

STORAGE NAME: h2111a.grr

DATE: April 5, 2000

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL RULES & REGULATIONS
ANALYSIS**

BILL #: HB 2111 (PCB LECP 00-05)

RELATING TO: Rulemaking Authority/ Florida Department of Law Enforcement

SPONSOR(S): Committee on Law Enforcement & Crime Prevention and Representative Futch

TIED BILL(S):

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

- (1) LAW ENFORCEMENT & CRIME PREVENTION YEAS 7 NAYS 0
 - (2) GOVERNMENTAL RULES & REGULATIONS YEAS 6 NAYS 0
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

In 1999, the Legislature clarified the rulemaking standards for agency rules set forth in ss. 120.52(8) and 120.536(1), F.S. See ch. 99-379, Laws of Florida. As part of this clarification process, the Legislature provided a procedure by which agencies would review their rules and identify those rules which exceeded the clarified standards. These rules were to be reported to the Joint Administrative Procedures Committee (JAPC) by October 1, 1999, and authorizing legislation was to be considered in the 2000 Regular Session. Identified laws are shielded from challenge as to legal basis through July 1, 2001.

Pursuant to this legislative directive, the Florida Department of Law Enforcement reviewed its rules and rulemaking authority, and reported to JAPC those rules, or portion thereof, which exceeded the standard. Subsequently, statutory language authorizing the identified rules was incorporated into HB 2111.

HB 2111 provides specific rulemaking authority with regard to

- procedures for notification and claims of rewards for reports of false bombs (s. 943.03);
- certification and discipline of instructors at criminal justice training schools (s. 943.14);
- providing criteria for exemption from completion of a commission approved training program;
- rules relating to breath, blood, and urine tests for alcohol and controlled substances under Chapters 316, 322, and 327, Florida Statutes; and
- defining acts of misconduct and setting standards of disciplinary action for its employees (s. 943.03).

HB 2111 provides specific rulemaking authority for those rules of the Florida Department of Law Enforcement that were found to exceed statutory authority, based on the new rulemaking standards set forth by the Legislature during the 1999 session.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Rulemaking Authority

In 1996, the Legislature significantly revised the Administrative Procedure Act (APA) which was designed to require executive branch agencies to more closely adhere to statutory authority when agencies adopt rules. The 1996 amendments contained a new section, s. 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 "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 (JAPC) the list of rules which exceeded the new "map-tack" standard.

Rules placed on the list were temporarily "shielded" from legal challenges of invalidity under the new "map-tack" provision. This "shield" left 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 enacted during the 1998 session provided statutory support for the rule, it remained in effect. On the other hand, the statute directed 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.

Subsequent to the 1996 amendments to the APA, several appellate cases have sought to interpret the "map-tack" standard. In *St. Johns River Water Management District v. Consolidated-Tomoka Land Co., et al*, 717 So.2d 72 (Fla. 1st DCA July 29, 1998), the petitioner land owners challenged proposed rules of the District that would create a regulatory subdistrict in the Spruce Creek and Tomoka River Hydrologic Basins, and would

create new standards for managing and storing surface waters in developments within this basin. *Tomoka* at 717 So.2d 75. An Administrative Law Judge (ALJ) in the Division of Administrative Hearings held that although the proposed rules were not arbitrary or capricious, were supported by competent and substantial evidence, and substantially accomplish the statutory objectives, the rules were invalid as a matter of law because the rules lacked the underlying statutory detail required by the new rulemaking standard in ss. 120.52(8) and 120.536(1), F.S. *Id.* at 76. The District appealed on this issue.

The First District Court of Appeal reversed the ALJ's final order, holding the proposed rules valid. In doing so, the court applied a "functional test based on the nature of the power or duty at issue and not on the level of detail in the language of the applicable statute." *Tomoka* at 717 So.2d 80.

The question is whether the rule falls within the range of powers the Legislature has granted to the agency for the purpose of enforcing or implementing the statutes within its jurisdiction. A rule is a valid exercise of delegated legislative authority if it regulates a matter directly within the class of powers and duties identified in the statute to be implemented. *Id.* In applying this test, the court found that delegated legislative authority was to identify geographic areas that require greater environmental protection and to impose more restrictive permitting requirements in those areas. *Id.* at 81. The challenged rules fell within the class of powers delegated by the statute and therefore were a valid exercise of delegated legislative authority. *Id.*

The 1999 legislature amended the Administrative Procedure Act (APA) to provide that an agency may adopt only rules that implement or interpret "specific powers and duties" granted by statute. Chapter 99-370, Laws of Florida, clarified the rulemaking standard to reflect the legislature's intent to limit the authority of agencies to adopt rules. The 1999 revision rejected the judicial interpretation in the *Consolidated-Tomoka* case which created a functional test to determine whether a challenged agency rule is directly within their class of powers and duties. The legislature again recognized that revising the standard to determine the validity of rules might suddenly invalidate many rules which had been adopted or reviewed under a different interpretation of the 1996 standard. Consequently, ch. 99-370, Laws of Florida, provided for another round of rule review and authorization. Agencies reviewed existing rules and provided in, October 1999, to the Joint Administrative Procedures Committee a list of rules adopted before June 18, 1999, which exceed the new standards for rulemaking authority found in s. 120.536(1), F.S. The Legislature will consider in the 2000 Regular Session specific legislation that would authorize the identified rules. For those rules not authorized, the agencies are to initiate repeal proceedings by January 1, 2001. The JAPC or any substantially affected person may petition for repeal of an identified rule after July 1, 2001.

