

By Senator Bennett

21-445B-07

1 A bill to be entitled
2 An act relating to rules and rulemaking;
3 amending s. 120.52, F.S.; redefining the term
4 "invalid exercise of delegated legislative
5 authority"; defining the terms "law
6 implemented" and "rulemaking authority";
7 amending s. 120.536, F.S.; revising guidelines
8 for the construction of statutory language
9 granting rulemaking authority; amending s.
10 120.54, F.S.; prescribing limits and guidelines
11 with respect to incorporation of material by
12 reference; prescribing requirements for
13 materials being incorporated by reference;
14 providing for rules; revising information to be
15 included in notices of proposed actions;
16 amending s. 120.545, F.S.; authorizing the
17 Administrative Procedures Committee to request
18 from agencies information to examine unadopted
19 agency statements; amending s. 120.55, F.S.;
20 requiring electronic publication of the Florida
21 Administrative Code; prescribing requirements
22 with respect to content of such electronic
23 publication; providing for filing information
24 incorporated by reference in electronic form;
25 amending s. 120.569, F.S.; revising a
26 cross-reference; amending s. 120.74, F.S.;
27 revising reporting requirements for agency
28 heads; providing effective dates.
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30 Be It Enacted by the Legislature of the State of Florida:
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1 Section 1. Subsection (8) of section 120.52, Florida
2 Statutes, is amended, present subsections (9) through (15) of
3 that section are renumbered as subsections (10) through (16),
4 respectively, present subsections (16) through (19) of that
5 section are renumbered as subsections (18) through (21),
6 respectively, and new subsections (9) and (17) are added to
7 that section, to read:

8 120.52 Definitions.--As used in this act:

9 (8) "Invalid exercise of delegated legislative
10 authority" means action that ~~which~~ goes beyond the powers,
11 functions, and duties delegated by the Legislature. A proposed
12 or existing rule is an invalid exercise of delegated
13 legislative authority if any one of the following applies:

14 (a) The agency has materially failed to follow the
15 applicable rulemaking procedures or requirements set forth in
16 this chapter;

17 (b) The agency has exceeded its grant of rulemaking
18 authority, citation to which is required by s. 120.54(3)(a)1.;

19 (c) The rule enlarges, modifies, or contravenes the
20 specific provisions of law implemented, citation to which is
21 required by s. 120.54(3)(a)1.;

22 (d) The rule is vague, fails to establish adequate
23 standards for agency decisions, or vests unbridled discretion
24 in the agency;

25 (e) The rule is arbitrary or capricious. A rule is
26 arbitrary if it is not supported by logic or the necessary
27 facts; a rule is capricious if it is adopted without thought
28 or reason or is irrational; or

29 (f) The rule imposes regulatory costs on the regulated
30 person, county, or city which could be reduced by the adoption
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1 of less costly alternatives that substantially accomplish the
2 statutory objectives.

3
4 A grant of rulemaking authority is necessary but not
5 sufficient to allow an agency to adopt a rule; a specific law
6 to be implemented is also required. An agency may adopt only
7 rules that implement or interpret the specific powers and
8 duties granted by the enabling statute. No agency shall have
9 authority to adopt a rule only because it is reasonably
10 related to the purpose of the enabling legislation and is not
11 arbitrary and capricious or is within the agency's class of
12 powers and duties, nor shall an agency have the authority to
13 implement statutory provisions setting forth general
14 legislative intent or policy. Statutory language granting
15 rulemaking authority or generally describing the powers and
16 functions of an agency shall be construed to extend no further
17 than implementing or interpreting the specific powers and
18 duties conferred ~~by the same statute.~~

19 (9) "Law implemented" means the statutory language
20 being carried out or interpreted by an agency through
21 rulemaking.

22 (17) "Rulemaking authority" means statutory language
23 that explicitly authorizes or requires an agency to adopt,
24 develop, establish, or otherwise create any statement coming
25 within the definition of "rule." Rulemaking authority
26 delegated to an agency by the Legislature shall be exercised
27 by the agency head and may not be transferred or redelegated.

