

STORAGE NAME: h4345a.ag

DATE: March 31, 1998

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

BILL #: HB 4345

RELATING TO: Rulemaking authority with respect to the regulation of the citrus industry

SPONSOR(S): Representative Spratt

COMPANION BILL(S): SB 1004 (s) by Senator Bronson
CS/CS/SB 1046 (c) by Committees on Governmental Reform &
Agriculture, Senator Bronson

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

- (1) AGRICULTURE YEAS 8 NAYS 0
 - (2)
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

House bill 4345 authorizes the Department of Citrus (department) to adopt a rule listing the forms used by the department and provides that the list is sufficient notice to the public of the forms' existence. The bill also allows the Florida Citrus Commission (commission) to prescribe by rule that a citrus fruit producer contract must contain certain information considered by the commission to be necessary to protect the producer from deceptive practices. Lastly, the bill authorizes the commission, in rules relating to the issuance and voluntary use of symbols, certification marks, service marks, or trademarks, to make general reference to national or state requirements that a license applicant must meet.

This bill appears to have no fiscal impact to state or local government.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

During the 1996 session, the Legislature adopted a comprehensive rewrite (chapter 96-159, Laws of Florida) of the Florida Administrative Procedures Act (APA). One of the changes modified the standards authorizing rulemaking and included provision for each agency with rulemaking authority to periodically review its rules.

Prior to 1996, several 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. Also, a rule was accepted as valid when used to implement general legislative intent or policy. Agencies had wide discretion to adopt rules whether the statutory basis for the rule was clearly conferred or implied from the enabling statute.

With the 1996 rewrite of the APA, a much stricter standard for rulemaking authority was imposed. Existing and proposed rules must now implement, interpret, or make specific the particular powers and duties granted by the enabling statute. The revised APA does not eliminate administrative rule, or discourage rulemaking, but ensures that rules are not broader than the enabling statute. A legislative grant of rulemaking authority is necessary, but alone is not enough for an agency to adopt a rule. Agencies need more than a statement of general legislative intent for implementing a rule. Rules must be based on specific grants of powers and cannot address subjects on which the Legislature was silent.

To temporarily protect a rule or portion of a rule from challenge under the new APA provisions, each agency had to review its rules and report, by October 1, 1997, those not meeting the new criteria.

Legislative review is the second phase of the process set forth in s. 120.536(2), F.S., which 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.

Based on these provisions, during the 1998 legislative session each agency has the responsibility to bring forward legislative proposals providing statutory authority for existing rules considered necessary by the agency, but which currently exceed the agency's rulemaking authority.

The Department of Citrus (DOC) submitted to the Joint Administrative Procedures Committee two rules deemed to exceed the DOC's statutory rulemaking authority. Rule 20-102.005, Florida Administrative Code, lists all forms used by the DOC in conducting its business. Rule 20-2.007, Florida Administrative Code, requires that all citrus producer contracts contain a cautionary statement regarding the bond posted with the Department of Agriculture and Consumer Services by the citrus fruit dealer.

Section 120.54(1)(l), F.S., imposes special requirements for incorporation of federal standards in a rule. The section provides that, notwithstanding any contrary provision of the section, in the pursuance of state implementation, operation, or enforcement of federal programs, an agency is empowered to adopt rules substantively identical to regulations adopted pursuant to federal law. When all or part of any rule proposed for adoption by an agency is substantively identical to a regulation adopted pursuant to federal law, the rule, whenever possible, must be written in a manner where the rule specifically references the regulation.

The DOC currently requires license applicants for the use of symbols or marks regulated by the DOC to be in compliance with requirements of jurisdictions outside of Florida when sales are made in those jurisdictions. Those extra-jurisdictional requirements, however, are not contained in DOC rules. Therefore, it is possible that an applicant must meet the requirements of the federal government, other states, and foreign countries to receive or maintain a license to voluntarily use certain marks regulated by the DOC. If these requirements are not met or maintained, permission to use the symbols can be denied or revoked.

B. EFFECT OF PROPOSED CHANGES:

This bill grants the DOC authority to provide by rule a list of forms used in conducting its business. The bill also states that the list provides the regulated public with sufficient notice of the existence of the forms and that specific reference to the forms in the rules requiring them is unnecessary.

The bill allows the Florida Citrus Commission to prescribe by rule that citrus fruit producer contracts contain information considered necessary to protect the producer from deceptive practices.

In addition, the bill creates a new section of law to permit the DOC, in its rules related to issuance and voluntary use of symbols, certification marks, service marks, or trademarks, to make general references to national or state requirements that a license applicant is compelled to meet regardless of the DOC's issuance of the license applied for. This provision grants the DOC an exception to the general requirement that incorporated material must be specifically referenced in the rule incorporating it.

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?

No.

- (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: **Not applicable.**

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

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

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

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: **Not applicable.**

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

(1) Who evaluates the family's needs?

(2) Who makes the decisions?

(3) Are private alternatives permitted?

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

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

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

- 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?

(2) service providers?

(3) government employees/agencies?

D. STATUTE(S) AFFECTED:

Sections 601.10 and 601.61, F.S. Section 601.9918, F.S., is created by this legislation.

E. SECTION-BY-SECTION RESEARCH:

Section 1: Subsection (15) of s. 601.10, F.S., is created granting the DOC authority to provide by rule a list of forms used in conducting its business. The new subsection also specifies that the list provides the regulated public with sufficient notice of the existence of the forms and that specific reference to the forms in the rules requiring them is unnecessary.

Section 2: Section 601.61, F.S., is amended permitting the Florida Citrus Commission to prescribe by rule that citrus fruit producer contracts contain information considered necessary to protect the producer from deceptive practices.

Section 3: Section 601.9918, F.S., is created permitting the DOC, in its rules related to issuance and voluntary use of symbols, certification marks, service marks, or trademarks, to make general references to national or state requirements that a license applicant is compelled to meet regardless of the DOC's issuance of the license applied for.

Section 4: Provides that the bill shall take effect upon becoming a 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:

The bill allows the Department of Citrus (DOC) to provide by rule a list of forms used in conducting its business, and such a rule would suffice as public notice of the existence of the forms. This negates the need for the DOC to amend every rule requiring a form each time a form is amended and should save rulemaking costs.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE: **Not applicable.**

1. Non-recurring Effects:

2. Recurring Effects:

3. Long Run Effects Other Than Normal Growth:

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: **Not applicable.**

1. Direct Private Sector Costs:

2. Direct Private Sector Benefits:

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

D. FISCAL COMMENTS:

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

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A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or take actions requiring expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the revenue raising authority of any county or municipality.

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

The bill does not reduce any state tax revenues shared with counties and municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON AGRICULTURE:

Prepared by:

Legislative Research Director:

Susan D. Reese

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