

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: SB 108

INTRODUCER: Senators Grall and Burgess

SUBJECT: Administrative Procedures

DATE: February 10, 2025 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McVaney</u>	<u>GO</u>	Favorable
2.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 108 amends the Administrative Procedures Act (APA), which provides a uniform set of procedures that agencies must follow when exercising rulemaking authority that has been delegated by the Legislature. This bill amends the APA rulemaking process and mandates an agency review of existing rules. The bill, in part:

- Requires each agency, in coordination with the Joint Administrative Procedures Committee, to review its rules for consistency with the powers and duties granted by the agency’s enabling statutes and for any general need for update.
- Provides that agency action to make no change or a technical change to a rule during its rule review process is not subject to a hearing or challenge otherwise provided in ch. 120, F.S.
- Requires agency annual regulatory plans to include an outline of the agency’s proposed five-year schedule of its rule review, with approximately 20 percent of the agency’s total existing rules to be reviewed annually.
- Establishes a 90-day timeframe for an agency to publish a notice of proposed rule from the effective date of legislation that delegates applicable rulemaking authority.
- Requires an agency, for all rules being adopted and reviewed, to electronically publish the full text of any incorporated materials with the notice of proposed rulemaking and necessitates changes to that material to be coded in a strike-through and underlined format.
- Directs an agency to publish emergency rules in the Florida Administrative Register and the Florida Administrative Code, with an agency statement of the specific basis for the rule.
- Permits an agency to withdraw an emergency rule, where it can show that the underlying emergency no longer exists. An agency is also allowed to make a technical change to an emergency rule or to supersede it with different language that will remain in effect for the duration of the initial emergency rule.
- Defines the term “technical change” and directs an agency to publish technical changes in the Florida Administrative Register and document the change in the history of the rule.
- Mandates that a notice of rule development and a notice of proposed rule include the proposed rule number.

- Requires at least seven days to pass between the publication of a notice of rule development and a notice of proposed rule.

The bill may have a negative fiscal impact on state government. The impact, however, is likely indeterminate and not expected to impact agencies until a later date. See Section V. Fiscal Impact Statement.

The bill grants rulemaking authority to the Department of State to implement certain provisions.

The bill will take effect July 1, 2025.

II. Present Situation:

Rulemaking Authority

The Legislature is the sole branch of government with the inherent power to create laws.¹ However, the Legislature may use laws to delegate to executive branch agencies the power to create rules that have the force and effect of law.² Usually, the Legislature delegates rulemaking authority to a given agency because an agency has “expertise in a particular area for which they are charged with oversight.”³ An agency must have both a general and a specific grant of rulemaking authority from the Legislature.⁴ The general grant of rulemaking authority is usually broad, while the specific grant of rulemaking authority provides specific standards and guidelines the agency must implement through rulemaking.⁵ An agency, therefore, cannot create rules at its discretion but instead must limit the rule to the specific empowerments and responsibilities delegated by the Legislature in law.⁶ A rule can be an agency’s interpretation or implementation of a law, and includes forms and applications used to administer a program.⁷

The Florida Administrative Procedures Act (APA)⁸ provides a framework for rulemaking to be followed by agencies.⁹ The APA provides that rulemaking is not a matter of agency discretion; rather, each agency statement that is in effect a “rule” must be adopted by the rulemaking procedure set forth in the APA as soon as feasible and practicable.¹⁰ An agency must notice a majority of these steps in the Florida Administrative Register as the rulemaking progresses, with set times lines to promote the opportunity for public comment.¹¹ At the conclusion of the

¹ Article III, s. 1, FLA. CONST.; *see also* Art. II, s. 3, FLA. CONST.

² Section 120.52(17), F.S. *See also*, *Whiley v. Scott*, 79 So. 3d 702, 710 (Fla. 2011) (“Rulemaking is a derivative of lawmaking.”).

³ *Whiley*, 79 So. 3d 702, 711 (Fla. 2011).

⁴ Sections 120.52(8) and 120.536(1), F.S.

⁵ *Sloban v. Florida Board of Pharmacy*, 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, 794 So. 2d 696, 704 (Fla. 1st DCA 2001).

⁶ Section 120.54(1)(a), F.S.

⁷ Section 120.52(16), F.S.

⁸ Sections 120.51 et seq., F.S.

⁹ *Dep’t. of Transp. v. Blackhawk Quarry Co. of Fla.*, 528 So. 2d 447, 449 (Fla. 4th DCA 1988); 2 FLA. JUR. Administrative law s. 5.

¹⁰ Sections 120.52 and 120.54(1); 2 FLA. JUR. Administrative law s. 5.

