

STORAGE NAME: h2055.wrm

DATE: March 20, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
WATER and RESOURCE MANAGEMENT
ANALYSIS**

BILL #: HB 2055 (formerly PCB WRM 00-04)

RELATING TO: Coordinated Agency Review for Projects in the Florida Keys (RAB)

SPONSOR(S): Committee on Water and Resource Management, Representative Alexander, and others

TIED BILL(S): None

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

(1) WATER and RESOURCE MANAGEMENT YEAS 11 NAYS 0

(2)

(3)

(4)

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I. SUMMARY:

Agencies have been directed by section 120.536, Florida Statutes, to identify rules which lack sufficient statutory authority, and to seek that authorization from the Legislature. The statutory authorization, in the form of a "rule authorization bill," or RAB, is to be narrowly drawn to the rule in question.

HB 2055 provides statutory authority to state and regional agencies for existing rules relating to coordinated agency review procedures in the Florida Keys, thus enabling them to carry out the provisions of s. 380.051, F.S.

The bill has no fiscal impact, nor does it raise constitutional or other legal concerns.

HB 2055 takes effect upon becoming a law.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" 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:

Background on RAB requirements

In enacting chapter 99-379, Laws of Florida, the Legislature amended ch. 120, F.S., (the Administrative Procedure 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., required that each agency, by October 1, 1999, provide to the Legislature's Joint Administrative Procedures Committee a list of each rule or portion of a rule adopted by that agency prior to June 18, 1999, that exceeded the rulemaking authority permitted by s. 120.536, F.S. For those rules of which only a portion exceeded the rulemaking authority permitted by this section, the agency also had to identify the language of the rule which exceeded this authority. The Joint Administrative Procedures Committee combined the lists and provided the cumulative listing to the President of the Senate and the Speaker of the House of Representatives. During the 2000 Regular Session, the Legislature will 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 permitted rulemaking authority. By February 1, 2001, the Joint 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 Joint 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.

Rules for coordinating agency review of Florida Keys projects

According to s. 380.05, F.S., areas of critical state concern may be designated for areas containing or impacting environmental or natural resources, historical or archaeological resources, or those areas impacting or being impacted by existing or proposed major public facility or other area of major public investment. Areas of critical state concern require controlled development with the establishment of specific principals for guiding development within the area.

Pursuant to s. 380.051, F.S., a developer in the Florida Keys may seek a review of proposed permits using coordinated agency review at the time of application. "Coordinated agency review" means review of the proposed location, densities, intensity of use, character, major design features, and environmental impacts of a proposed development in the Florida Keys area of critical state concern required to undergo review under s. 380.05, F.S., for the purposes of considering whether these aspects of the proposed development comply with the certifying agency's statutes and rules.

The Department of Environmental Protection (DEP) is required by s. 380.051, F.S. to provide for a coordinated agency review of permit applications in the Florida Keys. DEP has enacted this statutory requirement by rule 62-330, F.A.C. that adopts by reference rule 40E-1.615, F.A.C. of the South Florida Water Management District (SFWMD). Rule 40E-4.615, F.A.C. provides procedures for such coordinated reviews for surface water management and water use permits. However, neither DEP nor the SFWMD have rulemaking authority under chapter 380.

C. EFFECT OF PROPOSED CHANGES:

HB 2055 provides statutory authority to state and regional agencies for existing rules relating to coordinated agency review procedures in the Florida Keys, thus enabling them to carry out the provisions of s. 380.051, F.S.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 380.051, F.S. to add a new subsection authorizing state and regional agencies to adopt rules for implementing coordinated agency review procedures in the Florida Keys area of critical state concern.

Section 2: Provides that the act will become effective upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

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:

No fiscal impact is anticipated as HB 2055 authorizes already existing rules relating to coordinated agency review in the Florida Keys area of critical state concern, and thus, no changes in current operating procedure should occur.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to expend 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 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 counties and municipalities.

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V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

HB 2055 authorizes currently existing rules relating to coordinated agency review for the Florida Keys area of critical state concern.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON Water and RESOURCE MANAGEMENT:

Prepared by:

Staff Director:

Kellie R. Ralston

Joyce Pugh