

STORAGE NAME: s0770.ag

DATE: March 30, 1998

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

BILL #: SB 770

RELATING TO: Firefighter/Forestry Training

SPONSOR(S): Senator Diaz-Balart

COMPANION BILL(S):

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

(1) SENATE BANKING & INSURANCE 9 YEAS 0 NAYS

(2) HOUSE AGRICULTURE YEAS 8 NAYS 0

(3)

(4)

(5)

I. SUMMARY:

This bill provides the statutory authorization for provisions of two Department of Insurance rules which the agency deems necessary, but which currently exceed the agency's rulemaking authority. The bill authorizes the Division of State Fire Marshal to issue a special certificate of compliance for a firefighter and forestry administrative and command head of a fire/rescue/emergency service organization and provides guidelines for certain reexaminations.

This bill amends section 633.35, F.S., and appears to have no fiscal impact on state or local governments.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

During the 1996 legislative session a comprehensive rewrite of the Florida Administrative Procedures Act (APA) was adopted as CS/SBs 2290 and 2288. Among many other changes, the revised APA modified the standards which authorize rulemaking and included provisions 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 Florida Administrative Code (F.A.C.). However, 2,240 rules contained in the F.A.C. 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 provisions of two rules that exceed the agency's statutory rulemaking authority which relate to firefighter certification of certain individuals who receive training in a state other than Florida and to procedures for certification reexaminations.

Rule 4A-37.054, F.A.C., promulgated in 1981 and revised in 1996, authorizes the State Fire Marshal to issue a special certificate of compliance to an individual from another state who meets certain training and testing criteria and offers proof of employment as the "Administrative and Command Head" of a fire/rescue/emergency services organization. These individuals would be exempt from taking the "practical" portion of the Florida firefighter exam which includes a series of strenuous physical activities, i.e., pulling hoses, donning protective gear, handling hazardous materials. The rationale behind the rule is that persons hired from another state to be commanders of Florida fire agencies are unnecessarily being subjected to practical examinations which have no direct relationship to their function as commanders of such departments. These leadership positions are primarily administrative and do not require physical dexterity. Such persons would still have to take a written examination covering seven relevant subject areas and attend a 6 hour seminar. The rule further requires only one retake of the certification examination within a prescribed period. Rule 4A-37.056, F.A.C., also promulgated in 1981, sets out specific requirements for retaking certification tests.

B. EFFECT OF PROPOSED CHANGES

Pursuant to the explanation noted above under "Present Situation," the Department of Insurance proposed the present legislation which authorizes provisions of two existing administrative rules that relate to the State Fire Marshal. This bill provides for the issuance of a special certificate of compliance to a person from another state who is employed as the administrative and command head of a Florida fire/rescue/emergency services organization. Such person would be exempt from taking the physical-dexterity portion of the firefighter exam. The certificate of compliance would be valid only while the person served in the administrative/command position. The bill provides guidelines for certain reexaminations.

The bill would take effect on July 1, 1998.

C. APPLICATION OF PRINCIPLES:

1. Less Government: **Not applicable.**

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

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

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

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?

(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: **Not applicable.**

- a. Does the bill increase anyone's taxes?
- b. Does the bill require or authorize an increase in any fees?
- c. Does the bill reduce total taxes, both rates and revenues?
- d. Does the bill reduce total fees, both rates and revenues?
- e. Does the bill authorize any fee or tax increase by any local government?

3. Personal Responsibility: **Not applicable.**

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?
- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

4. Individual Freedom: **Not applicable.**

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?
- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

5. Family Empowerment: **Not applicable.**

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- 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:

Section 633.35, Florida Statutes.

E. SECTION-BY-SECTION RESEARCH:

Section 1: Amending s. 633.35, F.S.; providing for the issuance of a special certificate for administrative and command heads; providing guidelines for certain reexaminations.

Section 2: Providing that the act shall take effect July 1, 1998.

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:

None.

4. Total Revenues and Expenditures:

None.

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.

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

None.

D. FISCAL COMMENTS:

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take 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 any state tax shared with counties or municipalities.

V. COMMENTS:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON AGRICULTURE:

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