

THIS BILL WAS HEARD BY HOUSE COMMITTEE ON ELDER AFFAIRS & LONG TERM CARE
 ON 4/15/98, 1:30pm, 413C. VOTES: YEAS 5 NAYS 0, UNANIMOUS

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: March 18, 1998 Revised: _____

Subject: Umbrella Trust Funds

| | <u>Analyst</u> | <u>Staff Director</u> | <u>Reference</u> | <u>Action</u> |
|----|----------------|-----------------------|------------------|---------------------|
| 1. | <u>Crosby</u> | <u>Whiddon</u> | <u>CF</u> | <u>Favorable/CS</u> |
| 2. | <u>_____</u> | <u>_____</u> | <u>GO</u> | <u>Withdrawn</u> |
| 3. | <u>_____</u> | <u>_____</u> | <u>WM</u> | <u>Withdrawn</u> |
| 4. | <u>_____</u> | <u>_____</u> | <u>_____</u> | <u>_____</u> |
| 5. | <u>_____</u> | <u>_____</u> | <u>_____</u> | <u>_____</u> |

I. Summary:

The Committee Substitute for Senate Bill 1152 amends the statutes to incorporate a number of terms defined in rule. These terms include “individual trust,” “main umbrella trust,” and “umbrella trust fund.” The committee substitute requires the trustee to account annually to the trust beneficiary or the beneficiary’s representative.

This bill substantially amends section 402.175, Florida Statutes.

II. Present Situation:

During the 1996 legislative session, a comprehensive rewrite of the Florida Administrative Procedures Act (APA) was adopted (see CS/SBs 2290 and 2288). Among many other changes, the revised APA modifies the standards which authorize rule-making and includes a provision for periodic review of rules by agencies with rule making authority.

In the past, a number of court decisions held that a rule did not exceed the legislative grant of rule-making authority if it was reasonably related to the stated purpose of the enabling legislation. Additionally, it was accepted that a rule was valid when it implemented general legislative intent or policy. Agencies had wide discretion to adopt rules regardless of whether the statutory basis for a rule was clearly conferred or merely implied from the enabling statute.

Section 120.536, F.S., effectively overturns this line of cases by imposing a much stricter standard for rule-making authority. Under the new APA, existing rules and proposed rules must **implement, interpret, or make specific** the particular powers and duties granted by the enabling statute. It is important to note that the revised APA is not intended to eliminate administrative

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rules or even to discourage rule making, but to ensure that administrative rules are no broader than the enabling statute allows. A grant of rule-making authority by the Legislature is necessary, but not enough by itself, for an agency to adopt a rule. Likewise, agencies need more than a statement of general legislative intent for implementing a rule. Rules must be based on a specific grant of power and not address those subjects on which the Legislature was silent.

In order to temporarily shield a rule or portion of a rule from challenge under the new provisions, by October 1, 1997 agencies were to report rules that they believed did not meet the new criteria. The Joint Administrative Procedures Committee (JAPC) reports that some 5,850 rules or portions thereof were reported as exceeding the agency's rule-making authority under s. 120.536(1), F.S. Of these, 3,610 rules were identified by various local school boards (whose rules are not contained in the Florida Administrative Code); 2,240 rules contained in the Florida Administrative Code were reported by various agencies as exceeding statutory authority for rule making under s. 120.536, F.S.

Section 120.536(2), F.S., also lays out the second step in the process. This step is that of legislative review. The relevant subsection reads as follows:

The Legislature shall, at the 1998 Regular Session, consider whether specific legislation authorizing the identified rules, or portions thereof, should be enacted. By January 1, 1999, each agency shall initiate proceedings pursuant to s. 120.54 to repeal each rule, or portion thereof, identified as exceeding the rule making authority permitted by this section for which authorizing legislation does not exist.

Thus, during the 1998 legislative session each agency has the responsibility to bring forward legislative proposals, as appropriate, to provide statutory authorization for existing rules -- rules which the agency deems necessary but which currently exceed the agency's rule-making authority. The Legislature is directed to consider whether the legislation authorizing the identified rules should be enacted.

The Committee Substitute for SB 1152 emerges from this process and is the result of the Department of Children and Family Services, Administration/Revenue Management's review of rule and enabling law. Here, the department found that the language in many of the rules contained in Chapter 65-19, Florida Administrative Code, is not sufficiently authorized by statute. Therefore, a number of amendments were suggested for s. 402.175, F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 402.175, F.S., to add definitions which are currently defined in rule. These terms include "individual trust," "main umbrella trust," and "umbrella trust fund." The Committee Substitute for SB 1152 requires the trustee to account annually to the trust beneficiary or the beneficiary's representative.

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Section 2. This act shall take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The department acknowledges that many of the terms and practices included in the amendments to existing statutes (and as indicated in this bill) reflect a mere restatement of language included in current rule. Upon passage of this bill, the department has every intention of reviewing the relevant rules (at Chapter 65-19, Florida Administrative Code) and amending or repealing those which are found to be redundant.

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VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
