

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 465 CS PCS FOR HB 465 Administrative Procedures
SPONSOR(S): Allen
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee	7 Y, 0 N, w/CS	Williamson	Everhart
1) Judiciary Committee			
2) Fiscal Council			
3) State Administration Council			
4) _____			
5) _____			

SUMMARY ANALYSIS

The bill requires the Joint Administrative Procedures Committee (JAPC) to consider comments submitted by interested persons in its review of agency rules and to act as an ombudsman to Florida citizens regarding agency rules. It requires JAPC to maintain a continuous review of statutes that authorize agencies to adopt rules, and removes the requirement that JAPC undertake a systematic review of the statutes.

The bill requires the agency, rather than the petitioner, to provide a copy of a petition for variance or waiver of a rule to JAPC upon receipt by the agency. It further requires the agency to provide a copy to JAPC of the order granting or denying the petition upon rendition of the order. The bill requires agencies to file their annual report, listing the number and type of petitions for variance and waiver and the disposition of all petitions, with JAPC in addition to the Governor, President of the Senate, and Speaker of the House of Representatives.

The bill provides that JAPC may recommend that legislation be introduced to address its objection to an agency rule when the agency has failed to modify, amend, withdraw, or repeal the rule consistent with the objection.

Finally, the bill requires JAPC to undertake a study of its authority and legislative oversight function, and to report any recommendations for legislation to the President of the Senate and Speaker of the House of Representatives by January 1, 2006.

The bill could have a minimal fiscal impact on state government. It does not appear to have a fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill requires the Joint Administrative Procedures Committee to undertake a study of its authority and legislative oversight function, and to report any recommendations to the President of the Senate and Speaker of the House of Representatives.

B. EFFECT OF PROPOSED CHANGES:

Background

The Joint Administrative Procedures Committee (JAPC) is a standing committee of the Legislature composed of six members; three members from the House of Representatives and three members from the Senate.¹ JAPC's responsibilities include:

- Reviewing administrative rules and advising agencies of its findings;
- Performing certain duties prescribed by the Administrative Procedure Act² concerning the adoption and promulgation of rules; and
- Reviewing agency action pursuant to the operation of the Act.

JAPC is directed to undertake and maintain a systematic and continuous review of the statutes authorizing agencies to adopt rules.

Current law authorizes agencies to grant variances and waivers to requirements of their rules.³ As part of its oversight function, JAPC receives copies of petitions and orders granting or denying petitions. The petitioner is required to file a copy of the petition for variance or waiver with JAPC, and upon disposition, the agency is required to file a copy of the order granting or denying the petition with the committee. Frequently, JAPC does not receive these documents or does not receive them in a timely manner.

In addition, each agency is required to file an annual report with the Governor, President of the Senate, and Speaker of the House of Representatives listing the type and disposition of each petition filed. Under current law, agencies are not required to file the report with JAPC.

JAPC is authorized to vote to object to an agency rule if that rule is an invalid exercise of delegated legislative authority or otherwise does not comply with the rulemaking requirements.⁴ If the agency fails to initiate action to modify, amend, withdraw, or repeal the rule consistent with the objection, JAPC may recommend the introduction of legislation to modify or suspend the adoption of a proposed rule, or amend or repeal the rule, or portion thereof. The current law restricts the type of legislation it may recommend.

Although JAPC is required to review rules and advise agencies of its findings, this review does not constitute a legislative "approval" of rules. JAPC has no authority to prevent an agency from adopting a rule to which it has objected. Members of the Legislature have expressed an interest in strengthening JAPC's authority and oversight function regarding the rule review process. Careful study would be required to evaluate the possibilities for enhancing its authority and to recommend appropriate legislation.

¹ JAPC is created pursuant to s. 11.60, F.S.

² Chapter 120, F.S.

³ Section 120.542, F.S.

⁴ Section 120.545, F.S.

Effect of Bill

The bill requires JAPC to consider comments submitted by interested persons in its review of agency rules and to act as an ombudsman to Florida citizens regarding agency rules. This will increase the effectiveness of its review and allow for greater public participation in the rulemaking process. The bill also codifies JAPC's existing practice of investigating and responding to concerns raised by members of the public regarding the authority for agency rules.

