

By the Committee on Governmental Oversight and Accountability;
and Senator Burgess

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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 all proposed rules,
13 notices of change, and final rules; requiring
14 publication of materials used to produce estimates of
15 regulatory costs in a specified manner; providing
16 additional requirements for cost-benefit analyses for
17 certain rules; requiring an agency to conduct
18 retrospective cost-benefit analyses and assessment
19 reports for certain rules, subject to certain
20 requirements; requiring the Administrative Procedures
21 Committee to set a review schedule for existing rules
22 to undergo a retrospective cost-benefit analysis and
23 review; providing exceptions; requiring the committee
24 to separately review exempt rules; requiring the
25 agency to perform specified actions during such
26 reviews; amending s. 120.545, F.S.; revising
27 requirements for the review of rules by the
28 Administrative Procedures Committee; amending s.
29 120.55, F.S.; requiring that additional information be

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30 published in the Florida Administrative Code; amending
31 s. 120.56, F.S.; specifying that guidance documents
32 are subject to specified provisions; providing that a
33 party subject to an enforcement action may challenge
34 the action on the basis that the agency lacked
35 statutory authority for the rule or guidance document;
36 providing for award of costs and attorney fees;
37 providing for challenges to rules on the grounds that
38 an agency failed to comply with specified provisions;
39 conforming a cross-reference; providing an effective
40 date.

41
42 Be It Enacted by the Legislature of the State of Florida:

43
44 Section 1. Subsection (8) of section 120.52, Florida
45 Statutes, is amended to read:

46 120.52 Definitions.—As used in this act:

47 (8) “Invalid exercise of delegated legislative authority”
48 means action that goes beyond the powers, functions, and duties
49 delegated by the Legislature. A proposed or existing rule is an
50 invalid exercise of delegated legislative authority if any one
51 of the following applies:

52 (a) The agency has materially failed to follow the
53 applicable rulemaking procedures or requirements set forth in
54 this chapter;

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

57 (c) The rule enlarges, modifies, or contravenes the
58 specific provisions of law implemented, citation to which is

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59 required by s. 120.54(3)(a)1.;

60 (d) The rule is vague, fails to establish adequate
61 standards for agency decisions, or vests unbridled discretion in
62 the agency;

63 (e) The rule is arbitrary or capricious. A rule is
64 arbitrary if it is not supported by logic or the necessary
65 facts; a rule is capricious if it is adopted without thought or
66 reason or is irrational; ~~or~~

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

71 (g) The agency has issued a guidance document or other
72 statement interpreting a statute without express statutory
73 delegation to issue such guidance.

74

75 A grant of rulemaking authority is necessary but not sufficient
76 to allow an agency to adopt a rule; a specific law to be
77 implemented is also required. An agency may adopt only rules
78 that implement or interpret the specific powers and duties
79 granted by the enabling statute. No agency shall have authority
80 to adopt a rule only because it is reasonably related to the
81 purpose of the enabling legislation and is not arbitrary and
82 capricious or is within the agency's class of powers and duties,
83 nor shall an agency have the authority to implement statutory
84 provisions setting forth general legislative intent or policy.
85 Statutory language granting rulemaking authority or generally
86 describing the powers and functions of an agency shall be
87 construed to extend no further than implementing or interpreting

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88 the specific powers and duties conferred by the enabling
89 statute.

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

92 120.536 Rulemaking authority; repeal; challenge.-

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

110 Section 3. Subsection (1), paragraph (g) of subsection (2),
111 and subsection (5) of section 120.541, Florida Statutes, are
112 amended, paragraph (h) is added to subsection (2) of that
113 section, subsection (6) is added to that section, and subsection
114 (4) of that section is reenacted, to read:

115 120.541 Statement of estimated regulatory costs.-

116 (1) (a) An agency shall prepare a statement of estimated

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117 regulatory costs for each proposed rule, notice of change, or
118 final rule, regardless of whether the proposed rule, notice of
119 change, or final rule will have an adverse impact on small
120 business or is likely to increase regulatory costs. The
121 statement must include a cost-benefit analysis that clearly
122 demonstrates that the projected benefits of the proposed rule,
123 notice of change, or final rule exceed its projected costs.

