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### Session Law 87-385

Florida Senate & House of Representatives

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# **FLORIDA LEGISLATURE**

***History of Legislation  
1987 Regular Session  
1987 Special Session A***



**prepared by:**

***Joint Legislative Management Committee***

**Legislative Information Division  
Capitol Building, Room 826 — 488-4371**

## HISTORY OF SENATE BILLS

## S 605 (CONTINUED)

upon becoming law whichever occurs later  
 03/30/87 SENATE Prefiled  
 04/07/87 SENATE Introduced, referred to Economic, Community and Consumer Affairs, Appropriations—SJ 55  
 04/17/87 SENATE On Committee agenda—Economic, Community and Consumer Affairs, 04/21/87, 2:00 pm, Room-H  
 04/20/87 SENATE Extension of time granted Committee Economic, Community and Consumer Affairs  
 04/21/87 SENATE Comm. Report. CS by Economic, Community and Consumer Affairs—SJ 141  
 04/23/87 SENATE CS read first time—SJ 158, Now in Appropriations—SJ 141  
 05/06/87 SENATE Extension of time granted Committee Appropriations  
 05/21/87 SENATE Extension of time granted Committee Appropriations  
 06/06/87 SENATE Died in Committee on Appropriations

**S 606 GENERAL BILL/CS/CS by Finance, Taxation and Claims; Natural Resources and Conservation; Hollingsworth; W.D Childers (Similar CS/ENG/H 577, S 712, Compare H 459)**

Nonresident Hunting License. (THIS BILL COMBINES S 606, 712) provides exemptions for hunting & fishing licenses & stamps for Ga. residents age 65 or older provided reciprocal provision exists in Ga. for residents of Fla. age 65 or older; provides separate nonresident hunting license fees re residents of certain states contiguous to Fla. unless such states have reciprocal agreement with Fla., etc. Amends 372.57 Effective Date Upon becoming law.

03/30/87 SENATE Prefiled  
 04/07/87 SENATE Introduced, referred to Natural Resources and Conservation, Finance, Taxation and Claims; Appropriations—SJ 55  
 04/17/87 SENATE Extension of time granted Committee Natural Resources and Conservation  
 04/20/87 SENATE On Committee agenda—Natural Resources and Conservation, 04/22/87, 2:00 pm, Room H  
 04/22/87 SENATE CS combines this bill and 712, Comm. Report CS by Natural Resources and Conservation—SJ 196  
 04/24/87 SENATE CS read first time—SJ 216; Now in Finance, Taxation and Claims—SJ 196  
 05/01/87 SENATE On Committee agenda—Finance, Taxation and Claims, 05/05/87, 2:00 pm, Room-1C  
 05/04/87 SENATE Extension of time granted Committee Finance, Taxation and Claims  
 05/05/87 SENATE Comm Report CS/CS by Finance, Taxation and Claims—SJ 272  
 05/07/87 SENATE CS read first time—SJ 276, Now in Appropriations—SJ 272  
 05/21/87 SENATE Extension of time granted Committee Appropriations  
 05/27/87 SENATE On Committee agenda—Appropriations, 05/28/87, 1:00 pm, Room-A—SJ 446  
 05/28/87 SENATE Comm Report. Favorable with 2 amendment(s) by Appropriations, placed on Calendar—SJ 499  
 06/03/87 SENATE Placed on Consent Calendar—SJ 628, Iden /Sim House Bill substituted, Laid on Table under Rule, Iden /Sim / Compare Bill passed, refer to CS/HB 577 (Ch. 87 261)—SJ 659

**S 607 GENERAL BILL/CS by Health and Rehabilitative Services; W.D Childers (Identical H 650)**

Missing Children/Birth Records. provides direction for procedures governing birth records of missing children; requires State Registrar of Vital Statistics to flag birth records & recall local birth records, of missing children born in state, provides for removal of flags when such child is located, provides procedures re inquiries or requests concerning flagged or recalled records, provides procedure re missing children born outside state. Creates 382.355, 937.024 Effective Date: 10/01/87

03/30/87 SENATE Prefiled  
 04/07/87 SENATE Introduced, referred to Health and Rehabilitative Services, Appropriations—SJ 55  
 04/20/87 SENATE Extension of time granted Committee Health and Rehabilitative Services  
 05/01/87 SENATE Extension of time granted Committee Health and Rehabilitative Services  
 05/05/87 SENATE On Committee agenda—Health and Rehabilitative Services, 05/07/87, 9:00 am, Room-A  
 05/07/87 SENATE Comm Report CS by Health and Rehabilitative Services—SJ 272  
 05/08/87 SENATE CS read first time—SJ 276, Now in Appropriations—SJ 272  
 05/21/87 SENATE Extension of time granted Committee Appropriations  
 05/25/87 SENATE Withdrawn from Appropriations—SJ 414, Placed on Calendar  
 05/29/87 SENATE Placed on Consent Calendar—SJ 499, CS passed, YEAS 37 NAYS 0—SJ 510  
 06/01/87 SENATE Immediately certified—SJ 533  
 06/01/87 HOUSE In Messages  
 06/03/87 HOUSE Received, placed on Calendar—HJ 1100, Read second time, Read third time, CS passed, YEAS 118 NAYS 0—HJ 1100  
 06/03/87 ORDERED ENROLLED—SJ 642  
 06/29/87 Signed by Officers and presented to Governor  
 07/14/87 Approved by Governor Chapter No 87-384

**S 608 GENERAL BILL/CS/ENG by Governmental Operations; W.D Childers (Similar CS/H 710, Compare H 1177, CS/S 1179)**

Administrative Procedure Act. defines term "invalid exercise of delegated legislative authority", deletes requirement that separate statement of rule's effect on small business be submitted to committee, provides clarifying language to create uniform terminology for review of rules, provides 15 days for agency request for hearing officer, clarifies statutory sections under which admin hearing or judicial review is available, etc. Amends 120.52, 54, 54.5, 57, 59, 68 Effective Date 10/01/87

