

# Section 120.52

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## CHAPTER 74-310

Section 1. Chapter 120, Florida Statutes, consisting of sections 120.50, 120.51, 120.52, 120.53, 120.54, 120.55, 120.56, 120.57, 120.58, 120.59, 120.60, 120.61, 120.62, 120.63, 120.64, 120.65, 120.66, 120.68, 120.69, 120.70, and 120.71, is created 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 other state officer and each state department, departmental unit described in s. 20.04, commission, regional planning agency, board, district and authority including but not limited to those described in chapters 160, 163, 298, 373, 380 and 582; and

(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.

(2) "Agency action" means the whole or part of a rule or order or the equivalent, or denial of a petition to adopt a rule or issue an order. The term also includes any request made under s. 120.54(3).

(3) "Agency head" means the person or collegial body in a department or other governmental unit statutorily responsible for final agency action.

(4) "Committee" means the administrative procedures committee.

(5) "Division" means the division of administrative hearings of the department of administration.

(6) "License" means a franchise, permit, certification, registration, charter or similar form of authorization required by law, but it does not include a license required primarily for revenue purposes where issuance of the license is merely a ministerial act.

(7) "Licensing" means the agency process respecting the issuance, denial, renewal, revocation, suspension, annulment, withdrawal, amendment, or imposition of terms for the exercise of a license;

(8) “Order” means a final agency decision which does not have the effect of a rule and which is not expected from the definition of a rule, whether affirmative, negative, injunctive or declaratory in form. An agency decision shall be final when reduced to writing.

(9) “Party” means:

(a) Specifically named persons whose substantial interests are being determined in the proceeding;

(b) Any other person who as a matter of constitutional right, provision of statute, or provision of agency regulation is entitled to participate in whole or in part in the proceeding or whose substantial interests will be affected by proposed agency action and who makes an appearance as a party; and

(c) Any other person, including an agency staff member, allowed by the agency to intervene or participate in the proceeding as a party. Any agency may by rule authorize limited forms of participation in agency proceedings for persons who are not eligible to become parties.

(10) “Person” means any person described in s. 1.01, any unit of government in or outside the state, and any agency described in s. 120.52(1).

(11) “Proposed order” means the advance text, under s. 120.58(1)(d), of the order which a collegial agency head plans to enter as its final order. When a hearing officer assigned by the division conducts a hearing, the recommended order is the proposed order.

(12) “Recommended order” means the official recommendation of a hearing officer assigned by the division to an agency for final disposition of a proceeding under s. 120.57.

(13) “Rule” means each agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of an agency and includes the amendment or repeal of a rule. The term does not include internal management memoranda which do not affect either the private interests of any person or any plan or procedure important to the public, legal memoranda or opinions issued to an agency by the attorney general or agency legal opinions prior to their use in connection with the agency action or the preparation or modification of agency budgets, contractual provisions reached as a result of collective bargaining, or agricultural marketing orders under chapter 573 or 601.

### **CHAPTER 75-191**

Subsections (6), (7), (8), (9), (10), (11), (12), and (13) of section 120.52, Florida Statutes, 1974 Supplement, are renumbered as subsections (7), (8), (9), (10), (11), (12), (13), and (14), respectively, and a new subsection (6) is added to said section to read:

120.52 Definition.--As used in this act:

(6) “Educational units” means local school districts, community colleges districts, the Florida School for the Deaf and Blind, and units of the state university system other than the board of regents.

### **CHAPTER 76-131**

120.52 Definitions.--As used in this act:

(14) “Rule” means each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, 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. The term 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 ~~the~~ agency action, or

(c) The preparation or modification of:

1. Agency budgets,
2. Contractual provisions reached as a result of collective bargaining, or
3. Agricultural marketing orders under chapter 573 or chapter 601.

### **CHAPTER 77-174**

120.52 Definitions.--As used in this act:

(2) “Agency action” means the whole or part of a rule or order, or the equivalent, or the denial of a petition to adopt a rule or issue an order. The term also includes any request made under s. 120.54(5).

(8) “Licensing” means the agency process respecting the issuance, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license or imposition of terms for the exercise of a license.

## **CHAPTER 77-290**

Section 12. Paragraph (d) is added to subsection (1) of section 120.52, Florida Statutes, 1976 Supplement, to read:

120.52 Definitions.--As used in this act:

(1) "Agency" means:

(d) Neither the Industrial Relations Commission nor judges of industrial claims shall, in the adjudication of workmen's compensation claims, be considered an agency or part of an agency for the purposes of this act.

## **CHAPTER 77-453**

Section 2. Paragraph (c) of Subsection (14) of section 120.52, Florida Statutes, 1976 Supplement, is amended to read:

120.52 Definitions.--As used in this act:

(14) "Rule" means each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, 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. The term does not include:

(c) The preparation or modification of:

1. Agency budgets.
2. Contractual provisions reached as a result of collective bargaining.
3. Agricultural marketing orders under chapter 573 or chapter 601.
4. Curriculum by an educational unit.

## **CHAPTER 78-28**

Section 1. Subsection (10) of section 120.52, Florida Statutes, is amended to read:

120.52 Definitions.--As used in this act:

(10) "Party" means:

(a) Specifically named persons whose substantial interests are being determined in the proceeding;

(b) Any other person who as a matter of constitutional right, provision of statute, or provision of agency regulation, is entitled to participate in whole or in part in the proceeding, or whose substantial interests will be affected by proposed agency action, and who makes an appearance as a party.

(c) Any other person, including an agency staff member, allowed by the agency to intervene or participate in the proceeding as a party. An agency may be rule authorize limited forms of participation in agency proceedings for persons who are not eligible to become parties.

(d) Any county representative, agency, department or unit funded and authorized by state statute or county ordinance to represent the interests of the consumer of a county, when the proceeding involves the substantial interests of a significant number of residents of the county and the Board of County Commissioners has, by resolution, authorized the representative agency, department or unity to represent the class of interested persons. The authorizing resolution shall apply to a specific proceeding and to appeals and ancillary proceeding thereto, and it shall not be required to state the names of the persons whose interests are to be represented.

