



RULEMAKING & REGULATION SUBCOMMITTEE

Wednesday, January 12, 2011

9:00 A.M – 12:00 NOON

306 House Office Building

Dean Cannon
Speaker

Chris Dorworth
Chair



FLORIDA HOUSE OF REPRESENTATIVES

Dean Cannon, Speaker

Rules & Calendar Committee Rulemaking & Regulation Subcommittee

Chris Dorworth
Chair

317 The Capitol
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AGENDA

Wednesday, January 12, 2011

9:00 A.M.– 12:00 Noon

Room 306 House Office Building

- I. **Opening Remarks by Chair Dorworth**
- II. **Roll Call: Sonja Thompson, CAA**
- III. **Introductions**
- IV. **Instructions/committee expectations**
- V. **Discussion:**
 - Constitutional Basis and Limitations on Rulemaking Powers
 - Types of Substantive Law Implemented by Rulemaking
 - Brief History of Legislative Oversight of Administrative Agencies
 - Current Overview of Administrative Procedures Act (“APA”)
 - Comparison of Agency Rulemaking Authority and Practices Among States
 - Legislative Ratification of Rules pursuant to HB 1565 (initial analysis)
- VI. **Closing Remarks**
- VII. **Meeting Adjourned**

TABLE OF CONTENTS

TAB 1.....Constitutional Basis and Limitations on Rulemaking Powers

TAB 2.....Types of Substantive Law Implemented by Rulemaking

TAB 3.....Brief History of Legislative Oversight of Administrative Agencies

TAB 4.....Current Overview of Administrative Procedures Act (“APA”) Overview

TAB 5.....Comparison of Agency Rulemaking Authority and Practices among States

TAB 6.....Legislative Ratification of Rules pursuant to HB 1565 (initial analysis)

**CONSTITUTIONAL
BASIS AND
LIMITATIONS ON
RULEMAKING
POWERS**

Constitutional Basis and Limitations on Rulemaking Powers

Legislative power is the power to make legal policies which are binding on society.

"Rulemaking" is typically used to mean a limited degree of legislative power exercised by a department of government other than the legislature. The "rules" that result are made by independent agencies, executive departments, agencies, boards and commissions.

With limited exceptions, such as constitutional agencies having separate grants of legislative power, rulemaking power is conferred by general law. **Rulemaking power is a legislative power granted *BY* the legislature to an agency, department, board or commission.**

- *The purpose and scope of rulemaking power is defined by the legislature when the power is legislatively conferred.*

The separation of powers prohibits one branch of government from exercising the powers of another branch. Therefore, the Legislature may not delegate *ITS* lawmaking power to any other person or body. As articulated by the courts, **the "delegation" doctrine requires the legislature clearly express its will by setting standards for an executive agency to follow in either:**

- **"filling up details" of a regulatory scheme, or**
- **implementing requirements which become effective upon executive findings of clearly expressed contingencies.**

A corollary provides that a delegation may not be so vague that a reviewing court cannot determine whether the rule maker has acted outside its authority. Florida case law, relying on the express separation of powers in the state constitution, has been more explicit than the federal cases from which these general principles are derived. Florida judicial doctrine provides that an agency exercise of rulemaking power may not enlarge, modify or contravene specific provisions of law.

- *Rulemaking must be guided by policy, objectives or standards clearly expressed by the legislature.*

RULEMAKING AND REGULATION SUBCOMMITTEE

The legislature, therefore, determines whether and how much rulemaking power may be exercised by agencies, departments, boards or commissions. The Legislature also has power to regulate every detail of the exercise.

In 1996, and again in 1999, the Florida Legislature reasserted its control of rulemaking powers. It nullified existing statutory rulemaking authority found in general provisions such as one authorizing rules "necessary to carry out the provisions of the authorizing act" previously used to support any rule deemed "reasonably related to the purposes of the enabling legislation" and neither arbitrary nor capricious. The new standard is set out in s. 120.536(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.*

(Emphasis is added: **bold language is limiting**, *italicized language expressly contradicts prior judicial interpretations of rulemaking power.*)

The 1996 and 1999 laws, among other reforms, required agencies to review and repeal all then-existing rules that violated this requirement of specific authority. But grants of rulemaking power made since 1999 may or may not be consistent with the principles enunciated in that reform legislation. **Care in drafting enabling statutes, and oversight of the implementation of existing authority, are the surest legislative tools to maintaining careful supervision of the rulemaking powers conferred by the Legislature upon the executive branch and governmental subdivisions.** Every exercise of rulemaking power and every new authorization are proper objects of such care.