03/30/87 SENATE Prefiled  
 04/07/87 SENATE Introduced, referred to Governmental Operations—SJ 55  
 04/10/87 SENATE On Committee agenda—Governmental Operations, 04/14/87, 2:00 pm, Room-H  
 04/14/87 SENATE Comm Report CS by Governmental Operations, placed on Calendar—SJ 113  
 04/16/87 SENATE CS read first time—SJ 114  
 04/28/87 SENATE Placed on Special Order Calendar—SJ 195, CS passed, YEAS 38 NAYS 0—SJ 227  
 04/30/87 HOUSE In Messages  
 05/13/87 HOUSE Received, placed on Calendar—HJ 423  
 05/15/87 HOUSE Placed on Special Order Calendar  
 05/19/87 HOUSE Substituted for CS/HB 710—HJ 485, Read second time, Amendments adopted, Amendment pending—HJ 486  
 05/28/87 HOUSE Substitute amendment for pending amendment adopted, Amendment adopted, Read third time, CS passed as amended; YEAS 115 NAYS 1—HJ 706  
 05/28/87 SENATE In Messages  
 05/29/87 SENATE Message was taken up—SJ 507; Concurred, CS passed as amended; YEAS 36 NAYS 0—SJ 508  
 05/29/87 ORDERED ENROLLED, THEN ENROLLED—SJ 508  
 06/29/87 Signed by Officers and presented to Governor  
 07/14/87 Approved by Governor, Chapter No 87-385

**S 609 GENERAL BILL by Weinstock (Identical H 936, Compare CS/H 1015)**

Insurance/PIP Deductible. provides that deductible under personal injury protection coverage shall be applied prior to application of any coinsurance provision, provides that amount of deductible may not be subtracted from required coverage. Amends 627.739 Effective Date 10/01/87.

03/30/87 SENATE Prefiled  
 04/07/87 SENATE Introduced, referred to Commerce—SJ 55  
 04/21/87 SENATE Extension of time granted Committee Commerce  
 05/08/87 SENATE Extension of time granted Committee Commerce  
 05/25/87 SENATE Extension of time granted Committee Commerce  
 06/06/87 SENATE Died in Committee on Commerce

**S 610 GENERAL BILL by Lehtinen (Compare H 1067, CS/S 1195)**

Local Occupational License Taxes. authorizes counties & municipalities to adjust occupational license tax rates & classifications to achieve a more equitable distribution of tax burden, subject to specified terms & conditions. Amends 205.033, 043 Effective Date Upon becoming law

03/30/87 SENATE Prefiled  
 04/07/87 SENATE Introduced, referred to Economic, Community and Consumer Affairs, Finance, Taxation and Claims—SJ 55  
 04/20/87 SENATE Extension of time granted Committee Economic, Community and Consumer Affairs  
 04/28/87 SENATE On Committee agenda—Economic, Community and Consumer Affairs, 04/30/87, 1:30 pm, Room-H—Temporarily postponed  
 05/07/87 SENATE Extension of time granted Committee Economic, Community and Consumer Affairs  
 05/21/87 SENATE Extension of time granted Committee Economic, Community and Consumer Affairs  
 06/06/87 SENATE Died in Committee on Economic, Community and Consumer Affairs

**S 611 GENERAL BILL by Lehtinen (Compare H 1037, CS/ENG/H 1467, CS/S 921)**

Money Laundering Control Act. creates said act, provides penalties for certain acts involving proceeds of unlawful activity controlled by RICO Act, provides for civil penalties in addition to criminal penalties, etc. Effective Date 10/01/87

03/30/87 SENATE Prefiled  
 04/07/87 SENATE Introduced, referred to Judiciary—Criminal, Appropriations—SJ 55  
 04/17/87 SENATE Extension of time granted Committee Judiciary—Criminal  
 04/23/87 SENATE On Committee agenda—Judiciary—Criminal, 04/27/87, 2:00 pm, Room-C  
 04/27/87 SENATE Comm Report Favorable by Judiciary—Criminal—SJ 195  
 04/28/87 SENATE Now in Appropriations—SJ 195  
 05/06/87 SENATE Extension of time granted Committee Appropriations  
 05/21/87 SENATE Extension of time granted Committee Appropriations  
 06/06/87 SENATE Died in Committee on Appropriations, Iden /Sim / Compare bill passed, refer to CS/HB 1467 (Ch. 87-243)

**S 612 GENERAL BILL by Lehtinen**

Juveniles/Crime Victim Assistance. assesses specified costs against juvenile, who has committed delinquent act, for deposit to Juvenile Justice—Crime Victim Trust Fund, requires juvenile who is placed on community control to pay com-

(CONTINUED ON NEXT PAGE)

## HISTORY OF HOUSE BILLS

**H 704 (CONTINUED)**

04/16/87 HOUSE On subcommittee agenda—Education, K - 12, 04/20/87, 1 15 pm, 217 HOB  
 04/20/87 HOUSE On Committee agenda, pending subcommittee action—Education, K - 12, 04/22/87, 2 00 pm, 214C  
 04/22/87 HOUSE Preliminary Committee Action by Education, K - 12 Favorable  
 04/28/87 HOUSE Comm Report Favorable by Education, K - 12 -HJ 299, Now in Appropriations -HJ 299  
 05/28/87 HOUSE On Committee agenda—Appropriations, 05/28/87, 3 30 pm, 21 HOB, for subreferral  
 06/06/87 HOUSE Died in Committee on Appropriations

**H 705 GENERAL BILL by Saunders (Similar S 302)**

Warrantless Arrests/Authority, deletes scheduled repeal of law enforcement officer's authority to arrest without warrant when he has probable cause to believe misdemeanor has been committed in presence of United States officer on federal military property over which state has jurisdiction for such misdemeanor Amends 901.15 Effective Date 05/21/87

