

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
Natural Resources  
FINAL BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**BILL #:** CS/HB 855

**RELATING TO:** The Environmental Regulation Commission

**SPONSOR(S):** Committee on Natural Resources and Representative Eggelletion and Others

**STATUTE(S) AFFECTED:** ss. 20.255, 110.205, 120.54, 403.804, and 403.805, Florida Statutes

**COMPANION BILL(S):** SB 1028 (s), SB 740(s)

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

(1)NATURAL RESOURCES YEAS 20 NAYS 0

(2)APPROPRIATIONS WITHDRAWN

(3)

(4)

(5)

**I. SUMMARY:**

CS/HB 855 accomplishes three objectives. The first part concerns the Environmental Regulation Commission (ERC). It requires some of the members of the ERC to represent the scientific and technical community. In exercising its authority, the ERC is required to consider scientific and technical validity, economic impacts, and relative risks and benefits to the public and environment. It specifically prohibits the ERC from setting policies, priorities, plans, or directives of the Department of Environmental Protection (DEP). CS/HB 855 clarifies in law that the Secretary of the DEP has rulemaking responsibility. The Secretary is required to submit to the ERC for approval, modification or disapproval, rules relating to standards.

Second, CS/HB 855 exempts from the career service system within the DEP, Environmental Administrators and program administrators. Further, it exempts all supervisory engineers from the career service system.

Last, CS/HB 855 contains the substance of CS/HB 399 related to risk analysis, by Representative Eggelletion. It creates an eight member risk-based priority council composed of experts in a variety of scientific disciplines. This council is directed to review a list of items in order to determine the necessity or feasibility of requiring risk-impact statements from agencies when drafting rules affecting human health. The council is required to submit a report to the Governor and the Legislature by October 1, 1996, discussing the circumstances in which risk analysis would serve as an appropriate tool in developing rules for the protection of human health. Beginning October, 1995, the DEP and beginning October 1996, the Department of Agriculture and Consumer Affairs, are required

to prepare risk-impact statements for certain rules that are proposed for adoption. These risk impact statements shall identify the science used by the agencies in arriving at their rules.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

In 1975, the Legislature significantly revised the state's environmental laws and reorganized the Department of Natural Resources, the Department of Pollution Control and the Board of Trustees of the Internal Improvement Trust Fund into two departments. They were the Department of Environmental Regulation (DER) and the Department of Natural Resources (DNR). The former Department of Pollution Control was headed by a board of directors. When DER was created, it was headed for the first time, by a secretary. Due to this new organization, there was substantial industry concern that the secretary of the newly created DER could wield too much exclusive authority . As a result, the Legislature also created the ERC to set standards and to act as an adjudicatory body on almost all DER actions. In 1980, the Legislature removed the ERC's adjudicatory role, but more clearly specified its exclusive standard-setting powers, as well as its authority to adopt procedural rules governing the conduct of its meetings and hearings.

The ERC remains the exclusive standard setting authority of the department, with two small exceptions. For purposes of chapter 403, F.S., the word standard is defined to mean rules that relate to air and water quality, noise, solid-waste management, and electric and magnetic fields. The word does not include "rules of the department which relate exclusively to the internal management of the department, the procedural processing of applications, the administration of rulemaking or adjudicatory proceedings, the publication of notices, the conduct of hearings, or other procedural matters." There has been some confusion about what actions and rules fall within the purview of the ERC and which ones are within the Secretary's authority.

The current rulemaking procedure provided under Florida's Administrative Procedures Act (contained in chapter 120, F.S.) requires agencies to provide, among other things, an economic impact statement (EIS) if a proposed agency action will result in . . .

"a substantial increase in costs or prices paid by consumers, individual industries, or state or local government agencies, or would result in significant adverse effects on competition, employment, investment, productivity, innovation, or international trade, and alternative approaches to the regulatory objective exist and are not precluded by law . . . "

In addition, a list of persons and entities specified by statute may request preparation of an EIS for a proposed rule and persons affected by a proposed rule may file a challenge

to the proposed rule and request a public hearing or submit written comments regarding the rule.

Section 120.54(1)(c), F.S., provides a detailed list of items which each EIS must contain. Among other things, it must include: a) an estimate of the cost or benefit to all persons directly affected by the proposed action; b) a comparison of the probable costs and benefits of adopting the proposed rule and the costs and benefits of not adopting the rule; c) a description of any reasonable alternative methods for achieving the goal of the proposed rule; and d) a detailed statement of the data and methodology used in making the estimates for the EIS.

