



Florida Inspectors General

Melinda M. Miguel
Chief Inspector General

Legislative & Rulemaking Processes Statutes, Legislative Intent, Rules, Opinions

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*The Chief Inspector General and the Florida Chapter of
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Legislature

House---120 elected members, 2 year terms

Senate--- 40 elected members, 4 year terms

Both may only serve 8 years...Term Limits

May be elected again after two year break



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Leadership

Senate **President**

Speaker of the House

Control assignment of Committees and leadership positions

Control agendas of each chamber

As strong as the Governor with respect to change



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Session

Meets first Tuesday after the first Monday in March

Not to exceed 60 calendar days

Special sessions may be called

Every ten (10) years, following the US census, session begins early (usually January) for re-districting



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Bills

Either house may originate legislation

Each House member is given six (6) bill slots; there is no limit for Senators

A legislator sponsors a bill which is referred to one or more committees related to the bill's subject

Committees may pass, amend or fail to pass the bill



Bills

Once a bill passes all its committees of reference, it will go to the full chamber for a vote

A majority of each chamber will vote to accept the bill as is, amend it or reject it

Once passed, it goes to the other chamber for review
Often, there is already a companion bill in the other chamber



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Bills

When a bill is passed by both chambers, it is sent to the Governor

The Governor can sign the bill into law, allow it to pass into law without his/her signature, or veto it

The Governor's veto can be overridden by a 2/3rd vote of both chambers of the legislature



Rulemaking

Florida's rulemaking process is found in Chapter 120, Florida Statutes, the Administrative Procedures Act.

Rules are needed to provide detail to the more broad provisions found in statutes. An agency is granted (delegated) rulemaking authority by the legislature to create that level of specific standards that the public must adhere to.



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Rulemaking

Only the Legislature can make laws, unless it allows an agency to make law through rules. They are just as binding on the public as Florida laws (statutes).



Rulemaking

For example, Section 561.11, Florida Statutes, sets out the powers and duties of the Division of Alcoholic Beverages and Tobacco and states, “Power and authority of division.— (1) The division has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of the Beverage Law.”



Rulemaking

Sections 120.536 and 120.54, Florida Statutes, describe rulemaking authority and the steps any agency must go through to create a rule.

Rulemaking authority can be allowed by the statute or required by the statute.



Rulemaking

Section 561.42(12), Florida Statutes, requires rulemaking from the Division of Alcoholic Beverages and Tobacco relating to a certain subject: “The division shall make reasonable rules governing promotional displays and advertising, which rules shall not conflict with or be more stringent than the federal regulations. . .”

. .



Rulemaking

Existing agency rules are published in the Florida Administrative Code (FAC), and all rulemaking and hearing notices are published in the Florida Administrative Weekly (FAW).

Both publications are on the Department of State website, which is in charge of maintaining agency rules
<https://www.flrules.org/>



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Rulemaking

Even though it may seem complicated, the rulemaking process from Chapter 120, Florida Statutes, was designed to encourage public participation.



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Rulemaking

Generally, section 120.54, Florida Statutes, outlines the procedure for creating a rule.

The procedure contains numerous opportunities for the public to comment on the rule and legally object to the rule.

All rulemaking notices are published in the Florida Administrative Weekly (FAW), both in print and online.



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Rulemaking

Notice of Development of Rulemaking
Development Workshop
Notice of Proposed Rule
Hearing on the Proposed Rule
Changes to the Proposed Rule
Adoption of the Proposed Rule



Legislative Intent

Many times, the legislature comes right out and says what the intent on the law is, but often they do not. Florida courts often are the place where the intent of the legislature is determined.



Legislative Intent

810.07 Prima facie evidence of intent.— (1) In a trial on the charge of burglary, proof of the entering of such structure or conveyance at any time stealthily and without consent of the owner or occupant thereof is prima facie evidence of entering with intent to commit an offense



Legislative Intent

As one court said, “The words of a statute . . . should be given their ordinary meaning, absent clear and express legislative intention to the contrary,” as long as the ordinary meaning does “not render the statute’s application absurd, unreasonable, or unjust”

This process used by a court is called “statutory construction”



Legislative Intent

Courts look first at the plain language of the statute. Then they may look at legislative committee meetings and debate, to learn what lawmakers said about the bill during its consideration in committee or in floor debate.

The court also looks at previous court decisions that may have addressed similar issues (judicial precedent).



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Rulemaking

Bottom Line: A court always presumes the legislature knew what it was doing, that it was aware of the constitutional issues, that it was aware of previous statutory provisions it had enacted, and it was not looking for an absurd result



Legislative Intent

810.015 Legislative findings and intent; burglary.—
(1) The Legislature finds that the case of *Delgado v. State*, 776 So. 2d 233 (Fla. 2000), was decided contrary to legislative intent and the case law of this state relating to burglary prior to *Delgado v. State*. The Legislature finds that in order for a burglary to occur, it is not necessary for the licensed or invited person to remain in the dwelling, structure, or conveyance surreptitiously.



Opinions

Of course, courts issue a lot of opinions as shown above. They are “binding” on all lesser courts within the jurisdiction of a District Court of Appeal, and statewide if rendered by the Florida Supreme Court. If one DCA has issued an opinion and none of the other four have addressed the same issue, then that DCA opinion applies statewide unless or until the Supreme Court disagrees.



Opinions

The Attorney General also issues opinions
These AGO's are often issued upon a request by a local public official for the AG to address an area that has not been addressed by a court
These include addressing statutory and rule interpretations
These opinions are considered “persuasive” precedent



Opinions

“Persuasive” means an AGO may be used to guide the judge in making a decision.

The court does not have to follow the AGO, but it can. AGO’s are used a lot by state and local officials to guide their decision making in the absence of a court’s binding precedent.



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Questions?

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