

By the Committee on Governmental Oversight and Accountability;
and Senator Bennett

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1 A bill to be entitled
2 An act relating to rulemaking; amending s. 120.54,
3 F.S.; requiring that an agency include in its notice
4 of intended rulemaking a statement as to whether the
5 proposed rule will require legislative ratification;
6 clarifying that certain proposed rules are effective
7 only when ratified by the Legislature; amending s.
8 120.541, F.S.; reducing the time before an agency
9 files a rule for adoption within which the agency must
10 notify the person who submitted a lower cost
11 alternative and the Administrative Procedures
12 Committee; amending s. 120.56, F.S.; reducing the time
13 in which a substantially affected person may seek an
14 administrative determination of the invalidity of a
15 rule after the statement or revised statement of
16 estimated regulatory costs is available; providing an
17 effective date.

18
19 Be It Enacted by the Legislature of the State of Florida:

20
21 Section 1. Paragraphs (a) and (e) of subsection (3) of
22 section 120.54, Florida Statutes, as amended by chapter 2010-
23 279, Laws of Florida, are amended to read:

24 120.54 Rulemaking.—

25 (3) ADOPTION PROCEDURES.—

26 (a) *Notices*.—

27 1. Prior to the adoption, amendment, or repeal of any rule
28 other than an emergency rule, an agency, upon approval of the
29 agency head, shall give notice of its intended action, setting

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30 forth a short, plain explanation of the purpose and effect of
31 the proposed action; the full text of the proposed rule or
32 amendment and a summary thereof; a reference to the grant of
33 rulemaking authority pursuant to which the rule is adopted; and
34 a reference to the section or subsection of the Florida Statutes
35 or the Laws of Florida being implemented or interpreted. The
36 notice must include a summary of the agency's statement of the
37 estimated regulatory costs, if one has been prepared, based on
38 the factors set forth in s. 120.541(2), ~~and~~ a statement that any
39 person who wishes to provide the agency with information
40 regarding the statement of estimated regulatory costs, or to
41 provide a proposal for a lower cost regulatory alternative as
42 provided by s. 120.541(1), must do so in writing within 21 days
43 after publication of the notice, and a statement as to whether
44 the proposed rule will require legislative ratification pursuant
45 to s. 120.541(3). The notice must state the procedure for
46 requesting a public hearing on the proposed rule. Except when
47 the intended action is the repeal of a rule, the notice must
48 include a reference both to the date on which and to the place
49 where the notice of rule development that is required by
50 subsection (2) appeared.

51 2. The notice shall be published in the Florida
52 Administrative Weekly not less than 28 days prior to the
53 intended action. The proposed rule shall be available for
54 inspection and copying by the public at the time of the
55 publication of notice.

56 3. The notice shall be mailed to all persons named in the
57 proposed rule and to all persons who, at least 14 days prior to
58 such mailing, have made requests of the agency for advance

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59 notice of its proceedings. The agency shall also give such
60 notice as is prescribed by rule to those particular classes of
61 persons to whom the intended action is directed.

62 4. The adopting agency shall file with the committee, at
63 least 21 days prior to the proposed adoption date, a copy of
64 each rule it proposes to adopt; a copy of any material
65 incorporated by reference in the rule; a detailed written
66 statement of the facts and circumstances justifying the proposed
67 rule; a copy of any statement of estimated regulatory costs that
68 has been prepared pursuant to s. 120.541; a statement of the
69 extent to which the proposed rule relates to federal standards
70 or rules on the same subject; and the notice required by
71 subparagraph 1.

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

73 1. If the adopting agency is required to publish its rules
74 in the Florida Administrative Code, the agency, upon approval of
75 the agency head, shall file with the Department of State three
76 certified copies of the rule it proposes to adopt; one copy of
77 any material incorporated by reference in the rule, certified by
78 the agency; a summary of the rule; a summary of any hearings
79 held on the rule; and a detailed written statement of the facts
80 and circumstances justifying the rule. Agencies not required to
81 publish their rules in the Florida Administrative Code shall
82 file one certified copy of the proposed rule, and the other
83 material required by this subparagraph, in the office of the
84 agency head, and such rules shall be open to the public.

