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**GENERAL ACTS
RESOLUTIONS AND MEMORIALS
ADOPTED BY THE
SIXTEENTH LEGISLATURE OF FLORIDA
UNDER THE CONSTITUTION
AS REVISED IN 1968**

**During the Regular Session
March 2, 1999, through April 30, 1999**



**Volume I, Part Four
Published by Authority of Law
Under Direction of the
OFFICE OF LEGISLATIVE SERVICES**

Tallahassee

1999

Section 45. Section 190.0485, Florida Statutes, is created to read:

190.0485 Notice of establishment.—Within 30 days after the effective date of a rule or ordinance establishing a community development district under this act, the district shall cause to be recorded in the property records in the county in which it is located a “Notice of Establishment of the Community Development District.” The notice shall, at a minimum, include the legal description of the district and a copy of the disclosure statement specified in s. 190.048.

Section 46 Each community development district in existence on the effective date of this act shall record a notice of establishment as specified in s. 190.0485, Florida Statutes, as created by this act, within 90 days after that date, unless the district has previously recorded a notice that meets the requirements set forth in that section.

Section 47. (1) Section 190.049, Florida Statutes, is amended to read.

190.049 Special acts prohibited.—Pursuant to s. 11(a)(21), Art III of the State Constitution, there shall be no special law or general law of local application creating an independent special district which has the powers enumerated in two or more of the paragraphs contained in s. 190.012, unless such district is created pursuant to the provisions of s. 189.404.

(2) This section shall take effect upon this act becoming a law, if passed by a three-fifths vote of the membership of each house.

Section 48. This act shall take effect July 1, 1999.

Approved by the Governor June 18, 1999.

Filed in Office Secretary of State June 18, 1999.

CHAPTER 99-379

Committee Substitute for House Bill No. 107

An act relating to the Administrative Procedure Act; providing legislative intent, amending s. 120.52, F.S.; removing entities described in ch. 298, F.S., relating to water control districts, from the definition of “agency”, redefining the term “agency”, providing additional restrictions with respect to an agency’s rulemaking authority, amending s. 120.536, F.S.; providing additional restrictions with respect to an agency’s rulemaking authority; requiring agencies to provide the Administrative Procedures Committee with a list of existing rules which exceed such rulemaking authority and providing for legislative consideration of such rules; requiring agencies to initiate proceedings to repeal such rules for which authorizing legislation is not adopted; requiring a report to the Legislature; providing that the committee or a substantially affected person may petition for repeal

of such rules after a specified date; restricting challenge of such rules before that date; amending s. 120.54, F.S.; specifying when rules may take effect; restricting adoption of retroactive rules; amending s. 120.56, F.S.; revising an agency’s responsibilities in response to a challenge to a proposed rule and specifying the petitioner’s responsibility of going forward; amending s. 120.57, F.S., relating to hearings involving disputed issues of material fact, revising an agency’s authority with respect to rejection or modification of conclusions of law in its final order, providing for agency statement as to the reasonableness of its substituted finding of law or interpretation of administrative rule; amending s. 120.81, F.S.; providing that district school boards may adopt rules notwithstanding the rulemaking standards found in chapter 120, F.S.; providing an effective date.

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

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

Section 2. Subsections (1) and (8) of section 120.52, Florida Statutes, 1998 Supplement, are amended to read:

120.52 Definitions.—As used in this act:

(1) “Agency” means:

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

(b) Each:

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

2. Authority, including a regional water supply authority,

3. Board,

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

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

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

7. Educational units, ~~and these entities~~

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

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

This definition does not include any legal entity or agency created in whole or in part pursuant to chapter 361, part II, an expressway authority pursuant to chapter 348, any legal or administrative entity created by an interlocal agreement pursuant to s. 163.01(7), unless any party to such agreement is otherwise an agency as defined in this subsection, or any multicounty special district with a majority of its governing board comprised of elected persons, however, this definition shall include a regional water supply authority.

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

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

(e) The rule is arbitrary or capricious;

(f) The rule is not supported by competent substantial evidence, or

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

A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement or, interpret the, or make specific the particular powers and duties granted by the enabling statute. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and

capricious or is within the agency's class of powers and duties, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific the particular powers and duties conferred by the same statute

Section 3 Section 120.536, Florida Statutes, is amended to read

120 536 Rulemaking authority; listing of rules exceeding authority, repeal, challenge —

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

(2)(a) By October 1, 1997, each agency shall provide to the Administrative Procedures Committee a listing of each rule, or portion thereof, adopted by that agency before October 1, 1996, which exceeds the rulemaking authority permitted by this section. For those rules of which only a portion exceeds the rulemaking authority permitted by this section, the agency shall also identify the language of the rule which exceeds this authority. The Administrative Procedures Committee shall combine the lists and provide the cumulative listing to the President of the Senate and the Speaker of the House of Representatives. The Legislature shall, at the 1998 Regular Session, consider whether specific legislation authorizing the identified rules, or portions thereof, should be enacted. By January 1, 1999, each agency shall initiate proceedings pursuant to s. 120.54 to repeal each rule, or portion thereof, identified as exceeding the rulemaking authority permitted by this section for which authorizing legislation does not exist. By February 1, 1999, the Administrative Procedures Committee shall submit to the President of the Senate and the Speaker of the House of Representatives a report identifying those rules that an agency had previously identified as exceeding the rulemaking authority permitted by this section for which proceedings to repeal the rule have not been initiated. As of July 1, 1999, the Administrative Procedures Committee or any substantially affected person may petition an agency to repeal any rule, or portion thereof, because it exceeds the rulemaking authority permitted by this section. Not later than 30 days after the date of filing the petition if the agency is headed by an individual, or not later than 45 days if the agency is headed by a collegial body, the agency shall initiate rulemaking proceedings to repeal the rule, or portion thereof, or deny the petition, giving a written statement of its reasons for the denial

(b) By October 1, 1999, each agency shall provide to the Administrative Procedures Committee a listing of each rule, or portion thereof, adopted by that agency before the effective date of the bill, which exceeds the rulemaking authority permitted by this section. For those rules of which only a portion exceeds the rulemaking authority permitted by this section, the agency shall also identify the language of the rule which exceeds this authority. The Administrative Procedures Committee shall combine the lists and provide the cumulative listing to the President of the Senate and the Speaker of the House of Representatives. The Legislature shall, at the 2000 Regular Session, consider whether specific legislation authorizing the identified rules, or portions thereof, should be enacted. By January 1, 2001, each agency shall initiate proceedings pursuant to s. 120.54 to repeal each rule, or portion thereof, identified as exceeding the rulemaking authority permitted by this section for which authorizing legislation does not exist. By February 1, 2001, the Administrative Procedures Committee shall submit to the President of the Senate and the Speaker of the House of Representatives a report identifying those rules that an agency had previously identified as exceeding the rulemaking authority permitted by this section for which proceedings to repeal the rule have not been initiated. As of July 1, 2001, the Administrative Procedures Committee or any substantially affected person may petition an agency to repeal any rule, or portion thereof, because it exceeds the rulemaking authority permitted by this section. Not later than 30 days after the date of filing the petition if the agency is headed by an individual, or not later than 45 days if the agency is headed by a collegial body, the agency shall initiate rulemaking proceedings to repeal the rule, or portion thereof, or deny the petition, giving a written statement of its reasons for the denial.

(3) All proposed rules or amendments to existing rules filed with the Department of State on or after October 1, 1996, shall be based on rulemaking authority no broader than that permitted by this section. A rule adopted before October 1, 1996, and not included on a list submitted by an agency in accordance with subsection (2) may not be challenged before November 1, 1997, on the grounds that it exceeds the rulemaking authority or law implemented as described by this section. A rule adopted before October 1, 1996, and included on a list submitted by an agency in accordance with subsection (2) may not be challenged before July 1, 1999, on the grounds that it exceeds the rulemaking authority or law implemented as described by this section. A rule adopted before the effective date of the bill, and included on a list submitted by an agency in accordance with subsection (2)(b) may not be challenged before July 1, 2001, on the grounds that it exceeds the rulemaking authority or law implemented as described by this section.

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

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

120.54 Rulemaking.—

(1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER THAN EMERGENCY RULES.—

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

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

120.56 Challenges to rules —

(2) CHALLENGING PROPOSED RULES; SPECIAL PROVISIONS.—

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

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

120.57 Additional procedures for particular cases —

(1) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS INVOLVING DISPUTED ISSUES OF MATERIAL FACT —

(1) The agency may adopt the recommended order as the final order of the agency. The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of

administrative rule is as or more reasonable than that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. The agency may accept the recommended penalty in a recommended order, but may not reduce or increase it without a review of the complete record and without stating with particularity its reasons therefor in the order, by citing to the record in justifying the action.

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

120.81 Exceptions and special requirements, general areas.—

(1) EDUCATIONAL UNITS —

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

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

Approved by the Governor June 18, 1999.

Filed in Office Secretary of State June 18, 1999.

CHAPTER 99-380

House Bill No. 209

An act relating to alcohol sales; amending s. 567.01, F.S., providing for local option elections to determine sales of intoxicating liquors, wines, or beer by the drink; amending s. 567.06, F.S., providing ballot instructions for local option elections; amending s. 567.07, F.S., providing for a local option election for sole purpose of determining whether intoxicating liquors, wines, or beer may be sold by the drink for consumption on premises; providing an effective date

Be It Enacted by the Legislature of the State of Florida.

Section 1. Subsections (2) and (6) of section 567.01, Florida Statutes, are amended to read:

567.01 Petition, order, notice of election.—

(2) The election so ordered shall be to decide either:

(a) Whether the sale of intoxicating liquors, wines, or beer shall be prohibited or permitted in said county, and to decide also whether such sale, if permitted by said election, shall be restricted to sales by the package as hereinafter defined, or

(b) After a prior election has authorized such sale and has restricted sales to by the package only, whether intoxicating liquors, wines, or beer shall be sold by the drink for consumption on premises as provided in s. 567.07(2)(c)

(6) It is the purpose and intent of the Legislature that such election shall obviate the necessity for holding two separate elections, except as provided in s. 567.07(2)(c), by determining in one election:

(a) Whether the sale of intoxicating liquors, wines, or beer shall be prohibited or permitted, and

(b) If such sales are determined to be permitted, to further determine whether the sales so made shall be limited to sales by the package as herein before defined, or whether sales by the drink on the premises, as well as sales by the package, may be permitted.

A majority of those legally voting at such election must cast their votes for selling intoxicating liquors, wines, or beer in order that the results of the election on the second question shall be effective and binding

Section 2. Subsection (3) is added to section 567.06, Florida Statutes, to read

567.06 Form of ballot; canvassing votes —

(3) However, for a local option election authorized by s. 567.01(2)(b) on the sole question of whether intoxicating liquors, wines, or beer may be sold by the drink for consumption on premises, ballot instructions shall be presented in the following form.

INSTRUCTIONS: Local Option Election on the Following Question

THE QUESTION BEFORE THE ELECTORATE is to decide whether intoxicating liquors, wines, or beer, containing more than 6 2/3 percent of alcohol by volume, may be sold by the drink for consumption on premises in () County, Florida.

For Sales by the Drink.

followed by the word "yes" and also by the word "no," and shall be styled in such a manner that a "yes" vote will indicate approval of the question and a "no" vote will indicate rejection.

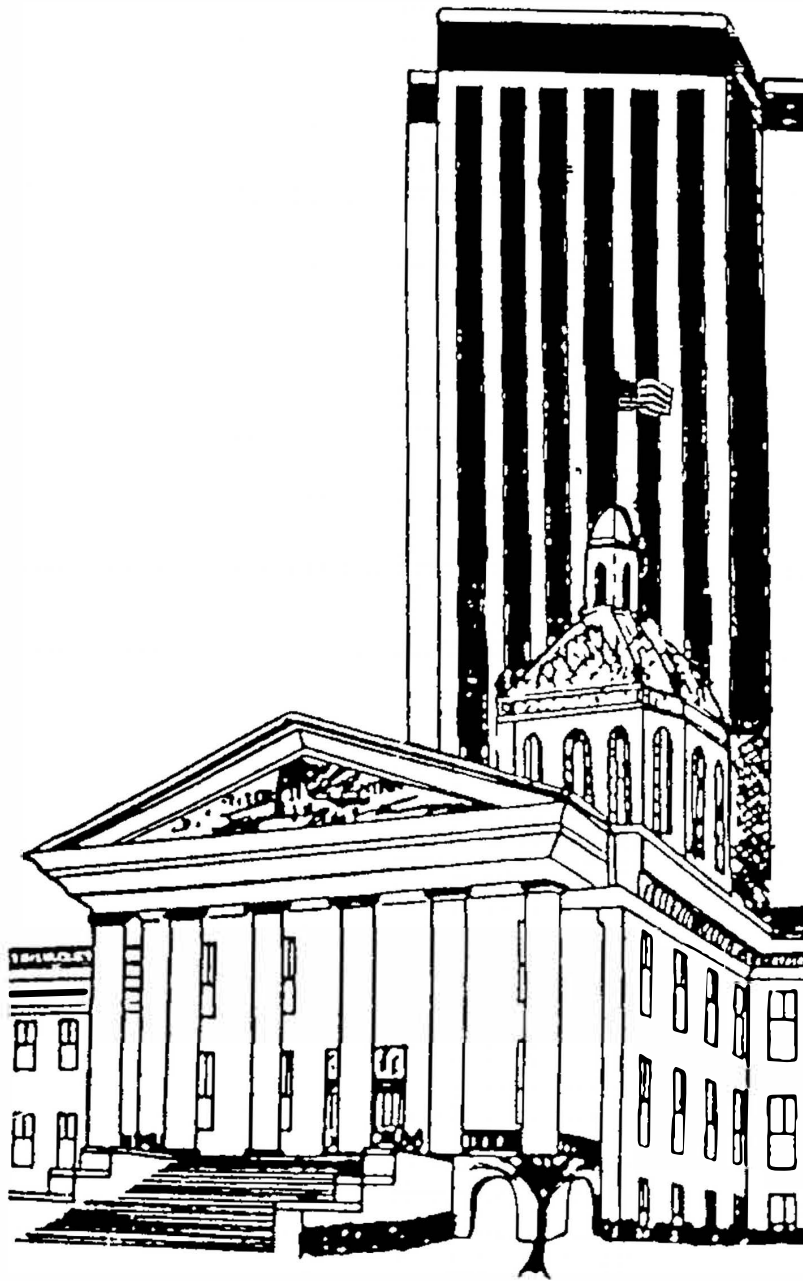
Section 3. Section 567.07, Florida Statutes, is amended to read