- *Constant vigilance of the Legislature is essential to ensuring that the people are governed by rules approved or specifically authorized by their elected representatives.*

RULEMAKING AND REGULATION SUBCOMMITTEE

Legislative power is generally exercised in four forms:

- Police powers, regulating the health, safety and morals of society. Examples of morals regulation are laws prohibiting fraud, requiring fair dealing and enforcing other social standards. This area also includes the licensure of trades and professions.
- Public benevolence, providing social services such as education, medical care, housing and food.
- Taxation, collection of the revenues necessary to supply the needs of duly-enacted governmental programs.
- Appropriations, authorizing the expenditure of public funds.

Rulemaking can be conferred in the advancement of all four powers:

- Obviously, under the police powers, it has the greatest impact on individual liberty.
- In public benevolence, it typically affects only those providing services or availing themselves of the benefits of the program.
- Under the taxing power, it typically extends only to revenue procedures; and the delegation doctrine is construed to strictly limit delegated discretion in assessing a tax.
- In appropriations, it might ensure certain limits of a specific appropriation are kept.

Many areas of public benevolence are largely dominated by federal law and federal rules, leaving little discretion to the state in its laws or rulemaking. These include education, Medicaid and other entitlement programs. As a result, the exercise of state police powers constitutes the most fruitful area of legislative oversight and supervision of agency rulemaking.

- ***To best protect the liberty essential to human dignity and prosperity, rulemaking in the exercise of police powers may constitute the most productive arena of legislative oversight.***

**TYPES OF
SUBSTANTIVE LAW
IMPLEMENTED BY
RULEMAKING**

Types of Substantive Law Implemented By Rulemaking

As defined by statute, a “rule” is an agency statement of binding general applicability which implements, interprets, or prescribes law or policy, or which describes the procedure or practice requirements of an agency. “Rulemaking” is the process by which an agency adopts a rule. If an agency statement meets the definition of a rule the agency must follow the public rulemaking process set out in the Administrative Procedures Act (“Act” or “Chapter 120”) in order to rely upon and enforce that policy statement. Regardless of the nature of the enabling statute or the type of rule being adopted, the process is the generally the same.

Despite similar adoption procedures, rules vary widely in substance reflecting the diverse statutes which authorize rulemaking. These substantive statutes fall into three broad categories:

- exercises of the State’s police power protecting the public health, safety and morals,
- taxation and revenue enforcement, and
- matters of social policy addressing issues affecting a limited population.

Rules adopted as authorized within each category of statutes are of three types:

- Procedural, including license or benefit application procedures;
- Technical, including performance criteria established for a specific business, profession, or service provider;
- Enforcement, including specifying the acts deemed to violate a licensure statute and establishing particular penalties within the punishment authority provided by statute.

General examples are provided on the following pages.

Examples of Rulemaking by Type of Substantive Law

I. Police Power Statutes

A. Public Health

1. Environmental protection statutes

- Process: permitting for particular use or development.
- Technical: Adoption of federally-imposed standards and procedures.
- Enforcement: specifying conduct which violates adopted rules and will be sanctioned under the enabling statute.

2. Disease prevention

- Permitting of public water systems.
- Adoption of standards for administering vaccines.
- Adoption of range of fines for violations of sewage plant operating license regulations.

3. Medical Licensure

- Process to apply for physician's license.
- Adopting minimum standards for dental fillings.
- Specifying conduct which results in disciplinary action against doctor's license.

B. Public Safety

1. Law enforcement

- Procedures for submitting fingerprints and information for criminal background check.
- FDLE updating list and classifications of specific controlled substances.
- Adopting license standards for law enforcement officers and grounds for license discipline.