¹¹ *Rosenzweig v. Dep’t of Transp.*, 979 So. 2d 1050, 1053 (Fla. 1st DCA 2008) (citing *Fla. Home Builders Ass’n v. Dep’t of Labor*, 412 So.2d 351, 352-53 (Fla. 1982)). The FAR is a publication available online, maintained by the DOS, and subject to continuous revision. See s. 120.55, F.S.

rulemaking process, when a rule is adopted, it is typically published in the Florida Administrative Code (FAC).¹²

Generally, under the APA, rulemaking is a process consisting of a series of nondiscretionary activities within specific timeframes. The rulemaking process includes the following steps:

- First, the Legislature enacts a statute granting an agency the authority to make a rule;
- Second, the agency initiates the formal rulemaking process by publishing a notice of rule development in the Florida Administrative Register, which provides the public an initial opportunity to provide input;
- Third, an agency files a notice of intended agency action, which may take the form of a notice of proposed rule, amendment, or repeal. The agency is encouraged to engage in an analysis of the costs related to rulemaking at this time;
- Fourth, an agency must send supporting materials of the proposed action to the Joint Administrative Procedures Committee (JAPC);
- Fifth, the agency files the rule, amendment, or repeal for adoption with the Department of State (DOS); and
- Sixth, the rule, amendment, or repeal becomes effective and is officially published in the FAC.

As further discussed below, at several times throughout this process, citizens, and state bodies, such as JAPC, and the Executive Office of the Governor, through the Office of Fiscal Accountability and Regulatory Reform, have a right to intervene in the process and provide feedback. Consequently, the rulemaking process at times is more complex.

Florida Administrative Register Publication and Coding

Agencies must electronically submit any notice to be published in the Florida Administrative Register (FAR) through DOS's electronic rulemaking website.¹³ All rule notices submitted for publication in the FAR must be coded in the same manner used in legislative documents to aid understanding of the proposed changes—new language is underlined, and deleted language is stricken through. This coding requirement does not extend to documents incorporated into the rule by reference.

The FAR must include the following: (1) all notices required prior to the adoption, amendment, or repeal of any rule, along with the text of all proposed rules; (2) all notices of public meetings, hearings, and workshops, including a statement of the manner in which a copy of the agenda may be obtained; (3) a notice of each request for authorization to amend or repeal an existing uniform rule or for the adoption of new uniform rules; (4) notice of petitions for declaratory statements or administrative determinations; (5) a summary of each objection to any rule filed by the JAPC; (6) a list of rules filed for adoption in the previous seven days; (7) a list of all rules filed for adoption pending legislative ratification (a rule is withdrawn from this list once it is ratified or

¹² Rules general in form but applicable to only one school district, community college district, or county, or a part thereof, or a state university rules relating to internal personnel or business and finance are not published in the FAC. Forms are not published in the FAC. Section 120.55(1)(a), F.S. Emergency rules are also not published in the FAC. DOS, *Florida Administrative Code & Florida Federal Register*, <https://www.flrules.org/> (last visited on Feb. 3, 2025).

¹³ Fla. Admin. Code R. 1-1.011.

withdrawn); and (8) any other material required or authorized by law or deemed useful by the DOS.¹⁴

Prior to 2012, the FAR was published weekly, resulting in a period of at least 7 days between the agency's publication of a notice of rule development and a notice of intended agency action. In 2012, the Legislature changed the FAR from a weekly publication to a publication that is continuously revised and, as a result, eliminated the 7-day period between the two notices.¹⁵ Now, theoretically, an agency can publish a notice of proposed rule development on Monday and its notice of proposed rule on Tuesday, thereby limiting the public's ability to request a public rule workshop or negotiated rulemaking.

The Florida Administrative Code

The Florida Administrative Code (FAC) is an electronic compilation of all rules adopted by each agency and maintained by the DOS.¹⁶ While the FAR is generally a publication of rulemaking, the FAC is the publication of rules that have completed rulemaking and are now effective—which constitute administrative law. Each rule entry in the FAC must provide the rule's text, cite the grant of rulemaking authority and the specific law implemented, as well as a history note detailing the initial promulgation of the rule and any subsequent changes.¹⁷ Rules applicable to only one school district, community college district, or county or state university rules relating to internal personnel or business and finance are not required to be included in the FAC.¹⁸

The DOS is required to publish the following information at the beginning of each section of the code concerning an agency:

- The address and telephone number of the executive offices of the agency;
- The manner by which the agency indexes its rules; and
- A listing of all rules of that agency excluded from publication in the FAC with a statement as to where those rules may be inspected.¹⁹

Joint Administrative Procedures Committee

Joint Administrative Procedures Committee (JAPC) is a standing committee of the Legislature established by joint rule and created to maintain a continuous review of administrative rules, the statutory authority upon which those rules are based, and the administrative rulemaking process.²⁰ The JAPC *may* examine existing rules, but *must* examine each proposed rule to determine whether:

- The rule is a valid exercise of delegated legislative authority;
- The statutory authority for the rule has been repealed;
- The rule reiterates or paraphrases statutory material;
- The rule is in proper form;
- The notice given prior to adoption was sufficient;

¹⁴ See ss. 120.525, 120.54, and 120.55, F.S.

¹⁵ Chapter 2012-63, Laws of Fla.

¹⁶ Section 120.55(1)(a)1., F.S. See also, Fla. Admin Code. R. 1-1.011(1)(b).

¹⁷ *Id.*

¹⁸ Section 120.55(1)(a)2., F.S.

¹⁹ Section 120.55(1)(a)3., F.S.

²⁰ 2 Fla. Leg. J. Rule 4.6; *see also* s. 120.545, F.S.

