

# FLORIDA HOUSE OF REPRESENTATIVES

## BILL ANALYSIS

*This bill analysis was prepared by nonpartisan committee staff and does not constitute an official statement of legislative intent.*

**BILL #:** [CS/HB 433](#)

**TITLE:** Administrative Procedures

**SPONSOR(S):** Overdorf

**COMPANION BILL:** [CS/SB 108](#) (Grall)

**LINKED BILLS:** None

**RELATED BILLS:** None

### Committee References

[Government Operations](#)

12 Y, 3 N, As CS

[Budget](#)

[State Affairs](#)

## SUMMARY

### Effect of the Bill:

The bill creates a rule review process called repromulgation that requires each agency to periodically review rules for consistency with the powers and duties granted by their enabling statutes. If after review an agency finds that substantive changes are not required of a rule, the agency is required to repromulgate the rule to reflect the date of the review. Before each session, the Joint Administrative Procedures Committee must submit a list of all rules that have not been repromulgated to the President of the Senate and the Speaker of the House of Representatives, identifying whether the statutory rulemaking authority for each rule remains in effect. If the Legislature does not act regarding these rules during that session, each agency must repeal the rule within 14 days after the close of session. All rules adopted before the effective date of the bill must be reviewed by December 31, 2030; all rules adopted after must be reviewed five years after their effective dates and every five years thereafter. The bill requires each agency to create a statement of estimated regulatory costs (SERC) for each proposed rule and provides specificity as to what constitutes compliance costs for purposes of the SERC. Additionally, the bill makes various changes to the rulemaking process including requiring agencies to file a notice of rule development at least seven days before providing a notice of a proposed rule, requiring agencies to withdraw any proposed rule when the agency has failed to adopt within the required timeframes, and revising the emergency rulemaking process. The bill also requires agencies to submit an annual report detailing licensure data.

### Fiscal or Economic Impact:

The bill may have an indeterminate negative fiscal impact on state government.

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## ANALYSIS

### EFFECT OF THE BILL:

#### Repromulgation of Rules

The bill requires each agency to periodically review rules for consistency with the powers and duties granted by their enabling statutes. If after review an agency finds that substantive changes are not required of a rule, the agency is required to repromulgate the rule to reflect the date of the review. All rules adopted, amended, or repromulgated on or after July 1, 2025, must be reviewed within five years after their effective dates and every five years thereafter. Agencies must review all existing rules by December 31, 2030. Within their [annual regulatory plans](#), agencies must provide for at least 20 percent of their existing rules to be reviewed each year during the initial five-year review period. If an agency deviates from this schedule, the agency must reflect the deviation in its annual regulatory plan. (Section [4](#))

The [Joint Administrative Procedures Committee \(JAPC\)](#) is required to provide each agency with a list of existing rules and their effective dates by December 31, 2025. Agencies that fail to adhere to the review and repromulgation deadlines set forth in the section will be subject to objections by JAPC. (Section [4](#))

The bill also requires that an agency must publish notice of repromulgation in the [Florida Administrative Register \(FAR\)](#) before repromulgation of a rule. The text of the rule being promulgated, however, does not need to be

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**DATE:** 3/23/2025

included. The agency must file the repromulgated rule with the Department of State (DOS), and it may not be filed for repromulgation less than 28 days, or more than 90 days, after the notice of repromulgation was filed. The agency must provide a notice of repromulgation to JAPC at least 14 days before filing the rule. JAPC must certify, at the time the rule is filed, whether the agency has responded in writing to all material and timely written comments or inquiries made by the committee. (Section [4](#))

The validity of repromulgated rules may not be challenged as a proposed rule in the Division of Administrative Hearings (DOAH). (Section [4](#))

The agency is required to electronically file a certified copy of the repromulgated rule and a certified copy of any material incorporated by reference with DOS. DOS must then update the history note of the rule in the [Florida Administrative Code](#), reflecting the filing date of the repromulgated rule. (Section [4](#))

At least 90 days before each legislative session, JAPC must submit a list of all rules that have not yet been repromulgated to the President of the Senate and the Speaker of the House of Representatives, identifying whether the statutory rulemaking authority for each rule remains in effect. If the Legislature does not act regarding these rules during the next regular session, each agency must repeal the rule within 14 days after the close of session. (Section [4](#))

### **Statements of Estimated Regulatory Costs**

The bill requires each agency to prepare a [statement of estimated regulatory costs](#) (SERC) before the adoption or amendment of any rule; however, SERCs are not required for emergency rules or for proposed rule repeals unless the repeal would impose a regulatory cost. SERCs must include cost-benefit analyses comparing a rule's projected benefits to the projected costs. (Section [2](#))

The bill adds good faith estimates of market impacts likely to result from compliance with a proposed rule that an agency must include in its SERCs. These include:

- Increased customer charges for goods and services.
- Decreased market value of goods or services produced, provided, or sold.
- Increased costs resulting from the purchase of substitute or alternative goods or services.
- The reasonable value of time to be spent by owners, officers, operators, and managers to understand and comply with the proposed rule, including time to be spent completing required education, training, or testing.
- Capital costs.
- Any other impacts suggested by the rules ombudsman in the Executive Office of the Governor or by any interested persons. (Section [3](#))