2. Drivers Licenses: application, testing and approval, discipline

3. Consumer fraud enforcement & recovery.

RULEMAKING AND REGULATION SUBCOMMITTEE

C. Public morality, commercial fair dealing and reliability

1. Professionals such as Surveyors and Mappers, Accountants, Contractors
 - Usually regulated through statutory Boards which are authorized to adopt rules.
 - License and required examination applications.
 - Minimum requirements for performance of specific work.
 - Specifying conduct violating license; stating range of penalties as authorized by statute.
2. Regulated businesses, such as insurance, telemarketers and charitable soliciting
 - Process for licensing or registering business, sales personnel, obtaining statutory exemption.
 - Specifying types of criminal convictions which prohibit licensure.
3. General activities which are not licensed but are statutorily-determined to harm the public interest, such as engaging in unfair and deceptive trade practices.
 - Civil rights and equal opportunity enforcement
 - Specifying conduct or specific levels of damage which constitute price-gouging during a public emergency.

II. Taxation & Revenue Statutes

A. Sales Taxes

1. Identifying specific items qualifying for statutory exemption from taxation.
2. Procedures for obtaining sales tax number, filing monthly returns, obtaining technical opinions.

B. Alcoholic Beverage Taxes

1. Specific products subject to statutory tax rates.
2. Range of sanctions for violating license conditions.

III. Social Policy Statutes

A. Individual entitlements – Medicaid, public assistance (welfare)

- Procedures for individual to apply for benefits, maintain records, obtain services.
- Calculation of reimbursement for specific benefits based on annual appropriations.
- Criteria for recovering program overpayments from providers.
- Adoption of and compliance with federal program requirements.

B. Education

1. Teacher licensing and disciplinary actions.
2. Student standardized testing: procedures, standards for providers of testing services.

C. Economic Development

1. Florida Seaport and Economic Development Council: rules for evaluating economic benefit of publicly-funded projects.
2. Enterprise Florida program administration.
3. Programs, councils, and commissions created and authorized to assist with expansion of business interests in Florida, particularly small businesses.

D. Unemployment and workers compensation

**BRIEF HISTORY OF
LEGISLATIVE
OVERSIGHT OF
ADMINISTRATIVE
AGENCIES**

Brief History of Legislative Oversight of Administrative Agencies

- Legislature creates the substantive law.
- The substantive law includes a delegation of authority for an agency to administer and enforce that law.
- A proper delegation of authority includes guidelines sufficiently specific to direct the agency in administering the law and exercising its authority.
- The quality of these guidelines constitutes the primary means of legislative oversight and control of an agency's interpretation and implementation of the statute, including rulemaking.

I. Adoption of Modern Florida Administrative Procedures Act ("APA")

A. 1974: Legislature extensively revises prior Ch. 120

1. Establishes procedures for agencies to follow in exercising substantial authority delegated by Legislature.
2. Created Division of Administrative Hearings ("DOAH"): impartial hearing officers to consider disputes of fact before agency takes final action.
3. Defined "rule." Created uniform process for public access to agency rulemaking.
4. Established extensive provisions for public access to rulemaking and hearing processes, public access to agency decisions.
5. Created Administrative Procedures Committee (later renamed JAPC) with oversight authority primarily to review and consult with agencies about proposed rules and report annually to the presiding officers of the Legislature.
6. Expressly stated "No agency has inherent rulemaking authority." §120.54(13).

RULEMAKING AND REGULATION SUBCOMMITTEE

B. 1975: DOAH given final order authority in rule challenges

First legislative statement authorizing DOAH hearing officer to enter final order in challenges to proposed or existing rules.

C. 1984: Legislature adopts Florida Equal Access to Justice Act

Provided for award of attorneys fees & costs to small business parties which prevail in administrative or court action brought by state agency.