Prisoners as defined in s. 944.02(5) shall not be considered parties for the purposes of obtaining proceedings under s. 120.54(16), or s. 120.57.

## **CHAPTER 78-425**

Section 1. Paragraph (b) of subsection (1) and subsections (2) and (13) of section 120.52, Florida Statutes, are amended, and Paragraph (d) is added to subsection (14) of section 120.52, Florida Statutes, to read:

120.52 Definitions.--As used in this act:

(1) “Agency” means:

(b) Each other state officer and each state department, departmental unit described in s. 20.04, commission, regional planning agency, board, district, and authority including but not limited to, those described in chapters 160, 163, 298, 373, 380 and 582, except any legal entity or agency created in whole or in part pursuant to chapter 361, part II.

(2) “Agency action” means the whole or part of a rule or order, or the equivalent, or the denial of a petition to adopt a rule or issue an order. The term also includes any denial of a request made under s. 120.54(5).

(13) “Recommended order” means the official recommendation of a hearing officer assigned by the division to an agency or of any other duly authorized presiding officer other than an agency head or member thereof, for the final disposition of a proceeding under s. 120.57.

(14) “Rule” means each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, 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. The term does not include:

(d) Agency action which has the effect of altering established hunting or fishing seasons when such action is adequately noticed in the area affected through publishing in a newspaper of general circulation or through notice by broadcasting in an electronic media.

#### **CHAPTER 79-20**

Section 1. Paragraph (e) is added to subsection (14) of section 120.52, Florida Statutes, 1978 Supplement, to read:

120.52 Definitions.--As used in this act:

(14) “Rule” means each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, 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. The term does not include:

(e) Any tests, test scoring criteria, practices, or procedures relating to student assessment which are developed or administered by the Department of Education pursuant to ss. 229.57, 232.245, 232.246, or 232.247.

#### **CHAPTER 79-40**

Section 55. Subsection (1) of section 120.52, Florida Statutes, 1978 Supplement, is amended to read:

120.52 Definitions.--As used in this act:

(1) “Agency” means:

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

(b) Each other state officer and each state department, departmental unit described in s. 20.04, commission, regional planning agency, board district, and authority including but not limited to, those described in chapters 160, 163, 298, 373, 380 and 582, except any legal entity or agency created in whole or in part pursuant to chapter 361, part II.

(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.

(d) Neither the Industrial Relations Commission nor ~~the deputy commissioner judges of industrial claims~~ shall not, in the adjudication of workers' ~~workmen's~~ compensation claims, be considered an agency or part of an agency for the purposes of this act.

## **CHAPTER 79-299**

Section (1). Paragraph (c) of subsection (1) and subsections (9) and (10) of section 120.52, Florida Statutes, 1978 Supplement, are amended to read:

120.52 Definitions.--As used in this act:

(1) "Agency" means:

(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.

Neither the Industrial Relations Commission nor the judges of industrial claims shall, in the adjudication of workmen's compensation claims, be considered an agency or part of an agency for the purposes of this act.

(9) "Order" means a final agency decision which does not have the effect of a rule and which is not excepted from the definition of a rule, whether affirmative, negative, injunctive, or declaratory in form. An agency decision shall be final when reduced to writing and filed with the person designated by the agency as clerk. The clerk shall indicate the date of filing on the order.

(10) "Party" means:

(a) Specifically named persons whose substantial interests are being determined in the proceeding;

(b) Any other person who, as a matter of constitutional right, provision of statute, or provision of agency regulation, is entitled to participate in whole or in part in the proceeding, or whose substantial interests will be affected by proposed agency action, and who makes an appearance as a party.

(c) Any other person, including an agency staff member, allowed by the agency to intervene or participate in the proceeding as a party. An agency may by rule authorize limited forms of participation in agency proceedings for persons who are not eligible to become parties.

(d) Any county representative, agency, department, or unit funded and authorized by state statute or county ordinance to represent the interests of the consumer of a county, when the proceeding involves the substantial interests of a significant number of residents of the county and the board of county commissioners has, by resolution, authorized the representative, agency, department, or unit to represent the class of interested persons. The authorizing resolution shall apply to a specific proceeding and to appeals and ancillary proceeding thereto, and it shall not be required to state the names of the persons whose interests are to be represented.

Prisoners as defined in s. 944.02(5) shall not be considered parties for the purposes of obtaining proceedings under s. 120.54(16) or s. 120.57, nor shall parolees be considered parties for these purposes when the proceeding relates to the revocation of parole.

### **CHAPTER 81-119**

Section 2. Subsection (1) of section 120.52, Florida Statutes, is amended to read:

120.52 Definitions.--As used in this act:

(1) "Agency" means:

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

(b) Each other state officer and each state department, departmental unit described in s. 20.04, commission, regional planning agency, board district, and authority, including, but not limited to, those described in chapters 160, 163, 298, 373, 380, and 582, except any legal entity or agency created in whole or in part pursuant to chapter 361, part II.

(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.

A deputy commissioner ~~Neither the Industrial Relations Commission nor the Deputy commissioner~~ shall not, in the adjudication of workers' compensation claims, be considered an agency or part of an agency for the purposes of this act.

Note.--Section 1, ch. 79-312, Laws of Florida, abolished the Industrial Relations Commission.

### **CHAPTER 81-180**

Section 1. Paragraph (f) is added to subsection (14) of section 120.52, Florida Statutes, to read:



120.52 Definitions.--As used in this act:

(14) "Rule" means each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedure, or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute to be an existing rule. The term also includes the amendment or repeal of a rule. The term does not include:

(f) Law enforcement policies and procedures of the Florida Department of Law Enforcement which relate to:

1. Collection, management, and dissemination of active criminal intelligence information, active criminal investigative information, management of criminal investigations, and management of undercover investigations and the selection, assignment, and fictitious identity of undercover personnel.