28 Section 2. Subsection (1) of section 120.536, Florida
29 Statutes, is amended to read:

30 120.536 Rulemaking authority; repeal; challenge.--
31

1 (1) A grant of rulemaking authority is necessary but
2 not sufficient to allow an agency to adopt a rule; a specific
3 law to be implemented is also required. An agency may adopt
4 only rules that implement or interpret the specific powers and
5 duties granted by the enabling statute. No agency shall have
6 authority to adopt a rule only because it is reasonably
7 related to the purpose of the enabling legislation and is not
8 arbitrary and capricious or is within the agency's class of
9 powers and duties, nor shall an agency have the authority to
10 implement statutory provisions setting forth general
11 legislative intent or policy. Statutory language granting
12 rulemaking authority or generally describing the powers and
13 functions of an agency shall be construed to extend no further
14 than implementing or interpreting the specific powers and
15 duties conferred ~~by the same statute.~~

16 Section 3. Paragraph (i) of subsection (1), paragraphs
17 (a) and (e) of subsection (3), and paragraph (a) of subsection
18 (4) of section 120.54, Florida Statutes, are amended to read:

19 120.54 Rulemaking.--

20 (1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER
21 THAN EMERGENCY RULES.--

22 (i)1. A rule may incorporate material by reference but
23 only as the material exists on the date the rule is adopted.
24 For purposes of the rule, changes in the material are not
25 effective unless the rule is amended to incorporate the
26 changes. Material incorporated by reference in a rule may not
27 incorporate additional material by reference unless the rule
28 specifically refers to the additional material.

29 2. An agency rule that incorporates by specific
30 reference another rule of that agency automatically
31 incorporates subsequent amendments to the referenced rule.

1 unless a contrary intent is clearly indicated in the
2 referencing rule. Any notice of amendments to a rule that has
3 been incorporated by specific reference in other rules of that
4 agency must explain the effect of the amendments on the
5 referencing rules.

6 3. In rules adopted after December 31, 2009, material
7 may not be incorporated by reference unless the material has
8 been submitted in the prescribed electronic format to the
9 Department of State and can be made available for free public
10 access through an electronic hyperlink from the rule in the
11 Florida Administrative Code making the reference.

12 4. A rule may not be amended by reference only.
13 Amendments must set out the amended rule in full in the same
14 manner as required by the State Constitution for laws. ~~The~~
15 ~~Department of State may prescribe by rule requirements for~~
16 ~~incorporating materials by reference pursuant to this~~
17 ~~paragraph.~~

18 5.2. Notwithstanding any contrary provision in this
19 section, when an adopted rule of the Department of
20 Environmental Protection or a water management district is
21 incorporated by reference in the other agency's rule to
22 implement a provision of part IV of chapter 373, subsequent
23 amendments to the rule are not effective as to the
24 incorporating rule unless the agency incorporating by
25 reference notifies the committee and the Department of State
26 of its intent to adopt the subsequent amendment, publishes
27 notice of such intent in the Florida Administrative Weekly,
28 and files with the Department of State a copy of the amended
29 rule incorporated by reference. Changes in the rule
30 incorporated by reference are effective as to the other agency
31 20 days after the date of the published notice and filing with

1 | the Department of State. The Department of State shall amend
2 | the history note of the incorporating rule to show the
3 | effective date of such change. Any substantially affected
4 | person may, within 14 days after the date of publication of
5 | the notice of intent in the Florida Administrative Weekly,
6 | file an objection to rulemaking with the agency. The objection
7 | shall specify the portions of the rule incorporated by
8 | reference to which the person objects and the reasons for the
9 | objection. The agency does ~~shall~~ not have the authority under
10 | this subparagraph to adopt those portions of the rule
11 | specified in such objection. The agency shall publish notice
12 | of the objection and of its action in response in the next
13 | available issue of the Florida Administrative Weekly.

14 | 6. The Department of State may prescribe by rule
15 | requirements for incorporating materials pursuant to this
16 | paragraph.

