

By the Committee on Governmental Oversight and Productivity;
and Senator Laurent

302-1767-99

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

1 agency's authority with respect to rejection or
2 modification of conclusions of law in its final
3 order; amending s. 120.68, F.S., relating to
4 judicial review; providing a directive with
5 respect to consideration by the court of an
6 agency's construction of a statute or rule;
7 providing an effective date.
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9 Be It Enacted by the Legislature of the State of Florida:

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

13 120.52 Definitions.--As used in this act:

14 (1) "Agency" means:

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

17 (b) Each:

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

20 2. Authority, including a regional water supply
21 authority.

22 3. Board.

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

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

27 6. Multicounty special district with a majority of its
28 governing board comprised of nonelected persons. ~~and~~
29 ~~authority, including, but not limited to, the Commission on~~
30 ~~Ethics and the Game and Fresh Water Fish Commission when~~
31

1 ~~acting pursuant to statutory authority derived from the~~
2 ~~Legislature,~~

3 7. Educational unit, other than a local school board.
4 ~~units, and those entities~~

5 8. Entity described in chapters 163, 298, 373, 380,
6 and 582 and s. 186.504, except any legal entity or agency
7 created in whole or in part pursuant to chapter 361, part II,
8 an expressway authority pursuant to chapter 348, or any legal
9 or administrative entity created by an interlocal agreement
10 pursuant to s. 163.01(7), unless any party to such agreement
11 is otherwise an agency as defined in this subsection.

12 (c) Each other unit of government in the state,
13 including counties, ~~and~~ municipalities, and local school
14 boards, to the extent they are expressly made subject to this
15 act by general or special law or existing judicial decisions.

16
17 This definition does not include any legal entity or agency
18 created in whole or in part pursuant to chapter 361, part II,
19 an expressway authority pursuant to chapter 348, or any legal
20 or administrative entity created by an interlocal agreement
21 pursuant to s. 163.01(7), unless any party to such agreement
22 is otherwise an agency as defined in this subsection.

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

28 (a) The agency has materially failed to follow the
29 applicable rulemaking procedures or requirements set forth in
30 this chapter;

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

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

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

9 (e) The rule is arbitrary or capricious;

10 (f) The rule is not supported by competent substantial
11 evidence; or

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

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

1 Section 2. Section 120.536, Florida Statutes, is
2 amended to read:

3 120.536 Rulemaking authority; listing of rules
4 exceeding authority; repeal; challenge.--

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

21 (2)(a) By October 1, 1997, each agency shall provide
22 to the Administrative Procedures Committee a listing of each
23 rule, or portion thereof, adopted by that agency before
24 October 1, 1996, which exceeds the rulemaking authority
25 permitted by this section. For those rules of which only a
26 portion exceeds the rulemaking authority permitted by this
27 section, the agency shall also identify the language of the
28 rule which exceeds this authority. The Administrative
29 Procedures Committee shall combine the lists and provide the
30 cumulative listing to the President of the Senate and the
31 Speaker of the House of Representatives. The Legislature

1 shall, at the 1998 Regular Session, consider whether specific
2 legislation authorizing the identified rules, or portions
3 thereof, should be enacted. By January 1, 1999, each agency
4 shall initiate proceedings pursuant to s. 120.54 to repeal
5 each rule, or portion thereof, identified as exceeding the
6 rulemaking authority permitted by this section for which
7 authorizing legislation does not exist. By February 1, 1999,
8 the Administrative Procedures Committee shall submit to the
9 President of the Senate and the Speaker of the House of
10 Representatives a report identifying those rules that an
11 agency had previously identified as exceeding the rulemaking
12 authority permitted by this section for which proceedings to
13 repeal the rule have not been initiated. As of July 1, 1999,
14 the Administrative Procedures Committee or any substantially
15 affected person may petition an agency to repeal any rule, or
16 portion thereof, because it exceeds the rulemaking authority
17 permitted by this section. Not later than 30 days after the
18 date of filing the petition if the agency is headed by an
19 individual, or not later than 45 days if the agency is headed
20 by a collegial body, the agency shall initiate rulemaking
21 proceedings to repeal the rule, or portion thereof, or deny
22 the petition, giving a written statement of its reasons for
23 the denial.