Each agency must also consider all direct and indirect costs necessary for individuals and private or local governmental entities to comply with the proposed rule. The bill provides 18 types of "compliance costs" agencies should consider including, but not limited to:

- Filing fees.
- Expenses to obtain a license.
- Installation, utilities for, and maintenance of necessary equipment.
- Necessary operations and procedures.
- Accounting, financial, information management, and other administrative processes
- Labor based on relevant rates of wages, salaries, and benefits.
- Materials and supplies.
- Capital expenditures, including financial costs.
- Professional and technical services, including contracted services necessary to implement and maintain compliance. (Section [3](#))

Each agency is also responsible for providing notice of any changes to SERCs, other than technical changes, including summaries of those revisions. The bill requires DOS to include on the FAR website the agency website where SERCs can be viewed in their entirety. Also, in the notice of proposed rule, each agency must provide the

website address where the SERC or its revisions can be read in its entirety to DOS for publication in the FAR. (Sections [2](#) and [3](#))

The bill also removes the ability of agencies to define “small businesses,” “small counties,” and “small cities,” more broadly than their statutory definitions for purposes of providing [rule tiers to reduce any disproportionate impact](#) to those entities or areas. (Section 2)

### Adverse Impacts on Small Businesses

Each agency as part of the pre-SERC process must consider whether a bill has an [adverse impact on small business](#). The bill sets out the following list of impacts that qualify as adverse impacts to small businesses:

- Whether an owner, officer, operator, or manager must complete any education, training, or testing to comply, or is likely to spend at least 10 hours or purchase professional advice to understand and comply, with the rule in the first year;
- Whether taxes or fees assessed on transactions are likely to increase by \$500 or more in the aggregate in 1 year;
- Whether prices charged for goods and services are restricted or are likely to increase because of the rule;
- Whether specially trained, licensed, or tested employees will be required because of the rule;
- Whether operating costs are expected to increase by at least \$1,000 annually because of the rule; or
- Whether capital expenditures in excess of \$1,000 are necessary to comply with the rule. (Section [2](#))

### **Rulemaking**

The bill adds a requirement that an agency must file a [notice of rule development](#) in the FAR at least seven days before providing public [notice of a proposed rule](#). The notice of rule development must also include the proposed rule number. Additionally, the notice must include a request for submission of any information that could help the agency in its preparation of the agency’s SERC and provide a statement explaining how a person may either submit comments or information regarding potential regulatory costs. (Section [1](#))

The agency must publish the notice of a proposed rule with the FAR within 12 months after the most recent notice of rule development. The bill also requires that notices of workshops for rule development and for the preparation of SERCs be published in the FAR no less than 14 days before a workshop’s scheduled date. The bill allows for affected persons to request in writing that workshops be held for either rule development or information gathering for the preparation of SERCs. With this added provision, the bill requires that the persons within the agency responsible for the proposed rule must attend these workshops to also address, explain, and receive any public input on the SERC. Similarly, the bill states that negotiated rulemaking may also be employed to develop information necessary to the preparation of SERCs. (Section [2](#))

Under the bill, an agency will be required to withdraw any proposed rule when the agency has failed to adopt within the prescribed timeframes for rule promulgation and adoption. JAPC must then send notice to the agency that it has failed to adopt the proposed rule within prescribed timeframes. If, however, the agency, 30 days after JAPC’s notice, has not withdrawn the proposed rule, JAPC must notify the Department of State (DOS) that the date for adoption of the rule has expired. DOS must then publish a notice of withdrawal of the proposed rule. (Section [2](#))

The bill adds guidance documents to the definition of a rule, clarifying that agencies must adopt guidance documents like all other types of rules. (Section [1](#))

If a rule requires ratification by the Legislature and fails to be ratified, the agency must withdraw the rule; however, within 90 days of adjournment, the agency may restart the rulemaking process for the rule. (Section [2](#))

### **Emergency Rules**

The bill requires that [emergency rules](#) be published in the Florida Administrative Code (FAC) as well as the FAR. The bill allows for an agency to adopt new emergency rules to supersede emergency rules already in effect; however, the agency must give a reason for the new rule. New rules must remain in effect for the duration of the effective period of the superseded rule. Technical changes to an emergency rule may be made within the first seven

days after the rule’s adoption. Renewal of emergency rules must be published in the FAR before the expiration of the existing emergency rule, with the notice of renewal stating the facts and reasons for the renewal. (Section [2](#))

The bill also states that for emergency rules with an effective period longer than 90 days that supersede existing rules, a history note must be added to the existing rule, specifically identifying the emergency rule that supersedes it and include the date the emergency rule was filed with DOS. Also, emergency rules may be repealed at any time while they are in effect; agencies must publish a notice in the FAR citing the reason for the repeal and the effective date of the repeal. (Section [2](#))