17 | (3) ADOPTION PROCEDURES.--

18 | (a) Notices.--

19 | 1. Prior to the adoption, amendment, or repeal of any
20 | rule other than an emergency rule, an agency, upon approval of
21 | the agency head, shall give notice of its intended action,
22 | setting forth a short, plain explanation of the purpose and
23 | effect of the proposed action; the full text of the proposed
24 | rule or amendment and a summary thereof; a reference to the
25 | grant of ~~specific~~ rulemaking authority pursuant to which the
26 | rule is adopted; and a reference to the section or subsection
27 | of the Florida Statutes or the Laws of Florida being
28 | implemented or, ~~interpreted, or made specific~~. The notice must
29 | ~~shall~~ include a summary of the agency's statement of the
30 | estimated regulatory costs, if one has been prepared, based on
31 | the factors set forth in s. 120.541(2), and a statement that

1 any person who wishes to provide the agency with information
2 regarding the statement of estimated regulatory costs, or to
3 provide a proposal for a lower cost regulatory alternative as
4 provided by s. 120.541(1), must do so in writing within 21
5 days after publication of the notice. The notice must state
6 the procedure for requesting a public hearing on the proposed
7 rule. Except when the intended action is the repeal of a rule,
8 the notice ~~must shall~~ include a reference both to the date on
9 which and to the place where the notice of rule development
10 that is required by subsection (2) appeared.

11 2. The notice shall be published in the Florida
12 Administrative Weekly not less than 28 days prior to the
13 intended action. The proposed rule shall be available for
14 inspection and copying by the public at the time of the
15 publication of notice.

16 3. The notice shall be mailed to all persons named in
17 the proposed rule and to all persons who, at least 14 days
18 prior to such mailing, have made requests of the agency for
19 advance notice of its proceedings. The agency shall also give
20 such notice as is prescribed by rule to those particular
21 classes of persons to whom the intended action is directed.

22 4. The adopting agency shall file with the committee,
23 at least 21 days prior to the proposed adoption date, a copy
24 of each rule it proposes to adopt; a copy of any material
25 incorporated by reference in the rule; a detailed written
26 statement of the facts and circumstances justifying the
27 proposed rule; a copy of any statement of estimated regulatory
28 costs that has been prepared pursuant to s. 120.541; a
29 statement of the extent to which the proposed rule relates to
30 federal standards or rules on the same subject; and the notice
31 required by subparagraph 1.

1 (e) Filing for final adoption; effective date.--

2 1. If the adopting agency is required to publish its
3 rules in the Florida Administrative Code, it shall file with
4 the Department of State three certified copies of the rule it
5 proposes to adopt; one copy of any material incorporated by
6 reference in the rule, certified by the agency; a summary of
7 the rule; a summary of any hearings held on the rule; and a
8 detailed written statement of the facts and circumstances
9 justifying the rule. Agencies not required to publish their
10 rules in the Florida Administrative Code shall file one
11 certified copy of the proposed rule, and the other material
12 required by this subparagraph, in the office of the agency
13 head, and such rules shall be open to the public.

14 2. A rule may not be filed for adoption less than 28
15 days or more than 90 days after the notice required by
16 paragraph (a), until 21 days after the notice of change
17 required by paragraph (d), until 14 days after the final
18 public hearing, until 21 days after preparation of a statement
19 of estimated regulatory costs required under s. 120.541, or
20 until the administrative law judge has rendered a decision
21 under s. 120.56(2), whichever applies. When a required notice
22 of change is published prior to the expiration of the time to
23 file the rule for adoption, the period during which a rule
24 must be filed for adoption is extended to 45 days after the
25 date of publication. If notice of a public hearing is
26 published prior to the expiration of the time to file the rule
27 for adoption, the period during which a rule must be filed for
28 adoption is extended to 45 days after adjournment of the final
29 hearing on the rule, 21 days after receipt of all material
30 authorized to be submitted at the hearing, or 21 days after
31 receipt of the transcript, if one is made, whichever is

1 latest. The term "public hearing" includes any public meeting
2 held by any agency at which the rule is considered. If a
3 petition for an administrative determination under s.
4 120.56(2) is filed, the period during which a rule must be
5 filed for adoption is extended to 60 days after the
6 administrative law judge files the final order with the clerk
7 or until 60 days after subsequent judicial review is complete.

