

Bill No. CS/HB 107

Amendment No.     

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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11	Senator Laurent moved the following amendment:		
12			
13	<b>Senate Amendment (with title amendment)</b>		
14	Delete everything after the enacting clause		
15			
16	and insert:		
17	Section 1. <u>It is the intent of the Legislature that</u>		
18	<u>modifications contained in sections 2 and 3 of this act which</u>		
19	<u>apply to rulemaking are to clarify the limited authority of</u>		
20	<u>agencies to adopt rules in accordance with chapter 96-159,</u>		
21	<u>Laws of Florida, and are intended to reject the class of</u>		
22	<u>powers and duties analysis. However, it is not the intent of</u>		
23	<u>the Legislature to reverse the result of any specific judicial</u>		
24	<u>decision.</u>		
25	Section 2. Subsections (1) and (8) of section 120.52,		
26	Florida Statutes, 1998 Supplement, are amended to read:		
27	120.52 Definitions.--As used in this act:		
28	(1) "Agency" means:		
29	(a) The Governor in the exercise of all executive		
30	powers other than those derived from the constitution.		
31	(b) Each:		

Bill No. CS/HB 107

Amendment No.     

1           1. State officer and state department, and each  
2 departmental unit described in s. 20.04,

3           2. Authority, including a regional water supply  
4 authority.

5           3. Board.

6           4. Commission, including the Commission on Ethics and  
7 the Game and Fresh Water Fish Commission when acting pursuant  
8 to statutory authority derived from the Legislature.

9           5. Regional planning agency, ~~board,~~

10           6. Multicounty special district with a majority of its  
11 governing board comprised of nonelected persons, ~~and~~  
12 ~~authority, including, but not limited to, the Commission on~~  
13 ~~Ethics and the Game and Fresh Water Fish Commission when~~  
14 ~~acting pursuant to statutory authority derived from the~~  
15 ~~Legislature,~~

16           7. Educational units, ~~and those entities~~

17           8. Entity described in chapters 163, 298, 373, 380,  
18 and 582 and s. 186.504, ~~except any legal entity or agency~~  
19 ~~created in whole or in part pursuant to chapter 361, part II,~~  
20 ~~an expressway authority pursuant to chapter 348, or any legal~~  
21 ~~or administrative entity created by an interlocal agreement~~  
22 ~~pursuant to s. 163.01(7), unless any party to such agreement~~  
23 ~~is otherwise an agency as defined in this subsection.~~

24           (c) Each other unit of government in the state,  
25 including counties and municipalities, to the extent they are  
26 expressly made subject to this act by general or special law  
27 or existing judicial decisions.

28

29 This definition does not include any legal entity or agency  
30 created in whole or in part pursuant to chapter 361, part II,  
31 an expressway authority pursuant to chapter 348, any legal or

Bill No. CS/HB 107

Amendment No.     

1 administrative entity created by an interlocal agreement  
2 pursuant to s. 163.01(7), unless any party to such agreement  
3 is otherwise an agency as defined in this subsection, or any  
4 multicounty special district with a majority of its governing  
5 board comprised of elected persons; however, this definition  
6 shall include a regional water supply authority.

7           (8) "Invalid exercise of delegated legislative  
8 authority" means action which goes beyond the powers,  
9 functions, and duties delegated by the Legislature. A proposed  
10 or existing rule is an invalid exercise of delegated  
11 legislative authority if any one of the following applies:

12           (a) The agency has materially failed to follow the  
13 applicable rulemaking procedures or requirements set forth in  
14 this chapter;

15           (b) The agency has exceeded its grant of rulemaking  
16 authority, citation to which is required by s. 120.54(3)(a)1.;

17           (c) The rule enlarges, modifies, or contravenes the  
18 specific provisions of law implemented, citation to which is  
19 required by s. 120.54(3)(a)1.;

20           (d) The rule is vague, fails to establish adequate  
21 standards for agency decisions, or vests unbridled discretion  
22 in the agency;

23           (e) The rule is arbitrary or capricious;

24           (f) The rule is not supported by competent substantial  
25 evidence; or

26           (g) The rule imposes regulatory costs on the regulated  
27 person, county, or city which could be reduced by the adoption  
28 of less costly alternatives that substantially accomplish the  
29 statutory objectives.

