

By the Committees on Fiscal Policy; Governmental Oversight and Productivity; and Senator Laurent

309-2214A-99

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; providing applicability
13 of such changes; amending s. 120.54, F.S.;
14 specifying when rules may take effect;
15 restricting adoption of retroactive rules;
16 amending s. 120.56, F.S.; revising an agency's
17 responsibilities in response to a challenge to
18 a proposed rule and specifying the petitioner's
19 responsibility of going forward; amending s.
20 120.57, F.S., relating to hearings involving
21 disputed issues of material fact; revising an
22 agency's authority with respect to rejection or
23 modification of conclusions of law in its final
24 order; providing for agency statement as to the
25 reasonableness of its substituted finding of
26 law or interpretation of administrative rule;
27 amending s. 120.81, F.S.; providing that
28 district school boards may adopt rules
29 notwithstanding the rulemaking standards found
30 in chapter 120, F.S.; providing an effective
31 date.

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

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3 Section 1. It is the intent of the Legislature that
4 modifications contained in sections 2 and 3 of this act which
5 apply to rulemaking are to clarify the limited authority of
6 agencies to adopt rules in accordance with chapter 96-159,
7 Laws of Florida, and are intended to reject the class of
8 powers and duties analysis. However, it is not the intent of
9 the Legislature to reverse the result of any specific judicial
10 decision.

11 Section 2. 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~~

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

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

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

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

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16 This definition does not include 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, any legal or
19 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, or any
22 multicounty special district with a majority of its governing
23 board comprised of elected persons; however, this definition
24 shall include a regional water supply authority.

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

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1 (a) The agency has materially failed to follow the
2 applicable rulemaking procedures or requirements set forth in
3 this chapter;

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

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

9 (d) The rule is vague, fails to establish adequate
10 standards for agency decisions, or vests unbridled discretion
11 in the agency;

12 (e) The rule is arbitrary or capricious;

13 (f) The rule is not supported by competent substantial
14 evidence; or

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

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

1 powers and functions of an agency shall be construed to extend
2 no further than implementing or interpreting the specific the
3 ~~particular~~ powers and duties conferred by the same statute.

4 Section 3. Subsection (1) of section 120.536, Florida
5 Statutes, is amended to read:

6 120.536 Rulemaking authority; listing of rules
7 exceeding authority; repeal; challenge.--

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

26 Section 4. Paragraph (f) of subsection (1) of section
27 120.54, Florida Statutes, 1998 Supplement, is amended to read:

28 120.54 Rulemaking.--

29 (1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER
30 THAN EMERGENCY RULES.--

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

8 Section 5. Paragraph (a) of subsection (2) of section
9 120.56, Florida Statutes, is amended to read:

10 120.56 Challenges to rules.--

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

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

1 rule as initially noticed, but who is substantially affected
2 by the rule as a result of a change, may challenge any
3 provision of the rule and is not limited to challenging the
4 change to the proposed rule.

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

7 120.57 Additional procedures for particular cases.--

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

10 (1) The agency may adopt the recommended order as the
11 final order of the agency. The agency in its final order may
12 reject or modify the conclusions of law over which it has
13 substantive jurisdiction and interpretation of administrative
14 rules over which it has substantive jurisdiction. When
15 rejecting or modifying such conclusion of law or
16 interpretation of administrative rule, the agency must state
17 with particularity its reasons for rejecting or modifying such
18 conclusion of law or interpretation of administrative rule and
19 must make a finding that its substituted conclusion of law or
20 interpretation of administrative rule is as or more reasonable
21 than that which was rejected or modified. Rejection or
22 modification of conclusions of law may not form the basis for
23 rejection or modification of findings of fact. The agency may
24 not reject or modify the findings of fact unless the agency
25 first determines from a review of the entire record, and
26 states with particularity in the order, that the findings of
27 fact were not based upon competent substantial evidence or
28 that the proceedings on which the findings were based did not
29 comply with essential requirements of law. The agency may
30 accept the recommended penalty in a recommended order, but may
31 not reduce or increase it without a review of the complete

1 record and without stating with particularity its reasons
2 therefor in the order, by citing to the record in justifying
3 the action.

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

8 120.81 Exceptions and special requirements; general
9 areas.--

10 (1) EDUCATIONAL UNITS.--

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

14 Section 8. This act shall take effect upon becoming a
15 law.

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17 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
18 COMMITTEE SUBSTITUTE FOR
19 CS/SB 0206

20 States that it is the intent of the Legislature to clarify the
21 limited authority of agencies to adopt rules, but not to
reverse the result of specific judicial decisions.

22 Removes the requirement that agencies review rules and report
23 to the Legislature those rules that exceed the rulemaking
standard.

24 Provides that changes to agency rulemaking authority in s.
25 120.536, F.S., apply to all rules adopted after the effective
date of the bill.

26 Removes the provision that prohibits courts from deferring to
27 an agency's construction of a statute or rule, or otherwise
affording any special weight to the agency's interpretation of
a statute or rule.

28 Provides that district school boards do not have to adopt
29 rules pursuant to the standard contained in s. 120.536(1) and
30 s. 120.52(8), but must instead adopt rules pursuant to s.
230.22, F.S., 1998 Supplement.

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