



THE FLORIDA LEGISLATURE



JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

2021 Annual Report

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Senator Lorraine Ausley
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Senator Danny Burgess
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JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE

January 14, 2022

Honorable Wilton Simpson
President, Florida Senate
The Capitol, Room 409
Tallahassee, Florida 32399-1100

Honorable Chris Sprowls
Speaker, House of Representatives
The Capitol, Room 420
Tallahassee, Florida 32399-1300

Mr. President and Mr. Speaker:

Pursuant to Rule 4.6(6) of the Joint Rules of the Florida Legislature, I am pleased to submit the Joint Administrative Procedures Committee annual report, covering January 1, 2021 through December 31, 2021.

Sincerely,

A handwritten signature in cursive script that reads "Kenneth J. Plante".

Kenneth J. Plante
Coordinator

cc: Senator Ben Albritton, Chair
Representative Rick Roth, Vice Chair

Enclosure

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JOINT ADMINISTRATIVE PROCEDURES COMMITTEE MEMBERS



Senator Ben Albritton, Chair
Senator Loranne Ausley
Senator Jason Brodeur
Senator Danny Burgess
Senator Shevrin D. “Shev” Jones

Representative Rick Roth, Vice Chair
Representative Wyman Duggan
Representative Yvonne Hayes Hinson
Representative Patt Maney
Representative Angela “Angie” Nixon
Representative Anthony Sabatini



THE JOINT ADMINISTRATIVE PROCEDURES COMMITTEE

The Joint Administrative Procedures Committee is a standing committee of the Legislature created by Joint Rule Four of the Florida Legislature.

The committee is composed of eleven members, five from the Senate, appointed by the President of the Senate, and six from the House of Representatives, appointed by the Speaker of the House.

The Chair of the committee is designated by the President of the Senate in odd-numbered years and by the Speaker of the House in even-numbered years. The committee staff is headed by a Coordinator, and includes reviewing attorneys and administrative support staff.

The committee is required to report annually to the Speaker and President. This report is provided at the start of the regular session and covers the preceding calendar year. It contains statistical information regarding rulemaking in the various state agencies as well as summaries of all objections voted by the committee during the preceding year. The committee voted no formal objections in 2021.

The committee maintains a continuous review of the statutory authority upon which each administrative rule is based and notifies the agency if its authority is eliminated or significantly changed by repeal, amendment, or decision of a court of last resort. Following each session of the Legislature, the committee reviews each law signed by the Governor or

allowed to become law without his signature and determines whether the law will have a probable effect on an agency's rules. If so, the affected agency is notified.

If the reviewing attorneys have concerns that a proposed or existing rule may not be authorized or exceeds the delegated rulemaking authority, the agency is contacted. Often the agency agrees that there is no authority for the rule and withdraws or amends the rule to meet the staff concerns. If there is disagreement about whether or not there is authority for the rule, the rule is scheduled for consideration by the full committee. The agency may appear before the committee

and present argument and evidence in support of its rule. If, after hearing the agency's argument, the committee does not find statutory authority for the rule, an objection is voted and the agency has a period defined by statute in which to respond. If the agency refuses to modify or withdraw a rule to which the

committee has objected, public notice of the objection is given and a notation accompanies the rule when it is published in the Florida Administrative Code.

In the event that an agency fails to initiate administrative action to meet an objection voted by the committee, the committee is authorized to submit to the President of the Senate and Speaker of the House a recommendation that legislation be introduced to modify or suspend the adoption of a proposed rule, or amend or repeal an existing rule. If the committee



votes to recommend the introduction of legislation, the committee is required to notify the agency of its action, and may request that the agency temporarily suspend the rule or suspend the adoption of a proposed rule, pending consideration of proposed legislation during the next regular session of the Legislature. The agency must respond to the committee within a specified time either by temporarily suspending the rule or suspending the adoption of a proposed rule, or by notifying the committee that it refuses to suspend the rule or rule adoption. The committee is required to prepare bills to modify or suspend the adoption of a proposed rule, or to amend or repeal an existing rule, in accordance with rules of the Senate and the House of Representatives for introduction in the next regular legislative session. The proposed bill is then presented to the Senate President and Speaker of the House along with the committee recommendation.

The committee constantly monitors judicial decisions in administrative law and advises the agency when either its statutory rulemaking authority or its rules are affected by these decisions.

The committee has a duty to recommend needed changes in the Administrative Procedure Act (APA) to the Legislature. These recommendations may be based upon its review of judicial decisions as well as its daily interaction with executive agencies and with citizens as they participate in the administrative procedures of the state. The committee made recommendations relating to the APA in 2021 to the President of the Senate and the Speaker of the House of

Representatives that are included in this report.

Joint Rule 4.6 directs the committee to undertake and maintain a systematic and continuous review of the Florida Statutes that authorize agencies to adopt rules, and to make recommendations to the appropriate standing committees of the Senate and the House of Representatives as to the advisability of considering changes to the delegated legislative authority to adopt rules in specific circumstances. Areas of concern brought to the attention of standing committees during the past year are detailed in this report.

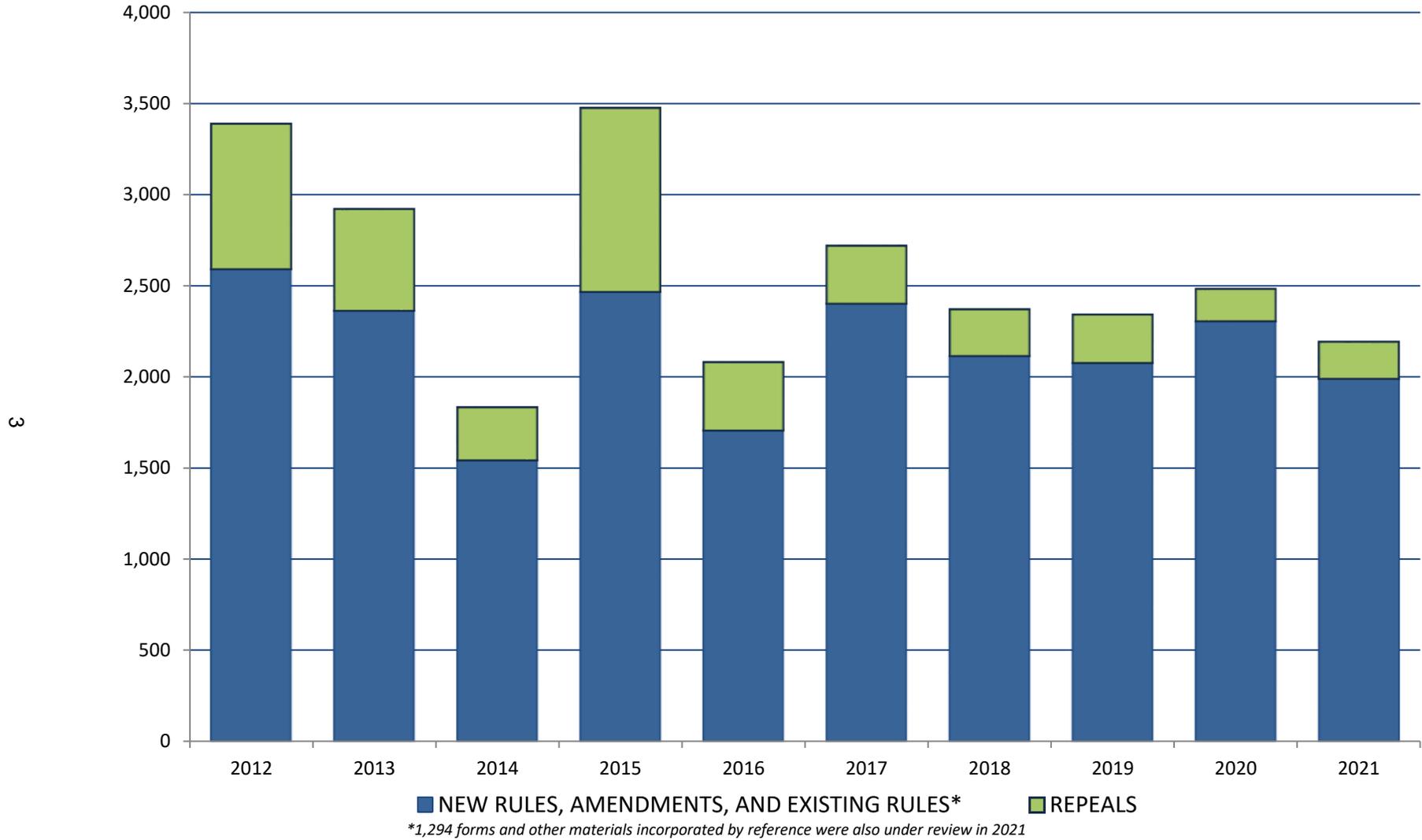
The committee has long had standing to seek judicial review of the validity of any rule to which it has objected and which has not been modified or repealed to meet the objection. To date, the committee has never found it necessary to exercise this power. Before judicial review, the committee must first notify the head of the agency involved and the Governor and provide an opportunity for consultation with the committee. If the issue cannot be resolved in this manner, the committee may bring an action in the appropriate court asking that the rule be declared invalid.

Thus, the committee performs services for the Legislature, the administrative agencies of the state and the people whom they regulate.