567.07 Results of election.—

FLORIDA LEGISLATURE

FINAL LEGISLATIVE BILL INFORMATION “CITATOR”

1999 Regular Session



prepared by:

**LEGISLATIVE INFORMATION SERVICES DIVISION
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HISTORY OF HOUSE BILLS

H 105 (CONTINUED)

03/02/99 HOUSE Introduced, referred to Business Development & International Trade (EDC), Finance & Taxation (FRC), General Appropriations (FRC) -HJ 00026, On Committee agenda—Business Development & International Trade (EDC), 02/16/99, 3 15 pm, Morris Hall, Comm Action: Unannmously Favorable by Business Development & International Trade (EDC) -HJ 00104, Now in Finance & Taxation (FRC) -HJ 00104

04/14/99 HOUSE On Committee agenda—Finance & Taxation (FRC), 04/16/99, 9 30 am, Morris Hall

04/16/99 HOUSE Comm Action Unanimously Favorable with 1 amendment(s) by Finance & Taxation (FRC) -HJ 00750

04/19/99 HOUSE Now in General Appropriations (FRC) HJ 00750

04/21/99 HOUSE Withdrawn from General Appropriations (FRC) -HJ 00673, Placed on calendar, available for General Calendar

04/22/99 HOUSE Placed on Special Order Calendar, Read second time -HJ 00852, Amendment(s) adopted -HJ 00852, Read third time -HJ 00852, Passed as amended, YEAS 112 NAYS 2 -HJ 00852

04/22/99 SENATE In Messages

04/23/99 SENATE Received, referred to Fiscal Resource, Commerce and Economic Opportunities -SJ 00794, Immediately withdrawn from Fiscal Resource, Commerce and Economic Opportunities -SJ 00722, Substituted for CS/SB 110 -SJ 00722, Read second time -SJ 00722, Read third time -SJ 00779, Passed, YEAS 40 NAYS 0 -SJ 00779, Immediately certified -SJ 00779

04/23/99 HOUSE Ordered enrolled -HJ 01089

04/29/99 Signed by Officers and presented to Governor -HJ 01893

05/14/99 Approved by Governor, Chapter No. 99-171

→ **H 107 GENERAL BILL/CS/IST ENG by Governmental Rules & Regulations (PRC); Pruitt; Wallace; (CO-SPONSORS) Posey; Byrd; Argenziano, Alexander; Valdes; Sorenson; Putnam (Similar CS/CS/S 0206)**

Administrative Procedure Act, removes entities described in provisions re water control districts, from definition of "agency", provides additional restrictions re agency's rulemaking authority, revises agency's responsibilities in response to challenge to proposed rule & specifies petitioner's responsibility of going forward, provides that district school boards may adopt rules notwithstanding rulemaking standards found in certain provisions, etc Amends Ch 120 Effective Date 06/18/1999

12/02/98 HOUSE Prefiled

12/08/98 HOUSE Referred to Water & Resource Management (RLC), Governmental Operations (PRC), Governmental Rules & Regulations (PRC)

12/21/98 HOUSE On Committee agenda—Water & Resource Management (RLC), 01/07/99, 3 15 pm, 214C

01/07/99 HOUSE Comm Action Favorable with 1 amendment(s) by Water & Resource Management (RLC)

01/08/99 HOUSE Now in Governmental Operations (PRC), On Committee agenda—Governmental Operations (PRC), 01/21/99, 9 00 am, 317C

01/21/99 HOUSE Comm Action Unanimously Favorable with 11 amendment(s) by Governmental Operations (PRC), Now in Governmental Rules & Regulations (PRC)

01/22/99 HOUSE On Committee agenda—Governmental Rules & Regulations (PRC), 02/01/99, 3 15 pm, 314-HOB

02/01/99 HOUSE Comm Action -CS by Governmental Rules & Regulations (PRC)

02/15/99 HOUSE Pending review of CS under Rule 113, Placed on Calendar

03/02/99 HOUSE Introduced, referred to Water & Resource Management (RLC), Governmental Operations (PRC), Governmental Rules & Regulations (PRC) -HJ 00026, On Committee agenda—Water & Resource Management (RLC), 01/07/99, 3 15 pm, 214C, Comm Action Favorable with 1 amendment(s) by Water & Resource Management (RLC) -HJ 00100, Now in Governmental Operations (PRC) -HJ 00100, On Committee agenda—Governmental Operations (PRC), 01/21/99, 9 00 am, 317C, Comm Action Unanimously Favorable with 11 amendment(s) by Governmental Operations (PRC) -HJ 00101, Now in Governmental Rules & Regulations (PRC) -HJ 00101, On Committee agenda—Governmental Rules & Regulations (PRC), 02/01/99, 3 15 pm, 314-HOB, Comm Action -CS by Governmental Rules & Regulations (PRC) -HJ 00103, CS read first time on 03/02/99 -HJ 00093, Pending review of CS under Rule 113, Placed on Calendar -HJ 00103

H 107 (CONTINUED)

03/04/99 HOUSE Placed on Special Order Calendar, Read second time -HJ 00152

03/10/99 HOUSE Read third time -HJ 00256, CS passed, YEAS 109 NAYS 8 -HJ 00257

03/16/99 SENATE In Messages

04/15/99 SENATE Received, referred to Governmental Oversight and Productivity, Fiscal Policy -SJ 00584

04/23/99 SENATE Withdrawn from Governmental Oversight and Productivity, Fiscal Policy -SJ 00720, Substituted for CS/CS/SB 206 -SJ 00720, Read second time -SJ 00720, Amendment(s) adopted -SJ 00720

04/26/99 SENATE Read third time -SJ 00836, CS passed as amended, YEAS 39 NAYS 1 -SJ 00836

04/26/99 HOUSE In returning messages

04/27/99 HOUSE Concurrred -HJ 01470, CS passed as amended, YEAS 113 NAYS 5 -HJ 01472, Ordered engrossed, then enrolled -HJ 01473

06/04/99 Signed by Officers and presented to Governor

06/18/99 Approved by Governor; Chapter No 99-379

H 109 GENERAL BILL/CS by Business Development & International Trade (EDC); Bitner; Starks; (CO-SPONSORS) Fasano; Constantine; Lynn (Identical CS/S 0108, Similar H 1951, Compare H 0031)

Unemployment Compensation, (THIS BILL COMBINES H109,31) extends for an additional year temporary reduction in certain contribution rates for specified employers, clarifies provisions re disqualification for benefits, extends for specified period temporary increase in maximum weekly & yearly benefit amounts for unemployment compensation benefits, specifies benefit years, provides extension for Fla Training Investment Program Amends 443 101, 111, 231 Effective Date 07/01/1999

12/02/98 HOUSE Prefiled

12/08/98 HOUSE Referred to Business Development & International Trade (EDC), Insurance (CAC), Finance & Taxation (FRC), General Government Appropriations (FRC)

02/08/99 HOUSE On Committee agenda—Business Development & International Trade (EDC), 02/16/99, 3 15 pm, Morris Hall—Workshop

03/01/99 HOUSE On Committee agenda—Business Development & International Trade (EDC), 03/03/99, 10 00 am, Morris Hall

03/02/99 HOUSE Introduced, referred to Business Development & International Trade (EDC), Insurance (CAC), Finance & Taxation (FRC); General Government Appropriations (FRC) -HJ 00026, On Committee agenda—Business Development & International Trade (EDC), 02/16/99, 3 15 pm, Morris Hall—Workshop, On Committee agenda—Business Development & International Trade (EDC), 03/03/99, 10 00 am, Morris Hall

03/03/99 HOUSE CS combines this bill with 31, Comm Action. Unanimously CS by Business Development & International Trade (EDC) -HJ 00286

03/10/99 HOUSE CS read first time on 03/10/99 -HJ 00285, Reference(s) rescinded Insurance (CAC), Finance & Taxation (FRC), General Government Appropriations (FRC), Pending review of CS under Rule 113, CS referred to Insurance (CAC), Finance & Taxation (FRC), General Government Appropriations (FRC) -HJ 00286

03/24/99 HOUSE Withdrawn from Insurance (CAC), Finance & Taxation (FRC), General Government Appropriations (FRC), Withdrawn from further cons., Ident/Sim/Compare Bill-(s) passed, refer to HB 1951 (Ch 99-131) -HJ 00337

H 111 GENERAL BILL by Heyman

Operation of Cardrooms, revises standards on when cardrooms may be operated & amount of bets allowable for each round, hand, or game; authorizes facilities to award prizes; redefines terms "authorized games" & "net proceeds", abolshes certain admission taxes, revises amount of cardroom receipts that must be used to supplement greyhound & jai alai purses Amends 849.086 Effective Date 07/01/1999

12/02/98 HOUSE Prefiled

12/08/98 HOUSE Referred to Regulated Services (CAC), Finance & Taxation (FRC), General Government Appropriations (FRC), Withdrawn from Regulated Services (CAC), Finance & Taxation (FRC), General Government Appropriations (FRC)

12/10/98 HOUSE Withdrawn prior to introduction -HJ 00026

H 113 GENERAL BILL/CS/CS/3RD ENG by Corrections (CRC); Crime & Punishment (CRC); Crist; Ball; Feeney; Andrews, (CO-SPONSORS) Futch; Crady; Trovillion; Merchant; Maygarden, Kyle; Thrasher; Goodlette; Ogles; Jones; Cantens; Villalobos. Flanagan; Brown; Fasano; Lynn; Heyman; Byrd; Casey; Spratt Putnam; Dockery; J. Miller; Harrington; Constantine; Alexander, Sorenson; Sanderson; Murman; Starks; Hafner; Fiorentino

(CONTINUED ON NEXT PAGE

FLORIDA LEGISLATURE—REGULAR SESSION—1999

HISTORY OF SENATE BILLS

S 202 (CONTINUED)

03/18/99 SENATE On Committee agenda—Regulated Industries, 03/23/99, 3 30 pm, Room—412K
 03/23/99 SENATE Comm Action -CS by Regulated Industries -SJ 00353, CS read first time on 03/25/99 -SJ 00361
 03/25/99 SENATE Placed on Calendar -SJ 00353
 04/23/99 SENATE Placed on Special Order Calendar -SJ 00792
 04/26/99 SENATE Placed on Special Order Calendar -SJ 00886
 04/27/99 SENATE Placed on Special Order Calendar -SJ 00886, -SJ 01222
 04/28/99 SENATE Placed on Special Order Calendar -SJ 01221, -SJ 01402
 04/29/99 SENATE Placed on Special Order Calendar -SJ 01402, -SJ 01628, Read second time -SJ 01424, Amendment(s) adopted -SJ 01424, Read third time -SJ 01424, CS passed as amended, YEAS 39 NAYS 1 -SJ 01424
 04/29/99 HOUSE In Messages
 04/30/99 HOUSE Died in Messages

S 204 GENERAL BILL/CS by Criminal Justice; Silver (Compare H 0137, 3RD ENG/H 0349)

Firearm Possession by Minor; provides that minor who violates certain provision must be detained in secure detention facility, provides that minor who commits offense that involves use or possession of firearm may not receive credit for time served, provides that weapons & firearms may not be possessed or discharged at school-sponsored event or on school property, etc Amends 790 22, 115, 943 051, 985 212 Effective Date 07/01/1999

12/03/98 SENATE Prefiled
 01/08/99 SENATE Referred to Criminal Justice, Fiscal Policy
 01/12/99 SENATE On Committee agenda—Criminal Justice, 01/19/99, 3 00 pm, Room 37S
 01/19/99 SENATE Comm Action CS by Criminal Justice
 01/22/99 SENATE Now in Fiscal Policy
 03/02/99 SENATE Introduced, referred to Criminal Justice, Fiscal Policy -SJ 00027, On Committee agenda—Criminal Justice, 01/19/99, 3 00 pm, Room—37S, Comm Action CS by Criminal Justice -SJ 00015, CS read first time on 03/02/99 -SJ 00105, Now in Fiscal Policy -SJ 00015
 04/22/99 SENATE Withdrawn from Fiscal Policy -SJ 00652, Placed on Calendar
 04/23/99 SENATE Placed on Special Order Calendar -SJ 00792, Read second time -SJ 00726
 04/26/99 SENATE Read third time -SJ 00837, CS passed, YEAS 40 NAYS 0 -SJ 00838
 04/26/99 HOUSE In Messages
 04/27/99 SENATE Requested House to return -SJ 00899
 04/27/99 HOUSE Returned -HJ 01441
 04/27/99 SENATE In returning messages
 04/29/99 SENATE Reconsidered -SJ 01576, Amendment(s) adopted -SJ 01576, House Bill substituted -SJ 01576, Laid on Table, Ident/Sim/Compare Bill(s) passed, refer to HB 349 (Ch 99-284)