24 (b) By October 1, 1999, each agency shall provide to
25 the Administrative Procedures Committee a listing of each
26 rule, or portion thereof, adopted by that agency on or after
27 October 1, 1996, and before October 1, 1999, which exceeds the
28 rulemaking authority permitted by this section. For those
29 rules of which only a portion exceeds the rulemaking authority
30 permitted by this section, the agency shall also identify the
31 language of the rule which exceeds this authority. The

1 Administrative Procedures Committee shall combine the lists
2 and provide the cumulative listing to the President of the
3 Senate and the Speaker of the House of Representatives. The
4 Legislature shall, at the 2000 Regular Session, consider
5 whether specific legislation authorizing the identified rules,
6 or portions thereof, should be enacted. By January 1, 2001,
7 each agency shall initiate proceedings pursuant to s. 120.54
8 to repeal each rule, or portion thereof, identified as
9 exceeding the rulemaking authority permitted by this section
10 for which authorizing legislation does not exist. By February
11 1, 2001, the Administrative Procedures Committee shall submit
12 to the President of the Senate and the Speaker of the House of
13 Representatives a report identifying those rules that an
14 agency had previously identified as exceeding the rulemaking
15 authority permitted by this section for which proceedings to
16 repeal the rule have not been initiated. As of July 1, 2001,
17 the Administrative Procedures Committee or any substantially
18 affected person may petition an agency to repeal any rule, or
19 portion thereof, because it exceeds the rulemaking authority
20 permitted by this section. Not later than 30 days after the
21 date of filing the petition if the agency is headed by an
22 individual, or not later than 45 days if the agency is headed
23 by a collegial body, the agency shall initiate rulemaking
24 proceedings to repeal the rule, or portion thereof, or deny
25 the petition, giving a written statement of its reasons for
26 the denial.

27 (3) All proposed rules or amendments to existing rules
28 filed with the Department of State on or after October 1,
29 1996, shall be based on rulemaking authority no broader than
30 that permitted by this section. A rule adopted before October
31 1, 1996, and not included on a list submitted by an agency in

1 accordance with subsection (2) may not be challenged before
2 November 1, 1997, on the grounds that it exceeds the
3 rulemaking authority or law implemented as described by this
4 section. A rule adopted before October 1, 1996, and included
5 on a list submitted by an agency in accordance with subsection
6 (2) may not be challenged before July 1, 1999, on the grounds
7 that it exceeds the rulemaking authority or law implemented as
8 described by this section. A rule adopted on or after October
9 1, 1996, and before October 1, 1999, and included on a list
10 submitted by an agency in accordance with subsection (2) may
11 not be challenged before July 1, 2001, on the grounds that it
12 exceeds the rulemaking authority or law implemented as
13 described by this section.

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

17 Section 3. Paragraph (f) of subsection (1) of section
18 120.54, Florida Statutes, 1998 Supplement, is amended to read:

19 120.54 Rulemaking.--

20 (1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER
21 THAN EMERGENCY RULES.--

22 (f) An agency may adopt rules authorized by law and
23 necessary to the proper implementation of a statute prior to
24 the effective date of the statute, but the rules may not be
25 effective ~~enforced~~ until the statute upon which they are based
26 is effective. An agency may not adopt retroactive rules,
27 including retroactive rules intended to clarify existing law,
28 unless that power is expressly authorized by statute.