II. Scrutiny and Oversight

A. 1991: Legislature mandates rulemaking for agency policies

1. Legislature had become increasingly concerned about trends in agency rulemaking and related court decisions.
 - a. Courts generally approved rules which were deemed “reasonably related” to the subject matter of a substantive statute.
 - b. Courts generally deferred to agency expertise in program areas and agency interpretation of their substantive statutes.
 - c. Many agencies appeared reluctant to adopt general policies meeting definition of “rules” through rulemaking process.
 - d. Legislature had increasing concern about agencies exceeding their delegated authority.
2. Adopted former s. 120.535: the first mandate that rulemaking is not optional:

120. 535. Rulemaking required

(1) Rulemaking is not a matter of agency discretion. Each agency statement defined as a rule under s. 120.52(16) shall be adopted by the rulemaking procedure provided by s. 120.54 as soon as feasible and practicable. Rulemaking shall be presumed feasible and practicable to the extent provided by this subsection unless one of the factors provided by this subsection is applicable.
3. Extended DOAH final order authority to challenges against agency unadopted rules: policies meeting the definition of a rule but for which the agency had not gone through the rulemaking process.

B. 1992: Refinement of Rulemaking Process

APA rulemaking process amended to provide procedures for public access to and participation in rule development.

C. 1992 – 1994: Legislative Investigation and Proposed Revisions

1. 1992: House Select Committee on Agency Rules and Administrative Procedures. Created to investigate “allegations of agency abuse of delegated authority” and to recommend necessary revisions.
2. 1993: Senate Select Committee on Governmental Reform. Created in part to “ensure agency rules are based on statutory authority...”
3. 1994: Separate House and Senate bills proposing comprehensive APA reform; could not reconcile on extent of needed reforms in that session.

III. Reform and Increasing Control

A. 1995: APA Reform Bill

1. Legislature passed comprehensive amendments to APA to constrain agency discretion and rulemaking.
2. Added substantial constraints on rulemaking: rules required to be within scope expressly authorized by statute.
3. Vetoed by Governor, who then appointed a commission for comprehensive study of necessary APA reform and legislative oversight.
4. Commission recommended most of changes incorporated in vetoed bill.

B. 1996: Major Reform

1. Chapter 96-156, Laws of Florida, adopted many of Commission’s recommendations.
2. Substantial rewording of important statutory sections on rulemaking, rule challenges, adjudicatory proceedings, appellate review.
3. Added significant constraint on rulemaking authority.

RULEMAKING AND REGULATION SUBCOMMITTEE

- Agency rulemaking now required BOTH a grant of rulemaking authority and a specific law to be implemented:

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.

- Quoted text was added to s. 120.52(8), clarifying the definition of “invalid exercise of delegated legislative authority.”
 - Added new s. 120.536 - Rulemaking authority; repeal; challenge. This provision replaced former s. 120.535. The above-quoted text was also included verbatim in 120.536(1) as the express statement on basic authority to adopt rules.
4. Added new policy statements concerning rulemaking, including:
 - Where statute mandates rulemaking for implementation, agency must file proposed rule within 180 days.
 - Agency cannot delay implementation of statute because rulemaking is incomplete.
 5. Authorized agencies to engage in negotiated rulemaking with stakeholders.
 6. Adjudication process modified, including procedures to challenge agency reliance on policies not adopted as rules.
 - If DOAH final order finds agency policy is unadopted rule in violation of s. 120.54(1), agency must immediately stop reliance on policy.
 7. Strengthened provision for award of attorneys fees in administrative proceedings.
 8. Added provisions for mediation, arbitration of disputes with agencies.

RULEMAKING AND REGULATION SUBCOMMITTEE

9. Added s. 120.541, statement of estimated regulatory costs.
10. Added s. 120.542, authorizing agencies to granting waivers and variances from adopted rules.
11. Expanded scope of JAPC authority, including:
 - Continuous review of existing rules.
 - Establishing criteria to measure agency compliance with delegations of authority.

C. 1999: Major Clarification

1. Chapter 99-379, Laws of Florida, responded to court cases which interpreted the 1996 amendments by continuing to approve rules by giving deference to an agency's discretion if the rule came within the general "class of powers and duties" authorized under the enabling statute.
2. Statement of specific intent: the following language was added to s. 120.536 to reject judicial application of "the general class of powers and duties" analysis in approving rulemaking:

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.

