

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.)

BILL: SB 2114

SPONSOR: Senator Carlton

SUBJECT: Department of Veterans' Affairs - Rule Authorization Bill

DATE: February 28, 2000 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bowman</u>	<u>Yeatman</u>	<u>CA</u>	<u>Favorable</u>
2.	_____	_____	<u>RC</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill requires that to be eligible for residency in a Veterans' domiciliary home, applicants must have applied for all financial assistance reasonably available through government sources. This is a rule authorization bill (RAB) for the Department of Veterans' Affairs (DVA).

This bill amends the following section of the Florida Statutes: 296.06.

II. Present Situation:

Section 296.06(2), F.S., lists the qualifications for eligibility for residency in the Veterans' Domiciliary Home of Florida, which is located in Lake City. The qualifications include:

- have wartime or peacetime service as defined in ss. 1.01(14) and 296.02, F.S.;
- have been a resident of the state for 1 year immediately preceding application and be a resident of the state at the time of application;
- not be mentally ill, habitually inebriated, or addicted to drugs; and
- not owe money to the department for services rendered during any previous stay at a department facility.

In enacting ch. 99-379, L.O.F., the Legislature amended ch. 120, F.S., (the Administrative Procedures Act) to clarify an agency's authority to adopt rules. Subsection (1) of s. 120.536, F.S., as amended, provides that a grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statute. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious or is within the agency's class of powers and duties, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be

construed to extend no further than implementing or interpreting the specific powers and duties conferred by the same statute.

To ensure compliance with s. 120.536(1), F.S., s. 120.536(2)(b), F.S., requires that each agency, by October 1, 1999, provide to the Administrative Procedures Committee a list of each rule or portion of a rule adopted by that agency prior to June 18, 1999 which exceeds the rulemaking authority permitted by s. 120.536, F.S. For those rules of which only a portion exceeds the rulemaking authority permitted by this section, the agency must also identify the language of the rule which exceeds this authority. The Administrative Procedures Committee combined the lists and provided the cumulative listing to the President of the Senate and the Speaker of the House of Representatives. The Legislature shall, at the 2000 Regular Session, consider whether specific legislation authorizing the identified rules, or portions thereof, should be enacted.

By January 1, 2001, each agency must initiate proceedings pursuant to s. 120.54, F.S., to repeal each rule, or portion thereof, identified as exceeding the rulemaking authority permitted by this section for which authorizing legislation does not exist. By February 1, 2001, the Administrative Procedures Committee must submit to the President of the Senate and the Speaker of the House of Representatives a report identifying those rules that an agency had previously identified as exceeding its rulemaking authority for which proceedings to repeal the rule have not been initiated. As of July 1, 2001, the Administrative Procedures Committee or any substantially affected person may petition an agency to repeal any rule, or portion thereof, because it exceeds the rulemaking authority permitted by this section. Not later than 30 days after the date of filing the petition if the agency is headed by an individual, or not later than 45 days if the agency is headed by a collegial body, the agency must initiate rulemaking proceedings to repeal the rule, or portion thereof, or deny the petition, giving a written statement of its reasons for the denial.

DVA identified, in its October 1, 1999 submission to the Administrative Procedures Committee, one rule which appears to exceed the rulemaking authority permitted by s. 120.536, F.S. The rule identified is Rule 55-11.008, F.A.C., which requires residents to apply for "all income that is reasonably made available to the resident through governmental funding sources."

III. Effect of Proposed Changes:

Section 1 amends s. 296.06, F.S., to require that to be eligible for residency in a Veterans' domiciliary homes, applicants must have applied for all financial assistance reasonably available through government sources. While this condition is specified in Rule 55-11.008, F.A.C., there is no statutory authority for the provision. This is a rule authorization bill (RAB) for DVA.

Section 2 provides that this bill will take effect upon becoming a 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:

None.

VIII. Amendments:

None.