- The rule is consistent with expressed legislative intent;
- The rule is necessary to accomplish the apparent or expressed objectives of the specific provision of law that the rule implements;
- 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;
- The rule could be made less complex or more easily comprehensible to the general public;
- The rule’s statement of estimated regulatory costs (discussed below) complies with the requirements of the APA and whether the rule does not impose regulatory costs on the regulated person, county, or municipality that could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives; or
- The rule will require additional appropriations.²¹

If, during its review, the JAPC has concerns that a proposed or existing rule may not be authorized or exceeds the delegated rulemaking authority, it contacts the agency. Often the agency agrees that there is no authority for the rule and withdraws or amends the rule to meet the staff concerns.²² If there is disagreement, the rule is scheduled for consideration by the full committee. The agency may appear before the JAPC and present argument and evidence in support of its rule. If, after hearing the agency’s argument, the JAPC does not find statutory authority for the rule, it votes on an objection and the agency must respond.²³ If the agency refuses to modify or withdraw a rule to which the JAPC has objected, public notice of the objection is given, and a notation accompanies the rule when it is published in the FAC. The JAPC may also seek judicial review to establish the invalidity of a rule or proposed rule but has not exercised this authority to date.²⁴

The JAPC reviewed a total of 1,074 rules in 2023—the lowest reviewed in the prior 10 years (with the highest number of 2,851 rule reviews in 2015).²⁵

Rulemaking Process

The Administrative Procedure Act (APA)²⁶ provides uniform procedures that agencies must follow when they engage in rulemaking. An agency may initiate rulemaking either as the result of a legislative mandate in statute, public request,²⁷ or its own agency initiative—presuming sufficient rulemaking authority exists in statute.

²¹ Section 120.545(1), F.S.

²² JAPC, *2023 Annual Report* at 1 (Jan. 11, 2024), <https://www.japc.state.fl.us/Documents/Publications/2023AnnualReport.pdf> (last visited Jan. 30, 2025).

²³ Section 120.545(3)-(7), F.S.

²⁴ JAPC, *2023 Annual Report* at 2 (Jan. 11, 2024), <https://www.japc.state.fl.us/Documents/Publications/2023AnnualReport.pdf> (last visited Jan. 30, 2025).

²⁵ *Id.* at 6-8.

²⁶ Chapter 120, F.S.

²⁷ Section 120.54(7)(a), F.S.

Notice of Rule Development

An agency begins the formal rulemaking process²⁸ by filing a notice of rule development in the FAR, which must indicate the subject area to be addressed by the rule development and provide a short, plain explanation of the rule's purpose and effect.²⁹ Such notice is required for all rulemaking (including creation of a new rule and amendment of an existing rule) except for rule repeals. A notice of rule development may, but is not required to, include the preliminary text of the proposed rule or amendment.³⁰

The notice of rule development gives notice to the public, which provides an initial opportunity to participate in the rulemaking process through either a request for a public rule development workshop,³¹ negotiated rulemaking,³² or simply communication of one's position to the agency.³³

Additionally, unless the agency is statutorily required to adopt the rule, it may abandon the rulemaking process at this point.³⁴

Notice of Intended Agency Action

Next, an agency must file a notice of intended agency action, which may be a notice of proposed rule, a notice of proposed amendment to an existing rule, or a notice of rule repeal. The notice must contain the full text and a summary of the proposed rule or amendment, as well as a reference to the grant of rulemaking authority and the specific statute or law the agency is implementing or interpreting.³⁵ The agency must also include a summary of its statement of estimated regulatory costs (SERC), if it prepared one. The notice must be published in the FAR at least 28 days before the agency may execute its intended action.³⁶

Public Input After the Notice of Intended Agency Action

The notice of intended agency action must also provide information detailing how a member of the public can:

- Request that the agency hold a public hearing on the proposed rule. The requesting party must be affected by the proposed rule and must request the hearing within 21 days of the publication of the notice of proposed rule (or other intended agency action);³⁷
- Provide input regarding the agency's SERC;³⁸

²⁸ Alternatively, a person regulated by an agency or having substantial interest in an agency rule may petition the agency to adopt, amend, or repeal a rule. Section 120.54(7), F.S.

²⁹ Section 120.54(2), F.S.

³⁰ Section 120.54(2), F.S., requires the agency to "include the preliminary text of the proposed rules, if available..."

³¹ Section 120.54(2)(c), F.S., requires an agency to hold a public workshop for the purposes of rule development, if requested in writing by an affected person, unless the agency head explains in writing why a workshop is unnecessary.

³² Section 120.54(2)(d), F.S.

³³ Jowanna Oates, The Florida Bar, *Escaping the Labyrinth: A Practical Guide to Rulemaking*, 29 FLA. BAR J. 61, available at <https://www.floridabar.org/the-florida-bar-journal/escaping-the-labyrinth-a-practical-guide-to-rulemaking/> (last visited Feb. 3, 2025).

³⁴ Section 120.54(3)(d)2., F.S.

³⁵ Section 120.54(3)(a), F.S.

³⁶ Section 120.54(3)(a)2., F.S.

³⁷ Section 120.54(3)(c), F.S. The agency cannot file the rule for adoption with the DOS until at least 14 days after the final public hearing has occurred.

³⁸ See "Statement of Estimated Regulatory Cost" section above.

