



1 A bill to be entitled
2 An act relating to agency rulemaking; amending s.
3 120.54, F.S.; requiring certain notices to include an
4 agency website address for a specified purpose;
5 requiring an agency to prepare a statement of
6 estimated regulatory costs before adopting or amending
7 any rule other than an emergency rule; requiring an
8 agency to prepare a statement of estimated regulatory
9 costs before repealing a rule in certain
10 circumstances; requiring that certain rule repeals be
11 considered presumptively correct by the Administrative
12 Procedures Committee or in certain proceedings;
13 conforming provisions to changes made by the act;
14 amending s. 120.541, F.S.; conforming provisions to
15 changes made by the act; requiring the Department of
16 State to include on the Florida Administrative
17 Register website the agency website addresses where
18 statements of estimated regulatory costs can be viewed
19 in their entirety; requiring certain agencies to
20 provide such addresses and revision notices to the
21 department for publication in the Florida
22 Administrative Register; amending ss. 120.55 and
23 120.56, F.S.; conforming provisions to changes made by
24 the act; providing an effective date.
25



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

27

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

30 120.54 Rulemaking.—

31 (3) ADOPTION PROCEDURES.—

32 (a) Notices.—

33 1. Prior to the adoption, amendment, or repeal of any rule
34 other than an emergency rule, an agency, ~~upon approval of the~~
35 ~~agency head,~~ shall give notice of its intended action, setting
36 forth a short, plain explanation of the purpose and effect of
37 the proposed action; the full text of the proposed rule or
38 amendment and a summary thereof; a reference to the grant of
39 rulemaking authority pursuant to which the rule is adopted; and
40 a reference to the section or subsection of the Florida Statutes
41 or the Laws of Florida being implemented or interpreted. The
42 notice must include a summary of the agency's statement of the
43 estimated regulatory costs, ~~if one has been prepared,~~ based on
44 the factors set forth in s. 120.541(2); an agency website
45 address where the statement of estimated regulatory costs can be
46 viewed in its entirety; a statement that any person who wishes
47 to provide the agency with information regarding the statement
48 of estimated regulatory costs, or to provide a proposal for a
49 lower cost regulatory alternative as provided by s. 120.541(1),
50 must do so in writing within 21 days after publication of the



51 notice; and a statement as to whether, based on the statement of
52 the estimated regulatory costs ~~or other information expressly~~
53 ~~relied upon and described by the agency if no statement of~~
54 ~~regulatory costs is required~~, the proposed rule is expected to
55 require legislative ratification pursuant to s. 120.541(3). The
56 notice must state the procedure for requesting a public hearing
57 on the proposed rule. Except when the intended action is the
58 repeal of a rule, the notice must include a reference both to
59 the date on which and to the place where the notice of rule
60 development that is required by subsection (2) appeared.

61 2. The notice shall be published in the Florida
62 Administrative Register not less than 28 days prior to the
63 intended action. The proposed rule shall be available for
64 inspection and copying by the public at the time of the
65 publication of notice.

66 3. The notice shall be mailed to all persons named in the
67 proposed rule and to all persons who, at least 14 days prior to
68 such mailing, have made requests of the agency for advance
69 notice of its proceedings. The agency shall also give such
70 notice as is prescribed by rule to those particular classes of
71 persons to whom the intended action is directed.

72 4. The adopting agency shall file with the committee, at
73 least 21 days prior to the proposed adoption date, a copy of
74 each rule it proposes to adopt; a copy of any material
75 incorporated by reference in the rule; a detailed written



76 | statement of the facts and circumstances justifying the proposed
77 | rule; a copy of the ~~any~~ statement of estimated regulatory costs
78 | ~~that has been~~ prepared pursuant to s. 120.541; a statement of
79 | the extent to which the proposed rule relates to federal
80 | standards or rules on the same subject; and the notice required
81 | by subparagraph 1.