03/27/87 HOUSE Prefiled  
 04/06/87 HOUSE Referred to Criminal Justice  
 04/07/87 HOUSE Introduced, referred to Criminal Justice -HJ 64  
 04/14/87 HOUSE Subreferred to Subcommittee on Crimes, Penalties and Prosecutions, On subcommittee agenda—Criminal Justice, 04/15/87, 3 30 pm, 217 HOB  
 04/15/87 HOUSE Subcommittee Recommendation pending ratification by full Committee Favorable  
 04/17/87 HOUSE On Committee agenda Criminal Justice, 04/21/87, 3 30 pm, Morris Hall  
 04/21/87 HOUSE Preliminary Committee Action by Criminal Justice Favorable, to Calendar  
 04/22/87 HOUSE Comm Report Favorable by Criminal Justice, placed on Calendar -HJ 224  
 04/29/87 HOUSE Placed on Special Order Calendar, Read second time -HJ 317  
 05/04/87 HOUSE Read third time, Passed, YEAS 115 NAYS 0 -HJ 343  
 05/05/87 SENATE In Messages  
 05/12/87 SENATE Received, referred to Judiciary—Criminal -SJ 281, Immediately withdrawn from Judiciary—Criminal, Substituted for SB 302, Passed, YEAS 31 NAYS 0 -SJ 285  
 05/13/87 Ordered enrolled  
 05/15/87 Signed by Officers and presented to Governor -HJ 470  
 05/21/87 Approved by Governor, Chapter No 87-45 -HJ 570

**H 706 GENERAL BILL by Friedman**

Vocational Ed Program Evaluations, provides for evaluations, as part of system of educational accountability, of secondary & postsecondary job preparatory vocational programs, provides required placement rates for postsecondary programs Amends 229.551 Effective Date Upon becoming law

03/27/87 HOUSE Prefiled  
 04/06/87 HOUSE Referred to Education, K - 12, Appropriations  
 04/07/87 HOUSE Introduced, referred to Education, K - 12, Appropriations -HJ 65  
 04/10/87 HOUSE On Committee agenda—Education, K - 12, 04/14/87, 10 00 am, 214C, for subreferral  
 04/14/87 HOUSE Subreferred to Subcommittee on Administration and Finance  
 06/06/87 HOUSE Died in Committee on Education, K - 12

**H 707 GENERAL BILL by Friedman and others (Compare S 20)**

Extended School Day Program, prohibits funding for implementation of extended-school day categorical program for certain students Amends 236.02 Effective Date 07/01/87

03/27/87 HOUSE Prefiled  
 04/06/87 HOUSE Referred to Education, K - 12, Appropriations  
 04/07/87 HOUSE Introduced, referred to Education, K - 12, Appropriations -HJ 65  
 04/10/87 HOUSE On Committee agenda—Education, K - 12, 04/14/87, 10 00 am, 214C, for subreferral  
 04/14/87 HOUSE Subreferred to Subcommittee on Oversight  
 06/06/87 HOUSE Died in Committee on Education, K - 12

**H 708**

03/31/87 HOUSE Withdrawn -HJ 65

**H 709 GENERAL BILL by Crady**

Commercial Vessels/Nonresident, provides for alien or nonresident commercial vessel licenses & income decals, provides fees, provides duties of tax collectors & DNR, provides for display of license decals, provides for disposition of licenses fees & duplicate licenses & replacement decals, establishes penalties, applies with respect to vessel registrations & reregistrations issued for fiscal year 1988-1989 Amends 327.25 Effective Date 07/01/87

03/27/87 HOUSE Prefiled  
 04/06/87 HOUSE Referred to Natural Resources, Finance & Taxation, Appropriations  
 04/07/87 HOUSE Introduced, referred to Natural Resources, Finance & Taxation, Appropriations -HJ 65

**H 709 (CONTINUED)**

04/16/87 HOUSE On Committee agenda—Natural Resources, 04/20/87, 1 15 pm, Morris Hall, for ratification of subreferral  
 04/20/87 HOUSE Subreferred to Subcommittee I  
 04/23/87 HOUSE On subcommittee agenda—Natural Resources, 04/27/87, 3 30 pm, 24 HOB, On Committee agenda, pending subcommittee action Natural Resources, 04/27/87, 4 30 pm, Morris Hall  
 04/27/87 HOUSE Preliminary Committee Action by Natural Resources Favorable  
 04/30/87 HOUSE Comm Report Favorable by Natural Resources -HJ 330, Now in Finance & Taxation -HJ 330  
 05/05/87 HOUSE On Committee agenda—Finance & Taxation, 05/07/87, 1 30 pm, 21 HOB, for ratification of subreferral  
 05/13/87 HOUSE Withdrawn from Finance & Taxation -HJ 431, Now in Appropriations  
 05/19/87 HOUSE Withdrawn from Appropriations -HJ 480, Placed on Calendar  
 05/29/87 HOUSE Placed on Special Order Calendar  
 06/01/87 HOUSE Read second time, Read third time, Passed, YEAS 112 NAYS 0 -HJ 917  
 06/01/87 SENATE In Messages  
 06/03/87 SENATE Received, referred to Natural Resources and Conservation, Finance, Taxation and Claims -SJ 630  
 06/06/87 SENATE Died in Committee on Natural Resources and Conservation

**H 710 GENERAL BILL/CS by Governmental Operations; Dantzler (Similar CS/ENG/S 608)**

Administrative Procedure Act, defines term "invalid exercise of delegated legislative authority", prohibits use of general intent or general policy as basis for rule promulgation, requires agency to request hearing officer within certain period, requires agency to notify recipient of administrative hearing or judicial review, requires agencies to submit copies of certain appeal petitions to Administrative Procedure Committee, etc Amends 120.52, 54, 54.5, 57, 59, 68 Effective Date 10/01/87

