

**STORAGE NAME:** h4791.wrm

**DATE:** April 16, 1998

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
WATER & RESOURCE MANAGEMENT  
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

**BILL #:** HB 4791 (formerly PCB WRM 98-05)

**RELATING TO:** Marine resources rulemaking

**SPONSOR(S):** Committee on Water and Resource Management and Rep. Carlton

**COMPANION BILL(S):** CS/SB 1440 (s)

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

- (1) WATER & RESOURCE MANAGEMENT YEAS 6 NAYS 1
  - (2)
  - (3)
  - (4)
  - (5)
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**I. SUMMARY:**

HB 4791 (formerly PCB WRM 98-05) gives the Department of Environmental Protection (DEP) the authority to adopt rules related to:

- o The issuance of special activity licenses for the capture of saltwater species to be used as brood stock for aquaculture purposes, and to administer a special activity license program.
- o The relocation of marine turtles, their nests, eggs and hatchlings for conservation purposes, and the designation and definition of "properly accredited person" to perform the relocation.

HB 4791 satisfies the requirements of s. 120.536, F.S., which specifies that agency rules which lack specific legislative authority may be shielded from administrative challenge until July 1, 1999, if the agency submits them on a list to the Legislature and persuades the Legislature to adopt enabling law.

HB 4791 is one of six bills sought by DEP in the 1998 session to give the agency specific rulemaking authority for existing rules.

The bill would take effect upon becoming a law.

## II. SUBSTANTIVE RESEARCH:

### A. PRESENT SITUATION:

#### Background on need for enabling legislation

The 1996 amendments to the Administrative Procedure Act (APA) were designed to require executive branch agencies to more closely adhere to statutory authority when agencies adopt rules. The 1996 amendments contained a new section, 120.536(1), F.S., requiring existing and proposed rules to implement, interpret or make specific the particular powers and duties granted by the enabling statute. This so-called "map-tack" provision ensures that agency rules closely relate to the enabling statute and, thus, imposes a more stringent standard.

The Legislature recognized that imposing a new statutory standard to determine the validity of rules might suddenly invalidate many rules which had previously been adopted by the agency in good faith under the older, more lenient standard. Rather than immediately invalidate existing rules, the 1996 reform legislation required each agency to examine all of its rules that had been adopted prior to the effective date of the 1996 amendments in light of the new "map-tack" provision. Agencies were required to report to the Joint Administrative Procedures Committee the list of rules which exceeded the new "map-tack" standard.

Rules placed on the list are temporarily "shielded" from legal challenges that they are invalid under the new "map-tack" provision. This "shield" leaves the rules in place during the 1998 legislative session, allowing the Legislature to examine the policy established by rule 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. On the other hand, the statute directs the agency to initiate repeal of any rule for which there is no authorizing legislation by January 1, 1999. Notably, an existing agency rule successfully challenged under the new APA for lack of statutory authority requires that the agency discontinue its reliance on the rule and the agency may have to pay attorney's fees and costs.

Over the interim, DEP identified nearly two dozen rules for which the agency has inadequate or non-existent statutory authority. DEP originally proposed nine bills to provide enabling authority, but after discussions with substantive committee staff and its general counsel, reduced the number of bills to six. The scope of the enabling legislation also was reduced.

#### Discussion of substantive issues

Chapter 370, F.S., preceded creation of the Florida Marine Fisheries Commission (MFC), which since 1983 has explicit legislative authority to promulgate rules dealing with regulation of marine life, except for endangered species. DEP's Division of Marine Resources still administers Chapter 370 programs through statute and MFC rules through the issuance of special activity licenses. The activities where special activity licenses are needed are use of non-traditional or special fishing gear; cultivation of shellfish when such aquaculture operations involve quality control, sanitation and public health regulations; and cultivation of sturgeon. Because of the new APA requirements, DEP lacks explicit rulemaking authority to issue special activity licenses.

Finally, DEP's rule related to the issuance of special permits for the taking or relocation of marine turtles, their eggs, hatchlings and nests also was determined to be an invalid exercise of statutory authority, because the particular subsection of law related to marine turtle relocation (s. 370.12(1), F.S.) because it does not specifically give the agency authority to adopt rules to generally implement the provisions.

**B. EFFECT OF PROPOSED CHANGES:**

HB 4791 changes two sections of law in Chapter 370 to give DEP explicit rulemaking authority to issue and administer special activity licenses, and to provide requirements for the relocation of marine turtles, their nests, eggs and hatchlings for a specific purposes. It also provides for establishment in rule the eligibility criteria for persons who may conduct the relocation.

**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?

Yes.

(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?

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:**

Sections 370.06 and 370.12, F.S.

**E. SECTION-BY-SECTION RESEARCH:**

Section 1: Amends s. 370.06, F.S., to delete non-specific rulemaking authority. Authorizes DEP to issue special activity licenses in accordance with other responsibilities and MFC rules, related to the capture and possession of saltwater species protected by law and used as stock for artificial cultivation and propagation. Authorizes DEP to promulgate rules to govern the administration of special activity licenses as provided in Chapter 370, F.S., and MFC rules, in such matters as application requirements and terms, conditions and restrictions.

Section 2: Amends s. 370.12(1), F.S., to prohibit anyone from possession marine turtle nests, eggs or hatchlings, as well as the turtles themselves, unless the person has a special permit or loan agreement. Adds "conservation activities" to the list of activities eligible to receive a special permit or loan agreement. Describes the types of persons or organizations that qualify as "properly accredited person." Grants DEP authority to promulgate rules to implement this subsection.

Section 3: Provides that this act 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:

Indeterminate.

3. Long Run Effects Other Than Normal Growth:

Indeterminate.

4. Total Revenues and Expenditures:

Indeterminate.

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:

None.

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:

The mandates provision is not applicable to a research discussion of HB 4791 because the bill does not require cities or counties to expend funds, or to take actions requiring the expenditure of funds.

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B. REDUCTION OF REVENUE RAISING AUTHORITY:

HB 4791 does not reduce the revenue-raising authority of counties or municipalities.

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

HB 4791 does not reduce the state tax revenues shared with counties or municipalities.

V. COMMENTS:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 7, 1998, the Committee on Water and Resource Management adopted an amendment to remove from PCB WRM 98-05 language giving DEP explicit rulemaking authority to adopt a list of fish designated as food fish. The Committee then adopted the proposed committee bill by a vote of 6-1. The bill was numbered HB 4791 by the Clerk of the House.

VII. SIGNATURES:

COMMITTEE ON WATER & RESOURCE MANAGEMENT:

Prepared by:

Legislative Research Director:

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Joyce Pugh

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Joyce Pugh