30  
31 A grant of rulemaking authority is necessary but not

Bill No. CS/HB 107

Amendment No. \_\_\_\_

1 sufficient to allow an agency to adopt a rule; a specific law  
2 to be implemented is also required. An agency may adopt only  
3 rules that implement or, interpret the, ~~or make~~ specific ~~the~~  
4 ~~particular~~ powers and duties granted by the enabling statute.  
5 No agency shall have authority to adopt a rule only because it  
6 is reasonably related to the purpose of the enabling  
7 legislation and is not arbitrary and capricious or is within  
8 the agency's class of powers and duties, nor shall an agency  
9 have the authority to implement statutory provisions setting  
10 forth general legislative intent or policy. Statutory language  
11 granting rulemaking authority or generally describing the  
12 powers and functions of an agency shall be construed to extend  
13 no further than implementing or interpreting the specific ~~the~~  
14 ~~particular~~ powers and duties conferred by the same statute.

15 Section 3. Section 120.536, Florida Statutes, is  
16 amended to read:

17 120.536 Rulemaking authority; listing of rules  
18 exceeding authority; repeal; challenge.--

19 (1) A grant of rulemaking authority is necessary but  
20 not sufficient to allow an agency to adopt a rule; a specific  
21 law to be implemented is also required. An agency may adopt  
22 only rules that implement or, interpret the, ~~or make~~ specific  
23 ~~the particular~~ powers and duties granted by the enabling  
24 statute. No agency shall have authority to adopt a rule only  
25 because it is reasonably related to the purpose of the  
26 enabling legislation and is not arbitrary and capricious or is  
27 within the agency's class of powers and duties, nor shall an  
28 agency have the authority to implement statutory provisions  
29 setting forth general legislative intent or policy. Statutory  
30 language granting rulemaking authority or generally describing  
31 the powers and functions of an agency shall be construed to

Bill No. CS/HB 107

Amendment No. \_\_\_\_

1 extend no further than implementing or interpreting the  
2 specific ~~the particular~~ powers and duties conferred by the  
3 same statute.

4           (2)(a) By October 1, 1997, each agency shall provide  
5 to the Administrative Procedures Committee a listing of each  
6 rule, or portion thereof, adopted by that agency before  
7 October 1, 1996, which exceeds the rulemaking authority  
8 permitted by this section. For those rules of which only a  
9 portion exceeds the rulemaking authority permitted by this  
10 section, the agency shall also identify the language of the  
11 rule which exceeds this authority. The Administrative  
12 Procedures Committee shall combine the lists and provide the  
13 cumulative listing to the President of the Senate and the  
14 Speaker of the House of Representatives. The Legislature  
15 shall, at the 1998 Regular Session, consider whether specific  
16 legislation authorizing the identified rules, or portions  
17 thereof, should be enacted. By January 1, 1999, each agency  
18 shall initiate proceedings pursuant to s. 120.54 to repeal  
19 each rule, or portion thereof, identified as exceeding the  
20 rulemaking authority permitted by this section for which  
21 authorizing legislation does not exist. By February 1, 1999,  
22 the Administrative Procedures Committee shall submit to the  
23 President of the Senate and the Speaker of the House of  
24 Representatives a report identifying those rules that an  
25 agency had previously identified as exceeding the rulemaking  
26 authority permitted by this section for which proceedings to  
27 repeal the rule have not been initiated. As of July 1, 1999,  
28 the Administrative Procedures Committee or any substantially  
29 affected person may petition an agency to repeal any rule, or  
30 portion thereof, because it exceeds the rulemaking authority  
31 permitted by this section. Not later than 30 days after the

Bill No. CS/HB 107

Amendment No. \_\_\_\_

1 date of filing the petition if the agency is headed by an  
2 individual, or not later than 45 days if the agency is headed  
3 by a collegial body, the agency shall initiate rulemaking  
4 proceedings to repeal the rule, or portion thereof, or deny  
5 the petition, giving a written statement of its reasons for  
6 the denial.

7 (b) By October 1, 1999, each agency shall provide to  
8 the Administrative Procedures Committee a listing of each  
9 rule, or portion thereof, adopted by that agency before the  
10 effective date of the bill, which exceeds the rulemaking  
11 authority permitted by this section. For those rules of which  
12 only a portion exceeds the rulemaking authority permitted by  
13 this section, the agency shall also identify the language of  
14 the rule which exceeds this authority. The Administrative  
15 Procedures Committee shall combine the lists and provide the  
16 cumulative listing to the President of the Senate and the  
17 Speaker of the House of Representatives. The Legislature  
18 shall, at the 2000 Regular Session, consider whether specific  
19 legislation authorizing the identified rules, or portions  
20 thereof, should be enacted. By January 1, 2001, each agency  
21 shall initiate proceedings pursuant to s. 120.54 to repeal  
22 each rule, or portion thereof, identified as exceeding the  
23 rulemaking authority permitted by this section for which  
24 authorizing legislation does not exist. By February 1, 2001,  
25 the Administrative Procedures Committee shall submit to the  
26 President of the Senate and the Speaker of the House of  
27 Representatives a report identifying those rules that an  
28 agency had previously identified as exceeding the rulemaking  
29 authority permitted by this section for which proceedings to  
30 repeal the rule have not been initiated. As of July 1, 2001,  
31 the Administrative Procedures Committee or any substantially

