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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.

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

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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.

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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

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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.

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