3. Broadened application of APA to include more agencies, such as regional water supply boards and the Commission on Ethics when exercising statutory power received from the Legislature.
4. In contested proceedings tried before DOAH under s. 120.57(1), limited agency ability to reject recommended interpretations of law to only those for which statute gave the agency substantive jurisdiction and for which the agency stated both specific grounds and that its interpretation was equally or more reasonable than that of the administrative law judge.

D. 2003: Attorneys Fees

1. Authorized an award of fees under general attorney fee statute, s. 57.105.
2. Conformed standard of fee awards for improperly-brought administrative action to that imposed in civil actions.

E. 2006: Broader access to petition for hearing

1. Created less stringent procedures for a party to request a hearing opposing an agency action to impose administrative sanctions for violation of a statute.

F. 2008: Two separate bills on agency forms, SBRAC

1. Rulemaking to incorporate forms by reference. Forms to be filed electronically and made available via internet.
2. Agencies required to submit proposed rules for SBRAC review if rule impacts small businesses.

G. 2010: Ratification

Proposed rules which will have adverse impact of more than \$1 Million over 5 years must be submitted for ratification before rule may go into effect.

**CURRENT
OVERVIEW OF
ADMINISTRATIVE
PROCEDURES ACT
("APA")**

Current Overview of Administrative Procedures Act (“APA”)

I. Why the APA Exists

WHAT: Uniform processes that control agencies in executing their substantive duties.

- Rulemaking
- Declaratory statements: agency formal legal interpretation.
- Administrative adjudication – including enforcement of regulatory statutes and granting of license & permit applications.

WHY: Increasing complexity in society and economy led to more complex laws.

- **Principle: When the Legislature creates a program it must dictate how that program is administered.**
 - Legislature normally determines procedures for implementing programs it creates.
 - Congress and state legislatures saw the benefit of standardizing the processes under which administrative agencies operated.
 - Congress adopted federal APA in 1946
 - Florida's first APA was adopted in 1961
- **SCOPE OF PRESENT APA**
 - Executive agencies broadly defined in s. 120.52(1) - entities acting pursuant to powers other than those derived from the constitution.

II. Agency Action Directly Affecting Citizens

A. 3 Formal Ways Agencies Interpret/Implement Substantive Statutes. Each has a separate chapter of procedural rules in the Florida Administrative Code (“FAC”).

1. Rulemaking and challenges to rules: s. 120.536 – 120.56. Procedural rules for hearings: FAC Chapter 28-103.
2. Declaratory Statements: s. 120.565. Procedural rules for hearings: FAC Chapter 28-105.
3. Final Orders: s. 120.569 – 120.574. Procedural rules for hearings: FAC Chapter 28-106.

B. Rulemaking

1. Mandatory: Agencies must use rulemaking for policies defined as “rules.” s. 120.54(1)(a).
2. Definitions
 - a. “Rule:” s. 120.52(16)
 - Agency statement which interprets, implements, or prescribes law, policy, or procedure of the agency.
 - “Generally applicable:” applies to all persons in similar fact situations.
 - Includes all forms adopted by the agency for a program.
 - Includes amendment or repeal of rules.
 - b. “Rulemaking authority:” s. 120.52(17)
 - Language in statute which expressly authorizes or requires agency to develop, create, adopt, rules.

RULEMAKING AND REGULATION SUBCOMMITTEE

- Provide express guidance for agency to execute the specific statute.
 - 2 factors required for rule to have proper Legislative authorization:
 - General authority: “Agency is authorized to adopt rules...”
 - Authorizing statute must provide specific, substantive actions to be implemented by rule.
- c. “Invalid exercise of delegated legislative authority:” s. 120.52(8)
- Agency action which exceeds powers, functions, duties delegated by Legislature.
3. “Non-rule policy” prohibited except in limited circumstances. s. 120.56(4).
4. Rule Adoption: s. 120.54
- Public Notice [copy of text also submitted to Joint Administrative Procedures Committee (“JAPC”) – JAPC begins review & comment]
 - Rule Development Workshop
 - Negotiated Rulemaking
 - Rule Hearing
 - Notice of Rule Adoption
 - Rules have force of law – violations may be sanctioned under agency’s substantive law authority
5. Challenges to Rules: s. 120.56, 120.569, 120.57
- During Rulemaking process
 - Adopted Rules
 - Within enforcement proceedings
 - Challenges to “non-rule policy:” s. 120.56(4), 120.57(1)(e)
 - DOAH has final order authority: s. 120.56(1), 120.57(1)(e)
 - Availability of fees to prevailing party: s. 57.105, 57.111, 120.595
 - Appellate review: s. 120.68

