

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** HB 7035 PCB RUC 20-04 Florida Statutes

**SPONSOR(S):** Rules Committee, Burton

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 600

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**FINAL HOUSE FLOOR ACTION:** 118

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**GOVERNOR'S ACTION:** Approved

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### SUMMARY ANALYSIS

HB 7035 passed the House on January 29, 2020 as SB 600.

Section 11.242(5)(j), F.S., directs the Office of Legislative Services to include duplicative, redundant, or unused statutory rulemaking authority among its proposed repeals in reviser's bill recommendations. The purpose of this directive is not to diminish the authority of executive branch agencies to adopt administrative rules necessary to implement their statutory responsibilities but to remove unnecessary text from the statutes.

This reviser's bill removes such rule authorizing provisions through revision of existing statutes or repeal of unnecessary provisions.

The bill was approved by the Governor on February 12, 2020, ch. 2020-4, L.O.F., and becomes effective on the 60<sup>th</sup> day after adjournment sine die.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

A rule is an agency statement of general applicability which interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency, as well as certain types of forms.<sup>1</sup> Rulemaking authority is delegated by the Legislature<sup>2</sup> by law authorizing an agency to “adopt, develop, establish, or otherwise create”<sup>3</sup> a rule. Agencies do not have discretion whether to engage in rulemaking.<sup>4</sup> To adopt a rule an agency must have an express grant of authority to implement a specific law by rulemaking.<sup>5</sup> The grant of rulemaking authority itself need not be detailed.<sup>6</sup> The particular statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.<sup>7</sup> A delegation of authority to an administrative agency by a law that is vague, uncertain, or so broad as to give no notice of what actions would violate the law, could be ruled unconstitutional because it allows the agency to state what the law is.<sup>8</sup> The Legislature must provide minimal standards and guidelines in the law creating a program to provide for its proper administration by the assigned executive agency. The Legislature may delegate rulemaking authority to agencies but not the authority to determine what the law should be.<sup>9</sup>

Legislation creating new programs or modifying existing ones may include an additional grant of authority for the responsible agency to create rules for administering the statute. Such language can be redundant of a broader grant of authority for the agency to adopt rules implementing the full statutory chapter or part and often is never used to support subsequent rulemaking because the existing authority is legally sufficient.

Other grants of rulemaking authority are superfluous because the substantive legislation provides sufficient guidance and detail for the agency to implement the program requirements without any additional rulemaking. Such grants of rulemaking authority remain in statutes unused because they serve no practical purpose.

### Annual Review of Rulemaking Authority

In 2012, the Legislature directed the Office of Legislative Services (OLS), through the process of proposed reviser’s bills, to omit duplicative, redundant, or unused grants of rulemaking authority from inclusion in the statutes. Rulemaking authority is deemed unused if the provision has been in effect for more than five years without being relied upon to adopt rules.<sup>10</sup>

This bill implements that oversight of rulemaking authority. In preparing the bill, OLS, together with staff of the Joint Administrative Procedures Committee (JAPC), developed a list of statutory grants of rulemaking authority that initially appeared to meet the requirements for repeal. This summary was submitted for review and comment by staff of the substantive House committees, which in turn consulted with the various administrative agencies affected by the proposed revisions. Adhering to the

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<sup>1</sup> Section 120.52(16), F.S.; *Fla. Dep’t of Fin. Services v. Capital Collateral Reg’l Counsel-Middle Region*, 969 So.2d 527, 530 (Fla. 1st DCA 2007).

<sup>2</sup> *Sw. Fla. Water Mgmt. Dist. v. Save the Manatee Club, Inc.*, 773 So.2d 594 (Fla. 1st DCA 2000).

<sup>3</sup> Section 120.52(17), F.S.

<sup>4</sup> Section 120.54(1)(a), F.S.

<sup>5</sup> Section 120.52(8) & s. 120.536(1), F.S.

<sup>6</sup> *Save the Manatee Club, Inc.*, supra at 599.

<sup>7</sup> *Sloban v. Fla. Bd. of Pharmacy*, 982 So.2d 26, 29-30 (Fla. 1st DCA 2008); *Bd. of Trustees of the Internal Improvement Trust Fund v. Day Cruise Ass’n, Inc.*, 794 So.2d 696, 704 (Fla. 1st DCA 2001).

<sup>8</sup> *Conner v. Joe Hatton, Inc.*, 216 So.2d 209 (Fla.1968).

<sup>9</sup> *Sarasota Cnty. v. Barg*, 302 So.2d 737 (Fla. 1974).

<sup>10</sup> Section 11.242(5)(j), F.S., as amended by Chapter 2012-116, s. 9, Laws of Florida.

recommendations received from staff of the substantive committees, the final list of sections was included in the bill.

The present bill is non-substantive and amends or deletes various statutory provisions or language to omit duplicative, redundant, or unused and unnecessary grants of rulemaking authority. Where necessary, the bill also deletes expired or obsolete language, corrects cross-references and grammatical errors, and improves the clarity of the statutes to facilitate correct and proper interpretation relative to legislative grants of rulemaking authority to administrative agencies. For each of the sections included in this bill, the statutory rulemaking authority being amended or repealed has not been used to adopt rules in more than five years and thus is unnecessary for the particular agency to implement its statutory responsibilities.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None

#### 2. Expenditures:

None

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None

#### 2. Expenditures:

None

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

### D. FISCAL COMMENTS:

This reviser's bill is a technical, non-substantive bill. The bill has no fiscal impact on state or local governments or on the private sector.