8 3. At the time a rule is filed, the agency shall
9 certify that the time limitations prescribed by this paragraph
10 have been complied with, that all statutory rulemaking
11 requirements have been met, and that there is no
12 administrative determination pending on the rule.

13 4. At the time a rule is filed, the committee shall
14 certify whether the agency has responded in writing to all
15 material and timely written comments or written inquiries made
16 on behalf of the committee. The department shall reject any
17 rule not filed within the prescribed time limits; that does
18 not comply with ~~satisfy~~ all statutory rulemaking requirements
19 and rules of the department; upon which an agency has not
20 responded in writing to all material and timely written
21 inquiries or written comments; upon which an administrative
22 determination is pending; or which does not include a
23 statement of estimated regulatory costs, if required.

24 5. If a rule has not been adopted within the time
25 limits imposed by this paragraph or has not been adopted in
26 compliance with all statutory rulemaking requirements, the
27 agency proposing the rule shall withdraw the rule and give
28 notice of its action in the next available issue of the
29 Florida Administrative Weekly.

30 6. The proposed rule shall be adopted on being filed
31 with the Department of State and become effective 20 days

1 after being filed, on a later date specified in the rule, or
2 on a date required by statute. Rules not required to be filed
3 with the Department of State shall become effective when
4 adopted by the agency head or on a later date specified by
5 rule or statute. If the committee notifies an agency that an
6 objection to a rule is being considered, the agency may
7 postpone the adoption of the rule to accommodate review of the
8 rule by the committee. When an agency postpones adoption of a
9 rule to accommodate review by the committee, the 90-day period
10 for filing the rule is tolled until the committee notifies the
11 agency that it has completed its review of the rule.

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13 For the purposes of this paragraph, the term "administrative
14 determination" does not include subsequent judicial review.

15 (4) EMERGENCY RULES.--

16 (a) If an agency finds that an immediate danger to the
17 public health, safety, or welfare requires emergency action,
18 the agency may adopt any rule necessitated by the immediate
19 danger. The agency may adopt a rule by any procedure which is
20 fair under the circumstances if:

21 1. The procedure provides at least the procedural
22 protection given by other statutes, the State Constitution, or
23 the United States Constitution.

24 2. The agency takes only that action necessary to
25 protect the public interest under the emergency procedure.

26 3. The agency publishes in writing at the time of, or
27 prior to, its action the specific facts and reasons for
28 finding an immediate danger to the public health, safety, or
29 welfare and its reasons for concluding that the procedure used
30 is fair under the circumstances. In any event, notice of
31 emergency rules, other than those of educational units or

1 units of government with jurisdiction in only one or a part of
2 one county, including the full text of the rules, shall be
3 published in the first available issue of the Florida
4 Administrative Weekly and provided to the committee along with
5 any material incorporated by reference in the rules. The
6 agency's findings of immediate danger, necessity, and
7 procedural fairness shall be judicially reviewable.

8 Section 4. Subsection (2) of section 120.545, Florida
9 Statutes, is amended to read:

10 120.545 Committee review of agency rules.--

11 (2) The committee may request from an agency such
12 information as is reasonably necessary for examination of a
13 rule as required by subsection (1) or for examination of an
14 unadopted agency statement. The committee shall consult with
15 legislative standing committees having with jurisdiction over
16 the subject areas. If the committee objects to an emergency
17 rule or a proposed or existing rule, it shall, within 5 days
18 after ~~of~~ the objection, certify that fact to the agency whose
19 rule has been examined and include with the certification a
20 statement detailing its objections with particularity. The
21 committee shall notify the Speaker of the House of
22 Representatives and the President of the Senate of any
23 objection to an agency rule concurrent with certification of
24 that fact to the agency. Such notice must ~~shall~~ include a
25 copy of the rule and the statement detailing the committee's
26 objections to the rule.