03/27/87 HOUSE Prefiled  
 04/06/87 HOUSE Referred to Governmental Operations  
 04/07/87 HOUSE Introduced, referred to Governmental Operations -HJ 65  
 04/10/87 HOUSE On Committee agenda—Governmental Operations, 04/14/87, 10 00 am, 413C  
 04/20/87 HOUSE Comm Report CS by Governmental Operations, placed on Calendar -HJ 200, CS read first time -HJ 200  
 05/13/87 HOUSE Placed on Special Order Calendar  
 05/19/87 HOUSE Iden /Sim Senate Bill substituted, Laid on Table under Rule, Iden /Sim /Compare Bill passed, refer to CS/SB 608 (Ch 87-385) -HJ 485

**H 711 JOINT RESOLUTION by Patchett; Grindle and others (Similar CS/S 431)**

Cabinet Members/Limited Terms, constitutional amendment to prohibit cabinet member who has served in same cabinet office for more than six years during two consecutive terms from being elected to succeeding term in that office & provides that computation of terms of cabinet members, for purposes of these amendments, shall begin with the term commencing in January 1991 Amends s 5, Art IV, creates s 20, Art XII

03/27/87 HOUSE Prefiled  
 04/06/87 HOUSE Referred to Judiciary  
 04/07/87 HOUSE Introduced, referred to Judiciary -HJ 65  
 04/28/87 HOUSE Subreferred to Subcommittee on Court Systems, Probate and Consumer Law, On Committee agenda—Judiciary, 04/30/87, 8 00 am, 214C, for ratification of subreferral  
 06/06/87 HOUSE Died in Committee on Judiciary

**H 712 GENERAL BILL by Burke (Identical S 687)**

Financial Institutions, revises current provisions under Uniform Commercial Code re credit given by bank for item in an account with its customer for withdrawal, provides exceptions, etc Amends 674.213, 655.081 Effective Date 10/01/87

03/27/87 HOUSE Prefiled  
 04/06/87 HOUSE Referred to Commerce  
 04/07/87 HOUSE Introduced, referred to Commerce -HJ 65  
 04/20/87 HOUSE Subreferred to Subcommittee on Banking and Commerce, On Committee agenda Commerce, 04/22/87, 8 00 am, 317C, for ratification of subreferral  
 04/24/87 HOUSE On subcommittee agenda—Commerce, 04/28/87, 1 15 pm, 317C  
 04/28/87 HOUSE Subcommittee Recommendation pending ratification by full Committee Favorable  
 06/06/87 HOUSE Died in Committee on Commerce

**H 713 RESOLUTION by Bronson, C.F. Jones (Similar S 1079)**

Osceola County Month, proclaims the month of May 1987 as Osceola County Month  
 03/27/87 HOUSE Prefiled  
 04/06/87 HOUSE Referred to Community Affairs  
 04/07/87 HOUSE Introduced, referred to Community Affairs -HJ 65

## SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Stengle</u>	<u>Swindell</u>	1. <u>GO</u>	<u>Fav/CS</u>
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____
4. _____	_____	4. _____	_____

SUBJECT: Administrative Procedure Act

BILL NO. AND SPONSOR:  
CS/SB 608 by  
Governmental Operations and  
Senator W.D. Childers

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DEPARTMENT OF STATE  
R A GRAY BUILDING  
Tallahassee, FL 32399-0250  
Series 18 Carton 1671

I. SUMMARY:

## A. Present Situation:

Chapter 120, F.S., the Administrative Procedure Act, establishes the procedures required for an executive agency to promulgate rules. Section 120.54(15), F.S., provides that no agency has inherent rulemaking authority, but an agency may adopt rules to properly implement statutes. Section 120.54(7), F.S., requires that each rule adopted be accompanied by a reference to the specific section of law that authorizes the agency rulemaking, as well as by a reference to the section of law that is being implemented by rule.

As a check on legislatively delegated rulemaking authority, s. 120.545, F.S., requires the Administrative Procedures Committee to examine each proposed rule and determine whether the rule is within the statutory authority upon which it is based. If the committee determines that it is not, the committee may object to the rule.

Sections 120.54(4) and 120.56, F.S., allow affected persons to seek an administrative determination by a hearing officer in the Division of Administrative Hearings (DOAH) whether a proposed rule or existing rule is an invalid exercise of delegated legislative authority. Chapter 120, F.S., does not specifically define "invalid exercise of delegated legislative authority."

In s. 120.68, F.S., district courts of appeal are given appellate review authority over agency rulemaking, as well as final orders of DOAH hearing officers in challenges to proposed and existing rules. There is no requirement that the Administrative Procedures Committee be notified of any such appeal. Numerous appellate decisions have defined the scope of an invalid exercise of delegated legislative authority, which includes an agency materially failing to adhere to the required rulemaking procedures of s. 120.54, F.S. [*e.g.*, Florida State University v. Dann, 400 So.2d 1304 (Fla. 1st DCA 1981)]; an agency exceeding the scope of its legislatively delegated authority [*e.g.*, 4245 Corp. v. Division of Beverage, 371 So.2d 1032 (Fla. 1st DCA 1978)]; an agency rule enlarging, modifying, or contravening specific provisions of the law it is implementing [*e.g.*, Grove Isle, Ltd. v. State Department of Environmental Regulation, 454 So.2d 571 (Fla. 1st DCA 1984)]; an agency adopting a rule that is impermissibly vague, that fails to establish adequate standards for agency decisions based on the rule, or that vests unbridled discretion in the agency [*e.g.*, Barrow v. Holland, 125 So.2d 749 (Fla. 1960)]; and an agency adopting a rule that is arbitrary or capricious [*e.g.*, Agrico Chemical Company v. State Department of Environmental Regulation, et al., 365 So.2d 759 (Fla. 1st DCA 1978)].

Section 120.54(2)(b), F.S., requires each agency to prepare a detailed economic impact statement for each proposed rule, and to include therein an analysis of the proposed rule's impact on small business. Prior to intended rule adoption, s. 120.54(11)(a), F.S., requires the agency to file with the Administrative Procedures Committee its economic impact statement, which includes its analysis of the impact on small business, along with a separate written statement of the impact on small business. Thus, the agency is required to furnish duplicative information to the committee.