- Submit a lower cost regulatory alternative (LCRA) pursuant to s. 120.541(1)(a), F.S.; or
- Petition for an administrative hearing held by an administrative law judge at the Division of Administrative Hearings (DOAH) on whether the proposed agency action is a proper exercise of authority or is otherwise invalid.³⁹

Generally, a member of the public has 21 days from the agency’s publication of a notice of intended agency action to request or take one of the above actions. To allow time for public input, the time before an agency may file the rule for final adoption (discussed below) is extended by 14-60 days upon the occurrence of one of the above actions.⁴⁰

Statements of Estimated Regulatory Costs (SERC) and Lower Cost Regulatory Alternatives

A SERC is an agency’s estimation of the impact of a rule on the public, focusing on the implementation and compliance costs.⁴¹ An agency is encouraged to prepare a SERC before adopting, amending, or repealing any rule⁴² but is not required to do so unless the proposed action will have a negative impact on small businesses or increase regulatory costs by more than \$200,000 in the aggregate within 1 year.⁴³ If the SERC determines that the rule will exceed the \$200,000 impact threshold, then the rule must be referred for Legislative ratification after its adoption; the rule does not take full effect until ratified by the Legislature.⁴⁴

If the agency created a SERC, it must provide a hyperlink to it in the applicable notice of intended agency action. If the agency revises a rule before its adoption and the revision increases the rule’s regulatory costs, then the agency must revise the SERC appropriately.⁴⁵

A person who is substantially affected by a proposed rule may submit a lower cost regulatory alternative (LCRA) within 21 days of the publication of a notice of intended agency action to adopt, amend, or repeal the relevant rule. A LCRA may recommend that the rule not be adopted at all, if it explains how the lower costs and objectives of the law will be achieved. The submission of an LCRA extends the period for filing a rule by an additional 21 days.⁴⁶

If an agency receives an LCRA, it must prepare a SERC if it has not done so already or revise its prior SERC to reflect the LCRA’s input. The agency must either adopt the LCRA or explain its reasons for rejecting it.⁴⁷ In order to provide adequate time for review, the agency must provide its new or revised SERC to the individual who submitted the LCRA and to the JAPC.⁴⁸ The

³⁹ Section 120.56(2)(a), F.S.

⁴⁰ Section 120.54(3)(e)2., F.S.

⁴¹ Section 120.541(2), F.S.

⁴² Section 120.54(3)(b)1., F.S.

⁴³ *Id* and s. 120.541(2)(a), F.S.

⁴⁴ See s. 120.541(3), F.S., for exceptions for the adoption of specific federal standards and updates to the Florida Building and Fire Prevention Codes. *Fernandez v. Dep’t. of Health, Bd. of Medicine*, 223 So. 3d 1055, 1057-8 (Fla. 1st DCA 2017).

⁴⁵ Section 120.541(1)(c), F.S.

⁴⁶ Section 120.541(1)(a), F.S.

⁴⁷ Section 120.541(1)(d), F.S.

⁴⁸ The Joint Administrative Procedures Committee (JPAC) “examines existing and proposed rules made by agencies in accordance with [the Administrative Procedures Act].” *Comm’n on Ethics v. Sullivan*, 489 So. 2d 10, 14 (Fla. 1986); see s. 120.545, F.S. (referring to “the committee” which section 120.52, F.S., defines as the Administrative Procedures Committee).

agency must also post a notice of the SERC's availability on the agency website at least 21 days before it files the rule for adoption.⁴⁹

Agencies must also separately consider the impact of a proposed rule, amendment, or rule repeal on small businesses, small counties, and small cities, and consider alterations to the rule to lessen any impact to these entities. If an agency determines that a proposed agency action will affect small businesses, then it must forward the notice to the rules ombudsman, an appointee of the Governor.⁵⁰ The rules ombudsman makes recommendations on any existing or proposed rules to alleviate unnecessary or disproportionate adverse effects to business.⁵¹ Each agency must adopt recommendations made by the rules ombudsman to minimize impacts on small businesses, unless the adopting agency finds the recommendation unfeasible or inconsistent with the proposed rule's objectives.⁵²

Notice of Supporting Materials Submitted to JAPC

At least 21 days before the date of adoption of a proposed rule, amendment, or repeal, the agency must send a packet of supporting materials to the JAPC that includes a:⁵³

- Copy of each rule or amendment it proposes to adopt or repeal;
- Copy of any material incorporated by reference therein;
- Detailed written statement of the facts and circumstances which justify the proposed rule amendment, or repeal;
- Copy of any SERC the agency prepared in relation to the proposed rule, amendment, or repeal;
- Statement of how the proposed rule, amendment, or repeal relates to federal standards or rules; and
- Copy of the Notice of Intended Agency Action.

At this time, the JAPC generally begins its review of a proposed rule pursuant to s. 120.545, F.S. (see "Joint Administrative Procedures Committee" section, *infra*).

Materials Incorporated by Reference

The APA allows an agency to incorporate material external to the text of the rule by reference.⁵⁴ The material to be incorporated must exist on the date the rule is adopted.⁵⁵ An agency may not incorporate material by reference in a rule unless:

- The material has been submitted in the prescribed electronic format to the DOS and the full text of the material can be made available for free public access through an electronic hyperlink from the rule making the reference in the FAC; or
- The agency has determined that posting the material publicly on the Internet would constitute a violation of federal copyright law, in which case a statement stating such, along with the

⁴⁹ *Id.*

⁵⁰ Sections 120.54(3)(b)2. and 288.7015, F.S.