2. Recruitment, management, identity, and remuneration of confidential informants or sources.

3. Surveillance techniques, the selection of surveillance personnel, and electronic surveillance including court ordered and consensual interceptions of communication conducted pursuant to chapter 934.

4. The safety and release of hostages.

5. Providing of security and protection to public figures.

6. Witness protection.

## **CHAPTER 82-180**

Section 7. Paragraph (e) of subsection (14) of section 120.52, Florida Statutes, is amended to read:

120.52 Definitions.--As used in this act:

(14) "Rule" means each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedure, or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute to be an existing rule. The term also includes the amendment or repeal of a rule. The term does not include:

(e) Any tests, test scoring criteria, ~~practices~~, or testing procedures relating to student assessment which are developed or administered by the Department of Education pursuant to s.

229.57, s. 232.245, s. 232.246, ~~or~~ s. 232.247, or any other statewide educational test required by law.

## **CHAPTER 83-78**

Section 1. Subsection (10) of section 120.52, Florida Statutes, 1982 Supplement is amended to read:

120.52 Definitions.--As used in this act:

(10) "Party" means:

(a) Specifically named persons whose substantial interests are being determined in the proceeding;

(b) Any other person who, as a matter of constitutional right, provision of statute, or provision of agency regulation, is entitled to participate in whole or in part in the proceeding, or whose substantial interests will be affected by proposed agency action, and who makes an appearance as a party.

(c) Any other person, including an agency staff member, allowed by the agency to intervene or participate in the proceeding as a party. An agency may by rule authorize limited forms of participation in agency proceedings for persons who are not eligible to become parties.

(d) Any county representative, agency, department, or unit funded and authorized by state statute or county ordinance to represent the interests of the consumer of a county, when the proceeding involves the substantial interests of a significant number of residents of the county and the board of county commissioners has, by resolution, authorized the representative, agency, department, or unit to represent the class of interested persons. The authorizing resolution shall apply to a specific proceeding and to appeals and ancillary proceeding thereto, and it shall not be required to state the names of the persons whose interests are to be represented.

Prisoners as defined in s. 944.02(5) may obtain or participate in proceedings under s. 120.54(3), (4), (5), or (9), or s. 120.56 and may be parties under s. 120.68 to seek judicial review of those proceedings. Prisoners shall not be considered parties in any other proceedings and may not seek judicial review under s. 120.68 of any other agency action. Parolees shall not be considered parties for purposes of agency action or judicial review when the proceedings relate to the rescission or revocation of parole. ~~shall not be considered parties for the purposes of obtaining proceedings under s. 120.54(16) or s. 120.57, nor shall parolees be considered parties for these purposes when the proceeding relates to the revocation of parole.~~

### **CHAPTER 83-273**

Section 1. Subsection (15) is added to section 120.52, Florida Statutes, 1982 Supplement, to read:

120.52 Definitions.--As used in this act:

(15) “Communications media technology” means the electronic transmission of printed matter, audio, full motion video, freeze frame video, compressed video, and digital video, by any method available.

### **CHAPTER 84-170**

Section 10. Subsection (10) of subsection 120.52, Florida Statutes, is amended to read:

120.52 Definitions.--As used in this act:

(10) “Order” means a final agency decision which does not have the effect of a rule and which is not excepted from the definition of a rule, whether affirmative, negative, injunctive, or declaratory in form. An agency decision shall be final when reduced to writing and filed with the person designated by the agency as clerk. This subsection is not applicable to assessments of tax, penalty, or interest made by the Department of Revenue. Assessments by the Department of Revenue shall be deemed final as provided in rules and statutes governing assessment and collection of taxes.

### **CHAPTER 85-80**

Section 15. Paragraph (b) of subsection 120.52, Florida Statutes, is amended to read:

120.52 Definitions.--As used in this act:

(1) “Agency” means:

(b) Each other state officer and each state department, departmental unit described in s. 20.04, commission, regional planning agency, board, district, and authority, including, but not limited to, those described in chapters ~~460~~, 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.

A deputy commissioner shall not, in the adjudication of workers' compensation claims, be considered an agency or part of an agency for the purposes of this act.

Reviser’s note.--Amend to conform reference to "ch.160" to the editorial renumbering of former s. 160.01, which section specifically provided for the creation of regional

planning councils, as s. 186.504 in the preparation of the Florida Statutes (1984 Supplement).

### **CHAPTER 85-168**

Section (1). Paragraph (g) of subsection (15) of section 120.52, Florida Statutes, is created to read:

120.52 Definitions.--As used in this act:

(15) "Rule" means each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, 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. The term does not include:

(g) The enlistment, organization, administration, equipment, maintenance, training and discipline of the militia, National Guard, Organized Militia, and unorganized militia, as provided in Section 2 of Article X of the State Constitution.

### **CHAPTER 87-385**

Section 2. Subsections (8) through (15) of section 120.52, Florida Statutes, are renumbered as subsections (9) through (16), respectively, and a new subsection (8) is added to said section to read:

120.52 Definitions.--As used in this act:

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

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

(b) The agency has exceeded its grant of rulemaking authority, citation to which is required by s. 120.54(7);

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

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

(e) The rule is arbitrary or capricious.

### **CHAPTER 88-367**

Section 1. Paragraph (c) of subsection (16) of section 120.52, Florida Statutes, is amended to read:

120.52 Definitions.--As used in this act:

(16) "Rule" means each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the organizations, 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. The term does not include:

(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.

~~3.2.~~ Contractual provisions reached as a result of collective bargaining.

~~4.3.~~ Agricultural marketing orders under chapter 573 or chapter 601.

~~5.4.~~ Curricula by an educational unit.

