

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 12, 1998 Revised: _____

Subject: Rule authorizing bill relating to bail bond agents and collateral security

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Emrich</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Chapter 648, Florida Statutes, provides for the licensure of bail bond agents and runners and for the regulation of the business of issuing bail bonds by the Department of Insurance. A bail bond serves as a pledge by a bail bond agent or surety company that a defendant will appear at all scheduled proceedings before a court. This bill provides the statutory authorization for three department rules which the agency deems necessary, but which currently exceed the agency’s rulemaking authority. This proposal authorizes the department to establish by rule a form for collateral security affidavits and statements that specifies the amount and source of security or consideration for posting a bond. The bill also prescribes “hold harmless” language to be included in indemnity agreements which are used by bail bond agents.

This bill amends section 648.442, 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.

The Joint Administrative Procedures Committee (J.A.P.C.) reports that some 5,850 rules or portions of rules were reported as exceeding the agency's rulemaking authority under s. 120.536(1), F.S. Of these, 3,610 rules were identified by various local school boards whose rules are not contained in the FAC. However, 2,240 rules contained in the FAC were reported by various agencies as exceeding statutory authority for rulemaking under s. 120.536, F.S.

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 agency's rulemaking authority. The Legislature is directed to consider whether such legislation authorizing the identified rules should be enacted.

The Department of Insurance has identified three rules that exceed the agency's statutory rulemaking authority which relate to collateral security agreements involving bail bond agents. The department apparently promulgated these rules many years ago in response to a mandate under s. 903.14, F.S., (Bail Statute) specifying certain affidavits and statements to be filed with bail bonds. Rule 4-221.125, F.A.C., was repromulgated in 1974 and requires that bail bond agents use an affidavit when they accept collateral security for a bail bond. The affidavit provides for the amount and source of security or consideration received by an agent or surety for posting a bond. Rule 4-221.130, F.A.C., promulgated in 1969, requires that agents may utilize, in lieu of an affidavit, a statement. Rule 4-221.140, F.A.C., repromulgated in 1974, requires that indemnity agreements between the agent and principal (the person arrested) contain certain "hold harmless" language which is necessary to protect the agent from any losses which may occur in writing the bail bond.

III. Effect of Proposed Changes:

Pursuant to the explanation noted above under "Present Situation," the Department of Insurance proposed the present legislation which authorizes three existing administrative rules that relate to bail bond agents. This bill mandates the department promulgate rules establishing forms for collateral security affidavits and statements to be used by the bail bond agent and principal (the person arrested) specifying the amount and source of the security for posting a bond. The bill also mandates hold harmless language in indemnity agreements. This language protects the agent or surety from any losses which may occur in writing the bail bond.

The bill is effective on October 1, 1998.

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:

None.

VIII. Amendments:

None.