

By the Committees on Budget; and 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 providing for modification or withdrawal of an adopted
7 rule that is not ratified by the Legislature;
8 clarifying that certain proposed rules are effective
9 only when ratified by the Legislature; amending s.
10 120.541, F.S.; reducing the time before an agency
11 files a rule for adoption within which the agency must
12 notify the person who submitted a lower cost
13 alternative and the Administrative Procedures
14 Committee; excluding rules adopting federal standards
15 and emergency rulemaking from certain provisions;
16 amending s. 120.56, F.S.; reducing the time within
17 which a substantially affected person may seek an
18 administrative determination of the invalidity of a
19 rule after the statement or revised statement of
20 estimated regulatory costs is available; amending s.
21 120.80, F.S.; exempting the adoption of certain
22 amendments and the triennial updates to the Florida
23 Building Code from required legislative ratification;
24 exempting the adoption of certain amendments and the
25 triennial updates to the Florida Fire Prevention Code
26 from required legislative ratification; exempting the
27 adoption of rules adjusting rates of certain
28 transportation and expressway tolls from the
29 preparation of a statement of estimated regulatory

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costs and from submission for legislative ratification; amending s. 120.81, F.S.; excluding the adoption of rules under chapter 2011-1, Laws of Florida, the Student Success Act, from the preparation of a statement of estimated regulatory costs and from submission for legislative ratification; providing an effective date.

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

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

120.54 Rulemaking.—

(3) ADOPTION PROCEDURES.—

(a) *Notices*.—

1. Prior to the adoption, amendment, or repeal of any rule other than an emergency rule, an agency, upon approval of the agency head, shall give notice of its intended action, setting forth a short, plain explanation of the purpose and effect of the proposed action; the full text of the proposed rule or amendment and a summary thereof; a reference to the grant of rulemaking authority pursuant to which the rule is adopted; and a reference to the section or subsection of the Florida Statutes or the Laws of Florida being implemented or interpreted. The notice must include a summary of the agency's statement of the estimated regulatory costs, if one has been prepared, based on the factors set forth in s. 120.541(2); ~~and~~ and a statement that any person who wishes to provide the agency with information

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59 regarding the statement of estimated regulatory costs, or to
60 provide a proposal for a lower cost regulatory alternative as
61 provided by s. 120.541(1), must do so in writing within 21 days
62 after publication of the notice; and a statement as to whether,
63 based on the statement of the estimated regulatory costs, or
64 other information expressly relied upon and described by the
65 agency if no statement of regulatory costs is required, the
66 proposed rule is expected to require legislative ratification
67 pursuant to s. 120.541(3). The notice must state the procedure
68 for requesting a public hearing on the proposed rule. Except
69 when the intended action is the repeal of a rule, the notice
70 must include a reference both to the date on which and to the
71 place where the notice of rule development that is required by
72 subsection (2) appeared.

73 2. The notice shall be published in the Florida
74 Administrative Weekly not less than 28 days prior to the
75 intended action. The proposed rule shall be available for
76 inspection and copying by the public at the time of the
77 publication of notice.

78 3. The notice shall be mailed to all persons named in the
79 proposed rule and to all persons who, at least 14 days prior to
80 such mailing, have made requests of the agency for advance
81 notice of its proceedings. The agency shall also give such
82 notice as is prescribed by rule to those particular classes of
83 persons to whom the intended action is directed.

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

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88 statement of the facts and circumstances justifying the proposed
89 rule; a copy of any statement of estimated regulatory costs that
90 has been prepared pursuant to s. 120.541; a statement of the
91 extent to which the proposed rule relates to federal standards
92 or rules on the same subject; and the notice required by
93 subparagraph 1.