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

83 | 1. Statement of estimated regulatory costs.—Before the
84 | adoption or, ~~amendment, or repeal~~ of any rule, other than an
85 | emergency rule, an agency must ~~is encouraged to~~ prepare a
86 | statement of estimated regulatory costs of the proposed rule, as
87 | provided by s. 120.541. However, an agency is not required to
88 | prepare a statement of estimated regulatory costs for a rule
89 | repeal unless such repeal would impose a regulatory cost. In any
90 | challenge to a rule repeal, a rule repeal which reduces or
91 | eliminates regulations on those presently regulated by the rule
92 | must be considered presumptively correct by the committee, in
93 | any proceeding before the division, or in any proceeding before
94 | a court of competent jurisdiction. ~~However, an agency must~~
95 | ~~prepare a statement of estimated regulatory costs of the~~
96 | ~~proposed rule, as provided by s. 120.541, if:~~

97 | a. ~~The proposed rule will have an adverse impact on small~~
98 | ~~business; or~~

99 | b. ~~The proposed rule is likely to directly or indirectly~~
100 | ~~increase regulatory costs in excess of \$200,000 in the aggregate~~



101 ~~in this state within 1 year after the implementation of the~~
102 ~~rule.~~

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

104 a. Each agency, before the adoption, amendment, or repeal
105 of a rule, shall consider the impact of the rule on small
106 businesses as defined by s. 288.703 and the impact of the rule
107 on small counties or small cities as defined by s. 120.52.
108 Whenever practicable, an agency shall tier its rules to reduce
109 disproportionate impacts on small businesses, small counties, or
110 small cities to avoid regulating small businesses, small
111 counties, or small cities that do not contribute significantly
112 to the problem the rule is designed to address. An agency may
113 define "small business" to include businesses employing more
114 than 200 persons, may define "small county" to include those
115 with populations of more than 75,000, and may define "small
116 city" to include those with populations of more than 10,000, if
117 it finds that such a definition is necessary to adapt a rule to
118 the needs and problems of small businesses, small counties, or
119 small cities. The agency shall consider each of the following
120 methods for reducing the impact of the proposed rule on small
121 businesses, small counties, and small cities, or any combination
122 of these entities:

123 (I) Establishing less stringent compliance or reporting
124 requirements in the rule.

125 (II) Establishing less stringent schedules or deadlines in



126 | the rule for compliance or reporting requirements.

127 | (III) Consolidating or simplifying the rule's compliance
128 | or reporting requirements.

129 | (IV) Establishing performance standards or best management
130 | practices to replace design or operational standards in the
131 | rule.

132 | (V) Exempting small businesses, small counties, or small
133 | cities from any or all requirements of the rule.

134 | b.(I) If the agency determines that the proposed action
135 | will affect small businesses as defined by the agency as
136 | provided in sub-subparagraph a., the agency shall send written
137 | notice of the rule to the rules ombudsman in the Executive
138 | Office of the Governor at least 28 days before the intended
139 | action.

140 | (II) Each agency shall adopt those regulatory alternatives
141 | offered by the rules ombudsman in the Executive Office of the
142 | Governor and provided to the agency no later than 21 days after
143 | the rules ombudsman's receipt of the written notice of the rule
144 | which it finds are feasible and consistent with the stated
145 | objectives of the proposed rule and which would reduce the
146 | impact on small businesses. When regulatory alternatives are
147 | offered by the rules ombudsman in the Executive Office of the
148 | Governor, the 90-day period for filing the rule in subparagraph
149 | (e)2. is extended for a period of 21 days.

150 | (III) If an agency does not adopt all alternatives offered



151 pursuant to this sub-subparagraph, it shall, before rule
152 adoption or amendment and pursuant to subparagraph (d)1., file a
153 detailed written statement with the committee explaining the
154 reasons for failure to adopt such alternatives. Within 3 working
155 days after the filing of such notice, the agency shall send a
156 copy of such notice to the rules ombudsman in the Executive
157 Office of the Governor.

158 Section 2. Subsection (1) and paragraph (g) of subsection
159 (2) of section 120.541, Florida Statutes, are amended, and
160 subsection (6) is added to that section, to read:

161 120.541 Statement of estimated regulatory costs.—

162 (1) (a) Within 21 days after publication of the notice
163 required under s. 120.54(3) (a), a substantially affected person
164 may submit to an agency a good faith written proposal for a
165 lower cost regulatory alternative to a proposed rule which
166 substantially accomplishes the objectives of the law being
167 implemented. The proposal may include the alternative of not
168 adopting any rule if the proposal explains how the lower costs
169 and objectives of the law will be achieved by not adopting any
170 rule. If such a proposal is submitted, the 90-day period for
171 filing the rule is extended 21 days. Upon the submission of the
172 lower cost regulatory alternative, the agency shall ~~prepare a~~
173 ~~statement of estimated regulatory costs as provided in~~
174 ~~subsection (2), or shall~~ revise its prior statement of estimated
175 regulatory costs, and either adopt the alternative or provide a



176 statement of the reasons for rejecting the alternative in favor
177 of the proposed rule.