### **Florida Administrative Register**

The bill requires the FAR be published each business day by 8 a.m., with the exception of state holidays or emergency closures of state agencies. If a rule, proposed rule, or notice of rule development is corrected and replaced, the corrected rule or notice must be published in the next available FAR with a notation indicating the rule, proposed rule, or notice was corrected by DOS. (Section [6](#))

### **Incorporation by Reference**

The bill requires an agency, in all notices of rulemaking, including notices related to rule repromulgation and rule modifications, that include material [incorporated by reference](#), to submit the incorporated material in a prescribed electronic format to DOS with the full text available for free public access through an electronic hyperlink and include a summary of substantive revisions to any material proposed to be incorporated by reference. Alternatively, if an agency determines that posting the incorporated material on the internet would violate federal copyright law, the agency must include in the notice a statement to that effect, along with the addresses of locations at DOS and the agency at which the material is available for public inspection and examination. (Section [2](#) and [6](#))

The bill requires DOS to prescribe by rule that material incorporated by reference included in a notice of proposed rule and a notice of change be formatted in such a way that additions to the text appear underlined and deletions appear as text stricken through. (Section [6](#))

### **Annual Regulatory Plans**

The bill requires an agency, in its annual regulatory plan, to identify and describe each rule, including the rule number or proposed rule number, which the agency intends to develop, adopt, or repeal during the next year. The plan must also identify any rules that are required to be repromulgated during that period. Further, the bill requires that in the certification of the regulatory plan an agency must pledge that it understands the necessity of regulatory accountability to ensure public confidence and integrity of state government, and that the agency is working toward lowering the total number of rules adopted. The agency must include in the certification the total number of rules adopted and repealed during the previous year. (Section [8](#))

### **Licensing Performance Data**

The bill requires each agency to submit, beginning October 1, 2026, as part of its annual regulatory plan, specified data regarding its compliance with [licensing timeframes](#) established in the APA. Each agency that issues licenses must submit the following information:

- The number of license applications submitted to the agency.
- The number of license applications that required one or more requests for additional information.
- The number of license applications that were not completed by the applicant.
- The number of license applications for which an extension was requested by the applicant and for which an extension was required by the state agency or the judicial branch.
- The number of license applications that were not approved or denied within the statutory timeframe.
- The average and median number of days it takes the agency to approve or deny an application after receipt of a completed application. (Section [8](#))

### **Regulatory Alternatives**

#### **Lower Cost Regulatory Alternatives**

The bill requires each agency to provide a copy of the [lower cost regulator alternative](#) (LCRA) to JAPC at least 21 days before filing the proposed rule for adoption. If the LCRA is submitted after a notice of change, the bill provides

that it only needs to be considered if the person submitting the proposal reasonably believes, and the proposal states the person's reasons for believing, that the LCRA as changed by the notice of change increase regulatory costs or creates an adverse impact on small businesses. The bill requires further that in the event a LCRA is made, the agency must revise its prior SERC and either adopt the alternative proposal, reject the alternative proposal, or modify the proposed rule to reduce regulatory costs. If the agency rejects the alternative proposal or modifies the proposed rule, the agency must provide a statement explaining why it rejected the alternative. Further, a summary of the revised SERC must be published with any subsequent notice of proposed rule. The revised SERC must be provided to the person who proposed the lower cost regulatory alternative, the rules ombudsman in the Executive Office of the Governor, and JAPC at least 21 days before filing the proposed rule for adoption. (Section [3](#))

#### [Regulatory Alternatives Submitted by the Rules Ombudsman](#)

The bill requires each agency to provide notice to JAPC of any regulatory alternative offered to the agency by the rules ombudsman at least 21 days before filing the proposed rule for adoption. (Section [2](#))

#### **Effective Date**

The effective date of the bill is July 1, 2025. (Section [14](#))

#### **RULEMAKING:**

The bill grants rulemaking authority to DOS for the purpose of implementing the provisions of the bill related to repromulgation. The rules are required to be promulgated by December 31, 2025.

***Lawmaking is a legislative power; however, the Legislature may delegate a portion of such power to executive branch agencies to create rules that have the force of law. To exercise this delegated power, an agency must have a grant of rulemaking authority and a law to implement.***

#### **FISCAL OR ECONOMIC IMPACT:**

#### **STATE GOVERNMENT:**

The bill will likely have an indeterminate, negative fiscal impact on state government as a result of the increased workload among agency staff related to the bill's repromulgation process as well as its requirement that a SERC be created for each rule.

## **RELEVANT INFORMATION**

#### **SUBJECT OVERVIEW:**

##### **Rulemaking**

The Legislature, as the sole branch of government with the inherent power to create laws,<sup>1</sup> may delegate to agencies in the executive branch the quasi-legislative ability, or authority, to create rules.<sup>2</sup> The Administrative Procedure Act (APA)<sup>3</sup> sets forth a uniform set of procedures agencies must follow when exercising delegated rulemaking authority. A rule is an agency statement of general applicability that interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency as well as certain types of forms.<sup>4</sup> Rulemaking authority is delegated by the Legislature through statute and authorizes agencies to "adopt, develop, establish, or otherwise create"<sup>5</sup> rules. Usually, the Legislature delegates rulemaking authority to a given agency because an agency has "expertise in a particular area for which they are charged with oversight."<sup>6</sup> Agencies do not have the discretion in and of themselves to engage in rulemaking.<sup>7</sup> To adopt a rule, an agency must have a

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<sup>1</sup> [Article III, s. 1, FLA. CONST.](#); see also [art. II, s. 3, FLA. CONST.](#)

<sup>2</sup> See *Whiley v. Scott*, 79 So. 3d 702, 710 (Fla. 2011), stating "[r]ulemaking is a derivative of lawmaking."