### **CHAPTER 89-147**

Section 1. Paragraph (d) of subsection (16) of section 120.52, Florida Statutes, 1988 Supplement, is amended to read:

120.52 Definitions.--As used in this act:

(16) "Rule" means each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, 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. The term does not include:

(d) Agency action which has the effect of altering established hunting or fishing seasons, or altering established annual harvest limits for saltwater fishing if the procedure for altering

such harvest limits is set out by rule of the Marine Fisheries Commission, provided when such action is adequately noticed in the area affected through publishing in a newspaper of general circulation or through notice by broadcasting in an electronic media.

#### **CHAPTER 91-46**

Section 1. Subsection (1) of section 120.52, Florida Statutes, is 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 other state officer and each state department, departmental unit described in s. 20.04, commission, regional planning agency, board, district, and authority, including, but not limited to, those 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.

(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.

A judge of compensation claims ~~deputy commissioner~~ shall not, in the adjudication of workers' compensation claims, be considered an agency or part of an agency for the purposes of this act.

Reviser's note.--Amended to ratify editorial action pursuant to the directive of the Legislature in s. 36, ch. 89-289, Laws of Florida, to conform to s. 23, ch. 89-289, which redesignated deputy commissioners as judges of compensation claims.

#### **CHAPTER 92-166**

Section 9. Subsection (12) of section 120.52, Florida Statutes, is amended to read:

120.52 Definitions.--As used in this act:

(12) "Party" means:

(a) Specifically named persons whose substantial interests are being determined in the proceeding.

(b) Any other person who, as a matter of constitutional right, provision of statute, or provision of agency regulation, is entitled to participate in whole or in part in the proceeding, or

whose substantial interests will be affected by proposed agency action, and who makes an appearance as a party.

(c) Any other person, including an agency staff member, allowed by the agency to intervene or participate in the proceeding as a party. An agency may by rule authorize limited forms of participation in agency proceedings for persons who are not eligible to become parties.

(d) Any county representative, agency, department, or unit funded and authorized by state statute or county ordinance to represent the interests of the consumers of a county, when the proceeding involves the substantial interests of a significant number of residents of the county and the board of county commissioners has, by resolution, authorized the representative, agency, department, or unit to represent the class of interested persons. The authorizing resolution shall apply to the specific proceeding and to appeals and ancillary proceedings thereto, and it shall not be required to state the names of the persons whose interests are to be represented.

Prisoners as defined in s.944.02(5) may obtain or participate in proceedings under s.120.54(3) ~~or (4), (5) or (9) or s.120.56 and may be parties under s.120.68 to seek judicial review of those proceedings.~~ Prisoners shall not be considered parties in any other proceedings and may not seek judicial review under s.120.68 of any other agency action. Parolees shall not be considered parties for purposes of agency action or judicial review when the proceedings relate to the rescission or revocation of parole.

#### **CHAPTER 92-279**

Section 50. Subsection (6) of section 120.52, Florida Statutes, is amended to read:

120.52 Definitions as used in this act:

(6) "Division" means the Division of Administrative Hearings ~~of the Department of Administration.~~

Section 339. Except as otherwise expressly provided in this act, this act shall take effect January 1, 1993, except that this section and sections 322, 323, 324, and 325 of this act shall take effect upon this act becoming a law.

#### **CHAPTER 92-326**

Section 55. Section 339 of chapter 279, Laws of Florida, is amended to read:

Section 339. Except as otherwise expressly provided in this act, this act shall take effect July 1, 1992 ~~January 1, 1993~~, except that this section and sections 322, 323, 324, and 325 of this act shall take effect upon this act becoming a law.

## CHAPTER 96-159

Section 1. It is the intent of the Legislature to consider the impact of any agency rulemaking required by proposed legislation and to determine whether the proposed legislation provides adequate and appropriate standards and guidelines to direct the agency's implementation of the proposed legislation.

Section 3. Section 120.52, Florida Statutes, is 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 ~~other~~ state officer and ~~each~~ state department, departmental unit described in s. 20.04, commission, regional planning agency, board, multi-county 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, 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 or an expressway authority pursuant to chapter 348.

(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.

~~A judge of compensation claims shall not, in the adjudication of workers' compensation claims, be considered an agency or part of an agency for the purposes of this act~~

(2) "Agency action" means the whole or part of a rule or order, or the equivalent, or the denial of a petition to adopt a rule or issue an order. The term also includes any denial of a request made under s. 120.54 ~~(7)(5)~~.

(3) "Agency head" means the person or collegial body in a department or other governmental unit statutorily responsible for final agency action.

(4) "Committee" means the Administrative Procedures Committee.

~~(5) "Communications media technology" means the electronic transmission of printed matter, audio, full motion video, freeze frame video, compressed video, and digital video by any method available.~~



~~(5)-(6)~~ "Division" means the Division of Administrative Hearings.

~~(6)(7)~~ "Educational unit" means a local school district, a community college district, the Florida School for the Deaf and the Blind, or a unit of the State University System other than the Board of Regents.

(7) "Final order" means a written final decision which results from a proceeding under s. 120.56, s. 120.565, s. 120.569, s. 120.57, s. 120.573, or s. 120.574 which is not a rule, and which is not excepted from the definition of a rule, and which has been filed with the agency clerk, and includes final agency actions which are affirmative, negative, injunctive, or declaratory in form. A final order includes all materials explicitly adopted in it. The clerk shall indicate the date of filing on the order.

(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 ~~or more~~ of the following applies apply:

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

(b) The agency has exceeded its grant of rulemaking authority, citation to which is required by s. 120.54(3)(a) ~~1~~(7);

(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~~(7);

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

(e) The rule is arbitrary or capricious; ~~or~~

(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, 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.

(9) "License" means a franchise, permit, certification, registration, charter, or similar form of authorization required by law, but it does not include a license required primarily for revenue purposes when issuance of the license is merely a ministerial act.

(10) "Licensing" means the agency process respecting the issuance, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license or imposition of terms for the exercise of a license.