Section 120.57(b), F.S., 1986 Supp., allows affected persons to challenge agency action other than rulemaking by filing a hearing request with the agency, which must be granted or denied within 15 days. At its option, the agency may request that a DOAH hearing officer be assigned to conduct the hearing; the agency must make its request to DOAH within 10 days of its receipt of the request for hearing, 5 days less than the time allowed for the agency to deny the hearing request.

**B. Effect of Proposed Changes:**

The definition of "invalid exercise of delegated legislative authority" that is established in case law would be codified. Language requiring the Administrative Procedures Committee to determine whether a rule is within the authority upon which it is based would be replaced with language requiring the committee to determine whether a rule is an invalid exercise of delegated legislative authority. The bill would also prohibit an agency from citing legislative statements of intent or policy as the authority for the agency rulemaking.

The agency would be required to furnish the Administrative Procedures Committee with a copy of any notice of appeal seeking review of final agency action in challenges of proposed or existing rules.

The requirement that the agency submit a duplicative statement of the impact on small business to the Administrative Procedures Committee would be eliminated.

The time within which an agency could request a DOAH hearing officer after receiving a request for hearing would be expanded from 10 days to 15 days to conform to the time period during which the hearing could be denied.

**II. ECONOMIC IMPACT AND FISCAL NOTE:**

**A. Public:**

None

**B. Government:**

None

**III. COMMENTS:**

An identical bill, HB 710, has been filed.

**IV. AMENDMENTS:**

None

BILL VOTE SHEET

(VS-87: File with Secretary of Senate)

BILL NO. SB 608

COMMITTEE ON Governmental Operations

DATE April 14, 1987

FINAL ACTION:

TIME 2:00 p.m. - 5:00 p.m.

         Favorably with          amendments

PLACE Room H, Senate Office Bldg.

  X   Favorably with Committee Substitute

OTHER COMMITTEE REFERENCES:  
(In order shown)

         Unfavorably

None

OTHER:          Temporarily Passed

         Reconsidered

         Not Considered

THE VOTE WAS:

FINAL BILL VOTE		SENATORS	CS by Margolis		#1 by McPherson							
Aye	Nay		Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay
X		Brown	W		X							
X		Johnson	I			X						
X		Marqolis	T			X						
X		McPherson	H		X							
		Scott	O									
X		VICE CHAIRMAN Jenne	U		X							
X		CHAIRMAN Kiser	T			X						
			O									
			B									
			J									
			E									
			C									
			T									
			I									
			O									
			N									
6	0		x		3	3						
Aye	Nay	TOTAL	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay	Aye	Nay

(Attach additional page if necessary)

Please Complete: The key sponsor appeared (     )  
 A Senator appeared (     )  
 Sponsor's aide appeared (     )  
 Other appearance (   X   )

RECORD OF AMENDMENTS WHICH FAILED OF ADOPTION  
IN SUBCOMMITTEE OR COMMITTEE

Date April 14, 1957

CS/S CGS SUBCOMMITTEE ON \_\_\_\_\_  
H \_\_\_\_\_ COMMITTEE ON Governmental Operations

During consideration of the above, the following amendments,  
which are attached along with roll call thereon (or viva voce),  
were considered and failed of adoption:

1. By Senator McPherson
2. By Senator \_\_\_\_\_
3. By Senator \_\_\_\_\_
4. By Senator \_\_\_\_\_
5. By Senator \_\_\_\_\_
6. By Senator \_\_\_\_\_
7. By Senator \_\_\_\_\_
8. By Senator \_\_\_\_\_
9. By Senator \_\_\_\_\_
10. By Senator \_\_\_\_\_
11. By Senator \_\_\_\_\_
12. By Senator \_\_\_\_\_
13. By Senator \_\_\_\_\_
14. By Senator \_\_\_\_\_
15. By Senator \_\_\_\_\_
16. By Senator \_\_\_\_\_
17. By Senator \_\_\_\_\_
18. By Senator \_\_\_\_\_
19. By Senator \_\_\_\_\_
20. By Senator \_\_\_\_\_

(Prepare in triplicate - file 1 copy with Secretary of the  
Senate, 1 copy with subcommittee, 1 copy with committee)

C4 (10-71)



## BILL VOTE SHEET

(VS-87: File with Secretary of Senate)

BILL NO. **SB 608**

COMMITTEE ON Governmental Operations

DATE April 14, 1987

TIME 2-5 p.m.

PLACE Rm. H, Sen. Office Bldg.

OTHER COMMITTEE REFERENCES:  
(In order shown)

None

**FINAL ACTION:**

\_\_\_\_ Favorably with \_\_\_\_ amendments

X Favorably with Committee Substitute

1 Unfavorably

OTHER: \_\_\_\_\_Temporarily Passed

       Reconsidered

       Not Considered

THE VOTE WAS:

115 CS

FINAL BILL VOTE		SENATORS	CS by <i>Margolis</i>		#1 by <i>McPherson</i> <i>p.2 l.25.</i> <i>sole action - if not done</i>							
Ave	Nay		Ave	Nay	Ave	Nay	Ave	Nay	Ave	Nay	Ave	Nay
/		Brown			/							
/		Johnson				/						
/		Margolis				/						
/		McPherson			/							
		Scott										
/		VICE CHAIRMAN Senne			/							
/		CHAIRMAN Kiser				/						
6	0	TOTAL	X		3	X 3						
Ave	Nay		Ave	Nay	Ave	Nay	Ave	Nay	Ave	Nay	Ave	Nay

(Attach additional page if necessary)

Please Complete: The key sponsor appeared  
 A Senator appeared  
 Sponsor's aide appeared  
 Other appearance

X

## SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Stengle</u> <i>DS</i>	<u>Swindell</u> <i>PS</i>	1. <u>GO</u>	_____
2. _____	_____	2. <u>JCI</u>	_____
3. _____	_____	3. _____	_____
4. _____	_____	4. _____	_____

## SUBJECT:

Administrative Procedure Act

## BILL NO. AND SPONSOR:

SB 1179 by  
Senator KiserI. SUMMARY:

## A. Present Situation:

The Administrative Procedure Act, ch. 120, F.S., is the procedural mechanism by which persons may seek redress for actions of state agencies in the executive branch. A party may request an administrative hearing when his substantial interests are determined by an agency, such as in licensing decisions under s. 120.60, F.S. The hearing will be a "formal proceeding" under s. 120.57(1), F.S., (1986 Supp.), if there are disputed issues of material fact and an "informal proceeding" in all other cases. In addition to requesting an administrative hearing when an agency determines substantial interests, a person or entity can become a party to the proceeding by being allowed to intervene in the proceeding.