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

140 (c)~~(b)~~ If a proposed rule, notice of change, or final rule
141 will have an adverse impact on small business or if the proposed
142 rule, notice of change, or final rule is likely to directly or
143 indirectly increase regulatory costs in excess of \$200,000 in
144 the aggregate within 1 year after the implementation of the
145 rule, the agency shall prepare a statement of estimated

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146 regulatory costs as required by s. 120.54(3) (b).

147 (d)~~(e)~~ The agency shall revise a statement of estimated
148 regulatory costs if any change to the rule made under s.
149 120.54(3) (d) increases the regulatory costs of the rule.

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

156 (f)~~(e)~~ Notwithstanding s. 120.56(1) (c), the failure of the
157 agency to prepare a statement of estimated regulatory costs or
158 to respond to a written lower cost regulatory alternative as
159 provided in this subsection is a material failure to follow the
160 applicable rulemaking procedures or requirements set forth in
161 this chapter.

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

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

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

171 (h)~~(g)~~ A rule that is challenged pursuant to s.
172 120.52(8) (f) may not be declared invalid unless:

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

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

178 3. The substantial interests of the person challenging the
179 rule are materially affected by the rejection.

180 (2) A statement of estimated regulatory costs shall
181 include:

182 (g) In the statement or revised statement, whichever
183 applies, a description of any regulatory alternatives submitted
184 under paragraph (1)(b) ~~(1)(a)~~ and a statement adopting the
185 alternative or a statement of the reasons for rejecting the
186 alternative in favor of the proposed rule.

187 (h) All documentation, assumptions, methods, and data used
188 in preparing the statement of estimated regulatory costs must be
189 published on a publicly accessible website and, where relevant,
190 in a machine-readable format readily available to the public,
191 including any supporting calculations, documents, data,
192 databases, or data tables, so that the results of the analysis
193 can be replicated. Uncertainties pertaining to these estimates
194 must be reported.

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

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

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

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

201 (5) For purposes of subsections (2) and (3), adverse
202 impacts and regulatory costs likely to occur within 5 years
203 after implementation of the rule include adverse impacts and

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204 regulatory costs estimated to occur within 5 years after the
205 effective date of the rule. However, if any provision of the
206 rule is not fully implemented upon the effective date of the
207 rule, the adverse impacts and regulatory costs associated with
208 such provision must be adjusted to include any additional
209 adverse impacts and regulatory costs estimated to occur within 5
210 years after implementation of such provision. However, an agency
211 may include longer periods of review but must, at a minimum,
212 provide a cost-benefit analysis that projects the first 5 years
213 after the rule goes into effect. If a discount rate is used in
214 the analysis, its use must be justified. The agency must also
215 provide an analysis without the use of discount rates.

216 (6) (a) An agency shall conduct a retrospective cost-benefit
217 analysis for each adopted rule 4 years after the rule's
218 effective date. The analysis must compare the actual costs and
219 benefits of the rule to those projected in the initial statement
220 of estimated regulatory costs prepared under paragraph (1) (a).

221 (b) An agency shall conduct a retrospective assessment
222 report for each adopted rule 8 years after the rule's effective
223 date. The report must compare the initial projected cost-benefit
224 analysis, the retrospective analysis conducted under paragraph
225 (a), and the outcomes observed up to this time. The agency shall
226 incorporate the findings and lessons learned from this
227 comparison into the standards for future statements of estimated
228 regulatory costs and apply them to similar rules.

229 (c) For all rules in effect on July 1, 2025, the committee
230 must set a schedule for agencies to conduct the analysis and
231 report as required by paragraphs (a) and (b), taking into
232 consideration the time and resources agencies will expend to

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233 perform such review. Such reviews must be scheduled to begin
234 between July 1, 2027, and July 1, 2037.