(11) "Official reporter" means the publication in which an agency publishes final orders, the index to final orders, and the list of final orders which are listed rather than published. "Order" means a final agency decision which does not have the effect of a rule and which is not excepted from the definition of a rule, whether affirmative, negative, injunctive, or declaratory in form. An agency decision shall be final when reduced to writing and filed with the person designated by the agency as clerk. The clerk shall indicate the date of filing on the order. This subsection is not applicable to an assessment of tax, penalty, or interest by the Department of Revenue. Assessments by the Department of Revenue shall be deemed final as provided in the statutes and rules governing the assessment and collection of taxes.

(12) "Party" means:

(a) Specifically named persons whose substantial interests are being determined in the proceeding.

(b) Any other person who, as a matter of constitutional right, provision of statute, or provision of agency regulation, is entitled to participate in whole or in part in the proceeding, or whose substantial interests will be affected by proposed agency action, and who makes an appearance as a party.

(c) Any other person, including an agency staff member, allowed by the agency to intervene or participate in the proceeding as a party. An agency may by rule authorize limited forms of participation in agency proceedings for persons who are not eligible to become parties.

(d) Any county representative, agency, department, or unit funded and authorized by state statute or county ordinance to represent the interests of the consumers of a county, when the proceeding involves the substantial interests of a significant number of residents of the county and the board of county commissioners has, by resolution, authorized the representative, agency, department, or unit to represent the class of interested persons. The authorizing resolution shall apply to a specific proceeding and to appeals and ancillary proceedings thereto, and it shall not be required to state the names of the persons whose interests are to be represented.

~~Prisoners as defined in s. 944.02(5) may obtain or participate in proceedings under s. 120.54(3) or (5). Prisoners shall not be considered parties in any other proceedings and may not seek judicial review under s. 120.68 of any other agency action. Parolees shall not be considered~~

~~parties for purposes of agency action or judicial review when the proceedings relate to the rescission or revocation of parole.~~

(13) "Person" means any person described in s. 1.01, any unit of government in or outside the state, and any agency described in subsection (1).

~~(14) "Proposed order" means the advance text, under s. 120.58(1)(e), of the order which a collegial agency head plans to enter as its final order. When a hearing officer assigned by the division conducts a hearing, the recommended order is the proposed order.~~

(14) ~~(15)~~ "Recommended order" means the official recommendation of an administrative law judge ~~a hearing officer~~ assigned by the division ~~to an agency~~ or of any other duly authorized presiding officer, other than an agency head or member of an agency head thereof, for the final disposition of a proceeding under ss. 120.569 and s. 120.57.

~~(15)~~ (16) "Rule" means each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the ~~organization,~~ 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. The term 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.

~~4. Agricultural marketing orders under chapter 573 or chapter 601.~~

~~5. Curricula by an educational unit.~~

~~(d) Agency action which has the effect of altering established hunting or fishing seasons, or altering established annual harvest limits for saltwater fishing if the procedure for altering such harvest limits is set out by rule of the Marine Fisheries Commission, provided such action is~~

adequately noticed in the area affected through publishing in a newspaper of general circulation or through notice by broadcasting in an electronic media.

~~(e) Any tests, test scoring criteria, or testing procedures relating to student assessment which are developed or administered by the Department of Education pursuant to s. 229.57, s. 232.245, s. 232.246, or s. 232.247 or any other statewide educational test required by law.~~

~~(f) Law enforcement policies and procedures of the Department of Law Enforcement which relate to:~~

~~1. The collection, management, and dissemination of active criminal intelligence information and active criminal investigative information; management of criminal investigations; and management of undercover investigations and the selection, assignment, and fictitious identity of undercover personnel.~~

~~2. The recruitment, management, identity, and remuneration of confidential informants or sources.~~

~~3. Surveillance techniques, the selection of surveillance personnel, and electronic surveillance including court ordered and consensual interceptions of communication conducted pursuant to chapter 934.~~

~~4. The safety and release of hostages.~~

~~5. The provision of security and protection to public figures.~~

~~6. The protection of witnesses.~~

~~(g) The enlistment, organization, administration, equipment, maintenance, training, and discipline of the militia, National Guard, Organized Militia, and unorganized militia, as provided in s. 2, Art. X of the State Constitution.~~

(16) "Small city" means any municipality that has an unincarcerated population of 10,000 or less according to the most recent decennial census.

(17) "Small county" means any county that has an unincarcerated population of 75,000 or less according to the most recent decennial census.

(18) "Variance" means a decision by an agency to grant a modification to all or part of the literal requirements of an agency rule to a person who is subject to the rule. Any variance shall conform to the standards for variances outlined in this chapter and in the uniform rules adopted pursuant to s. 120.54(5).

(19) "Waiver" means a decision by an agency not to apply all or part of a rule to a person who is subject to the rule. Any waiver shall conform to the standards for waivers outlined in this chapter and in the uniform rules adopted pursuant to s. 120.54(5).

## **CHAPTER 97-176**

### **Committee Substitute for Senate Bill No. 1066**

Section 1. Subsection (1) of section 120.52, Florida Statutes, 1996 Supplement, is 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 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 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, 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.

## **CHAPTER 97-286**

### **Committee Substitute for Senate Bill No. 940**

Section 2. Paragraph (c) of subsection (15) of section 120.52, Florida Statutes, 1996 Supplement, is amended to read:

120.52 Definitions.—As used in this act:

(15) “Rule” means 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. The term does not include:

(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.
4. Memoranda issued by the Executive Office of the Governor relating to information resources management.

## **CHAPTER 98-402**

### **Committee Substitute for House Bill No. 4027**

Section 1. Subsection (12) of section 120.52, Florida Statutes, is amended to read:

120.52 Definitions.—As used in this act:

(12) “Party” means:

(a) Specifically named persons whose substantial interests are being determined in the proceeding.

(b) Any other person who, as a matter of constitutional right, provision of statute, or provision of agency regulation, is entitled to participate in whole or in part in the proceeding, or whose substantial interests will be affected by proposed agency action, and who makes an appearance as a party.