S 206 GENERAL BILL/CS/CS by Fiscal Policy; Governmental Oversight and Productivity; Laurent (Similar CS/1ST ENG/H 0107)

Administrative Procedure Act removes entities described in provisions re water control districts, from definition of "agency", provides additional restrictions re agency's rulemaking authority, revises agency's responsibilities in response to challenge to proposed rule & specifies petitioner's responsibility of going forward, provides that district school boards may adopt rules notwithstanding rulemaking standards found in certain provisions, etc Amends Ch 120 Effective Date Upon becoming law

12/03/98 SENATE Prefiled
 01/08/99 SENATE Referred to Governmental Oversight and Productivity, Fiscal Policy
 03/02/99 SENATE Introduced, referred to Governmental Oversight and Productivity, Fiscal Policy -SJ 00028
 03/08/99 SENATE On Committee agenda—Governmental Oversight and Productivity, 03/11/99, 9 00 am, Room—37S
 03/11/99 SENATE Comm Action CS by Governmental Oversight and Productivity -SJ 00257, CS read first time on 03/16/99 -SJ 00281
 03/12/99 SENATE Now in Fiscal Policy -SJ 00257
 04/16/99 SENATE On Committee agenda—Fiscal Policy, 04/21/99, 1 00 pm, Room—412K
 04/21/99 SENATE Comm Action -CS/CS by Fiscal Policy -SJ 00707, CS read first time on 04/22/99 -SJ 00708
 04/22/99 SENATE Placed on Calendar -SJ 00707
 04/23/99 SENATE Placed on Special Order Calendar -SJ 00792, Read second time -SJ 00720, Amendment(s) adopted -SJ 00720, House Bill substituted -SJ 00720, Laid on Table, Ident/Sim/Compare Bill(s) passed, refer to CS/HB 107 (Ch 99-379)

S 208 JOINT RESOLUTION by Hargrett, (CO-SPONSORS) Holzendorf; Dawson-White; Jones; Meek (Identical H 0265, Compare H 0265, H 1811, S 0210)

Felon's Right to Register or Vote constitutional amendment to authorize Legislature to provide conditions under which convicted felon's right to register or vote or hold office may be restored by statute Amends s 4, Art VI
 12/03/98 SENATE Prefiled
 01/08/99 SENATE Referred to Ethics and Elections, Rules and Calendar
 03/02/99 SENATE Introduced, referred to Ethics and Elections, Rules and Calendar -SJ 00028, On Committee agenda—Ethics and Elections, 03/04/99, 3 30 pm, Room—309C
 03/04/99 SENATE Comm Action Favorable with 2 amendment(s) by Ethics and Elections -SJ 00131
 03/05/99 SENATE Now in Rules and Calendar -SJ 00131
 04/30/99 SENATE Died in Committee on Rules and Calendar

S 210 GENERAL BILL by Hargrett; (CO-SPONSORS) Holzendorf; Dawson-White; Jones; Meek (Identical H 0265, Compare H 0263, H 1811, S 0208)

Felons' Right to Vote provides for automatic restoration of former felons' right to vote following completion & satisfaction of sentence of incarceration & community supervision, provides conditions on such automatic restoration, takes effect on date of SJR 208, or another amendment to State Constitution which authorizes, or removes impediments to, enactment of this act by Legislature Amends 97 041 Effective Date Contingent
 12/03/98 SENATE Prefiled
 01/08/99 SENATE Referred to Ethics and Elections, Criminal Justice
 03/02/99 SENATE Introduced, referred to Ethics and Elections, Criminal Justice -SJ 00028, On Committee agenda—Ethics and Elections, 03/04/99, 3 30 pm, Room—309C
 03/04/99 SENATE Comm Action Favorable with 2 amendment(s) by Ethics and Elections -SJ 00130
 03/05/99 SENATE Now in Criminal Justice -SJ 00130
 04/30/99 SENATE Died in Committee on Criminal Justice

S 212 GENERAL BILL by Diaz-Balart (Compare H 0915)

Witnesses in Judicial Proceedings, prohibits threatening employee with dismissal because of employee's testimony or appearance as witness in judicial proceeding, authorizes court to hold employer in contempt for dismissing, or threatening to dismiss, employee because of employee's appearance or testimony as witness Amends 92 57 Effective Date 07/01/1999
 12/03/98 SENATE Prefiled
 01/08/99 SENATE Referred to Judiciary
 01/12/99 SENATE On Committee agenda—Judiciary, 01/20/99, 1 00 pm, Room 110S
 01/20/99 SENATE Comm Action -Favorable by Judiciary
 01/22/99 SENATE Placed on Calendar
 03/02/99 SENATE Introduced, referred to Judiciary -SJ 00028, On Committee agenda—Judiciary, 01/20/99, 1 00 pm, Room—110S, Comm Action -Favorable by Judiciary -SJ 00015, Placed on Calendar -SJ 00015
 03/24/99 SENATE Placed on Special Order Calendar -SJ 00308, Read second time -SJ 00303
 03/30/99 SENATE Read third time -SJ 00377, Passed, YEAS 37 NAYS 0 -SJ 00377
 04/06/99 HOUSE In Messages
 04/30/99 HOUSE Died in Messages

S 214 GENERAL BILL/CS/CS/1ST ENG by Comprehensive Planning, Local and Military Affairs, Commerce and Economic Opportunities; Silver (Similar 2ND ENG/H 0297, Compare CS/CS/3RD ENG/H 0017, CS/2ND ENG/S 0260, CS/2ND ENG/S 1510)

Florida Empowerment Zone Act, authorizes municipalities to designate satellite enterprise zones, creates said act & defines terms, provides legislative intent, provides for administration by DCA, provides requirements for eligibility defines as "qualified high-crime area" areas receiving 1999 federal empowerment zone designation, defines as "qualified county" county that contains area receiving 1999 enterprise community designation, etc Amends Chs 212, 290 Appropriation \$3,500,000 Effective Date Upon becoming law
 12/03/98 SENATE Prefiled
 01/08/99 SENATE Referred to Commerce and Economic Opportunities Comprehensive Planning, Local and Military Affairs, Fiscal Policy
 03/02/99 SENATE Introduced, referred to Commerce and Economic Opportunities, Comprehensive Planning, Local and Military Affairs, Fiscal Policy -SJ 00028, On Committee agenda—Commerce and Economic Opportunities, 03/03/99, 10 45 am, Room—110S
 03/03/99 SENATE Comm Action CS by Commerce and Economic Opportunities -SJ 00131, CS read first time on 03/05/99 -SJ 00132
 03/05/99 SENATE Now in Comprehensive Planning, Local and Military Affairs -SJ 00131

By Representative Pruitt

1 A bill to be entitled
 2 An act relating to the Administrative Procedure
 3 Act; amending ss. 120.52 and 120.536, F.S.;
 4 removing entities described in ch. 298, F.S.,
 5 relating to water control districts, from the
 6 definition of "agency"; providing that an
 7 agency's confirmation of a statutory exemption
 8 is not agency action and is not subject to
 9 provisions relating to decisions which affect
 10 substantial interests; providing additional
 11 restrictions with respect to an agency's
 12 rulemaking authority; amending s. 120.56, F.S.;
 13 revising an agency's responsibilities in
 14 response to a challenge to a proposed rule;
 15 amending s. 120.57, F.S., relating to hearings
 16 involving disputed issues of material fact;
 17 revising an agency's authority with respect to
 18 rejection or modification of conclusions of law
 19 in its final order; providing an effective
 20 date.
 21
 22 Be It Enacted by the Legislature of the State of Florida:
 23
 24 Section 1. Paragraph (b) of subsection (1) and
 25 subsections (2) and (8) of section 120.52, Florida Statutes,
 26 1998 Supplement, are amended to read:
 27 120.52 Definitions.--As used in this act:
 28 (1) "Agency" means:
 29 (b) Each state officer and state department,
 30 departmental unit described in s. 20.04, commission, regional
 31 planning agency, board, multicounty special district with a

CODING: words ~~stricken~~ are deletions; words underlined are additions.

1 majority of its governing board comprised of nonelected
2 persons, and authority, including, but not limited to, the
3 Commission on Ethics and the Game and Fresh Water Fish
4 Commission when acting pursuant to statutory authority derived
5 from the Legislature, educational units, and those entities
6 described in chapters 163, ~~290~~, 373, 380, and 582 and s.
7 186.504, except any legal entity or agency created in whole or
8 in part pursuant to chapter 361, part II, an expressway
9 authority pursuant to chapter 348, or any legal or
10 administrative entity created by an interlocal agreement
11 pursuant to s. 163.01(7), unless any party to such agreement
12 is otherwise an agency as defined in this subsection.

13 (2) "Agency action" means the whole or part of a rule
14 or order, or the equivalent, or the denial of a petition to
15 adopt a rule or issue an order. The term also includes any
16 denial of a request made under s. 120.54(7). The term does not
17 include an agency's confirmation or affirmance of a statutory
18 exemption, and such an act is not subject to s. 120.569 or s.
19 120.57.

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.;

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

30 Section 2. Subsection (1) of section 120.536, Florida
31 Statutes, is 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, interpret, or make more specific
7 the ~~detailed particular~~ powers and duties granted by the
8 enabling statute. No agency shall have authority to adopt a
9 rule only because it is reasonably related to the purpose of
10 the enabling legislation or is within the agency's class of
11 powers and duties and is not arbitrary and capricious, nor
12 shall an agency have the authority to implement statutory
13 provisions setting forth general legislative intent or policy.
14 Statutory language granting rulemaking authority or generally
15 describing the powers and functions of an agency shall be
16 construed to extend no further than the detailed particular
17 powers and duties conferred by the same statute.
18 Section 3. Paragraph (a) of subsection (2) of section
19 120.56, Florida Statutes, is amended to read:
20 120.56 Challenges to rules.--
21 (2) CHALLENGING PROPOSED RULES; SPECIAL PROVISIONS.--
22 (a) Any substantially affected person may seek an
23 administrative determination of the invalidity of any proposed
24 rule by filing a petition seeking such a determination with
25 the division within 21 days after the date of publication of
26 the notice required by s. 120.54(3)(a), within 10 days after
27 the final public hearing is held on the proposed rule as
28 provided by s. 120.54(3)(c), within 20 days after the
29 preparation of a statement of estimated regulatory costs
30 required pursuant to s. 120.541, if applicable, or within 20
31 days after the date of publication of the notice required by

1 s. 120.54(3)(d). The petition shall state with particularity
2 the objections to the proposed rule and the reasons that the
3 proposed rule is an invalid exercise of delegated legislative
4 authority. The agency then has the burden of going forward
5 and the burden to prove by a preponderance of the evidence
6 that the proposed rule is not an invalid exercise of delegated
7 legislative authority as to the objections raised. Any person
8 who is substantially affected by a change in the proposed rule
9 may seek a determination of the validity of such change. Any
10 person not substantially affected by the proposed rule as
11 initially noticed, but who is substantially affected by the
12 rule as a result of a change, may challenge any provision of
13 the rule and is not limited to challenging the change to the
14 proposed rule.

15 Section 4. Paragraph (1) of subsection (1) of section
16 120.57, Florida Statutes, 1998 Supplement, is amended to read:

17 120.57 Additional procedures for particular cases.--

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

20 (1) The agency may adopt the recommended order as the
21 final order of the agency. The agency in its final order may
22 reject or modify the clearly erroneous conclusions of law over
23 which it has substantive jurisdiction and interpretation of
24 administrative rules over which it has substantive
25 jurisdiction. Rejection or modification of conclusions of law
26 may not form the basis for rejection or modification of
27 findings of fact. The agency may not reject or modify the
28 findings of fact unless the agency first determines from a
29 review of the entire record, and states with particularity in
30 the order, that the findings of fact were not based upon
31 competent substantial evidence or that the proceedings on

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

7 | Section 5. This act shall take effect upon becoming a
8 | law.

9 |

10 | *****

11 | HOUSE SUMMARY

12 | Removes entities described in ch. 298, F.S., relating to
13 | water control districts, from the definition of "agency"
14 | under the Administrative Procedure Act. Provides that an
15 | agency's confirmation of a statutory exemption is not
16 | agency action under the act and is not subject to
17 | provisions relating to decisions which affect substantial
18 | interests. Provides additional restrictions with respect
19 | to an agency's rulemaking authority. Revises an agency's
20 | responsibilities in response to a challenge to a proposed
21 | rule. Revises an agency's authority with respect to
22 | rejection or modification of conclusions of law in its
23 | final order following a hearing involving disputed issues
24 | of material fact.

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Bill No. CS/HB 107

Amendment No.

Senate

CHAMBER ACTION

House

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Senator Laurent moved the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

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

Section 2. Subsections (1) and (8) of section 120.52, Florida Statutes, 1998 Supplement, are amended to read:

120.52 Definitions.--As used in this act:

(1) "Agency" means:

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

(b) Each:

SENATE AMENDMENT

Bill No. CS/HB 107

Amendment No.