29 Section 4. Paragraph (a) of subsection (2) of section
30 120.56, Florida Statutes, is amended to read:

31 120.56 Challenges to rules.--

1 (2) CHALLENGING PROPOSED RULES; SPECIAL PROVISIONS.--
2 (a) Any substantially affected person may seek an
3 administrative determination of the invalidity of any proposed
4 rule by filing a petition seeking such a determination with
5 the division within 21 days after the date of publication of
6 the notice required by s. 120.54(3)(a), within 10 days after
7 the final public hearing is held on the proposed rule as
8 provided by s. 120.54(3)(c), within 20 days after the
9 preparation of a statement of estimated regulatory costs
10 required pursuant to s. 120.541, if applicable, or within 20
11 days after the date of publication of the notice required by
12 s. 120.54(3)(d). The petition shall state with particularity
13 the objections to the proposed rule and the reasons that the
14 proposed rule is an invalid exercise of delegated legislative
15 authority. The petitioner has the burden of going forward.The
16 agency then has the burden to prove by a preponderance of the
17 evidence that the proposed rule is not an invalid exercise of
18 delegated legislative authority as to the objections raised.
19 Any person who is substantially affected by a change in the
20 proposed rule may seek a determination of the validity of such
21 change. Any person not substantially affected by the proposed
22 rule as initially noticed, but who is substantially affected
23 by the rule as a result of a change, may challenge any
24 provision of the rule and is not limited to challenging the
25 change to the proposed rule.
26 Section 5. Paragraph (1) of subsection (1) of section
27 120.57, Florida Statutes, 1998 Supplement, is amended to read:
28 120.57 Additional procedures for particular cases.--
29 (1) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS
30 INVOLVING DISPUTED ISSUES OF MATERIAL FACT.--
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1 (1) The agency may adopt the recommended order as the
2 final order of the agency. The agency in its final order may
3 reject or modify the clearly erroneous conclusions of law over
4 which it has substantive jurisdiction and interpretation of
5 administrative rules over which it has substantive
6 jurisdiction. Rejection or modification of conclusions of law
7 may not form the basis for rejection or modification of
8 findings of fact. The agency may not reject or modify the
9 findings of fact unless the agency first determines from a
10 review of the entire record, and states with particularity in
11 the order, that the findings of fact were not based upon
12 competent substantial evidence or that the proceedings on
13 which the findings were based did not comply with essential
14 requirements of law. The agency may accept the recommended
15 penalty in a recommended order, but may not reduce or increase
16 it without a review of the complete record and without stating
17 with particularity its reasons therefor in the order, by
18 citing to the record in justifying the action.

19 Section 6. Paragraph (d) of subsection (7) of section
20 120.68, Florida Statutes, is amended to read:

21 120.68 Judicial review.--

22 (7) The court shall remand a case to the agency for
23 further proceedings consistent with the court's decision or
24 set aside agency action, as appropriate, when it finds that:

25 (d) The agency has erroneously interpreted a provision
26 of law and a correct interpretation compels a particular
27 action. The court shall not defer to an agency's construction
28 of a statute or rule or otherwise afford any special weight to
29 the agency's interpretation of a statute or rule; or

30 Section 7. This act shall take effect upon becoming a
31 law.

1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 SB 206

4 Includes regional water supply authorities within the
5 definition of "agency." Lists local school boards in section
6 of definition of "agency" that includes them only if they are
7 expressly made subject to the act by general or special law or
8 existing judicial decisions.

9 Provides that an agency may adopt only rules that implement or
10 interpret the specific powers and duties granted by the
11 enabling statute.

12 Prohibits an agency from adopting a rule only because it is
13 within the agency's class of powers and duties. Provides that
14 the powers and functions of an agency are to be construed to
15 extend no further than implementing or interpreting the
16 specific powers.

17 Requires agencies to review rules and report to the
18 Legislature those rules that exceed the rulemaking standard.
19 Provides that Legislature will review rules on list and
20 determine if legislation to authorize rules will be adopted.
21 Requires agencies to repeal unauthorized rules. Permits
22 challenges to rules July 1, 2001.

23 Prohibits adoption of retroactive rules.

24 Provides that courts may not defer to an agency's construction
25 of a statute or rule or otherwise afford any special weight to
26 the agency's interpretation of a statute or a rule.

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