(c) Any other person, including an agency staff member, allowed by the agency to intervene or participate in the proceeding as a party. An agency may by rule authorize limited forms of participation in agency proceedings for persons who are not eligible to become parties.

(d) Any county representative, agency, department, or unit funded and authorized by state statute or county ordinance to represent the interests of the consumers of a county, when the proceeding involves the substantial interests of a significant number of residents of the county and the board of county commissioners has, by resolution, authorized the representative, agency, department, or unit to represent the class of interested persons. The authorizing resolution shall apply to a specific proceeding and to appeals and ancillary proceedings thereto, and it shall not be required to state the names of the persons whose interests are to be represented.

The term “party” does not include a member government of a regional water supply authority or a governmental or quasi-judicial board or commission established by local ordinance or special or general law where the governing membership of such board or commission is

shared with, in whole or in part, or appointed by a member government of a regional water supply authority in proceedings under s. 120.569, s. 120.57, or s. 120.68, to the extent that an interlocal agreement under ss. 163.01 and 373.1962 exists in which the member government has agreed that its substantial interests are not affected by the proceedings or that it is to be bound by alternative dispute resolution in lieu of participating in the proceedings. This exclusion applies only to those particular types of disputes or controversies, if any, identified in an interlocal agreement.

## **CHAPTER 99-245**

### **Committee Substitute for Committee Substitute for Senate Bill No. 864**

Section 64. Paragraph (b) of subsection (1) of section 120.52, Florida Statutes, is 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 majority of its governing board comprised of nonelected persons, and authority, including, but not limited to, the Commission on Ethics and the Fish and Wildlife Conservation ~~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.

## **CHAPTER 99-379**

### **Committee Substitute for House Bill No. 107**

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 those 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.

## **CHAPTER 2002-387**

### **Senate Bill No. 20-E**

Section 895. Subsection 96 of section 120.52, Florida Statutes, is amended to read

120.52 Definitions.—As used in this act:

(6) “Educational unit” means a local school district, a community college district, the Florida School for the Deaf and the Blind, or a state university ~~unit of the State University System other than the Board of Regents.~~

## CHAPTER 2003-94

### **Committee Substitute for Committee Substitute for Senate Bill No. 1584**

Section 1. Subsection (8) of section 120.52, Florida Statutes, is amended to read:

120.52 Definitions.—As used in this act:

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

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

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

(c) The rule enlarges, modifies, or contravenes the specific provisions of law implemented, citation to which is 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. A rule is arbitrary if it is not supported by logic or the necessary facts; a rule is capricious if it is adopted without thought or reason or is irrational; or

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

~~(f)~~<sup>(g)</sup> 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 specific 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 powers and duties conferred by the same statute.

## CHAPTER 2008-104

### **Committee Substitute for Committee Substitute for Senate Bill No. 704**

Section 1. this act may be cited as the “Open Government Act.”

Section 2. Subsection (8) of section 120.52, Florida Statutes, is amended, present subsections (9) through (15) of that section are renumbered as subsections (10) through (16), respectively, present subsections (16), (17), (18), and (19) of that section are redesignated as subsections (18), (19), (21), and (22), respectively, and new subsections (9), (17), and (20) are added to that section, to read:

120.52 Definitions.—As used in this act:

(8) “Invalid exercise of delegated legislative authority” means action that ~~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. A rule is arbitrary if it is not supported by logic or the necessary facts; a rule is capricious if it is adopted without thought or reason or is irrational; or

(f) 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 specific 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 powers and duties conferred by the enabling statute ~~by~~

~~the same statute.~~

(9) “Law implemented” means the language of the enabling statute being carried out or interpreted by an agency through rulemaking.

(17) “Rulemaking authority” means statutory language that explicitly authorizes or requires an agency to adopt, develop, establish, or otherwise create any statement coming within the definition of the term “rule.”

(20) “Unadopted rule” means an agency statement that meets the definition of the term “rule,” but that has not been adopted pursuant to the requirements of s. 120.54.

## **CHAPTER 2009-85**

### **House Bill 1021**

Section 1. Section 120.52, Florida Statutes, is 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, including the Board of Governors of the State University System and a state university board of trustees when acting pursuant to statutory authority derived from the Legislature.

4. Commission, including the Commission on Ethics and the Fish and Wildlife Conservation Commission when acting pursuant to statutory authority derived from the Legislature.

5. Regional planning agency.

6. Multicounty special district with a majority of its governing board comprised of nonelected persons.

7. Educational units.

8. Entity described in chapters 163, 373, 380, and 582 and s. 186.504.

(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, any metropolitan planning organization created pursuant to s. 339.175, any separate legal or administrative entity created pursuant to s. 339.175 of which a metropolitan planning organization is a member, an expressway authority pursuant to chapter 348 or any transportation authority under chapter 343 or chapter 349, 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.

Approved by the Governor May 27, 2009.

## **CHAPTER 2009-187**

### **Committee Substitute for Senate Bill 2188**

Section 1. Subsection (1) of section 120.52, Florida Statutes, is amended to read:

120.52 Definitions.—As used in this act:

(1) “Agency” means the following officers or governmental entities if acting pursuant to powers other than those derived from the constitution:

(a) The Governor; each state officer and state department, and each departmental unit described in s. 20.04; the Board of Governors of the State University System; the Commission on Ethics; the Fish and Wildlife Conservation Commission; a regional water supply authority; a regional planning agency; a multicounty special district, but only when a majority of its governing board is comprised of nonelected persons; educational units; and each entity described in chapters 163, 373, 380, and 582 and s. 186.504 in the exercise of all executive powers other than those derived from the constitution.