- 1 1. State officer and state department, and each
2 departmental unit described in s. 20.04.
3 2. Authority, including a regional water supply
4 authority.
5 3. Board.
6 4. Commission, including the Commission on Ethics and
7 the Game and Fresh Water Fish Commission when acting pursuant
8 to statutory authority derived from the Legislature.
9 5. Regional planning agency., board,
10 6. Multicounty special district with a majority of its
11 governing board comprised of nonelected persons., and
12 authority, including, but not limited to, the Commission on
13 Ethics and the Game and Fresh Water Fish Commission when
14 acting pursuant to statutory authority derived from the
15 Legislature,
16 7. Educational units., and those entities
17 8. Entity described in chapters 163, 290, 373, 380,
18 and 582 and s. 186.504, except any legal entity or agency
19 created in whole or in part pursuant to chapter 361, part II,
20 an expressway authority pursuant to chapter 340, or any legal
21 or administrative entity created by an interlocal agreement
22 pursuant to s. 163.01(7), unless any party to such agreement
23 is otherwise an agency as defined in this subsection.
24 (c) Each other unit of government in the state,
25 including counties and municipalities, to the extent they are
26 expressly made subject to this act by general or special law
27 or existing judicial decisions.
28
29 This definition does not include any legal entity or agency
30 created in whole or in part pursuant to chapter 361, part II,
31 an expressway authority pursuant to chapter 348, any legal or

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1 administrative entity created by an interlocal agreement
2 pursuant to s. 163.01(7), unless any party to such agreement
3 is otherwise an agency as defined in this subsection, or any
4 multicounty special district with a majority of its governing
5 board comprised of elected persons; however, this definition
6 shall include a regional water supply authority.

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

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

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

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

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

23 (e) The rule is arbitrary or capricious;

24 (f) The rule is not supported by competent substantial
25 evidence; or

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

30

31 A grant of rulemaking authority is necessary but not

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

15 Section 3. Section 120.536, Florida Statutes, is
16 amended to read:

17 120.536 Rulemaking authority; listing of rules
18 exceeding authority; repeal; challenge.--

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

SENATE AMENDMENT

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Amendment No.

1 extend no further than implementing or interpreting the
2 specific ~~the particular~~ powers and duties conferred by the
3 same statute.
4 (2) (a) By October 1, 1997, each agency shall provide
5 to the Administrative Procedures Committee a listing of each
6 rule, or portion thereof, adopted by that agency before
7 October 1, 1996, which exceeds the rulemaking authority
8 permitted by this section. For those rules of which only a
9 portion exceeds the rulemaking authority permitted by this
10 section, the agency shall also identify the language of the
11 rule which exceeds this authority. The Administrative
12 Procedures Committee shall combine the lists and provide the
13 cumulative listing to the President of the Senate and the
14 Speaker of the House of Representatives. The Legislature
15 shall, at the 1998 Regular Session, consider whether specific
16 legislation authorizing the identified rules, or portions
17 thereof, should be enacted. By January 1, 1999, each agency
18 shall initiate proceedings pursuant to s. 120.54 to repeal
19 each rule, or portion thereof, identified as exceeding the
20 rulemaking authority permitted by this section for which
21 authorizing legislation does not exist. By February 1, 1999,
22 the Administrative Procedures Committee shall submit to the
23 President of the Senate and the Speaker of the House of
24 Representatives a report identifying those rules that an
25 agency had previously identified as exceeding the rulemaking
26 authority permitted by this section for which proceedings to
27 repeal the rule have not been initiated. As of July 1, 1999,
28 the Administrative Procedures Committee or any substantially
29 affected person may petition an agency to repeal any rule, or
30 portion thereof, because it exceeds the rulemaking authority
31 permitted by this section. Not later than 30 days after the

SENATE AMENDMENT

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Amendment No.

1 date of filing the petition if the agency is headed by an
2 individual, or not later than 45 days if the agency is headed
3 by a collegial body, the agency shall initiate rulemaking
4 proceedings to repeal the rule, or portion thereof, or deny
5 the petition, giving a written statement of its reasons for
6 the denial.

7 (b) By October 1, 1999, each agency shall provide to
8 the Administrative Procedures Committee a listing of each
9 rule, or portion thereof, adopted by that agency before the
10 effective date of the bill, which exceeds the rulemaking
11 authority permitted by this section. For those rules of which
12 only a portion exceeds the rulemaking authority permitted by
13 this section, the agency shall also identify the language of
14 the rule which exceeds this authority. The Administrative
15 Procedures Committee shall combine the lists and provide the
16 cumulative listing to the President of the Senate and the
17 Speaker of the House of Representatives. The Legislature
18 shall, at the 2000 Regular Session, consider whether specific
19 legislation authorizing the identified rules, or portions
20 thereof, should be enacted. By January 1, 2001, each agency
21 shall initiate proceedings pursuant to s. 120.54 to repeal
22 each rule, or portion thereof, identified as exceeding the
23 rulemaking authority permitted by this section for which
24 authorizing legislation does not exist. By February 1, 2001,
25 the Administrative Procedures Committee shall submit to the
26 President of the Senate and the Speaker of the House of
27 Representatives a report identifying those rules that an
28 agency had previously identified as exceeding the rulemaking
29 authority permitted by this section for which proceedings to
30 repeal the rule have not been initiated. As of July 1, 2001,
31 the Administrative Procedures Committee or any substantially

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1 affected person may petition an agency to repeal any rule, or
2 portion thereof, because it exceeds the rulemaking authority
3 permitted by this section. Not later than 30 days after the
4 date of filing the petition if the agency is headed by an
5 individual, or not later than 45 days if the agency is headed
6 by a collegial body, the agency shall initiate rulemaking
7 proceedings to repeal the rule, or portion thereof, or deny
8 the petition, giving a written statement of its reasons for
9 the denial.

10 (3) All proposed rules or amendments to existing rules
11 filed with the Department of State on or after October 1,
12 1996, shall be based on rulemaking authority no broader than
13 that permitted by this section. A rule adopted before October
14 1, 1996, and not included on a list submitted by an agency in
15 accordance with subsection (2) may not be challenged before
16 November 1, 1997, on the grounds that it exceeds the
17 rulemaking authority or law implemented as described by this
18 section. A rule adopted before October 1, 1996, and included
19 on a list submitted by an agency in accordance with subsection
20 (2) may not be challenged before July 1, 1999, on the grounds
21 that it exceeds the rulemaking authority or law implemented as
22 described by this section. A rule adopted before the effective
23 date of the bill, and included on a list submitted by an
24 agency in accordance with subsection (2)(b) may not be
25 challenged before July 1, 2001, on the grounds that it exceeds
26 the rulemaking authority or law implemented as described by
27 this section.

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

31 Section 4. Paragraph (f) of subsection (1) of section

SENATE AMENDMENT

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Amendment No.

1 120.54, Florida Statutes, 1998 Supplement, is amended to read:

2 120.54 Rulemaking.--

3 (1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER
4 THAN EMERGENCY RULES.--

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

12 Section 5. Paragraph (a) of subsection (2) of section
13 120.56, Florida Statutes, is amended to read:

14 120.56 Challenges to rules.--

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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Amendment No.

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 6. Paragraph (1) of subsection (1) of section
10 120.57, Florida Statutes, 1998 Supplement, 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

Bill No. CS/HB 107

Amendment No. _____

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

12 120.81 Exceptions and special requirements; general
13 areas.--

14 (1) EDUCATIONAL UNITS.--

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

18 Section 8. This act shall take effect upon becoming a
19 law.

20

21

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

23 And the title is amended as follows:

24 Delete everything before the enacting clause

25

26 and insert:

27

A bill to be entitled

28

An act relating to the Administrative Procedure

29

Act; providing legislative intent; amending s.

30

120.52, F.S.; removing entities described in

31

ch. 298, F.S., relating to water control

SENATE AMENDMENT

Bill No. CS/HB 107

Amendment No. _____

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

SENATE AMENDMENT

Bill No. CS/HB 107

Amendment No.

1 law or interpretation of administrative rule;
2 amending s. 120.81, F.S.; providing that
3 district school boards may adopt rules
4 notwithstanding the rulemaking standards found
5 in chapter 120, F.S.; providing an effective
6 date.
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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; requiring agencies to
13 provide the Administrative Procedures Committee
14 with a list of existing rules which exceed such
15 rulemaking authority and providing for
16 legislative consideration of such rules;
17 requiring agencies to initiate proceedings to
18 repeal such rules for which authorizing
19 legislation is not adopted; requiring a report
20 to the Legislature; providing that the
21 committee or a substantially affected person
22 may petition for repeal of such rules after a
23 specified date; restricting challenge of such
24 rules before that date; amending s. 120.54,
25 F.S.; specifying when rules may take effect;
26 restricting adoption of retroactive rules;
27 amending s. 120.56, F.S.; revising an agency's
28 responsibilities in response to a challenge to
29 a proposed rule and specifying the petitioner's
30 responsibility of going forward; amending s.
31 120.57, F.S., relating to hearings involving

1 disputed issues of material fact; revising an
2 agency's authority with respect to rejection or
3 modification of conclusions of law in its final
4 order; providing for agency statement as to the
5 reasonableness of its substituted finding of
6 law or interpretation of administrative rule;
7 amending s. 120.81, F.S.; providing that
8 district school boards may adopt rules
9 notwithstanding the rulemaking standards found
10 in chapter 120, F.S.; providing an effective
11 date.

12
13 Be It Enacted by the Legislature of the State of Florida:

14
15 Section 1. It is the intent of the Legislature that
16 modifications contained in sections 2 and 3 of this act which
17 apply to rulemaking are to clarify the limited authority of
18 agencies to adopt rules in accordance with chapter 96-159,
19 Laws of Florida, and are intended to reject the class of
20 powers and duties analysis. However, it is not the intent of
21 the Legislature to reverse the result of any specific judicial
22 decision.

23 Section 2. Subsections (1) and (8) of section 120.52,
24 Florida Statutes, 1998 Supplement, are amended to read:

25 120.52 Definitions.--As used in this act:

26 (1) "Agency" means:

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

29 (b) Each:

30 1. State officer and state department, and each
31 departmental unit described in s. 20.04.

- 1 2. Authority, including a regional water supply
- 2 authority.
- 3 3. Board.
- 4 4. Commission, including the Commission on Ethics and
- 5 the Game and Fresh Water Fish Commission when acting pursuant
- 6 to statutory authority derived from the Legislature.
- 7 5. Regional planning agency., board,
- 8 6. Multicounty special district with a majority of its
- 9 governing board comprised of nonelected persons., and
- 10 ~~authority, including, but not limited to, the Commission on~~
- 11 ~~Ethics and the Game and Fresh Water Fish Commission when~~
- 12 ~~acting pursuant to statutory authority derived from the~~
- 13 ~~Legislature,~~
- 14 7. Educational units., and those entities
- 15 8. Entity described in chapters 163, 290, 373, 380,
- 16 and 582 and s. 186.504, except 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, or any legal
- 19 or 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.
- 22 (c) Each other unit of government in the state,
- 23 including counties and municipalities, to the extent they are
- 24 expressly made subject to this act by general or special law
- 25 or existing judicial decisions.
- 26
- 27 This definition does not include any legal entity or agency
- 28 created in whole or in part pursuant to chapter 361, part II,
- 29 an expressway authority pursuant to chapter 348, any legal or
- 30 administrative entity created by an interlocal agreement
- 31 pursuant to s. 163.01(7), unless any party to such agreement

1 is otherwise an agency as defined in this subsection, or any
2 multicounty special district with a majority of its governing
3 board comprised of elected persons; however, this definition
4 shall include a regional water supply authority.

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

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

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

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

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

21 (e) The rule is arbitrary or capricious;

22 (f) The rule is not supported by competent substantial
23 evidence; or

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

28
29 A grant of rulemaking authority is necessary but not
30 sufficient to allow an agency to adopt a rule; a specific law
31 to be implemented is also required. An agency may adopt only

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

13 Section 3. Section 120.536, Florida Statutes, is
14 amended to read:

15 120.536 Rulemaking authority; listing of rules
16 exceeding authority; repeal; challenge.--

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

1 specific ~~the particular~~ powers and duties conferred by the
2 same statute.

3 (2) (a) By October 1, 1997, each agency shall provide
4 to the Administrative Procedures Committee a listing of each
5 rule, or portion thereof, adopted by that agency before
6 October 1, 1996, which exceeds the rulemaking authority
7 permitted by this section. For those rules of which only a
8 portion exceeds the rulemaking authority permitted by this
9 section, the agency shall also identify the language of the
10 rule which exceeds this authority. The Administrative
11 Procedures Committee shall combine the lists and provide the
12 cumulative listing to the President of the Senate and the
13 Speaker of the House of Representatives. The Legislature
14 shall, at the 1998 Regular Session, consider whether specific
15 legislation authorizing the identified rules, or portions
16 thereof, should be enacted. By January 1, 1999, each agency
17 shall initiate proceedings pursuant to s. 120.54 to repeal
18 each rule, or portion thereof, identified as exceeding the
19 rulemaking authority permitted by this section for which
20 authorizing legislation does not exist. By February 1, 1999,
21 the Administrative Procedures Committee shall submit to the
22 President of the Senate and the Speaker of the House of
23 Representatives a report identifying those rules that an
24 agency had previously identified as exceeding the rulemaking
25 authority permitted by this section for which proceedings to
26 repeal the rule have not been initiated. As of July 1, 1999,
27 the Administrative Procedures Committee or any substantially
28 affected person may petition an agency to repeal any rule, or
29 portion thereof, because it exceeds the rulemaking authority
30 permitted by this section. Not later than 30 days after the
31 date of filing the petition if the agency is headed by an

1 individual, or not later than 45 days if the agency is headed
2 by a collegial body, the agency shall initiate rulemaking
3 proceedings to repeal the rule, or portion thereof, or deny
4 the petition, giving a written statement of its reasons for
5 the denial.

