

STORAGE NAME: h1323a.ree.doc
DATE: September 14, 2001

****AS PASSED BY THE LEGISLATURE****
CHAPTER #: 2001-75, Laws of Florida

HOUSE OF REPRESENTATIVES

RULES, ETHICS, & ELECTIONS
FINAL ANALYSIS

BILL #: HB 1323 (1st Engrossed) (PCB REE 01-09)
RELATING TO: Rulemaking Authority of the Department of State
SPONSOR(S): Committee on Rules, Ethics, & Elections and Representative Goodlette
TIED BILL(S):

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

- (1) RULES, ETHICS, & ELECTIONS (PRC) YEAS 11 NAYS 0
 - (2) PROCEDURAL & REDISTRICTING COUNCIL YEAS 16 NAYS 0
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

Florida law establishes 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. As a result, state agencies are required to review the statutory authority they have for rulemaking and determine if sufficient authority exists for their rules or proposed rules.

For any rules or proposed rules that may be lacking in this authority, the Legislature was directed to consider whether specific legislation authorizing the identified rules, or portions thereof, should be enacted during the 2000 Regular Session. Pursuant to this directive, HB 2067 (PCB ER 00-04) was filed during the 2000 Regular Session, to correct deficiencies in rulemaking authority identified by the Division of Elections within the Department of State. HB 2067 was amended by the Senate during the last days of the 2000 Regular Session and subsequently died in House messages.

This bill amends or creates sections of Florida Statutes where a portion of the rule may exceed statutory authority permitted as determined by the Division of Elections or where authority is nonexistent. This rule authorization bill seeks to correct any deficiencies noted by establishing specific authority in statute. **Please see Section II D., Section-By-Section Analysis, for details.**

It is not anticipated that this legislation will have a financial impact beyond current appropriated funds.

The bill shall take 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:

Section 120.536(1), F.S., prescribes the rulemaking standard for agencies:

(1) 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. (emphasis added)

Section 120.536(2)(b), F.S., was created to provide agencies with the opportunity to review existing rules for compliance with the rulemaking standard articulated in s. 120.536(1), F.S. Where an agency determined that a rule, or a portion thereof, exceeded the standard, the agency reported this rule to the Joint Administrative Procedures Committee (JAPC). Section 120.536(2)(b), F.S., provides that the Legislature shall, at the 2000 Regular Legislative Session, consider whether specific legislation authorizing the identified rules, or portions thereof, should be enacted.

Pursuant to s. 120.536(2)(b), F.S., the House Committee on Election Reform introduced HB 2067 (PCB ER 00-04) during the 2000 Regular Session. HB 2067 was the rulemaking authority bill for the Division of Elections. HB 2067 was subsequently amended in the Senate and died in House returning messages. Section 120.536(2)(b), F.S., provides that by January 1, 2001, each agency shall initiate proceedings to repeal each rule, or portion thereof, identified as exceeding their rulemaking authority ***for which authorizing legislation does not exist.*** Further, by February 1, 2001, JAPC is directed to submit to the President of the Senate and the Speaker of the House of Representatives a report identifying those rules previously identified by an agency as exceeding the rulemaking authority permitted by s. 120.536, F.S., for which proceedings to repeal the rule have not been initiated. Lastly, current law provides that as of July 1, 2001, JAPC or any substantially

affected person may petition an agency to repeal any rule, or portion thereof, because it exceeds the rulemaking authority.

C. EFFECT OF PROPOSED CHANGES:

The rules determined to be lacking in specific statutory authority for the Division of Elections and the Department of State are found in Chapter 1S-2. Elections, Florida Administrative Code. This bill will bring these entities into compliance with the requirements of s. 120.536, F.S. **Please see Section II D., Section-By-Section Analysis, for details.**

This bill is similar to the rulemaking authority bill for the Division of Elections within the Department of State, which was passed by the House of Representatives during the 2000 Regular Session [HB 2067 (PCB ER 00-04)].

