

By Senator Burgess

23-00576A-25

2025448\_\_

1                                   A bill to be entitled  
2       An act relating to administrative procedure; amending  
3       s. 120.52, F.S.; specifying that an agency's issuance  
4       of a guidance document or other statement interpreting  
5       a statute without express statutory delegation to  
6       issue such guidance is an invalid exercise of  
7       delegated legislative authority; amending s. 120.536,  
8       F.S.; prohibiting an agency from adopting a rule or  
9       issuing a guidance document without statutory  
10      delegation; reenacting and amending s. 120.541, F.S.;  
11      requiring an agency to prepare a statement of  
12      estimated regulatory costs for proposed rules, notices  
13      of change, and final rules; providing requirements for  
14      such statements; requiring the agency to conduct a  
15      retrospective cost-benefit analysis for each adopted  
16      rule after a specified period; providing requirements  
17      for such analysis; requiring review of prior cost-  
18      benefit analyses as part of a specified review;  
19      requiring agencies to use the findings of such a  
20      review for specified purposes; requiring publication  
21      of materials used to produce estimates of regulatory  
22      costs in a specified manner; providing additional  
23      requirements for cost-benefit analyses; amending s.  
24      120.545, F.S.; revising requirements for review of  
25      rules by the Administrative Procedures Committee;  
26      amending s. 120.55, F.S.; requiring that additional  
27      information be published in the Florida Administrative  
28      Code; providing for the expiration of rules after a  
29      specified period unless readopted; providing

23-00576A-25

2025448\_\_

30 requirements for the readoption process; requiring the  
31 Administrative Procedures Committee to set expiration  
32 dates for existing rules; providing exceptions to rule  
33 expiration; requiring review of such exempt rules;  
34 requiring the agency to perform specified actions  
35 during reviews; providing for a limited extension of  
36 expiration in certain circumstances; amending s.  
37 120.555, F.S.; requiring that specified information be  
38 published concerning expired rules; amending s.  
39 120.56, F.S.; specifying that guidance documents are  
40 subject to specified provisions; providing that a  
41 party subject to an enforcement action may challenge  
42 the action on the basis that the agency lacked  
43 statutory authority for the rule or guidance document;  
44 providing for award of costs and attorney fees;  
45 providing for challenges to rules on the grounds that  
46 the agency failed to comply with specified provisions;  
47 conforming a cross-reference; providing an effective  
48 date.

49  
50 Be It Enacted by the Legislature of the State of Florida:

51  
52 Section 1. Subsection (8) of section 120.52, Florida  
53 Statutes, is amended to read:

54 120.52 Definitions.—As used in this act:

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

23-00576A-25

2025448\_\_

59 of the following applies:

60 (a) The agency has materially failed to follow the  
61 applicable rulemaking procedures or requirements set forth in  
62 this chapter;

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

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

68 (d) The rule is vague, fails to establish adequate  
69 standards for agency decisions, or vests unbridled discretion in  
70 the agency;

71 (e) The rule is arbitrary or capricious. A rule is  
72 arbitrary if it is not supported by logic or the necessary  
73 facts; a rule is capricious if it is adopted without thought or  
74 reason or is irrational; ~~or~~

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

79 (g) The agency has issued a guidance document or other  
80 statement interpreting a statute without express statutory  
81 delegation to issue such guidance.

82

83 A grant of rulemaking authority is necessary but not sufficient  
84 to allow an agency to adopt a rule; a specific law to be  
85 implemented is also required. An agency may adopt only rules  
86 that implement or interpret the specific powers and duties  
87 granted by the enabling statute. No agency shall have authority

23-00576A-25

2025448\_\_

88 to adopt a rule only because it is reasonably related to the  
89 purpose of the enabling legislation and is not arbitrary and  
90 capricious or is within the agency's class of powers and duties,  
91 nor shall an agency have the authority to implement statutory  
92 provisions setting forth general legislative intent or policy.  
93 Statutory language granting rulemaking authority or generally  
94 describing the powers and functions of an agency shall be  
95 construed to extend no further than implementing or interpreting  
96 the specific powers and duties conferred by the enabling  
97 statute.