235 (d) An amendment to a rule through subsequent rulemaking
236 does not affect the agency's duty to perform the reviews as
237 required by paragraphs (a) and (b), unless the amendment
238 completely repeals and adopts a new rule as described in s.
239 120.54. In such case, the rule's review dates must be determined
240 based on the effective date of the subsequent rule.

241 (e) The following rules are exempt from the review
242 processes described in paragraphs (a) and (b):

243 1. Rules required to comply with federal law or to receive
244 federal funds.

245 2. Rules adopted pursuant to authority granted under the
246 State Constitution.

247 3. Rules of agencies that are headed by an elected
248 official.

249 (f) Rules exempt under paragraph (e) must be reviewed by
250 the agency according to the schedule set by the committee. The
251 agency may not begin its review more than 1 year before the
252 rule's scheduled review date.

253 (g) During the review, including any review under paragraph
254 (f), the agency shall:

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

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

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

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

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

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

266 120.545 Committee review of agency rules.—

267 (1) As a legislative check on legislatively created
268 authority, the committee shall examine each proposed rule,
269 except for those proposed rules exempted by s. 120.81(1)(e) and
270 (2), and its accompanying material, and each emergency rule, and
271 may examine any existing rule, for the purpose of determining
272 whether:

273 (m) The agency is timely complying with the review
274 requirements described in s. 120.541(6)(a) and (b).

275 (n) The agency has properly reviewed exempt rules as
276 required under s. 120.541(6)(f).

277 Section 5. Paragraph (a) of subsection (1) of 120.55,
278 Florida Statutes, is amended to read:

279 120.55 Publication.—

280 (1) The Department of State shall:

281 (a)1. Through a continuous revision and publication system,
282 compile and publish electronically, on a website managed by the
283 department, the "Florida Administrative Code." The Florida
284 Administrative Code shall contain all rules adopted by each
285 agency, citing the grant of rulemaking authority and the
286 specific law implemented pursuant to which each rule was
287 adopted, including the effective date of each rule, all history
288 notes as authorized in s. 120.545(7), complete indexes to all
289 rules contained in the code, and any other material required or
290 authorized by law or deemed useful by the department. The

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291 electronic code shall display each rule chapter currently in
292 effect in browse mode and allow full text search of the code and
293 each rule chapter. The department may contract with a publishing
294 firm for a printed publication; however, the department shall
295 retain responsibility for the code as provided in this section.
296 The electronic publication shall be the official compilation of
297 the administrative rules of this state. The Department of State
298 shall retain the copyright over the Florida Administrative Code.

299 2. Rules general in form but applicable to only one school
300 district, community college district, or county, or a part
301 thereof, or state university rules relating to internal
302 personnel or business and finance shall not be published in the
303 Florida Administrative Code. Exclusion from publication in the
304 Florida Administrative Code shall not affect the validity or
305 effectiveness of such rules.

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

313 4. Forms shall not be published in the Florida
314 Administrative Code; but any form which an agency uses in its
315 dealings with the public, along with any accompanying
316 instructions, shall be filed with the committee before it is
317 used. Any form or instruction which meets the definition of
318 "rule" provided in s. 120.52 shall be incorporated by reference
319 into the appropriate rule. The reference shall specifically

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320 state that the form is being incorporated by reference and shall
321 include the number, title, and effective date of the form and an
322 explanation of how the form may be obtained. Each form created
323 by an agency which is incorporated by reference in a rule notice
324 of which is given under s. 120.54(3)(a) after December 31, 2007,
325 must clearly display the number, title, and effective date of
326 the form and the number of the rule in which the form is
327 incorporated.

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

340 Section 6. Subsection (1) and paragraph (a) of subsection
341 (2) of section 120.56, Florida Statutes, are amended to read:

342 120.56 Challenges to rules.—

343 (1) GENERAL PROCEDURES.—

344 (a) Any person substantially affected by a rule, a guidance
345 document, or a proposed rule may seek an administrative
346 determination of the invalidity of the rule or guidance document
347 on the ground that the rule or guidance document is an invalid
348 exercise of delegated legislative authority. All of the

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349 provisions in this section apply to guidance documents as well
350 as adopted rules.