The bill requires JAPC to maintain a continuous review of statutes that authorize agencies to adopt rules, and removes the requirement that it undertake a systematic review of the statutes. JAPC has found it to be a more efficient use of its resources to review statutes in the course of the rule review process.

The bill requires the agency, rather than the petitioner, to provide a copy of a petition for variance or waiver of a rule to the committee upon receipt by the agency. It further requires the agency to provide a copy of the order granting or denying the petition to JAPC upon rendition of the order. Agencies are required to file the annual report listing the number and type of petitions for variance and waiver and the disposition of all petitions with JAPC in addition to the Governor, President of the Senate, and Speaker of the House of Representatives. These changes will help ensure that JAPC is provided information necessary to its oversight function in a timely manner.

The bill provides that JAPC may recommend that legislation be introduced to address its objection to an agency rule when the agency has failed to modify, amend, withdraw, or repeal the rule consistent with the objection. The recommended legislation may include the modification of the proposed rule, the suspension of the rule, the repeal of the rule or portion thereof, or the amendment of legislative authority. The bill removes the limitation that the recommended legislation may include only the modification or suspension of the proposed rule, or the amendment or repeal of the rule, or portion thereof. It will provide JAPC with more flexibility to recommend legislation appropriate to the particular rule objection.

The bill requires JAPC to undertake a study of its authority and legislative oversight function, and must submit a report of any recommendations for legislation to the President of the Senate and Speaker of the House of Representatives by January 1, 2006. The study will enable JAPC to fully research the possibilities for increasing the effectiveness of its oversight function, especially with regard to its review of agency rules.

C. SECTION DIRECTORY:

Section 1 amends s. 11.60, F.S., relating to the administrative procedures committee.

Section 2 amends s. 120.542, F.S., relating to variances and waivers.

Section 3 amends .s 120.545, F.S., relating to committee review of agency rules.

Section 4 requires JAPC to undertake a study of its authority and legislative oversight function.

Section 5 provides a July 1, 2005, effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. The bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

The fiscal impact is unknown at this time; however, it will likely be minimal.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. The bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

None. The bill does not create, modify, amend, or eliminate a local expenditure.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None. This bill does not affect persons in the private sector.

D. FISCAL COMMENTS:

The fiscal impact is unknown at this time. JAPC could incur costs associated with reviewing rule comments submitted by interested parties, in addition to costs associated with undertaking a study of its authority and legislative oversight function and reporting those findings.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not: require counties or municipalities to spend funds or to take an action requiring the expenditure of funds; reduce the percentage of a state tax shared with counties or municipalities; or reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 13, 2005, the Governmental Operations Committee adopted a proposed committee substitute and reported the bill favorably with committee substitute. The bill required the Legislature to review and approve all agency rules prior to agency adoption of the rules. The committee substitute:

- Requires JAPC to consider comments submitted by interested persons in its review of agency rules and to act as an ombudsman to Florida citizens regarding agency rules.
- Requires JAPC to maintain a continuous review of statutes that authorize agencies to adopt rules.
- Removes the requirement that JAPC undertake a systematic review of the statutes.
- Requires the agency, rather than the petitioner, to provide a copy of a petition for variance or waiver of a rule to JAPC upon receipt by the agency.
- Requires the agency to provide a copy to JAPC of the order granting or denying the petition upon rendition of the order.
- Requires agencies to file their annual report, listing the number and type of petitions for variance and waiver and the disposition of all petitions, with JAPC in addition to the Governor, President of the Senate, and Speaker of the House of Representatives.
- Provides that JAPC may recommend that legislation be introduced to address its objection to an agency rule when the agency has failed to modify, amend, withdraw, or repeal the rule consistent with the objection.
- Requires JAPC to undertake a study of its authority and legislative oversight function, and to report any recommendations for legislation to the President of the Senate and Speaker of the House of Representatives by January 1, 2006.