

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: February 12, 1998 Revised: \_\_\_\_\_

Subject: Rule authorizing bill relating to firefighter training and certification

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Emrich</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

**I. Summary:**

This bill provides the statutory authorization for provisions of two Department of Insurance rules which the agency deems necessary, but which currently exceed the agency’s rulemaking authority. The bill authorizes the Division of State Fire Marshal to issue a special certificate of compliance for a firefighter and forestry administrative and command head of a fire/rescue/emergency service organization and provides guidelines for certain reexaminations.

This bill amends section 633.35 of the Florida Statutes.

**II. Present Situation:**

During the 1996 legislative session a comprehensive rewrite of the Florida Administrative Procedures Act was adopted as CS/SBs 2290 and 2288. Among many other changes, the revised APA modified the standards which authorize rulemaking and included provision for periodic review of rules by agencies with rulemaking authority.

In the past, a number of court decisions held that a rule did not exceed the legislative grant of rulemaking 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 whether the statutory basis for a rule was clearly conferred or implied from the enabling statute.

The Joint Administrative Procedures Committee (J.A.P.C.) reports that some 5,850 rules or portions of rules were reported as exceeding the agency’s rulemaking 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

F.A.C. However, 2,240 rules contained in the F.A.C. were reported by various agencies as exceeding statutory authority for rulemaking under s. 120.536, F.S.

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

The Department of Insurance has identified provisions of two rules that exceed the agency's statutory rulemaking authority which relate to firefighter certification of certain individuals who receive training in a state other than Florida and to procedures for certification reexaminations.

Rule 4A-37.054, F.A.C., promulgated in 1981 and revised in 1996, authorizes the State Fire Marshal to issue a special certificate of compliance to an individual from another state who meets certain training and testing criteria and offers proof of employment as the "Administrative and Command Head" of a fire/rescue/emergency services organization. These individuals would be exempt from taking the "practical" portion of the Florida firefighter exam which includes a series of strenuous physical activities, i.e., pulling hoses, donning protective gear, handling hazardous materials. The rationale behind the rule is that persons hired from another state to be commanders of Florida fire agencies are unnecessarily being subjected to practical examinations which have no direct relationship to their function as commanders of such departments. These leadership positions are primarily administrative and do not require physical dexterity. Such persons would still have to take a written examination covering seven relevant subject areas and attend a 6 hour seminar. The rule further requires only one retake of the certification examination within a prescribed period. Rule 4A-37.056, F.A.C., also promulgated in 1981, sets out specific requirements for retaking certification tests.

### **III. Effect of Proposed Changes:**

Pursuant to the explanation noted above under "Present Situation," the Department of Insurance proposed the present legislation which authorizes provisions of two existing administrative rules that relate to the State Fire Marshal. This bill provides for the issuance of a special certificate of compliance to a person from another state who is employed as the administrative and command head of a Florida fire/rescue/emergency services organization. Such person would be exempt from taking the physical-dexterity portion of the firefighter exam. The certificate of compliance would be valid only while the person served in the administrative/command position. The bill provides guidelines for certain reexaminations.

The bill would take effect on July 1, 1998.

**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:**

None.

**VIII. Amendments:**

None.