

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Governmental Operations Committee

BILL: SB 1594

INTRODUCER: Senator Bennett

SUBJECT: Rules and Rulemaking

DATE: March 9, 2007

REVISED: 3/14/07

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	Wilson	GO	Fav/3 amendments
2.			JU	
3.			TA	
4.				
5.				
6.				

Please see last section for Summary of Amendments

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

I. Summary:

The bill modifies provisions of the Administrative Procedure Act relating to agency rulemaking, particularly provisions concerning the incorporation by reference of materials into agency rules. The bill specifies that after December 31, 2009, materials incorporated by reference in a rule must be made available for free via an electronic link from the rule to the referenced material.

This bill amends sections 120.52, 120.536, 120.54, 120.545, 120.55, 120.569, and 120.74 of the Florida Statutes.

II. Present Situation:

The Joint Administrative Procedures Committee and Agency Rulemaking

The Joint Administrative Procedures Committee (JAPC or the committee) is created in s. 11.60, F.S., as a legislative check on legislatively created authority as interpreted by executive agencies. JAPC is a joint standing legislative committee composed of six members, with three members from each house. The committee is assigned the duty of maintaining a continuous review of administrative rules and the statutory authority on which they are based.

Pursuant to s. 120.52(15), F.S., a “rule” is each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule.

Section 120.54(3)(a)4., F.S., requires an agency to furnish the following documents to JAPC at least 21 days prior to rule adoption: a copy of the proposed rule; a detailed written statement of the facts and circumstances justifying the proposed rule; a copy of the economic impact statement, if required; a statement of the extent to which the proposed rule establishes standards more restrictive than federal rules, or that a federal rule on the same subject does not exist; and a copy of the notice of intent to adopt, amend, or repeal a rule.

The committee conducts a review of all proposed rules to determine whether: (a) the rule is an invalid exercise of delegated legislative authority; (b) the statutory authority for the rule has been repealed; (c) the rule reiterates or paraphrases statutory material; (d) the rule is in proper form; (e) the notice given prior to adoption was sufficient to give adequate notice of the purpose and effect of the rule; (f) an economic impact statement (EIS) was prepared, if required; (g) the rule is consistent with expressed legislative intent pertaining to the specific provisions of law which the rule implements; (h) the rule is a reasonable implementation of the law as it affects the convenience of the general public or persons particularly affected by the rule; (i) the rule could be made less complex or more easily comprehensible to the general public; (j) the rule reflects the approach to the regulatory objective involving the lowest net cost to society to the degree consistent with the provisions of law which the rule implements; (k) the rule will require additional appropriations; and (l) if the rule is an emergency rule, there exists an emergency justifying the rule, whether the agency has exceeded the scope of its statutory authority, and whether the emergency rule was promulgated in the manner required.¹

If JAPC objects to a rule, it must certify the objection to the agency within five days of the objection. The committee also must notify the President of the Senate and the Speaker of the House of Representatives of any objection concurrent with certification to the agency.

Upon receipt of the objection, an agency must: (a) modify the proposed rule to meet JAPC’s objection; (b) withdraw the proposed rule; or (c) refuse to modify or withdraw the proposed rule. If the objection is to an existing rule, the agency must notify the committee that: (a) it has elected to amend the rule to meet the objection; (b) it has elected to repeal the rule; or (c) it refuses to amend or repeal the rule.

If an agency elects to modify a proposed rule to meet the objection, after modification it must give notice in the first available issue of the FAW. If an agency elects to amend an existing rule to meet an objection, it must notify JAPC in writing and initiate the amendment procedure by giving notice in the next available issue of the FAW. The agency must complete the amendatory process to an existing rule under these circumstances within 90 days.

If the agency refuses to modify, amend, withdraw, or repeal a rule to which JAPC has filed an objection, JAPC must file a detailed notice of its objection with the Department of State. The department must publish this notice in the FAW and in the Florida Administrative Code (FAC).

¹ Section 120.55(1)(b), F.S.

The committee may not require the agency to meet its objection. JAPC, however, may seek an administrative or judicial determination that a rule to which it has filed an objection is an invalid exercise of delegated legislative authority.

Florida Administrative Code and Florida Administrative Weekly

Pursuant to s. 120.55(1), F.S., the Department of State (the department) is required to compile and publish the Florida Administrative Code, which contains all rules adopted by each agency, citing specific rulemaking authority, all history notes, and complete indexes.

