

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	_____	(Y/N)
ADOPTED AS AMENDED	_____	(Y/N)
ADOPTED W/O OBJECTION	_____	(Y/N)
FAILED TO ADOPT	_____	(Y/N)
WITHDRAWN	_____	(Y/N)
OTHER		

1 Committee/Subcommittee hearing bill: Oversight, Transparency &
 2 Administration Subcommittee

3 Representative Spano offered the following:

4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Paragraphs (a) and (b) of subsection (3) of
 8 section 120.54, Florida Statutes, are amended to read:

9 120.54 Rulemaking.—

10 (3) ADOPTION PROCEDURES.—

11 (a) Notices.—

12 1. Prior to the adoption, amendment, or repeal of any rule
 13 other than an emergency rule, an agency, ~~upon approval of the~~
 14 ~~agency head,~~ shall give notice of its intended action, setting
 15 forth a short, plain explanation of the purpose and effect of
 16 the proposed action; the full text of the proposed rule or

Amendment No.

17 amendment and a summary thereof; a reference to the grant of
18 rulemaking authority pursuant to which the rule is adopted; and
19 a reference to the section or subsection of the Florida Statutes
20 or the Laws of Florida being implemented or interpreted. The
21 notice must include a summary of the agency's statement of the
22 estimated regulatory costs, if one has been prepared, based on
23 the factors set forth in s. 120.541(2); an agency website
24 address where the statement of estimated regulatory cost can be
25 viewed in its entirety; a statement that any person who wishes
26 to provide the agency with information regarding the statement
27 of estimated regulatory costs, or to provide a proposal for a
28 lower cost regulatory alternative as provided by s. 120.541(1),
29 must do so in writing within 21 days after publication of the
30 notice; and a statement as to whether, based on the statement of
31 the estimated regulatory costs or other information expressly
32 relied upon and described by the agency if no statement of
33 regulatory costs is required, the proposed rule is expected to
34 require legislative ratification pursuant to s. 120.541(3). The
35 notice must state the procedure for requesting a public hearing
36 on the proposed rule. Except when the intended action is the
37 repeal of a rule, the notice must include a reference both to
38 the date on which and to the place where the notice of rule
39 development that is required by subsection (2) appeared.

40 2. The notice shall be published in the Florida
41 Administrative Register not less than 28 days prior to the

Amendment No.

42 intended action. The proposed rule shall be available for
43 inspection and copying by the public at the time of the
44 publication of notice.

45 3. The notice shall be mailed to all persons named in the
46 proposed rule and to all persons who, at least 14 days prior to
47 such mailing, have made requests of the agency for advance
48 notice of its proceedings. The agency shall also give such
49 notice as is prescribed by rule to those particular classes of
50 persons to whom the intended action is directed.

51 4. The adopting agency shall file with the committee, at
52 least 21 days prior to the proposed adoption date, a copy of
53 each rule it proposes to adopt; a copy of any material
54 incorporated by reference in the rule; a detailed written
55 statement of the facts and circumstances justifying the proposed
56 rule; a copy of any statement of estimated regulatory costs that
57 has been prepared pursuant to s. 120.541; a statement of the
58 extent to which the proposed rule relates to federal standards
59 or rules on the same subject; and the notice required by
60 subparagraph 1.

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

62 1. Statement of estimated regulatory costs.—Before the
63 adoption ~~or, amendment, or repeal~~ of any rule other than an
64 emergency rule, an agency must ~~is encouraged to~~ prepare a
65 statement of estimated regulatory costs of the proposed rule, as
66 provided by s. 120.541. However, an agency is not required to

Amendment No.

67 prepare a statement of estimated regulatory cost for a rule
68 repeal unless such repeal would impose a regulatory cost. In any
69 challenge to a rule repeal, such rule repeal must be considered
70 presumptively correct by the committee, in any proceeding before
71 the division, or in any proceeding before a court of competent
72 jurisdiction. ~~However, an agency must prepare a statement of~~
73 ~~estimated regulatory costs of the proposed rule, as provided by~~
74 ~~s. 120.541, if:~~

75 a. ~~The proposed rule will have an adverse impact on small~~
76 ~~business; or~~

77 b. ~~The proposed rule is likely to directly or indirectly~~
78 ~~increase regulatory costs in excess of \$200,000 in the aggregate~~
79 ~~in this state within 1 year after the implementation of the~~
80 ~~rule.~~

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

82 a. Each agency, before the adoption, amendment, or repeal
83 of a rule, shall consider the impact of the rule on small
84 businesses as defined by s. 288.703 and the impact of the rule
85 on small counties or small cities as defined by s. 120.52.
86 Whenever practicable, an agency shall tier its rules to reduce
87 disproportionate impacts on small businesses, small counties, or
88 small cities to avoid regulating small businesses, small
89 counties, or small cities that do not contribute significantly
90 to the problem the rule is designed to address. An agency may
91 define "small business" to include businesses employing more

Amendment No.

92 than 200 persons, may define "small county" to include those
93 with populations of more than 75,000, and may define "small
94 city" to include those with populations of more than 10,000, if
95 it finds that such a definition is necessary to adapt a rule to
96 the needs and problems of small businesses, small counties, or
97 small cities. The agency shall consider each of the following
98 methods for reducing the impact of the proposed rule on small
99 businesses, small counties, and small cities, or any combination
100 of these entities:

101 (I) Establishing less stringent compliance or reporting
102 requirements in the rule.