⁵¹ Section 288.7015(3), F.S. *See also*, E.O. 11-01 (establishing the Office of Fiscal Accountability and Regulatory Reform (OFARR)) (renewed by E.O. 11-72 and 11-211).

⁵² Section 120.54(3)(b)2.b.(II), F.S.

⁵³ Section 120.54(3)(a)4., F.S.

⁵⁴ Section 120.54(1)(i), F.S.; *see also*, Fla. Admin. Code R. 1-1.013.

⁵⁵ Section 120.54(1)(i)1., F.S.

address of locations at the DOS and the agency at which the material is available for public inspection and examination, must be included in the notice.⁵⁶

If an agency wishes to alter the material incorporated by reference after the rule is effective, the rule itself must be amended.⁵⁷ However, an agency rule that incorporates another rule by reference automatically incorporates subsequent amendments to the referenced rule.⁵⁸

Notice of Change Submitted to JAPC

If an agency substantively changes the proposed rule or amendment after its initial notice of intended agency action, it must file a notice of change with the JAPC at least 21 days before it files the rule for adoption; this deadline may coincide with the submission deadline of required notice of supporting materials. An agency may substantially change a proposed rule or amendment in response to a public hearing or materials timely submitted to the agency. The notice of change must also be mailed to interested parties and published in the FAR.⁵⁹ The agency must also amend any SERC to reflect the proposed rule's substantive changes.

An agency cannot file the rule for adoption (discussed below) until at least 21 days after this notice of change is filed; however, the period allowed for filing the rule for adoption is extended by 45 days (from a range of 28-90 days to 73-135 days) upon timely filing of a notice of change.

If the agency makes no changes, or only technical changes, to the proposed rule, amendment, or repeal, then it must file a notice of no change with the JAPC at least 7 days before it files the matter for adoption.⁶⁰

Filing for Adoption of the Proposed Agency Action

Generally, an agency must file a rule or amendment for adoption between 28 and 90 days after its notice of intended agency action is published in the FAR; this time can be extended and tolled to accommodate public hearings, SERC revisions, formal hearings at the DOAH, and other rulemaking processes provided for by the APA.⁶¹ Once an agency has completed the rulemaking steps within the appropriate timeframe, the agency may file the rule for adoption with the DOS.⁶² This triggers JAPC's duty to certify the agency's compliance with its inquiries made pursuant to s. 120.545, F.S., if any.

At the time the agency files the rule for adoption, the JAPC must certify to the DOS whether the agency responded to all material and timely written comments or inquiries made on behalf of JAPC (these inquiries are outlined in additional detail above in the "Joint Administrative Procedures" section). If the JAPC notifies the agency that it is considering making an objection to the adopted rule or amendment based on its inquiry, the agency may withdraw or modify the rule by publication in the FAR and notice to interested parties. The agency's rule withdrawal

⁵⁶ Section 120.54(1)(i)3., F.S.

⁵⁷ *Id.*

⁵⁸ Section 120.54(1)(i)2., F.S.

⁵⁹ Section 120.54(3)(d)1., F.S.

⁶⁰ *Id.*

⁶¹ 120.54(3)(e)2., F.S.

⁶² 120.54(3)(e), F.S.

must occur before the rule or amendment becomes effective.⁶³ An agency may re-start rulemaking on the same subject after it has withdrawn a rule and is not required to re-publish a notice of proposed rulemaking in order to do so. However, if the agency's rulemaking is performed pursuant to a legislative delegation, it must continue the rulemaking process until a rule becomes effective.

The DOS may approve an agency rule for adoption if it finds that the agency:

- Filed the rule for adoption within the applicable timeframes;
- Complied with all rulemaking requirements;
- Timely responded to all material and timely written inquiries or comments; and
- Is not engaged in pending administrative determination on the rule in question.⁶⁴

The rule becomes effective 20 days after such filing for adoption, unless a different date is indicated in the rule.⁶⁵

Agency Review of Rules – Annual Regulatory Review

The APA requires each agency to formally review its rules and prepare an agency regulatory plan annually.⁶⁶ A regulatory plan includes a list of each law enacted during the previous 12 months that creates or modifies the duties or authority of the agency, and a statement whether the agency must adopt rules to implement the newly adopted laws.⁶⁷ The regulatory plan must also include a list of each additional law not otherwise listed that the agency expects to implement by rulemaking before the following July 1. The agency head or presiding officer and the principal legal advisor to the agency, must certify that they reviewed the regulatory plan and verify that the agency regularly reviews all of its rules and identify the period during which the rules have most recently been reviewed to determine their continued authority and consistent with implementing laws.⁶⁸

By October 1 of each year, the regulatory plan must be published on the agency's website or on another state website. The agency must also deliver a copy of its certification to the JAPC and publish a notice in the FAR identifying the date of publication of the agency's regulatory plan.⁶⁹

If a newly-enacted law requires implementation by rule, s. 120.54(1)(b), F.S., requires the agency charged with rulemaking to publish a notice of rule development by November 1 after enactment for each law. The notice of intended agency action (usually a notice of proposed rule in this circumstance) must be published by April 1 of the year following the regulatory plan. However, agencies are allowed to file extensions to any rulemaking plans or amended notices

⁶³ Section 120.54(3)(d)3., F.S. An agency may also withdraw or modify a rule after it has become effective if a final order that is not subject to appeal is entered in a pertinent rule challenge or withdraw but not modify the rule when the Legislature did not timely ratify the rule.