Generally, a hearing officer conducts the administrative hearing. A hearing officer can be supplied by the Division of Administrative Hearings, if requested by the agency, or the agency itself can utilize its own hearing officer. In either case, the hearing officer does not issue a "final order" in administrative proceedings under s. 120.57, F.S., but issues a recommended order to the licensing or approving agency. The agency then acts on the hearing officer's recommended order, issuing a final order.

Section 120.565, F.S., provides the procedures for an agency to issue declaratory statements, which set out the agency's opinion as to the applicability of a statutory provision, or rule or order of the agency, as it applies to the petitioner for a declaratory statement in his particular circumstances. Agency disposition of petitions is final agency action.

Generally, each party to a proceeding must bear his own costs and attorney's fees in administrative proceedings, except: (1) when there is an appeal of an agency's final order, the court may award a reasonable attorney's fee and costs to the prevailing party if the appeal was frivolous or if the agency action which led to the appeal was a "gross" abuse of the agency's discretion; and (2) under s. 57.111, F.S., when an agency brings an action against a small business and the small business prevails in the proceeding, the hearing officer must award costs and attorney's fees to the small business if the agency did not have substantial justification at law and in fact for initiating the action, unless under the circumstances the award would be unjust.

Section 120.57(1)(b)(5), F.S., (1986 Supp.), provides that, in formal administrative proceedings, all pleadings, motions, or other papers filed must be signed by the party filing them, his attorney, or other qualified representative. The signature is deemed to certify that the signatory has read the document and that to the best of his knowledge, information, and belief

DATE: May 19, 1987

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formed after reasonable inquiry, the document is not interposed for an improper purpose. An improper purpose is one intended to "harass or to cause unnecessary delay or for economic advantage, competitive reason, or frivolous purpose or needless increase in the cost of litigation." The hearing officer is required to impose an appropriate sanction for violation of the requirements, which may include ordering the offending party to pay the other party the amount of reasonable expenses incurred because of the filing, including a reasonable attorney's fee. A like provision applies under ch. 163, pt. II, F.S., the "Local Government Comprehensive Planning and Land Development Regulation Act," in formal administrative proceedings for administrative review of land development regulations. Section 163.3213, F.S.

B. Effect of Proposed Changes:

In administrative proceedings under s. 120.57, F.S., and those for declaratory statements under s. 120.565, F.S., the prevailing party shall be entitled to recover costs from the nonprevailing adverse party. An agency that is a party would not be entitled to recover its costs, however.

A prevailing party -- again, other than an agency -- in those administrative proceedings would also be entitled to recover attorney fees from the nonprevailing adverse party -- also not an agency -- if the latter participated in the proceeding for an "improper purpose." An "improper purpose" would be participation primarily for frivolous reasons, or to harass, delay, or increase the costs of licensing or approval by an agency. The hearing officer would make the determination of "improper purpose," but the person entering the final order -- usually, the licensing or approving agency -- would award the attorney fees. As well, the final order awarding attorney fees would be required to designate the prevailing party. An "improper purpose" would be presumed where a nonprevailing party was unable to establish the factual or legal merits of its position in at least two prior administrative proceedings under s. 120.57 or 120.565, F.S., involving the same nonagency prevailing party.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Indeterminable.

B. Government:

Indeterminable.

III. COMMENTS:

None

IV. AMENDMENTS:

None

HB \_\_\_\_\_

The Committee on...Gov. Operations....recommended the following  
amendment which was moved by Senator.....and adopted:  
and failed:

1 Senate Amendment

2

3 On page ....1....., lines ...14-31.,

4 and on page ....2....., lines ....1-10...., strike

5 all of said lines

6

7

8

9

10 If amendment is text from another bill insert:

11 Bill No. \_\_\_\_\_ Draft No. \_\_\_\_\_ With Changes? No Yes -

12 and insert:

13 (6)(a) In any proceeding pursuant to s. 120.565 or s.14 120.57, a prevailing party shall be entitled to recover costs15 from the nonprevailing adverse party, and shall also be16 entitled to recover a reasonable attorney fee as provided17 herein. The provisions of this subsection shall not apply to18 a prevailing or nonprevailing party that is an agency.19 (b) The final order in a proceeding pursuant to s.20 120.565 or s. 120.57 shall award a reasonable attorney fee to21 the prevailing party where the nonprevailing adverse party has22 been determined by the hearing officer to have participated in23 the proceeding for an improper purpose.24 (c) In all proceedings pursuant to ss. 120.565 and25 120.57, the hearing officer shall determine whether any party,26 other than a party that is an agency, participated in the27 proceeding for an improper purpose as defined in this28 subsection. In making such determination, the hearing officer29 shall consider whether the nonprevailing adverse party has30 participated in two or more other such proceedings involving31 the same nonagency prevailing party as an adverse party and inCODING: Words ~~stricken~~ are deletions; words underlined are additions.

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\* Amendment No. \_\_, taken up by committee: Adopted \_\_ \*

\* Offered by \_\_\_\_\_ Failed \_\_ \*

\*\*\*\*\*

(Amendment No. \_\_ Adopted \_\_ Failed \_\_ Date \_\_/\_\_/\_\_)

1 which such two or more proceedings the nonprevailing adverse  
2 party did not establish either the factual or legal merits of  
3 its position. In such event, it shall be presumed that the  
4 nonprevailing adverse party participated in the pending  
5 proceeding for an improper purpose.

