specific authority or needed clarification of that authority under the new APA standard. These rules relate to the following program areas:

Admission and eligibility requirements for the Veterans' Domiciliary of Florida and the Veterans' Nursing Home of Florida.

C. EFFECT OF PROPOSED CHANGES:

This bill is a Rules Authorizing Bill (RAB) for the Florida Department of Veterans Affairs (FDVA) which covers rules relating to the Veterans' Domiciliary Home of Florida Act and the Veterans' Nursing Home of Florida Act. As currently required by Rule 55-11.008(1)(d), F.A.C., the bill requires that veteran applicants apply for all financial assistance reasonably available through governmental sources to be eligible for residency in the Veterans' Domiciliary Home of Florida. Similarly, as currently required by Rule 55-11.005(1)(d), F.A.C., the bill requires that applicants to veterans' nursing homes not owe money to the department for services rendered during any previous stay at a department facility.

In addition, this bill creates new law to require that veteran applicants to the Florida Veterans' nursing home apply for all financial assistance reasonably available through governmental sources.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Paragraph (e) is added to s. 296.06(2), F.S., to require veterans to apply for all financial assistance reasonably available through governmental sources to be eligible for residency in the veterans' domiciliary home. This provision provides specific authority for Rule 55-11.008(1)(d), F.A.C.

Section 2: Paragraph (c) is added to s. 296.36(1), F.S., to require as a condition of eligibility that a veteran not owe money to the department for services rendered during any previous stay at a department facility. This provision provides specific authority for Rule 55-11.005(1)(d), F.A.C.

Paragraph (d) is added to s. 296.36(1), F.S., to require veterans to apply for all financial assistance reasonably available through governmental sources to be eligible for admittance in a Florida veterans' nursing home.

Section 3: Provides an effective date of upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

There should be a positive fiscal impact from an increase in revenues due to the amount of funds the Domiciliary and Nursing Homes receive from Veterans' benefit sources.

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that local governments 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 state tax shared with local governments.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

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B. RULE-MAKING AUTHORITY:

Yes. The bill requires the Department of Veterans' Affairs to adopt rules regarding s. 296.06(e), and s. 296.36(1)(c) and (d), F.S., in accordance with chapter 120, Florida Statutes.

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None

VII. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

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AS REVISED BY THE COMMITTEE ON HEALTH AND HUMAN SERVICES

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