

1 A bill to be entitled
2 An act relating to administrative procedure; amending
3 s. 120.52, F.S.; specifying that issuance of a
4 guidance document or other statement interpreting a
5 statute without express statutory delegation to issue
6 such guidance is an invalid exercise of delegated
7 legislative authority; s. 120.536, F.S.; providing
8 that an agency may not adopt a rule or issue a
9 guidance document without statutory delegation;
10 reenacting and amending s. 120.541, F.S.; requiring a
11 statement of estimated regulatory costs for proposed
12 rules, notices of change, or final rules; providing
13 requirements for such estimates; requiring the agency
14 to conduct a retrospective cost-benefits analysis for
15 each adopted rule after a specified period; providing
16 requirements for such analysis; requiring review of
17 prior cost benefit analyses as part of a specified
18 review; requiring agencies to use the findings of such
19 a review for specified purposes; requiring publication
20 of materials used to produce estimates of regulatory
21 costs in a specified manner; providing additional
22 requirements for cost-benefit analyses; amending s.
23 120.545, F.S.; revising requirements for review of
24 rules by the Administrative Procedures Committee;
25 amending s. 120.55, F.S.; requiring additional

26 information to be published in the Florida
27 Administrative Code; providing for expiration of rules
28 after a specified period unless readopted; providing
29 requirements for the readoption process; requiring the
30 Administrative Procedures Committee to set expiration
31 dates for existing rules; providing exceptions to rule
32 expiration; requiring review of such exempt rules;
33 providing for a limited extension of expiration in
34 certain circumstances; amending s. 120.555, F.S.;
35 requiring that specified information be published
36 concerning expired rules; amending s. 120.56, F.S.;
37 specifying that guidance documents are subject to
38 specified provisions; providing that a party subject
39 to an enforcement action may challenge the action on
40 the basis that the agency lacked statutory authority
41 for the rule or guidance document; providing for award
42 of costs and attorney fees; providing for challenges
43 to rules for failure to comply with specified
44 provisions; conforming a provision to changes made by
45 the act; providing an effective date.

46
47 Be It Enacted by the Legislature of the State of Florida:

48
49 **Section 1. Paragraphs (e) and (f) of subsection (8) of**
50 **section 120.52, Florida Statutes, are amended, and paragraph (g)**

51 **is added to that subsection, to read:**

52 120.52 Definitions.—As used in this act:

53 (8) "Invalid exercise of delegated legislative authority"
54 means action that goes beyond the powers, functions, and duties
55 delegated by the Legislature. A proposed or existing rule is an
56 invalid exercise of delegated legislative authority if any one
57 of the following applies:

58 (e) The rule is arbitrary or capricious. A rule is
59 arbitrary if it is not supported by logic or the necessary
60 facts; a rule is capricious if it is adopted without thought or
61 reason or is irrational; ~~or~~

62 (f) The rule imposes regulatory costs on the regulated
63 person, county, or city which could be reduced by the adoption
64 of less costly alternatives that substantially accomplish the
65 statutory objectives; or

66 (g) The agency has issued a guidance document or other
67 statement interpreting a statute without express statutory
68 delegation to issue such guidance.

69
70 A grant of rulemaking authority is necessary but not sufficient
71 to allow an agency to adopt a rule; a specific law to be
72 implemented is also required. An agency may adopt only rules
73 that implement or interpret the specific powers and duties
74 granted by the enabling statute. No agency shall have authority
75 to adopt a rule only because it is reasonably related to the

76 | purpose of the enabling legislation and is not arbitrary and
77 | capricious or is within the agency's class of powers and duties,
78 | nor shall an agency have the authority to implement statutory
79 | provisions setting forth general legislative intent or policy.
80 | Statutory language granting rulemaking authority or generally
81 | describing the powers and functions of an agency shall be
82 | construed to extend no further than implementing or interpreting
83 | the specific powers and duties conferred by the enabling
84 | statute.