6 (b) By October 1, 1999, each agency shall provide to
7 the Administrative Procedures Committee a listing of each
8 rule, or portion thereof, adopted by that agency before the
9 effective date of the bill, which exceeds the rulemaking
10 authority permitted by this section. For those rules of which
11 only a portion exceeds the rulemaking authority permitted by
12 this section, the agency shall also identify the language of
13 the rule which exceeds this authority. The Administrative
14 Procedures Committee shall combine the lists and provide the
15 cumulative listing to the President of the Senate and the
16 Speaker of the House of Representatives. The Legislature
17 shall, at the 2000 Regular Session, consider whether specific
18 legislation authorizing the identified rules, or portions
19 thereof, should be enacted. By January 1, 2001, each agency
20 shall initiate proceedings pursuant to s. 120.54 to repeal
21 each rule, or portion thereof, identified as exceeding the
22 rulemaking authority permitted by this section for which
23 authorizing legislation does not exist. By February 1, 2001,
24 the Administrative Procedures Committee shall submit to the
25 President of the Senate and the Speaker of the House of
26 Representatives a report identifying those rules that an
27 agency had previously identified as exceeding the rulemaking
28 authority permitted by this section for which proceedings to
29 repeal the rule have not been initiated. As of July 1, 2001,
30 the Administrative Procedures Committee or any substantially
31 affected person may petition an agency to repeal any rule, or

1 portion thereof, because it exceeds the rulemaking authority
2 permitted by this section. Not later than 30 days after the
3 date of filing the petition if the agency is headed by an
4 individual, or not later than 45 days if the agency is headed
5 by a collegial body, the agency shall initiate rulemaking
6 proceedings to repeal the rule, or portion thereof, or deny
7 the petition, giving a written statement of its reasons for
8 the denial.

9 (3) All proposed rules or amendments to existing rules
10 filed with the Department of State on or after October 1,
11 1996, shall be based on rulemaking authority no broader than
12 that permitted by this section. A rule adopted before October
13 1, 1996, and not included on a list submitted by an agency in
14 accordance with subsection (2) may not be challenged before
15 November 1, 1997, on the grounds that it exceeds the
16 rulemaking authority or law implemented as described by this
17 section. A rule adopted before October 1, 1996, and included
18 on a list submitted by an agency in accordance with subsection
19 (2) may not be challenged before July 1, 1999, on the grounds
20 that it exceeds the rulemaking authority or law implemented as
21 described by this section. A rule adopted before the effective
22 date of the bill, and included on a list submitted by an
23 agency in accordance with subsection (2) (b) may not be
24 challenged before July 1, 2001, on the grounds that it exceeds
25 the rulemaking authority or law implemented as described by
26 this section.

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

30 Section 4. Paragraph (f) of subsection (1) of section
31 120.54, Florida Statutes, 1998 Supplement, is amended to read:

1 120.54 Rulemaking.--

2 (1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER
3 THAN EMERGENCY RULES.--

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

11 Section 5. Paragraph (a) of subsection (2) of section
12 120.56, Florida Statutes, is amended to read:

13 120.56 Challenges to rules.--

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

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

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

8 Section 6. Paragraph (1) of subsection (1) of section
9 120.57, Florida Statutes, 1998 Supplement, is amended to read:

10 120.57 Additional procedures for particular cases.--

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

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

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

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

11 120.81 Exceptions and special requirements; general
12 areas.--

13 (1) EDUCATIONAL UNITS.--

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

17 Section 8. This act shall take effect upon becoming a
18 law.

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STORAGE NAME: h0107z.grr
DATE: June 30, 1999

****FINAL ACTION****
****SEE FINAL ACTION STATUS SECTION****

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
GOVERNMENTAL RULES AND REGULATIONS
FINAL ANALYSIS**

BILL #: CS/HB 107 (Chapter No 99-379, Laws of Florida)
RELATING TO: Administrative Procedure Act
SPONSOR(S): The Committee on Governmental Rules and Regulations, Representative Pruitt,
Representative Wallace, and others
COMPANION BILL(S): CS/CS/SB 206 (similar)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) WATER AND RESOURCE MANAGEMENT YEAS 5 NAYS 3
- (2) GOVERNMENTAL OPERATIONS YEAS 6 NAYS 0
- (3) GOVERNMENTAL RULES AND REGULATIONS YEAS 6 NAYS 1
- (4)
- (5)

I FINAL ACTION STATUS

1st Eng/CS/HB 107 passed the Legislature on April 27, 1999. Its companion, CS/CS/SB 206, was laid on the table in lieu of 1st Eng/CS/HB 107 on April 23, 1999. 1st Eng/CS/HB 107 was signed by the Governor on June 18, 1999. See Chapter 99-379, Laws of Florida.

II SUMMARY

1st Eng/CS/HB 107 provides that

- ◆ It is the intent of the Legislature that modifications contained in sections 2 and 3 of this act which apply to rulemaking are to clarify the limited authority of agencies to adopt rules in accordance with chapter 96-159, LoF, and are intended to reject the class of powers and duties analysis. However, it is not the intent of the Legislature to reverse the result of any specific judicial decision.
- ◆ Agency rulemaking can only implement or interpret the specific powers and duties granted by the enabling statute. An agency may not adopt a rule because it is within the agency's class of powers and duties found in the enabling statute.
- ◆ Agencies are to review existing rules and provide by October 1, 1999, to the Joint Administrative Procedures Committee (JAPC) a list of those rules that exceed the standard for rulemaking found in s. 120.536(1), F.S. The Legislature will consider in the 2000 Regular Session specific legislation that would authorize the identified rules. For those rules not authorized, the agencies are to initiate repeal proceedings by January 1, 2001. The JAPC or any substantially affected person may petition for repeal of an identified rule after July 1, 2001.
- ◆ An agency may not adopt retroactive rules, including retroactive rules intended to clarify existing law, unless that power is expressly authorized by statute.
- ◆ A petitioner has the burden of going forward with presenting the objections to the proposed rule. The agency then has the burden to prove by a preponderance of the evidence that a proposed rule is not an invalid exercise of delegated legislative authority as to the objections raised.
- ◆ An agency, in its final order, may now only modify or reject conclusions of law over which it has substantive jurisdiction. When rejecting or modifying a conclusion of law over which it has substantive jurisdiction or an interpretation of administrative rule over which it has substantive jurisdiction, the agency must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified.
- ◆ Local school districts are excepted from the provisions of s. 120.536(1) and the flush left paragraph of s. 120.52(8), F.S., and may adopt rules to implement their general powers found in s. 230.22, F.S.

The definition of agency is amended and is rewritten for clarity. The bill has an indeterminate fiscal impact and takes effect upon becoming law.

III. SUBSTANTIVE ANALYSIS:
PRESENT SITUATION:

Chapter 120, F.S., The Administrative Procedure Act

Standard for Agency Rulemaking

In 1996, the Legislature significantly revised the Administrative Procedure Act (APA), Chapter 120, Florida Statutes, to clarify definitions and exceptions and to simplify its procedures. Notable among the 1996 amendments to the APA are amendments creating a statutory standard for rulemaking (s.120.536(1), F.S) and inclusion of this standard in the definition of an invalid exercise of delegated legislative authority (s. 120 52(8), F S) The identical language is found in both sections:

A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement, interpret, or make specific the particular powers and duties granted by the enabling statute. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than the particular powers and duties conferred by the same statute.

Rule authorization activities under section 120.536, F.S. The Legislature also provided an opportunity to agencies to review existing rules to determine whether existing rules were in compliance with this new rulemaking standard. Section 120 536(2) directed agencies to identify rules that exceed the authority found in that section and report those rules to the Joint Administrative Procedures Committee (JAPC), which then compiled a report and presented it to the Senate President and Speaker of the House on October 31, 1997. The JAPC reported that 114 state agencies identified 2,236 rules exceeding rulemaking authority, and that 19 school boards identified 3,614 rules exceeding rulemaking authority.

The rules identified are shielded from challenge as to validity until July 1, 1999. In the 1998 Regular Session the Legislature had the opportunity to address legislation authorizing those rules. In the 1998 session, 48 bills submitted for the purpose of authorizing rules identified under this section were enacted, several other bills also addressing rules identified under this section were enacted. Agencies were to have initiated repeals of those rules not ratified by the Legislature beginning January 1, 1999. Finally, the shield is entirely removed on July 1, 1999, and the JAPC or any substantially affected party may petition for the repeal of any remaining rule identified as exceeding rulemaking authority and for which authorizing legislation has not been enacted.

Analysis of the standard The first sentence of the rulemaking standard found in s. 120.536(1) is clear, a rule must have as its basis a specific enabling statute, and a grant of rulemaking authority is necessary but not sufficient for the adoption of a rule. The third sentence overrules a judicially created test to determine the validity of a rule. No longer would a rule be valid if it was reasonably related to the purpose of the enabling legislation and was not arbitrary and capricious, nor would an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. As it was described in the Final Bill Analysis of Senate Bill 2290 and 2288 (1996)

These two provisions would overrule the decisions that followed the rule established prior to the enactment of the section 120.52(8), Florida Statutes, that "rules and regulations would be upheld so long as they are reasonably related to the purpose of the enabling legislation and are not arbitrary or capricious." *General Telephone Co. of Florida v. Florida Public Service Commission*, 446 So 2d 1063 (Fla 1984); *Department of Labor and Employment Security, Division of Workers' Compensation v. Bradley*, 636 So.2d 802 (Fla 1st DCA 1994); *Florida Waterworks Ass'n v. Florida Public Service Com'n*, 473 So 2d 237 (Fla 1st DCA 1985),

Department of Professional Regulation, Board of Medical Examiners v. Durrani, 455 So.2d 515 (Fla. 1st DCA 1984) *Agrico Chemical Co. v. State, Department of Environmental Protection*, 365 So.2d 759 (Fla. 1st DCA 1978); *Florida Beverage Corp. v. Wynne*, 306 So.2d 200 (Fla. 1st DCA 1975).

However, it is the standard for rulemaking found in the second sentence and reiterated in the fourth sentence, that has generated discussion litigation since enactment. Several appellate cases have sought to interpret this standard. First, in *St. Johns River Water Management District v Consolidated-Tomoka Land Co., et al.*, 717 So.2d 72 (Fla. 1st DCA July 29, 1998), the petitioner land owners challenged proposed rules of the District that would create a regulatory subdistrict in the Spruce Creek and Tomoka River Hydrologic Basins, and would create new standards for managing and storing surface waters in developments within this basin. *Tomoka* at 717 So 2d 75. An Administrative Law Judge (ALJ) in the Division of Administrative Hearings held that although the proposed rules were not arbitrary or capricious, were supported by competent and substantial evidence, and substantially accomplish the statutory objectives, the rules were invalid as a matter of law because the rules lacked the underlying statutory detail required by the new rulemaking standard in ss. 120.52(8) and 120.536(1), F.S. *Id.* at 76. The District appealed on this issue.

The First District Court of Appeal reversed the ALJ's final order, holding the proposed rules valid. In doing so, the court applied a "functional test based on the nature of the power or duty at issue and not on the level of detail in the language of the applicable statute." *Tomoka* at 717 So 2d 80

The question is whether the rule falls within the range of powers the Legislature has granted to the agency for the purpose of enforcing or implementing the statutes within its jurisdiction. A rule is a valid exercise of delegated legislative authority if it regulates a matter directly within the class of powers and duties identified in the statute to be implemented.

Id. In applying this test, the court found that delegated legislative authority was to identify geographic areas that require greater environmental protection and to impose more restrictive permitting requirements in those areas. *Id.* at 81. The challenged rules fell within the class of powers delegated by the statute and therefore were a valid exercise of delegated legislative authority. *Id.*

Second, in *Department of Business and Professional Regulation v. Calder Race Course, Inc., et al.*, 1998 WL 422515, 1998 23 Fla. L. Weekly D1795 (Fla. 1st DCA July 29, 1998), the respondent Department challenged the ALJ final order invalidating rules that would authorize the Department to conduct warrantless searches of persons and places within a permitted pari-mutual wagering facility. *Id.* at 23 Fla. L. Weekly D1795. The First District Court of Appeal affirmed the ALJ, noting first that where "government is to be given the right to conduct a warrantless search of a closely regulated business, the Fourth Amendment demands that the language of the statute delegating such power do so in clear and unambiguous terms," and second, that "highly regulatory laws are subject to strict construction and may not be extended by interpretation." *Id.* at 23 Fla. L. Weekly D1797. The court, in applying the *Tomoka* reasoning, found that the Department did not have the statutory basis to adopt these rules because the enabling statute did not provide the specific law under which such a rule could be adopted. *Id.*

Third, in *St. Petersburg Kennel Club v. Department of Business and Professional Regulation*, 719 So.2d 1210 (Fla. 2d DCA 1998), the petitioner kennel club appealed an ALJ final order validating Department rules defining the game of poker, and a Department final order denying application of three card games. *Id.* The court reversed both the ALJ final order that validated rules of the Department defining the game of poker and reversed a final order of the Department denying approval of three particular card games. *Id.* The court, in applying s. 120.536(1), F.S., noted that the enabling statute did not provide specifically that the Department is authorized to adopt rules to define the game of poker. *Id.* The Department could not administratively determine what would constitute the game of poker and therefore could not deny approval of card games because the denial was based upon application of an invalid rule. *Id.*

Order of Presentation of Evidence and Burdens of Proof in Rule Challenge Cases

STORAGE NAME: h0107z.grr

DATE: June 30, 1999

PAGE 4

The 1996 amendments to the APA also changed the burden of proof when challenge is made to the validity of a proposed rule. In amending s. 120.56(2), F.S., the Legislature removed the presumption of validity that cloaked a proposed rule, the APA now states that a proposed rule is not to be presumed valid or invalid. Further, when a petitioner challenges a proposed rule as an invalid exercise of delegated legislative authority, it is the agency that must proceed with the burden to prove the validity of the rule. See section 120.56(2)(a).