6 (d) In any proceeding in which the hearing officer  
7 determines that a party participated in the proceeding for an  
8 improper purpose, the recommended order shall so designate and  
9 shall recommend the award of attorney fees.

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Date April 9, 1987  
Revised: \_\_\_\_\_  
Fir \_\_\_\_\_

HOUSE OF REPRESENTATIVES  
COMMITTEE ON GOVERNMENTAL OPERATIONS  
STAFF ANALYSIS

BILL #: HB 710

RELATING TO: APA - Delegated Legislative Authority

SPONSOR(S): Dantzler

EFFECTIVE DATE: October 1, 1987

COMPANION BILL(S): \_\_\_\_\_

OTHER COMMITTEES OF REFERENCE: (1) \_\_\_\_\_

(2) \_\_\_\_\_

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I. SUMMARY:

This bill would define "invalid exercise of delegated legislative authority" in s. 120.52, Florida Statutes, the Administrative Procedure Act.

The Joint Administrative Procedures Committee's review of agency rules would include a determination of whether a rule is an "invalid exercise of delegated legislative authority".

The bill would also preclude an agency in the course of proposed rulemaking, from citing any legislative statement of general intent or general policy.

Currently, executive branch agencies are authorized to adopt rules that implement, interpret or prescribe law or policy. Agencies must cite the specific rulemaking authority, including a reference to the Statute or Laws being implemented prior to adoption of a rule. This bill would prohibit citation to legislative statement of general intent or general policy.

Currently, the Administrative Procedures Committee is charged with reviewing agency rules, proposed or existing, to determine whether the rule is within the cited statutory authority. This bill would replace the language "statutory authority" with "invalid exercise of delegated legislative authority."

"Invalid exercise of delegated legislative authority" would be defined as action which goes beyond the powers, functions, and duties delegated by the legislature. The committee would object to a rule if any one or more of the following apply:

(a) The agency has materially failed to follow the applicable rulemaking procedures set forth in s. 120.54;

(b) The agency has exceeded its grant of rulemaking authority, as required under s. 120.54(7);

(c) The rule enlarges, modifies, or contravenes the specific provisions of law implemented, as required by s. 120.54(7);

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

(e) The rule is arbitrary or capricious.

Current law allows persons substantially affected by a proposed rule to seek an administrative determination before the Division of Administrative Hearings (DOAH) on the ground that the proposed rule is an "invalid exercise of delegated legislative authority." The hearing officer, and a court upon a subsequent appeal would consider as a standard the definition of invalid exercise of delegated legislative authority when making a determination.

## II. ECONOMIC IMPACT:

### A. Public:

None

### B. Government:

None

## III. STATE COMPREHENSIVE PLAN IMPACT:

The bill is consistent with the State Comprehensive Plan in that it encourages greater efficiency and economy through adoption and implementation of evaluation procedures.

## IV. COMMENTS:

The Joint Administrative Procedures Committee (JAPC) has reviewed DOAH and court decisions for the past ten years to determine the grounds stated for declaring rules invalid. The bill would codify those grounds. The bill would define and limit this review of agency rules.

JAPC also stated that they currently object to rules which cite legislative statement of general intent or general policy. The bill would clarify this prohibition.

Staff contacted several executive branch agencies about the bill and received no objection, or no response.

## V. AMENDMENTS:

None

HB 10  
Page 3  
April 9, 1987

VI. PREPARED BY: Susan G. Bisbee

VII. STAFF DIRECTOR: Jack Holland



STAFF ANALYSIS OF PROPOSED AMENDMENTS TO CHAPTER 120, F.S.

FOR HOUSE BILL 710 AND SENATE BILL 608

- I. This bill amends s.120.52 to add a definition of the term "invalid exercise of delegated legislative authority", setting forth five specific bases for rule invalidity. If a rule fails to pass any one of the five "tests", it is invalid. Each of the independent bases of invalidity is derived directly from current decisional law or express statutory requirements of Chapter 120.

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- (a) Subsection (a) states the requirement that agency rulemaking must materially adhere to the procedural requirements of s.120.54. E.g., Florida Department of Transportation v. Foster and Kleiser, 365 So.2d 224 (Fla. 1 DCA 1978) (court held that effect of deviation from 120.54 time frames would be measured by provisions of s.120.68(8) such that violation of time frames for rulemaking would not invalidate the rule unless that violation impaired the fairness of the proceeding or the correctness of the action); F.S.U. v. Dann, 400 So.2d 1304, (Fla. 1 DCA 1981); Cf., City of Panama City v. Florida P.E.R.C., 364 So.2d 109, (Fla. 1 DCA 1978).
- (b) Subsection (b) relies on the well-established principle that no agency has inherent rulemaking authority and states that, in rulemaking, an agency may not exceed its grant of rulemaking authority. This subsection contains a reminder that citation to specific rulemaking authority must accompany the rule text. E.g., 4245 Corp. v. Division of Beverage, 371 So.2d 1032 (Fla. 1 DCA 1978); State Com'n on Ethics v. Sullivan, 500 So.2d 553 (Fla. 1 DCA 1986) (holding that Commission on Ethics had no inherent rulemaking authority; that substantive (as opposed to procedural) rules promulgated by the Commission amounted to an invalid exercise of delegated legislative authority since Commission has no substantive rulemaking authority in either constitutional or statutory law); Grove Isle. Ltd. v. State Department of Environmental Regulation, 454 So.2d 471 (Fla. 1 DCA 1984) and authorities cited therein (administrative bodies have no inherent power to promulgate rules and must derive that power from a statutory base).

