

Section 120.536

CHAPTER 96-159

Section 9. (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, 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.

(2) 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, Florida Statutes, 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.

(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.

(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.

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 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.

CHAPTER 2000-151

House Bill No. 1049

Section 15. Paragraph (b) of subsection (2) of section 120.536, Florida Statutes, is amended to read:

120.536 Rulemaking authority; listing of rules exceeding authority; repeal; challenge.—

(2)

(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 June 18, 1999 ~~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.

Reviser's note.--Amended to improve clarity and facilitate correct interpretation. Paragraph (b) was enacted by s. 3, ch. 99-379, Laws of Florida. Section 8, ch. 99-379, provided that the act would take effect upon becoming law. Committee Substitute for H.B. 107, which became ch. 99-379, was signed by the Governor on June 18, 1999.

CHAPTER 2008-104

Committee Substitute for Committee Substitute for Senate Bill No. 704

Section 4. Subsection (1) of section 120.536, Florida Statutes, is amended to read:

120.536 Rulemaking 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 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~~.

CHAPTER 2012-31

House Bill No. 7029

Section 1. Present subsections (2) and (3) of section 120.536, Florida Statutes, are renumbered as subsections (3) and (4), respectively, and a new subsection (2) is added to that section to read:

120.536 Rulemaking authority; repeal; challenge.—

(2) Unless otherwise expressly provided by law:

(a) The repeal of one or more provisions of law implemented by a rule that on its face implements only the provision or provisions repealed and no other provision of law nullifies the rule. Whenever notice of the nullification of a rule under this subsection is

received from the committee or otherwise, the Department of State shall remove the rule from the Florida Administrative Code as of the effective date of the law effecting the nullification and update the historical notes for the code to show the rule repealed by operation of law.

(b) The repeal of one or more provisions of law implemented by a rule that on its face implements the provision or provisions repealed and one or more other provisions of law nullifies the rule or applicable portion of the rule to the extent that it implements the repealed law. The agency having authority to repeal or amend the rule shall, within 180 days after the effective date of the repealing law, publish a notice of rule development identifying all portions of rules affected by the repealing law and if no notice is timely published the operation of each rule implementing a repealed provision of law shall be suspended until such notice is published.

(c) The repeal of one or more provisions of law that, other than as provided in paragraph (a) or paragraph (b), causes a rule or portion of a rule to be of uncertain enforceability requires the Department of State to treat the rule as provided by s. 120.555. A rule shall be considered to be of uncertain enforceability under this paragraph if the division notifies the Department of State that a rule or a portion of the rule has been invalidated in a division proceeding based upon a repeal of law, or the committee gives written notification to the Department of State and the agency having power to amend or repeal the rule that a law has been repealed creating doubt about whether the rule is still in full force and effect.