

By the Committee on Governmental Rules & Regulations and  
Representatives Pruitt, Wallace, Posey, Byrd and Argenziano

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

1 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.

8

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

10

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.

21

3. Board.

22

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

25

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

26

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

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

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

13  
14 This definition does not include any legal entity or agency  
15 created in whole or in part pursuant to chapter 361, part II,  
16 an expressway authority pursuant to chapter 348, or any legal  
17 or administrative entity created by an interlocal agreement  
18 pursuant to s. 163.01(7), unless any party to such agreement  
19 is otherwise an agency as defined in this subsection.

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.;

30  
31

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.

14  
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 or, interpret the, ~~or make~~ specific ~~the~~  
19 ~~particular~~ powers and duties granted by the enabling statute.  
20 No agency shall have authority to adopt a rule only because it  
21 is reasonably related to the purpose of the enabling  
22 legislation and is not arbitrary and capricious or is within  
23 the agency's class of powers and duties, nor shall an agency  
24 have the authority to implement statutory provisions setting  
25 forth general legislative intent or policy. Statutory language  
26 granting rulemaking authority or generally describing the  
27 powers and functions of an agency shall be construed to extend  
28 no further than implementing or interpreting the specific ~~the~~  
29 ~~particular~~ powers and duties conferred by the same statute.

30 Section 2. Section 120.536, Florida Statutes, is  
31 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 or, interpret the, ~~or make~~ specific  
7 ~~the particular~~ powers and duties granted by the enabling  
8 statute. No agency shall have authority to adopt a rule only  
9 because it is reasonably related to the purpose of the  
10 enabling legislation and is not arbitrary and capricious or is  
11 within the agency's class of powers and duties, nor shall an  
12 agency have the authority to implement statutory provisions  
13 setting forth general legislative intent or policy. Statutory  
14 language granting rulemaking authority or generally describing  
15 the powers and functions of an agency shall be construed to  
16 extend no further than implementing or interpreting the  
17 specific ~~the particular~~ powers and duties conferred by the  
18 same statute.

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

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

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

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

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

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

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

15 Section 3. Paragraph (f) of subsection (1) of section  
16 120.54, Florida Statutes, 1998 Supplement, is amended to read:

17 120.54 Rulemaking.--

18 (1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER  
19 THAN EMERGENCY RULES.--

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

27 Section 4. Paragraph (a) of subsection (2) of section  
28 120.56, Florida Statutes, is amended to read:

29 120.56 Challenges to rules.--

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

31



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

25           Section 5. Paragraph (1) of subsection (1) of section  
26 120.57, Florida Statutes, 1998 Supplement, is amended to read:

27           120.57 Additional procedures for particular cases.--

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

30           (1) The agency may adopt the recommended order as the  
31 final order of the agency. The agency in its final order may

1 reject or modify the clearly erroneous conclusions of law over  
2 which it has substantive jurisdiction and interpretation of  
3 administrative rules over which it has substantive  
4 jurisdiction. Rejection or modification of conclusions of law  
5 may not form the basis for rejection or modification of  
6 findings of fact. The agency may not reject or modify the  
7 findings of fact unless the agency first determines from a  
8 review of the entire record, and states with particularity in  
9 the order, that the findings of fact were not based upon  
10 competent substantial evidence or that the proceedings on  
11 which the findings were based did not comply with essential  
12 requirements of law. The agency may accept the recommended  
13 penalty in a recommended order, but may not reduce or increase  
14 it without a review of the complete record and without stating  
15 with particularity its reasons therefor in the order, by  
16 citing to the record in justifying the action.

17 Section 6. Paragraph (d) of subsection (7) of section  
18 120.68, Florida Statutes, is amended to read:

19 120.68 Judicial review.--

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

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

28 Section 7. This act shall take effect upon becoming a  
29 law.

30  
31