C. EFFECT OF PROPOSED CHANGES:

HB 2111 provides specific rulemaking authority with regard to

- procedures for notification and claims of rewards for reports of false bombs (s. 943.03);
- certification and discipline of instructors at criminal justice training schools (s. 943.14);
- providing criteria for exemption from completion of a commission approved training program;
- rules relating to breath, blood, and urine tests for alcohol and controlled substances under Chapters 316, 322, and 327, Florida Statutes; and

- defining acts of misconduct and setting standards of disciplinary action for its employees (s. 943.03).

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 316.1932(1), F.S., dealing with breath, blood, and urine tests for alcohol, chemical substances, or controlled substances for operators of motor vehicles. It specifically makes the Alcohol Testing Program within the Department of Law Enforcement responsible for the regulation of the operation, inspection, and registration of breath test instruments used under DUI provisions set forth in the statutes. This section provides rule authority for rules of the Florida Department of Law Enforcement set forth in Chapter 11D-8, Florida Administrative Code. Specifically, it provides rule authority for definitions set forth in 11D-8.02; for department inspection and registration of breath test operators and agency inspectors set forth in 11D 8.04; for criteria and qualifications for permitting breath test operators and agency inspectors in 11-D 8.08; for establishing qualifications for instructors in 11D-8.010; for the criteria and qualifications for permitting blood alcohol permits and analysts in 11D-8.013; for specifications regarding the renewal of blood alcohol permits and analysts in 11D-8.014 and for the criteria regarding the denial, revocation, and suspension of permits in 11D-8.015.

Section 2: Amends s. 322.63(3), F.S., dealing with alcohol or drug testing for commercial motor vehicle operators. It specifically makes the Alcohol Testing Program within the Department of Law Enforcement responsible for the regulation of the operation, inspection, and registration of breath test instruments used under DUI provisions set forth in the statutes, but specifically with respect to commercial motor vehicle operators.

Section 3: Amends s. 327.352, F.S., dealing with breath, blood and urine tests for alcohol, chemical substances, or controlled substances, with regard to vessels. It specifically makes the Alcohol Testing Program within the Department of Law Enforcement responsible for the regulation of the operation, inspection, and registration of breath test instruments used under DUI provisions set forth in the statutes, but specifically with respect to vessels.

Section 4: Amends s. 943.03(4), F.S., to authorize rulemaking for statutory duties in rules regarding procedures for notification and claims of rewards for reports of false bombs. This section provides rulemaking authority for rules of the Department of Law Enforcement set forth in Chapter 11-2, Florida Administrative Code. [Currently, s. 790.164(c) only states that "The Department of Law enforcement **shall establish procedures** to be used by all reward applicants, and that the circuit judge in whose jurisdiction the action occurs shall review all applications and make final determination as to those applicants entitled to receive an award."] In addition, this section authorizes rulemaking authority for definitions pertaining to misconduct of agency employees, and setting standards of disciplinary action for agency employees. These rules are set forth in Chapter 11I-1, Florida Administrative Code. [Previously, rulemaking authority was provided in s. 110.201(2), but has since been repealed, leaving agencies without authority to provide definitions for employee misconduct that would specifically relate to the particular agency.]

Section 5: Amends s. 943.131(2), F.S., to provide criteria and procedures for exemption from completion of a commission approved basic recruit training program. This section provides rule authority for rules of the Department of Law Enforcement set forth in Chapter 11B-35, Florida Administrative Code. [Currently, s. 943.131(2), F.S., requires that the *Commission* approve exemptions, but the rule delegates that authority to Commission *staff*.]

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Section 6: Amends s. 943.14(3), F.S., dealing with certification of Criminal Justice Standards and Training instructors, and provides rule authority for the discipline of instructors in criminal justice training schools. This section provides rule authority for rules of the Department of Law Enforcement set forth in Chapter 11B-20, Florida Administrative Code. [Currently, there exists no statutory authority for the Criminal Justice Standards and Training Commission in criminal justice training schools. The statutes provide only for the certification of instructors.] Rule 11B-20.0012 delineates the disciplinary procedures for instructors accused of violating rule requirements.

Section 7: Provides that the bill shall take effect upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

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B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

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

N/A

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

This bill authorizes rulemaking authority for the Florida Department of Law Enforcement.

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON LAW ENFORCEMENT AND CRIME PREVENTION:

Prepared by:

Staff Director:

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AS REVISED BY THE COMMITTEE ON GOVERNMENTAL RULES & REGULATIONS:

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