⁶⁴ Section 120.54(3)(e)4., F.S.

⁶⁵ Section 120.54(3)(e)6., F.S.

⁶⁶ See s. 120.74, F.S.

⁶⁷ Section 120.74(1), F.S.

⁶⁸ Section 120.74(1)(d), F.S.

⁶⁹ Section 120.74(2), F.S.

under this provision. Thus, this provision does not necessarily ensure that agencies adopt rules mandated by the Legislature in a timely manner.

Emergency Rules

An agency is authorized to respond to immediate dangers to the public health, safety, or welfare by adopting emergency rules.⁷⁰ An emergency rule is not adopted using the same procedures required of other rules.⁷¹ The notice of the emergency rule and the text of the rule is published in the first available issue of the FAR. There is no requirement, however, that an emergency rule be published in the FAC (because emergency rules are temporary in nature).⁷² The agency must publish prior to, or contemporaneously with, the rule's promulgation the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare.⁷³ An emergency rule takes effect immediately, or on a date less than 20 days after filing if specified in the rule.⁷⁴ An emergency rule is only effective for a period of no longer than 90 days.⁷⁵ An emergency rule is not renewable, except when the agency has initiated rulemaking to adopt rules relating to the subject of the emergency rule and a challenge to the proposed rules has been filed and remains pending or the proposed rule is awaiting ratification by the Legislature.⁷⁶ These exceptions allow for continuity of a needed rule where the agency has demonstrated its intent to maintain the policy (via initiation of rulemaking), but the permanent implementation of the rule is delayed for an unknown period of time. In at least one instance, however, an agency has renewed an emergency rule 12 times while its proposed permanent rule successor awaits Legislative ratification.⁷⁷ The validity of an emergency rule may be challenged at DOAH subject to an expedited filing and hearing schedule.⁷⁸

The Office of Legislative Services

The Office of Legislative Services (OLS) oversees the statutory revision plan, which involves recommending the deletion of all laws which have expired, become obsolete, and/or had their effect or served their purpose.⁷⁹ Similarly, the OLS is authorized to include duplicative, redundant, or unused statutory rulemaking authority among its recommended repeals in revisers bill recommendations.⁸⁰ The OLS is also authorized to:

- Award contracts or pay for editorial work, printing, and other things authorized for the statutory revision program;⁸¹ and

⁷⁰ Section 120.54(4), F.S.

⁷¹ Section 120.54(4)(a)1., F.S.

⁷² Section 120.54(4)(a)3, F.S.

⁷³ *Id.*

⁷⁴ Section 120.54(4)(d), F.S.

⁷⁵ Section 120.54(4)(c), F.S.

⁷⁶ *Id.*

⁷⁷ *See* Emergency Rule 65CER22-1, history available at <https://flrules.org/gateway/ruleNo.asp?id=65CER22-1> (last visited Feb. 8, 2025). *See also*, proposed rule 65C-9.004 (not yet adopted), rulemaking history available at <https://flrules.org/gateway/ruleno.asp?id=65C-9.004> (last visited Feb. 8, 2025).

⁷⁸ *Id.*

⁷⁹ Section 11.241(1)(i), F.S.

⁸⁰ Section 11.241(5)(j), F.S.

⁸¹ Section 11.241(6), F.S.

- Exchange Florida Statutes, and other available publications, with the officers, boards, and agencies of other states and of the United States, and with other governments;⁸² and exercise all other powers, duties, and functions necessary or convenient for properly carrying out the provisions of law relating to statutory revision.⁸³

III. Effect of Proposed Changes:

Technical Changes

Section 1 amends s. 120.52, F.S., to define a “technical change” as a change “limited to correcting grammatical, typographical, or similar errors not affecting the substance of the rule.”

Section 2, in part, creates s. 120.54(3)(a)5., F.S., to require an agency to publish a notice of correction in the FAR to detail a technical change made to a notice of intended agency action (rule adoption, amendment, or repeal). Examples of such a change include a technical change to the proposed rule language, an updated e-mail address for the agency employee contact, or a technical change to a SERC. A notice of correction in this instance would not affect the timeframes for filing a rule for adoption.

Section 5 in part, creates s. 120.55(1)(a)6., F.S., to require the DOS to include the date of any technical changes in the history note of the rule in the FAC, and clarifies that a technical change does not affect the effective date of the rule. Additionally, a technical change made after the adoption of a rule must be published as a notice of correction.

Timeline for Publishing a Notice of Proposed Rule

Section 2 amends s. 120.54, F.S., relating to rulemaking procedures, to include clarifying language and to narrow the time an agency has to publish a notice of proposed rule to 90 days after the effective date of the act granting rulemaking authority.⁸⁴ Previously, an agency was required to publish a notice of proposed rule by “April 1 of the year following the deadline for the regulatory plan.”⁸⁵ Assuming a bill’s effective date of July 1, the former deadline to publish a notice of proposed rule was approximately 270 days (9 months) after the delegating law took effect.