RULEMAKING AND REGULATION SUBCOMMITTEE

6. Fiscal/ECONOMIC Impact: s. 120.54(3)(b), 120.541

- Ratification: 120.541(3), added by HB 1565
- SERC
- SBRAC Review

7. Waiver/Variance of rule in individual cases: s. 120.542

- Process
- Role of Administration Commission

8. Incorporating materials/forms by reference: agency must adopt rule incorporating material/form in order to compel use of material/form. s. 120.54(1)(i).

- Purpose: make incorporated material readily available via the internet.
- Includes incorporation of other material such as federal standards, specific standards for an industry.
- Requirements for incorporation apply regardless of whether agency incorporates extensive substantive material or simply updates a form.

C. Declaratory Statements: s. 120.565

1. Any party may request a statement on whether/how a statute under the agency's substantive jurisdiction applies to the petitioner.
2. Petition must meet criteria of statute and applicable rule.
3. Agency publishes notice of receiving petition.
4. If necessary, agency may conduct hearing(s) to create a complete record on which to render its decision.
5. Declaratory statement not limited to petitioner in its particular circumstances.
6. Declaratory statement issued like final order, same requirements for execution and service.

RULEMAKING AND REGULATION SUBCOMMITTEE

D. Final Orders – Proceedings Determining Substantive Interests: s. 120.569, 120.57

1. Three general scenarios:
 - Granting/denial of license
 - Imposing authorized sanctions for violation of substantive statute
 - Bid protests: different time frames and general procedures
2. Affected party must ask for hearing
 - Failure to ask within 21 days of receiving notice of agency action – lose right to a hearing. FAC Rule 28-106.111(4).
 - If no request, agency completes proposed action by issuing final order.
3. Disputed facts – DOAH: s. 120.57(1) – “formal hearing”
 - ALJ conducts trial
 - Issues Recommended Order with recommended findings of fact, conclusions of law, sanctions or dismissal.
 - Recommended Order – Case returned for agency to issue final order.
4. No disputed facts – agency conducts hearing: s. 120.57(2) – “informal hearing”
 - No standard qualifications for hearing officers
 - Limited rules of procedure
 - If agency determines to overrule other party’s objection to the proposed action, must give explanatory letter within 7 days from making that determination.
5. Final order: not “final” until “rendered”=filed with the agency clerk.
 - Strict 30 days from rendition of final order to file notice of appeal
 - Judicial review: s. 120.68

III. Other Examples of Agency Exercising Discretion

A. General Operations: also under APA

1. Licensing – return of application, fees when applicant seeks license for clearly exempt activity. s. 120.60.
2. Settlement negotiations: s. 120.57(4)
3. Enforcement of final orders – when, how, use of collection actions. s. 120.69.

B. APA Exemptions: s. 120.80, 120.81

1. Hearings on Department of Agriculture and Consumer Services marketing orders: referral to DOAH not required. s. 120.80(2).
2. Certain rulemaking by district school boards is exempted from the standard procedures: s. 120.81(1).

C. Waivers of Sovereign Immunity – not under APA

1. Existing general waivers
 - Tort claims: s. 768.28.
 - Contracts
2. Bankruptcy claims
 - Filing a proof of claim is a waiver as to certain issues
 - No authorization from Legislature

D. Memoranda of Understanding – not under APA

1. Between Agencies & Regulated Parties
2. Between Separate Agencies

**COMPARISON OF
AGENCY
RULEMAKING
AUTHORITY AND
PRACTICES AMONG
STATES**

Comparison of Agency Rulemaking Authority and Practices among States

I. Do most states have an Administrative Procedures Act (APA)?

Most states have adopted an Administrative Procedures Act and have legislatively delegated rulemaking authority to agencies. Under their respective APA's, states have utilized a variety of executive and legislative offices and committees to oversee the rulemaking process.