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

100 120.536 Rulemaking authority; repeal; challenge.—

101 (1) A grant of rulemaking authority is necessary but not  
102 sufficient to allow an agency to adopt a rule; a specific law to  
103 be implemented is also required. An agency may adopt only rules  
104 that implement or interpret the specific powers and duties  
105 granted by the enabling statute. An agency may not adopt any  
106 rule or issue any guidance document unless the agency has been  
107 expressly granted the power to do so by a specific statutory  
108 delegation. No agency shall have authority to adopt a rule only  
109 because it is reasonably related to the purpose of the enabling  
110 legislation and is not arbitrary and capricious or is within the  
111 agency's class of powers and duties, nor shall an agency have  
112 the authority to implement statutory provisions setting forth  
113 general legislative intent or policy. Statutory language  
114 granting rulemaking authority or generally describing the powers  
115 and functions of an agency shall be construed to extend no  
116 further than implementing or interpreting the specific powers

23-00576A-25

2025448\_\_

117 and duties conferred by the enabling statute.

118 Section 3. Subsection (1), paragraph (g) of subsection (2),  
119 and subsection (5) of section 120.541, Florida Statutes, are  
120 amended, paragraph (h) is added to subsection (2) of that  
121 section, and subsection (4) of that section is reenacted, to  
122 read:

123 120.541 Statement of estimated regulatory costs.—

124 (1) (a) An agency shall prepare a statement of estimated  
125 regulatory costs for each proposed rule, notice of change, or  
126 final rule, regardless of whether the proposed rule, notice of  
127 change, or final rule will have an adverse impact on small  
128 business or is likely to increase regulatory costs. The  
129 statement must include a cost-benefit analysis that clearly  
130 demonstrates that the projected benefits of the proposed rule,  
131 notice of change, or final rule exceed its projected costs.

132 (b) (a) Within 21 days after publication of the notice  
133 required under s. 120.54(3) (a), a substantially affected person  
134 may submit to an agency a good faith written proposal for a  
135 lower cost regulatory alternative to a proposed rule which  
136 substantially accomplishes the objectives of the law being  
137 implemented. The proposal may include the alternative of not  
138 adopting any rule if the proposal explains how the lower costs  
139 and objectives of the law will be achieved by not adopting any  
140 rule. If such a proposal is submitted, the 90-day period for  
141 filing the rule is extended 21 days. Upon the submission of the  
142 lower cost regulatory alternative, the agency shall prepare a  
143 statement of estimated regulatory costs as provided in  
144 subsection (2), or shall revise its prior statement of estimated  
145 regulatory costs, and either adopt the alternative or provide a

23-00576A-25

2025448\_\_

146 statement of the reasons for rejecting the alternative in favor  
147 of the proposed rule.

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

155 (d)~~(e)~~ The agency shall revise a statement of estimated  
156 regulatory costs if any change to the rule made under s.  
157 120.54(3)(d) increases the regulatory costs of the rule.

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

164 (f)~~(e)~~ Notwithstanding s. 120.56(1)(c), the failure of the  
165 agency to prepare a statement of estimated regulatory costs or  
166 to respond to a written lower cost regulatory alternative as  
167 provided in this subsection is a material failure to follow the  
168 applicable rulemaking procedures or requirements set forth in  
169 this chapter.

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

23-00576A-25

2025448\_\_

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

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

179 ~~(h)(g)~~ A rule that is challenged pursuant to s.  
180 120.52(8)(f) may not be declared invalid unless:

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

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

186 3. The substantial interests of the person challenging the  
187 rule are materially affected by the rejection.

188 (i) An agency shall conduct a retrospective cost-benefit  
189 analysis for each adopted rule 4 years after the rule's  
190 effective date. The analysis must compare the actual costs and  
191 benefits of the rule to those projected in the initial statement  
192 of estimated regulatory costs prepared under paragraph (a).

193 (j) When a rule is reviewed upon expiration pursuant to s.  
194 120.55(9), the agency shall conduct a retrospective assessment  
195 report comparing the initial projected cost-benefit analysis,  
196 the retrospective analysis conducted under paragraph (i), and  
197 the outcomes observed up to the time of expiration. The agency  
198 shall incorporate the findings and lessons learned from this  
199 comparison into the standards for future statements of estimated  
200 regulatory costs and apply them to similar rules.