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

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

355 2. Facts sufficient to show that the petitioner is
356 substantially affected by the challenged adopted rule or would
357 be substantially affected by the proposed rule.

358 (c) The petition shall be filed by electronic means with
359 the division which shall, immediately upon filing, forward by
360 electronic means copies to the agency whose rule is challenged,
361 the Department of State, and the committee. Within 10 days after
362 receiving the petition, the division director shall, if the
363 petition complies with paragraph (b), assign an administrative
364 law judge who shall conduct a hearing within 30 days thereafter,
365 unless the petition is withdrawn or a continuance is granted by
366 agreement of the parties or for good cause shown. Evidence of
367 good cause includes, but is not limited to, written notice of an
368 agency's decision to modify or withdraw the proposed rule or a
369 written notice from the chair of the committee stating that the
370 committee will consider an objection to the rule at its next
371 scheduled meeting. The failure of an agency to follow the
372 applicable rulemaking procedures or requirements set forth in
373 this chapter shall be presumed to be material; however, the
374 agency may rebut this presumption by showing that the
375 substantial interests of the petitioner and the fairness of the
376 proceedings have not been impaired.

377 (d) Within 30 days after the hearing, the administrative

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378 law judge shall render a decision and state the reasons for his
379 or her decision in writing. The division shall forthwith
380 transmit by electronic means copies of the administrative law
381 judge's decision to the agency, the Department of State, and the
382 committee.

383 (e) Hearings held under this section shall be de novo in
384 nature. The standard of proof shall be the preponderance of the
385 evidence. Hearings shall be conducted in the same manner as
386 provided by ss. 120.569 and 120.57, except that the
387 administrative law judge's order shall be final agency action.
388 The petitioner and the agency whose rule is challenged shall be
389 adverse parties. Other substantially affected persons may join
390 the proceedings as intervenors on appropriate terms which shall
391 not unduly delay the proceedings. Failure to proceed under this
392 section does not constitute failure to exhaust administrative
393 remedies.

394 (f) Any party subject to an enforcement action may
395 challenge the enforcement action based solely on the grounds
396 that the agency lacked express statutory authority to adopt the
397 rule or issue a guidance document upon which the enforcement
398 action is based. Any party that prevails on such a challenge
399 shall be entitled to recover reasonable costs and attorney fees.

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

402 a. Failing to prepare a statement of estimated regulatory
403 costs as required;

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

406 c. Failing to make the statement or the underlying data and

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407 analysis publicly available as required by s. 120.541(2)(h); or
408 d. Failing to conduct the retrospective analyses required
409 by s. 120.541(1)(i) and (j).

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

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

414 (a) A petition alleging the invalidity of a proposed rule
415 shall be filed within 21 days after the date of publication of
416 the notice required by s. 120.54(3)(a); within 10 days after the
417 final public hearing is held on the proposed rule as provided by
418 s. 120.54(3)(e)2.; within 20 days after the statement of
419 estimated regulatory costs or revised statement of estimated
420 regulatory costs, if applicable, has been prepared and made
421 available as provided in s. 120.541(1)(e) ~~s. 120.541(1)(d)~~; or
422 within 20 days after the date of publication of the notice
423 required by s. 120.54(3)(d). The petitioner has the burden to
424 prove by a preponderance of the evidence that the petitioner
425 would be substantially affected by the proposed rule. The agency
426 then has the burden to prove by a preponderance of the evidence
427 that the proposed rule is not an invalid exercise of delegated
428 legislative authority as to the objections raised. A person who
429 is not substantially affected by the proposed rule as initially
430 noticed, but who is substantially affected by the rule as a
431 result of a change, may challenge any provision of the resulting
432 proposed rule.

433 Section 7. This act shall take effect July 1, 2025.