II. Do states require legislative review?

States have differing requirements for legislative review of agency rules and regulations. The most common legislative review practice requires notification to the presiding officers of each house at the time the agency notices the rule. The presiding officers may refer the rule to standing committees or the legislative body. However, beyond notice, legislative action is rarely required and usually sporadic and arbitrary. Florida's Joint Administrative Procedures Committee may provide review that is more thorough than nearly every other state.

One state requires legislative approval of every agency rule. In most others, a standing committee may report to the agency or the legislature the committee's position of support or opposition to the rule.

III. Is executive review required apart from the promulgator?

Most have a state registrar within the executive branch. Many have a state commission or agency that governs process. Some verify compliance with requirements of law, and have power to disapprove a proposed rule.

IV. Do states require legislative ratification?

Idaho requires legislative ratification or adoption before any rule may become effective. Florida now requires ratification of rules that exceed particular levels of cost or economic impact.

V. Do states authorize veto by resolution?

Some states authorize the legislature to reject promulgated rules by concurrent or joint resolution without gubernatorial consent (the Florida Constitution does not permit this). It may be assumed that every legislature can override any rule by enacting a law.

VI. Do states have exemptions from rulemaking?

Yes. States provide by law for many forms of exemptions from some or all APA rulemaking requirements: by agency or institution; by activity such as adopting forms; or by programs or functions controlled by federal policy or federal funding.

VII. Do states have sunset review of rules?

Some states review rules on a scheduled basis. As a result of the review, the agency may be required to readopt or repeal the rule, subject to renewed legislative review and approval or disapproval.

RULEMAKING AND REGULATION SUBCOMMITTEE

Comparison of Agency Rulemaking Authority and Practices Among States									
	FL	TX	CA	NH	ID	GA	UT	CO	WV
I. Do most states have an APA?	✓	✓	✓	✓	✓	✓	✓	✓	✓
II. Do states require legislative review?		✓		✓	✓			✓	✓
III. Is executive review required apart from the promulgator?	✓	✓	✓		✓			✓	✓
IV. Do states require legislative ratification?	✓								✓
V. Do states authorize veto by resolution?			✓	✓	✓				Legislative Adoption
VI. Do states have exemptions from rulemaking? If so, what types?	✓ Activities FS 120.80 FS 120.81	✓ Agency Forms	✓ Agency		✓ Agency	✓	✓		✓ Agency
VII. Do states have sunset review of rules?		✓ Every 4 years					✓ Annually	✓ Annually	

✓ = YES

**LEGISLATIVE
RATIFICATION OF
RULES PURSUANT
TO HB 1565
(INITIAL ANALYSIS)**

Legislative Ratification of Rules pursuant to HB 1565 (initial analysis)

Immediate effects of veto override:

- Rulemaking may change to reduce number of rules imposing significant economic/cost impacts.
- When affected rules are required by state law or federal policy, members can expect requests for ratification.
- Secretary of State has considered steps to require identification, upon publication and or adoption, of rules that require ratification.
- Only one rule now awaiting ratification. (A medical licensure rule.)

Initial staff conclusions about legal effect.

- Pre-session deadline for notification to Legislature does not appear to limit power of Legislature to ratify any rule any time in session.
- Ratification appears to require passage of general law.
- Ratification appears to require agency to complete statutory process for rule adoption prior to legislative consideration.

Matters to be determined.

- Staff will work with Senate and executive agencies to develop general language to ratify rules pursuant to the new law and still avoid inadvertently making each such rule into permanent general law.
- Staff will work with agencies to determine rules necessary to maintain compliance with federal mandates in areas such as Medicaid and public education.
- Still under review whether ratification would be by omnibus bill, agency bill, or one rule at a time.