Most agencies, are required to file proposed rules with the Joint Administrative Procedures Committee (JAPC) at least 21 days prior to the proposed date for rule adoption. JAPC is statutorily required to review the proposed rules, and among other things must determine whether: a) the rule is an invalid exercise of delegated legislative authority; b) the EIS informs the public of the economic effect of the rule; c) the rule is necessary to accomplish the apparent or expressed objectives of the specific provision of law which the rule implements; and d) the rule is a reasonable implementation of the law as it affects the convenience of all people or persons affected by the rule. Agencies must file notice of any changes to a proposed rule with the JAPC seven days prior to filing the rule for adoption. After the rule is adopted but before the effective date of the rule, an agency may modify or withdraw the rule in response to a JAPC objection. Agencies are required to publish notice when a rule is modified or withdrawn.

The terms "risk assessment," "risk analysis," and "risk management," are frequently used in discussions involving risk. These terms are distinct and should not be confused, since each serves to accomplish a separate analysis and goal. The term "risk assessment" in its truest form is primarily a scientific effort in which data from toxicology, epidemiology, and exposure studies are used to estimate the nature and probability of a given risk from a given substance or action and to determine the likelihood of that harm occurring to humans or to the environment. Risk assessment estimates the magnitude of a given risk but makes no judgment concerning acceptability of that risk. Risk assessments may be conducted on a site-by-site basis, or a contaminant-by-contaminant basis. For example, a site which may have a leaking underground storage tank may undertake a risk assessment to determine the contaminants which have been released, the contaminant's routes of exposure, the degree of exposure to human populations in the area surrounding the tank, and the degree of exposure to the habitats of the surrounding area. This information can be used to make an informed decision on the degree of clean-up needed at the site.

"Risk analysis," on the other hand, is a sophisticated cost-benefit analysis which is conducted at a generic level, such as prior to rule promulgation. It predicts, using scientifically generated information, the degree and nature of a risk to human health and the environment. It can provide a description of assumptions used in making the

analysis, and provide ranges and variabilities of estimates to be used in lieu of reviewing each and every site which may allow a certain toxic to escape into the environment.

"Comparative risk assessment" takes risk assessments from a number of problems and compares and ranks them to determine which problems pose the greatest threats to humans, including their quality of life, and ecological health.

Another useful term is "risk management." The concept is closely aligned with risk assessment, however, many experts agree that while risk assessment is a purely scientific concept, risk management is not. It is primarily a policymaking process in which government officials and the public use the comparative risk assessment to make a value judgment about whether the risks are acceptable and if not, how to manage and reduce such risks. It generates a prioritized set of risk-reduction or prevention strategies that will achieve environmental goals. The effectiveness of risk management strategies can be evaluated by looking at the progress made toward goals, using indicators such as the reduction in the ambient concentration of a certain pollutant or an increase in the biological diversity of a given ecosystem.

The United States Environmental Protection Agency (EPA) has used risk assessment for over ten years in drafting its regulations for various programs, most significantly its "site clean-up" programs such as Superfund and the Resource Conservation and Recovery Act (RCRA) corrective action programs. This agency has regularly drawn up regulations to allow the public to be exposed to any specific pollutant or toxic at a rate of  $10^{-6}$ , or one chance in a million. Expressed another way, if a million people were exposed to that level of contamination for a lifetime, one would expect that one person would die of a fatal cancer.

The DEP has applied risk assessment principles in some of its programs. In its programs it has used a decision making model for identifying, and prioritizing the clean-up requirements of leaking underground storage tanks within the state. It is a decision making tool that helps regulators decide how a site should be managed, what cleanup goals should be, and how to achieve the goals.

Another model which has been discussed by the DEP as a method for applying risk assessment principles is one called the risk-based corrective action (RBCA). This model was developed by the American Society for Testing and Material's Exposure/Risk Assessment task force. This group consisted of representatives from federal governments, major oil companies and environmental cleanup consultants. The standard which was adopted attempts to define the environmental risk posed by a petroleum release at a given site to human health and environment.

**B. EFFECT OF PROPOSED CHANGES:**

This bill changes the procedures for appointing members to the ERC as well as change their professional qualifications, to be more scientifically based. CS/HB 855 clarifies the role of the ERC vis-a-vis the Secretary, by specifying that the Secretary has the rulewriting authority. However the Secretary is required to submit rules containing standards to the ERC for approval, modification, or rejection. It specifically prohibits the ERC from setting department policies, priorities, plans, or directives.

Second, CS/HB 855 exempts Environmental Administrators and program administrators from the career service system within the DEP. Further, it exempts all state supervisory engineers from the career service system.

CS/HB 855 creates the risk-based priority council composed of representatives from the scientific community, and requires the council to prepare a report identifying methods for risk analyses to be used in the development of rules related to the protection of human health. This bill requires the DEP and the Department of Agriculture and Consumer Services (DACS) to prepare risk impact statements for specified proposed rules which establish or change standards based on impacts to human health. CS/HB 855 provides that these requirements do not create any new causes of action or basis for challenging rules, nor diminish existing causes of action or basis for rule challenges.

