

DATE: 4/8/77

COMMITTEE ACTION: 1. Fav. 4-12-77
2. None
3. None
Amend. or CS Attached

SENATE
STAFF ANALYSIS AND ECONOMIC STATEMENT
Governmental Operations Committee
(Amundsen)

4/11/77
(To Sponsor)

Bill No. and Sponsor:
SB 553 by Senator Lewis

Subject Administrative Procedures
Committee

REFERENCES: GOVERNMENTAL OPERATIONS

I. BILL SUMMARY:

Adds paragraph (i) to section 11.60(2), F.S., to provide that the Administrative Procedure Committee (APC) shall have standing to seek judicial review, on behalf of the Legislature or the citizens of Florida, of the validity or invalidity of any administrative rule to which the committee has voted an objection and which has not been withdrawn, modified, repealed or amended to meet that objection. Provides that the APC may expend public funds for this purpose.

II. PURPOSE:

A. Present Situation:

Neither Chapter 120 nor section 11.60 gives the APC standing to seek judicial review of the validity of a proposed rule or rule.

Chapter 120 provides that a "substantially affected person" may seek an administrative determination of invalidity of any proposed rule [s. 120.54(4)] and any rule (s. 120.56). Such determinations are made in administrative hearings pursuant to s. 120.57. The hearing officer may invalidate the rule. The hearing officer's determination is subject to judicial review. The only ground upon which an administrative determination of validity may be sought is "that the proposed rule is an invalid exercise of delegated legislative authority." [120.54(4) (a) and 120.56(1).]

Section 120.545 provides that the APC shall examine all proposed rules, and may examine all existing rules to determine whether (1) the rule is within statutory authority, (2) the rule is in proper form, and (3) adequate notice was given. If the APC objects, and the rulemaking agency refuses to modify, amend, withdraw or repeal the rule, the APC shall file a notice with the Department of State detailing the objection. The objection shall then be included along with the rule in the Administrative Code. The rule remains effective. There are approximately 100 such rules.

B. Effect on Present Situation:

This bill enables the APC to seek judicial review of any administrative rule to which the committee has voted an objection and which has not been withdrawn, modified, repealed or amended to meet the objection.

III. ECONOMIC CONSIDERATIONS:

Economic Impact: YES: X NO

A. Economic Impact on the Public:

Mr. Carroll Webb, Staff Director of the APC, advises that enabling the APC to seek judicial review should have no effect on the caseload of the Division of Administrative Hearings, Department of Administration. Mr. Webb advises that the APC reviews rules according to a predetermined schedule, and does not intend to challenge rules in behalf of individual litigants.

B. Fiscal Impact on Implementing or Enforcing Agencies:

Mr. Carroll Webb, Staff Director of the APC, advises that this bill will require no additional positions on the APC staff. Mr. Webb estimates that this bill would result in the APC bringing about ten cases a year, and the only additional costs would be the usual court costs of filing fees, court reporters, service of process and the like.

IV. COMMENTS:

Section 120.68, F.S., provides that a “party who is adversely affected by final agency action is entitled to judicial review.” The judicial review is conducted by the district courts of appeal. Presumably the APC would seek review in the First District Court of Appeal.

Mr. Chris Bentley, Assistant Director, Division of Administrative Hearings, DOA, suggests that the APC should first be required to seek an administrative determination of validity in a section 120.57 hearing, and then seek judicial review. This is the manner by which all other parties may challenge administrative rules.

An amendment may be necessary to clarify the intent of this bill. This bill speaks only to the challenge of “any rule.” Section 120.54 (12) provides that a “proposed rule shall be adopted on filing with the Department of State. . . .” Therefore, a respondent rulemaking agency may argue that this bill enables the APC to challenge rules, but not proposed rules.

1977 HB 808 is identical to this bill.