27 Section 5. Paragraph (c) of subsection (1) and
28 subsection (3) of section 120.55, Florida Statutes, are
29 amended to read:

30 120.55 Publication.--

31 (1) The Department of State shall:

1 (c) Prescribe by rule the style, ~~and~~ form and content
2 requirements required for rules, notices, and other materials
3 submitted for filing ~~and establish the form for their~~
4 ~~certification.~~

5 (3) Any publication of a proposed rule promulgated by
6 an agency, whether published in the Florida Administrative
7 Code or elsewhere, shall include, along with the rule, the
8 name of the person or persons originating such rule, the name
9 of the agency head ~~supervisor or person~~ who approved the rule,
10 and the date upon which the rule was approved.

11 Section 6. Effective December 31, 2007, paragraph (d)
12 of subsection (1) and subsections (2) and (5) of section
13 120.55, Florida Statutes, as amended by section 4 of chapter
14 2006-82, Laws of Florida, are amended to read:

15 120.55 Publication.--

16 (1) The Department of State shall:

17 (d) Prescribe by rule the style, ~~and~~ form, and content
18 requirements required for rules, notices, and other materials
19 submitted for filing ~~and establish the form for their~~
20 ~~certification.~~

21 (2) The Florida Administrative Weekly Internet website
22 must allow users to:

23 (a) Search for notices by type, publication date, rule
24 number, word, subject, and agency;

25 (b) Search a database that makes available all notices
26 published on the website for a period of at least 5 years;

27 (c) Subscribe to an automated e-mail notification of
28 selected notices to be sent out prior to or concurrently with
29 weekly publication of the printed and electronic Florida
30 Administrative Weekly. Such notification must include in the
31 text of the e-mail a summary of the content of each notice;

1 (d) View agency forms and other materials that have
2 been submitted to the department in electronic form and that
3 are being incorporated by reference in proposed rules; and

4 (e) Comment on proposed rules.

5 (5) Any publication of a proposed rule promulgated by
6 an agency, whether published in the Florida Administrative
7 Code or elsewhere, shall include, along with the rule, the
8 name of the person or persons originating such rule, the name
9 of the agency head ~~supervisor or person~~ who approved the rule,
10 and the date upon which the rule was approved.

11 Section 7. Effective December 31, 2008, paragraph (a)
12 of subsection (1) of section 120.55, Florida Statutes, as
13 amended by section 4 of chapter 2006-82, Laws of Florida, and
14 by this act, is amended to read:

15 120.55 Publication.--

16 (1) The Department of State shall:

17 (a) 1. Through a continuous revision system, compile
18 and publish electronically the "Florida Administrative Code--"
19 on an Internet website managed by the department. The Florida
20 Administrative Code shall contain all rules adopted by each
21 agency, citing the grant of ~~specific~~ rulemaking authority and
22 the specific law implemented pursuant to which each rule was
23 adopted, all history notes as authorized in s. 120.545(9), ~~and~~
24 complete indexes to all rules contained in the code, and any
25 other material required or authorized by law or deemed useful
26 by the department. The electronic code shall display each rule
27 chapter currently in effect in browse mode and allow full text
28 search of the code and each rule chapter. ~~Supplementation~~
29 ~~shall be made as often as practicable, but at least monthly.~~
30 The department shall publish a printed version of the Florida
31 Administrative Code and may contract with a publishing firm

1 | for such printed the publication, ~~in a timely and useful form,~~
2 | ~~of the Florida Administrative Code~~; however, the department
3 | shall retain responsibility for the code as provided in this
4 | section. Supplementation of the printed code shall be made as
5 | often as practicable, but at least monthly. The printed ~~This~~
6 | publication shall be the official compilation of the
7 | administrative rules of this state. The Department of State
8 | shall retain the copyright over the Florida Administrative
9 | Code.

10 | 2. Rules general in form but applicable to only one
11 | school district, community college district, or county, or a
12 | part thereof, or state university rules relating to internal
13 | personnel or business and finance shall not be published in
14 | the Florida Administrative Code. Exclusion from publication in
15 | the Florida Administrative Code shall not affect the validity
16 | or effectiveness of such rules.