Section 6 deletes language from s. 120.74, F.S., which tied agency rulemaking timeframes to the agency regulatory plan, requiring that an agency publish a notice of rule development by November 1 and a notice of proposed rule by April 1 of the year following the deadline for the regulatory plan. The provisions also allowed for an extension for rulemaking upon agency publication of a notice of extension in the FAR.

⁸² Section 11.241(7), F.S.

⁸³ Section 11.241(8), F.S.

⁸⁴ Prior to 2015, section 120.54, F.S., directed agencies to notice proposed rules within 180 days after the effective date of an act requiring mandatory rulemaking. This provision was removed with the enactment of the annual regulatory provision - s. 120.74, F.S. Adding the 180-day rulemaking requirement will likely give the JAPC greater oversight authority.

⁸⁵ Section 120.74(5), F.S.

Public Notices

Section 2 amends s. 120.54(3), F.S., to expand the information required in notices of intended agency action to include the proposed rule number and the name, e-mail address, and telephone number of the agency employee who can be contacted with questions regarding the intended action.

Additionally, the bill re-instates the requirement that an agency publish its notice of proposed rulemaking for at least 7 days before it can publish a notice of intended agency action.

The bill allows the agency to electronically deliver notices of intended agency action to all persons who are named in the proposed rule and to those who requested a notice of proceedings at least 14 days before the agency's delivery.

The bill expands the function of a notice of change to include it as a tool for public notice of technical changes made to a Notice of Intended Agency Action (both to the notice itself, and to proposed rule text). Previously, a notice of change was used to notify the public of a change to a proposed rule that occurred after the final hearing on the proposed rule or after time for such a hearing had expired.

Material Incorporated by Reference in Rules

Section 2 amends s. 120.54(1) and (3), F.S., to require all rules proposed after July 1, 2025, and adopted or reviewed to have the full text of any incorporated materials published electronically within the notice of proposed rulemaking (if available) and the notice of intended agency action. The material incorporated by reference must also be available via hyperlink in the FAC after the rule is adopted. If such posting would violate federal copyright law, then the agency must make a statement to that effect and provide the address of the location at DOS and the agency where the material available for public inspection and examination.

Additionally, an agency update to material incorporated by reference into a rule, must be coded by underlining new text and striking through deleted text to reflect the changes.

Section 5 amends the DOS's rulemaking authority to allow it to prescribe rules requiring an agency to provide in its rulemaking notices a coded copy of any documents it creates and proposes to incorporate by reference.

Legislative Ratification

Section 2 amends s. 120.54(3)(d)3.c., F.S., to limit the time for ratification of a rule by the Legislature to one regular legislative session after the agency submits the rule for ratification. If the Legislature does not ratify the rule during the regular session immediately following the filing for adoption, the agency must withdraw the rule and re-start the rulemaking process within 90 days of adjournment sine die (assuming the continued existence the underlying delegation of legislative authority that requires rulemaking).

Section 3 amends s. 120.541(3), F.S., to require an agency to notify the JAPC within 3 business days of its submission of a rule to the Legislature for ratification.

Emergency Rules

Section 2 amends s. 120.54(4), F.S., to make several changes regarding the creation and duration of emergency rules. The bill clarifies that an agency may adopt an emergency rule both where it finds an immediate danger to the public health, safety, or welfare which requires emergency action, or *where the Legislature authorizes* the agency to adopt emergency rules based on its own finding of an immediate danger. While agencies have historically adopted administrative rules pursuant to both authorities, the bill formalizes the agency action's authority to do so.

The bill requires a notice of emergency rule to include the agency's grant of emergency rulemaking authority or finding of immediate danger, necessity, and procedural fairness. By incorporating this information into the notice of emergency rule, it must, be published in the FAR and included in the publication of the final emergency rule to be published in the FAC.

Agencies are not currently allowed to edit an emergency rule after its publication. The bill would allow an agency to:

- Make a technical change to the emergency rule within the first 7 days after it is adopted, assuming the change is published in the FAR as a notice of correction;
- Supersede the emergency rule currently in effect with a new version of the rule—which may only have effect for the remaining duration of the initial emergency rule. The agency's adoption of a superseding rule must be achieved through the same processes as initial adoption of an emergency rule; and
- Repeal an emergency rule before its expiration by providing a notice in the FAR with a short, plain explanation as to why the conditions of immediate danger specified in the adoption notice no longer require the emergency rule.

This section further provides for the renewal of an emergency rule. The notice of the renewal must be published in the FAR before the expiration of the existing emergency rule and must state the specific facts and reasons for the renewal. For emergency rules intended to replace existing rules with an effective period greater than 90 days, a note must be added to the history note of the existing rule which specifically identifies the emergency rule that is intended to supersede the existing rule and includes the date that the emergency rule was filed with the DOS.

JAPC Notifications

Sections 2-3 amend ss. 120.54(3)(b), 120.54(7), and 120.541(1)(a), F.S., respectively, to require the agency to provide the JAPC a copy of the following within 7 days of the agency's receipt thereof or response to:

- A LCRA received during the rulemaking proceeding;
- A petition to adopt, amend, or repeal a rule, or provide minimum public information required by ch. 120, F.S. (the agency must also notify the committee of its intended action or response to such requests within 7 days); and
- A regulatory alternative provided by the rules ombudsman.

