

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GEAC 07-05 Publication on State Agency Website
SPONSOR(S): Government Efficiency & Accountability Council
TIED BILLS: **IDEN./SIM. BILLS:**

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---|-----------|----------|----------------|
| Orig. Comm.: Government Efficiency & Accountability Council | 10 Y, 0 N | Ferguson | Cooper |
| 1) _____ | _____ | _____ | _____ |
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| 4) _____ | _____ | _____ | _____ |
| 5) _____ | _____ | _____ | _____ |

SUMMARY ANALYSIS

The Joint Administrative Procedures Committee (JAPC) is a joint standing legislative committee composed of six members, with three members from each house. JAPC is assigned the duty of maintaining a continuous review of chapter 120 of Florida Statutes known as the Administrative Procedure Act ("the Act"). The bill modifies provisions of the Act by providing that:

- "Rulemaking authority" means an agency only has rulemaking authority whenever the Legislature has explicitly authorized an agency to make rules.
- Material incorporated by reference in a rule may not incorporate additional material unless the material is specifically identified.
- Rulemaking responsibilities of an agency head, in certain circumstances, may not be delegated or transferred.
- An agency rule that incorporates by specific reference another rule of that agency automatically incorporates subsequent amendments to the referenced rule, unless contrary intent is indicated.
- An adopting agency is required to file with JAPC, at least 21 days prior to the proposed adoption date, a copy of material incorporated by reference in the rule. A copy of any material incorporated by reference in the rule, certified by the agency, must be filed with the Department of State, upon approval of the agency head, if the adopting agency is required to publish its rules in the Florida Administrative Code (FAC).
- JAPC's review of agency rules includes an unadopted agency statement.
- The Department of State is required to provide electronic notices prior to or at the same time as the printed Florida Administrative Weekly.
- The Department of State is required to electronically publish the Florida Administrative Code on its website.
- Materials incorporated by reference in a rule, after December 31, 2009, must be made available via an electronic link from the rule to the referenced material unless the agency has determined that posting such material would violate federal law.

According to the Department of State, electronically accepting and publishing incorporated materials will entail \$345,000 in nonrecurring costs to upgrade existing systems. The bill provides that the money will be appropriated from the Records Management Trust Fund.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provides limited government—The bill requires the Department of State to perform additional duties.

B. EFFECT OF PROPOSED CHANGES:

Current situation

The Joint Administrative Procedures Committee and Agency Rulemaking

The Joint Administrative Procedures Committee (JAPC) is created in s. 11.60, F.S., as a legislative check on legislatively created authority as interpreted by executive agencies. JAPC is a joint standing legislative committee composed of six members, with three members from each house. The committee is assigned the duty of maintaining a continuous review of administrative rules and the statutory authority on which they are based.

Pursuant to s. 120.52(15), F.S., a “rule” is each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule. Section 120.54(3)(a)4., F.S., requires an agency to furnish the following documents to JAPC at least 21 days prior to rule adoption: a copy of the proposed rule; a detailed written statement of the facts and circumstances justifying the proposed rule; a copy of the economic impact statement, if required; a statement of the extent to which the proposed rule establishes standards more restrictive than federal rules, or that a federal rule on the same subject does not exist; and a copy of the notice of intent to adopt, amend, or repeal a rule.

The committee conducts a review of all proposed rules to determine whether: (a) the rule is an invalid exercise of delegated legislative authority; (b) the statutory authority for the rule has been repealed; (c) the rule reiterates or paraphrases statutory material; (d) the rule is in proper form; (e) the notice given prior to adoption was sufficient to give adequate notice of the purpose and effect of the rule; (f) an economic impact statement (EIS) was prepared, if required; (g) the rule is consistent with expressed legislative intent pertaining to the specific provisions of law which the rule implements; (h) 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; (i) the rule could be made less complex or more easily comprehensible to the general public; (j) the rule reflects the approach to the regulatory objective involving the lowest net cost to society to the degree consistent with the provisions of law which the rule implements; (k) the rule will require additional appropriations; and (l) if the rule is an emergency rule, there exists an emergency justifying the rule, whether the agency has exceeded the scope of its statutory authority, and whether the emergency rule was promulgated in the manner required.¹

If JAPC objects to a rule, it must certify the objection to the agency within five days of the objection. The committee also must notify the President of the Senate and the Speaker of the House of Representatives of any objection concurrent with certification to the agency.

Upon receipt of the objection, an agency must: (a) modify the proposed rule to meet JAPC’s objection; (b) withdraw the proposed rule; or (c) refuse to modify or withdraw the proposed rule. If the objection is to an existing rule, the agency must notify JAPC that: (a) it has elected to amend the rule to meet the objection; (b) it has elected to repeal the rule; or (c) it refuses to amend or repeal the rule.

¹ Section 120.55 (1) (b), F.S.

If an agency elects to modify a proposed rule to meet the objection, after modification it must give notice in the first available issue of the *Florida Administrative Weekly* (Weekly). If an agency elects to amend an existing rule to meet an objection, it must notify JAPC in writing and initiate the amendment procedure by giving notice in the next available issue of the Weekly. The agency must complete the amendatory process to an existing rule under these circumstances within 90 days.