Bill No. CS/HB 107

Amendment No. \_\_\_\_

1 affected person may petition an agency to repeal any rule, or  
2 portion thereof, because it exceeds the rulemaking authority  
3 permitted by this section. Not later than 30 days after the  
4 date of filing the petition if the agency is headed by an  
5 individual, or not later than 45 days if the agency is headed  
6 by a collegial body, the agency shall initiate rulemaking  
7 proceedings to repeal the rule, or portion thereof, or deny  
8 the petition, giving a written statement of its reasons for  
9 the denial.

10 (3) All proposed rules or amendments to existing rules  
11 filed with the Department of State on or after October 1,  
12 1996, shall be based on rulemaking authority no broader than  
13 that permitted by this section. A rule adopted before October  
14 1, 1996, and not included on a list submitted by an agency in  
15 accordance with subsection (2) may not be challenged before  
16 November 1, 1997, on the grounds that it exceeds the  
17 rulemaking authority or law implemented as described by this  
18 section. A rule adopted before October 1, 1996, and included  
19 on a list submitted by an agency in accordance with subsection  
20 (2) may not be challenged before July 1, 1999, on the grounds  
21 that it exceeds the rulemaking authority or law implemented as  
22 described by this section. A rule adopted before the effective  
23 date of the bill, and included on a list submitted by an  
24 agency in accordance with subsection (2)(b) may not be  
25 challenged before July 1, 2001, on the grounds that it exceeds  
26 the rulemaking authority or law implemented as described by  
27 this section.

28 (4) Nothing in this section shall be construed to  
29 change the legal status of a rule that has otherwise been  
30 judicially or administratively determined to be invalid.

31 Section 4. Paragraph (f) of subsection (1) of section

Bill No. CS/HB 107

Amendment No. \_\_\_\_

1 120.54, Florida Statutes, 1998 Supplement, is amended to read:

2 120.54 Rulemaking.--

3 (1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER  
4 THAN EMERGENCY RULES.--

5 (f) An agency may adopt rules authorized by law and  
6 necessary to the proper implementation of a statute prior to  
7 the effective date of the statute, but the rules may not be  
8 effective enforced until the statute upon which they are based  
9 is effective. An agency may not adopt retroactive rules,  
10 including retroactive rules intended to clarify existing law,  
11 unless that power is expressly authorized by statute.

12 Section 5. Paragraph (a) of subsection (2) of section  
13 120.56, Florida Statutes, is amended to read:

14 120.56 Challenges to rules.--

15 (2) CHALLENGING PROPOSED RULES; SPECIAL PROVISIONS.--

16 (a) Any substantially affected person may seek an  
17 administrative determination of the invalidity of any proposed  
18 rule by filing a petition seeking such a determination with  
19 the division within 21 days after the date of publication of  
20 the notice required by s. 120.54(3)(a), within 10 days after  
21 the final public hearing is held on the proposed rule as  
22 provided by s. 120.54(3)(c), within 20 days after the  
23 preparation of a statement of estimated regulatory costs  
24 required pursuant to s. 120.541, if applicable, or within 20  
25 days after the date of publication of the notice required by  
26 s. 120.54(3)(d). The petition shall state with particularity  
27 the objections to the proposed rule and the reasons that the  
28 proposed rule is an invalid exercise of delegated legislative  
29 authority. The petitioner has the burden of going forward.The  
30 agency then has the burden to prove by a preponderance of the  
31 evidence that the proposed rule is not an invalid exercise of



Bill No. CS/HB 107

Amendment No. \_\_\_\_

1 delegated legislative authority as to the objections raised.  
2 Any person who is substantially affected by a change in the  
3 proposed rule may seek a determination of the validity of such  
4 change. Any person not substantially affected by the proposed  
5 rule as initially noticed, but who is substantially affected  
6 by the rule as a result of a change, may challenge any  
7 provision of the rule and is not limited to challenging the  
8 change to the proposed rule.