Section 3 further provides that that an LCRA submitted after an agency's change to a proposed rule is deemed to be made "in good faith" if it states the person's reasons for believing the proposed rule as changed increases the regulatory costs or creates an adverse impact on small business that the previous proposed rule did not.

Section 2 requires an agency to provide notice to the JAPC of any regulatory alternative offered to the agency by the rules ombudsman of the Executive Office of the Governor before filing the rule for adoption.

Rule Review

Sections 4 and 6 create a rule review process that each agency, in coordination with the JAPC, must undertake between July 1, 2025, and July 1, 2030. The goal of the review is to ensure appropriate statutory authority; review the rule's exercise of delegated legislative authority; bring all rules under the same requirements (to have, for example, all materials incorporated by reference electronically-available); and allow for general clean-up of text that may not have been reviewed recently.

Beginning October 1, 2025, each agency must create a list of its existing rules and include the list in its annual agency regulatory plan. The agency regulatory plan must further detail an annual schedule of the rules the agency will review each year—totally approximately 20% of the total existing rules annually.

The agency must take one of four actions as part of its rule review: (1) make no change to the rule; (2) make a technical change to the rule; (3) substantively amend the rule; or (4) repeal the rule. By January 1 of each year of the review, the agency must submit a report to the President of the Senate and Speaker of the House of Representatives to indicate which of the above actions the agency plans to take on each rule subject to review during that fiscal year. The agency must have completed (for instances where it makes no change, or a technical change) or commenced the action (for instances where it will substantively amend or repeal the rule) by April 1.

Those rules to which the agency makes no change, or only a technical change, during its rule review are not subject to challenge or hearing otherwise provided for in the APA. If the agency chooses to make a substantive amendment or to repeal a reviewed rule, however, it must use the procedures otherwise outlined in the APA to do so. Further, the amendment or repeal is subject to challenge or hearing as otherwise prescribed in the APA.

The agency must support its actions in the rule review with a written statement of its intended action, its assessment of specific factors outlined in statute, a coded version of the recommended changes (if applicable), and a statement of the facts and circumstances justifying any recommended change. The agency must submit these documents to the JAPC, which will then examine the submissions and make additional inquiries, if needed. If the agency recommends no change or a technical change, the JAPC must complete this examination within 90 days of its receipt of the agency's submissions and ultimately certify whether the agency responded appropriately to its inquiries.

The agency may alter its rule review schedule in its next annual regulatory plan. If the agency fails to timely conclude a rule review in accordance with its schedule, it must identify the ongoing rule review and either list the rule in its next agency regulatory plan and notify the JAPC of such action or explain why the rule review is no longer necessary. Additionally, **section 5** amends s. 120.55(1)(b), F.S., to require the DOS to publish a list of all rules that were not timely reviewed by their agency in the FAR and update the list at least annually.

After the agency has completed its rule review process and received a certification from the JAPC, it may electronically file a certified copy of the reviewed rule (to which no change, or technical changes were made) with the DOS. The agency completes its rule review for rules that are substantively amended or repealed when it has filed a notice of proposed rule pursuant to s. 120.54, F.S.

The DOS must document the rule review by notice in the FAR and update the rule's history note in the FAC to reflect the rule review's date of completion.

The bill grants the DOS authority to adopt rules to implement the rule review process by no later than December 31, 2025.

Section 120.5435, F.S., created by section 4, is scheduled to repeal on July 1, 2032, unless reviewed and saved from repeal through reenactment by the Legislature.

DOS Publication of the FAR and the FAC

Section 2 amends s. 120.54(3)(e), F.S., to reduce paperwork requirements by requiring an agency to file with the DOS one electronic, rather than three paper, certified copies of a proposed rule and one certified copy of any material incorporated by reference in the rule.

Section 5 amends s. 120.55, F.S., which provides FAC publication requirements for the DOS. This section incorporates changes to notices required during rulemaking made elsewhere in the bill. Additionally, this section requires each agency to publish at the beginning of the section of code that deals with its subject matter a list of all forms and materials incorporated by reference into its rules.

Effective Date

Section 7 provides that the bill takes effect July 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None identified.

C. Trust Funds Restrictions:

None identified.

D. State Tax or Fee Increases:

None identified.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None identified.

B. Private Sector Impact:

The bill provides additional public notice in rulemaking. This should make it easier for the public to engage in rulemaking.

C. Government Sector Impact:

The bill may have an indeterminate, negative fiscal impact on state government. The JAPC and agencies will be required to perform additional work relating to the rule review over the next 5 years. Additionally, there are new notice and publication requirements within the rulemaking process that may create additional workload. Agencies and the JAPC will likely be required to spend funds to implement the bill's requirements. Whether these requirements may be absorbed within each agency's existing resources is not known.

However, agencies should have sufficient time to request additional funding or personnel should they determine a need for additional resources.

The DOS may have additional costs associated with rulemaking.

VI. Technical Deficiencies:

None identified.

VII. Related Issues:

None identified.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 120.52, 120.54, 120.541, 120.55, and 120.74. The bill additionally creates section 120.5435 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
