

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB RCEC 15-04 Rulemaking Repeals

**SPONSOR(S):** Rules, Calendar & Ethics Committee

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Rules, Calendar & Ethics Committee		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 60<sup>th</sup> 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.<sup>1</sup> Rulemaking authority is delegated by the Legislature<sup>2</sup> by law authorizing an agency to “adopt, develop, establish, or otherwise create”<sup>3</sup> a rule. Agencies do not have discretion whether to engage in rulemaking.<sup>4</sup> To adopt a rule an agency must have an express grant of authority to implement a specific law by rulemaking.<sup>5</sup> The grant of rulemaking authority itself need not be detailed.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup>

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.<sup>10</sup>

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

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<sup>1</sup> Section 120.52(16), F.S.; *Florida Department of Financial Services v. Capital Collateral Regional Counsel-Middle Region*, 969 So.2d 527, 530 (Fla. 1<sup>st</sup> DCA 2007).

<sup>2</sup> *Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So.2d 594 (Fla. 1<sup>st</sup> DCA 2000).

<sup>3</sup> Section 120.52(17), F.S.

<sup>4</sup> Section 120.54(1)(a), F.S.

<sup>5</sup> Section 120.52(8) & s. 120.536(1), F.S.

<sup>6</sup> *Save the Manatee Club, Inc.*, supra at 599.

<sup>7</sup> *Sloban v. Florida Board of Pharmacy*, 982 So.2d 26, 29-30 (Fla. 1<sup>st</sup> DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, 794 So.2d 696, 704 (Fla. 1<sup>st</sup> DCA 2001).

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

<sup>9</sup> *Sarasota County. v. Barg*, 302 So.2d 737 (Fla. 1974).

<sup>10</sup> 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. 257.171, F.S., to remove text granting duplicative, redundant, or unused rulemaking authority. This statute authorizes the Division of Library and Information Services to adopt rules under which a multicounty library is eligible to receive state moneys. Section 257.14, F.S., provides authority sufficient to adopt any rules necessary to implement every provision of ch. 257.

Section 2 amends s. 257.193, F.S., by removing the rulemaking authority of the Department of State over the Community Libraries in Caring program. The provision is redundant to the rulemaking authority under s. 257.14, F.S.

Section 3 amends s. 257.43, F.S., by removing the rulemaking authority of the Division of Library and Information Services to adopt rules relating to use of administrative services and property by citizen support organizations. The provision is redundant to the Division's rulemaking authority under s. 257.14, F.S.

Section 4 amends s. 393.0651, F.S., by removing the rulemaking authority of the Agency for Persons with Disabilities to adopt rules relating to family or individual support plans. The provision is redundant to the Agency's rulemaking authority under s. 393.501, F.S.

Section 5 amends s. 393.066, F.S., by removing the rulemaking authority of the Agency for Persons with Disabilities to adopt rules relating to community services and treatment. The provision is redundant to the Agency's rulemaking authority under s. 393.501, F.S.

Section 6 amends s. 394.4789, F.S., by removing the rulemaking authority of the Department of Children and Families to adopt rules relating to a referral process for hospital care for indigent mentally ill persons. The provision is redundant to the provisions of ch. 120, F.S., and the Department's rulemaking authority under s. 394.457(5)(b), F.S.

Section 7 amends s. 394.495, F.S., by removing the rulemaking authority for the Department of Children and Families to adopt rules setting standards for child and adolescent mental health assessments.

Section 8 amends s. 394.496, F.S., by removing the rulemaking authority for the Department of Children and Families to adopt rules relating to mental health services planning for children or adolescents.

Section 9 amends s. 394.497, F.S., by removing the rulemaking authority for the Department of Children and Families to adopt rules relating to target populations for case managers.

Section 10 amends s. 397.406, F.S., by removing the rulemaking authority for the Department of Children and Families to adopt rules relating to licensure and regulation of government-operated substance abuse programs. The provision is redundant to the Department's rulemaking authority under s. 397.321(5), F.S.