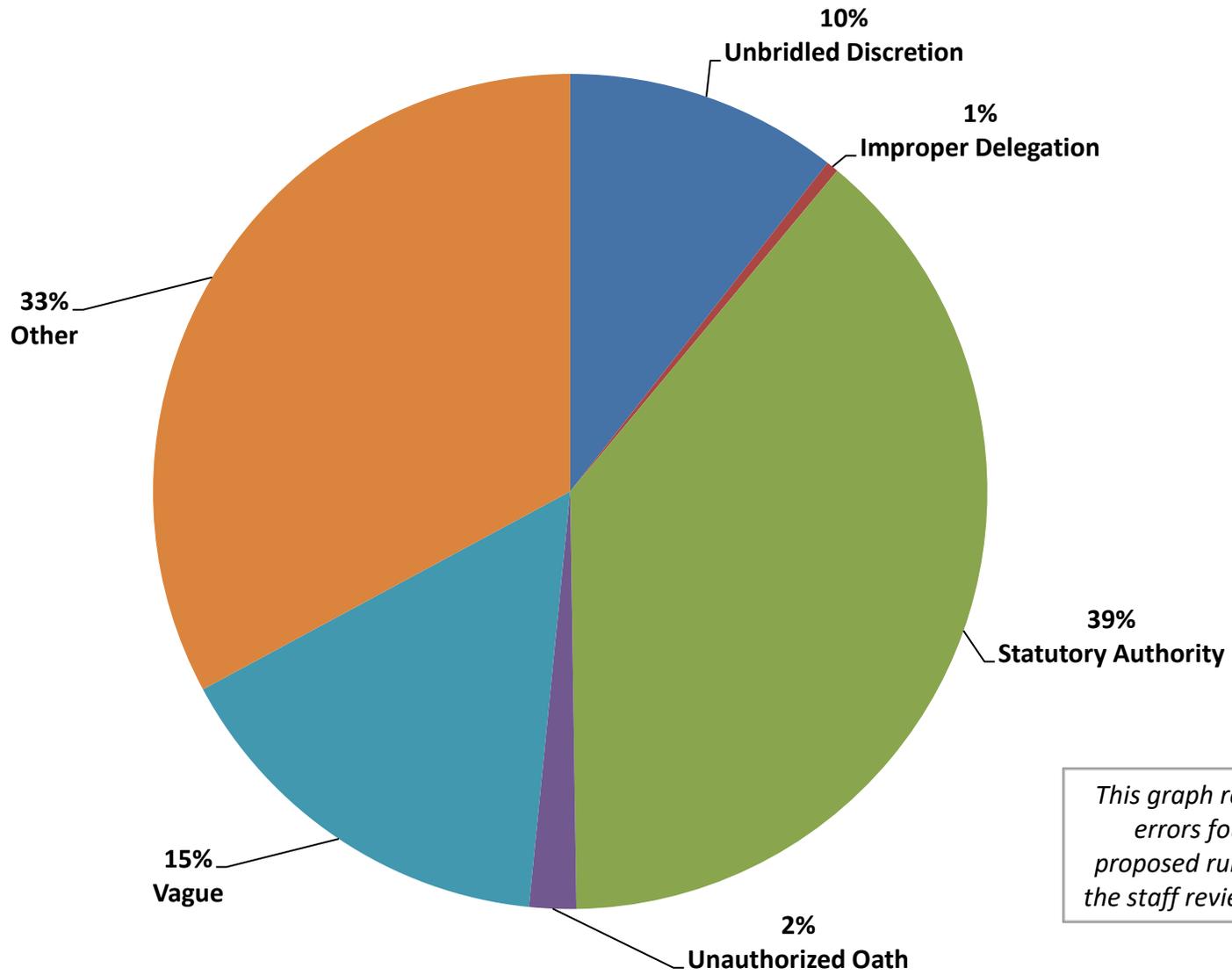


Statistical Information on Committee Review of Rules

NUMBER OF RULES UNDER REVIEW 2012 - 2021

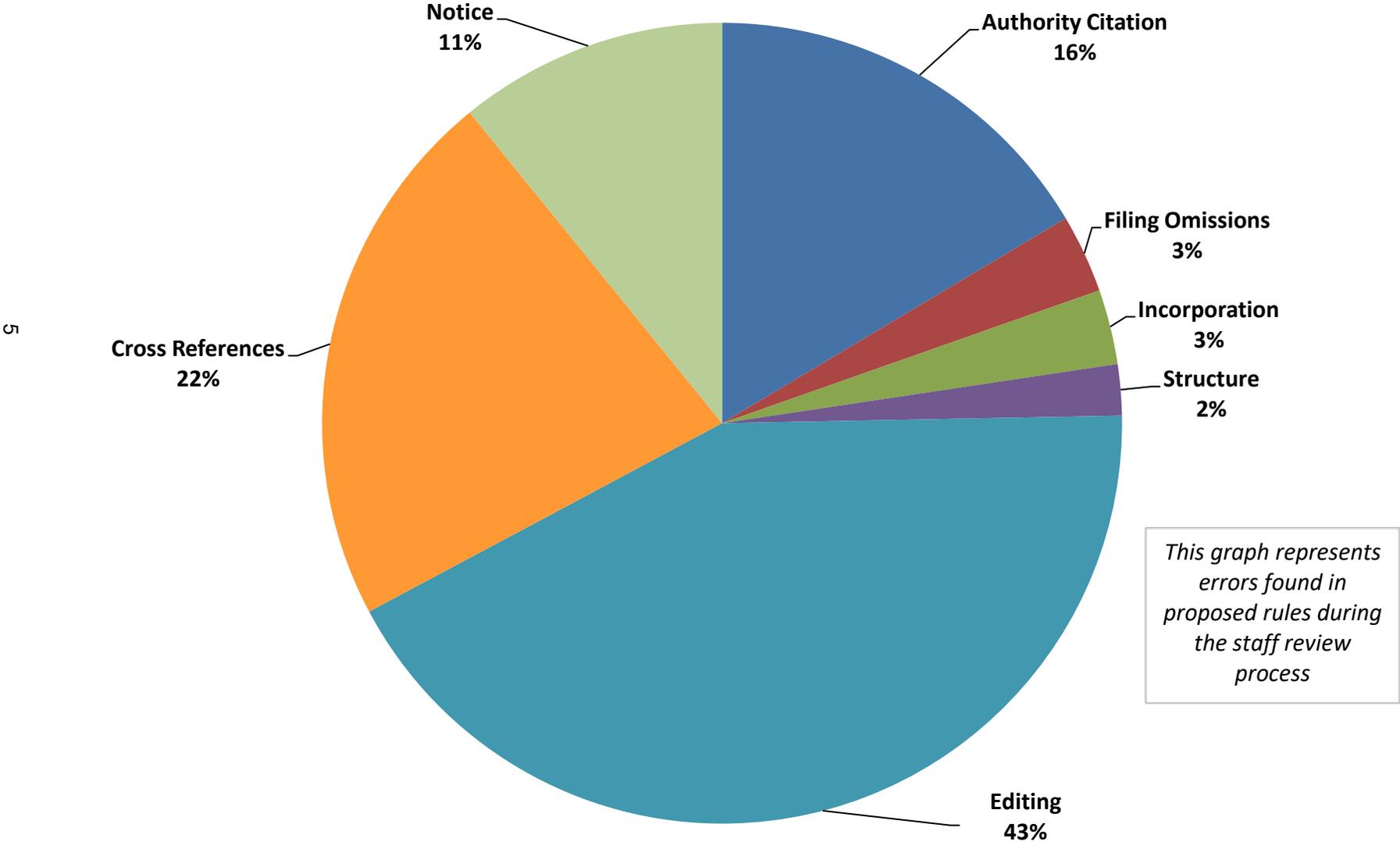


TYPES OF SUBSTANTIVE ERRORS - 2021



This graph represents errors found in proposed rules during the staff review process

TYPES OF TECHNICAL ERRORS - 2021





Proposed Rules (2012 - 2021)

PROPOSED RULES 2012 THROUGH 2021

CHPT #	Agency	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	TOTAL
01	State	18	25	14	52	18	12	11	16	15	15	196
02	Legal Affairs	4	15	12	34	9	17	8	17	23	5	144
05	Agriculture and Consumer Services	46	99	147	54	92	167	107	147	81	47	987
06	Education	117	84	107	109	130	105	90	61	62	61	926
11	Law Enforcement	87	0	30	35	35	34	29	29	24	21	324
12	Revenue	50	160	29	129	29	67	52	56	66	18	656
14	Transportation	20	27	14	64	18	18	40	8	3	3	215
15	Highway Safety and Motor Vehicles	137	2	24	2	2	26	0	7	0	0	200
18	Board of Trustees of the Internal Improvement Trust Fund	3	4	0	10	2	0	20	6	0	3	48
19	State Board of Administration	52	47	51	28	39	18	13	10	23	9	290
20	Citrus	54	4	9	37	4	25	78	8	12	102	333
23	Florida Commission on Offender Review	25	14	6	2	0	20	2	0	0	0	69
25	Public Service Commission	67	14	19	25	13	9	12	16	27	12	214
27	Executive Office of the Governor	0	14	0	1	0	0	1	7	10	0	33
28	Administration Commission	46	52	0	17	0	0	0	0	6	19	140
29	Regional Planning Councils	8	5	0	0	0	0	3	71	1	1	89
32	Florida State Fair Authority	0	0	0	0	0	0	0	0	0	0	0
33	Corrections	79	55	44	9	21	26	19	0	26	22	301
34	Commission on Ethics	10	34	21	48	10	6	4	9	8	12	162

**Repealed*

CHPT #	Agency	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	TOTAL
35	Metropolitan Planning Organizations	0	0	9	0	0	0	0	0	0	0	9
40	Water Management Districts	136	493	109	211	72	32	66	33	51	75	1,278
41	Commission for the Transportation Disadvantaged	5	1	0	2	0	1	3	0	2	1	15
42	Florida Land and Water Adjudicatory Commission	3	7	0	4	2	2	11	1	0	3	33
49	Regional Utility Authorities	0	0	17	0	0	0	0	0	0	0	17
53	Lottery	66	3	0	65	1	1	0	0	0	0	136
54	Interlocal Agencies	0	0	0	0	0	0	0	0	0	0	0
55	Veterans' Affairs	0	0	3	36	10	4	0	3	0	0	56
57	Space Florida	0	0	0	0	0	0	0	0	0	0	0
58	Elder Affairs	26	26	0	20	14	3	12	0	0	0	101
59	Agency for Health Care Administration	108	73	108	76	126	73	101	43	8	46	762
60	Management Services	88	42	42	125	68	134	18	16	3	53	589
61	Business and Professional Regulation	322	247	114	270	175	182	119	153	208	131	1,921
62	Environmental Protection	144	307	129	175	159	38	124	76	195	156	1,503
63	Juvenile Justice	1	131	4	57	4	16	15	15	67	37	347
64	Health	275	289	254	510	399	226	284	216	227	292	2,972
65	Children and Families	78	86	63	259	90	115	101	137	99	69	1,097
66	Navigation Districts	3	10	4	4	0	0	0	0	35	4	60
67	Florida Housing Finance Corporation	9	79	69	1	61	71	64	62	63	60	539

**Repealed*

CHPT #	Agency	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	TOTAL
68	Fish and Wildlife Conservation Commission	81	238	62	80	88	58	96	138	76	52	969
69	Financial Services	185	83	222	260	144	192	150	196	104	71	1,607
70	Military Affairs	0	0	0	0	0	0	0	0	0	0	0
71	Agency for Enterprise Information Technology*	0	0	0	0	33	0	0	0	0	0	33
72	Board of Governors	0	0	0	1	1	0	0	0	0	0	2
73	Economic Opportunity	29	25	35	24	38	59	32	16	11	2	271
74	Agency for State Technology*	0	0	0	15	11	3	6	0	0	0	35
	TOTAL	2,382	2,795	1,771	2,851	1,918	1,760	1,691	1,573	1,536	1,402	19,679



Emergency Rules

(2012 - 2021)

EMERGENCY RULES 2012 THROUGH 2021

CHPT #	Agency	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	TOTAL
01	State	1	0	0	0	0	0	0	0	3	0	4
02	Legal Affairs	1	1	0	0	1	0	1	0	0	1	5
05	Agriculture and Consumer Services	0	0	0	0	2	5	0	3	5	4	19
06	Education	1	1	0	0	0	0	0	1	0	2	5
11	Law Enforcement	0	0	0	0	0	0	0	0	0	0	0
12	Revenue	8	7	7	3	2	4	7	4	16	20	78
14	Transportation	0	0	0	0	0	0	0	0	0	0	0
15	Highway Safety and Motor Vehicles	0	0	0	0	0	0	0	0	0	0	0
18	Board of Trustees of the Internal Improvement Trust Fund	0	0	0	0	0	0	0	0	0	0	0
19	State Board of Administration	1	0	0	0	0	0	0	0	0	0	1
20	Citrus	1	1	0	3	2	5	1	0	0	0	13
23	Florida Commission on Offender Review	0	0	0	0	0	0	0	0	0	0	0
25	Public Service Commission	0	0	0	0	0	0	0	0	0	0	0
27	Executive Office of the Governor	0	0	0	0	0	0	0	0	0	0	0
28	Administration Commission	0	0	0	0	0	0	0	0	0	0	0
29	Regional Planning Councils	0	0	0	0	0	0	0	0	0	0	0
32	Florida State Fair Authority	0	0	0	0	0	0	0	0	0	0	0
33	Corrections	0	0	0	0	0	0	0	0	0	0	0
34	Commission on Ethics	0	0	0	0	0	0	0	0	0	0	0

CHPT #	Agency	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	TOTAL
69	Financial Services	1	0	0	0	0	0	0	0	1	0	2
70	Military Affairs	0	0	0	0	0	0	0	0	0	0	0
72	Board of Governors	0	0	0	0	0	0	0	0	0	0	0
73	Economic Opportunity	0	0	1	2	0	0	0	0	2	2	7
	TOTAL	96	92	85	79	79	122	82	94	191	126	1,046



Legislative Report:

2021 Session

Changes in

Chapter 120, F.S.

2021 Summary of Amendments to Chapter 120, F.S.

Chapter 2021-17, Laws of Florida, amends section 120.81(1)(d)1., F.S., to require educational units to publish notices in a newspaper “qualified under chapter 50” in the affected area.

Effective Date: January 1, 2022

Chapter 2021-191, Laws of Florida, creates section 120.80(13)(g), F.S., which exempts rules adopted by the Florida Public Service Commission pursuant to sections 366.04(8) and 366.97, F.S., from the requirements of section 120.541, F.S.

Effective Date: June 29, 2021



Staff Correspondence with Standing Committees

STAFF CORRESPONDENCE WITH SUBSTANTIVE COMMITTEES

The following was brought to the attention of standing committees, pursuant to Joint Rule 4.6, in 2021:

Sec. 196.081(4), F.S. On February 19, 2020, the Second District Court of Appeal held that section 196.081(4), F.S., was invalid and unenforceable. *Dept. of Revenue v. Bell*, So. 3d 1060 (Fla. 2nd DCA 2020). This statutory provision requires a veteran to have been a permanent resident of the state as of January 1 of the year in which the veteran dies for his or her surviving spouse to be eligible for a tax exemption. The Court held that the residency condition conflicted with article VII, section (6)(f), of the Florida Constitution, as it limited the class of individuals eligible for the exemption under the plain language of the constitution. The Legislature may wish to amend this provision's language for consistency with the opinion.



Recommended Legislation (2021 Session)

**JOINT ADMINISTRATIVE PROCEDURES COMMITTEE
2021 RECOMMENDED LEGISLATION**

REPROMULGATION OF EXISTING RULES

Recommendation 1: Repromulgation/re-adoption of existing rules

Section 120.545, Florida Statutes, and Joint Rule 4.6 of the Florida Legislature authorize the Committee to review existing rules to ensure, in part, that the rule is not an invalid exercise of delegated legislative authority, and that the rule's statutory authority and laws implemented have not been repealed or otherwise amended. The Committee does not review the rules for consistency with agency policies, procedures or guidelines.

Section 120.74(1)(d)2., Florida Statutes, requires that, with the filing of the agency's annual regulatory plan, the agency head and legal counsel, "Verify that the agency regularly reviews all of its rules and identify the period during which all rules have most recently been reviewed to determine if the rules remain consistent with the agency's rulemaking authority and the laws implemented." There is no requirement, however, that the agency take any affirmative action to resolve any discrepancies that may be noted. The agency's review of existing rules that do not require any changes is not reflected in the history notes of the rules published in the Florida Administrative Code. As of December 16, 2020, a total of 16,597 numbered rules were published in the Florida Administrative Code, with the rule history notes indicating that 26% were either adopted or last amended prior to 2000. The resulting perception is that many rules have not been reviewed by an agency in over 20 years.

The recommended legislation creates section 120.5435, Florida Statutes. The purpose of the amendment is to give greater structure to the review of existing rules by requiring existing rules to be "repromulgated" or re-adopted as they are reviewed, a procedure currently recognized but not formalized by rule by the Department of State, with the date of repromulgation noted in the rule history notes. The proposed procedure would place the public on notice that rules have actually been reviewed to be consistent with both statutory requirements and agency policy. The recommendation does not require the full republication of the rule in the Florida Administrative Register or open the rule to an administrative challenge. A more formalized review process is consistent with the directive issued by Governor DeSantis to agencies under the supervision of the Governor to review all rules on a 5-year basis.

The 5-year review schedule is also consistent with the provisions of section 11.242(5)(j), Florida Statutes, which provides:

All statutes and laws, or parts thereof, which grant duplicative, redundant, or unused rulemaking authority, shall be omitted through the process of reviser's bills duly enacted by the Legislature. Rulemaking authority shall be deemed to be unused if the provision has been in effect for more than 5 years and no rule has been promulgated in reliance thereon.

Under this procedure, a "rule" is considered to be a numbered section of the Florida Administrative Code. All forms and material incorporated by reference that meet the statutory definition of a

“rule” under section 120.52(16), Florida Statutes, but are not assigned a “rule number” by the Department of State, will also be reviewed, as they are incorporated by reference into the rules being reviewed.

Recommendation 2: Require regulatory plans to include a plan for repromulgating rules

Section 120.74, Florida Statutes, requires that each agency prepare a regulatory plan by October 1 of each year. The amendment would require regulatory plans to identify rules scheduled to be repromulgated for the upcoming year, as well as to include a 5-year plan for the repromulgation of existing rules.

STATEMENT OF ESTIMATED REGULATORY COSTS

Recommendation 3: Require notice of filing regulatory alternatives with JAPC

Sections 120.54(3)(b) and 120.541(1)(a), Florida Statutes, provide for the submission of lower cost regulatory alternatives to agencies for consideration. The submission of a lower cost regulatory alternative results in a 21-day extension to the rulemaking procedure timeframe, and in some cases will require an agency to prepare a new or revised statement of estimated regulatory costs (SERC). Under the current procedures, there is no requirement that the Committee be provided with a copy of the regulatory alternative. The proposed amendment would require that a copy of any regulatory alternative be provided to the Committee by the agency, thereby enabling the Committee to keep an accurate record of the rulemaking timeframe.

TRANSPARENCY

Recommendation 4: Changes to material incorporated by reference

Rules are amended by means of a strike-through and underline process, similar to that used by the Legislature in drafting bills. However, the same coding is not required for amendments to incorporated manuals, guidelines, or forms. While substantive changes to a document incorporated by reference must be accomplished through the rulemaking procedure outlined in section 120.54, Florida Statutes, those amendments are not reflected by published, coded changes to the document itself; rather, a change in the effective date of the document is sufficient. The purpose of this proposed amendment is to require all documents created by an agency that meet the definition of a rule and that are incorporated by reference into a rule to have the same transparency in any proposed changes as a rule identified by a number assigned by the Department of State and be amended by strike-through and underlining.

Recommendation 5: Availability of material incorporated by reference

Currently, material incorporated by reference need not be made available via hyperlink at the time that the rule is proposed. As such, the public’s only notice of any changes to an incorporated document is often only a change to the document’s effective date in the notice of proposed rulemaking. In keeping with the added transparency for incorporated material, where permitted by federal copyright law, the proposed amendment would require the proposed rule text to include

hyperlinks to materials incorporated by reference to allow the public to review the material without having to request a hard copy of the material from the agency.

Section 120.54(1)(i)3., Florida Statutes, requires that materials incorporated by reference be made available via hyperlink where permitted by federal copyright law for all rules adopted after December 31, 2010. An estimated two-thirds of all rules were adopted or last amended prior to 2010. The proposed amendment would require that all rules adopted prior to 2010, when repromulgated, include hyperlinks to any materials incorporated by reference.