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

105 (III) Consolidating or simplifying the rule's compliance
106 or reporting requirements.

107 (IV) Establishing performance standards or best management
108 practices to replace design or operational standards in the
109 rule.

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

112 b.(I) If the agency determines that the proposed action
113 will affect small businesses as defined by the agency as
114 provided in sub-subparagraph a., the agency shall send written
115 notice of the rule to the rules ombudsman in the Executive

Amendment No.

116 Office of the Governor at least 28 days before the intended
117 action.

118 (II) Each agency shall adopt those regulatory alternatives
119 offered by the rules ombudsman in the Executive Office of the
120 Governor and provided to the agency no later than 21 days after
121 the rules ombudsman's receipt of the written notice of the rule
122 which it finds are feasible and consistent with the stated
123 objectives of the proposed rule and which would reduce the
124 impact on small businesses. When regulatory alternatives are
125 offered by the rules ombudsman in the Executive Office of the
126 Governor, the 90-day period for filing the rule in subparagraph
127 (e)2. is extended for a period of 21 days.

128 (III) If an agency does not adopt all alternatives offered
129 pursuant to this sub-subparagraph, it shall, before rule
130 adoption or amendment and pursuant to subparagraph (d)1., file a
131 detailed written statement with the committee explaining the
132 reasons for failure to adopt such alternatives. Within 3 working
133 days after the filing of such notice, the agency shall send a
134 copy of such notice to the rules ombudsman in the Executive
135 Office of the Governor.

136 Section 2. Subsection (1) of section 120.541, Florida
137 Statutes, is amended, and subsection (6) is added to that
138 section, to read:

139 120.541 Statement of estimated regulatory costs.—

Amendment No.

140 (1) (a) Within 21 days after publication of the notice
141 required under s. 120.54(3) (a), a substantially affected person
142 may submit to an agency a good faith written proposal for a
143 lower cost regulatory alternative to a proposed rule which
144 substantially accomplishes the objectives of the law being
145 implemented. The proposal may include the alternative of not
146 adopting any rule if the proposal explains how the lower costs
147 and objectives of the law will be achieved by not adopting any
148 rule. If such a proposal is submitted, the 90-day period for
149 filing the rule is extended 21 days. Upon the submission of the
150 lower cost regulatory alternative, the agency shall ~~prepare a~~
151 ~~statement of estimated regulatory costs as provided in~~
152 ~~subsection (2), or shall~~ revise its prior statement of estimated
153 regulatory costs, and either adopt the alternative or provide a
154 statement of the reasons for rejecting the alternative in favor
155 of the proposed rule.

156 ~~(b) If a proposed rule will have an adverse impact on~~
157 ~~small business or if the proposed rule is likely to directly or~~
158 ~~indirectly increase regulatory costs in excess of \$200,000 in~~
159 ~~the aggregate within 1 year after the implementation of the~~
160 ~~rule, the agency shall prepare a statement of estimated~~
161 ~~regulatory costs as required by s. 120.54(3) (b).~~

162 (b)(e) The agency shall revise a statement of estimated
163 regulatory costs if any change to the rule made under s.
164 120.54(3) (d) increases the regulatory costs of the rule.

Amendment No.

165 ~~(c)-(d)~~ At least 21 days before filing the rule for
166 adoption, an agency that is required to revise a statement of
167 estimated regulatory costs shall provide the statement to the
168 person who submitted the lower cost regulatory alternative and
169 to the committee and shall provide notice on the agency's
170 website that it is available to the public.

171 ~~(d)-(e)~~ Notwithstanding s. 120.56(1)(c), the failure of the
172 agency to prepare a statement of estimated regulatory costs or
173 to respond to a written lower cost regulatory alternative as
174 provided in this subsection is a material failure to follow the
175 applicable rulemaking procedures or requirements set forth in
176 this chapter.

177 ~~(e)-(f)~~ An agency's failure to prepare a statement of
178 estimated regulatory costs or to respond to a written lower cost
179 regulatory alternative may not be raised in a proceeding
180 challenging the validity of a rule pursuant to s. 120.52(8)(a)
181 unless:

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

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

186 ~~(f)-(g)~~ A rule that is challenged pursuant to s.
187 120.52(8)(f) may not be declared invalid unless:

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

Amendment No.

214 An act relating to agency rulemaking; amending s. 120.54, F.S.;
215 requiring certain notices to include an agency website address
216 for a specified purpose; requiring an agency to prepare a
217 statement of estimated regulatory costs before adopting or
218 amending any rule other than an emergency rule; requiring an
219 agency to prepare a statement of estimated regulatory costs
220 before repealing a rule in certain circumstances; amending s.
221 120.541, F.S.; conforming provisions to changes in the bill;
222 requiring the Department of State to include on the Florida
223 Administrative Register website the agency website addresses
224 where statements of estimated regulatory costs can be viewed in
225 their entirety; requiring an agency to include in its notice of
226 intended action the agency website address where the statement
227 of estimated regulatory cost can be read in its entirety;
228 requiring an agency to provide a notice of revision when an
229 agency revises a statement of estimated regulatory cost;
230 providing an effective date.