<sup>3</sup> Ch. 120, F.S.

<sup>4</sup> S. [120.52\(16\), F.S.](#)

<sup>5</sup> S. [120.52\(17\), F.S.](#)

<sup>6</sup> *Whiley v. Scott*, 79 So. 3d 702, 711 (Fla. 2011).

<sup>7</sup> S. [120.54\(1\)\(a\), F.S.](#)



general grant of authority to implement a specific law by rulemaking.<sup>8</sup> The grant of rulemaking authority itself need not be detailed. The specific statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.<sup>9</sup>

An agency begins the formal rulemaking process<sup>10</sup> by filing a [notice of rule development](#) of proposed rules indicating the subject area to be addressed by the rule development and including a short, plain explanation of the purpose and effect of the rule.<sup>11</sup> The notice is published in the [Florida Administrative Register](#) (FAR)—the official compilation of agency notices published each day. The notice may include the preliminary text of the proposed rule, but it is not necessary. Such notice is required for all rulemaking, except for rule repeals. Next, an agency must file, upon approval of the agency head, a [notice of proposed rule](#).<sup>12</sup> The notice of proposed rule is published by the Department of State (DOS) in the FAR<sup>13</sup> and must contain the full text of the proposed rule or amendment and a summary thereof.<sup>14</sup> Prior to 2012, the FAR was published weekly, resulting in a period of at least seven days between the publication of a notice of rule development and a notice of proposed rule.<sup>15</sup> In 2012, the Legislature passed [HB 541](#) that changed the FAR from a weekly publication to a publication that is continuously revised and, as a result, eliminated the seven day period between the two notices.<sup>16</sup>

After publication of a notice of proposed rule, an agency must hold a hearing on the proposed rule if a person requests a hearing within 21 days.<sup>17</sup> If, after the hearing is held or after the time for requesting a hearing has expired, the agency does not change the rule, other than a technical change, the agency must file a notice stating no changes have been made to the rule with JAPC at least seven days before filing the rule for adoption.<sup>18</sup> However, if a hearing is requested, the agency may, based upon the comments received at the hearing, publish a notice of change.<sup>19</sup>

As an alternative to the agency-initiated process delineated above, a person regulated by the agency or having a substantial interest in an agency rule may petition the agency to adopt, amend, or repeal a rule.<sup>20</sup> The petitioner must specify the proposed rule and action requested.<sup>21</sup> The agency can either initiate rulemaking or decline to do so; however, if the agency chooses the latter, it must issue a written statement of the reasons for the denial.<sup>22</sup>

Once an agency has completed the steps of rulemaking, the agency may file for rule adoption with DOS and the rule becomes effective 20 days later, unless a different date is indicated in the rule.<sup>23</sup> Most adopted rules are published in the FAC.<sup>24</sup>

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<sup>8</sup> S. [120.52\(8\), F.S.](#); [s. 120.536\(1\), F.S.](#)

<sup>9</sup> *Sloban v. Fla. Bd. Of Pharmacy*, 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Bd. Of Trustees of the Internal Improvement Trust Fund v. Day Cruise Assoc., Inc.*, 794 So. 2d 696, 704 (Fla. 1st DCA 2001).

<sup>10</sup> Alternatively, a person regulated by an agency or having a substantial interest in an agency rule may petition the agency to adopt, amend, or repeal a rule. S. [120.54\(7\)\(a\), F.S.](#)

<sup>11</sup> S. [120.54\(2\), F.S.](#)

<sup>12</sup> S. [120.54\(3\), F.S.](#)

<sup>13</sup> S. [120.55\(1\)\(b\), F.S.](#)

<sup>14</sup> S. [120.54\(3\)\(a\)1., F.S.](#)

<sup>15</sup> Ch. 2012-63, L.O.F.

<sup>16</sup> *Id.*

<sup>17</sup> S. [120.54\(3\)\(c\), F.S.](#)

<sup>18</sup> S. [120.54\(3\)\(d\)1., F.S.](#)

<sup>19</sup> *Id.*

<sup>20</sup> S. [120.54\(7\)\(a\), F.S.](#)

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> S. [120.54\(3\)\(e\)6., F.S.](#)

<sup>24</sup> Rules general in form but applicable to only one school district, community college district, or county, or a part thereof, or a state university rules relating to internal personnel or business and finance are not published in the FAC. Forms are not published in the FAC. S. [120.55\(1\)\(a\), F.S.](#) Emergency rules are also not published in the FAC.

