HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB RCEC 16-04 Rulemaking Repeals
SPONSOR(S): Rules, Calendar & Ethics Committee; Eisnaugle
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Rules, Calendar & Ethics Committee	16 Y, 0 N	Stranburg	Birtman

SUMMARY ANALYSIS

Section 11.242(5)(j), F.S., directs the Office of Legislative Services to include duplicative, redundant, or unused statutory rulemaking authority among its proposed repeals in reviser's bill recommendations. The purpose of this directive is not to diminish the authority of executive branch agencies to adopt administrative rules necessary to implement their statutory responsibilities but to remove unnecessary text from the statutes.

This reviser's bill removes such rule authorizing provisions through revision of existing statutes or repeal of unnecessary provisions. The bill also makes conforming changes to correct cross-references.

Pursuant to House Rule 12.3(e), a reviser's bill cannot be amended except to delete one or more bill sections.

The effective date of the bill is the 60th day after adjournment sine die.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

1. *Statutory Delegation of Authority to Make Rules*

A rule is an agency statement of general applicability which interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency, as well as certain types of forms.[1] Rulemaking authority is delegated by the Legislature[2] by law authorizing an agency to "adopt, develop, establish, or otherwise create"[3] a rule. Agencies do not have discretion whether to engage in rulemaking.[4] To adopt a rule an agency must have an express grant of authority to implement a specific law by rulemaking.[5] The grant of rulemaking authority itself need not be detailed.[6] The particular statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.[7] A delegation of authority to an administrative agency by a law that is vague, uncertain, or so broad as to give no notice of what actions would violate the law, could be ruled unconstitutional because it allows the agency to state what the law is.[8] The Legislature must provide minimal standards and guidelines in the law creating a program to provide for its proper administration by the assigned executive agency. The Legislature may delegate rule-making authority to agencies but not the authority to determine what the law should be.[9]

Legislation creating new programs or modifying existing ones may include an additional grant of authority for the responsible agency to create rules for administering the statute. Such language can be redundant of a broader grant of authority for the agency to adopt rules implementing the full statutory chapter or part and often is never used to support subsequent rulemaking because the existing authority is legally sufficient.

Other grants of rulemaking authority are superfluous because the substantive legislation provides sufficient guidance and detail for the agency to implement the program requirements without any additional rulemaking. Such grants of rulemaking authority remain in statutes unused because they serve no practical purpose.

2. *Annual Review of Rulemaking Authority*

In 2012 the Legislature directed the Office of Legislative Services (OLS), through the process of duly proposed reviser's bills, to omit duplicative, redundant, or unused grants of rulemaking authority from inclusion in the statutes. Rulemaking authority is deemed unused if the provision has been in effect for more than 5 years without being relied upon to adopt rules.[10]

This bill implements that oversight of rulemaking authority. In preparing the bill OLS, together with the respective staffs of the Joint Administrative Procedures Committee (JAPC) and the House Rulemaking Oversight & Repeal Subcommittee developed a list of statutory grants of rulemaking authority that initially appeared to meet the requirements for omission. This summary then was submitted for review and comment by the staff of other substantive House committees, which in turn consulted with the

[1] Section 120.52(16), F.S.; *Florida Department of Financial Services v. Capital Collateral Regional Counsel-Middle Region*, 969 So.2d 527, 530 (Fla. 1st DCA 2007).
[2] *Southwest Florida Water Management District v. Save the Manatee Club, Inc.,* 773 So.2d 594 (Fla. 1st DCA 2000).
[3] Section 120.52(17), F.S.
[4] Section 120.54(1)(a), F.S.
[5] Section 120.52(8) & s. 120.536(1), F.S.
[6] *Save the Manatee Club*, *Inc.*, supra at 599.
[7] *Sloban v. Florida Board of Pharmacy*, 982 So.2d 26, 29-30 (Fla. 1st DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.,* 794 So.2d 696, 704 (Fla. 1st DCA 2001).
[8] *Conner v. Joe Hatton*, *Inc.,* 216 So.2d 209 (Fla.1968).
[9] *Sarasota County. v. Barg*, 302 So.2d 737 (Fla. 1974).
[10] Section 11.242(5)(j), F.S., as amended by Chapter 2012-116, s. 9, Laws of Florida.

various administrative agencies affected by the proposed revisions. Adhering to the recommendations received from the other substantive committees, the final list of sections was included in the bill.

The present bill is technical and non-substantive, amending or deleting various statutory provisions or language to omit duplicative, redundant, or unused and unnecessary grants of rulemaking authority. Where necessary, the bill also deletes expired or obsolete language, corrects cross-references and grammatical errors, and improves the clarity of the statutes to facilitate correct and proper interpretation relative to legislative grants of rulemaking authority to administrative agencies.

B. SECTION DIRECTORY:

For each of the following sections the statutory rulemaking authority being amended or repealed has not been used to adopt rules in more than 5 years and thus is unnecessary for the particular agency to implement its statutory responsibilities.

Section 1 amends s. 487.064, F.S., to remove unused rulemaking authority of the Department of Agriculture and Consumer Services (DACS) regulating certain pesticide handling devices or locations.

Section 2 amends s. 487.071, F.S., to remove rule authorizing language that is redundant to authority of DACS under s. 570.07(23), F.S.

Section 3 amends s. 493.6113, F.S., to remove rule authorizing language that is redundant to authority of DACS under s. 570.07(23), F.S.

Section 4 amends s. 493.6115, F.S., to remove rule authorizing language that is redundant to authority of DACS under ss. 493.6103 and 570.07(23), F.S.

Section 5 amends s. 570.921, F.S., to delete an unnecessary consultation requirement in certain rulemaking and to remove rule authorizing language that is redundant to authority of DACS under s. 570.07(23), F.S.

Section 6 amends s. 573.1201, F.S., to remove procedural rulemaking authority respecting exemptions from agricultural marketing orders that is redundant to authority of DACS under s. 570.07(23), F.S.

Section 7 amends s. 583.181, F.S., to remove rule authorizing language respecting facilities and equipment used with dead poultry and hatchery residue that is redundant to authority of DACS under ss. 570.07(23) and 583.04, F.S.

Section 8 amends s. 593.107, F.S., to remove rule authorizing language respecting cotton grower records that is redundant to authority of DACS under ss. 570.07(23) and 593.103(2), F.S.

Section 9 provides for an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Please see FISCAL COMMENTS in Part II, Section D.

2. Expenditures:

   Please see FISCAL COMMENTS in Part II, Section D.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Please see FISCAL COMMENTS in Part II, Section D.

2. Expenditures:

Please see FISCAL COMMENTS in Part II, Section D.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Please see FISCAL COMMENTS in Part II, Section D.

D. FISCAL COMMENTS:

This reviser's bill is a technical, non-substantive bill. The bill has no fiscal impact on state or local governments or on the private sector.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take any action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

N/A

B. RULE-MAKING AUTHORITY:

This reviser's bill removes unnecessary grants of rulemaking authority from the statutes but does not substantively affect the necessary rulemaking authority of any agency.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES