

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 13, 1998 Revised: _____

Subject: Rulemaking Authority With Respect to the Fee Schedule for Asbestos Removal

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Green</u>	<u>Voigt</u>	<u>NR</u>	<u>Favorable</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill authorizes the Department of Environmental Protection to establish, by rule, a fee schedule based on the size of the asbestos removal project.

The bill amends section 376.60, Florida Statutes.

II. Present Situation:

The 1996 amendments to the Administrative Procedure Act (APA) were designed to require executive branch agencies to more closely adhere to statutory authority when agencies adopt rules. The 1996 amendments contained a new section, s. 120.536(1), F.S., requiring existing and proposed rules to implement, interpret or make specific the particular powers and duties granted by the enabling statute. This “map-tack” provision ensures that agency rules closely relate to the enabling statute and, thus, imposes a more stringent standard.

The Legislature recognized that imposing a new statutory standard to determine the validity of rules might suddenly invalidate many rules which had previously been adopted by the agency in good faith under the older, more lenient standard. Rather than immediately invalidate existing rules, the 1996 reform legislation required each agency to examine all of its rules that had been adopted prior to the effective date of the 1996 amendments in light of the new “map-tack” provision. Agencies were required to report to the Joint Administrative Procedures Committee the list of rules which exceeded the new “map-tack” standard.

Rules placed on the list are temporarily “shielded” from legal challenges that they are invalid under the new “map-tack” provision. This “shield” leaves the rules in place during the 1998 legislative session, allowing the Legislature to examine the policy established by rule to determine

if it is good public policy. If legislation is enacted during the 1998 session which provides statutory support for the rule, it will remain in effect. On the other hand, the statute directs the agency to initiate repeal of any rule for which there is no authorizing legislation by January 1, 1999. Notably, an existing agency rule successfully challenged under the new APA for lack of statutory authority requires that the agency discontinue its reliance on the rule and the agency may have to pay attorney's fees and costs.

The Department of Environmental Protection identified a number of program areas that have inadequate rulemaking authority and the department is proposing several bills to provide adequate rulemaking authority.

One of those programs involves the asbestos removal program inspection and notification fee. The department's asbestos removal program is contained in chapter 62-257, F.A.C. Currently, the department charges a fee based on project size. While s. 376.60, F.S., stipulates that the inspection and notification fee may not exceed \$300 for a small business as defined in s. 288.703(1), F.S., or \$1,000 for any other project, the statute does not authorize the department to establish a fee schedule by rule. Specifically, the statute does not allow the department to charge lower fees for smaller projects.

III. Effect of Proposed Changes:

The bill provides authority for the department to establish a fee schedule by rule.

Section 1. Authorizes the department to establish a fee schedule by rule for the asbestos removal program inspection and notification.

Section 2. Provides an effective date.

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:

Should the department alter the fee schedule as provided in Rule 62-257.400, F.A.C., there would be an impact on the private sector. Any increases in the fee schedule would be limited by the fee caps as provided in s. 376.60, F.S. However, the department maintains it plans to continue the current fee schedule.

C. Government Sector Impact:

No fiscal impact will result unless the department amends the fee schedule in Rule 62-257.400, F.A.C. Currently, the department has no plans to amend the fee schedule.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.