

By Senator Laurent

17-500-99

See HB

1                                   A bill to be entitled

2           An act relating to the Administrative Procedure

3           Act; amending ss. 120.52 and 120.536, F.S.;

4           removing entities described in ch. 298, F.S.,

5           relating to water control districts, from the

6           definition of "agency"; providing that an

7           agency's confirmation of a statutory exemption

8           is not agency action and is not subject to

9           provisions relating to decisions that affect

10          substantial interests; providing additional

11          restrictions with respect to an agency's

12          rulemaking authority; amending s. 120.56, F.S.;

13          revising an agency's responsibilities in

14          response to a challenge to a proposed rule;

15          amending s. 120.57, F.S., relating to hearings

16          involving disputed issues of material fact;

17          revising an agency's authority with respect to

18          rejection or modification of conclusions of law

19          in its final order; providing an effective

20          date.

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

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24           Section 1. Paragraph (b) of subsection (1) and

25           subsections (2) and (8) of section 120.52, Florida Statutes,

26           1998 Supplement, are amended to read:

27           120.52 Definitions.--As used in this act:

28           (1) "Agency" means:

29           (b) Each state officer and state department,

30           departmental unit described in s. 20.04, commission, regional

31           planning agency, board, multicounty special district with a

1 majority of its governing board comprised of nonelected  
2 persons, and authority, including, but not limited to, the  
3 Commission on Ethics and the Game and Fresh Water Fish  
4 Commission when acting pursuant to statutory authority derived  
5 from the Legislature, educational units, and those entities  
6 described in chapters 163, ~~298~~, 373, 380, and 582 and s.  
7 186.504, except any legal entity or agency created in whole or  
8 in part pursuant to chapter 361, part II, an expressway  
9 authority pursuant to chapter 348, or any legal or  
10 administrative entity created by an interlocal agreement  
11 pursuant to s. 163.01(7), unless any party to such agreement  
12 is otherwise an agency as defined in this subsection.

13 (2) "Agency action" means the whole or part of a rule  
14 or order, or the equivalent, or the denial of a petition to  
15 adopt a rule or issue an order. The term also includes any  
16 denial of a request made under s. 120.54(7). The term does not  
17 include an agency's confirmation or affirmance of a statutory  
18 exemption, and such an act is not subject to s. 120.569 or s.  
19 120.57.

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

25 (a) The agency has materially failed to follow the  
26 applicable rulemaking procedures or requirements set forth in  
27 this chapter;

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

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

4 (d) The rule is vague, fails to establish adequate  
5 standards for agency decisions, or vests unbridled discretion  
6 in the agency;

7 (e) The rule is arbitrary or capricious;

8 (f) The rule is not supported by competent substantial  
9 evidence; or

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

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

30 Section 2. Subsection (1) of section 120.536, Florida  
31 Statutes, is amended to read:

1           120.536 Rulemaking authority; listing of rules  
2 exceeding authority; repeal; challenge.--

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

18           Section 3. Paragraph (a) of subsection (2) of section  
19 120.56, Florida Statutes, is amended to read:

20           120.56 Challenges to rules.--

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

22           (a) Any substantially affected person may seek an  
23 administrative determination of the invalidity of any proposed  
24 rule by filing a petition seeking such a determination with  
25 the division within 21 days after the date of publication of  
26 the notice required by s. 120.54(3)(a), within 10 days after  
27 the final public hearing is held on the proposed rule as  
28 provided by s. 120.54(3)(c), within 20 days after the  
29 preparation of a statement of estimated regulatory costs  
30 required pursuant to s. 120.541, if applicable, or within 20  
31 days after the date of publication of the notice required by

1 s. 120.54(3)(d). The petition shall state with particularity  
2 the objections to the proposed rule and the reasons that the  
3 proposed rule is an invalid exercise of delegated legislative  
4 authority. The agency then has the burden of going forward  
5 and the burden to prove by a preponderance of the evidence  
6 that the proposed rule is not an invalid exercise of delegated  
7 legislative authority as to the objections raised. Any person  
8 who is substantially affected by a change in the proposed rule  
9 may seek a determination of the validity of such change. Any  
10 person not substantially affected by the proposed rule as  
11 initially noticed, but who is substantially affected by the  
12 rule as a result of a change, may challenge any provision of  
13 the rule and is not limited to challenging the change to the  
14 proposed rule.

15 Section 4. Paragraph (1) of subsection (1) of section  
16 120.57, Florida Statutes, 1998 Supplement, is amended to read:

17 120.57 Additional procedures for particular cases.--

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

20 (1) The agency may adopt the recommended order as the  
21 final order of the agency. The agency in its final order may  
22 reject or modify the clearly erroneous conclusions of law over  
23 which it has substantive jurisdiction and the interpretation  
24 of administrative rules over which it has substantive  
25 jurisdiction. Rejection or modification of conclusions of law  
26 may not form the basis for rejection or modification of  
27 findings of fact. The agency may not reject or modify the  
28 findings of fact unless the agency first determines from a  
29 review of the entire record, and states with particularity in  
30 the order, that the findings of fact were not based upon  
31 competent substantial evidence or that the proceedings on

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

7 Section 5. This act shall take effect upon becoming a  
8 law.

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LEGISLATIVE SUMMARY

Removes entities described in ch. 298, F.S., relating to water control districts, from the definition of "agency" under the Administrative Procedure Act. Provides that an agency's confirmation of a statutory exemption is not agency action under the act and is not subject to provisions relating to decisions that affect substantial interests. Provides additional restrictions with respect to an agency's rulemaking authority. Revises an agency's responsibilities in response to a challenge to a proposed rule. Revises an agency's authority with respect to rejection or modification of conclusions of law in its final order following a hearing involving disputed issues of material fact.