

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7039 PCB RUC 22-04 Florida Statutes

SPONSOR(S): Rules Committee, Clemons

TIED BILLS: IDEN./SIM. **BILLS:** SB 852

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Rules Committee	15 Y, 0 N	Johnson	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.

Pursuant to House Rule 12.3(e), a reviser’s bill cannot be amended except to delete 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:

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 Legislature² 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 rulemaking 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.

Annual Review of Rulemaking Authority

In 2012, the Legislature directed the Office of Legislative Services (OLS), through the process of 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 five years without being relied upon to adopt rules.¹⁰

This bill implements that oversight of rulemaking authority. In preparing the bill, OLS, together with staff of the Joint Administrative Procedures Committee (JAPC), developed a list of statutory grants of rulemaking authority that initially appeared to meet the requirements for repeal. This summary was submitted for review and comment by staff of the substantive House committees, which in turn consulted with the various administrative agencies affected by the proposed revisions. Adhering to the

¹ Section 120.52(16), F.S.; *Fla. Dep’t of Fin. Services v. Capital Collateral Reg’l Counsel-Middle Region*, 969 So.2d 527, 530 (Fla. 1st DCA 2007).

² *Sw. Fla. Water Mgmt. Dist. 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. Fla. Bd. of Pharmacy*, 982 So.2d 26, 29-30 (Fla. 1st DCA 2008); *Bd. of Trustees of the Internal Improvement Trust Fund v. Day Cruise Ass’n, Inc.*, 794 So.2d 696, 704 (Fla. 1st DCA 2001).

⁸ *Conner v. Joe Hatton, Inc.*, 216 So.2d 209 (Fla.1968).

⁹ *Sarasota Cnty. 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.

recommendations received from staff of the substantive committees, the final list of sections was included in the bill.

The present bill is non-substantive and amends or deletes 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. For each of the sections included in this bill, the statutory rulemaking authority being amended or repealed has not been used to adopt rules in more than five years and thus is unnecessary for the particular agency to implement its statutory responsibilities.

B. SECTION DIRECTORY:

Section 1 amends s. 267.1736, F.S., to remove unused rulemaking authority from the University of Florida allowing the university to adopt rules governing a direct-support organization tasked with assisting the university in carrying out its dual historic preservation and historic preservation education purposes and responsibilities for the City of St. Augustine, St. Johns County.

Section 2 amends s. 341.822, F.S., to remove unused rulemaking authority from the Florida Rail Enterprise allowing the enterprise to adopt rules to administer permits issued to railroad companies for the purpose of constructing communication facilities within a new or existing public or private high-speed rail system.

Section 3 amends s. 341.840, F.S., to remove unused rulemaking authority from the Florida Rail Enterprise and the Department of Revenue (DOR). The former allowing the enterprise to adopt rules governing the application process for exemption from sales and use tax when a contractor is deemed an authorized agent of the enterprise. The latter allowing DOR to adopt rules governing the issuance and form of high-speed rail system exemption permits, the audit of contractors using such permits, the recapture of taxes on certain purchases, and the manner and form of refund applications.

Section 4 amends s. 475.631, F.S., to remove unused rulemaking authority from the Florida Real Estate Appraisal Board allowing the board to adopt rules regulating nonresident certified real estate appraisers or licensees.

Section 5 amends s. 482.0815, F.S., to remove unused rulemaking authority from the Department of Agriculture and Consumer Services requiring the department adopt rules to administer permits issued to pest control businesses to perform preventive termite treatments for new construction.

Section 6 amends s. 497.150, F.S., to remove unused rulemaking authority from the Department of Financial Services (DFS) allowing DFS to adopt rules relating to the examination of the facilities, records, operations, trust accounts, and financial affairs of licensees licensed under chapter 497, F.S.

Section 7 amends s. 497.160, F.S., to remove unused rulemaking authority from DFS allowing DFS to adopt rules regarding the appointment of the state as a court-appointed receiver of any licensee or revoked or suspended licensee or person who has without license conducted activities requiring licensure under chapter 497, F.S.

Section 8 provides an effective date of the 60th day after adjournment sine die.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

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

Not applicable.