85 | **Section 2. Subsection (1) of section 120.536, Florida**
86 | **Statutes, is amended to read:**

87 | 120.536 Rulemaking authority; repeal; challenge.—

88 | (1) A grant of rulemaking authority is necessary but not
89 | sufficient to allow an agency to adopt a rule; a specific law to
90 | be implemented is also required. An agency may adopt only rules
91 | that implement or interpret the specific powers and duties
92 | granted by the enabling statute. An agency may not adopt any
93 | rule or issue any guidance document unless the agency has been
94 | expressly granted the power to do so by a specific statutory
95 | delegation. No agency shall have authority to adopt a rule only
96 | because it is reasonably related to the purpose of the enabling
97 | legislation and is not arbitrary and capricious or is within the
98 | agency's class of powers and duties, nor shall an agency have
99 | the authority to implement statutory provisions setting forth
100 | general legislative intent or policy. Statutory language

101 granting rulemaking authority or generally describing the powers
102 and functions of an agency shall be construed to extend no
103 further than implementing or interpreting the specific powers
104 and duties conferred by the enabling statute.

105 **Section 3. Subsection (1), paragraph (g) of subsection**
106 **(2), and subsection (5) of section 120.541, Florida Statutes,**
107 **are amended, paragraph (h) is added to subsection (2), and**
108 **subsection (4) of that section is reenacted, to read:**

109 120.541 Statement of estimated regulatory costs.—

110 (1) (a) An agency shall prepare a statement of estimated
111 regulatory costs for each proposed rule, notice of change, or
112 final rule, regardless of whether the proposed rule, notice of
113 change, or final rule will have an adverse impact on small
114 business or is likely to increase regulatory costs. The
115 statement must include a cost-benefit analysis that clearly
116 demonstrates that the projected benefits of the existing rule or
117 proposed rule exceed its projected costs.

118 (b)-(a) Within 21 days after publication of the notice
119 required under s. 120.54(3)(a), a substantially affected person
120 may submit to an agency a good faith written proposal for a
121 lower cost regulatory alternative to a proposed rule which
122 substantially accomplishes the objectives of the law being
123 implemented. The proposal may include the alternative of not
124 adopting any rule if the proposal explains how the lower costs
125 and objectives of the law will be achieved by not adopting any

126 rule. If such a proposal is submitted, the 90-day period for
127 filing the rule is extended 21 days. Upon the submission of the
128 lower cost regulatory alternative, the agency shall prepare a
129 statement of estimated regulatory costs as provided in
130 subsection (2), or shall revise its prior statement of estimated
131 regulatory costs, and either adopt the alternative or provide a
132 statement of the reasons for rejecting the alternative in favor
133 of the proposed rule.

134 (c)~~(b)~~ If a proposed rule, notice of change, or final
135 rule will have an adverse impact on small business or if the
136 proposed rule, notice of change, or final rule is likely to
137 directly or indirectly increase regulatory costs in excess of
138 \$200,000 in the aggregate within 1 year after the implementation
139 of the rule, the agency shall prepare a statement of estimated
140 regulatory costs as required by s. 120.54(3)(b).

141 (d)~~(e)~~ The agency shall revise a statement of estimated
142 regulatory costs if any change to the rule made under s.
143 120.54(3)(d) increases the regulatory costs of the rule.

144 (e)~~(d)~~ At least 21 days before filing the rule for
145 adoption, an agency that is required to revise a statement of
146 estimated regulatory costs shall provide the statement to the
147 person who submitted the lower cost regulatory alternative and
148 to the committee and shall provide notice on the agency's
149 website that it is available to the public.

150 (f)~~(e)~~ Notwithstanding s. 120.56(1)(c), the failure of the

151 agency to prepare a statement of estimated regulatory costs or
152 to respond to a written lower cost regulatory alternative as
153 provided in this subsection is a material failure to follow the
154 applicable rulemaking procedures or requirements set forth in
155 this chapter.

156 (g)~~(f)~~ An agency's failure to prepare a statement of
157 estimated regulatory costs or to respond to a written lower cost
158 regulatory alternative may not be raised in a proceeding
159 challenging the validity of a rule pursuant to s. 120.52(8)(a)
160 unless:

161 1. Raised in a petition filed no later than 1 year after
162 the effective date of the rule; and

163 2. Raised by a person whose substantial interests are
164 affected by the rule's regulatory costs.