- (c) Subsection (c) codifies the axiom found in numerous decisions that a rule cannot enlarge, modify or contravene the specific provisions of law implemented. This subsection also contains a reminder that citation to the section or subsection of the statutes or the Laws of Florida, which is being implemented, interpreted, or made specific, must accompany the rule text. E.g., Grove Isle., Ltd., supra, 454 So.2d at 573; Board of Optometry, Etc. v. Fla. Medical Association, 463 So.2d 1213 (Fla. 1 DCA 1985); State Dept. of Business Regulation v. Salvation Ltd., 452 So.2d 65 (Fla. 1 DCA 1984); Dept. of Health and Rehab. Services v. Florida Psychiatric Society, 382 So.2d 1280 (Fla. 1 DCA 1980); State Dept. of HRS v. McTigue, 387 So.2d 454 (1 DCA 1980).
- (d) Subsection (d) codifies the long established principle that rules must not fail to apprise the reader or regulated party of what is expected or proscribed, must establish adequate standards for regulation, and cannot vest unbridled discretion in the agency. E.g., Grove Isle., Ltd. supra, 454 So.2d 571 at 574; Miami v. Save Brickell Avenue, 426 So.2d 1100 (Fla. 1 DCA 1983); Barrow v. Holland, 125 So.2d 749 (Fla. 1960).
- (e) Subsection (e) codifies the long established principle that administrative rules cannot be arbitrary or capricious, i.e., unsupported by logic, despotic or irrational. E.g., Agrico Chem. Co. v. State D.E.R., 365 So.2d 759, 763 (Fla. 1 DCA 1978); cert. den. 376 So.2d 74 (Fla. 1979); General Telephone Company of Florida v. Florida P.S.C., 446 So.2d 1063 (Fla. 1984).

- II. The bill amends s.120.54(7) to include the express prohibition that no rule shall cite as the statute or law implemented any legislative statement of general intent or general policy.
  
- III. The bill amends s.120.545(1)(a) to specify that the committee's review of proposed and existing rules includes a determination whether a rule is an "invalid exercise of delegated legislative authority", as that term is defined in proposed s.120.52(8).

Date: April 10, 1987  
Revised: April 15, 1987  
Final: \_\_\_\_\_

HOUSE OF REPRESENTATIVES  
COMMITTEE ON GOVERNMENTAL OPERATIONS  
STAFF ANALYSIS

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BILL #: CS/HB 710  
RELATING TO: APA - Delegated Legislative Authority  
SPONSOR(S): Governmental Operations and Representative Dantzler  
EFFECTIVE DATE: October 1, 1987  
COMPANION BILL(S): CS/SB 608  
OTHER COMMITTEES OF REFERENCE: (1) \_\_\_\_\_  
(2) \_\_\_\_\_

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I. SUMMARY:

This bill would amend the Administrative Procedure Act, chapter 120 of the Florida Statutes.

Currently, executive branch agencies are authorized to adopt rules that implement, interpret or prescribe law or policy. Agencies must cite the specific rulemaking authority, including a reference to the Statute or Laws being implemented, prior to adoption of a rule. This bill would prohibit citation to legislative statement of general intent or general policy.

Currently, the Joint Administrative Procedures Committee (JAPC) is charged with reviewing agency rules, proposed or existing, to determine whether the rule is within the cited statutory authority. This bill would replace the language "statutory authority" with "invalid exercise of delegated legislative authority." The JAPC's review of agency rules would include a determination of whether a rule is an "invalid exercise of delegated legislative authority".

"Invalid exercise of delegated legislative authority" would be defined as action which goes beyond the powers, functions, and duties delegated by the legislature. The committee would object to a rule if any one or more of the following apply:

(a) The agency has materially failed to follow the applicable rulemaking procedures set forth in s. 120.54;

(b) The agency has exceeded its grant of rulemaking authority, as required under s. 120.54(7);

(c) The rule enlarges, modifies, or contravenes the specific provisions of law implemented, as required by s. 120.54(7);

- (d) The rule is vague, fails to establish adequate standards for agency decisions, or vests unbridled discretion in the agency; or
- (e) The rule is arbitrary or capricious.

Current law allows persons substantially affected by a proposed rule to seek an administrative determination before the Division of Administrative Hearings (DOAH) on the ground that the proposed rule is an "invalid exercise of delegated legislative authority." The hearing officer, and a court upon a subsequent appeal would consider as a standard the definition of invalid exercise of delegated legislative authority when making a determination.

Agencies would no longer have to provide a separate, written statement of a rules impact on small business to the JAPC pursuant to s. 120.54(11)(a), Florida Statutes. This deletion removes a redundancy in the law. A written statement of a rules impact on small business is required elsewhere in the APA. The deletion of this language would remove this redundancy in the law.

Currently, agencies have 15 days to grant or deny a hearing requested by a substantially affected party and only ten days to notify the DOAH of the need for assignment of a hearing officer. The proposed change would remove potential defects in final orders caused by the inconsistent provisions.

The bill would also require agencies to provide notices of appeal to JAPC that concern the challenge to an administrative rule.

Agencies are currently required to notify recipients of any administrative hearing or judicial review that may be available upon final order. The bill would limit this notice to that review available under section 120.68, Florida Statutes.

## II. ECONOMIC IMPACT:

### A. Public:

None

### B. Government:

None

## III. STATE COMPREHENSIVE PLAN IMPACT:

The bill is consistent with the State Comprehensive Plan in that it encourages greater efficiency and economy through adoption and implementation of evaluation procedures.

## IV. COMMENTS:

The Joint Administrative Procedures Committee (JAPC) has reviewed DOAH and court decisions for the past ten years to determine the grounds stated for declaring rules invalid. The bill would codify

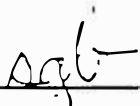
those grounds. The bill would define and limit this review of agency rules.

JAPC also stated that they currently object to rules which cite legislative statement of general intent or general policy. The bill would codify in the law the grounds for the objection.

Staff contacted several executive branch agencies about the bill. Most agencies had no objection to the bill. However, a representative of the agencies headed by the Governor voiced some concerns about the bill immediately before the committee meeting.

V. AMENDMENTS:

None

VI. PREPARED BY: Susan G. Bisbee 

VII. STAFF DIRECTOR: Jack Holland 