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Adds subsection (3) to s. 20.10, F.S., authorizing the Department of State to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to administer provisions of law conferring duties upon the department.

Section 2. Adds subsection (3) to s. 20.10, F.S., as amended by Chapter 2000-258, Laws of Florida, effective January 7, 2003,. This is to conform to the Constitutional change from a cabinet position to that of an appointive position for the Secretary of State.

Section 3. Adds s. 99.061(9), F.S., authorizing the Department of State to prescribe by rule the requirements for filing candidate qualifying papers. [Rule identified to exceed the rulemaking standard: 1 F.A.C. 1S-2.0001, Designation of Division of Elections as Filing Office for Department of State.]

Section 4. Amends s. 101.161(2), F.S., to require that the designated number for constitutional amendments be assigned in accordance with rules adopted by the Department of State, in addition to the order of filing or certification. [Rule identified to exceed the rulemaking standard: 1 F.A.C. 1S-2.0011, Constitutional Amendment Ballot Position.]

Section 5. Amends s. 101.62(4)(a), F.S., authorizing the Department of State to prescribe by rule the requirements for the preparation and mailing of absentee ballots to overseas electors. [Rule identified to exceed the rulemaking standard: 1 F.A.C. 1S-2.013, Absentee Ballots to Overseas Electors.]

Section 6. Adds s. 106.07(9), F.S., authorizing the Department of State to adopt rules for the filing of campaign treasurer's reports. [Rule identified to exceed the rulemaking standard: 1 F.A.C. 1S-2.023, Campaign Treasurer's Report; Filing Requirements, Fines for Late Filing.]

Section 7. Amends s. 106.22(11), F.S., authorizing the Department of State to adopt rules for the filing and investigation of voter fraud complaints. [Rule identified to exceed the rulemaking standard: 1 F.A.C. 1S-2.025, Voter Fraud Complaints.]

Section 8. Amends s. 106.23(2), F.S., to require that requests for advisory opinions rendered by the Division of Elections be submitted in accordance with rules adopted by the Department of State. [Rule identified to exceed the rulemaking standard: 1 F.A.C. 1S-2.010, Advisory Opinions.]

Section 9. Amends s. 120.54(1)(i), F.S., authorizing the Department of State to adopt rules for incorporating materials by reference. [Rule identified to exceed the rulemaking standard: 1 F.A.C. 1S-1.005, Incorporation by Reference.]

Section 10. Adds s. 267.061(3)(p) relating to the responsibilities of the Division of Historical Resources to provide the Division authority to protect and administer historical resources on state-owned lands or state-owned sovereignty submerged lands. In addition, the Division is responsible for issuing permits for excavation and salvage activities to recover historical resources and shipwrecks. Finally, the Division is provided with rulemaking authority to adopt rules to administer the transfer of objects recovered by commercial salvors under permit in exchange for recovery services provided to the State. [Rule identified to exceed the rulemaking standard: 1A F.A.C. 31.0015, 1A F.A.C. 31.0035, 1A F.A.C. 31.0055, 1A F.A.C. 31.0065, 1A F.A.C. 31.010, and 1A F.A.C. 31.011].

Section 11. Adds s. 872.05(11), F.S., to provide rule authorization for procedures for reporting unmarked human burial and determining jurisdiction. [Rule identified to exceed the rulemaking standard: 1A F.A.C. 44.003, 1A F.A.C. 44.004, 1A F.A.C. 44.005, and 1A F.A.C. 44.006].

Section 12. Provides that this bill shall take effect upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Any costs of promulgating rules will be absorbed within existing appropriations.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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 spend funds or take 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 sales tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

This bill establishes specific rulemaking authority to comply with s. 120.536, F.S.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON RULES, ETHICS, & ELECTIONS:

Prepared by:

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Staff Director:

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AS REVISED BY THE PROCEDURAL & REDISTRICTING COUNCIL:

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FINAL ANALYSIS PREPARED BY THE COMMITTEE ON RULES, ETHICS, & ELECTIONS:

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