165 (h)~~(g)~~ A rule that is challenged pursuant to s.
166 120.52(8)(f) may not be declared invalid unless:

167 1. The issue is raised in an administrative proceeding
168 within 1 year after the effective date of the rule;

169 2. The challenge is to the agency's rejection of a lower
170 cost regulatory alternative offered under paragraph (b) ~~(a)~~ or
171 s. 120.54(3)(b)2.b.; and

172 3. The substantial interests of the person challenging the
173 rule are materially affected by the rejection.

174 (i) An agency shall conduct a retrospective cost-benefit
175 analysis for each adopted rule 4 years after the rule's

176 effective date. The analysis must compare the actual costs and
177 benefits of the rule to those projected in the initial statement
178 of estimated regulatory costs prepared under paragraph (a).

179 (j) When a rule is reviewed upon expiration pursuant to s.
180 120.55(9), the agency shall conduct a retrospective assessment
181 report comparing the initial projected cost-benefit analysis,
182 the retrospective analysis conducted under paragraph (i), and
183 the outcomes observed up to the time of expiration. The agency
184 shall incorporate the findings and lessons learned from this
185 comparison into the standards for future statements of estimated
186 regulatory costs and apply them to similar rules.

187 (2) A statement of estimated regulatory costs shall
188 include:

189 (g) In the statement or revised statement, whichever
190 applies, a description of any regulatory alternatives submitted
191 under paragraph (1) (b) ~~(1) (a)~~ and a statement adopting the
192 alternative or a statement of the reasons for rejecting the
193 alternative in favor of the proposed rule.

194 (h) All documentation, assumptions, methods, and data used
195 in preparing the statement of estimated regulatory costs shall
196 be published on a publicly accessible website and, where
197 relevant, in a machine-readable format readily available to the
198 public, including any supporting calculations, documents, data,
199 databases, or data tables, so that the results of the analysis
200 can be replicated. Uncertainties pertaining to these estimates

201 must be reported.

202 (4) Subsection (3) does not apply to the adoption of:

203 (a) Federal standards pursuant to s. 120.54(6).

204 (b) Triennial updates of and amendments to the Florida
205 Building Code which are expressly authorized by s. 553.73.

206 (c) Triennial updates of and amendments to the Florida
207 Fire Prevention Code which are expressly authorized by s.
208 633.202.

209 (5) For purposes of subsections (2) and (3), adverse
210 impacts and regulatory costs likely to occur within 5 years
211 after implementation of the rule include adverse impacts and
212 regulatory costs estimated to occur within 5 years after the
213 effective date of the rule. However, if any provision of the
214 rule is not fully implemented upon the effective date of the
215 rule, the adverse impacts and regulatory costs associated with
216 such provision must be adjusted to include any additional
217 adverse impacts and regulatory costs estimated to occur within 5
218 years after implementation of such provision. However, an agency
219 may include longer periods of review but must, at a minimum,
220 provide a cost-benefit analysis that projects the first 5 years
221 after the rule goes into effect. If a discount rate is used in
222 the analysis, its use must be justified. The agency must also
223 provide an analysis without the use of discount rates.

224 **Section 4. Subsection (1) of section 120.545, Florida**
225 **Statutes, is amended to read:**

226 | 120.545 Committee review of agency rules.—
 227 | (1) As a legislative check on legislatively created
 228 | authority, the committee shall examine each proposed rule,
 229 | except for those proposed rules exempted by s. 120.81(1)(e) and
 230 | (2), and its accompanying material, and each emergency rule, and
 231 | may examine any existing rule, for the purpose of determining
 232 | whether:
 233 | (a) The rule is an invalid exercise of delegated
 234 | legislative authority.
 235 | (b) The statutory authority for the rule has been
 236 | repealed.
 237 | (c) The rule reiterates or paraphrases statutory material.
 238 | (d) The rule is in proper form.
 239 | (e) The notice given prior to its adoption was sufficient
 240 | to give adequate notice of the purpose and effect of the rule.
 241 | (f) The rule is consistent with expressed legislative
 242 | intent pertaining to the specific provisions of law which the
 243 | rule implements.
 244 | (g) The rule is necessary to accomplish the apparent or
 245 | expressed objectives of the specific provision of law which the
 246 | rule implements.
 247 | (h) The rule is a reasonable implementation of the law as
 248 | it affects the convenience of the general public or persons
 249 | particularly affected by the rule.
 250 | (i) The rule could be made less complex or more easily

251 comprehensible to the general public.

