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JOSE R. OLIVA
Speaker



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THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**

COMMITTEE MEETING AGENDA

February 7, 2019

404 House Office Building

1:30 p.m. – 3:30 p.m.

CALL TO ORDER AND ROLL CALL

INTRODUCTORY COMMENTS BY THE CHAIR

TAB 1 WORKSHOP ON CHAPTER 120, FLORIDA STATUTES

Presentations by Committee Staff

Presentations by stakeholders/interested parties

REPORTS AND APPEARANCES

TAB 1

WORKSHOP ON CHAPTER 120, F.S.

PRESENTATIONS BY:

- **Senator Curt Kiser – Commissioner, Public Employees Relations Commission and former Chair, Joint Administrative Procedures Committee**
- **Senator Fred Dudley – Partner, Dudley, Sellers, Healy, Heath & Desmond; Executive Council, Florida Bar, Administrative Law Section and former member of the Joint Administrative Procedures Committee**
- **Judge Bob Cohen – Director and Chief Judge, Division of Administrative Hearings**
- **Brian Newman – Partner, Pennington Law Firm and Chair-Elect, Florida Bar, Administrative Law Section**
- **Terry Cole – Shareholder, Gunster Law Firm**
- **David Daniel – Vice President, Smith, Bryan and Myers**
- **Ken Plante – Coordinator, Joint Administrative Procedures Committee**

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JOINT ADMINISTRATIVE PROCEDURES COMMITTEE MEETING

FEBRUARY 7, 2019

**FROM BILL DRAFTING TO RULE ADOPTION
A GUIDE TO LEGISLATIVE TERMS FOR RULEMAKING**

General rulemaking authority

Every agency has general rulemaking authority.

- “The Department of Financial Services has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter.” § 284.17, F.S.
- “The board [of Pilot Commissioners] has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter.” § 310.185(1), F.S.
- “The department [of Veterans’ Affairs] has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter.” § 292.05(3), F.S.

In addition, agencies may also have general rulemaking authority directed at specific statutes or programs.

- “The department [of Economic Opportunity] has all the powers necessary or appropriate to carry out the purposes and provisions of the program, including the power to: * * * (3) Adopt and enforce rules not inconsistent with ss. 290.0401-290.048 for the administration of the fund.” § 290.048(3), F.S.
- “The Department of Environmental Protection is authorized to adopt rules to implement the ‘Green Lodging’ program. § 286.29(2), F.S.

Specific rulemaking terminology

- Statutory directive that an agency adopt specific “rules.”
 - “The board of trustees [of the Internal Improvement Trust Fund] shall adopt rules for selecting individuals to perform appraisals pursuant to this section. § 253.025(6)(b), F.S.
 - “The Chief Financial Officer shall establish by rule the requirements for the capitalization of property that has been recorded in the state’s financial systems.” § 273.025, F.S.
- Alternative language: An agency shall develop “criteria,” “standards,” or “guidelines.”
 - The Division of Emergency Management shall “[a]dopt standards and requirements for county emergency management plans.” § 252.35(2)(b), F.S.
 - “The department [of Economic Opportunity] shall establish minimum criteria pertaining to the number of jobs created for persons of low or moderate income” § 290.046(2)(b)2., F.S.
 - “The Department of Transportation shall adopt a uniform system of traffic control devices for use on the streets and highways of the state.” § 316.075(1), F.S.

Mandatory rulemaking

The use of the word “shall” indicates that rulemaking is a requirement of the agency.

- Mandatory rulemaking – no date specified for adoption.
 - “The Agency for State Technology shall adopt rules relating to information technology security and to administer this section.” § 282.318(6), F.S.
 - “The department [of Management Services] shall adopt rules to administer the program for online procurement.” § 287.057(22)(b), F.S.
- Mandatory rulemaking – date certain.
 - “No later than January 1, 1995, the board [of Pilot Commissioners] shall adopt rules to administer the provisions of this section. . . .” § 310.183(2), F.S.

- “The [State Hazardous Materials Emergency Response] commission shall establish by December 31, 1989, uniform reporting forms for all reporting requirements under this part for use by all committees.” § 252.90(1), F.S.
- “The agency [for Health Care Administration] shall publish proposed rules implementing a reasonable exemption procedure by November 1, 1992.” § 395.1041(d)4., F.S.
- Mandatory rulemaking – general authorization, no date specified for adoption.
 - “The State Board of Education shall adopt rules for administering this section.” § 295.01(4), F.S.

Permissive rulemaking

- Use of the term “may” authorizes an agency to develop rules, but there is no requirement or timeframe for adoption.
 - “The department [of Highway Safety and Motor Vehicles] may adopt rules necessary to administer this section.” § 316.0741(7), F.S.
 - “The agency [for Health Care Administration] may adopt rules implementing the licensure requirements set forth in subsection (8).” § 395.003(10), F.S.
- Alternative terminology/authority:
 - “This section does not prohibit the Board of Trustees of the Internal Improvement Trust Fund or the Department of Environmental Protection from imposing additional application fees, regulatory permitting fees, or other lease requirements as otherwise authorized by law.” § 253.0357(4), F.S.

Mandatory rulemaking with a permissive twist

The use of the word “shall” suggests that rulemaking is a requirement, but the agency has the discretion to determine if rulemaking is necessary.

- “The Department of Management Services shall adopt such rules as are necessary to carry out the purposes of subsections (1) and (3).” § 272.16(4), F.S.

Exception from, or removal of, rulemaking authority

- “The board [of Nursing] does not have rulemaking authority to administer this section, except that the board shall adopt rules that prescribe the format for submitting program applications under subsection (1) and annual reports under subsection (3), and to administer the documentation of the accreditation of nursing education programs under subsection (11).” § 464.019(8), F.S.
- “The department [of Health] may not establish by rule any regulation governing the design, alteration, modification, or repair of public swimming pools and bathing places which has no impact on sanitation and safety of persons using public swimming pools and bathing places. Further, the department may not adopt by rule any regulation governing the construction, erection, or demolition of public swimming pools and bathing places.” § 514.021(2), F.S.

Delegation of authority to an agency without any restrictions

The use of certain language grants agencies virtually unlimited authority when coupled with rulemaking authority.

- “The board [of Trustees of the Internal Improvement Trust Fund] may require reasonable additional information as may be necessary, for the better understanding of the operation [of land] under lease. . . .” § 253.511(1), F.S.
- “The State Board of Education . . . has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of law conferring duties upon it for the improvement of the state system of K-20 public education except for the State University System.” § 1001.02(1), F.S.