201 (2) A statement of estimated regulatory costs shall  
202 include:

203 (g) In the statement or revised statement, whichever

23-00576A-25

2025448\_\_

204 applies, a description of any regulatory alternatives submitted  
205 under paragraph (1)(b) ~~(1)(a)~~ and a statement adopting the  
206 alternative or a statement of the reasons for rejecting the  
207 alternative in favor of the proposed rule.

208 (h) All documentation, assumptions, methods, and data used  
209 in preparing the statement of estimated regulatory costs must be  
210 published on a publicly accessible website and, where relevant,  
211 in a machine-readable format readily available to the public,  
212 including any supporting calculations, documents, data,  
213 databases, or data tables, so that the results of the analysis  
214 can be replicated. Uncertainties pertaining to these estimates  
215 must be reported.

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

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

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

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

222 (5) For purposes of subsections (2) and (3), adverse  
223 impacts and regulatory costs likely to occur within 5 years  
224 after implementation of the rule include adverse impacts and  
225 regulatory costs estimated to occur within 5 years after the  
226 effective date of the rule. However, if any provision of the  
227 rule is not fully implemented upon the effective date of the  
228 rule, the adverse impacts and regulatory costs associated with  
229 such provision must be adjusted to include any additional  
230 adverse impacts and regulatory costs estimated to occur within 5  
231 years after implementation of such provision. However, an agency  
232 may include longer periods of review but must, at a minimum,



23-00576A-25

2025448\_\_

233 provide a cost-benefit analysis that projects the first 5 years  
234 after the rule goes into effect. If a discount rate is used in  
235 the analysis, its use must be justified. The agency must also  
236 provide an analysis without the use of discount rates.

237 Section 4. Paragraphs (m), (n), and (o) are added to  
238 subsection (1) of section 120.545, Florida Statutes, to read:

239 120.545 Committee review of agency rules.—

240 (1) As a legislative check on legislatively created  
241 authority, the committee shall examine each proposed rule,  
242 except for those proposed rules exempted by s. 120.81(1)(e) and  
243 (2), and its accompanying material, and each emergency rule, and  
244 may examine any existing rule, for the purpose of determining  
245 whether:

246 (m) The rule is scheduled to expire pursuant to s.  
247 120.55(9) and whether the agency is complying with the  
248 expiration and readoption requirements.

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

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

253 Section 5. Present subsection (9) of section 120.55,  
254 Florida Statutes, is redesignated as subsection (10), a new  
255 subsection (9) is added to that section, and paragraph (a) of  
256 subsection (1) of that section is amended, to read:

257 120.55 Publication.—

258 (1) The Department of State shall:

259 (a)1. Through a continuous revision and publication system,  
260 compile and publish electronically, on a website managed by the  
261 department, the "Florida Administrative Code." The Florida

23-00576A-25

2025448\_\_

262 Administrative Code shall contain all rules adopted by each  
263 agency, citing the grant of rulemaking authority and the  
264 specific law implemented pursuant to which each rule was  
265 adopted, including the effective date and expiration date of  
266 each rule, all history notes as authorized in s. 120.545(7),  
267 complete indexes to all rules contained in the code, and any  
268 other material required or authorized by law or deemed useful by  
269 the department. The electronic code shall display each rule  
270 chapter currently in effect in browse mode and allow full text  
271 search of the code and each rule chapter. The department may  
272 contract with a publishing firm for a printed publication;  
273 however, the department shall retain responsibility for the code  
274 as provided in this section. The electronic publication shall be  
275 the official compilation of the administrative rules of this  
276 state. The Department of State shall retain the copyright over  
277 the Florida Administrative Code.

278 2. Rules general in form but applicable to only one school  
279 district, community college district, or county, or a part  
280 thereof, or state university rules relating to internal  
281 personnel or business and finance shall not be published in the  
282 Florida Administrative Code. Exclusion from publication in the  
283 Florida Administrative Code shall not affect the validity or  
284 effectiveness of such rules.

285 3. At the beginning of the section of the code dealing with  
286 an agency that files copies of its rules with the department,  
287 the department shall publish the address and telephone number of  
288 the executive offices of each agency, the manner by which the  
289 agency indexes its rules, a listing of all rules of that agency  
290 excluded from publication in the code, and a statement as to

23-00576A-25

2025448\_\_

291 where those rules may be inspected.