If the agency refuses to modify, amend, withdraw, or repeal a rule to which JAPC has filed an objection, JAPC must file a detailed notice of its objection with the Department of State (DOS). DOS must publish this notice in the Weekly and in the Florida Administrative Code (FAC). JAPC may not require the agency to meet its objection. JAPC, however, may seek an administrative or judicial determination that a rule to which it has filed an objection is an invalid exercise of delegated legislative authority.

Florida Administrative Code and Florida Administrative Weekly

Pursuant to s. 120.55(1), F.S., DOS is required to compile and publish the FAC, which contains all rules adopted by each agency, citing specific rulemaking authority, all history notes, and complete indexes.

Pursuant to s. 120.55(1)(b), F.S., DOS is required to publish notices and various other materials filed by the state's administrative agencies in the Weekly which must contain:

- Notice of adoption of, and an index to, all rules filed during the preceding week;
- All notices required by s. 120.54(3)(a), F.S., concerning agency rulemaking, showing the text of all rules proposed for consideration or a reference to the location in the Weekly where the text of the proposed rules is published;
- All notices of public meetings, hearings, and workshops, including a statement of the manner in which a copy of the agenda may be obtained;
- A notice of each request for authorization to amend or repeal an existing uniform rule or for the adoption of new uniform rules;
- Notice of petitions for declaratory statements or administrative determinations;
- A summary of each objection to any rule filed by JAPC during the preceding week; and
- Any other material required or authorized by law or deemed useful by DOS.

During the 2006 Regular Session, the Legislature passed CS/SB 262, enacted as Ch. 226-82, Laws of Florida, which requires DOS to start publishing the Weekly on its Internet website with certain search capabilities, effective December 31, 2007.³ The law requires DOS to continue to publish a printed version of the Weekly.

Proposed change

Chapter 120 of Florida Statutes is known as the Administrative Procedure Act ("the Act"). The bill modifies provisions of the Act as discussed in the following sections:

Definitions

The bill defines "rulemaking authority" to restrict agency rulemaking authority by providing that an agency only has rulemaking authority whenever the Legislature has explicitly authorized an agency to make rules. The bill provides that rulemaking responsibilities of an agency head to give notice prior to adopting, amending, or repealing a rule other than emergency rule; or filing requirements for final adoption, may not be delegated or transferred.

³The department's website is located at <https://www.flrules.org/default.asp>

Material Incorporated by reference

Currently, a rule may incorporate material by reference but only as the material exists on the date the rule is adopted. The bill provides that when material is incorporated by reference, additional material may not be incorporated unless that material is specifically identified. The bill also provides that subsequent amendments to the referenced rule are automatically incorporated, unless a contrary intent is clearly indicated in the referenced rule. Also, any notice of amendments must explain the amendment's effect.

Currently an adopting agency is required to file with JAPC a copy of each rule it proposes to adopt, a detailed written statement of the facts and circumstances justifying the proposed rule, a copy of any statement of estimated regulatory costs that has been prepared, a statement of the extent to which the proposed rule relates to federal standards or rules on the same subject, and notice of its intent. The bill requires a copy of any material incorporated by reference also be filed and if the agency filing is required to publish its rules in the FAC, it is required to file a copy of any material incorporated by reference to the DOS upon approval of the agency head. Also, a copy of any material incorporated by reference is to be provided to JAPC when an agency adopts emergency rules.

Publication

Currently, DOS is authorized to prescribe by rule the style and form for rules submitted for filing. The bill expands DOS authority to include content requirements for rules, notices, and other materials.

Currently, users of the Florida Administrative Weekly Internet Website subscription service are able to receive an automated email notification. The bill requires those email notifications to be sent prior to or at the same time as the printed Weekly, and the email notification must include a summary of the content of the notice.

Currently, DOS is required to publish a printed version of the FAC. The bill requires DOS to electronically publish the FAC on its website, allow for a full text search, and any material incorporated by reference after December 31, 2009, must have a hyperlink to the material incorporated by reference; or if the agency has determined that the posting of the material would constitute a violation of federal law, a statement to that effect, along with the address of locations at DOS and the agency at which the material is available for public inspection and examination.

Decisions which affect substantial interests

The bill provides that if a disputed issue of material fact arises during a hearing not involving disputed issues of material fact that hearing must be terminated and a hearing involving disputed issues of material fact must be conducted unless waived by all parties. Currently, when a disputed issue of material fact arises in such hearings it is unclear whether or not the proceeding should continue.

C. SECTION DIRECTORY:

Section 1. Amends s. 120.52, F.S., to redefine and define terms.

Section 2. Amends s. 120.536, F.S., to revise guidelines for the construction of statutory language granting rulemaking authority.

Section 3. Amends s. 120.54, F.S., to provide limits and guidelines with respect to materials being incorporated by reference.

Section 4. Amends s. 120.545, F.S., to authorize the Joint Administrative Procedures Committee to request from agencies information to examine unadopted agency statements.

Sections 5-7. Amends s. 120.55, F.S., to require electronic publication of the Florida Administrative Code, to prescribe content requirements, and to provide for filling information incorporated by reference in electronic form.

Section 8. Amends s. 120.569, F.S., to revise cross-references.

Section 9. Amends s. 120.74, F.S., to revise reporting requirements for agency heads.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

According to the Department of State, electronically accepting and publishing incorporated materials will entail \$345,000 in nonrecurring costs to upgrade existing systems. The bill provides that the money will be appropriated from the Records Management Trust Fund.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

None.