The validity of a rule or a proposed rule may be challenged at the Division of Administrative Hearings (DOAH)<sup>25</sup> as an invalid delegation of legislative authority.<sup>26</sup> An invalid delegation of legislative authority is an action that goes beyond the powers, functions, and duties delegated by the Legislature.<sup>27</sup> A rule or proposed rule is an invalid delegation of legislative authority if:

- The agency has materially failed to follow the rulemaking procedures in the APA;
- The agency has exceeded its grant of rulemaking authority;
- The rule enlarges, modifies, or contravenes the specific provisions of the law implemented;
- The rule is vague, fails to establish adequate standards for agency decisions, or vests the agency with unbridled discretion;
- The rule is arbitrary or capricious; or
- The rule imposes regulatory costs on the regulated person, county, or municipality that could have been reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives.<sup>28</sup>

An administrative law judge (ALJ) at DOAH hears the rule challenge in a de novo proceeding and, within 30 days of the hearing, determines the rule's validity based upon a preponderance of the evidence standard.<sup>29</sup> The ALJ's decision constitutes final agency action, which means an agency may not alter the decision after its issuance,<sup>30</sup> but an agency may appeal the decision to the District Court of Appeal where the agency maintains its headquarters.<sup>31</sup>

### **Statements of Estimated Regulatory Costs**

A SERC is an agency's assessment of the potential economic impact of a proposed rule, including compliance costs for the public and implementation costs for the agency and other government entities.<sup>32</sup> An agency is encouraged to prepare SERCs before the adoption, amendment, or repeal of rules;<sup>33</sup> however, an agency is required to prepare a SERC if the proposed rule will have an [adverse impact on small businesses](#) or increase regulatory costs by more than \$200,000 in the aggregate within one year after the implementation of the rule.<sup>34</sup> If the agency revises a rule before adoption and the revision increases the regulatory costs of the rule, the agency must revise the SERC to reflect that alteration.<sup>35</sup>

A SERC must include:

- A good faith estimate of the number of people and entities affected by the proposed rule;
- A good faith estimate of the cost to the agency and other governmental entities to implement the proposed rule;
- A good faith estimate of transactional costs likely to be incurred by people, entities, and governmental agencies for compliance; and
- An analysis of the proposed rule's impact on small business, counties, and municipalities.<sup>36</sup>

The SERC must also include an economic analysis on the likelihood that the proposed rule will have an adverse impact in excess of \$1 million within the first 5 years of implementation on:

- Economic growth, private-sector job creation or employment, or private-sector investment;
- Business competitiveness, productivity, or innovation; or
- Regulatory costs, including any transactional costs.<sup>37</sup>

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<sup>25</sup> DOAH is an agency in the executive branch, administratively housed under the Department of Management Services but not subject to its control. DOAH employs ALJs who serve as neutral arbiters presiding over disputes arising under the APA. S. [120.65, F.S.](#)

<sup>26</sup> S. [120.56\(1\), F.S.](#)

<sup>27</sup> S. [120.52\(8\), F.S.](#)

<sup>28</sup> S. [120.52\(8\)\(a\)-\(f\), F.S.](#)

<sup>29</sup> S. [120.56\(1\)\(e\), F.S.](#)

<sup>30</sup> *Id.*

<sup>31</sup> S. [120.68\(2\)\(a\), F.S.](#)

<sup>32</sup> S. [120.541\(2\), F.S.](#)

<sup>33</sup> S. [120.54\(3\)\(b\)1, F.S.](#)

<sup>34</sup> *Id.*

<sup>35</sup> S. [120.541\(1\)\(c\), F.S.](#)

<sup>36</sup> S. [120.541\(2\)\(b\)-\(e\), F.S.](#)

<sup>37</sup> S. [120.541\(2\)\(a\), F.S.](#)

If the economic analysis forecasts that the proposed rule's adverse impact or regulatory costs will be in excess of \$1 million within five years after the rule's implementation, then the rule must be ratified by the Legislature in order to take effect.<sup>38</sup>

An agency's failure to prepare a SERC or to respond to a written lower cost regulatory alternative can be raised in a proceeding at DOAH to invalidate a rule as an invalid exercise of delegated legislative authority only if it is raised within one year of the effective date of the rule and is raised by a person whose substantial interests are affected by the regulatory costs of the rule.<sup>39</sup>

The APA encourages agencies to prepare SERCs before the adoption, amendment, or repeal of rules, only requiring SERCs to be prepared when a proposed rule will have an adverse impact on small business or the proposed rule is likely to directly or indirectly increase regulatory costs of more than \$200,000 in the aggregate within one year after the rule's intended action.<sup>40</sup>

### [Rule Tiers to Reduce Disproportionate Impact](#)

Even if a SERC is not required, each agency is required to consider the impact of a rule on small businesses, small counties, and small cities; the agency must tier the rule to reduce any disproportionate impact on those entities.<sup>41</sup> While the terms "small business,"<sup>42</sup> "small county,"<sup>43</sup> and "small city"<sup>44</sup> have statutory definitions—businesses employing 200 or fewer persons, counties with 75,000 or fewer residents, cities with 10,000 or fewer residents, respectively—agencies are allowed to define those terms more broadly for purposes of tiering the impacts of their rules.

