

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.)

Date: March 3, 1998 Revised: _____

Subject: Rulemaking Authority of the Department of Citrus

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Luken</u>	<u>Poole</u>	<u>AG</u>	<u>Favorable</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill specifically authorizes the Department of Citrus to provide by rule a list of forms used in conducting its business, and to prescribe by rule that a citrus fruit producer contract must contain certain information as deemed necessary to protect the producer from deceptive practices.

This bill substantially amends sections 601.10 and 601.61 of the Florida Statutes.

II. Present Situation:

During the 1996 legislative session a comprehensive rewrite of the Florida Administrative Procedures Act was adopted as CS/SBs 2290 and 2288. Among many other changes, the revised APA modified the standards which authorize rulemaking and included provision for periodic review of rules by agencies with rulemaking authority.

In the past, a number of court decisions held that a rule did not exceed the legislative grant of rulemaking authority if it was reasonably related to the stated purpose of the enabling legislation. Additionally, it was accepted that a rule was valid when it implemented general legislative intent or policy. Agencies had wide discretion to adopt rules whether the statutory basis for a rule was clearly conferred or implied from the enabling statute.

Section 120.536, F.S., effectively overturned this line of cases and imposed a much stricter standard for rulemaking authority. Under the new APA, existing rules and proposed rules must implement, interpret or make specific the particular powers and duties granted by the enabling statute. It is important to note that the revised APA is not intended to eliminate administrative rules or even to discourage rulemaking, but to ensure that administrative rules are no broader than the enabling statute. A grant of rulemaking authority by the Legislature is necessary but not

enough by itself for an agency to adopt a rule. Likewise, agencies need more than a statement of general legislative intent for implementing a rule. Rules must be based on specific grants of powers and not address subjects on which the Legislature was silent.

In order to temporarily shield a rule or portion of a rule from challenge under the new provisions, agencies were to report rules which they believed did not meet the new criteria by October 1, 1997.

Section 120.536(2) also lays out the second step in the process, that of legislative review. The subsection provides:

The Legislature shall, at the 1998 Regular Session, consider whether specific legislation authorizing the identified rules, or portions thereof, should be enacted. By January 1, 1999, each agency shall initiate proceedings pursuant to s. 120.54 to repeal each rule, or portion thereof, identified as exceeding the rulemaking authority permitted by this section for which authorizing legislation does not exist.

Thus, during the 1998 legislative session, each agency has the responsibility to bring forward legislative proposals, as appropriate, which will provide statutory authorization for existing rules or portions thereof which the agency deems necessary but which currently exceed the agencies' rulemaking authority. The Legislature is directed to consider whether such legislation authorizing the identified rules should be enacted.

Pursuant to s. 120.536, the Department of Citrus submitted to the Joint Administrative Procedures Committee the following rules as ones that exceeded the department's statutory rulemaking authority. Rule 20-102.005 is a list of all forms used by the department in conducting its business. Rule 20-2.007 requires that all citrus producer contracts contain a cautionary statement regarding the bond posted by the citrus fruit dealer with the Department of Agriculture and Consumer Services. The department does not currently have specific statutory authority for either of these rules.

III. Effect of Proposed Changes:

This bill would permit the department to continue its current practices and would save these rules from repeal.

Section 1: Creates an additional subsection to s. 601.10, F.S., which grants the Department of Citrus the power to provide by rule a list of forms used in conducting its business.

Section 2: Amends s. 601.61, F.S., permitting the commission to prescribe by rule that citrus fruit producer contracts contain information that it considers necessary to protect the producer from deceptive practices.

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:

As these rules are already part of departmental practice, there should be little or no private sector impact. Section 1 of this bill will permit the department to provide by rule a list of forms used by the department, which may provide a benefit to those involved in the industry, in that they may receive more consolidated notice of the forms used by the department.

Section 2 of this bill authorizes the commission to require cautionary statements in citrus fruit contracts for the purpose of protecting the grower from deceptive practices. If the department is able to warn producers about certain issues by requiring explicit statements to appear in their contracts, it would appear that producers may become aware of facts not previously known to them, and this may prompt further consideration on the part of the producer when necessary.

C. Government Sector Impact:

The department would continue its current practices unchanged, and these rules would not be repealed.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