94 (d) *Modification or withdrawal of proposed rules.*—

95 1. After the final public hearing on the proposed rule, or
96 after the time for requesting a hearing has expired, if the rule
97 has not been changed from the rule as previously filed with the
98 committee, or contains only technical changes, the adopting
99 agency shall file a notice to that effect with the committee at
100 least 7 days prior to filing the rule for adoption. Any change,
101 other than a technical change that does not affect the substance
102 of the rule, must be supported by the record of public hearings
103 held on the rule, must be in response to written material
104 submitted to the agency within 21 days after the date of
105 publication of the notice of intended agency action or submitted
106 to the agency between the date of publication of the notice and
107 the end of the final public hearing, or must be in response to a
108 proposed objection by the committee. In addition, when any
109 change is made in a proposed rule, other than a technical
110 change, the adopting agency shall provide a copy of a notice of
111 change by certified mail or actual delivery to any person who
112 requests it in writing no later than 21 days after the notice
113 required in paragraph (a). The agency shall file the notice of
114 change with the committee, along with the reasons for the
115 change, and provide the notice of change to persons requesting
116 it, at least 21 days prior to filing the rule for adoption. The

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notice of change shall be published in the Florida Administrative Weekly at least 21 days prior to filing the rule for adoption. This subparagraph does not apply to emergency rules adopted pursuant to subsection (4).

2. After the notice required by paragraph (a) and prior to adoption, the agency may withdraw the rule in whole or in part.

3. After adoption and before the rule becomes effective date, a rule may be modified or withdrawn only in the following circumstances: ~~response to an objection by the committee or may be modified to extend the effective date by not more than 60 days~~

a. When the committee objects to the rule;

b. When a final order, which is not subject to further appeal, is entered in a rule challenge brought pursuant to s. 120.56 after the date of adoption but before the rule becomes effective pursuant to subparagraph (e)6.;

c. If the rule requires ratification, when more than 90 days have passed since the rule was filed for adoption without the Legislature ratifying the rule, in which case the rule may be withdrawn but may not be modified; or

d. When the committee notifies ~~has notified~~ the agency that an objection to the rule is being considered, in which case the rule may be modified to extend the effective date by not more than 60 days.

4. The agency shall give notice of its decision to withdraw or modify a rule in the first available issue of the publication in which the original notice of rulemaking was published, shall notify those persons described in subparagraph (a)3. in accordance with the requirements of that subparagraph, and shall

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146 notify the Department of State if the rule is required to be
147 filed with the Department of State.

148 5. After a rule has become effective, it may be repealed or
149 amended only through the rulemaking procedures specified in this
150 chapter.

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

152 1. If the adopting agency is required to publish its rules
153 in the Florida Administrative Code, the agency, upon approval of
154 the agency head, shall file with the Department of State three
155 certified copies of the rule it proposes to adopt; one copy of
156 any material incorporated by reference in the rule, certified by
157 the agency; a summary of the rule; a summary of any hearings
158 held on the rule; and a detailed written statement of the facts
159 and circumstances justifying the rule. Agencies not required to
160 publish their rules in the Florida Administrative Code shall
161 file one certified copy of the proposed rule, and the other
162 material required by this subparagraph, in the office of the
163 agency head, and such rules shall be open to the public.

164 2. A rule may not be filed for adoption less than 28 days
165 or more than 90 days after the notice required by paragraph (a),
166 until 21 days after the notice of change required by paragraph
167 (d), until 14 days after the final public hearing, until 21 days
168 after a statement of estimated regulatory costs required under
169 s. 120.541 has been provided to all persons who submitted a
170 lower cost regulatory alternative and made available to the
171 public, or until the administrative law judge has rendered a
172 decision under s. 120.56(2), whichever applies. When a required
173 notice of change is published prior to the expiration of the
174 time to file the rule for adoption, the period during which a

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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 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

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204 does not include a statement of estimated regulatory costs, if
205 required.