Recommendation 6: Publication requirements for the Florida Administrative Code

Section 120.55(1)(a)3., Florida Statutes, currently requires the Department of State to publish the address and telephone number of the executive offices of each agency that files copies of its rules with the Department of State, as well as the manner by which the agency indexes its rules, a listing of all rules of that agency excluded from publication in the code, and a statement as to where those rules may be inspected. This requirement is not being performed in a consistent manner, and it is not clear whether the Department of State or the agency bears the responsibility for the publication. Although the Department of State publishes the Florida Administrative Code, agencies are required “to publish” rules in the Florida Administrative Code. The purpose of the proposed amendment is to clarify the responsibility for publishing the material, and to place the responsibility on the agency, as the agency is in direct possession of the information.

The amendment would also require agencies to publish a list of all forms and material incorporated by reference used by the agency, and a statement as to where those forms and incorporated material may be inspected. Currently, there is no central filing requirement for the public to identify forms and incorporated material that meet the definition of a rule but the texts of which are not published in the Florida Administrative Code.

EMERGENCY RULES

Recommendation 7: Renewal of emergency rules

Section 120.54(4), Florida Statutes, allows an agency to renew an emergency rule where a challenge to the proposed rule addressing the subject of the emergency rule has been filed or where the proposed rule is awaiting ratification by the Legislature. Currently, chapter 120, Florida Statutes, does not prescribe the procedure for the renewal of emergency rules. The proposed amendment would require an agency to publish notice of the renewal of an emergency rule in the Florida Administrative Register prior to the expiration of the emergency rule.

Recommendation 8: Publication of emergency rules

Notice of the adoption of an emergency rule is published in the Florida Administrative Register along with the text of the rule. The emergency rule is not, however, published in the Florida Administrative Code. Therefore, unless an individual is aware of the publication of an emergency rule and the date of its publication, the rule is effectively hidden from the public. This practice is especially problematic for emergency rules that are the subject of litigation or are on appeal, have

been renewed by an agency, or have an effective period of more than 90 days. The proposed amendment would require the text of emergency rules to be published in the Florida Administrative Code.

Recommendation 9: Changes to emergency rules

Section 120.54(4), Florida Statutes, does not provide a procedure to amend an emergency rule, nor does it specifically prohibit amending an emergency rule. The proposed amendment recognizes that technical changes may be necessary, and would allow for technical changes to be made within the first seven days after the adoption of the emergency rule and preserves the 90-day integrity of the emergency rule. Additionally, the proposed amendment clarifies that an agency may make changes to an emergency rule by superseding the previous emergency rule, while maintaining the original 90-day timeframe of the rule.

RULEMAKING PROCEDURES

Recommendation 10: Define the term “technical change”

The proposed amendment provides a definition for the term “technical change.” A technical change to a proposed or existing rule does not require the publication of a notice in the Florida Administrative Register. The term is not defined in the Department of State’s rules, leading to inconsistent interpretation by agencies and interested parties.

Recommendation 11: Documentation of technical changes

The proposed amendment requires the Department of State to include the date of any technical changes in the rule’s history note. Currently, since technical changes are not substantive in nature, there is no requirement that they be formally documented in the rule history. The amendment would allow for a more complete record of any rule changes.

Recommendation 12: Publication of a notice of correction

The subject of what may be addressed in a notice of correction and the effect of the publication of a notice of correction has long been the subject of litigation and confusion. The proposed amendment is intended to add clarity and certainty to agencies and the affected public as to the distinction between a notice of correction and a notice of change under section 120.54(3)(d), Florida Statutes.

Recommendation 13: Publication of a notice of proposed rule

Section 120.54, Florida Statutes, sets forth the requirements for publishing a notice of rule development and a notice of proposed rule. Prior to converting the Florida Administrative Register from a weekly (Florida Administrative Weekly) to a daily publication, the timeframe between the publication of the notice of rule development and the notice of proposed rule was at least one week. There is currently no minimum time period required between publication dates, and agencies often publish a notice of proposed rule the day after publication of the notice of rule development,

effectively rendering the purpose of the notice of rule development meaningless. The proposed amendment would reestablish the timeframe originally set with the weekly publication requirements, and establish a seven-day minimum period between the publication of a notice of rule development and the notice of proposed rule.

Recommendation 14: Streamline the petition to initiate rulemaking procedure

Section 120.54(7), Florida Statutes, provides that if an agency, in response to a petition to initiate rulemaking, does not initiate rulemaking, it shall file a copy of its statement of the reasons for not doing so with the Committee, which is then responsible for forwarding a copy of the statement to the substantive committee with primary oversight jurisdiction of the agency in the House and in the Senate. Either the Committee or the substantive committee having primary oversight may hold a hearing directed at the statement of the agency. The proposed amendment would remove the Committee as middleman and require an agency to file a copy of its statement of reasons for not initiating rulemaking directly with the appropriate substantive committees.

Recommendation 15: Notice of withdrawal of rules

Section 120.54, Florida Statutes, requires that agencies file a notice of withdrawal if a rule has not been adopted within the time limits imposed by statute or has not been adopted in compliance with all statutory rulemaking requirements. This requirement is not always followed, leaving the status of proposed rules in limbo. The proposed amendment would allow the Department of State to withdraw the expired proposed rule upon notification by the Committee.

MANDATORY RULEMAKING

Recommendation 16: Require mandatory rulemaking to be completed within 180 days

Prior to 2015, section 120.54, Florida Statutes, directed agencies to notice proposed rules within 180 days after the effective date of an act requiring mandatory rulemaking. The provision was removed with the enactment of section 120.74, Florida Statutes, which requires agencies to file annual regulatory plans outlining proposed rulemaking for the coming year, and allows agencies to unilaterally grant extensions to any rulemaking plans/notices. Adding the 180-day rulemaking requirement back to section 120.54, Florida Statutes, will give the Committee greater oversight authority to ensure that agencies adopt rules mandated by the Legislature in a timely manner.

JAPC REVIEW

Recommendation 17: Amend the JAPC review process

The current process set forth in section 120.545, Florida Statutes, allows an agency to toll the 90-day timeframe for adopting a rule if it is advised that the Committee is considering an objection. The tolling allows the agency and Committee staff additional time to consider any outstanding issues. The proposed amendment would allow the Committee to toll the 90-day timeframe to allow additional time for the Committee to review incorporated documents or address statutory language, when an objection may not be imminent.

REGULATORY PLANS

Recommendation 18: Amend section 11.242(5)(j), Florida Statutes

Section 11.242(5)(j), Florida Statutes, provides:

All statutes and laws, or parts thereof, which grant duplicative, redundant, or unused rulemaking authority, shall be omitted through the process of reviser's bills duly enacted by the Legislature. Rulemaking authority shall be deemed to be unused if the provision has been in effect for more than 5 years and no rule has been promulgated in reliance thereon.

Currently, the statute is silent as to what entity is responsible for notifying the Division of Law Revision which statutes should be included in the reviser's bills. The amendment would place this responsibility on each agency. This proposal is consistent with the Governor's November 11, 2019, directive which states: "By September 1, 2020, each agency shall conduct a thorough review of all current rules and regulations and report to OFARR any rules or regulations that are barriers to entry for private business competition, duplicative, outdated, obsolete, overly burdensome, or impose excessive cost."

1 A bill to be entitled

2 An act relating to regulatory reform, amending s. 120.52,
3 F.S.; defining terms; amending s. 120.54, F.S.; requiring
4 rules to be proposed within 180 days of the effective date
5 of the act; requiring material incorporated by reference to
6 be included in rules repromulgated; requiring rule numbers
7 to be included in agency notices of proposed adoption,
8 amendment or repeal of any rules other than emergency
9 rules; requiring notices of proposed rules to be published
10 no less than seven days after the publication of the notice
11 of rule development; requiring all material proposed to be
12 incorporated by reference to be available for inspection;
13 providing for the publication of a notice of correction;
14 providing that grammatical and citation corrections are not
15 required to be published as a notice of correction;
16 requiring that an agency provide the committee with a copy
17 of any regulatory alternative offered to the agency;
18 providing for the withdrawal of a rule upon the expiration
19 of the date for adoption; providing for the tolling of the
20 timeframe for adoption of a rule; requiring that a notice
21 of renewal of an emergency rule be published prior to the
22 expiration of the existing emergency rule; requiring that
23 history notes be published for emergency rules with an
24 effective date greater than 90 days that are intended to
25 replace existing rules; requiring that emergency rules be
26 published in the Florida Administrative Code; providing
27 that an agency may supersede an emergency rule; providing
28 that technical changes may be made to an emergency rule;
29 requiring that an agency provide the committee with a copy
30 of any petition received to adopt, amend or repeal a rule;
31 amending s. 120.541, F.S.; requiring an agency to provide
32 the committee with a copy of any proposal for a lower cost

33 regulatory alternative; creating s. 120.5435, F.S.;

34 requiring the periodic review of agency rules for

35 consistency with the powers and duties granted by its

36 enabling statutes; requiring the periodic repromulgation of

37 existing rules; requiring that all rules adopted or

38 repromulgated after July 1, 2021, be reviewed within five

39 years of the date of the adoption or repromulgation;

40 requiring that each agency review all existing rules within

41 five years of the effective date of the act; requiring that

42 an agency publish a notice of repromulgation; providing

43 that a notice of repromulgation is not required to include

44 the text of the rule; providing that a rule filed for

45 repromulgation may not be filed less than 28 days or more

46 than 90 days after the publication of the notice of

47 repromulgation; requiring that a notice of repromulgation

48 be filed with the committee; requiring that the committee

49 certify that an agency has responded to all material and

50 timely written comments or inquiries; requiring that if the

51 rule is not filed within 90 days of the publication of the

52 notice of repromulgation, the agency withdraw the proposed

53 repromulgation; providing that a repromulgated rule shall

54 not be subject to administrative challenge; providing that

55 the hearing requirements set forth in s. 120.54, F.S.,

56 shall not apply to the repromulgation of a rule; requiring

57 that an agency file certified copies of the rule it

58 proposes to repromulgate; providing that a rule be

59 considered repromulgated upon filing; requiring the

60 Department of State to update the history note of the rule

61 to reflect the date of the repromulgation; requiring the

62 Department of State to adopt rules to implement this

63 section; amending s. 120.55; requiring that the Florida

64 Administrative Code contain a complete index of all

65 incorporated material contained in the code; requiring that
66 each agency publish a listing of all forms and matter
67 incorporated by reference used by the agency, and a
68 statement as to where those forms and incorporated material
69 may be inspected; requiring that, after December 31, 2021,
70 any material incorporated by reference in adopted and
71 repromulgated rules be filed in the manner prescribed by s.
72 120.54(1)(i)3.a. or s. 120.54(1)(i)3.b.; requiring the
73 Department of State to publish the date of any technical
74 changes to a rule; providing that a technical change to a
75 rule does not change the effective date of the rule;
76 providing that a technical change made after the adoption
77 of a rule must be published as a notice of correction;
78 requiring the Department of State to require, by rule, that
79 documents created by an agency proposed to be incorporated
80 by reference be coded in the same manner as the notices
81 published pursuant to s. 120.54(3)(a)1.; amending s.
82 120.74, F.S.; requiring agency regulatory plans to include
83 a list of rules scheduled for repromulgation; requiring
84 agency regulatory plans to include a 5-year schedule for
85 the review and repromulgation of rules; requiring that each
86 agency provide the committee and the Division of Law
87 Revision a list of all statutes and laws, or parts thereof,
88 which grant duplicative, redundant, or unused rulemaking
89 authority, as defined in s. 11.242(5)(j), and a
90 recommendation as to what statutes, laws, or parts thereof,
91 should be repealed.