Section 11 amends s. 397.407, F.S., by removing the rulemaking authority for the Department of Children and Families to adopt rules relating to licensure of government-operated substance abuse programs. The provision is redundant to the provisions of ch. 120, F.S., and the Department's rulemaking authority under s. 397.321(5), F.S.

Section 12 amends s. 397.427, F.S., by removing the rulemaking authority for the Department of Children and Families to adopt rules relating to medication-assisted treatment service providers. The provision is redundant to the Department's rulemaking authority under s. 397.321(5), F.S.

Section 13 amends s. 397.471, F.S., by removing the rulemaking authority of the Department of Children and Families to adopt rules relating to service provider facility standards. The provision is redundant to the Department's rulemaking authority under s. 397.321(5), F.S.

Section 14 amends s. 397.901, F.S., by removing the rulemaking authority of the Department of Children and Families to adopt rules relating to prototype juvenile addictions receiving facilities. The provision is redundant to the Department's rulemaking authority under s. 397.321(5), F.S.

Section 15 amends s. 397.96, F.S., by removing the rulemaking authority of the Department of Children and Families to adopt rules relating to case management for complex substance abuse cases. The provision is redundant to the Department's authority under s. 397.321(5), F.S.

Section 16 amends s. 400.147, F.S., by removing the rulemaking authority of the Agency for Health Care Administration to adopt rules relating to internal risk management and quality assurance of nursing homes. The provision is redundant to the Agency's authority under s. 400.23, F.S.

Section 17 amends s. 401.113, F.S., by removing the rulemaking authority of the Department of Health to adopt rules relating to the Emergency Medical Services Trust Fund. The provision is redundant to the Department's rulemaking authority under s. 401.121, F.S.

Section 18 amends s. 401.252, F.S., by removing the rulemaking authority of the Department of Health to adopt rules relating to interfacility transport by ambulance service. The provision is redundant to the Department's rulemaking authority under s. 401.35, F.S.

Section 19 amends s. 401.34, F.S., by removing the rulemaking authority of the Department of Health to adopt rules relating to fees for same-day grading of examinations for emergency medical technician or paramedic certification. The provision is redundant to the provisions of ch. 120, F.S., and the Department's rulemaking authority under s. 401.35, F.S.

Section 20 amends s. 402.04, F.S., by removing the rulemaking authority of the Department of Children and Families to adopt rules relating to payment of scholarships and stipends. The Department has indicated that it does not need the rulemaking authority granted by this section.

Section 21 amends s. 402.47, F.S., by removing the rulemaking authority of the Department of Children and Families to adopt rules relating to the foster grandparent program. The Department has indicated that it does not need the rulemaking authority granted by this section.

Section 22 amends s. 403.414, F.S., by removing the rulemaking authority of the Department of Environmental Protection to adopt rules relating to the environmental award program. The provision is redundant to the Department's rulemaking authority under s. 403.061(7), F.S.

Section 23 amends s. 403.510, F.S., by removing the rulemaking authority of the Electrical Power Plant Siting Board to adopt rules relating to licensure of power plant sites. The provision is redundant to the Board's rulemaking authority under s. 403.504(1), F.S.

Section 24 amends s. 403.7061, F.S., by removing the rulemaking authority of the Department of Environmental Protection to adopt rules relating to waste-to-energy facilities. The provision is redundant to the Department's rulemaking authority under s. 403.704(9), F.S.

Section 25 amends s. 403.763, F.S., by removing the rulemaking authority of the Department of Environmental Protection to adopt rules relating to grants to local governments to collect, reuse, or dispose of used oil. The provision is redundant to the Department's rulemaking authority under s. 403.704(9), F.S.

Section 26 amends s. 403.871, F.S., by removing the rulemaking authority of the Department of Environmental Protection to adopt rules relating to fees for licensure of water treatment plants. The provision is redundant to the provisions of ch. 120, F.S., and the Department's rulemaking authority under s. 403.861(9), F.S.