However, in *Tomoka*, the ALJ interpreted this procedure to mean that although the agency has the ultimate burden of establishing the validity of the proposed rule, the petitioner has the burden of going forward with the evidence supporting the objections. *Tomoka* at 717 So 2d 76-7.

In *Board of Clinical Laboratory Personnel v. Florida Ass'n of Blood Banks*, 721 So 2d 318 (Fla. 1st DCA 1998), the respondent Board challenged the ALJ's invalidation of proposed rule changes to the licensure requirements of blood bank personnel made in response to changes in the federal licensure requirements. *Id.* at 318. The court reversed the ALJ's final order, noting that although s. 120.56(2), F.S., did require the agency to prove by a preponderance of the evidence that the proposed rules satisfied s. 120.52(8), F.S., that section did not require the agency to prove by a preponderance of the evidence that its proposed changes were not an invalid exercise of delegated legislative authority. *Id.* The court noted that the APA did not require this level of proof when challenging a proposed rule but the court did not state what should be the level of proof. *Id.* See *Agency for Health Care Administration v. Fla. Coalition of Professional Laboratory Organizations* 718 So 2d 869 (Fla. 1st DCA 1998).

Finally, in *Dept. Of Children and Families v. Patricia Morman d/b/a Patti Cake Nursery*, 715 So.2d 1076 (Fla. 1st DCA 1998), the concurring opinion reads s. 120.57(1)(l), F.S., relating to the adoption of the final recommended order of the ALJ by the agency, to mean that an agency may reject or modify only the interpretations of administrative rules over which it has substantive jurisdiction, but that it may reject or modify any conclusion of law found in a recommended final order. *Id.* In this case, the court reversed the ALJ's *sua sponte* dismissal of the complaint against the respondent because the petitioner agency did not provide enough specificity in the complaint against which the respondent could defend. *Id.* The court found that the respondent failed to object to the lack of specificity in the complaint in the trial court below and that the transcript showed that the respondent was clear as to the rules violated and those in her employ who violated the rules. *Id.*

Retroactive Application of Rules

In general, the administrative rules of a state agency are prospective in application. *Gulfstream Park v. Dept. of Business Regulation* 407 So.2d 263 (Fla. 3d DCA 1981). However, in a recent opinion, a district court of appeal applied an exception, drawn from federal administrative law cases, that a rule that "merely clarifies another existing rule and does not establish new requirements" may be applied retroactively. See *Environmental Trust v. Dept. Of Environmental Protection*, 714 So.2d 493 (Fla. 1st DCA 1998). Although the circumstances of that case are unusual, it is argued that the exception could place a citizen in the untenable position of defending conduct that at the time was not prohibited by that rule, but by the retroactive application of an amendment to that rule, the conduct then becomes violative of the rule.

Chapter 298, Florida Statutes

This chapter regulates the affairs of water control districts. These districts are limited-purpose local governmental units administratively separate from state and other local governments. These units are created to provide financing or maintain infrastructure when general-purpose local governments (cities and counties) are unwilling or unable to provide the needed capital or services. The chapter was significantly revised in 1997 to, among other things, create a circuit court process for adjudicating disputes resulting from ad valorem assessments. The revisions also repealed the water control districts' authority to adopt rules, substituting that with the authority to adopt policies and resolutions.

A EFFECT OF PROPOSED CHANGES

1st Eng/CS/HB 107 addresses several cases interpreting 1996 amendments to the APA. It rewrites the definition of agency for clarity. Amendments to the definition of agency address specific types of agencies

It clarifies the rulemaking standard found in ss. 120.52(8) and 120 536(1), F S., and rejects a judicial interpretation of this standard which created a functional test to determine whether a challenged agency rule is directly within the class of powers and duties identified in the statute to be implemented *St Johns River Water Management District v Consolidated-Tomoka Land Co., et al*, 717 So.2d 72 (Fla. 1st DCA 1998) It provides for another round of rule review and authorization Rules identified by agencies as exceeding the clarified standard found in s 120.536(1), F S., are to be reported to the Joint Administrative Procedures Committee (JAPC) by October 1, 1999, and authorizing legislation is to be considered in the 2000 Regular Session Identified rules are shielded from challenge as to the legal basis for those rule beginning October 1, 1999 through July 1, 2001.

It prohibits retroactive rules except where the power is expressly authorized. When challenging a proposed rule, the petitioner has the burden of going forward with the allegations found in the petition. The agency then has the burden to prove by a preponderance of the evidence that the proposed rule is not an invalid exercise of delegated legislative authority as to the objection raised When rejecting or modifying a conclusion of law or interpretation of administrative rule found in a recommended final order, the agency must state with particularity its reason for substituting for the recommended conclusion of law and make a finding that the substituted conclusion of law is as or more reasonable than that for which it was substituted

Finally, local school districts are excepted from the provisions of ss 120 536(1) and the flush left paragraph of 102.52(8) and may adopt rules to implement their general powers found in s. 230.22, F S.

The bill has an indeterminate fiscal impact and is effective upon becoming law.

B. APPLICATION OF PRINCIPLES

1. Less Government:

a Does the bill create, increase or reduce, either directly or indirectly

(1) any authority to make rules or adjudicate disputes?

Although CS/HB 107 does not create any new authority for agencies to adopt rules, provisions found in the bill will clarify the authority of agencies to adopt rules pursuant to the more restrictive standard for rulemaking enacted in the 1996 amendments to the APA These provisions also prohibit an agency from adopting a rule where the statutory basis for the rule is "class of powers and duties" found within the enabling statute.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5 Family Empowerment

- a. If the bill purports to provide services to families or children

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

- (3) government employees/agencies?

N/A

C. STATUTE(S) AFFECTED.

Amends ss. 120.52(1)(b) and (8), 120.536, 120.54(1)(f), 120.56(2)(a), 120.57(1)(1), and 120.81(1), F.S.

D SECTION-BY-SECTION ANALYSIS:

Section 1 Provides for legislative intent that modifications contained in sections 2 and 3 of this act which apply to rulemaking are to clarify the limited authority of agencies to adopt rules in accordance with Chapter 96-159, L.O.F., and are intended to reject the class of powers and duties analysis. However, it is not the intent of the Legislature to reverse the result of any specific judicial decision.

Section 2: Rewrites and amends section 120.52(1)(b), F.S. (1998 Supp.). The definition of agency is rewritten for clarity. Citation to Ch 298, F.S., is removed from the definition. One type of agency is specifically included in the definition. regional water supply authorities. Multicounty special districts with a majority of its governing board comprised of elected persons are specifically excluded from the definition of agency, however, while water control authorities are organized in this way, the exclusion does not apply to these authorities

Amends the flush left paragraph of s 120 52(8), F.S., to read that an agency may only implement or interpret the specific powers and duties found in an enabling statute and that statutory language granting rulemaking authority shall be construed to extend no further than implementing or interpreting the same Prohibits an agency from adopting a rule because it is within the agency's class of powers and duties.

Section 3: Amends s 120.536(1), F.S., to read that an agency may only implement or interpret the specific powers and duties found in an enabling statute and that statutory language granting rulemaking authority shall be construed to extend no further than implementing or interpreting the same. Prohibits an agency from adopting a rule because it is within the agency's class of powers and duties (identical to changes made to s. 120.52(8), found in section 1, above)

Creates s 120.536(b)(2), F.S., a two-year rule review and authorization process. The process protects identified rules from challenge until the Legislature has had an opportunity to ratify these rules. Provides for a shield from challenge as to the validity of the legal basis for the rule for a period of time and a deadline for repeal of those rules not ratified by the Legislature

Section 4: Amends s 120 54(1)(f), F.S., relating to the general provisions applicable to all rules other than emergency rules Prohibits the adoption of retroactive rules, including retroactive rules intended to clarify existing law, unless that power is expressly authorized by statute

Section 5: Amends s 120.56(2)(a), F.S., relating to special provisions for challenging proposed rules. Provides that the petitioner has the burden of going forward with presenting the particular objections to the challenged rule Provides that the agency has to prove by a preponderance of the evidence that the proposed rule is not an invalid exercise of delegated legislative authority

Section 6: Amends s. 120.57(1)(1), F.S., relating to additional procedures applicable to hearings involving disputed issues of material fact Makes clear that an agency may, in a final order, reject or modify a conclusion of law over which it has substantive jurisdiction as well as administrative rules over which it has substantive jurisdiction Further, when substituting its conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for substituting and make a finding that its substitution is as or more reasonable than that which was rejected or modified

Section 7: Amends s. 120.81(1), F.S. Renumbers paragraphs (a) through (j) of that section as (b) through (k) and creates a new paragraph (a) that excepts local school districts from the provisions of ss 120.536(1) and 120 52(8), F.S. (1998 Supp.).

Section 8: Provides that the act takes effect upon becoming law

IV. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS.

1. Non-recurring Effects

Indeterminate.

2. Recurring Effects:

Indeterminate.

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects.

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

The fiscal impact of this bill on public and private sector expenditures concerning rule promulgation and implementation is indeterminate.

V. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require the counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that municipalities or counties have to raise revenue in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES

The bill does not reduce the percentage of a state tax shared with counties or municipalities

VI. COMMENTS:

A drafting error resulted in the garbled language now found at section 120.81(1)(a), F.S. This exception should read:

Notwithstanding section 120 536(1) and the flush left paragraph of section 120.52(8), district school boards are authorized to adopt rules to implement their general powers under section 230 22, Florida Statutes.

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The committee substitute reported favorably by the Committee on Governmental Rules and Regulations on February 1, 1999, substantially incorporates the amendments to House Bill 107 adopted in the Committees on Water and Resource Management, Governmental Operations, and Governmental Rules and Regulations. The committee substitute, in a housekeeping measure, rewrites the definition of agency for clarity.

VIII. SIGNATURES:

COMMITTEE ON WATER AND RESOURCE MANAGEMENT.

Prepared by:

Staff Director:

Joyce Pugh

Joyce Pugh

AS REVISED BY THE COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:

Staff Director:

Douglas Pile

Jimmy Q. Helms

AS FURTHER REVISED BY THE COMMITTEE ON GOVERNMENTAL RULES AND REGULATIONS:

Prepared by:

Staff Director:

David M. Greenbaum

David M. Greenbaum

FINAL ANALYSIS PREPARED BY THE COMMITTEE ON GOVERNMENTAL RULES AND REGULATIONS:

Prepared by:

Staff Director:

David M. Greenbaum

David M. Greenbaum

By Senator Laurent

17-500-99

See HB

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A bill to be entitled
An act relating to the Administrative Procedure Act; amending ss. 120.52 and 120.536, F.S.; removing entities described in ch. 298, F.S., relating to water control districts, from the definition of "agency"; providing that an agency's confirmation of a statutory exemption is not agency action and is not subject to provisions relating to decisions that affect substantial interests; providing additional restrictions with respect to an agency's rulemaking authority; amending s. 120.56, F.S.; revising an agency's responsibilities in response to a challenge to a proposed rule; amending s. 120.57, F.S., relating to hearings involving disputed issues of material fact; revising an agency's authority with respect to rejection or modification of conclusions of law in its final order; providing an effective date.

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

Section 1. Paragraph (b) of subsection (1) and subsections (2) and (8) of section 120.52, Florida Statutes, 1998 Supplement, are amended to read:

120.52 Definitions.--As used in this act:

(1) "Agency" means:

(b) Each state officer and state department, departmental unit described in s. 20.04, commission, regional planning agency, board, multicounty special district with a

1 majority of its governing board comprised of nonelected
2 persons, and authority, including, but not limited to, the
3 Commission on Ethics and the Game and Fresh Water Fish
4 Commission when acting pursuant to statutory authority derived
5 from the Legislature, educational units, and those entities
6 described in chapters 163, ~~298~~, 373, 380, and 582 and s.
7 186.504, except any legal entity or agency created in whole or
8 in part pursuant to chapter 361, part II, an expressway
9 authority pursuant to chapter 348, or any legal or
10 administrative entity created by an interlocal agreement
11 pursuant to s. 163.01(7), unless any party to such agreement
12 is otherwise an agency as defined in this subsection.

13 (2) "Agency action" means the whole or part of a rule
14 or order, or the equivalent, or the denial of a petition to
15 adopt a rule or issue an order. The term also includes any
16 denial of a request made under s. 120.54(7). The term does not
17 include an agency's confirmation or affirmance of a statutory
18 exemption, and such an act is not subject to s. 120.569 or s.
19 120.57.