252 (j) The rule's statement of estimated regulatory costs
253 complies with the requirements of s. 120.541 and whether the
254 rule does not impose regulatory costs on the regulated person,
255 county, or city which could be reduced by the adoption of less
256 costly alternatives that substantially accomplish the statutory
257 objectives.

258 (k) The rule will require additional appropriations.

259 (l) If the rule is an emergency rule, there exists an
260 emergency justifying the adoption of such rule, the agency is
261 within its statutory authority, and the rule was adopted in
262 compliance with the requirements and limitations of s.
263 120.54(4).

264 (m) The rule is scheduled to expire pursuant to s.
265 120.55(9) and whether the agency is complying with the
266 expiration and readoption requirements.

267 (n) The initial expiration date for the rule has been set
268 in accordance with s. 120.55(9)(b).

269 (o) The agency has properly reviewed exempt rules as
270 required under s. 120.55(9)(f).

271 **Section 5. Subsection (9) of section 120.55, Florida**
272 **Statutes, is renumbered as subsection (10), paragraph (a) of**
273 **subsection (1) is amended, and a new subsection (9) is added to**
274 **that section, to read:**

275 120.55 Publication.—

276 (1) The Department of State shall:

277 (a)1. Through a continuous revision and publication
278 system, compile and publish electronically, on a website managed
279 by the department, the "Florida Administrative Code." The
280 Florida Administrative Code shall contain all rules adopted by
281 each agency, citing the grant of rulemaking authority and the
282 specific law implemented pursuant to which each rule was
283 adopted, including the effective date and expiration date of
284 each rule, all history notes as authorized in s. 120.545(7),
285 complete indexes to all rules contained in the code, and any
286 other material required or authorized by law or deemed useful by
287 the department. The electronic code shall display each rule
288 chapter currently in effect in browse mode and allow full text
289 search of the code and each rule chapter. The department may
290 contract with a publishing firm for a printed publication;
291 however, the department shall retain responsibility for the code
292 as provided in this section. The electronic publication shall be
293 the official compilation of the administrative rules of this
294 state. The Department of State shall retain the copyright over
295 the Florida Administrative Code.

296 2. Rules general in form but applicable to only one school
297 district, community college district, or county, or a part
298 thereof, or state university rules relating to internal
299 personnel or business and finance shall not be published in the
300 Florida Administrative Code. Exclusion from publication in the

301 Florida Administrative Code shall not affect the validity or
302 effectiveness of such rules.

303 3. At the beginning of the section of the code dealing
304 with an agency that files copies of its rules with the
305 department, the department shall publish the address and
306 telephone number of the executive offices of each agency, the
307 manner by which the agency indexes its rules, a listing of all
308 rules of that agency excluded from publication in the code, and
309 a statement as to where those rules may be inspected.

310 4. Forms shall not be published in the Florida
311 Administrative Code; but any form which an agency uses in its
312 dealings with the public, along with any accompanying
313 instructions, shall be filed with the committee before it is
314 used. Any form or instruction which meets the definition of
315 "rule" provided in s. 120.52 shall be incorporated by reference
316 into the appropriate rule. The reference shall specifically
317 state that the form is being incorporated by reference and shall
318 include the number, title, and effective date of the form and an
319 explanation of how the form may be obtained. Each form created
320 by an agency which is incorporated by reference in a rule notice
321 of which is given under s. 120.54(3)(a) after December 31, 2007,
322 must clearly display the number, title, and effective date of
323 the form and the number of the rule in which the form is
324 incorporated.

325 5. The department shall allow adopted rules and material

326 incorporated by reference to be filed in electronic form as
327 prescribed by department rule. When a rule is filed for adoption
328 with incorporated material in electronic form, the department's
329 publication of the Florida Administrative Code on its website
330 must contain a hyperlink from the incorporating reference in the
331 rule directly to that material. The department may not allow
332 hyperlinks from rules in the Florida Administrative Code to any
333 material other than that filed with and maintained by the
334 department, but may allow hyperlinks to incorporated material
335 maintained by the department from the adopting agency's website
336 or other sites.