9 Section 6. Paragraph (1) of subsection (1) of section  
10 120.57, Florida Statutes, 1998 Supplement, is amended to read:

11 120.57 Additional procedures for particular cases.--

12 (1) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS  
13 INVOLVING DISPUTED ISSUES OF MATERIAL FACT.--

14 (1) The agency may adopt the recommended order as the  
15 final order of the agency. The agency in its final order may  
16 reject or modify the conclusions of law over which it has  
17 substantive jurisdiction and interpretation of administrative  
18 rules over which it has substantive jurisdiction. When  
19 rejecting or modifying such conclusion of law or  
20 interpretation of administrative rule, the agency must state  
21 with particularity its reasons for rejecting or modifying such  
22 conclusion of law or interpretation of administrative rule and  
23 must make a finding that its substituted conclusion of law or  
24 interpretation of administrative rule is as or more reasonable  
25 than that which was rejected or modified. Rejection or  
26 modification of conclusions of law may not form the basis for  
27 rejection or modification of findings of fact. The agency may  
28 not reject or modify the findings of fact unless the agency  
29 first determines from a review of the entire record, and  
30 states with particularity in the order, that the findings of  
31 fact were not based upon competent substantial evidence or

Bill No. CS/HB 107

Amendment No. \_\_\_\_

1 that the proceedings on which the findings were based did not  
2 comply with essential requirements of law. The agency may  
3 accept the recommended penalty in a recommended order, but may  
4 not reduce or increase it without a review of the complete  
5 record and without stating with particularity its reasons  
6 therefor in the order, by citing to the record in justifying  
7 the action.

8 Section 7. Present paragraphs (a) through (j) of  
9 subsection (1) of section 120.81, Florida Statutes, are  
10 redesignated as paragraphs (b) through (k), respectively, and  
11 a new paragraph (a) is added to that subsection, to read:

12 120.81 Exceptions and special requirements; general  
13 areas.--

14 (1) EDUCATIONAL UNITS.--

15 (a) Notwithstanding s. 120.536(1) and the flush left  
16 provisions of s. 120.52(8), district school boards may adopt  
17 rules to implement their general powers under s. 230.22.

18 Section 8. This act shall take effect upon becoming a  
19 law.

20  
21

22 ===== T I T L E A M E N D M E N T =====

23 And the title is amended as follows:

24 Delete everything before the enacting clause

25  
26 and insert:

27 A bill to be entitled  
28 An act relating to the Administrative Procedure  
29 Act; providing legislative intent; amending s.  
30 120.52, F.S.; removing entities described in  
31 ch. 298, F.S., relating to water control

Bill No. CS/HB 107

Amendment No. \_\_\_\_

1 districts, from the definition of "agency";  
2 redefining the term "agency"; providing  
3 additional restrictions with respect to an  
4 agency's rulemaking authority; amending s.  
5 120.536, F.S.; providing additional  
6 restrictions with respect to an agency's  
7 rulemaking authority; requiring agencies to  
8 provide the Administrative Procedures Committee  
9 with a list of existing rules which exceed such  
10 rulemaking authority and providing for  
11 legislative consideration of such rules;  
12 requiring agencies to initiate proceedings to  
13 repeal such rules for which authorizing  
14 legislation is not adopted; requiring a report  
15 to the Legislature; providing that the  
16 committee or a substantially affected person  
17 may petition for repeal of such rules after a  
18 specified date; restricting challenge of such  
19 rules before that date; amending s. 120.54,  
20 F.S.; specifying when rules may take effect;  
21 restricting adoption of retroactive rules;  
22 amending s. 120.56, F.S.; revising an agency's  
23 responsibilities in response to a challenge to  
24 a proposed rule and specifying the petitioner's  
25 responsibility of going forward; amending s.  
26 120.57, F.S., relating to hearings involving  
27 disputed issues of material fact; revising an  
28 agency's authority with respect to rejection or  
29 modification of conclusions of law in its final  
30 order; providing for agency statement as to the  
31 reasonableness of its substituted finding of

Bill No. CS/HB 107

Amendment No. \_\_\_\_

1 law or interpretation of administrative rule;  
2 amending s. 120.81, F.S.; providing that  
3 district school boards may adopt rules  
4 notwithstanding the rulemaking standards found  
5 in chapter 120, F.S.; providing an effective  
6 date.  
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