### [Emergency Rules](#)

Agencies are authorized to respond to immediate dangers to the public health, safety, or welfare by adopting emergency rules.<sup>45</sup> Emergency rules are not adopted using the same procedures required of other rules.<sup>46</sup> The notice of the emergency rule and the text of the rule is published in the first available issue of the FAR; however, there is no requirement that an emergency rule be published in the FAC.<sup>47</sup> Before or the at the time of the rule's promulgation, the agency must publish the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare.<sup>48</sup> The agency's findings of immediate danger are judicially reviewable.<sup>49</sup> Emergency rules are effective immediately, or on a date less than 20 days after filing if specified in the rule,<sup>50</sup> but are only effective for a period of no longer than 90 days.<sup>51</sup> An emergency rule is not renewable, except when the agency has initiated rulemaking to adopt rules relating to the subject of the emergency rule and a challenge to the proposed rule has been filed and remains pending or the proposed rule is awaiting ratification by the Legislature.<sup>52</sup>

### [Incorporation by Reference](#)

The APA allows an agency to incorporate material external to the text of the rule by reference.<sup>53</sup> The material to be incorporated must exist on the date the rule is adopted.<sup>54</sup> If the agency seeks to alter the material incorporated by

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<sup>38</sup> S. [120.541\(3\), F.S.](#)

<sup>39</sup> S. [120.541\(1\)\(f\), F.S.](#)

<sup>40</sup> S. [120.54\(3\)\(b\), F.S.](#)

<sup>41</sup> S. [120.54\(3\)\(b\)2.a., F.S.](#)

<sup>42</sup> S. [288.703\(6\), F.S.](#)

<sup>43</sup> S. [120.54\(19\), F.S.](#)

<sup>44</sup> S. [120.54\(18\), F.S.](#)

<sup>45</sup> S. [120.54\(4\), F.S.](#)

<sup>46</sup> S. [120.54\(4\)\(a\), F.S.](#)

<sup>47</sup> S. [120.54\(4\)\(a\)3., F.S.](#)

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> S. [120.54\(4\)\(d\), F.S.](#)

<sup>51</sup> S. [120.54\(4\)\(c\), F.S.](#)

<sup>52</sup> *Id.*

<sup>53</sup> S. [120.54\(1\)\(i\), F.S.](#); *see also* r. 1-1.013, F.A.C.

<sup>54</sup> S. [120.54\(1\)\(i\)1., F.S.](#)



reference after the rule has been adopted, the rule itself must be amended for the change to be effective.<sup>55</sup> However, an agency rule incorporating another rule by reference automatically incorporates subsequent amendments to the referenced rule.<sup>56</sup>

An agency may not incorporate material by reference unless:

- The material is submitted in the prescribed electronic format to DOS and the full text of the material may be made available for free public access through an electronic hyperlink from the rule incorporating the material by reference in the FAC; or
- If the agency determined that posting the material publicly on the internet would violate federal copyright law, a statement explaining such concern, along with the address of locations at DOS and the agency at which the material is available for public inspection and examination, must be included in the notice.<sup>57</sup>

DOS requires each agency incorporating material by reference in an administrative rule to certify the materials incorporated have been filed with DOS electronically or, if the agency claims posting the material would violate federal copyright law, the location where the public may view the material.<sup>58</sup>

### Annual Regulatory Plans

Annually, each agency must prepare a regulatory plan that includes a list of each law enacted during the previous 12 months that creates or modifies the duties or authority of the agency, and state whether the agency must adopt rules to implement the newly adopted laws.<sup>59</sup> The plan must also include a list of each additional law not otherwise listed that the agency expects to implement by rulemaking before the following July 1, except emergency rules.<sup>60</sup> The plan must include a certification by the agency head or, if the agency head is a collegial body, the presiding officer, and the individual acting as principal legal advisor to the agency verifying the persons have reviewed the plan, verifying the agency regularly reviews all of its rules, and identifying 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 being implemented.<sup>61</sup> By October 1 of each year, the plan must be published on the agency's website or on another state website established for publication of administrative law records with a hyperlink to the plan. The agency must also deliver a copy of the certification to JAPC and publish a notice in the FAR identifying the date of publication of the agency's regulatory plan.<sup>62</sup>

### **Regulatory Alternatives**

#### Lower Cost Regulatory Alternatives

A person substantially affected by a proposed rule may, within 21 days after the publication of a notice of adoption, amendment, or repeal of a rule, submit a lower cost regulatory alternative (LCRA).<sup>63</sup> The LCRA must be a written proposal, made in good faith, that substantially accomplishes the objectives of the law being implemented.<sup>64</sup> A LCRA may recommend that a rule not be adopted at all, if it explains how the "lower costs and objectives of the law will be achieved by not adopting any rule."<sup>65</sup> If a LCRA is submitted to an agency, the agency must prepare a SERC if one has not been previously prepared, or revise its prior SERC, and either adopt the LCRA or provide a statement to explain the reasons for rejecting the LCRA.<sup>66</sup> Additionally, if a LCRA is submitted, the 90-day period for filing a rule is extended an additional 21 days.<sup>67</sup> At least 21 days before filing a rule for adoption, an agency that is required

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<sup>55</sup> *Id.*

<sup>56</sup> S. 120.54(1)(i)2., F.S.