92

93 Be It Enacted by the Legislature of the State of Florida:

94

95 **Section 1:** Subsections 120.52(23) and (24) are created to
96 read:

97 (23) "Repromulgate" or "repromulgation" means the notice
98 and adoption of an existing rule following an agency's review of
99 the rule for consistency with the powers and duties granted by
100 its enabling statutes.

101 (24) "Technical change" means a change limited to
102 correcting grammatical, typographical, and like errors not
103 affecting the substance of the rule. A technical change also
104 includes a correction to the rulemaking notice.

105 **Section 2:** Subsections 120.54(1), (3), (4), and (7), F.S.,
106 are amended to read:

107 120.54 Rulemaking.—

108 (1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER THAN
109 EMERGENCY RULES.—

110 (a) No change.

111 (b) Notwithstanding any other provision of law, whenever
112 an act of the Legislature is enacted which requires
113 implementation of the act by rules of an agency within the
114 executive branch of state government, such rules shall be
115 drafted and formally proposed in accordance with this section
116 within 180 days after the effective date of the act, unless the
117 act provides otherwise as provided in this section within the
118 times provided in s. 120.74(4) and (5).

119 (c) through (h) No change.

120 (i) 1. A rule may incorporate material by reference but only
121 as the material exists on the date the rule is adopted. For
122 purposes of the rule, changes in the material are not effective
123 unless the rule is amended to incorporate the changes.

124 2. An agency rule that incorporates by specific reference
125 another rule of that agency automatically incorporates
126 subsequent amendments to the referenced rule unless a contrary
127 intent is clearly indicated in the referencing rule. A notice of
128 amendments to a rule that has been incorporated by specific

129 reference in other rules of that agency must explain the effect
130 of those amendments on the referencing rules.

131 3. In rules adopted after December 31, 2010, and rules
132 repromulgated after December 31, 2021, material may not be
133 incorporated by reference unless:

134 a. The material has been submitted in the prescribed
135 electronic format to the Department of State and the full text
136 of the material can be made available for free public access
137 through an electronic hyperlink from the rule making the
138 reference in the Florida Administrative Code; or

139 b. The agency has determined that posting the material on
140 the Internet for purposes of public examination and inspection
141 would constitute a violation of federal copyright law, in which
142 case a statement to that effect, along with the address of
143 locations at the Department of State and the agency at which the
144 material is available for public inspection and examination,
145 must be included in the notice required by subparagraph (3)(a)1.

146 4. A rule may not be amended by reference only. Amendments
147 must set out the amended rule in full in the same manner as
148 required by the State Constitution for laws.

149 5. Notwithstanding any contrary provision in this section,
150 when an adopted rule of the Department of Environmental
151 Protection or a water management district is incorporated by
152 reference in the other agency's rule to implement a provision of
153 part IV of chapter 373, subsequent amendments to the rule are
154 not effective as to the incorporating rule unless the agency
155 incorporating by reference notifies the committee and the
156 Department of State of its intent to adopt the subsequent
157 amendment, publishes notice of such intent in the Florida
158 Administrative Register, and files with the Department of State
159 a copy of the amended rule incorporated by reference. Changes in
160 the rule incorporated by reference are effective as to the other

161 agency 20 days after the date of the published notice and filing
162 with the Department of State. The Department of State shall
163 amend the history note of the incorporating rule to show the
164 effective date of such change. Any substantially affected person
165 may, within 14 days after the date of publication of the notice
166 of intent in the Florida Administrative Register, file an
167 objection to rulemaking with the agency. The objection shall
168 specify the portions of the rule incorporated by reference to
169 which the person objects and the reasons for the objection. The
170 agency shall not have the authority under this subparagraph to
171 adopt those portions of the rule specified in such objection.
172 The agency shall publish notice of the objection and of its
173 action in response in the next available issue of the Florida
174 Administrative Register.

175 6. The Department of State may adopt by rule requirements
176 for incorporating materials pursuant to this paragraph.

177 (j) and (k) No change.

178 (2) No change.

179 (3) ADOPTION PROCEDURES.—

180 (a) *Notices.*—

181 1. Prior to the adoption, amendment, or repeal of any rule
182 other than an emergency rule, an agency, upon approval of the
183 agency head, shall give notice of its intended action, setting
184 forth a short, plain explanation of the purpose and effect of
185 the proposed action; the rule number and full text of the
186 proposed rule or amendment and a summary thereof; a reference to
187 the grant of rulemaking authority pursuant to which the rule is
188 adopted; and a reference to the section or subsection of the
189 Florida Statutes or the Laws of Florida being implemented or
190 interpreted. The notice must include a summary of the agency's
191 statement of the estimated regulatory costs, if one has been
192 prepared, based on the factors set forth in s. 120.541(2); a

193 statement that any person who wishes to provide the agency with
194 information regarding the statement of estimated regulatory
195 costs, or to provide a proposal for a lower cost regulatory
196 alternative as provided by s. 120.541(1), must do so in writing
197 within 21 days after publication of the notice; and a statement
198 as to whether, based on the statement of the estimated
199 regulatory costs or other information expressly relied upon and
200 described by the agency if no statement of regulatory costs is
201 required, the proposed rule is expected to require legislative
202 ratification pursuant to s. 120.541(3). The notice must state
203 the procedure for requesting a public hearing on the proposed
204 rule. Except when the intended action is the repeal of a rule,
205 the notice must include a reference both to the date on which
206 and to the place where the notice of rule development that is
207 required by subsection (2) appeared.

208 2. The notice shall be published in the Florida Administrative
209 Register not less than 7 days after the publication of the
210 notice of rule development and not less than 28 days prior to
211 the intended action. The proposed rule, including all material
212 proposed to be incorporated by reference, shall be available for
213 inspection and copying by the public at the time of the
214 publication of notice. After December 31, 2021, material
215 proposed to be incorporated by reference in the notice required
216 by this paragraph shall be made available in the manner
217 prescribed by sub-subparagraph (1)(i)3.a. or (1)(i)3.b.

218 3. The notice shall be mailed to all persons named in the
219 proposed rule and to all persons who, at least 14 days prior to
220 such mailing, have made requests of the agency for advance
221 notice of its proceedings. The agency shall also give such
222 notice as is prescribed by rule to those particular classes of
223 persons to whom the intended action is directed.

224 4. The adopting agency shall file with the committee, at least
225 21 days prior to the proposed adoption date, a copy of each rule
226 it proposes to adopt; a copy of any material incorporated by
227 reference in the rule; a detailed written statement of the facts
228 and circumstances justifying the proposed rule; a copy of any
229 statement of estimated regulatory costs that has been prepared
230 pursuant to s. 120.541; a statement of the extent to which the
231 proposed rule relates to federal standards or rules on the same
232 subject; and the notice required by subparagraph 1.

233 5. If any of the information, exclusive of substantive changes
234 to the rule text, that is required to be included in the notice
235 required by subparagraph 1. is omitted or is incorrect, the
236 agency shall publish a notice of correction. A notice of
237 correction shall not affect the timeframes for filing the rule
238 for adoption set forth in paragraph (e). Grammatical and
239 citation corrections are not required to be published as a
240 notice of correction.

241 (b) *Special matters to be considered in rule adoption.*—

242 1. Statement of estimated regulatory costs.—Before the
243 adoption, amendment, or repeal of any rule other than an
244 emergency rule, an agency is encouraged to prepare a statement
245 of estimated regulatory costs of the proposed rule, as provided
246 by s. 120.541. However, an agency must prepare a statement of
247 estimated regulatory costs of the proposed rule, as provided by
248 s. 120.541, if:

249 a. The proposed rule will have an adverse impact on small
250 business; or

251 b. The proposed rule is likely to directly or indirectly
252 increase regulatory costs in excess of \$200,000 in the aggregate
253 in this state within 1 year after the implementation of the
254 rule.

255 2. Small businesses, small counties, and small cities.—

256 a. Each agency, before the adoption, amendment, or repeal
257 of a rule, shall consider the impact of the rule on small
258 businesses as defined by s. 288.703 and the impact of the rule
259 on small counties or small cities as defined by s. 120.52.
260 Whenever practicable, an agency shall tier its rules to reduce
261 disproportionate impacts on small businesses, small counties, or
262 small cities to avoid regulating small businesses, small
263 counties, or small cities that do not contribute significantly
264 to the problem the rule is designed to address. An agency may
265 define "small business" to include businesses employing more
266 than 200 persons, may define "small county" to include those
267 with populations of more than 75,000, and may define "small
268 city" to include those with populations of more than 10,000, if
269 it finds that such a definition is necessary to adapt a rule to
270 the needs and problems of small businesses, small counties, or
271 small cities. The agency shall consider each of the following
272 methods for reducing the impact of the proposed rule on small
273 businesses, small counties, and small cities, or any combination
274 of these entities:

275 (I) Establishing less stringent compliance or reporting
276 requirements in the rule.