85 2. A rule may not be filed for adoption less than 28 days
86 or more than 90 days after the notice required by paragraph (a),
87 until 21 days after the notice of change required by paragraph

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(d), until 14 days after the final public hearing, until 21 days after a statement of estimated regulatory costs required under s. 120.541 has been provided to all persons who submitted a lower cost regulatory alternative and made available to the public, or until the administrative law judge has rendered a decision under s. 120.56(2), whichever applies. When a required notice of change is published prior to the expiration of the time to file the rule for adoption, the period during which a rule must be filed for adoption is extended to 45 days after the date of publication. If notice of a public hearing is published prior to the expiration of the time to file the rule for adoption, the period during which a rule must be filed for adoption is extended to 45 days after adjournment of the final hearing on the rule, 21 days after receipt of all material authorized to be submitted at the hearing, or 21 days after receipt of the transcript, if one is made, whichever is latest. The term "public hearing" includes any public meeting held by any agency at which the rule is considered. If a petition for an administrative determination under s. 120.56(2) is filed, the period during which a rule must be filed for adoption is extended to 60 days after the administrative law judge files the final order with the clerk or until 60 days after subsequent judicial review is complete.

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

4. At the time a rule is filed, the committee shall certify

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

5. If a rule has not been adopted within the time limits imposed by this paragraph or has not been adopted in compliance with all statutory rulemaking requirements, the agency proposing the rule shall withdraw the rule and give notice of its action in the next available issue of the Florida Administrative Weekly.

6. The proposed rule shall be adopted on being filed with the Department of State and become effective 20 days after being filed, on a later date specified in the notice required by subparagraph (a)1., ~~or~~ on a date required by statute, or when ratified by the Legislature pursuant to s. 120.541(3). Rules not required to be filed with the Department of State shall become effective when adopted by the agency head, ~~or~~ on a later date specified by rule or statute, or when ratified by the Legislature pursuant to s. 120.541(3). If the committee notifies an agency that an objection to a rule is being considered, the agency may postpone the adoption of the rule to accommodate review of the rule by the committee. When an agency postpones adoption of a rule to accommodate review by the committee, the

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146 90-day period for filing the rule is tolled until the committee
147 notifies the agency that it has completed its review of the
148 rule.

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150 For the purposes of this paragraph, the term "administrative
151 determination" does not include subsequent judicial review.

152 Section 2. Paragraph (d) of subsection (1) of section
153 120.541, Florida Statutes, as amended by chapter 2010-279, Laws
154 of Florida, is amended to read:

155 120.541 Statement of estimated regulatory costs.—

156 (1)

157 (d) At least 21 ~~45~~ days before filing the rule for
158 adoption, an agency that is required to revise a statement of
159 estimated regulatory costs shall provide the statement to the
160 person who submitted the lower cost regulatory alternative and
161 to the committee and shall provide notice on the agency's
162 website that it is available to the public.

163 Section 3. Paragraph (a) of subsection (2) of section
164 120.56, Florida Statutes, as amended by chapter 2010-279, Laws
165 of Florida, is amended to read:

166 120.56 Challenges to rules.—

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

168 (a) A substantially affected person may seek an
169 administrative determination of the invalidity of a proposed
170 rule by filing a petition seeking such a determination with the
171 division within 21 days after the date of publication of the
172 notice required by s. 120.54(3)(a); within 10 days after the
173 final public hearing is held on the proposed rule as provided by
174 s. 120.54(3)(e)2.; within 20 ~~44~~ days after the statement of

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175 estimated regulatory costs or revised statement of estimated
176 regulatory costs, if applicable, has been prepared and made
177 available as provided in s. 120.541(1)(d); or within 20 days
178 after the date of publication of the notice required by s.
179 120.54(3)(d). The petition must state with particularity the
180 objections to the proposed rule and the reasons that the
181 proposed rule is an invalid exercise of delegated legislative
182 authority. The petitioner has the burden of going forward. The
183 agency then has the burden to prove by a preponderance of the
184 evidence that the proposed rule is not an invalid exercise of
185 delegated legislative authority as to the objections raised. A
186 person who is substantially affected by a change in the proposed
187 rule may seek a determination of the validity of such change. A
188 person who is not substantially affected by the proposed rule as
189 initially noticed, but who is substantially affected by the rule
190 as a result of a change, may challenge any provision of the rule
191 and is not limited to challenging the change to the proposed
192 rule.

193 Section 4. This act shall take effect July 1, 2011.