

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: February 27, 1998 Revised: 03/05/98

Subject: Rulemaking Authority; AHCA Report Filing Extension Authority

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	Carter	Wilson	HC	Fav/1 Amendment
2.				
3.				
4.				
5.				

I. Summary:

Senate Bill 1232 authorizes the Agency for Health Care Administration to adopt rules that allow for a one-time extension of the deadline for a health care facility to file reports relating to data collection, finances, physician charges, and other requirements under chapter 408, F.S., including assessments on hospitals and nursing homes for purposes of funding the data collection and analyses responsibilities of the agency.

This bill amends s. 408.08(13), Florida Statutes.

II. Present Situation:

During the 1996 legislative session a comprehensive rewrite of the Florida Administrative Procedures Act (APA) 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.

A new standard is provided in the revised APA in s. 120.536, F.S., which effectively overturns this line of cases and imposes 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. The Joint Administrative Procedures Committee (JAPC) reports that some 5,850 rules or portions of rules were reported as exceeding the delegated rulemaking authority under s. 120.536(1), F.S. Of these, 3,610 rules were identified by various local school boards, whose rules are not contained in the *Florida Administrative Code* (FAC). However, 2,240 rules contained in the FAC were reported by various agencies as exceeding statutory authority for rulemaking under s. 120.536, F.S.

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 [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.

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 of rules which the agency deems necessary, but which currently exceed the agency's rulemaking authority. The Legislature is directed to consider whether such legislation authorizing the identified rules should be enacted.

According to JAPC, there are 3500-3600 grants of rulemaking authority in the *Florida Statutes* falling roughly into two categories: (1) specific grants and (2) general grants. Most of them are specific grants of authority, that is, the grant of authority is found coupled in a sentence with a specific power or duty of the agency. General grants of rulemaking authority delegate rulemaking in the context of the agency's mission or as it pertains to the stated purpose of the enabling legislation. Most agencies have a general grant of rulemaking authority and numerous specific grants of rulemaking authority. In most cases, it appears that existing rules exceed statutory authority because a "specific law to be implemented" is not apparent in the statute. The "character" of the referenced rules are of a degree of specificity that is too narrow to be an articulation of the general agency mission or the purpose of the enabling legislation so as to fall within the Legislature's grant of general rulemaking authority.

Section 408.061, F.S., delegates to AHCA the authority to collect data, financial reports, and information relating to physician charges from health care facilities, health care providers, and health insurers necessary for it to carry out its duties. Under s. 408.08(13), F.S., AHCA is authorized to impose and collect a fine of up to \$1,000 per day for each day of violation on an ambulatory surgical center, a hospice, a nursing home, a hospital, a diagnostic-imaging center, a freestanding or hospital-based therapy center, a clinical laboratory, a home health agency, a cardiac catheterization laboratory, a medical equipment supplier, an alcohol or chemical dependency treatment center, a physical rehabilitation center, a lithotripsy center, an ambulatory care center, a birth center, or a nursing home component within a continuing care facility for: refusing to file a report, failing to timely file a report, filing a false report, or filing an incomplete report relating to audited financial statements, data or financial reports or information about physician charges, as provided under s. 408.061, F.S.; failure of a hospital or nursing home to meet assessment obligations under s. 408.20, F.S.; or failure to provide documents or records requested by the agency under a provision of chapter 408, F.S. The agency is also delegated authority to assess fees on hospitals and nursing homes, pursuant to s. 408.20, F.S., for purposes of financing its data collection and analyses activities under s. 408.061, F.S.

These duties were delegated to AHCA by chapter 92-33, Laws of Florida, when the Health Care Cost Containment Board was abolished. However, the report filing extension authority that the Board had been delegated was not transferred to AHCA. Without such authority AHCA would have no discretion to exercise regarding the imposition of the administrative fine of up to \$1,000 per day when a health care facility fails to meet report filing deadlines and other commitments established under chapter 408, F.S. However, AHCA has been extending such deadlines pursuant to Rule 59E-2.017, FAC, which the agency adopted under its general rulemaking authority as provided in subsection 408.15(8), F.S. The Joint Administrative Procedures Committee and no health care facility has challenged AHCA's authority to grant such extensions or Rule 59E-2.017, FAC.

III. Effect of Proposed Changes:

Senate Bill 1232 amends subsection 408.08(13), F.S., authorizing AHCA to fine health care facilities up to \$1,000 per day for each day of violation for failure to comply with various requirements imposed under chapter 408, F.S., to authorize AHCA, upon a showing of good cause, to grant to a health care facility a one-time extension of any deadline for a health care facility to timely file a required report relating to data collection, financial reporting, physician charges, or audited financial statements, and assessments on hospitals and nursing homes.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Subsections 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Enactment of specific rulemaking authority for purposes of delegating to AHCA the authority to adopt a rule necessary for granting report-filing extensions to avoid an otherwise inflexible requirement to impose administrative fines for purposes of enforcing requirements under chapter 408, F.S., will ensure that AHCA is acting in conformity with the revised APA standards relating to the validity of the rule it uses in carrying out its duties under subsection 408.08(13), F.S.

VIII. Amendments:

#1 by Health Care:

This is a technical amendment that adds a designation of “RAB,” an acronym meaning “rulemaking authority bill,” to the title of the bill.

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