337 (9) (a) All rules adopted by an agency shall expire 8 years
338 after their effective date unless readopted through the
339 rulemaking process outlined in s. 120.54, except as provided in
340 paragraph (e). The readoption process may not begin more than 1
341 year before the rule's expiration date.

342 (b) For all rules in effect on July 1, 2025, the committee
343 shall set the initial expiration dates, taking into
344 consideration the time and resources agencies will expend to
345 potentially readopt those rules. The initial expiration dates
346 must be set between the second and twelfth calendar years after
347 the effective date of this subsection. A rule shall expire on
348 January 1 of the calendar year selected by the committee.

349 (c) An amendment to a rule through subsequent rulemaking
350 does not affect the rule's expiration date unless the amendment

351 completely repeals and readopts the rule. In such case, the new
352 expiration date shall be 8 years from the effective date of the
353 readopted rule.

354 (d) Every rule, if readopted, shall subsequently expire on
355 January 1 every 8 calendar years after its initial expiration
356 date unless reviewed and readopted pursuant to this subsection.

357 (e) The following rules do not expire:

358 1. Rules required to comply with federal law or to receive
359 federal funds.

360 2. Rules adopted pursuant to authority granted under the
361 State Constitution.

362 3. Rules of agencies that are headed by an elected
363 official.

364 (f) Rules exempt under paragraph (e) must be reviewed by
365 the agency according to the schedule set by the committee. The
366 agency may not begin its review more than 1 year prior to the
367 rule's scheduled review date.

368 (g) During the review, including any review under
369 paragraph (f), the agency shall:

370 1. Notify the public of the review, including making the
371 text of the notice, the text of the rule, and all analyses
372 associated with the review available on the agency's website.

373 2. Hold a public comment period for at least 30 days.

374 3. Conduct all analyses that would be required if the rule
375 were being readopted pursuant to s. 120.54.

376 4. Provide a reasoned response to unique public comments.

377 5. Publish a report on the agency's website that includes
 378 the analyses and the agency's response to public comments.

379 (h) For each rule, the Governor may grant extensions
 380 totaling no more than 365 days postponing the expiration date
 381 upon a written request by the agency. In the agency's written
 382 request, an explanation must be given by the agency explaining
 383 why it cannot readopt the rule within the time allotted by this
 384 subsection and why the expiration of the rule would harm the
 385 public health, safety, or welfare. The Governor must affirm
 386 these findings in writing before granting an extension. An
 387 extension under this paragraph does not affect subsequent
 388 expiration dates. Reviews under paragraph (f) may not be granted
 389 extensions.

390 **Section 6. Subsection (6) is added to section 120.555,**
 391 **Florida Statutes, to read:**

392 120.555 Summary removal of published rules no longer in
 393 force and effect.—When, as part of the continuous revision
 394 system authorized in s. 120.55(1)(a)1. or as otherwise provided
 395 by law, the Department of State is in doubt whether a rule
 396 published in the official version of the Florida Administrative
 397 Code is still in full force and effect, the procedure in this
 398 section shall be employed.

399 (6) When a rule has expired pursuant to s. 120.55(9), the
 400 Department of State shall update the Florida Administrative Code

401 to remove the rule and shall provide historical notes
402 identifying the manner in which the rule ceased to have effect,
403 including the expiration pursuant to s. 120.55(9).

404 **Section 7. Subsection (1) and paragraph (a) of subsection**
405 **(2) of section 120.56, Florida Statutes, are amended to read:**

406 120.56 Challenges to rules.—

407 (1) GENERAL PROCEDURES.—

408 (a) Any person substantially affected by a rule, guidance
409 document, or a proposed rule may seek an administrative
410 determination of the invalidity of the rule or guidance document
411 on the ground that the rule or guidance document is an invalid
412 exercise of delegated legislative authority. All of the
413 provisions in this section apply to guidance documents as well
414 as adopted rules.

415 (b) The petition challenging the validity of a proposed or
416 adopted rule under this section must state:

417 1. The particular provisions alleged to be invalid and a
418 statement of the facts or grounds for the alleged invalidity.