277 (II) Establishing less stringent schedules or deadlines in
278 the rule for compliance or reporting requirements.

279 (III) Consolidating or simplifying the rule's compliance or
280 reporting requirements.

281 (IV) Establishing performance standards or best management
282 practices to replace design or operational standards in the
283 rule.

284 (V) Exempting small businesses, small counties, or small
285 cities from any or all requirements of the rule.

286 b.(I) If the agency determines that the proposed action
287 will affect small businesses as defined by the agency as

288 provided in sub-subparagraph a., the agency shall send written
289 notice of the rule to the rules ombudsman in the Executive
290 Office of the Governor at least 28 days before the intended
291 action.

292 (II) Each agency shall adopt those regulatory alternatives
293 offered by the rules ombudsman in the Executive Office of the
294 Governor and provided to the agency no later than 21 days after
295 the rules ombudsman's receipt of the written notice of the rule
296 which it finds are feasible and consistent with the stated
297 objectives of the proposed rule and which would reduce the
298 impact on small businesses. When regulatory alternatives are
299 offered by the rules ombudsman in the Executive Office of the
300 Governor, the 90-day period for filing the rule in subparagraph
301 (e)2. is extended for a period of 21 days. The agency shall
302 provide a copy of any regulatory alternative offered to the
303 agency to the committee prior to filing the rule for adoption.

304 (III) If an agency does not adopt all alternatives offered
305 pursuant to this sub-subparagraph, it shall, before rule
306 adoption or amendment and pursuant to subparagraph (d)1., file a
307 detailed written statement with the committee explaining the
308 reasons for failure to adopt such alternatives. Within 3 working
309 days after the filing of such notice, the agency shall send a
310 copy of such notice to the rules ombudsman in the Executive
311 Office of the Governor.

312 (c) No change.

313 (d) *Modification or withdrawal of proposed rules.*—

314 1. After the final public hearing on the proposed rule, or
315 after the time for requesting a hearing has expired, if the rule
316 has not been changed from the rule as previously filed with the
317 committee, or contains only technical changes, the adopting
318 agency shall file a notice to that effect with the committee at
319 least 7 days prior to filing the rule for adoption. Any change,

320 other than a technical change that does not affect the substance
321 of the rule, must be supported by the record of public hearings
322 held on the rule, must be in response to written material
323 submitted to the agency within 21 days after the date of
324 publication of the notice of intended agency action or submitted
325 to the agency between the date of publication of the notice and
326 the end of the final public hearing, or must be in response to a
327 proposed objection by the committee. In addition, when any
328 change is made in the a proposed rule, other than a technical
329 change, the adopting agency shall provide a copy of a notice of
330 change by certified mail, email, or actual delivery to any
331 person who requests it in writing no later than 21 days after
332 the notice required in paragraph (a). The agency shall file the
333 notice of change with the committee, along with the reasons for
334 the change, and provide the notice of change to persons
335 requesting it, at least 21 days prior to filing the rule for
336 adoption. The notice of change shall be published in the Florida
337 Administrative Register at least 21 days prior to filing the
338 rule for adoption. This subparagraph does not apply to emergency
339 rules adopted pursuant to subsection (4). After December 31,
340 2021, material proposed to be incorporated by reference in the
341 notice required by this paragraph shall be made available in the
342 manner prescribed by sub-subparagraph (1)(i)3.a. or (1)(i)3.b.

343 2. After the notice required by paragraph (a) and prior to
344 adoption, the agency may withdraw the rule in whole or in part.

345 3. After adoption and before the rule becomes effective, a
346 rule may be modified or withdrawn only in the following
347 circumstances:

348 a. When the committee objects to the rule;

349 b. When a final order, which is not subject to further
350 appeal, is entered in a rule challenge brought pursuant to s.

351 120.56 after the date of adoption but before the rule becomes
352 effective pursuant to subparagraph (e)6.;

353 c. If the rule requires ratification, when more than 90
354 days have passed since the rule was filed for adoption without
355 the Legislature ratifying the rule, in which case the rule may
356 be withdrawn but may not be modified; or

357 d. When the committee notifies the agency that an objection
358 to the rule is being considered, in which case the rule may be
359 modified to extend the effective date by not more than 60 days.

360 4. The agency shall give notice of its decision to withdraw
361 or modify a rule in the first available issue of the publication
362 in which the original notice of rulemaking was published, shall
363 notify those persons described in subparagraph (a)3. in
364 accordance with the requirements of that subparagraph, and shall
365 notify the Department of State if the rule is required to be
366 filed with the Department of State.

367 5. After a rule has become effective, it may be repealed or
368 amended only through the rulemaking procedures specified in this
369 chapter.

370 (e) Filing for final adoption; effective date.—

371 1. If the adopting agency is required to publish its rules
372 in the Florida Administrative Code, the agency, upon approval of
373 the agency head, shall file with the Department of State three
374 certified copies of the rule it proposes to adopt; one copy of
375 any material incorporated by reference in the rule, certified by
376 the agency; a summary of the rule; a summary of any hearings
377 held on the rule; and a detailed written statement of the facts
378 and circumstances justifying the rule. Agencies not required to
379 publish their rules in the Florida Administrative Code shall
380 file one certified copy of the proposed rule, and the other
381 material required by this subparagraph, in the office of the
382 agency head, and such rules shall be open to the public.

383 2. A rule may not be filed for adoption less than 28 days
384 or more than 90 days after the notice required by paragraph (a),
385 until 21 days after the notice of change required by paragraph
386 (d), until 14 days after the final public hearing, until 21 days
387 after a statement of estimated regulatory costs required under
388 s. 120.541 has been provided to all persons who submitted a
389 lower cost regulatory alternative and made available to the
390 public, or until the administrative law judge has rendered a
391 decision under s. 120.56(2), whichever applies. When a required
392 notice of change is published prior to the expiration of the
393 time to file the rule for adoption, the period during which a
394 rule must be filed for adoption is extended to 45 days after the
395 date of publication. If notice of a public hearing is published
396 prior to the expiration of the time to file the rule for
397 adoption, the period during which a rule must be filed for
398 adoption is extended to 45 days after adjournment of the final
399 hearing on the rule, 21 days after receipt of all material
400 authorized to be submitted at the hearing, or 21 days after
401 receipt of the transcript, if one is made, whichever is latest.
402 The term "public hearing" includes any public meeting held by
403 any agency at which the rule is considered. If a petition for an
404 administrative determination under s. 120.56(2) is filed, the
405 period during which a rule must be filed for adoption is
406 extended to 60 days after the administrative law judge files the
407 final order with the clerk or until 60 days after subsequent
408 judicial review is complete.

409 3. At the time a rule is filed, the agency shall certify
410 that the time limitations prescribed by this paragraph have been
411 complied with, that all statutory rulemaking requirements have
412 been met, and that there is no administrative determination
413 pending on the rule.

414 4. At the time a rule is filed, the committee shall certify
415 whether the agency has responded in writing to all material and
416 timely written comments or written inquiries made on behalf of
417 the committee. The department shall reject any rule that is not
418 filed within the prescribed time limits; that does not comply
419 with all statutory rulemaking requirements and rules of the
420 department; upon which an agency has not responded in writing to
421 all material and timely written inquiries or written comments;
422 upon which an administrative determination is pending; or which
423 does not include a statement of estimated regulatory costs, if
424 required.

425 5. If a rule has not been adopted within the time limits
426 imposed by this paragraph or has not been adopted in compliance
427 with all statutory rulemaking requirements, the agency proposing
428 the rule shall withdraw the rule and give notice of its action
429 in the next available issue of the Florida Administrative
430 Register. If, 30 days after notice by the committee, the agency
431 has not given notice of the withdrawal of the rule, the
432 committee shall notify the department that the date for adoption
433 of the rule has expired, and the department shall publish a
434 notice of withdrawal of the proposed rule.

435 6. The proposed rule shall be adopted on being filed with
436 the Department of State and become effective 20 days after being
437 filed, on a later date specified in the notice required by
438 subparagraph (a)1., on a date required by statute, or upon
439 ratification by the Legislature pursuant to s. 120.541(3). Rules
440 not required to be filed with the Department of State shall
441 become effective when adopted by the agency head, on a later
442 date specified by rule or statute, or upon ratification by the
443 Legislature pursuant to s. 120.541(3). If the committee notifies
444 an agency that an objection to a rule is being considered, or
445 that additional time is required for review by the committee,

446 the agency or the committee may postpone the adoption of the
447 rule to accommodate review of the rule by the committee. When
448 ~~an agency postpones~~ the adoption of a rule is postponed to
449 accommodate review by the committee, the 90-day period for
450 filing the rule is tolled until the committee notifies the
451 agency that it has completed its review of the rule.

452
453 For the purposes of this paragraph, the term "administrative
454 determination" does not include subsequent judicial review.

455 (4) EMERGENCY RULES.—

456 (a) and (b) No change.

457 (c) Unless otherwise provided by law, An emergency rule
458 adopted under this subsection shall not be effective for a
459 period longer than 90 days and shall not be renewable, except
460 when the agency has initiated rulemaking to adopt rules
461 addressing the subject of the emergency rule and either:

462 1. A challenge to the proposed rules has been filed and
463 remains pending; or

464 2. The proposed rules are awaiting ratification by the
465 Legislature pursuant to s. 120.541(3).

466 (d) ~~(e)~~ Notice of the renewal of an emergency rule shall be
467 published in the Florida Administrative Register prior to the
468 expiration of the existing emergency rule. The notice of
469 renewal shall state the specific facts and reasons for the
470 renewal.

471 (e) ~~(d)~~ For emergency rules with an effective period
472 greater than 90 days that are intended to replace existing
473 rules, a note shall be added to the history note of the existing
474 rule specifically identifying the emergency rule that is
475 intended to supersede the existing rule and shall include the
476 date the emergency rule was filed with the Department of State.

477 (f) ~~(e)~~ Emergency rules shall be published in the Florida
478 Administrative Code.

479 (g) An agency may supersede an emergency rule in effect by
480 adopting another emergency rule. The reason for the new rule
481 shall be stated in accordance with the procedures set forth in
482 paragraph (4) (a), and the new rule shall be subject to the
483 effective period of the superseded rule.