<sup>57</sup> S. 120.54(1)(i)3., F.S.

<sup>58</sup> R. 1-1.013(5)(d), F.A.C.

<sup>59</sup> S. 120.74(1)(a), F.S.

<sup>60</sup> S. 120.74(1)(b), F.S.

<sup>61</sup> S. 120.74(1)(d), F.S.

<sup>62</sup> S. 120.74(2), F.S.

<sup>63</sup> S. 120.541(1)(a), F.S.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

to revise a SERC in response to a LCRA must provide the SERC to the person who submitted the LCRA and to JAPC and must provide notice on the agency's website that it is available to the public.<sup>68</sup>

Just as in the case of an agency's failure to prepare a SERC, an agency's failure to respond to a LCRA may be raised in a proceeding at DOAH to invalidate a rule as an invalid delegation of legislative authority if it is raised within one year of the effective date of the rule and is raised by a person whose substantial interests are affected by the regulatory costs of the rule.<sup>69</sup>

#### [Regulatory Alternatives Submitted by the Rules Ombudsman](#)

Each agency, before the adoption, amendment, or repeal of a rule, must consider the impact of the rule on small businesses.<sup>70</sup> If the agency determines that the proposed action will affect small businesses, the agency must send written notice to the rules ombudsman<sup>71</sup> in the Executive Office of the Governor at least 28 days before the intended action.<sup>72</sup> The agency must adopt the regulatory alternatives offered by the rules ombudsman if it finds the alternatives are feasible and consistent with the stated objectives of the proposed rule and would reduce the impact on small businesses.<sup>73</sup>

If the agency does not adopt the alternatives offered, before rule adoption or amendment, the agency must file a detailed written statement with JAPC explaining the reasons for failure to adopt such alternatives.<sup>74</sup>

#### [Joint Administrative Procedures Committee](#)

The Joint Administrative Procedures Committee (JAPC) is a standing committee of the Legislature established by joint rule and created to maintain a continuous review of administrative rules, the statutory authority upon which those rules are based, and the administrative rulemaking process.<sup>75</sup> Specifically, JAPC may examine existing rules and must examine each proposed rule to determine whether:

- The rule is an invalid exercise of delegated legislative authority;
- The statutory authority for the rule has been repealed;
- The rule reiterates or paraphrases statutory material;
- The rule is in proper form;
- The notice given prior to adoption was sufficient;
- The rule is consistent with expressed legislative intent;
- The rule is necessary to accomplish the apparent or expressed objectives of the specific provision of law that the rule implements;
- The rule is a reasonable implementation of the law as it affects the convenience of the general public or persons particularly affected by the rule;
- The rule could be made less complex or more easily comprehensible to the general public;
- The rule's statement of estimated regulatory cost complies with the requirements of the APA and whether the rule does not impose regulatory costs on the regulated person, county, or municipality that could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives; or
- The rule will require additional appropriations.<sup>76</sup>

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<sup>68</sup> S. [120.541\(1\)\(d\), F.S.](#)

<sup>69</sup> S. [120.541\(1\)\(f\), F.S.](#)

<sup>70</sup> S. [120.54\(3\)\(b\)2., F.S.](#)

<sup>71</sup> The Governor must appoint a rules ombudsman in the Executive Office of the Governor for purposes of considering the impact of agency rules on the state citizens and businesses. The rules ombudsman must carry out the duties related to rule adoption procedures with respect to small businesses; review agency rules that adversely or disproportionately impact businesses, particularly those relating to small and minority businesses; and make recommendations on any existing or proposed rules to alleviate unnecessary or disproportionate adverse effects to business. Each agency must cooperate fully with the rules ombudsman in identifying such rules and take the necessary steps to waive, modify, or otherwise minimize the adverse effects of any such rules. S. [288.7015, F.S.](#)

<sup>72</sup> S. [120.54\(3\)\(b\)2.b.\(I\), F.S.](#)

<sup>73</sup> S. [120.54\(3\)\(b\)2.b.\(II\), F.S.](#)

<sup>74</sup> S. [120.54\(3\)\(b\)2.b.\(III\), F.S.](#)

<sup>75</sup> Fla. Leg. J. Rule 4.6; *see also* s. [120.545, F.S.](#)

<sup>76</sup> S. [120.545\(1\), F.S.](#)

Upon examining a rule, JAPC may object to the rule.<sup>77</sup> If JAPC notifies an agency that a rule objection is under consideration, the agency may postpone rule adoption to allow for review.<sup>78</sup> If the issue cannot be resolved at the staff level, JAPC prepares a recommendation for formal objection to be presented to the committee in a public forum. The agency is advised of the recommended objection and is invited before the committee to argue that the rule is authorized.<sup>79</sup> If the committee concludes that there is no authority for the rule, it votes an objection.<sup>80</sup> If the agency refuses to amend or repeal the rule, JAPC's objection is referenced in a footnote to the rule in the Florida Administrative Code.<sup>81</sup>

