

DATE: May 6, 1981

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

| <u>Analyst</u> | <u>Staff Director</u> | <u>Reference</u> | <u>Action</u> |
|----------------------|-----------------------|------------------|---------------|
| 1. <u>Kolchakian</u> | <u>Overstreet</u> | 1. <u>G.O.</u> | <u>Fav/CS</u> |
| 2. _____ | _____ | 2. _____ | _____ |
| 3. _____ | _____ | 3. _____ | _____ |

SUBJECT: Administrative Procedure Act

BILL No. AND SPONSOR:
CS/SB 866 By Governmental
Operations and Senators
Neal, Ware and Jenne

I. SUMMARY:

A. Present Situation:

Chapter 120, F.S., the Administrative Procedure Act, provides that the Department of State (DOS) shall prescribe by rule the form in which agency rules are to be filed. The DOS rule on "Publication by Reference," section 1S-1.005, Florida Administrative Code, authorizes any ordinance, standard, specification, or similar material to be published by reference in a rule subject to specified conditions. The material must be generally available to the persons affected and the material must be published by a governmental agency or a professional organization which is generally recognized. The rule also requires the agency publishing material by reference to file a copy of the reference material, a description of the material, and the title of the rule to which the material relates. The rule further provides that amendments to material published by reference must be promulgated under the rulemaking provisions of chapter 120, F.S., in order for the amended sections to be validly incorporated. Section 120.54(8), F.S., provides that no rule shall be amended by reference only.

Chapter 120, F.S., requires agencies to file rules on which no public hearing is held not less than 21 days nor more than 90 days after the agency gives notice of the intended action. If a public hearing is held, the rule must be filed within 21 days after receipt of all material authorized to be submitted at the hearing, or within 21 days after receipt of the transcript of the hearing, whichever occurs later. If a public hearing is held and no material is authorized to be submitted and no transcript is made, the rule shall be filed not less than 21 days nor more than 90 days after the agency gives notice of the intended action. The DOS is required to reject any rule not filed within the prescribed time limits.

Chapter 120, F.S., requires agencies to write an economic impact statement for each rule adopted. Section 120.545, F.S., authorizes the Joint Administrative Procedures Committee to review rules to determine if they are within statutory authority, reiterate or

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paraphrase statutory material, are in proper form, and were adopted after proper notice was given. The committee may object to the agency on these grounds. The agency may either modify or refuse to modify the rule to meet the objection.

The rules of approximately two-thirds of state agencies contain some forms in addition to textual material. Approximately three-fourths of state agencies feel that there should be no requirement that their forms be published in the rules.

The requirement which was contained in Chapter 120, F.S., that copies of forms be included in rules was deleted in 1976. The law was amended in 1976 to allow agencies to list forms by reference in a forms index in their rules. Forms which request information or impose requirements not specifically required by statute or existing rule are included in the definition of "rule" under Chapter 120, F.S.

Agency rules are published in the Florida Administrative Code. After July 1, 1981, rules will be published in the Florida Administrative Weekly pursuant to Chapter 80-391, Laws of Florida. Both publications are produced by the Department of State. The inclusion of actual forms increases the size of the total body of rules by approximately 10 percent. Under the 1980 law, the Code will be published by a private firm in an improved format, under a contract which will be entered into by July 1, 1981.

B. Effect of Proposed Changes:

Agencies would be allowed to incorporate material by reference in a rule if the material exists on the date the rule is adopted. DOS would specify by rule the manner in which material of this type would be incorporated by reference. Changes in the incorporated material would not be effective with respect to the rule unless the rule is amended to incorporate the material as changed.

If a public hearing is held on a rule, the rule would have to be filed within 21 days after receipt of all material authorized to be submitted at the hearing, within 21 days after receipt of the transcript of the hearing, or within 21 days after adjournment of the final hearing on the rule, whichever occurs latest. If the rule is not adopted within these time limits, the agency would have to withdraw the rule.

The committee would be authorized to review agency rules to determine whether the economic impact statement accompanying the rule is adequate. The committee could

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object to the rule on this basis. The agency would then be required to prepare a corrected economic impact statement or notify the committee that it refuses to correct it.

Actual forms would not be published in the rules. Agencies would include forms by reference to title, effective date, and a statement of how affected persons can obtain a copy of the form. Forms used by the agency in its dealings with the public would be filed with the Department of State which would send a copy to the Joint Administrative Procedures Committee. The form would not become effective earlier than 20 days after it is filed with the department.

The size of the total body of administrative rules would be reduced by approximately 10 percent.

Forms defined as "rules" under Chapter 120, F.S., those which impose requirements or request information not specifically required by statute or existing rule, would be subject to the existing procedures applicable to other rules. Other forms used by the agency in its dealings with the public would be subject to review and objection by the Joint Administrative Procedures Committee.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Subscribers to the Florida Administrative Code and the Florida Administrative Weekly would pay less as publication costs would decrease with the reduction in size of the body of rules. The amount of savings cannot be quantified at this time as it is not known what the subscription fees will be under the new publication format. Present subscription fees are \$250 for the Code and \$150 for yearly supplements and \$25 per year for the Weekly.

B. Government:

Publication costs of the state for the Code and Weekly would be lower as the size of the body of rules decreases. The amount to be saved cannot be ascertained as it is not yet known how much publication will cost under the new format. Current annual publication costs are approximately \$250,000 for the Code and will be approximately \$100,000 for the Weekly.

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III. COMMENTS:

None

IV. AMENDMENTS:

None