(b) Each officer and governmental entity in the state having statewide jurisdiction or jurisdiction in more than one county.:

~~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, including the Board of Governors of the State University System and a state~~

~~university board of trustees when acting pursuant to statutory authority derived from the Legislature.~~

~~4. Commission, including the Commission on Ethics and the Fish and Wildlife Conservation Commission when acting pursuant to statutory authority derived from the Legislature.~~

~~5. Regional planning agency.~~

~~6. Multicounty special district with a majority of its governing board comprised of nonelected persons.~~

~~7. Educational units.~~

~~8. Entity described in chapters 163, 373, 380, and 582 and s. 186.504.~~

~~(c) Each officer and governmental entity in the state having jurisdiction in one county or less than one county 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 municipality or legal entity created solely by a municipality; any legal entity or agency created in whole or in part pursuant to part II of chapter 361; part II, any metropolitan planning organization created pursuant to s. 339.175; any separate legal or administrative entity created pursuant to s. 339.175 of which a metropolitan planning organization is a member; an expressway authority pursuant to chapter 348 or transportation authority under chapter 349; 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, 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.~~

~~Section 2. The amendments to subsection 120.52(1), Florida Statutes, made by this act are not intended to effect a substantive change in meaning of that subsection. The amendments are intended to clarify and simplify existing law and are intended to be consistent with judicial interpretations of that statute.~~

## **CHAPTER 2010-5**

### **Senate Bill No. 1784**

Section 10. Section 120.52, Florida Statutes, is reenacted to read:

120.52 Definitions.—As used in this act:

(1) “Agency” means the following officers or governmental entities if acting pursuant to powers other than those derived from the constitution:

(a) The Governor; each state officer and state department, and each departmental unit described in s. 20.04; the Board of Governors of the State University System; the Commission on Ethics; the Fish and Wildlife Conservation Commission; a regional water supply authority; a regional planning agency; a multicounty special district, but only when a majority of its governing board is comprised of nonelected persons; educational units; and each entity described in chapters 163, 373, 380, and 582 and s. 186.504.

(b) Each officer and governmental entity in the state having statewide jurisdiction or jurisdiction in more than one county.

(c) Each officer and governmental entity in the state having jurisdiction in one county or less than one county, 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 municipality or legal entity created solely by a municipality; any legal entity or agency created in whole or in part pursuant to part II of chapter 361; any metropolitan planning organization created pursuant to s. 339.175; any separate legal or administrative entity created pursuant to s. 339.175 of which a metropolitan planning organization is a member; an expressway authority pursuant to chapter 348 or any transportation authority under chapter 343 or chapter 349; 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.

(2) “Agency action” means the whole or part of a rule or order, or the equivalent, or the denial of a petition to adopt a rule or issue an order. The term also includes any denial of a request made under s. 120.54(7).

(3) “Agency head” means the person or collegial body in a department or other governmental unit statutorily responsible for final agency action.

(4) “Committee” means the Administrative Procedures Committee.

(5) “Division” means the Division of Administrative Hearings.

(6) “Educational unit” means a local school district, a community college district, the Florida School for the Deaf and the Blind, or a state university when the university is acting pursuant to statutory authority derived from the Legislature.

(7) “Final order” means a written final decision which results from a proceeding under s. 120.56, s. 120.565, s. 120.569, s. 120.57, s. 120.573, or s.120.574 which is not a rule, and which is not excepted from the definition of a rule, and which has been filed with the agency clerk, and includes final agency actions which are affirmative, negative, injunctive, or declaratory in form. A final order includes all materials explicitly adopted in it. The clerk shall indicate the date of filing on the order.

(8) “Invalid exercise of delegated legislative authority” means action that 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. A rule is arbitrary if it is not supported by logic or the necessary facts; a rule is capricious if it is adopted without thought or reason or is irrational; or

(f) 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 specific 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 powers and duties conferred by the enabling statute.

(9) “Law implemented” means the language of the enabling statute being carried out or interpreted by an agency through rulemaking.

(10) “License” means a franchise, permit, certification, registration, charter, or similar form of authorization required by law, but it does not include a license required primarily for revenue purposes when issuance of the license is merely a ministerial act.

(11) “Licensing” means the agency process respecting the issuance, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license or imposition of terms for the exercise of a license.

(12) “Official reporter” means the publication in which an agency publishes final orders, the index to final orders, and the list of final orders which are listed rather than published.



(13) “Party” means:

(a) Specifically named persons whose substantial interests are being determined in the proceeding.

(b) Any other person who, as a matter of constitutional right, provision of statute, or provision of agency regulation, is entitled to participate in whole or in part in the proceeding, or whose substantial interests will be affected by proposed agency action, and who makes an appearance as a party.

(c) Any other person, including an agency staff member, allowed by the agency to intervene or participate in the proceeding as a party. An agency may by rule authorize limited forms of participation in agency proceedings for persons who are not eligible to become parties.

(d) Any county representative, agency, department, or unit funded and authorized by state statute or county ordinance to represent the interests of the consumers of a county, when the proceeding involves the substantial interests of a significant number of residents of the county and the board of county commissioners has, by resolution, authorized the representative, agency, department, or unit to represent the class of interested persons. The authorizing resolution shall apply to a specific proceeding and to appeals and ancillary proceedings thereto, and it shall not be required to state the names of the persons whose interests are to be represented.

The term “party” does not include a member government of a regional water supply authority or a governmental or quasi-judicial board or commission established by local ordinance or special or general law where the governing membership of such board or commission is shared with, in whole or in part, or appointed by a member government of a regional water supply authority in proceedings under s. 120.569, s. 120.57, or s. 120.68, to the extent that an interlocal agreement under ss. 163.01 and 373.1962 exists in which the member government has agreed that its substantial interests are not affected by the proceedings or that it is to be bound by alternative dispute resolution in lieu of participating in the proceedings. This exclusion applies only to those particular types of disputes or controversies, if any, identified in an interlocal agreement.

(14) “Person” means any person described in s. 1.01, any unit of government in or outside the state, and any agency described in subsection (1).

(15) “Recommended order” means the official recommendation of an administrative law judge assigned by the division or of any other duly authorized presiding officer, other than an agency head or member of an agency head, for the final disposition of a proceeding under ss. 120.569 and 120.57.