484 (h) Technical changes to an emergency rule may be made
485 within the first 7 days after adoption of the rule and shall be
486 published in the Florida Administrative Register.

487
488 Nothing in this paragraph prohibits the agency from adopting a
489 rule or rules identical to the emergency rule through the
490 rulemaking procedures specified in subsection (3).

491 (i) ~~(d)~~ Subject to applicable constitutional and statutory
492 provisions, an emergency rule becomes effective immediately on
493 filing, or on a date less than 20 days thereafter if specified
494 in the rule, if the adopting agency finds that such effective
495 date is necessary because of immediate danger to the public
496 health, safety, or welfare.

497 (5) No change.

498 (6) No change.

499 (7) PETITION TO INITIATE RULEMAKING.—

500 (a) Any person regulated by an agency or having substantial
501 interest in an agency rule may petition an agency to adopt,
502 amend, or repeal a rule or to provide the minimum public
503 information required by this chapter. The petition shall specify
504 the proposed rule and action requested. The agency shall
505 provide a copy of the petition to the committee. Not later than
506 30 calendar days following the date of filing a petition, the
507 agency shall initiate rulemaking proceedings under this chapter,

508 otherwise comply with the requested action, or deny the petition
509 with a written statement of its reasons for the denial.

510 (b) through (d) No change.

511 **Section 3:** Paragraph (a) of Subsection 120.541(1), F.S.,
512 is amended to read:

513 120.541 Statement of estimated regulatory costs.—

514 (1) (a) Within 21 days after publication of the notice
515 required under s. 120.54(3) (a), a substantially affected person
516 may submit to an agency a good faith written proposal for a
517 lower cost regulatory alternative to a proposed rule which
518 substantially accomplishes the objectives of the law being
519 implemented. The agency shall provide a copy of any proposal for
520 a lower cost regulatory alternative to the committee prior to
521 filing the rule for adoption. The proposal may include the
522 alternative of not adopting any rule if the proposal explains
523 how the lower costs and objectives of the law will be achieved
524 by not adopting any rule. If such a proposal is submitted, the
525 90-day period for filing the rule is extended 21 days. Upon the
526 submission of the lower cost regulatory alternative, the agency
527 shall prepare a statement of estimated regulatory costs as
528 provided in subsection (2), or shall revise its prior statement
529 of estimated regulatory costs, and either adopt the alternative
530 or provide a statement of the reasons for rejecting the
531 alternative in favor of the proposed rule.

532 **Section 4:** Section 120.5435, Florida Statutes, is created
533 to read:

534 120.5435 Repromulgation of rules. -

535 (1) It is the intent of the Legislature that each agency
536 shall periodically review its rules for consistency with the
537 powers and duties granted by its enabling statutes. If an
538 agency determines after review that substantive changes to amend
539 a rule are not required, the agency shall repromulgate the rule

540 to reflect the date of the review. All rules adopted or
541 repromulgated after July 1, 2021, shall be reviewed within 5
542 years from the date of adoption or repromulgation. Each agency
543 shall review its existing rules pursuant to this section within
544 5 years following the effective date of this act.

545 (2) Before repromulgating a rule, an agency shall, upon
546 approval by the agency head:

547 (a) Publish a notice of repromulgation in the Florida
548 Administrative Register. A notice of repromulgation is not
549 required to include the text of the rule being promulgated.

550 (b) File the rule for repromulgation with the Department of
551 State. A rule may not be filed for repromulgation less than 28
552 days or more than 90 days after the publication of the notice
553 required by paragraph (a).

554 (3) (a) The agency shall file a notice with the committee at
555 least 14 days before filing the rule for repromulgation with the
556 department.

557 (b) The committee shall certify whether the agency has
558 responded in writing to all material and timely written comments
559 or written inquiries made on behalf of the committee.

560 (4) If the rule is not filed for repromulgation within the
561 time limits imposed by paragraph (2) (b), the agency shall
562 withdraw the rule for repromulgation and give notice of the
563 withdrawal in the next available issue of the Florida
564 Administrative Register.

565 (5) A repromulgated rule shall not be subject to challenge
566 as a proposed rule pursuant to s. 120.56(2).

567 (6) The hearing requirements of s. 120.54 shall not apply
568 to repromulgation of a rule.

569 (7) The agency, upon approval of the agency head or his or
570 her designee, shall file with the department three certified

571 copies of the rule it proposes to repromulgate and one certified
572 copy of any material incorporated by reference in the rule.

573 (8) The rule shall be repromulgated upon filing with the
574 department.

575 (9) The department shall update the history note of the
576 rule in the Florida Administrative Code to reflect the effective
577 date of the repromulgated rule.

578 (10) The department shall adopt rules to implement this
579 section by December 31, 2021.

580 **Section 5:** Subsection 120.55(1), F.S., is amended to read:
581 120.55 Publication.—

582 (1) The Department of State shall:

583 (a)1. Through a continuous revision and publication system,
584 compile and publish electronically, on a website managed by the
585 department, the "Florida Administrative Code." The Florida
586 Administrative Code shall contain all rules adopted by each
587 agency, citing the grant of rulemaking authority and the
588 specific law implemented pursuant to which each rule was
589 adopted, all history notes as authorized in s. 120.545(7),
590 complete indexes to all rules and incorporated material
591 contained in the code, and any other material required or
592 authorized by law or deemed useful by the department. The
593 electronic code shall display each rule chapter currently in
594 effect in browse mode and allow full text search of the code and
595 each rule chapter. The department may contract with a publishing
596 firm for a printed publication; however, the department shall
597 retain responsibility for the code as provided in this section.
598 The electronic publication shall be the official compilation of
599 the administrative rules of this state. The Department of State
600 shall retain the copyright over the Florida Administrative Code.

601 2. Rules general in form but applicable to only one school
602 district, community college district, or county, or a part

603 thereof, or state university rules relating to internal
604 personnel or business and finance shall not be published in the
605 Florida Administrative Code. Exclusion from publication in the
606 Florida Administrative Code shall not affect the validity or
607 effectiveness of such rules.

608 3. At the beginning of the section of the code dealing with
609 an agency that files copies of its rules with the department,
610 ~~the department~~ each agency shall publish the address and
611 telephone number of the executive offices of ~~each~~ the agency,
612 the manner by which the agency indexes its rules, a listing of
613 all rules of that agency excluded from publication in the code,
614 and a statement as to where those rules may be inspected, a
615 listing of all forms and material incorporated by reference used
616 by the agency, and a statement as to where those forms and
617 incorporated material may be inspected.

618 4. Forms shall not be published in the Florida
619 Administrative Code; but any form which an agency uses in its
620 dealings with the public, along with any accompanying
621 instructions, shall be filed with the committee before it is
622 used. Any form or instruction which meets the definition of
623 "rule" provided in s. 120.52 shall be incorporated by reference
624 into the appropriate rule. The reference shall specifically
625 state that the form is being incorporated by reference and shall
626 include the number, title, and effective date of the form and an
627 explanation of how the form may be obtained. Each form created
628 by an agency which is incorporated by reference in a rule notice
629 of which is given under s. 120.54(3)(a) after December 31, 2007,
630 must clearly display the number, title, and effective date of
631 the form and the number of the rule in which the form is
632 incorporated.

633 5. After December 31, 2021, the department shall require
634 any material incorporated by reference in adopted and

635 ~~repromulgated rules allow adopted rules and material~~
636 ~~incorporated by reference~~ to be filed in the manner prescribed
637 by s. 120.54(1)(i)3.a. or s. 120.54(1)(i)3.b. When a rule is
638 filed for adoption or repromulgation with incorporated material
639 in electronic form, the department's publication of the Florida
640 Administrative Code on its website must contain a hyperlink from
641 the incorporating reference in the rule directly to that
642 material. The department may not allow hyperlinks from rules in
643 the Florida Administrative Code to any material other than that
644 filed with and maintained by the department, but may allow
645 hyperlinks to incorporated material maintained by the department
646 from the adopting agency's website or other sites.

647 6. The department shall include the date of any technical
648 changes in the history note of the rule in the Florida
649 Administrative Code. A technical change does not affect the
650 effective date of the rule. A technical change made after the
651 adoption of a rule must be published as a notice of correction.

652 (b) Electronically publish on a website managed by the
653 department a continuous revision and publication entitled the
654 "Florida Administrative Register," which shall serve as the
655 official publication and must contain:

656 1. All notices required by s. 120.54(2) and (3)(a) and (d),
657 showing the text of all rules proposed for consideration.

658 2. All notices of public meetings, hearings, and workshops
659 conducted in accordance with s. 120.525, including a statement
660 of the manner in which a copy of the agenda may be obtained.

661 3. A notice of each request for authorization to amend or
662 repeal an existing uniform rule or for the adoption of new
663 uniform rules.

664 4. Notice of petitions for declaratory statements or
665 administrative determinations.

666 5. A summary of each objection to any rule filed by the
667 Administrative Procedures Committee.

668 6. A list of rules filed for adoption in the previous 7
669 days.

670 7. A list of all rules filed for adoption pending
671 legislative ratification under s. 120.541(3). A rule shall be
672 removed from the list once notice of ratification or withdrawal
673 of the rule is received.

674 8. Any other material required or authorized by law or
675 deemed useful by the department.

676
677 The department may contract with a publishing firm for a printed
678 publication of the Florida Administrative Register and make
679 copies available on an annual subscription basis.

680 (c) Prescribe by rule the style and form required for
681 rules, notices, and other materials submitted for filing,
682 including a rule requiring documents created by an agency that
683 are proposed to be incorporated by reference in notices
684 published pursuant to s. 120.54(3)(a) and (d) to be coded in the
685 same manner as notices published pursuant to s. 120.54(3)(a)1.

686 (d) and (e) No change.

687 **Section 6:** Subsection (1) of Section 120.74 is amended to
688 read:

689 (1) REGULATORY PLAN.—By October 1 of each year, each agency
690 shall prepare a regulatory plan.