Section 27 amends s. 403.873, F.S., by removing the rulemaking authority of the Department of Environmental Protection to adopt rules relating to renewal of licenses for water treatment plants. The provision is redundant to the Department's rulemaking authority under s. 403.861(9), F.S.

Section 28 amends s. 403.874, F.S., by removing the rulemaking authority of the Department of Environmental Protection to adopt rules relating to inactive status for licenses for water treatment plants. The provision is redundant to the Department's rulemaking authority under s. 403.861(9), F.S.

Section 29 amends s. 403.876, F.S., by removing the rulemaking authority of the Department of Environmental Protection to adopt rules relating to grounds for disciplinary action for water treatment plants. The provision is redundant to the provisions of ch. 120, F.S., and the Department's rulemaking authority under s. 403.861(9), F.S.

Section 30 amends s. 403.942, F.S., by removing the rulemaking authority of the Natural Gas Transmission Pipeline Siting Board to adopt rules relating to licensure of natural gas pipelines. The provision is redundant to the Board's rulemaking authority under s. 403.9404, F.S.

Section 31 amends s. 406.11, F.S., by removing the rulemaking authority of the Medical Examiners Commission to adopt rules relating to examinations, investigations, and autopsies. The provision is redundant to the Commission's rulemaking authority under s. 406.04, F.S.

Section 32 amends s. 409.2598, F.S., by removing the rulemaking authority of the Department of Revenue to adopt rules relating to license suspension proceeding to enforce support orders. The Department has indicated that it does not need the rulemaking authority granted by this section.

Section 33 amends s. 409.9102, F.S., by removing the rulemaking authority of the Agency for Health Care Administration and the Department of Children and Families to adopt rules relating to the long-term care insurance partnership program. The provision is redundant to the Agency's and Department's rulemaking authorities under s. 409.919, F.S.

Section 34 repeals s. 415.112, F.S. The Department of Children and Families indicated that they do not require this provision.

Section 35 amends s. 420.526, F.S., by removing the rulemaking authority of the Florida Housing Finance Corporation to adopt rules relating to the Predevelopment Loan Program. The provision is redundant to the provisions of ch. 120, F.S., and the Corporation's rulemaking authority under s. 420.507(12), F.S.

Section 36 amends s. 420.527, F.S., by removing the rulemaking authority of the Florida Housing Finance Corporation to adopt rules relating to application for a loan. The provision is redundant to the provisions of ch. 120, F.S., and the Corporation's rulemaking authority under 420.507(12), F.S.

Section 37 amends s. 429.44, F.S., by removing the rulemaking authority of the Department of Elderly Affairs to adopt rules relating to construction and renovation of assisted care communities. The Department has indicated that it does not need the rulemaking authority granted by this section.

Section 38 amends s. 467.0125, F.S., by removing the rulemaking authority of the Department of Health to adopt rules relating to licensure of midwifery. The provision is redundant to the Department's rulemaking authority under s. 467.005, F.S.

Section 39 amends s. 467.013, F.S., by removing the rulemaking authority of the Department of Health to adopt rules relating to inactive status of a midwifery license. The provision is redundant to the provisions of ch. 120, F.S., and the Department's rulemaking authority under 467.005, F.S.

Section 40 amends s. 467.019, F.S., by removing the rulemaking authority of the Department of Health to adopt rules relating to midwifery records. The provision is redundant to the Department's rulemaking authority under s. 467.005, F.S.

Section 41 amends 468.1165, F.S., by removing the rulemaking authority of the Board of Speech-Language Pathology and Audiology to adopt rules relating to professional employment experience. The provision is redundant to the Board's authority under s. 468.1135(4)(a), F.S.

Section 42 amends s. 468.307, F.S., by removing the rulemaking authority of the Department of Health to adopt rules relating to certification of radiological personnel. The provision is redundant to the provisions of ch. 120, F.S., and the Department's rulemaking authority under s. 468.303, F.S.