(16) “Rule” means 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. The term 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 Chief Financial Officer or Comptroller as chief fiscal officer of the state and relating or pertaining to claims for payment submitted by state agencies to the Chief Financial Officer or Comptroller.

3. Contractual provisions reached as a result of collective bargaining.

4. Memoranda issued by the Executive Office of the Governor relating to information resources management.

(17) “Rulemaking authority” means statutory language that explicitly authorizes or requires an agency to adopt, develop, establish, or otherwise create any statement coming within the definition of the term “rule.”

(18) “Small city” means any municipality that has an unincarcerated population of 10,000 or less according to the most recent decennial census.

(19) “Small county” means any county that has an unincarcerated population of 75,000 or less according to the most recent decennial census.

(20) “Unadopted rule” means an agency statement that meets the definition of the term “rule,” but that has not been adopted pursuant to the requirements of s. 120.54.

(21) “Variance” means a decision by an agency to grant a modification to all or part of the literal requirements of an agency rule to a person who is subject to the rule. Any variance shall conform to the standards for variances outlined in this chapter and in the uniform rules adopted pursuant to s.120.54(5).

(22) “Waiver” means a decision by an agency not to apply all or part of a rule to a person who is subject to the rule. Any waiver shall conform to the standards for waivers outlined in this chapter and in the uniform rules adopted pursuant to s. 120.54(5).

Reviser’s note.—Section 1, ch. 2009-85, Laws of Florida, amended s. 120.52 without publishing subsections (2)-(22). Absent affirmative evidence of legislative intent to repeal

the omitted subsections, the section is reenacted to confirm the omissions were not intended.

## **CHAPTER 2010-205**

### **Committee Substitute for Committee Substitute for Committee Substitute for Senate Bill No. 550**

Section 2. Subsection (13) of section 120.52, Florida Statutes, is amended to read:

120.52 Definitions.—As used in this act:

(13) “Party” means:

(a) Specifically named persons whose substantial interests are being determined in the proceeding.

(b) Any other person who, as a matter of constitutional right, provision of statute, or provision of agency regulation, is entitled to participate in whole or in part in the proceeding, or whose substantial interests will be affected by proposed agency action, and who makes an appearance as a party.

(c) Any other person, including an agency staff member, allowed by the agency to intervene or participate in the proceeding as a party. An agency may by rule authorize limited forms of participation in agency proceedings for persons who are not eligible to become parties.

(d) Any county representative, agency, department, or unit funded and authorized by state statute or county ordinance to represent the interests of the consumers of a county, when the proceeding involves the substantial interests of a significant number of residents of the county and the board of county commissioners has, by resolution, authorized the representative, agency, department, or unit to represent the class of interested persons. The authorizing resolution shall apply to a specific proceeding and to appeals and ancillary proceedings thereto, and it shall not be required to state the names of the persons whose interests are to be represented.

The term “party” does not include a member government of a regional water supply authority or a governmental or quasi-judicial board or commission established by local ordinance or special or general law where the governing membership of such board or commission is shared with, in whole or in part, or appointed by a member government of a regional water supply authority in proceedings under s. 120.569, s. 120.57, or s. 120.68, to the extent that an interlocal agreement under ss. 163.01 and 373.713 ~~373.1962~~ exists in which the member government has agreed that its substantial interests are not affected by the proceedings or that it is to be bound by alternative dispute resolution in lieu of participating in the proceedings. This exclusion applies only to those particular types of disputes or controversies, if any, identified in an interlocal agreement.

## **CHAPTER 2011-208**

### **Committee Substitute for Committee Substitute for Senate Bill No. 170**

Section 7. Subsection (5) of section 120.52, Florida Statutes, is amended to read:

120.52 Definitions.—As used in this act:

(5) “Division” means the Division of Administrative Hearings. Any document filed with the division by a party represented by an attorney shall be filed by electronic means through the division’s website. Any document filed with the division by a party not represented by an attorney shall, whenever possible, be filed by electronic means through the division’s website.

## **CHAPTER 2012-116**

### **Committee Substitute for House Bill No. 7055**

Section 8. Subsection (3) of section 120.52, Florida Statutes, is amended to read:

120.52 Definitions.—As used in this act:

(3) “Agency head” means the person or collegial body in a department or other governmental unit statutorily responsible for final agency action. An agency head appointed by and serving at the pleasure of an appointing authority remains subject to the direction and supervision of the appointing authority but actions taken by the agency head as authorized by statute are official acts.

## **CHAPTER 2013-173**

### **Committee Substitute for Senate Bill No. 606**

Section 14. Subsection (1) of section 120.52, Florida Statutes, is amended to read:

120.52 Definitions.—As used in this act:

(1) “Agency” means the following officers or governmental entities if acting pursuant to powers other than those derived from the constitution:

(a) The Governor; each state officer and state department, and each departmental unit described in s. 20.04; the Board of Governors of the State University System; the Commission on Ethics; the Fish and Wildlife Conservation Commission; a regional water supply authority; a regional planning agency; a multicounty special district, but only if ~~when~~ a majority of its governing

board is comprised of nonelected persons; educational units; and each entity described in chapters 163, 373, 380, and 582 and s. 186.504.

(b) Each officer and governmental entity in the state having statewide jurisdiction or jurisdiction in more than one county.

(c) Each officer and governmental entity in the state having jurisdiction in one county or less than one county, to the extent they are expressly made subject to this chapter ~~act~~ by general or special law or existing judicial decisions.

This definition does not include a ~~any~~ municipality or legal entity created solely by a municipality; a ~~any~~ legal entity or agency created in whole or in part pursuant to part II of chapter 361; a ~~any~~ metropolitan planning organization created pursuant to s. 339.175; a ~~any~~ separate legal or administrative entity created pursuant to s. 339.175 of which a metropolitan planning organization is a member; an expressway authority pursuant to chapter 348 or any transportation authority or commission under chapter 343 or chapter 349; or a ~~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.