17 | 3. At the beginning of the section of the code dealing
18 | with an agency that files copies of its rules with the
19 | department, the department shall publish the address and
20 | telephone number of the executive offices of each agency, the
21 | manner by which the agency indexes its rules, a listing of all
22 | rules of that agency excluded from publication in the code,
23 | and a statement as to where those rules may be inspected.

24 | 4. Forms shall not be published in the Florida
25 | Administrative Code; but any form which an agency uses in its
26 | dealings with the public, along with any accompanying
27 | instructions, shall be filed with the committee before it is
28 | used. Any form or instruction which meets the definition of
29 | "rule" provided in s. 120.52 shall be incorporated by
30 | reference into the appropriate rule. The reference shall
31 | specifically state that the form is being incorporated by

1 reference and shall include the number, title, and effective
2 date of the form and an explanation of how the form may be
3 obtained. Each form created by an agency which is incorporated
4 by reference in a rule notice of which is given under s.
5 120.54(3)(a) after December 31, 2007, must clearly display the
6 number, title, and effective date of the form and the number
7 of the rule in which the form is incorporated.

8 5. The department shall allow material incorporated by
9 reference to be filed in electronic form as prescribed by
10 department rule. When a rule is filed for adoption with
11 incorporated material in electronic form, the department's
12 publication of the Florida Administrative Code on its Internet
13 website must contain a hyperlink from the incorporating
14 reference in the rule directly to that material. The
15 department may not allow hyperlinks from rules in the Florida
16 Administrative Code to any material other than that filed with
17 and maintained by the department, but it may allow additional
18 hyperlinks to incorporated material maintained by the
19 department from the adopting agency's website or other sites.

20 Section 8. Paragraph (c) of subsection (2) of section
21 120.569, Florida Statutes, is amended to read:

22 120.569 Decisions which affect substantial
23 interests.--

24 (2)

25 (c) Unless otherwise provided by law, a petition or
26 request for hearing shall include those items required by the
27 uniform rules adopted pursuant to s. 120.54(5)(b) ~~s.~~
28 ~~120.54(5)(b)~~4. Upon the receipt of a petition or request for
29 hearing, the agency shall carefully review the petition to
30 determine if it contains all of the required information. A
31 petition shall be dismissed if it is not in substantial

1 | compliance with these requirements or it has been untimely
2 | filed. Dismissal of a petition shall, at least once, be
3 | without prejudice to petitioner's filing a timely amended
4 | petition curing the defect, unless it conclusively appears
5 | from the face of the petition that the defect cannot be cured.
6 | The agency shall promptly give written notice to all parties
7 | of the action taken on the petition, shall state with
8 | particularity its reasons if the petition is not granted, and
9 | shall state the deadline for filing an amended petition if
10 | applicable. This paragraph does not eliminate the availability
11 | of equitable tolling as a defense to the untimely filing of a
12 | petition.

13 | Section 9. Subsection (2) of section 120.74, Florida
14 | Statutes, is amended to read:

15 | 120.74 Agency review, revision, and report.--

16 | (2) Beginning October 1, 1997, and by October 1 of
17 | every ~~other~~ year thereafter, the head of each agency shall
18 | file a report with the President of the Senate, the Speaker of
19 | the House of Representatives, and the committee, with a copy
20 | to each appropriate standing committee of the Legislature,
21 | which certifies that the agency has complied with the
22 | requirements of this section ~~subsection~~. The report must
23 | specify any changes made to its rules as a result of the
24 | review and, when appropriate, recommend statutory changes that
25 | will promote efficiency, reduce paperwork, or decrease costs
26 | to government and the private sector. The report must identify
27 | the types of cases or disputes in which the agency is involved
28 | which should be conducted under the summary hearing process
29 | described in s. 120.574.

30 | Section 10. Except as otherwise expressly provided in
31 | this act, this act shall take effect July 1, 2007.

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SENATE SUMMARY

Provides additional requirements for the use of material that is being incorporated by reference in rules. Requires electronic publication of the Florida Administrative Code and provides for filing of material incorporated by reference in electronic form.