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.;

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

30 Section 2. Subsection (1) of section 120.536, Florida
31 Statutes, is 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, interpret, or make more specific
7 the detailed particular powers and duties granted by the
8 enabling statute. No agency shall have authority to adopt a
9 rule only because it is reasonably related to the purpose of
10 the enabling legislation or is within the agency's class of
11 powers and duties and is not arbitrary and capricious, nor
12 shall an agency have the authority to implement statutory
13 provisions setting forth general legislative intent or policy.
14 Statutory language granting rulemaking authority or generally
15 describing the powers and functions of an agency shall be
16 construed to extend no further than the detailed particular
17 powers and duties conferred by the same statute.
18 Section 3. Paragraph (a) of subsection (2) of section
19 120.56, Florida Statutes, is amended to read:
20 120.56 Challenges to rules.--
21 (2) CHALLENGING PROPOSED RULES; SPECIAL PROVISIONS.--
22 (a) Any substantially affected person may seek an
23 administrative determination of the invalidity of any proposed
24 rule by filing a petition seeking such a determination with
25 the division within 21 days after the date of publication of
26 the notice required by s. 120.54(3)(a), within 10 days after
27 the final public hearing is held on the proposed rule as
28 provided by s. 120.54(3)(c), within 20 days after the
29 preparation of a statement of estimated regulatory costs
30 required pursuant to s. 120.541, if applicable, or within 20
31 days after the date of publication of the notice required by

1 s. 120.54(3)(d). The petition shall state with particularity
2 the objections to the proposed rule and the reasons that the
3 proposed rule is an invalid exercise of delegated legislative
4 authority. The agency then has the burden of going forward
5 and the burden to prove by a preponderance of the evidence
6 that the proposed rule is not an invalid exercise of delegated
7 legislative authority as to the objections raised. Any person
8 who is substantially affected by a change in the proposed rule
9 may seek a determination of the validity of such change. Any
10 person not substantially affected by the proposed rule as
11 initially noticed, but who is substantially affected by the
12 rule as a result of a change, may challenge any provision of
13 the rule and is not limited to challenging the change to the
14 proposed rule.

15 Section 4. Paragraph (1) of subsection (1) of section
16 120.57, Florida Statutes, 1998 Supplement, is amended to read:

17 120.57 Additional procedures for particular cases.--

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

20 (1) The agency may adopt the recommended order as the
21 final order of the agency. The agency in its final order may
22 reject or modify the clearly erroneous conclusions of law over
23 which it has substantive jurisdiction and the interpretation
24 of administrative rules over which it has substantive
25 jurisdiction. Rejection or modification of conclusions of law
26 may not form the basis for rejection or modification of
27 findings of fact. The agency may not reject or modify the
28 findings of fact unless the agency first determines from a
29 review of the entire record, and states with particularity in
30 the order, that the findings of fact were not based upon
31 competent substantial evidence or that the proceedings on

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

7 Section 5. This act shall take effect upon becoming a
8 law.

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LEGISLATIVE SUMMARY

Removes entities described in ch. 298, F.S., relating to water control districts, from the definition of "agency" under the Administrative Procedure Act. Provides that an agency's confirmation of a statutory exemption is not agency action under the act and is not subject to provisions relating to decisions that affect substantial interests. Provides additional restrictions with respect to an agency's rulemaking authority. Revises an agency's responsibilities in response to a challenge to a proposed rule. Revises an agency's authority with respect to rejection or modification of conclusions of law in its final order following a hearing involving disputed issues of material fact.

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:

2

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~~

31

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.
15
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.
19
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.--

31

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.

16

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
28 a statute or rule.

29 Provides that district school boards do not have to adopt
30 rules pursuant to the standard contained in s. 120.536(1) and
s. 120.52(8), but must instead adopt rules pursuant to s.
31 230.22, F.S., 1998 Supplement.

II. Present Situation:

The Administrative Procedure Act (APA), which is contained in ch 120, F S , primarily sets forth requirements for two governmental processes. First, it contains general standards and procedures that all agencies must follow when adopting administrative rules. Second, the APA creates an administrative hearing process in the executive branch for the resolution of disputes.

The APA does not apply to the Legislature or to the courts¹ but to agencies. The term “agency” is defined by the act² to mean

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

(b) Each state officer and state department, departmental unit described in s 20.04, commission, regional planning agency, board, multicounty special district with a majority of its governing board comprised of non-elected persons, and authority, including, but not limited to, the Commission on Ethics and the Game and Fresh Water Fish Commission when acting pursuant to statutory authority derived from the Legislature, educational units, and those entities described in chapters 163, 298, 373, 380, and 582 and s 186.504, except any legal entity or agency created in whole or in part pursuant to chapter 361, part II, an expressway authority pursuant to chapter 348, or any legal or administrative entity created by an interlocal agreement pursuant to s 163.01(7), unless any party to such agreement is otherwise an agency as defined in this subsection.

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

Rulemaking Standard

Executive agencies do not have inherent rulemaking authority.³ Shaping public policy through lawmaking is the exclusive power of the Legislature.⁴ The Legislature, however, may delegate to agencies the authority to adopt rules that implement, enforce, and interpret a statute.⁵ An enabling statute that delegates rulemaking authority to an agency cannot provide unbridled authority to an

¹Section 120.50, F S

²Section 120.52(1)(a), F S

³*Grove Isle, Ltd. v State Dept. of Envtl. Reg.*, 454 So 2d 571, 573 (Fla 1st DCA 1984)

⁴*Jones v Department of Rev.*, 523 So 2d 1211, 1214 (Fla 1st DCA 1988)

⁵*State v Atlantic C.L.R. Co.*, 47 So 969 (1909)

agency to decide what the law is,⁶ but must be complete,⁷ must declare the legislative policy or standard,⁸ and must operate to limit the delegated power.⁹

A rule is defined by s 120 52(15), F S , to mean

... each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule. The term also includes the amendment or repeal of a rule

¹⁰

Agencies are not authorized to determine whether or not they want to adopt rules.¹¹ They are required by law to adopt as a rule each agency statement that meets the definition of a rule as soon as feasible and practicable. Rulemaking is presumed to be feasible¹² and practicable¹³ unless the agency proves certain statutory standards. Whenever an act of the Legislature requires implementation by rule, an agency has 180 days after the effective date of the act to do so, unless the act provides otherwise.¹⁴

⁶*State ex rel Davis v. Fowler*, 114 So 435, 437 (Fla 1927)

⁷*Spencer v. Hunt*, 147 So 282, 286 (Fla 1933), accord *Florida Beverage Corp. V Wynne*, 306 So 2d 200, 202 (Fla 1st DCA 1975)

⁸*Chiles v Children A, B, C, D, E, & F*, 589 So 2d 260, 268 (Fla 1991)

⁹*Palm Beach Jockey Club, Inc. v. Florida State Racing Comm'n*, 28 So 2d 330 (Fla 1946)

¹⁰The term "rule" does not include (a) internal management memoranda which do not affect either the private interests of any person or any plan or procedure important to the public and which have no application outside the agency issuing the memorandum, (b) legal memoranda or opinions issued to an agency by the Attorney General or agency legal opinions prior to their use in connection with an agency action, (c) the preparation or modification of (1) agency budgets, (2) statements, memoranda, or instructions to state agencies issued by the Comptroller as chief fiscal officer of the state and relating or pertaining to claims for payment submitted by state agencies to the Comptroller, (3) contractual provisions reached as a result of collective bargaining, or (4) memoranda issued by the Executive Office of the Governor relating to information resources management

¹¹Section 120 54(1)(a), F S

¹²Rulemaking is presumed feasible unless the agency proves that (a) the agency has not had sufficient time to acquire the knowledge and experience reasonably necessary to address a statement by rulemaking, (b) related matters are not sufficiently resolved to enable the agency to address a statement by rulemaking, (c) the agency is currently using the rulemaking procedure expeditiously and in good faith to adopt rules which address the statement

¹³Rulemaking is presumed practicable to the extent necessary to provide fair notice to affected persons of relevant agency procedures and applicable principles, criteria, or standards for agency decisions unless the agency proves that (a) Detail or precision in the establishment of principles, criteria, or standards for agency decisions is not reasonable under the circumstances; or (b) The particular questions addressed are of such a narrow scope that more specific resolution of the matter is impractical outside of an adjudication to determine the substantial interest of a party based on individual circumstances

¹⁴Section 120 54(1)(b), F S

While agencies are required to adopt as a rule each agency statement that implements, interprets, or prescribes law or policy, there are limitations on the content and scope of these rules. When the Legislature adopted changes to the APA in 1996, it overturned case law that had permitted broader bases for rulemaking, and significantly narrowed the standard for rulemaking.¹⁵ Sections 120.52(8) and 120.536(1), F.S., now state:

A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement, interpret, or make specific the *particular powers and duties* granted by the enabling statute. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than the particular powers and duties conferred by the same statute [*emphasis added*]

The standard limiting agency rulemaking power has been reviewed by the courts in at least three cases. In two of the three cases, the courts overturned proposed rules of agencies, but in the third case the court upheld the proposed rules.

In the first case, *St. Johns River Water Management District v. Consolidated-Tomoka Land Co., et al.*¹⁶, the First District Court of Appeal upheld proposed agency rules. In *Tomoka*, land owners challenged proposed rules of the water management district that would have added two hydrologic basins to five others within the district and would have imposed four new development standards within these basins. The administrative law judge in *Tomoka* found the proposed rules to be supported by competent substantial evidence, but concluded that the statutory authority on which they were based was “. . . merely a general, nonspecific description of the agency’s duties.” The administrative law judge determined that the enabling statute must “detail” the powers and duties that are the subject of the rules and, since it did not, the rules were not within the “particular powers and duties” granted by the enabling statute.¹⁷ As a result, the administrative law judge invalidated the proposed rules. The water management district appealed the decision invalidating the proposed rules to the First District Court of Appeal.

The First District Court of Appeal (DCA) overturned the administrative law judge’s final order and upheld the proposed rules. The court stated that the phrase “particular powers and duties” in the statute was unclear and noted that the word “particular” had more than one meaning.

¹⁵Before the 1996 revision to the APA, the courts had held that rule is a valid exercise of delegated legislative authority if it is “reasonably related” to the enabling statute and not arbitrary and capricious. See, *General Tel. Co. of Fla. v. Florida Pub. Serv. Comm’n*, 446 So.2d 1063 (Fla. 1984), *Department of Labor and Employment Sec., Div. of Workers’ Compensation v. Bradley*, 636 So.2d 802 (Fla. 1st DCA 1994), *Florida Waterworks Ass’n v. Florida Pub. Serv. Comm’n*, 473 So.2d 237 (Fla. 1st DCA 1985), *Department of Prof’l Regulation, Bd. of Med. Exam’rs v. Durrani*, 455 So.2d 515 (Fla. 1st DCA 1984), *Agrico Chem. Co. v. State, Dept. of Envtl. Regulation*, 365 So.2d 759 (Fla. 1st DCA 1978), *Florida Beverage Corp., Inc. v. Wynne*, 306 So.2d 200 (Fla. 1st DCA 1975).

¹⁶717 So.2d 72 (Fla. 1st DCA 1998).

¹⁷Sections 373.413(1) and 373.416(1), F.S.

In the present case, the language of section 120.52(8) could refer to one of two different kinds of restrictions on an agency's rulemaking power. The statute could mean that the powers and duties delegated by the enabling statute must be particular in the sense that they are identified (and therefore limited to those identified) or in the sense that they are described in detail.¹⁸

While the administrative law judge relied on a definition of "particular" that meant "detailed" to disallow the proposed rules, the district court determined that "particular" meant "directly within a class of powers," which the court found to be a broader standard than "detailed." The court stated:

We consider it unlikely that the Legislature intended to establish a rulemaking standard based on the level of detail in the enabling statute, because such a standard would be unworkable. The courts are bound to interpret ambiguous statutes in the most logical and sensible way. If possible, the court must avoid an interpretation that produces an unreasonable consequence. A standard based on the precision and detail of an enabling statute would produce endless litigation regarding the sufficiency of the delegated power. Section 120.52(8) provides that a rule can implement, interpret, or *make specific*, the powers and duties granted by the enabling statute (Emphasis added) It follows from this statement that the enabling statute can be, and most likely will be, more general than the rule. Just how general the statute can be is not explained¹⁹

The court identified two problems that would result if the stricter definition of the term "particular" were applied. The court stated

[w]hat is specific enough in one circumstance may be too general in another. An argument could be made in nearly any case that the enabling statute is not specific enough to support the precise subject of a rule, no matter how detailed the Legislature tried to be in describing the power delegated to the agency. Consequently, it is more likely that the Legislature used the term "particular" to mean that the powers and duties must be identifiable as powers and duties falling within a class.

Second, the court stated that the stricter standard is less consistent with other provisions of APA. The court noted that rulemaking is not restricted to those situations in which the enabling statute details the precise subject of a proposed rule

Section 120.54(1)(a), Florida Statutes (Supp. 1996), states that "[r]ulemaking is not a matter of agency discretion." This statute places an affirmative duty on the part of all state agencies to codify their policies in rules adopted in the formal rulemaking process. The term "rule" is defined broadly in section 120.52(15) to include an "agency statement of general applicability." These sections suggest that rulemaking authority is not restricted to those situations in which the enabling statute details the precise subject of a proposed rule. The

¹⁸717 So 2d 72 at 79

¹⁹717 So 2d 72 at 80

legislative command directing the agency to adopt rules carries with it an implication that the agencies have authority to adopt rules, at least within the *class of powers* conferred by the applicable enabling statute [*emphasis added*]

For these reasons, the court determined that the proper test to determine whether a rule is a valid exercise of delegated authority is whether the rule is

based on the nature of the power or duty at issue and not the level of detail in the language of the applicable statute. The question is whether the rule falls within the *range of powers* the Legislature has granted to the agency for the purpose of enforcing or implementing the statutes within its jurisdiction. A rule is a valid exercise of delegated legislative authority if it regulates a matter *directly within the class of powers and duties identified in the statute* to be implemented. This approach meets the legislative goal of restricting the agencies' authority to promulgate rules, and, at the same time, ensures that the agencies will have the authority to perform the essential functions assigned to them by the Legislature [*emphasis added*]

Another recent case interpreting the new rulemaking standard is *Department of Business and Professional Regulation v Calder Race Course, Inc , et al* ²⁰ In that case, corporations holding permits and licenses to operate pari-mutuel facilities and to conduct pari-mutuel wagering, filed a joint petition contesting numerous proposed rules that authorized the department to conduct warrantless searches of persons and places within a permitted pari-mutuel wagering facility. The administrative law judge observed in her order that

before the enactment of the 1996 amendments to chapter 120, Florida Statutes, an agency's rulemaking authority was implied to the extent necessary to properly implement the agency's statutory duties and responsibilities. Thus, if the enabling statute simply stated that an agency "may make such rules and regulations as may be necessary to carry out the provisions of this Act," the regulations were deemed valid so long as they were not arbitrary and capricious .
²¹

This administrative law judge, however, concluded that this principle had been repealed by the 1996 amendments to the APA and that the agency now had the burden of proving that a proposed rule is not an invalid exercise of delegated legislative authority. Additionally, the administrative law judge found that the "reasonably related" standard was no longer sufficient to support a rule and that an agency must now show a grant of specific legislative authority for the rule. Based on these statutory changes and the lack of specific legislative authority, a final order invalidating the rule was issued.

