

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

HOUSE OF REPRESENTATIVES  
COMMITTEE ON GOVERNMENTAL OPERATIONS  
STAFF ANALYSIS

BILL #: HB 710

RELATING TO: APA – Delegated Legislative Authority

SPONSOR(S): Dantzler

EFFECTIVE DATE: Upon becoming law

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

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

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

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I. SUMMARY:

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

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

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

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

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

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

- (a) The agency has materially failed to follow the applicable rulemaking procedures set forth in s. 120.54;
- (b) The agency has exceeded its grant of rulemaking authority, as required under s. 120.54(7);
- (c) The rule enlarges, modifies, or contravenes the specific provisions of law implemented, as required by s. 120.54(7);
- (d) The rule is impermissibly vague, fails to establish adequate standards for agency decisions, or vests unbridled discretion in the agency; or
- (e) The rule is arbitrary or capricious.

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

II. ECONOMIC IMPACT:

A. Public:

None

B. Government:

None

III. STATE COMPREHENSIVE PLAN IMPACT:

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

IV. COMMENTS:

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

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

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

V. AMENDMENTS:

None

VI. PREPARED BY: Susan G.Bisbee

VII. STAFF DIRECTOR: Jack Holland

**710** A bill to be entitled

An act relating to the Administrative Procedure Act; amending s. 120.52, F.S., defining the term "invalid exercise of delegated legislative authority"; amending s. 120.54, F.S., prohibiting the use of general intent or general policy as a basis for rule promulgation; amending s. 120.545, F.S., providing clarifying language to create uniform terminology for review of rules; providing an effective date.

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

Section 1. 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 anyone 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 impermissibly vague, fails to establish adequate standards for agency decisions, or vests unbridled discretion in the agency; or

(e) The rule is arbitrary or capricious.

Section 2. Subsection (7) of section 120.54, Florida Statutes, 1986 Supplement, is amended to read:

120.54 Rulemaking; adoption procedures.--

(7) Each rule adopted shall be accompanied by a reference to the specific rulemaking authority pursuant to which the rule was adopted and a reference to the section or subsection of the Florida Statutes or the Laws of Florida being implemented, interpreted, or made specific. No rule shall cite as the lay implemented any legislative statement of general intent or general policy.

Section 3. Paragraph (a) of subsection (1) of section 120.545, Florida Statutes, is amended to read:

120.545 Committee review of agency rules.--

(1) As a legislative check on legislatively created authority, the committee shall examine each proposed rule, except for those proposed rules exempted by s. 120.54(11)(a), and its accompanying material, and may examine any existing rule, for the purpose of determining whether:

(a) The rule is an invalid exercise of delegated legislative authority ~~within the statutory authority upon which it is based;~~

Section 4. This act shall take effect October 1, 1987.