419 2. Facts sufficient to show that the petitioner is
420 substantially affected by the challenged adopted rule or would
421 be substantially affected by the proposed rule.

422 (c) The petition shall be filed by electronic means with
423 the division which shall, immediately upon filing, forward by
424 electronic means copies to the agency whose rule is challenged,
425 the Department of State, and the committee. Within 10 days after

426 receiving the petition, the division director shall, if the
427 petition complies with paragraph (b), assign an administrative
428 law judge who shall conduct a hearing within 30 days thereafter,
429 unless the petition is withdrawn or a continuance is granted by
430 agreement of the parties or for good cause shown. Evidence of
431 good cause includes, but is not limited to, written notice of an
432 agency's decision to modify or withdraw the proposed rule or a
433 written notice from the chair of the committee stating that the
434 committee will consider an objection to the rule at its next
435 scheduled meeting. The failure of an agency to follow the
436 applicable rulemaking procedures or requirements set forth in
437 this chapter shall be presumed to be material; however, the
438 agency may rebut this presumption by showing that the
439 substantial interests of the petitioner and the fairness of the
440 proceedings have not been impaired.

441 (d) Within 30 days after the hearing, the administrative
442 law judge shall render a decision and state the reasons for his
443 or her decision in writing. The division shall forthwith
444 transmit by electronic means copies of the administrative law
445 judge's decision to the agency, the Department of State, and the
446 committee.

447 (e) Hearings held under this section shall be de novo in
448 nature. The standard of proof shall be the preponderance of the
449 evidence. Hearings shall be conducted in the same manner as
450 provided by ss. 120.569 and 120.57, except that the

451 administrative law judge's order shall be final agency action.
452 The petitioner and the agency whose rule is challenged shall be
453 adverse parties. Other substantially affected persons may join
454 the proceedings as intervenors on appropriate terms which shall
455 not unduly delay the proceedings. Failure to proceed under this
456 section does not constitute failure to exhaust administrative
457 remedies.

458 (f) Any party subject to an enforcement action may
459 challenge the enforcement action based solely on the grounds
460 that the agency lacked express statutory authority to adopt the
461 rule or issue the guidance document upon which the enforcement
462 action is based. Any party that prevails on such a challenge
463 shall be entitled to recover reasonable costs and attorney fees.

464 (g)1. A person may challenge a rule on the grounds that
465 the agency failed to comply with s. 120.541 by:

466 a. Failing to prepare a statement of estimated regulatory
467 costs as required;

468 b. Preparing a statement of estimated regulatory costs
469 that does not include all the information required by s.
470 120.541(2);

471 c. Failing to make the statement or the underlying data
472 and analysis publicly available as required by s. 120.541(2)(h);
473 or

474 d. Failing to conduct the retrospective analyses required
475 by s. 120.541(1)(i) and (j).

476 2. If an administrative law judge finds that the agency
477 has materially failed to comply with s. 120.541, the rule shall
478 be declared invalid and void.

479 (2) CHALLENGING PROPOSED RULES; SPECIAL PROVISIONS.—

480 (a) A petition alleging the invalidity of a proposed rule
481 shall be filed within 21 days after the date of publication of
482 the notice required by s. 120.54(3)(a); within 10 days after the
483 final public hearing is held on the proposed rule as provided by
484 s. 120.54(3)(e)2.; within 20 days after the statement of
485 estimated regulatory costs or revised statement of estimated
486 regulatory costs, if applicable, has been prepared and made
487 available as provided in s. 120.541(1)(e) ~~s. 120.541(1)(d)~~; or
488 within 20 days after the date of publication of the notice
489 required by s. 120.54(3)(d). The petitioner has the burden to
490 prove by a preponderance of the evidence that the petitioner
491 would be substantially affected by the proposed rule. The agency
492 then has the burden to prove by a preponderance of the evidence
493 that the proposed rule is not an invalid exercise of delegated
494 legislative authority as to the objections raised. A person who
495 is not substantially affected by the proposed rule as initially
496 noticed, but who is substantially affected by the rule as a
497 result of a change, may challenge any provision of the resulting
498 proposed rule.

499 **Section 8.** This act shall take effect July 1, 2025.