

**STORAGE NAME:** h3621a.grr

**DATE:** March 11, 1998

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
GOVERNMENTAL RULES AND REGULATIONS  
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

**BILL #:** HB 3621

**RELATING TO:** Agency Accountability Act; Administrative Procedure

**SPONSOR(S):** Representative Posey

**COMPANION BILL(S):**

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

- (1) GOVERNMENTAL RULES AND REGULATIONS YEAS 3 NAYS 2
  - (2) CIVIL JUSTICE AND CLAIMS
  - (3)
  - (4)
  - (5)
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**I. SUMMARY:**

Presently, Ch. 120 Florida Statutes, the Florida Administrative Procedure Act, does not provide for the recovery of actual damages where an agency employee has proximately caused financial harm to a party by the grossly negligent breach of that employee's duties or scope of employment in determining a material fact or applying an agency policy.

HB 3621 would create s. 120.572, Florida Statutes, and provide that a court, in reviewing a final agency action, may find an agency employee personally liable where such employee has proximately caused financial harm to the party by the grossly negligent breach of that employee's duties or scope of employment. The court order shall find the agency employee liable for the actual damages to and attorney fees incurred by the injured party.

HB 3621 takes effect upon becoming law and has no fiscal impact upon agency budgets. It would apply to all administrative proceedings for which final agency action has been rendered on or after that date.

## II. SUBSTANTIVE RESEARCH:

### A. PRESENT SITUATION:

The Florida Administrative Procedure Act (APA) was enacted to govern rulemaking and certain administrative adjudicatory activities. The modern version of the APA was enacted in 1974. It was not significantly amended until 1991, when the discretion of administrative agencies to develop policy positions through orders and other non-rulemaking means was curtailed, and the Legislature adopted a preference for rulemaking and a procedure for parties to enforce that preference. Arthur J. England and L. Harold Levinson, Florida Administrative Practice Manual §1.02(b), (Johnny Burris, ed.)(1994).

The APA was extensively rewritten and reorganized in 1996 to clarify and simplify the definitions and procedures of and exceptions to the APA.

The Administrative Procedure Act provides for the award of reasonable attorney's fees and costs if the court finds, among other things, that the agency action which precipitated the appeal was a gross abuse of agency discretion. §120.595(5) F.S. (1997)

Presently, the APA does not allow for the recovery of actual damages as a result of the gross negligence of an agency employee in making a factual assessment.

### B. EFFECT OF PROPOSED CHANGES:

This bill provides that a court, in reviewing a final agency action, may find an agency employee personally liable where such employee has proximately caused financial harm to the party by the grossly negligent breach of that employee's duties or scope of employment. The court order shall find the agency employee liable for the actual damages and attorney fees incurred by the injured party.

To make such a finding, the court must determine that an agency employee:

- by act or omission arising out of and in the scope of the agency employment or function, either
- makes a grossly factual assessment in determining a material fact within the exercise of the agency's discretion *or*
- as a result of the willful disregard of a clear expression of legislative intent codified for the applicable law, makes an erroneous ruling on either:
  - on a disputed issue of agency procedure or policy
  - or on a disputed interpretation of law within the exercise of the agency's discretion, and
- proximately causes financial harm to the party whose interests are effected.

Sovereign immunity, as provided for in section 13, Article X, Florida Constitution, is to be waived for the express and limited purpose of this section.

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?

N/A

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

N/A

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

N/A

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?

N/A

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

N/A

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

N/A

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

N/A

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

N/A

3. Personal Responsibility:

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

N/A

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

N/A

4. Individual Freedom:

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

N/A

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

N/A

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:

Creates section 102.572, Florida Statutes

E. SECTION-BY-SECTION RESEARCH:

Please see II.B. of this document for discussion.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Indeterminate, but would have an impact on the personal finances of an agency employee were such an employee found liable under this bill.

2. Direct Private Sector Benefits:

Indeterminate

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

None.

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require the counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenue in the aggregate.

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

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

COMMENTS:

1. It is unclear what the phrase "agency policy or procedure" is designed to address, in that the phrase is neither defined in the bill nor in Chapter 120, Florida Statutes.

2. Section 13, Art. X, Fla. Const. reads:

Provision may be made by general law for bringing suit against the state as to all liabilities now existing or hereafter originating.

3. A person has a substantial interest where: (1) that person will suffer an injury-in-fact which is of sufficient immediacy to entitle that person to a hearing under §120.57 F.S., and (2) the substantial injury is of a type or nature which the proceeding is designed to protect.

An injury-in-fact is an actual injury sustained at time of filing of the petition, and the person is immediately in danger of sustaining some direct injury as a result of the challenged agency action.

4. An administrative action is subject to judicial review only if the action is final, the agency is subject to provision of the APA, appellant was party to the action, and appellant was adversely affected by the action.

5. Section 120.52(7), Fla. Stat. (1997) defines a "Final Order" to "[mean] a written final decision which results from a proceeding under s. 120.56, s. 120.565, s. 120.569, s. 120.57, s. 120.573, or s. 120.574 which is not a rule, and which is not excepted from the definition of a rule, and which has been filed with the agency clerk, and includes final agency actions which are affirmative, negative, injunctive, or declaratory in form. A final order includes all materials explicitly adopted in it."

6. Gross negligence is that course of conduct which a reasonable and prudent [person] would know would probably and most likely result in injury to persons or property. Clements v. Deebs, 88 So.2d 505 (Fla. 1957).

7. CS/HB 879 by Committee on Governmental Rules and Regulations and Representatives Posey, Wallace, and Feeney, proposes a similar standard for agencies, where a court, in its review of a final agency action, makes a finding of gross negligence by an agency in determining a material fact within the agency's exercise of delegated discretion, and enters an order finding the agency liable for any actual damages to and attorney's fees incurred by the injured party.

CS/HB 879 passed the House of Representatives on April 29, 1997 and was carried over pursuant to House Rule 96, to the 1998 Session. It is currently available for the House Consent Calendar.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VI. SIGNATURES:

COMMITTEE ON GOVERNMENTAL RULES AND REGULATIONS:

Prepared by:

Legislative Research Director:

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David M. Greenbaum

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