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

184 (b)~~(e)~~ The agency shall revise a statement of estimated
185 regulatory costs if any change to the rule made under s.
186 120.54(3)(d) increases the regulatory costs of the rule.

187 (c)~~(d)~~ At least 21 days before filing the rule for
188 adoption, an agency that is required to revise a statement of
189 estimated regulatory costs shall provide the statement to the
190 person who submitted the lower cost regulatory alternative and
191 to the committee and shall provide notice on the agency's
192 website that it is available to the public.

193 (d)~~(e)~~ Notwithstanding s. 120.56(1)(c), the failure of the
194 agency to prepare a statement of estimated regulatory costs or
195 to respond to a written lower cost regulatory alternative as
196 provided in this subsection is a material failure to follow the
197 applicable rulemaking procedures or requirements set forth in
198 this chapter.

199 (e)~~(f)~~ An agency's failure to prepare a statement of
200 estimated regulatory costs or to respond to a written lower cost



201 regulatory alternative may not be raised in a proceeding
202 challenging the validity of a rule pursuant to s. 120.52(8)(a)
203 unless:

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

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

208 (f)~~(g)~~ A rule that is challenged pursuant to s.
209 120.52(8)(f) may not be declared invalid unless:

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

212 2. The challenge is to the agency's rejection of a lower
213 cost regulatory alternative offered under paragraph (a) or s.
214 120.54(3)(b)2.b.; and

215 3. The substantial interests of the person challenging the
216 rule are materially affected by the rejection.

217 (2) A statement of estimated regulatory costs shall
218 include:

219 (g) In the ~~statement or~~ revised statement, ~~whichever~~
220 ~~applies~~, a description of any regulatory alternatives submitted
221 under paragraph (1)(a) and a statement adopting the alternative
222 or a statement of the reasons for rejecting the alternative in
223 favor of the proposed rule.

224 (6) The Department of State shall include on the Florida
225 Administrative Register website the agency website addresses



226 | where statements of estimated regulatory costs can be viewed in
227 | their entirety.

228 | (a) An agency that prepares a statement of estimated
229 | regulatory costs must provide, as part of the notice required
230 | under s. 120.54(3)(a), the agency website address where the
231 | statement of estimated regulatory costs can be read in its
232 | entirety to the department for publication in the Florida
233 | Administrative Register.

234 | (b) An agency that revises a statement of estimated
235 | regulatory costs must provide a notice that a revision has been
236 | made that includes the agency website address where the revision
237 | can be viewed in its entirety to the department for publication
238 | in the Florida Administrative Register.

239 | Section 3. Subsection (6) of section 120.55, Florida
240 | Statutes, is amended to read:

241 | 120.55 Publication.—

242 | (6) Any publication of a proposed rule promulgated by an
243 | agency, whether published in the Florida Administrative Register
244 | or elsewhere, shall include, along with the rule, the name of
245 | the person or persons originating such rule, ~~the name of the~~
246 | ~~agency head who approved the rule, and the date upon which the~~
247 | ~~rule was approved.~~

248 | Section 4. Paragraph (a) of subsection (2) of section
249 | 120.56, Florida Statutes, is amended to read:

250 | 120.56 Challenges to rules.—



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

252 (a) A petition alleging the invalidity of a proposed rule
253 shall be filed within 21 days after the date of publication of
254 the notice required by s. 120.54(3)(a); within 10 days after the
255 final public hearing is held on the proposed rule as provided by
256 s. 120.54(3)(e)2.; within 20 days after the statement of
257 estimated regulatory costs or revised statement of estimated
258 regulatory costs, if applicable, has been prepared and made
259 available as provided in s. 120.541(1)(c) ~~s. 120.541(1)(d)~~; or
260 within 20 days after the date of publication of the notice
261 required by s. 120.54(3)(d). The petitioner has the burden to
262 prove by a preponderance of the evidence that the petitioner
263 would be substantially affected by the proposed rule. The agency
264 then has the burden to prove by a preponderance of the evidence
265 that the proposed rule is not an invalid exercise of delegated
266 legislative authority as to the objections raised. A person who
267 is not substantially affected by the proposed rule as initially
268 noticed, but who is substantially affected by the rule as a
269 result of a change, may challenge any provision of the resulting
270 proposed rule.

271 Section 5. This act shall take effect July 1, 2018.