

Amendment No. \_\_\_\_ (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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ORIGINAL STAMP BELOW

Representative(s) Frankel offered the following:

**Amendment to Amendment (782029) (with title amendment)**

On page 12, between lines 14 and 15 of the amendment

insert:

Section 7. Subsection (8) of section 120.52, Florida Statutes, is amended to read:

120.52 Definitions.--As used in this act:

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

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

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

(c) The rule enlarges, modifies, or contravenes the specific provisions of law implemented, citation to which is

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1 required by s. 120.54(3)(a)1.;

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

5 (e) The rule is arbitrary or capricious;

6 (f) The rule is not supported by competent substantial  
7 evidence; or

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

12

13 A grant of rulemaking authority is necessary but not  
14 sufficient to allow an agency to adopt a rule; a specific law  
15 to be implemented is also required. An agency may adopt only  
16 rules that implement, interpret ~~the~~ or make specific the  
17 particular powers and duties granted by the enabling statute.

18 No agency shall have authority to adopt a rule only because it  
19 is reasonably related to the purpose of the enabling  
20 legislation and is not arbitrary and capricious ~~or is within~~  
21 ~~the agency's class of powers and duties~~, nor shall an agency  
22 have the authority to implement statutory provisions setting  
23 forth general legislative intent or policy. Statutory language  
24 granting rulemaking authority or generally describing the  
25 powers and functions of an agency shall be construed to extend  
26 no further than ~~implementing or interpreting the specific the~~  
27 particular powers and duties conferred by the same statute.

28 Section 8. Section 120.536, Florida Statutes, is  
29 amended to read:

30 120.536 Rulemaking authority; listing of rules  
31 exceeding authority; repeal; challenge.--

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

17           (2)~~(a)~~ By October 1, 1997, each agency shall provide  
18 to the Administrative Procedures Committee a listing of each  
19 rule, or portion thereof, adopted by that agency before  
20 October 1, 1996, which exceeds the rulemaking authority  
21 permitted by this section. For those rules of which only a  
22 portion exceeds the rulemaking authority permitted by this  
23 section, the agency shall also identify the language of the  
24 rule which exceeds this authority. The Administrative  
25 Procedures Committee shall combine the lists and provide the  
26 cumulative listing to the President of the Senate and the  
27 Speaker of the House of Representatives. The Legislature  
28 shall, at the 1998 Regular Session, consider whether specific  
29 legislation authorizing the identified rules, or portions  
30 thereof, should be enacted. By January 1, 1999, each agency  
31 shall initiate proceedings pursuant to s. 120.54 to repeal

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

20 ~~(b) By October 1, 1999, each agency shall provide to~~  
21 ~~the Administrative Procedures Committee a listing of each~~  
22 ~~rule, or portion thereof, adopted by that agency before the~~  
23 ~~effective date of the bill, which exceeds the rulemaking~~  
24 ~~authority permitted by this section. For those rules of which~~  
25 ~~only a portion exceeds the rulemaking authority permitted by~~  
26 ~~this section, the agency shall also identify the language of~~  
27 ~~the rule which exceeds this authority. The Administrative~~  
28 ~~Procedures Committee shall combine the lists and provide the~~  
29 ~~cumulative listing to the President of the Senate and the~~  
30 ~~Speaker of the House of Representatives. The Legislature~~  
31 ~~shall, at the 2000 Regular Session, consider whether specific~~

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

23 (3) All proposed rules or amendments to existing rules  
24 filed with the Department of State on or after October 1,  
25 1996, shall be based on rulemaking authority no broader than  
26 that permitted by this section. A rule adopted before October  
27 1, 1996, and not included on a list submitted by an agency in  
28 accordance with subsection (2) may not be challenged before  
29 November 1, 1997, on the grounds that it exceeds the  
30 rulemaking authority or law implemented as described by this  
31 section. A rule adopted before October 1, 1996, and included

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1 on a list submitted by an agency in accordance with subsection  
2 (2) may not be challenged before July 1, 1999, on the grounds  
3 that it exceeds the rulemaking authority or law implemented as  
4 described by this section. ~~A rule adopted before the effective~~  
5 ~~date of the bill, and included on a list submitted by an~~  
6 ~~agency in accordance with paragraph (2)(b) may not be~~  
7 ~~challenged before July 1, 2001, on the grounds that it exceeds~~  
8 ~~the rulemaking authority or law implemented as described by~~  
9 ~~this section.~~

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

13 Section 9. Paragraph (a) of subsection (2) of section  
14 120.561, Florida Statutes, is amended to read:

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

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

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

9 Section 10. Paragraph (1) of subsection (1) of section  
10 120.57, Florida Statutes, is amended to read:

11 120.57 Additional procedures for particular cases.--

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

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

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

8 Section 11. Section 1 of Chapter 99-379, Laws of  
9 Florida, is hereby repealed.

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12 ===== T I T L E A M E N D M E N T =====

13 And the title is amended as follows:

14 On page 13, line 19 of the amendment  
15 remove: all of said line

16

17 and insert in lieu thereof:

18 Procedure Act; amending 120.52, F.S.;  
19 eliminating restrictions with respect to an  
20 agency's rulemaking authority; amending s.  
21 120.536, F.S.; eliminating restrictions with  
22 respect to an agency's rulemaking authority;  
23 eliminating requirements of agencies to repeal  
24 rules as identified as exceeding rulemaking  
25 authority, eliminating the requirement for the  
26 Administrative Procedures Committee to report  
27 to the legislature; eliminating the ability of  
28 the committee or a substantially affected  
29 person to petition for repeal of such rules  
30 after a specified date; amending s. 120.56,  
31 F.S., revising the agency's responsibilities in



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1 response to a challenge to a proposed rule;  
2 eliminating the burden on the petitioner of  
3 going forward; amending s. 120.57, F.S.,  
4 related to hearings involving disputed issues  
5 of material fact; revising an agency's  
6 authority and requirements with respect to  
7 rejection or modification of conclusions of law  
8 in its final order; repealing legislative  
9 intent rejecting the class of powers of duties  
10 analysis; providing an effective date.

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