### [Florida Administrative Code](#)

The FAC is an electronic compilation of all rules adopted by each agency and maintained by DOS.<sup>82</sup> DOS retains the copyright over the FAC.<sup>83</sup> Each rule in the FAC must cite the grant of rulemaking authority and the specific law implemented.<sup>84</sup> Rules applicable to only one school district, community college district, or county or state university rules relating to internal personnel or business and finance are not required to be included in the FAC.<sup>85</sup> DOS is required to publish the following information at the beginning of each section of the code concerning an agency:

- The address and telephone number of the executive offices of the agency;
- The manner by which the agency indexes its rules; and
- A listing of all rules of that agency excluded from publication in the FAC and a statement as to where those rules may be inspected.<sup>86</sup>

DOS is required to adopt rules allowing adopted rules and materials incorporated by reference to be filed in electronic form.<sup>87</sup> Further, DOS is required to prescribe by rule the style and form required for rules, notices, and other materials submitted for filing in the FAC.<sup>88</sup> The rule DOS has adopted requires rules that are being amended to be coded by underlining new text and by striking through deleted text.<sup>89</sup>

### [Licensing Timeframes](#)

The APA sets out specific procedures for how an agency processes license<sup>90</sup> applications.<sup>91</sup> First, the agency examines the licensure application and within 30 days notifies the applicant if the application contains errors or omissions.<sup>92</sup> At this point the agency can request any additional information that is required as part of the application. The agency is permitted to establish by rule the time period for submitting the additional information but must grant a request for extension of that time period if the applicant shows good cause. Once an application is complete—all requested information received and all errors corrected—the agency must approve or deny the license within 90 days after receipt the application.<sup>93</sup> Any application that is not approved or denied during this 90-day timeframe is considered approved.<sup>94</sup>

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<sup>77</sup> S. [120.545\(2\), F.S.](#)

<sup>78</sup> Joint Administrative Procedures Committee, [A Primer on Florida's Administrative Procedure Act](#) (2020) (last visited March 14, 2025); see also [s. 120.545, F.S.](#)

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> S. [120.55\(1\)\(a\)1., F.S.](#)

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> S. [120.55\(1\)\(a\)2., F.S.](#)

<sup>86</sup> S. [120.55\(1\)\(a\)3., F.S.](#)

<sup>87</sup> S. [120.55\(1\)\(a\)5., F.S.](#)

<sup>88</sup> S. [120.55\(1\)\(c\), F.S.](#)

<sup>89</sup> Rule 1-1.010(5)(a), F.A.C. referencing r. 1-1.011(3)(c), F.A.C.

<sup>90</sup> "License" means "a franchise, permit, certification, registration, charter, or similar form of authorization required by law, but it does not include a license required primarily for revenue purposes when issuance of the license is merely a ministerial act." S. 120.52(10), F.S.

<sup>91</sup> See s. 120.60, F.S.

<sup>92</sup> S. 120.60(1), F.S.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

**RECENT LEGISLATION:**

YEAR	BILL #	HOUSE SPONSOR(S)	SENATE SPONSOR	OTHER INFORMATION
2024	<a href="#">HB 1279</a>	Gregory	DiCeglie	Died in the House.
2023	<a href="#">CS/CS/CS/HB 713</a>	McFarland	Grall	Died in the House.
2022	<a href="#">CS/CS/HB 337</a>	McClain	Diaz	Died in the House.
2021	<a href="#">HB 65</a>	Sabatini	Diaz	Died in the House.
2021	<a href="#">CS/HB 1145</a>	McClain	Albritton	Died in the House.

**BILL HISTORY**

COMMITTEE REFERENCE	ACTION	DATE	STAFF DIRECTOR/ POLICY CHIEF	ANALYSIS PREPARED BY
<a href="#">Government Operations Subcommittee</a>	12 Y, 3 N, As CS		Toliver	Lines
THE CHANGES ADOPTED BY THE COMMITTEE:	<ul style="list-style-type: none"> <li>Added “guidance documents” to the definition of a “rule.”</li> <li>Required agencies to include a cost-benefit analysis in their SERCs.</li> <li>Required agencies to withdraw a rule or restart rulemaking if the rule was submitted for legislative ratification and failed to be ratified.</li> <li>Required agencies to specify in their annual regulatory plans 20 percent of their existing rules that are scheduled to be reviewed each year during the initial five-year review period.</li> <li>Required each agency to submit certain licensing information as part of their annual regulatory plan.</li> <li>Removed requirement that a comprehensive review of certain permitting programs be conducted.</li> </ul>			
<a href="#">Budget Committee</a>				
<a href="#">State Affairs Committee</a>				

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**THIS BILL ANALYSIS HAS BEEN UPDATED TO INCORPORATE ALL OF THE CHANGES DESCRIBED ABOVE.**  
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