691 (a) The plan must include a listing of each law enacted or
692 amended during the previous 12 months which creates or modifies
693 the duties or authority of the agency. If the Governor or the
694 Attorney General provides a letter to the committee stating that
695 a law affects all or most agencies, the agency may exclude the
696 law from its plan. For each law listed by an agency under this
697 paragraph, the plan must state:

698 1. Whether the agency must adopt rules to implement the
699 law.

700 2. If rulemaking is necessary to implement the law:

701 a. Whether a notice of rule development has been published
702 and, if so, the citation to such notice in the Florida
703 Administrative Register.

704 b. The date by which the agency expects to publish the
705 notice of proposed rule under s. 120.54(3)(a).

706 3. If rulemaking is not necessary to implement the law, a
707 concise written explanation of the reasons why the law may be
708 implemented without rulemaking.

709 (b) No change.

710 (c) The plan must also include:

711 1. A list of rules scheduled for review and repromulgation
712 pursuant to s. 120.5435.

713 2. A 5-year schedule for the review and repromulgation of
714 all rules existing as of July 1, 2021.

715 (c) and (d) No change; renumber as (e) and (f).

716 (g) Beginning October 1, 2021, and every year thereafter,
717 each agency shall provide the committee and the Division of Law
718 Revision a list of all statutes and laws, or parts thereof,
719 which grant duplicative, redundant, or unused rulemaking
720 authority, as defined in s. 11.242(5)(j), and a recommendation
721 as to what statutes, laws, or parts thereof, should be repealed.



Administrative Determinations and Petitions for Judicial Review

2021 ADMINISTRATIVE DETERMINATIONS AND PETITIONS FOR JUDICIAL REVIEW FILED ON THE INVALIDITY OF PROPOSED AND EXISTING RULES*

NUMBER OF CASES FILED AT DOAH IN 2021:

	CLOSED CASES	ACTIVE CASES
<i>PROPOSED RULES</i>	27	3
<i>EXISTING RULES</i>	5	5

JUDICIAL REVIEW CASES:

DOAH CASE NUMBER: 19-4688RP

STYLE: WALMART INC. AND WAL-MART STORES EAST, L.P. vs. DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO

RULE: 61A-3.055

DOAH FINAL ORDER DATE: 12/18/2019

CASE SUMMARY: Evidence did not prove proposed rule 61A-3.055 valid. It was arbitrary and capricious and contravened statute. Must show meaning of restaurant to prove what is customarily sold in a restaurant.

DCA CASE: 1D20-4 filed 1/20/2020. Affirmed in part, reversed in part 5/19/2021.

DOAH CASE NUMBER: 19-4913RP

STYLE: TARGET CORPORATION vs. DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO

RULE: 61A-3.055

DOAH FINAL ORDER DATE: 12/18/2019

CASE SUMMARY: Evidence did not prove proposed rule 61A-3.055 valid. It was arbitrary and capricious and contravened statute. Must show meaning of restaurant to prove what is customarily sold in a restaurant.

DCA CASE: 1D20-4 filed 1/20/2020. Affirmed in part, reversed in part 5/19/2021.

*Note: As of January 5, 2022. Data obtained from the [Division of Administrative Hearings \(DOAH\)](#).



**Joint Rule Four
of the
Florida Legislature:

Joint
Committees**

Joint Rule Four—Joint Committees

4.1—Standing Joint Committees

(1) The following standing joint committees are established:

- (a) Administrative Procedures Committee.
- (b) Committee on Public Counsel Oversight.
- (c) Legislative Auditing Committee.

(2) No other joint committee shall exist except as agreed to by the presiding officers or by concurrent resolution approved by the Senate and the House of Representatives.

(3) Appointments to each standing joint committee shall be made or altered and vacancies shall be filled by the Senate and the House of Representatives in accordance with their respective rules. There shall be appointed to each standing joint committee no fewer than five and no more than seven members from each house.

(4)(a) The President of the Senate shall appoint a member of the Senate to serve as the chair, and the Speaker of the House of Representatives shall appoint a member of the House of Representatives to serve as the vice chair, for:

1. The Legislative Auditing Committee and the Committee on Public Counsel Oversight, for the period from the Organization Session until noon on August 1 of the calendar year following the general election.

2. The Administrative Procedures Committee for the period from noon on August 1 of the calendar year following the general election until the next general election.

(b) The Speaker of the House of Representatives shall appoint a member of the House of Representatives to serve as the chair, and the President of the Senate shall appoint a member of the Senate to serve as the vice chair, for:

1. The Legislative Auditing Committee and the Committee on Public Counsel Oversight, for the period from noon on August 1 of the calendar year following the general election until the next general election.

2. The Administrative Procedures Committee for the period from the Organization Session until noon on August 1 of the calendar year following the general election.

(c) A vacancy in an appointed chair or vice chair shall be filled in the same manner as the original appointment.

4.2—Procedures in Joint Committees

The following rules shall govern procedures in joint committees other than conference committees:

(1) A quorum for a joint committee shall be a majority of the appointees of each house. No business of any type may be conducted in the absence of a quorum.

(2)(a) Joint committees shall meet only within the dates, times, and locations authorized by both the President of the Senate and the Speaker of the House of Representatives.

(b) Joint committee meetings shall meet at the call of the chair. In the absence of the chair, the vice chair shall assume the duty to convene and preside over meetings and such other duties as provided by law or joint rule. During a meeting properly convened, the presiding chair may temporarily assign the duty to preside at that meeting to another joint committee member until the assignment is relinquished or revoked.

(c) Before any joint committee may hold a meeting, a notice of such meeting shall be provided to the Secretary of the Senate and the Clerk of the House of Representatives no later than 4:30 p.m. of the 7th day before the meeting. For purposes of effecting notice to members of the house to which the chair does not belong, notice to the Secretary of the Senate shall be deemed notice to members of the Senate and notice to the Clerk of the House shall be deemed notice to members of the House of Representatives. Noticed meetings may be canceled by the chair with the approval of at least one presiding officer.

(d) If a majority of its members from each house agree, a joint committee may continue a properly noticed meeting after the expiration of the time called for the meeting. However, a joint committee may not meet beyond the time authorized by the presiding officers without special leave granted by both presiding officers.

(3) The presiding officers shall interpret, apply, and enforce rules governing joint committees by agreement when the rule at issue is a joint rule. Unless otherwise determined or overruled by an agreement of the presiding officers, the chair shall determine all questions of order arising in joint committee meetings, but such determinations may be appealed to the committee during the meeting.

(4) Each question, including any appeal of a ruling of the chair, shall be decided by a majority vote of the members of the joint committee of each house present and voting.

4.3—Powers of Joint Committees

(1) A joint committee may exercise the subpoena powers vested by law in a standing committee of the Legislature. A subpoena issued under this rule must be approved and signed by the President of the Senate and the Speaker of the House of Representatives and attested by the Secretary of the Senate and the Clerk of the House.

(2) A joint committee may adopt rules of procedure that do not conflict with the Florida Constitution or any law or joint rule, subject to the joint approval of the President of the Senate and the Speaker of the House of Representatives.

(3) A joint committee may not create subcommittees or workgroups unless authorized by both presiding officers.

4.4—Administration of Joint Committees

(1) Within the monetary limitations of the approved operating budget, the expenses of the members and the salaries and expenses of the staff of each joint committee shall be governed by joint policies adopted under Joint Rule 3.2.

(2) Subject to joint policies adopted under Joint Rule 3.2, the presiding officers shall appoint and remove the staff director and, if needed, a general counsel and any other staff necessary to assist each joint committee. All joint committee staff shall serve at the pleasure of the presiding officers. Upon the initial adoption of these joint rules in a biennium, each joint committee staff director position shall be deemed vacant until an appointment is made.

* * * * *

4.6—Special Powers and Duties of the Administrative Procedures Committee

The Administrative Procedures Committee shall:

(1) Maintain a continuous review of the statutory authority on which each administrative rule is based and, whenever such authority is eliminated or significantly changed by repeal, amendment, holding by a court of last resort, or other factor, advise the agency concerned of the fact.

(2) Maintain a continuous review of administrative rules and identify and request an agency to repeal any rule or any provision of any rule that reiterates or paraphrases any statute or for which the statutory authority has been repealed.

(3) Review administrative rules and advise the agencies concerned of its findings.

(4) Exercise the duties prescribed by chapter 120, Florida Statutes, concerning the adoption and promulgation of rules.

(5) Generally review agency action pursuant to the operation of chapter 120, Florida Statutes, the Administrative Procedure Act.

(6) Report to the President of the Senate and the Speaker of the House of Representatives at least annually, no later than the first week of the regular session, and recommend needed legislation or other

appropriate action. Such report shall include the number of objections voted by the committee, the number of suspensions recommended by the committee, the number of administrative determinations filed on the invalidity of a proposed or existing rule, the number of petitions for judicial review filed on the invalidity of a proposed or existing rule, and the outcomes of such actions. Such report shall also include any recommendations provided to the standing committees during the preceding year under subsection (11).

(7) Consult regularly with legislative standing committees that have jurisdiction over the subject areas addressed in agency proposed rules regarding legislative authority for the proposed rules and other matters relating to legislative authority for agency action.

(8) Subject to the approval of the President of the Senate and the Speaker of the House of Representatives, have standing to seek judicial review, on behalf of the Legislature or the citizens of this state, of the validity or invalidity of any administrative rule to which the committee has voted an objection and that has not been withdrawn, modified, repealed, or amended to meet the objection. Judicial review under this subsection may not be initiated until the Governor and the head of the agency making the rule to which the committee has objected have been notified of the committee's proposed action and have been given a reasonable opportunity, not to exceed 60 days, for consultation with the committee. The committee may expend public funds from its appropriation for the purpose of seeking judicial review.

(9) Maintain a continuous review of the administrative rulemaking process, including a review of agency procedure and of complaints based on such agency procedure.

(10) Establish measurement criteria to evaluate whether agencies are complying with the delegation of legislative authority in adopting and implementing rules.

(11) Maintain a continuous review of statutes that authorize agencies to adopt rules and shall make recommendations to the appropriate standing committees of the Senate and the House of Representatives as to the advisability of considering changes to the delegated legislative authority to adopt rules in specific circumstances.

* * * * *

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