

# 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: SB 672

SPONSOR: Senator Bronson

SUBJECT: Coordinated Agency Review (RAB)

DATE: November 30, 1999 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Gee</u>	<u>Voigt</u>	<u>NR</u>	<u>Favorable</u>
2.	_____	_____	<u>RC</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

## I. Summary:

This bill authorizes state and regional agencies to adopt rules to implement coordinated-agency-review of permit applications in the Florida Keys.

This bill amends s. 380.051 of the Florida Statutes.

## II. Present Situation:

In enacting ch. 99-379, L.O.F., the Legislature amended ch. 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.

Pursuant to s. 380.051, F.S., a developer in the Florida Keys may elect to request coordinated agency review of proposed permits 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) reports that no specific statutory authorization exists for its Rule 62-330, F.A.C., insofar as it adopts by reference Rule 40E-1.615, F.A.C. This rule provides procedures for implementing coordinated agency review in the Florida Keys Area of Critical State Concern by the DEP and the South Florida Water Management District (SFWMD) for environmental resource and consumptive use permits.

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

Section 380.051, F.S., is amended to authorize state and regional agencies to adopt rules to implement coordinated agency review procedures.

### **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:**

A developer electing to use coordinated agency review could realize savings in terms of time in completing projects.

**C. Government Sector Impact:**

There should be no impact on government, as otherwise agencies would simply perform their review at a different time. As a practical matter, the DEP reports that this mechanism is rarely used, although the permitting agencies do coordinate their activities informally.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.