

STORAGE NAME: s1434a.ep

DATE: April 8, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
ENVIRONMENTAL PROTECTION
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: SB 1434 (First Engrossed)

RELATING TO: Coastal Construction/Rulemaking/DEP

SPONSOR(S): Senator Latvala

COMPANION BILL(S):

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

- (1) SENATE NATURAL RESOURCES YEAS 11 NAYS 0
 - (2) HOUSE ENVIRONMENTAL PROTECTION YEAS 8 NAYS 3
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

The bill amends:

Section 161.052, F.S., to provide specific rulemaking authority for the adoption of rules relating to coastal construction and excavation.

Section 161.053, F.S., authorizing the exemption of certain activities from permit requirements, and provides authority to adopt rules relating to coastal construction and regulation on a county basis.

Section 403.813, F.S., to delete an incorrect reference to the term "subsection" when the legislative intent was to use the term "paragraph."

The bill provides that the act shall take effect upon becoming law.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

The Administrative Procedures Act (APA) was amended in 1996 to require state agencies to adhere more closely to statutory authority with regard to the adoption of rules. Among the 1996 APA amendments was a new section, s. 120.536(1), F.S., which required existing and proposed rules to implement, interpret or make specific the particular powers and duties granted by the enabling statute. This provision was to ensure that agency rules closely relate to the enabling statute, thus yielding a more stringent standard.

By virtue of a new statutory standard to determine the validity of rules, previously adopted rules under the older standard, could become invalid. Rather than immediately invalidate existing rules, the 1996 reform legislation required each agency to examine all of its rules which had been adopted prior to the effective date of the 1996 APA in light of the new provision. Agencies were required to report to the Joint Administrative Procedures Committee, by October 1, 1997, a list of rules which exceeded the standard.

Rules placed on the list, that are invalid under the new provision, are temporarily *shielded* from legal challenges. The *shield* leaves the rules in place during the 1998 legislative session, allowing the Legislature to examine the policy established by rule and to determine if it is good public policy. If legislation is enacted during the 1998 Session which provides statutory support for the rule, it will remain in effect. The statute, s. 120.536(2), F.S., also directs the agency to initiate repeal of any rule for which there is no authorizing legislation by January 1, 1999. Any existing agency rule successfully challenged under the new APA for lack of statutory authority, requires that the agency discontinue its reliance on the rule, leaving agencies liable for attorney's fees and costs in regard to a challenge.

A number of program areas that have inadequate rulemaking authority have been identified by the Department of Environmental Protection (DEP). The DEP is proposing several bills to provide adequate rulemaking authority in these program areas.

One such program involves environmental permitting. Chapter 62B-33, F.A.C., contains rules and procedures for coastal construction and excavation. Rule 62B-33.004, F.A.C., establishes exemptions from permit requirements. Although s. 161.053, F.S., contains implied rulemaking authority, it does not provide the general rulemaking authority for chapter 62B-33, F.A.C., or specific rulemaking authority for permit exemptions contained in rule 62B-33.004, F.A.C. Specific rulemaking authority for these rules is required under the more stringent standards of the new APA.

Additionally, because of a bill drafting error, the DEP is currently precluded from adopting implementation rules for the entire subsection (2) of s. 403.813, F.S. During the 1997 session, a provision was made for a permitting exemption, noting the department would not need to implement rules for that exemption. However, the DEP was prohibited from implementing rules for the entire subsection (2) rather than just the paragraph (2)(r) in s. 403.813, F.S.

B. EFFECT OF PROPOSED CHANGES:

The bill provides rulemaking authority to adopt rules relating to coastal construction and excavation, and authorizes the exemption from permitting requirements for certain activities which are determined by DEP not to cause a measurable interference or have adverse impacts on the natural functioning of the coastal system. The DEP expects no effects from the proposed changes to Chapter 161, F.S., because they merely provide rulemaking authority and do not alter the intent or requirements of the statute.

The bill would clarify that under s. 403.813(2)(r), F.S., the prohibition to adoption of rules to implement the exemption applies only to the exemption under paragraph (r), rather than subsection (2).

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

This bill provides the DEP with the necessary authority to adopt rules and grant exemptions of certain activities with respect to coastal construction and excavation.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No

(3) any entitlement to a government service or benefit?

No

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No

b. Does the bill require or authorize an increase in any fees?

No

c. Does the bill reduce total taxes, both rates and revenues?

No

d. Does the bill reduce total fees, both rates and revenues?

No

e. Does the bill authorize any fee or tax increase by any local government?

No

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Amends s. 161.052, F.S.

Amends s. 161.053, F.S.

Amends s. 403.813, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1: Amends s. 161.052(11), F.S., to provide general rulemaking authority for chapter 161, F.S.

Section 2: Amends s. 161.053(12), F.S., to authorize the exemption of certain activities from permit requirements. Creates s. 161.053(21), F.S., to provide rulemaking authority for this section.

Section 3: Amends s. 403.813(2)(r), F.S., to clarify the DEP is not authorized to implement rules for that paragraph, rather than the subsection.

Section 4: Provides that this act shall take effect upon becoming law.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None

2. Recurring Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

4. Total Revenues and Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None

2. Recurring Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None

2. Direct Private Sector Benefits:

The private sector would not be required to submit permit applications and pay permit application fees for projects the DEP finds do not cause a measurable interference with coastal systems.

3. Effects on Competition, Private Enterprise and Employment Markets:

None

D. FISCAL COMMENTS:

DEP stated that the proposed amendments do not represent any fiscal impact to state agencies, local governments or the private sector because they do not contain substantive changes to the statutes.

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 to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the revenue-raising authority of cities or counties.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the amount of state tax shared with cities and counties.

V. COMMENTS:

Should this bill fail to pass, the public would be required to submit permit applications and pay permit application fees for projects posing no adverse environmental impact. This task, according to the DEP, is beyond the capabilities of current staff levels.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

SB 1434 was reported favorably by the Senate Natural Resources Committee on March 19, 1998, with one amendment.

On April 1, 1998, the Senate passed by unanimous vote SB 1434. (YEAS 35 - NAYS 0)

On April 6, 1998, the House Environmental Protection Committee reported favorably SB 1434. Two amendments to the bill were adopted.

Amendment 1. - Provides DEP with specific rulemaking authority for coastal construction and excavation, setback requirements, waivers and variances, exemptions, and the removal of unauthorized structures.

Amendment 2. - Authorizes DEP to adopt rules relating specifically to: establishment of the coastal construction control line; activities seaward of the coastal construction control line; exemptions; property owner agreements; delegation of the program; permitting programs, and violations and penalties.

VII. SIGNATURES:

COMMITTEE ON ENVIRONMENTAL PROTECTION:

Prepared by:

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