

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Godwin</u>	<u>Stengle</u>	1. <u>GO</u>	_____
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____
4. _____	_____	4. _____	_____

SUBJECT:  
 The Administrative Procedure Act;  
 Copies of Agency Orders

BILL NO. AND SPONSOR:  
 SB 1354 by  
 Senator Kiser

I. SUMMARY:

A. Present Situation:

The Administrative Procedure Act (APA), ch. 120, F.S., is the procedural mechanism by which aggrieved parties may seek legal redress for actions of state agencies and certain units of local government. The act divides agency action into two broad categories, those of rules and orders. Rules are statements of general applicability that implement, interpret, or prescribe law or policy or which amend or repeal a rule. Orders are all other final agency decisions which do not have the effect of a rule; they are decisions of individual applicability which implement laws, rules, and policies.

Chapter 91-30, Laws of Florida, revised the statutory requirements for indexing agency orders. The law amended s. 120.53(2), F.S., to specify those orders which must be indexed and available to the public, to include each agency order resulting from a proceeding under s. 120.57(1) or (2), F.S.; final agency orders rendered pursuant to s. 120.57(3), F.S., which contain an agency policy statement that may be the basis of future agency decisions or that may otherwise contain a statement of precedential value; declaratory statements; and final orders resulting from a proceeding under s. 120.54(4) or s. 120.56, F.S.

Chapter 91-30, L.O.F., also clarified the role of rulemaking by executive agencies. The act declares a statutory presumption that rulemaking is both practicable and feasible, with certain limited exceptions. Rulemaking is presumed to be feasible unless an agency can prove that: (1) the agency has not has sufficient time to acquire the knowledge and experience reasonably necessary to address an agency statement by rulemaking; or (2) related matters are not sufficiently resolved to permit an agency to address an agency statement by rulemaking; or (3) the agency is currently using the rulemaking procedure expeditiously, and in good faith, to adopt rules which address the agency statement.

Rulemaking is presumed practicable to the extent necessary to provide fair notice to affected parties of relevant agency procedures and applicable principles, criteria, or standards for agency decisions, unless the agency is able to prove that: (1) the detail or precision in the establishment of principles, criteria, or standards for agency decisions is reasonable under the circumstances; or (2) the questions which must be addressed are so narrow in scope that more detail or precision is precluded outside of an adjudication to determine the substantial interests of a party based on individual circumstances.

A challenge to an agency statement is authorized to be instituted, under newly-created s. 120.535, F.S., by petition filed with the Division of Administrative Hearings by any substantially affected person. The petition is required to be in writing, and to allege facts sufficient to demonstrate that the person is substantially affected by an agency statement, that the statement constitutes a rule under s. 120.52(16), F.S., and that the statement has not been adopted by the rulemaking procedure in s. 120.54, F.S.

Within 30 days after the hearing, the hearing officer will issue his final order, in which all or part of the challenged agency statement may be found to violate rulemaking standards. Chapter 91-30, L.O.F., however, did not explicitly require the indexing and preservation of orders entered under s. 120.535, F.S.

B. Effect of Proposed Changes:

Final orders issued by hearing officers of the Division of Administrative Hearings under s. 120.535, F.S., would be added to the list of orders required to be indexed and made available under s. 120.53, F.S.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

None.

III. MUNICIPALITY/COUNTY MANDATES RESTRICTIONS:

None.

IV. COMMENTS:

The indexing and availability requirements for orders were originally contained in SB 900 (1991). The specifications for agency rulemaking were contained in CS/SB 1836 (1991) and its companion, HB 1879 (1991).

REVISED: \_\_\_\_\_

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When HB 1879 was taken up on the Senate floor, the substance of SB 900 was amended onto the bill; apparently inadvertently, however, the newly-created s. 120.535, F.S., contained in HB 1879, was not added into the indexing requirements amended onto the bill. Thus, ch. 91-30, L.O.F., became law without requiring final orders issued under s. 120.535, F.S., to be indexed and available as are other specified orders. SB 1354 would rectify the omission.

V. AMENDMENTS:

None.