The department appealed the final order to the First District Court of Appeal, but the final order was affirmed by the court. The court stated

²⁰23 Fla. L. Weekly D1795 (Fla. 1st DCA July 29, 1998)

²¹Department of Business and Professional Regulation v Calder Race Course, Inc

Although the result we reach in the instant case -- approval of the ALJ's order invalidating a rule -- is not the same as that decided in *St. Johns*, we adopt the reasoning employed therein. We reiterate that the term "particular powers and duties granted by the enabling state," as used in amended sections 120 52(8) and 120 536(1), requires a determination of whether the rule falls within the *range of powers* the Legislature has granted to the agency for the purpose of enforcing or implementing the statutes within its jurisdiction.

In applying this range of powers test to the proposed rule, the court found that the cited general and specific statutory authority for the rule failed to convey the requisite power to the agency to conduct searches of persons and places within a permitted pari-mutuel wagering facility. The court stated

Subsection 550 0251(3) merely empowers the Division to "adopt reasonable rules for the control, supervision, and direction of all applicants, permittees, and licensees and for the holding, conducting, and operating of all racetracks, race meets, and races held in this state." This general grant of rulemaking authority, while necessary, is not sufficient to validate rule 61D-2.002 under the 1996 amendment to section 120 52(8). A specific law to be implemented was also required, and nothing in this subsection identifies the power that the rule attempts to implement, i.e., to search.

The court stated that if the rule was to pass the range of powers test, it must do so through the powers delegated generally to the department under s. 550 0251, F.S., which enumerate the division's powers. The court singled out one of those powers, the power to conduct investigations, and discussed how investigations may or may not involve a search. The court found that the distinction between an investigation that does not involve a search and one that does is highly significant. The court noted that where "government is to be given the right to conduct a warrantless search of a closely regulated business, the Fourth Amendment demands that the language of the statute delegating such power do so in clear and unambiguous terms." Additionally, the court noted that "highly regulatory laws are subject to strict construction and may not be extended by interpretation." The court concluded that there was nothing in the class of powers and duties identified in s. 550 0251, F.S., that delegated to the Division the right to search persons or places within pari-mutuel wagering facilities, or any provision in the statute deeming a licensee to have waived the protections of the Fourth Amendment by consenting to such searches. The court upheld the final order invalidating the proposed rules.

Finally, in the case *St. Petersburg Kennel Club v. Department of Business and Professional Regulation*, a kennel club owner appealed two orders of the department. The first final order of the department denied the Kennel Club's petition for a determination that the definition of the game "poker" was an invalid exercise of delegated legislative authority. The second order challenged a final order of the department which denied the Kennel Club's application for approval of three particular card games.

The court noted that the Cardroom Act²² did not define "poker" but defined the term "authorized games" by reference to another statute, s. 849 085(2)(a), F.S. The statute referred to, however,

²²Section 849 086, F.S.

did not define “poker” either. Thus, neither the Cardroom Act nor the statute to which it referred provided a statutory definition of “poker.” Furthermore, the general powers of the division did not specifically authorize it to “ . . . make rules which set forth the definition of poker.”²³

The court reversed both orders because the enabling statutes did not provide specifically that the department was authorized to adopt rules to define the game of poker. As the department was not authorized to define the game of poker it could not, therefore, deny approval of these games because the denial was based upon application of an invalid rule.

Challenges to Proposed Rules

Under the APA, any substantially affected person may seek an administrative determination of the invalidity of any proposed rule by filing a petition with DOAH within certain time frames. Since the 1996 amendments, a petition challenging a proposed rule is required to state with particularity the objections to the proposed rule and the reasons that the proposed rule is an invalid exercise of delegated legislative authority. The agency has the burden to prove that the proposed rule is not an invalid exercise of delegated legislative authority as to the objections raised.

This process was adopted in the 1996 revision to the APA. Prior to that time, the courts had held that a rule was presumed to be valid, and that the party challenging a rule had the burden of establishing that it was invalid.²⁴ These principles still apply in challenges to existing rules and challenges to agency statements alleged to meet the definition of a rule, but not to challenges to proposed rules. Section 120.56(2)(c), F.S., provides that a proposed rule is not presumed to be valid or invalid. Section 120.56(2)(a), F.S., requires an agency to establish the validity of a proposed rule once it has been challenged.

In *Tomoka*, the administrative law judge interpreted the requirement to mean that the agency has the ultimate burden of establishing that a proposed rule is valid, but that the challenger still has the burden of going forward with the evidence supporting the objections. The First District Court of Appeals agreed stating

Section 120.56(2)(a) requires the agency to justify a proposed rule, but that does not relieve the challenger of the duty to present the evidence necessary to provide a preliminary factual basis for the objections. . . . Nothing in section 120.56(2) requires the agency to carry the burden of presenting evidence to disprove an objection alleged in a petition challenging a proposed rule. Moreover, it would be impractical to impose such a requirement. As the administrative law judge explained, a petition challenging a proposed rule might include numerous objections, not all of which remain in controversy by the time of the hearing. If the agency had the burden of going forward with the evidence, it would be forced to rebut every objection made in the petition, if for no other reason than to avoid the possibility of an award of attorneys’ fees for its failure to justify the proposed rule. Therefore, we prefer the more practical approach taken by the administrative law judge here. A party challenging a proposed rule has the burden of establishing a factual basis for the objections to a rule, and then the

²³St. Petersburg Kennel Club v. Department of Business and Professional Regulation

²⁴*Agrico Chem. Co. v. State, Dept. of Env. Reg.*, 365 So. 2d 759 (Fla. 1st DCA 1978), *Dravo Basic Materials Co., Inc. v. Dept. of Transportation*, 602 So. 2d 632 (Fla. 2d DCA 1992)

agency has the ultimate burden of persuasion to show that the proposed rule is a valid exercise of delegated legislative authority²⁵

Additionally, in *Board of Clinical Laboratory Personnel v. Florida Ass'n of Blood Banks*,²⁶ the court reversed the ALJ's final order on the issue of what evidentiary standard should be employed to prove the validity of a challenged rule. The ALJ held that the agency had to establish proof by a preponderance of the evidence. In reversing on this issue, the court noted that the APA did not require this level of proof when challenging a proposed rule but did not state what the standard should be.²⁷

Finally, in *Department of Children and Families v. Patricia Morman d/b/a/ Patti Cake Nursery*,²⁸ relating to issuance of final orders, the court found that an agency may reject or modify only interpretations of administrative rules over which it has substantive jurisdiction, but that it may reject or modify any conclusion of law found in a recommended final order. In this case, the court reversed the ALJ's dismissal of the complaint against the respondent because the petitioner agency did not provide enough specificity in the complaint against which the respondent could defend. The court found that the respondent failed to object to the lack of specificity in the complaint and that the transcript showed that the respondent was clear as to the rules violated and those in her employ who violated the rules.

Retroactive Application of Rules

Generally, administrative rules of an agency are prospective in application. In *Environmental Trust v. Dept. of Environmental Protection*,²⁹ the district court of appeal applied an exception, drawn from federal administrative law cases, that a rule that merely clarifies another existing rule and does not establish new requirements may be applied retroactively.

III. Effect of Proposed Changes:

The committee substitute makes definitional changes to the APA, as well as addresses several cases interpreting the 1996 amendments to the APA. The committee substitute states that it is the intent of the Legislature to clarify the limited authority of agencies to adopt rules, but not to reverse the result of specific judicial decisions.

Definitional changes. The committee substitute reorganizes the definition of "agency" to clarify it. It also adds regional water supply authorities to the definition to clarify that they are agencies for purposes of the APA. Provides that district school boards do not have to adopt rules pursuant

²⁵Tomoka, *supra*, at 76 and 77

²⁶23 Fla L Weekly D1851 (Fla 1st DCA August 3, 1998)

²⁷*Id* at 1852

²⁸23 Fla L Weekly 1900 (Fla 1st DCA August 7, 1998)

²⁹714 So 2d 493 (Fla 1st DCA 1998)

to the standard contained in s. 120.536(1) and s. 120.52(8), but must instead adopt them pursuant to s. 230.22(2), F.S., 1998 Supplement.

The committee substitute removes entities described in ch. 298, F.S., from the definition of agency found in s. 120.52(1), F.S. The entities that are described in ch. 298, F.S., are water control districts. These districts are limited-purpose local governmental units administratively separate from state and other local governments. These units are created to provide financing or to construct or maintain infrastructure or provide services. The chapter was significantly revised in 1997 to create a circuit court process for adjudicating disputes resulting from ad valorem assessments, among other things. The revision also repealed the authority of water control districts to adopt rules.

Rulemaking standard. The committee substitute also modifies the legislative standard for rulemaking adopted in 1996 that subsequently was interpreted by the judicial branch in the cases reviewed *supra*. Sections 120.52(8) and 120.536(1), F.S., currently state that an agency may adopt only rules that implement, interpret, or make specific the *particular* powers and duties granted by the enabling statute and that statutory language granting rulemaking authority or generally describing the powers and functions of an agency are to be construed to extend no further than the *particular* powers and duties conferred by the same statute. The committee substitute strikes the word “particular” which the First District Court of Appeals in *Tomoka* described as being unclear. The provision is amended to permit agencies to adopt only rules that “implement or interpret the specific powers and duties granted by the enabling statute.” Further, agencies are not permitted to adopt a rule only because it is within the agency’s class of powers and duties. Agency powers and functions are to be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the same statute. The changes to the grant of rulemaking authority apply to all rules adopted after the effective date of the bill.

Retroactive Rules. The committee substitute prohibits agencies from adopting retroactive rules, including retroactive rules that are intended to clarify existing law, unless that power is expressly authorized by statute.

Rule challenge proceedings. The committee substitute amends s. 120.56(2)(a), F.S., by providing that, after a petition challenging the validity of a proposed rule has been filed, the petitioner has the burden of going forward in the case, but the agency whose proposed rule is being challenged has the burden of proving by a preponderance of the evidence that the proposed rule is not an invalid exercise of delegated legislative authority as to the objections raised.

Final orders in cases involving disputed issues of material fact. In cases where there are disputed issues of material fact and where the administrative law judge issues only a recommended order, an agency in its final order currently may reject or modify the conclusions of law and interpretation of administrative rules over which it has substantive jurisdiction. The committee substitute narrows this provision by tightening the standard on modification. Under the committee substitute, the agency only may reject or modify the “clearly erroneous” conclusions of law “over which it has substantive jurisdiction.” The bill requires agencies, when rejecting or modifying conclusions of law in their final orders, to state their particular reasons for rejecting or modifying the conclusion of law or interpretation of administrative rule. Agencies must further

make a finding that their conclusion of law or interpretation of rule is as or more reasonable than the conclusion they reject

Judicial Review. Section 120.68(7)(d), F S , is amended to state that the courts may not defer to an agency's construction of a statute or rule or otherwise afford any special weight to the agency's interpretation of a statute or rule

IV. Constitutional Issues:

A. Municipality/County Mandates Restrctions:

None.

B. Public Records/Open Meetings Issues.

None

C. Trust Funds Restrctions

None

V. Economic Impact and Fiscal Note:

A Tax/Fee Issues.

None

B Private Sector Impact.

Indeterminable.

C Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The First District Court of Appeals in *Tomoka*³⁰ found that the phrase "particular powers and duties" in the statute was unclear and noted that the legislatively-undefined word "particular" had more than one meaning. The court found that "particular" could mean that the powers and duties

³⁰717 So 2d 72 at 79 (Fla 1st DCA 1998)

are identified (and therefore limited to those identified) or in the sense that they are described in detail. The administrative law judge relied on the definition of "particular" that required powers and duties to be described in detail, but was overruled by the district court. The First District Court of Appeal used the definition of "particular" that meant "directly within the class of powers and duties," which is a broader standard. The committee substitute removes the word "particular" from the standard and instead relies upon the word "specific." As in the case of the word "particular" in the 1996 APA amendments, the word "specific" is not defined by the bill. As a result, in any administrative appeal, the court will use principles of statutory construction to determine legislative intent for the word "specific."

The committee substitute modifies the definition of "agency" by including regional water supply authorities within the definition, thereby making them subject to the act, but it eliminates water control districts from the definition. Traditionally, the APA applied to all governmental entities with statewide or multi-county, regional jurisdictions.

VIII. Amendments:

None

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate
