

1                   A bill to be entitled  
2           An act relating to the Administrative Procedure  
3           Act; providing legislative intent; amending s.  
4           120.52, F.S.; removing entities described in  
5           ch. 298, F.S., relating to water control  
6           districts, from the definition of "agency";  
7           redefining the term "agency"; providing  
8           additional restrictions with respect to an  
9           agency's rulemaking authority; amending s.  
10          120.536, F.S.; providing additional  
11          restrictions with respect to an agency's  
12          rulemaking authority; requiring agencies to  
13          provide the Administrative Procedures Committee  
14          with a list of existing rules which exceed such  
15          rulemaking authority and providing for  
16          legislative consideration of such rules;  
17          requiring agencies to initiate proceedings to  
18          repeal such rules for which authorizing  
19          legislation is not adopted; requiring a report  
20          to the Legislature; providing that the  
21          committee or a substantially affected person  
22          may petition for repeal of such rules after a  
23          specified date; restricting challenge of such  
24          rules before that date; amending s. 120.54,  
25          F.S.; specifying when rules may take effect;  
26          restricting adoption of retroactive rules;  
27          amending s. 120.56, F.S.; revising an agency's  
28          responsibilities in response to a challenge to  
29          a proposed rule and specifying the petitioner's  
30          responsibility of going forward; amending s.  
31          120.57, F.S., relating to hearings involving

1       disputed issues of material fact; revising an  
2       agency's authority with respect to rejection or  
3       modification of conclusions of law in its final  
4       order; providing for agency statement as to the  
5       reasonableness of its substituted finding of  
6       law or interpretation of administrative rule;  
7       amending s. 120.81, F.S.; providing that  
8       district school boards may adopt rules  
9       notwithstanding the rulemaking standards found  
10      in chapter 120, F.S.; providing an effective  
11      date.

12  
13 Be It Enacted by the Legislature of the State of Florida:

14  
15       Section 1. It is the intent of the Legislature that  
16 modifications contained in sections 2 and 3 of this act which  
17 apply to rulemaking are to clarify the limited authority of  
18 agencies to adopt rules in accordance with chapter 96-159,  
19 Laws of Florida, and are intended to reject the class of  
20 powers and duties analysis. However, it is not the intent of  
21 the Legislature to reverse the result of any specific judicial  
22 decision.

23       Section 2. Subsections (1) and (8) of section 120.52,  
24 Florida Statutes, 1998 Supplement, are amended to read:

25       120.52 Definitions.--As used in this act:

26       (1) "Agency" means:

27       (a) The Governor in the exercise of all executive  
28 powers other than those derived from the constitution.

29       (b) Each:

30       1. State officer and state department, and each  
31 departmental unit described in s. 20.04.7

1           2. Authority, including a regional water supply  
2 authority.

3           3. Board.

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

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

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

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

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

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

26  
27 This definition does not include any legal entity or agency  
28 created in whole or in part pursuant to chapter 361, part II,  
29 an expressway authority pursuant to chapter 348, any legal or  
30 administrative entity created by an interlocal agreement  
31 pursuant to s. 163.01(7), unless any party to such agreement

1 is otherwise an agency as defined in this subsection, or any  
2 multicounty special district with a majority of its governing  
3 board comprised of elected persons; however, this definition  
4 shall include a regional water supply authority.

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

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

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

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

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

21 (e) The rule is arbitrary or capricious;

22 (f) The rule is not supported by competent substantial  
23 evidence; or

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

28  
29 A grant of rulemaking authority is necessary but not  
30 sufficient to allow an agency to adopt a rule; a specific law  
31 to be implemented is also required. An agency may adopt only

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

13 Section 3. Section 120.536, Florida Statutes, is  
14 amended to read:

15 120.536 Rulemaking authority; listing of rules  
16 exceeding authority; repeal; challenge.--

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

31

1 specific ~~the particular~~ powers and duties conferred by the  
2 same statute.

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

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

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

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

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

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

30 Section 4. Paragraph (f) of subsection (1) of section  
31 120.54, Florida Statutes, 1998 Supplement, is amended to read:



1 120.54 Rulemaking.--

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

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

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

13 120.56 Challenges to rules.--

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

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

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

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

10 120.57 Additional procedures for particular cases.--

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

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

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

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

11 120.81 Exceptions and special requirements; general  
12 areas.--

13 (1) EDUCATIONAL UNITS.--

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

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