292 4. Forms shall not be published in the Florida  
293 Administrative Code; but any form which an agency uses in its  
294 dealings with the public, along with any accompanying  
295 instructions, shall be filed with the committee before it is  
296 used. Any form or instruction which meets the definition of  
297 "rule" provided in s. 120.52 shall be incorporated by reference  
298 into the appropriate rule. The reference shall specifically  
299 state that the form is being incorporated by reference and shall  
300 include the number, title, and effective date of the form and an  
301 explanation of how the form may be obtained. Each form created  
302 by an agency which is incorporated by reference in a rule notice  
303 of which is given under s. 120.54(3)(a) after December 31, 2007,  
304 must clearly display the number, title, and effective date of  
305 the form and the number of the rule in which the form is  
306 incorporated.

307 5. The department shall allow adopted rules and material  
308 incorporated by reference to be filed in electronic form as  
309 prescribed by department rule. When a rule is filed for adoption  
310 with incorporated material in electronic form, the department's  
311 publication of the Florida Administrative Code on its website  
312 must contain a hyperlink from the incorporating reference in the  
313 rule directly to that material. The department may not allow  
314 hyperlinks from rules in the Florida Administrative Code to any  
315 material other than that filed with and maintained by the  
316 department, but may allow hyperlinks to incorporated material  
317 maintained by the department from the adopting agency's website  
318 or other sites.

319 (9) (a) All rules adopted by an agency shall expire 8 years

23-00576A-25

2025448\_\_

320 after their effective date unless readopted through the  
321 rulemaking process outlined in s. 120.54, except as provided in  
322 paragraph (e). The readoption process may not begin more than 1  
323 year before the rule's expiration date.

324 (b) For all rules in effect on July 1, 2025, the committee  
325 shall set the initial expiration dates, taking into  
326 consideration the time and resources agencies will expend to  
327 potentially readopt those rules. The initial expiration dates  
328 must be set between the second and twelfth calendar years after  
329 the effective date of this subsection. A rule shall expire on  
330 January 1 of the calendar year selected by the committee.

331 (c) An amendment to a rule through subsequent rulemaking  
332 does not affect the rule's expiration date unless the amendment  
333 completely repeals and readopts the rule. In such case, the new  
334 expiration date must be 8 years from the effective date of the  
335 readopted rule.

336 (d) Every rule, if readopted, must subsequently expire on  
337 January 1 every 8 calendar years after its initial expiration  
338 date unless reviewed and readopted pursuant to this subsection.

339 (e) The following rules do not expire:

340 1. Rules required to comply with federal law or to receive  
341 federal funds.

342 2. Rules adopted pursuant to authority granted under the  
343 State Constitution.

344 3. Rules of agencies that are headed by an elected  
345 official.

346 (f) Rules exempt under paragraph (e) must be reviewed by  
347 the agency according to the schedule set by the committee. The  
348 agency may not begin its review more than 1 year before the

23-00576A-25

2025448\_\_

349 rule's scheduled review date.

350 (g) During the review, including any review under paragraph  
351 (f), the agency shall:

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

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

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

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

359 5. Publish a report on the agency's website which includes  
360 the analyses and the agency's response to public comments.

361 (h) For each rule, the Governor may grant extensions  
362 totaling no more than 365 days postponing the expiration date  
363 upon a written request by the agency. In the agency's written  
364 request, an explanation must be given by the agency explaining  
365 why it cannot readopt the rule within the time allotted by this  
366 subsection and why the expiration of the rule would harm the  
367 public health, safety, or welfare. The Governor must affirm  
368 these findings in writing before granting an extension. An  
369 extension under this paragraph does not affect subsequent  
370 expiration dates. Reviews under paragraph (f) may not be granted  
371 extensions.

372 Section 6. Subsection (6) is added to section 120.555,  
373 Florida Statutes, to read:

374 120.555 Summary removal of published rules no longer in  
375 force and effect.—When, as part of the continuous revision  
376 system authorized in s. 120.55(1)(a)1. or as otherwise provided  
377 by law, the Department of State is in doubt whether a rule

23-00576A-25

2025448\_\_

378 published in the official version of the Florida Administrative  
379 Code is still in full force and effect, the procedure in this  
380 section shall be employed.

381 (6) When a rule has expired pursuant to s. 120.55(9), the  
382 Department of State shall update the Florida Administrative Code  
383 to remove the rule and shall provide historical notes  
384 identifying the manner in which the rule ceased to have effect,  
385 including the expiration pursuant to s. 120.55(9).