Section 43 amends s. 468.3851, F.S., by removing the rulemaking authority of the Department of Business and Professional Regulation to adopt rules relating to renewal of auctioneer's license. The provision is redundant to the Department's rulemaking authority under s. 468.384(2), F.S.

Section 44 amends s. 468.3852, F.S., by removing the rulemaking authority of the Department of Business and Professional Regulation to adopt rules relating to reactivation of auctioneer's license. The provision is redundant to the provisions of ch. 120, F.S., and the Department's rulemaking authority under s. 468.384(2), F.S.

Section 45 amends s. 468.404, F.S., by removing the rulemaking authority of the Department of Business and Professional Regulation to adopt rules relating to licensing fees for talent agencies. The provision is redundant to the provisions of ch. 120, F.S., and the Department's rulemaking authority under s. 468.402(3), F.S.

Section 46 amends s. 468.435, F.S., by removing the rulemaking authority of the Department of Business and Professional Regulation to adopt rules relating to licensure fees for community association management. The provision is redundant to the provisions of ch. 120, F.S., and the Department's rulemaking authority under s. 468.4315(2), F.S.

Section 47 amends s. 468.532, F.S., by removing the rulemaking authority of the Board of Employee Leasing Companies to adopt rules relating to discipline of employee leasing companies. The provision is redundant to the provisions of ch. 120, F.S., and the Board's rulemaking authority under s. 468.522, F.S.

Section 48 amends s. 468.8312, F.S., by removing the rulemaking authority of the Department of Business and Professional Regulation to adopt rules relating to fees for home inspector licensure. The provision is redundant to the provisions of ch. 120, F.S., and the Department's rulemaking authority under s. 468.8325, F.S.

Section 49 amends s. 468.8317, F.S., by removing the rulemaking authority of the Department of Business and Professional Regulation to adopt rules relating to inactive home inspector licenses. The provision is redundant to the Department's rulemaking authority under s. 468.8325, F.S.

Section 50 amends s. 468.8412, F.S., by removing the rulemaking authority of the Department of Business and Professional Regulation to adopt rules relating to fees for mold-related services licensure. The provision is redundant to the provisions of ch. 120, F.S., and the Department's rulemaking authority under s. 468.8424, F.S.

Section 51 amends s. 476.214, F.S., by removing the rulemaking authority of the Department of Business and Professional Regulation to adopt rules relating to suspending revoking or refusing to grant barbering license or certificate. The provision is redundant to the Department's rulemaking authority under s. 476.064(4), F.S.

Section 52 amends s. 477.022, F.S., by removing the rulemaking authority of the Department of Business and Professional Regulation to adopt rules relating to examinations for cosmetology licensure. The provision is redundant to the Department's rulemaking authority under s. 477.016(1), F.S.

Section 53 amends s. 479.07, F.S., by removing the rulemaking authority of the Department of Transportation to adopt rules relating to fees for sign permits. The provision is redundant to the Department's rulemaking authority under s. 479.02(7), F.S.

Section 54 amends s. 481.205, F.S., by removing the rulemaking authority of the Board of Architecture and Interior Design to adopt rules relating to oversight of licensees. The provision is redundant to the provisions of ch. 120, F.S., and to the Board's rulemaking authority under s. 481.2055, F.S.

Section 55 amends s. 502.121, F.S., by removing the rulemaking authority of the Department of Agriculture and Consumer Services to adopt rules relating to future dairy farms and milk and frozen dessert plants. The provision is redundant to the provisions of ch. 120, F.S., and the Department's rulemaking authority under s. 502.014(5), F.S.

Section 56 amends s. 509.035, F.S., by removing the rulemaking authority of the Division of Hotels and Restaurants of the Department of Business and Professional Regulation to adopt rules relating to immediate closure of facilities due to severe public health threat. The provision is redundant to the Division's rulemaking authority under s. 509.032(6), F.S.

Section 57 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**