
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: April 7, 1998 Revised: _____

Subject: Agency Rulemaking Authority

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Nebelsiek</u>	<u>Wilson</u>	<u>GO</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The Committee Substitute for SB 2240 eliminates unnecessarily broad grants of general rulemaking authority while retaining an agency's essential authority to adopt rules. The bill does not enlarge agency rulemaking authority nor is it intended to diminish existing agency rulemaking authority.

The CS amends the following sections of the Florida Statutes: 14.202, 17.29, 18.22, 20.171, 63.233, 175.341, 177.504, 185.23, 198.08, 199.202, 201.11, 207.011, 210.10, 210.75, 212.17, 212.18, 213.06, 215.62, 215.95, 217.14, 220.182, 220.183, 229.053, 229.515, 230.22, 230.32, 231.261, 235.01, 240.209, 240.227, 240.311, 240.319, 242.331, 246.041, 246.051, 246.071, 246.207, 246.213, 253.03, 253.73, 257.14, 258.007, 258.43, 259.035, 259.041, 265.284, 265.605, 267.031, 280.19, 284.17, 288.709, 292.05, 310.151, 310.185, 319.17, 320.011, 320.69, 320.824, 324.042, 326.003, 327.04, 330.29, 334.044, 339.175, 350.127, 366.05, 367.121, 368.05, 369.20, 369.22, 369.251, 370.021, 370.092, 370.15, 373.043, 373.044, 373.113, 373.171, 373.337, 373.418, 376.07, 377.22, 377.703, 378.205, 378.404, 380.05, 380.0651, 381.0011, 384.33, 391.026, 392.66, 394.879, 395.1055, 403.061, 403.1835, 403.504, 403.523, 403.704, 403.716, 403.805, 403.861, 403.869, 403.9404, 406.04, 408.15, 414.45, 427.013, 430.08, 440.591, 443.171, 455.203, 455.521, 457.104, 458.309, 459.005, 460.405, 461.005, 463.005, 464.006, 465.005, 465.022, 466.004, 466.038, 467.005, 468.1135, 468.1685, 468.204, 468.384, 468.402, 468.507, 468.522, 468.606, 468.705, 468.802, 470.005, 471.008, 472.008, 473.304, 474.206, 475.05, 475.614, 476.064, 477.016, 478.43, 480.035, 481.2055, 481.306, 482.051, 483.805, 484.005, 484.044, 486.025, 488.02, 489.108, 489.507, 490.004, 491.004, 492.104, 494.0011, 496.424, 497.103, 497.105, 498.007, 500.459, 501.014, 501.143, 501.626, 502.014, 503.031, 504.32, 516.22, 516.23, 517.03, 520.994, 526.09, 531.41, 548.003, 553.76, 560.105, 561.11, 570.07, 571.05, 571.24, 574.14, 578.11, 580.036, 583.04, 585.002, 593.103, 616.165, 616.256, 617.01301, 620.1835, 620.81055, 624.308, 624.4431, 626.943, 627.805,

627.9408, 628.535, 633.01, 633.517, 634.021, 634.302, 634.402, 635.081, 636.067, 641.403, 641.56, 648.26, 651.015, 655.012, 681.118, 717.138, 718.501, 719.501, 721.26, 723.006, 916.20, 943.03, 944.09, 947.07, 960.045, and 985.405.

II. Present Situation:

Section 11.60(4), F.S., provides that the Joint Administrative Procedures Committee (JAPC) “undertake and maintain a systematic and continuous review of statutes that authorize agencies to adopt rules. . .” The JAPC is required to make recommendations to the appropriate standing committees of the Legislature as to the advisability of changes to the delegated legislative authority.¹ The CS for SB 2240 encompasses the JAPC’s recommendations pursuant to s. 11.60(4), F.S., for changes to agency general grants of rulemaking authority.

According to the Joint Administrative Procedures Committee (JAPC), there are 3500-3600 grants of rulemaking authority contained in the Florida Statutes falling roughly into two categories: specific grants and 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 authorize rulemaking in the context of the agency’s mission or as it pertains to the stated purpose of the enabling legislation. Most agencies have one or a few general grants of rulemaking authority and numerous specific grants of rulemaking authority. The CS attempts to standardize the general grants of rulemaking authority.

In conjunction with the new rulemaking requirements set forth in s. 120.536, F.S.,² the recommendations encompassed by this CS are an attempt to ensure that agency rulemaking is limited to the particular powers and duties granted to the agency by the enabling statute. By eliminating unnecessarily broad grants of general rulemaking authority, agencies are forced to evaluate in a context other than the reporting required pursuant to s. 120.536(2), F.S., whether there are rules on the books that rely solely on a general grant of rulemaking authority but lack a specific law to be implemented. In most cases, existing rules that were reported to the JAPC pursuant to s. 120.536(2), F.S., exceeded their statutory authority because a “specific law to be implemented” was missing from the statute, not a legislative grant of rulemaking authority.

III. Effect of Proposed Changes:

There are 227 sections in CS/SB 2240. The majority of the sections specifically address a general grant of rulemaking authority for a particular agency, although a few sections of the bill correct

¹Section 11.60(4), F.S.

²Section 120.536, F.S., provides: “[a] grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement, interpret, or make specific the particular powers and duties granted by the enabling statute. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than the particular powers and duties conferred by the same statute.

cross-references. The bill attempts to standardize the general grants of rulemaking authority to the greatest extent possible in light of the vast array of powers and duties granted to the numerous agencies subject to ch. 120, F.S.

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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The committee substitute grants agencies general rulemaking authority pursuant to ss. 120.54 and 120.536(1), F.S. The two major judicial interpretations of s. 120.536(1), F.S., are currently the

subject of pending litigation.³ To the extent that the general grants of rulemaking authority created in this CS specifically reference s. 120.536(1), F.S., the outcome of the aforementioned litigation may or may not have an impact on an agency's rulemaking powers. Nonetheless, any impact should be negligible since agencies may only adopt rules in accordance with the statutory standard. Judicial interpretation of s. 120.536(1), F.S, may have some affect on agency rulemaking but it will not nullify the requirement to adhere to the standard when adopting rules.

VIII. Amendments:

None.

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

³See *St. Johns River Water Management District v. Consolidated-Tamoka Land Co.*, Case No. 97-02996, Florida 1st District Court of Appeal, 1997; *Department of Business and Professional Regulation v. Calder Race Course*, Case No. 97-02704, Florida 1st District Court of Appeal, 1997.