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

388 120.56 Challenges to rules.—

389 (1) GENERAL PROCEDURES.—

390 (a) Any person substantially affected by a rule, a guidance  
391 document, or a proposed rule may seek an administrative  
392 determination of the invalidity of the rule or guidance document  
393 on the ground that the rule or guidance document is an invalid  
394 exercise of delegated legislative authority. All of the  
395 provisions in this section apply to guidance documents as well  
396 as adopted rules.

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

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

401 2. Facts sufficient to show that the petitioner is  
402 substantially affected by the challenged adopted rule or would  
403 be substantially affected by the proposed rule.

404 (c) The petition shall be filed by electronic means with  
405 the division which shall, immediately upon filing, forward by  
406 electronic means copies to the agency whose rule is challenged,

23-00576A-25

2025448\_\_

407 the Department of State, and the committee. Within 10 days after  
408 receiving the petition, the division director shall, if the  
409 petition complies with paragraph (b), assign an administrative  
410 law judge who shall conduct a hearing within 30 days thereafter,  
411 unless the petition is withdrawn or a continuance is granted by  
412 agreement of the parties or for good cause shown. Evidence of  
413 good cause includes, but is not limited to, written notice of an  
414 agency's decision to modify or withdraw the proposed rule or a  
415 written notice from the chair of the committee stating that the  
416 committee will consider an objection to the rule at its next  
417 scheduled meeting. The failure of an agency to follow the  
418 applicable rulemaking procedures or requirements set forth in  
419 this chapter shall be presumed to be material; however, the  
420 agency may rebut this presumption by showing that the  
421 substantial interests of the petitioner and the fairness of the  
422 proceedings have not been impaired.

423 (d) Within 30 days after the hearing, the administrative  
424 law judge shall render a decision and state the reasons for his  
425 or her decision in writing. The division shall forthwith  
426 transmit by electronic means copies of the administrative law  
427 judge's decision to the agency, the Department of State, and the  
428 committee.

429 (e) Hearings held under this section shall be de novo in  
430 nature. The standard of proof shall be the preponderance of the  
431 evidence. Hearings shall be conducted in the same manner as  
432 provided by ss. 120.569 and 120.57, except that the  
433 administrative law judge's order shall be final agency action.  
434 The petitioner and the agency whose rule is challenged shall be  
435 adverse parties. Other substantially affected persons may join

23-00576A-25

2025448\_\_

436 the proceedings as intervenors on appropriate terms which shall  
437 not unduly delay the proceedings. Failure to proceed under this  
438 section does not constitute failure to exhaust administrative  
439 remedies.

440 (f) Any party subject to an enforcement action may  
441 challenge the enforcement action based solely on the grounds  
442 that the agency lacked express statutory authority to adopt the  
443 rule or issue a guidance document upon which the enforcement  
444 action is based. Any party that prevails on such a challenge  
445 shall be entitled to recover reasonable costs and attorney fees.

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

448 a. Failing to prepare a statement of estimated regulatory  
449 costs as required;

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

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

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

456 2. If an administrative law judge finds that the agency has  
457 materially failed to comply with s. 120.541, the rule must be  
458 declared invalid and void.

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

460 (a) A petition alleging the invalidity of a proposed rule  
461 shall be filed within 21 days after the date of publication of  
462 the notice required by s. 120.54(3)(a); within 10 days after the  
463 final public hearing is held on the proposed rule as provided by  
464 s. 120.54(3)(e)2.; within 20 days after the statement of



23-00576A-25

2025448\_\_

465 estimated regulatory costs or revised statement of estimated  
466 regulatory costs, if applicable, has been prepared and made  
467 available as provided in s. 120.541(1)(e) ~~s. 120.541(1)(d)~~; or  
468 within 20 days after the date of publication of the notice  
469 required by s. 120.54(3)(d). The petitioner has the burden to  
470 prove by a preponderance of the evidence that the petitioner  
471 would be substantially affected by the proposed rule. The agency  
472 then has the burden to prove by a preponderance of the evidence  
473 that the proposed rule is not an invalid exercise of delegated  
474 legislative authority as to the objections raised. A person who  
475 is not substantially affected by the proposed rule as initially  
476 noticed, but who is substantially affected by the rule as a  
477 result of a change, may challenge any provision of the resulting  
478 proposed rule.

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