

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: February 10, 1998 Revised: \_\_\_\_\_

Subject: Breaking of seals on petroleum fuel measuring devices

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Luken</u>	<u>Poole</u>	<u>AG</u>	<u>Favorable</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

**I. Summary:**

This bill permits a meter mechanic to break the seal on the meter adjustment of a petroleum fuel measuring device to repair it in the absence of a department inspector and place a new seal on the device for later inspection by the department inspector. This provision specifically authorizes the current department practice by statute.

This bill substantially amends section 525.07, Florida Statutes.

**II. Present Situation:**

During the 1996 legislative session a comprehensive rewrite of the Florida Administrative Procedures Act was adopted as CS/SBs 2290 and 2288. Among many other changes, the revised APA modified the standards which authorize rulemaking and included provision for periodic review of rules by agencies with rulemaking authority.

In the past, a number of 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. Additionally, it was accepted that a rule was valid when it implemented general legislative intent or policy. Agencies had wide discretion to adopt rules whether the statutory basis for a rule was clearly conferred or implied from the enabling statute.

Section 120.536, F.S., effectively overturned this line of cases and imposed a much stricter standard for rulemaking authority. Under the new APA, existing rules and proposed rules must implement, interpret or make specific the particular powers and duties granted by the enabling statute. It is important to note that the revised APA is not intended to eliminate administrative rules or even to discourage rulemaking, but to ensure that administrative rules are no broader than

the enabling statute. A grant of rulemaking authority by the Legislature is necessary but not enough by itself for an agency to adopt a rule. Likewise, agencies need more than a statement of general legislative intent for implementing a rule. Rules must be based on specific grants of powers and not address subjects on which the Legislature was silent.

In order to temporarily shield a rule or portion of a rule from challenge under the new provisions, agencies were to report rules which they believed did not meet the new criteria by October 1, 1997.

Section 120.536(2) also lays out the second step in the process, that of legislative review. The subsection 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.

Thus, during the 1998 legislative session, each agency has the responsibility to bring forward legislative proposals, as appropriate, which will provide statutory authorization for existing rules or portions thereof which the agency deems necessary but which currently exceed the agencies' rulemaking authority. The Legislature is directed to consider whether such legislation authorizing the identified rules should be enacted.

Currently, the Department of Agriculture and Consumer Services, through its Bureau of Petroleum Inspection, inspects petroleum fuel measuring devices to determine if these devices are in calibration. If these devices are not in calibration, the inspector places a seal on the pump so that it is rendered unusable. Under the current statutory language of s. 525.07, F.S., it is unlawful for any person to break, cut or remove any seal applied by the department to a petroleum fuel measuring device or container.

Pursuant to s. 120.536, F.S., the Department of Agriculture and Consumer Services submitted to the Joint Administrative Procedures Committee Rule 5F-2.007, F.A.C., as a rule that exceeded rulemaking authority. Under Rule 5F-2.007, F.A.C., the breaking of this seal is permitted by a registered meter mechanic for the purposes of adjusting or repairing the calibration, so long as the seal is replaced, the meter mechanic is identified on the seal, and the department is notified.

### **III. Effect of Proposed Changes:**

This bill would permit the continuation of the departmental practice of allowing a registered meter mechanic to break the seal on the meter adjustment in the absence of an inspector if the person

breaking the seal:

- is a meter mechanic registered with the department;
- makes repairs and adjustments;
- reseals the adjusting mechanism;
- places the name of the company, initials or name of the meter mechanic on the seal;
- and notifies the department of this action.

#### **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:**

Most fuel measuring devices are properly calibrated, however, when a department inspector determines one is out of calibration, the pump must be sealed and is unable to be used. As the department inspector only inspects, but does not calibrate the measuring device, it is difficult at times to have both the meter mechanic and the department inspector on the site simultaneously.

Permitting a meter mechanic to break the seal, repair and reseal the measuring device, and then notify the department of the repair expedites the repair process, and allows the pump to be put back into service in a more timely manner. Since the meter adjustment is resealed by the meter mechanic after the repair or adjustment, and must be reinspected by the department inspector prior to use by the public, there appear to be adequate safeguards to assure that the public is not using devices that are improperly calibrated.

**C. Government Sector Impact:**

The department would continue its current practices unchanged. If department inspectors had to be present while a meter mechanic repaired the calibration, it is expected that the process of inspection would be more time consuming and less cost effective.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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

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