

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

FOR HOUSE BILL 710 AND SENATE BILL 608

- I. Section 1 of the bill amends s.120.52 to create a new subsection (8), and paragraphs (a)-(e), and add a definition of the term “invalid exercise of delegated legislative authority”, setting forth five specific bases for rule invalidity. If a rule fails to pass anyone of the five “tests”, it is invalid. Each of the independent bases of invalidity is derived directly from current decisional law or express statutory requirements of Chapter 120.
- (a) Paragraph (a) states the requirement that agency rulemaking must materially adhere to the procedural requirements of s.120.54. E.g., Florida Department of Transportation v. Foster and Kleiser, 365 So.2d 224 (Fla 1 DCA 1978) (court held that effect of deviation from 120.54 time frames would be measured by provisions of s.120.68(8) such that violation of time frames for rulemaking would not invalidate the rule unless that violation impaired the fairness of the proceeding or the correctness of the action); F.S.U. v. Dann, 400 So.2d 1304, (Fla. 1 DCA 1981); Cf., City of Panama City v. Florida P.E.R.C., 364 So.2d 109, (Fla. 1 DCA 1978).
- (b) Paragraph (b) relies on the well-established principle that no agency has inherent rulemaking authority and states that, in rulemaking, an agency may not exceed its grant of rulemaking authority. This subsection contains a reminder that citation to specific rulemaking authority must accompany the rule text. E.g., 4245 Corp. v. Division of Beverage, 371 So.2d 1032 (Fla. 1 DCA 1978); State Com'n on Ethics v. Sullivan, 500 So.2d 553 (Fla. 1 DCA 1986) (holding that Commission on Ethics had no inherent rulemaking authority; that substantive (as opposed to procedural) rules promulgated by the Commission amounted to an invalid exercise of delegated legislative authority since Commission has no substantive rulemaking authority in either constitutional or statutory law); Grove Isle. Ltd. v. State Department of Environmental Regulation, 454 So.2d 471 (Fla. 1 DCA 1984) and authorities cited therein (administrative bodies have no inherent power to promulgate rules and must derive that power from a statutory base).
- (c) Paragraph (c) codifies the axiom found in numerous decisions that a rule cannot enlarge, modify or contravene the specific provisions of law implemented. This subsection also contains a reminder that citation to the section or subsection of the statutes or the Laws of Florida, which is being implemented, interpreted, or made specific, must accompany the rule text. E.g., Grove Isle., Ltd., supra, 454 So.2d at 573; Board of Optometry, Etc. v. Fla. Medical Association, 463 So.2d 1213 (Fla. 1 DCA 1985); State Dept. of Business Regulation v. Salvation Ltd., 452 So.2d 65 (Fla. 1 DCA 1984); Dept. of Health and Rehab. Services v. Florida Psychiatric Society,

382 So.2d 1280 (Fla. 1 DCA 1980); State Dept. of HRS v. McTigue, 387 So.2d 454 (1 DCA 1980).

- (d) Paragraph (d) codifies the long established principle that rules must not fail to apprise the reader or regulated party of what is expected or proscribed, must establish adequate standards for regulation, and cannot vest unbridled discretion in the agency. E.g., Grove Isle., Ltd. supra, 454 So.2d 571 at 574; Miami v. Save Brickell Avenue, 426 So.2d 1100 (Fla. 1 DCA 1983); Barrow v. Holland, 125 So.2d 749 (Fla. 1960).
 - (e) Paragraph (e) codifies the long established principle that administrative rules cannot be arbitrary or capricious, i.e., unsupported by logic, despotic or irrational. E.g., Agrico Chern. Co. v. State D.E.R., 365 So.2d 759, 763 (Fla. 1 DCA 1978); cert. den. 376 So.2d 74 (Fla. 1979); General Telephone Company of Florida v. Florida P.S.C., 446 So.2d 1063 (Fla. 1984).
- II. Section 2 of the bill amends s.120.54(7) to include the express prohibition that no rule shall cite as the statute or law implemented any legislative statement of general intent or general policy.
 - III. Section 2. of the bill also amends 120.54(11)(a) to delete the requirement that a separate, written statement of a rule's impact on small business be submitted to the committee. This same requirement is already stated in 120.54(2); its deletion from paragraph (a) of subsection (11) merely removes a redundancy.
 - IV. Section 3 of the bill amends s.120.545(1)(a) to specify that the committee's review of proposed and existing rules includes a determination whether a rule is an “invalid exercise of delegated legislative authority”, as that term is defined in proposed s.120.52(8).
 - V. Section 4 of the bill amends 120.68(2) to require transmittal to the committee of a copy of all notices of appeal of orders in 120.54(4) or 120.56 proceedings. This amendment will facilitate the committee's review of administrative action as provided in 11.60 and 120.545.