**C. SECTION-BY-SECTION ANALYSIS:**

Section 1: Amends s. 20.255(7), F.S., to clarify the qualifications of the members of the ERC.

Section 2. Amends s. 110.205(2), F.S., to provide that Environmental Administrators and program administrators within the DEP are select exempt positions. Provides all supervisory engineers licensed under chapter 471, F.S. are to be recategorized as select exempt positions.

Section 3: Amends s. 403.804(1), F.S., to clarify the scope of authority of the ERC and to provide items to be considered by the ERC when exercising its authority. Removes the ERC's authority as the exclusive standard setting body. Specifies that the ERC is the standard setting authority, except as specified under enumerated provisions of law.

Section 4: Amends s. 403.805(1), F.S., to grant to the secretary of the DEP the rulemaking responsibility, but requires the secretary to submit proposed rules related to standards to the ERC for approval, modification, or disapproval. Deletes existing law stating the ERC is the exclusive standard setting authority for the department.

Section 5: Creates the risk-based priority council whose purpose is to recommend to the Legislature, the Governor and affected agencies, ways in which risk assessment can be

used in the development of cost-effective rules and regulations pertaining to the protection of human health. Specifies the council shall consist of eight members with expertise in identified scientific disciplines. Provides procedures for appointment. Provides council members shall serve without compensation, but shall be reimbursed for food and travel.

Requires the council to submit a report to the Legislature, the agencies, and the Governor by October 1, 1996. Requires the report to identify the circumstances in which risk analysis would serve as a tool in the development of cost-effective rules for the protection of human health. Provides a detailed list of items to be considered by the council in preparing its report. Requires the council to provide a draft report to the public prior to finalization of the report. Authorizes the council to meet as frequently as necessary until the report is complete. Requires agencies to assist the council as needed in order to allow the council to perform its duties.

Specifies that for administrative purposes, the council shall be assigned to the Joint Legislative Management Committee, which must provide staff and assistance to the council. Provides the council shall cease to exist after completing its report.

Section 6. Beginning October 1, 1995, requires the DEP to prepare risk impact statements for rules proposed for approval by the ERC which establish or change standards based on impacts to human health. Beginning October 1, 1996, requires the Department of Agriculture and Consumer Services to prepare risk impact statements for proposed rules which establish or change standards based on impacts to human health. Provides specific exemptions from this requirement. Provides that nothing created in this section provides a new cause of action or basis for challenging a rule, nor diminish existing causes of action or basis for rule challenges.

Section 7. Requires the DEP to contract with the state university system for assistance in preparing at least one model risk-impact statement project for Fiscal Year 1995-1996. Appropriates \$50,000 to DEP from the Solid Waste Management Trust Fund for these purposes.

Section 8. Provides that sections 4 and 5 of the act are repealed effective 10/1/98. This cross reference error occurred due to a floor amendment which was added on the last day of session. The intent of the bill sponsor was to repeal the Risk-Based Priority Council and the requirement that the DEP and the DACS prepare risk impact statements (sections 5 and 6) effective 1998. Requires the Legislature to review these sections prior to that date.

Section 9. Provides this act takes effect upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

The Joint Legislative Management Committee indicates the following appropriations will be required to support the activities of the Risk-Based Priority Council:

|                               | <u>FY 1995/96</u> | <u>FY 1996/97</u> | <u>FY 1997/98</u> |
|-------------------------------|-------------------|-------------------|-------------------|
| General Revenue               | \$65,658          | \$43,689          | \$45,003          |
| From DEP Operating Trust Fund | \$50,000          | 0                 | 0                 |

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

See A.2. above.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the mandates provision because it does not require counties or municipalities to expend funds to implement the provisions of the act.

**B. REDUCTION OF REVENUE RAISING AUTHORITY:**

None.

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

None.

**V. COMMENTS:**

**VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:**

A strike-everything amendment was adopted by the Natural Resources Committee on March 30, 1995. Provided below is a summary of the differences between the bill as filed and the amendment. First, the amendment provides a list of interest groups the ERC must represent, so that five members represent specific groups and two are lay citizens. It removed the creation of the ERC Nominating Council. The amendment requires the ERC to consider scientific and technical validity, economic impacts, and relative risks in their analyses. Last, it clarifies that the secretary of the DEP has rulemaking responsibility. The secretary is required to submit to the ERC proposed rules dealing with standards.

**VII. SIGNATURES:**

**COMMITTEE ON NATURAL RESOURCES:**

Prepared by:

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