

RE: AMENDMENT OF 120.52, F.S.

LEGISLATION RECEIVED

For the purpose of this review by the addition of new subparagraph 120.52(16)(c)2., as proposed, the APA definition of a rule will read as follows:

“Rule” means each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedure, or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule. The term also includes the amendment or repeal of a rule. The term does not include . . . statements, memoranda, or instructions to agencies issued by the comptroller as chief fiscal officer of the state and relating or pertaining to claims for payment submitted by state agencies to the comptroller.

APPLICABLE LAW

1. Art. IV, s.4(c) The Comptroller . . . as the chief fiscal officer of the state . . . shall settle and approve accounts against the state.
2. The term “CLAIMS” as used in the phrase “CLAIMS FOR PAYMENT” in proposed subparagraph 120.52(16)(c)2. is undefined. It can include any request for payment monies from “Travel Vouchers” to demands for reimbursement, pay or benefits, as well as the relief sought by any other type demand judgment or legislation.
3. Section 215.26 provides a procedure by which the Comptroller may refund any monies paid into the state in error. The procedure by subsection 215.26(4) EXCLUSIVE FOR REFUND CLAIMS between individual funds and accounts in the State Treasury. However, this section also provides that the Comptroller shall approve refund claim forms and supplement the proof otherwise required. Section 215.25 also authorizes the Comptroller to delegate to any agency to whom the monies were paid authority to determine the amount of the refund due such claims.

OPINION:

We do not know the policy reasons behind the amendment and therefore only offer our comments based upon the above premises.

1. We assume this bill is intended to allow the Comptroller to issue the “statements” and “memoranda” mentioned in the amendments as supplemental updates to the Comptroller’s accounting and auditing rules under Title “3A” of the F.A.C.
2. If the statements or memoranda refer only to specific claims or cases, they are already excluded from the definition of a rule. However, if they do not fall into this grouping, then their impact on both “other agencies” and the affected “public” must be considered. If these statements, memoranda or instructions to state agencies are excepted from the definition of “rule”, they are by s. 120.52(11), F.S., automatically excluded from the definition of “order” leaving an affected person somewhat puzzled as to the available recourse if his substantial interests are affected by one of these documents.
3. If these Comptroller documents as “agency statements” are to only directly affect other agencies, and only indirectly the public, it must be determined whether or not they should be subject to the act. An exception, if there needs to be one, should be drafted in general terms like the one relating to “internal management memoranda.” However, when examined in this light, the policy reasons which gave rise to the APA in the first place are also present, admittedly in somewhat lessened degree for these agency statements also serve to regulate the other agencies affected by these documents.