Pursuant to s. 120.55(1)(b), F.S., the department is required to publish notices and various other materials filed by the state's administrative agencies in the *Florida Administrative Weekly* (Weekly). The FAW must contain:

- Notice of adoption of, and an index to, all rules filed during the preceding week;
- All notices required by s. 120.54(3)(a), F.S., concerning agency rulemaking, showing the text of all rules proposed for consideration or a reference to the location in the FAW where the text of the proposed rules is published;
- All notices of public meetings, hearings, and workshops, including a statement of the manner in which a copy of the agenda may be obtained;
- A notice of each request for authorization to amend or repeal an existing uniform rule or for the adoption of new uniform rules;
- Notice of petitions for declaratory statements or administrative determinations;
- A summary of each objection to any rule filed by the Joint Administrative Procedures Committee during the preceding week; and
- Any other material required or authorized by law or deemed useful by the department.

During the 2006 Regular Session, the Legislature passed CS/SB 262, enacted as Ch. 226-82, Laws of Florida, which requires the department to start publishing the Weekly on its Internet website with certain search capabilities, effective December 31, 2007.³ The law requires the department to continue to publish a printed version of the Weekly.

III. Effect of Proposed Changes:

Section 1 adds definitions of “law implemented” and “rulemaking authority” to s. 120.52, F.S.

Section 2 amends s. 120.536(1), F.S., to clarify language relating to the source of statutory authority granting rulemaking authority.

Section 3 amends s. 120.54(1)(i), F.S., by requiring that material incorporated by reference in a rule may not incorporate other material by reference unless the rule refers to the additional material. An agency rule that incorporates another rule of that agency automatically incorporates subsequent amendments to the referenced rule, unless a contrary intent is indicated. For rules

³ The department's website is located at <https://www.flrules.org/default.asp>.

adopted after December 31, 2009, material may not be incorporated by reference unless it has been submitted electronically and can be linked to for free from the Florida Administrative Code.

The bill amends s. 120.54(3), F.S., to clarify language relating to grants of rulemaking authority, and to require that agencies, when filing a rule with JAPC, to file copies of any materials incorporated by reference in the rule. If the rule is required to be published in the Florida Administrative Code, a copy of any material incorporated by reference in the rule must be filed with the Department of State.

The bill amends s. 120.54(4), F.S., by requiring that in adopting an emergency rule, an agency must provide JAPC with any material incorporated by reference in the rule.

Section 4 amends s. 120.55(2), F.S., by providing that JAPC may request from an agency information necessary to examine an unadopted agency statement.

Section 5 amends s. 120.55, F.S., by providing that the Department of State must prescribe by rule the style, form, and content requirements for rules, notices, and other materials. The bill also requires that the name of the agency head, not a delegate, be published with proposed rules.

Section 6 amends s. 120.55(1), F.S., effective December 31, 2007. The substance of the change is the same as that in section 5 of the bill; this section enacts the change as of the December 31, 2007, effective date of ch. 2006-82, L.O.F.

The bill amends s. 120.55(2), F.S., by providing that the Florida Administrative Weekly Internet website must allow users to:

- subscribe to e-mail notification of notices concurrent to publication of the printed Florida Administrative Weekly, and
- view other materials submitted electronically that are being incorporated by reference.

Section 7 makes changes to s. 120.55(1), F.S., effective December 31, 2008, pursuant to ch. 2006-82, L.O.F. The bill requires the Department of State to electronically publish the Florida Administrative Code (Code), in which each rule must contain a cite to the specific law implemented. The on-line Code must contain all required or useful information, and display rules in browse mode and allow full text search. The on-line Code must contain hyperlinks to materials that are incorporated by reference electronically.

The bill requires that the Department of State must publish a printed version of the Code, which must be supplemented at least monthly.

Section 8 changes a reference in s. 120.569, F.S., occasioned by section 3 of the bill.

Section 9 amends s. 120.74, F.S., to change to annually from biannually a requirement that agencies report to the Legislature on their rules.

Section 10 provides an effective date of July 1, 2007, for sections 1, 2, 3, 4, 5, 8 and 9 of the bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the Department of State, electronically accepting and publishing incorporated materials will entail \$345,000 in nonrecurring costs to upgrade existing systems, and \$39,614.91 in recurring costs for a FTE.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

Barcode 102896 by Governmental Operations:

Deletes a provision in the definition of “rulemaking authority” that such authority delegated by the Legislature to an agency must be exercised by the agency head and may not be transferred or redelegated.

Barcode 561466 by Governmental Operations:

Adds a provision to s. 120.54(1), F.S., that rulemaking authority delegated to an agency by the Legislature must be exercised by the agency head and may not be transferred or redelegated.

(WITH TITLE AMENDMENT)

Barcode 795144 by Governmental Operations:

Adds a provision to s. 120.569(1), F.S., that if a disputed issue of material fact arises during an administrative hearing in which issues of material facts are not initially disputed, unless waived by all parties, the proceeding must be terminated and a hearing in which material facts are in dispute must be conducted. (WITH TITLE AMENDMENT)