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

212 6. The proposed rule shall be adopted on being filed with
213 the Department of State and become effective 20 days after being
214 filed, on a later date specified in the notice required by
215 subparagraph (a)1., ~~or~~ on a date required by statute, or upon
216 ratification by the Legislature pursuant to s. 120.541(3). Rules
217 not required to be filed with the Department of State shall
218 become effective when adopted by the agency head, ~~or~~ on a later
219 date specified by rule or statute, or upon ratification by the
220 Legislature pursuant to s. 120.541(3). If the committee notifies
221 an agency that an objection to a rule is being considered, the
222 agency may postpone the adoption of the rule to accommodate
223 review of the rule by the committee. When an agency postpones
224 adoption of a rule to accommodate review by the committee, the
225 90-day period for filing the rule is tolled until the committee
226 notifies the agency that it has completed its review of the
227 rule.

228
229 For the purposes of this paragraph, the term "administrative
230 determination" does not include subsequent judicial review.

231 Section 2. Paragraph (d) of subsection (1) and subsection
232 (4) of section 120.541, Florida Statutes, as amended by chapter

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2010-279, Laws of Florida, are amended to read:

120.541 Statement of estimated regulatory costs.—

(1)

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

(4) This section ~~Paragraph (2) (a)~~ does not apply to the adoption of emergency rules pursuant to s. 120.54(4) or the adoption of federal standards pursuant to s. 120.54(6).

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

120.56 Challenges to rules.—

(2) CHALLENGING PROPOSED RULES; SPECIAL PROVISIONS.—

(a) A substantially affected person may seek an administrative determination of the invalidity of a proposed rule by filing a petition seeking such a determination with the division within 21 days after the date of publication of the notice required by s. 120.54(3)(a); within 10 days after the final public hearing is held on the proposed rule as provided by s. 120.54(3)(e)2.; within 20 ~~44~~ days after the statement of estimated regulatory costs or revised statement of estimated regulatory costs, if applicable, has been prepared and made available as provided in s. 120.541(1)(d); or within 20 days after the date of publication of the notice required by s. 120.54(3)(d). The petition must state with particularity the

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262 objections to the proposed rule and the reasons that the
263 proposed rule is an invalid exercise of delegated legislative
264 authority. The petitioner has the burden of going forward. The
265 agency then has the burden to prove by a preponderance of the
266 evidence that the proposed rule is not an invalid exercise of
267 delegated legislative authority as to the objections raised. A
268 person who is substantially affected by a change in the proposed
269 rule may seek a determination of the validity of such change. A
270 person who is not substantially affected by the proposed rule as
271 initially noticed, but who is substantially affected by the rule
272 as a result of a change, may challenge any provision of the rule
273 and is not limited to challenging the change to the proposed
274 rule.

275 Section 4. Subsection (16) of section 120.80, Florida
276 Statutes, is amended, and subsections (17) and (18) are added to
277 that section, to read:

278 120.80 Exceptions and special requirements; agencies.—

279 (16) FLORIDA BUILDING COMMISSION.—

280 (a) Notwithstanding the provisions of s. 120.542, the
281 Florida Building Commission may not accept a petition for waiver
282 or variance and may not grant any waiver or variance from the
283 requirements of the Florida Building Code.

284 (b) The Florida Building Commission shall adopt within the
285 Florida Building Code criteria and procedures for alternative
286 means of compliance with the code or local amendments thereto,
287 for enforcement by local governments, local enforcement
288 districts, or other entities authorized by law to enforce the
289 Florida Building Code. Appeals from the denial of the use of
290 alternative means shall be heard by the local board, if one

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exists, and may be appealed to the Florida Building Commission.

(c) Notwithstanding ss. 120.565, 120.569, and 120.57, the Florida Building Commission and hearing officer panels appointed by the commission in accordance with s. 553.775(3)(c)1. may conduct proceedings to review decisions of local building code officials in accordance with s. 553.775(3)(c).

(d) Section 120.541(3) does not apply to the adoption of amendments and the triennial update to the Florida Building Code expressly authorized by s. 553.73.

(17) STATE FIRE MARSHAL.—Section 120.541(3) does not apply to the adoption of amendments and the triennial update to the Florida Fire Prevention Code expressly authorized by s. 633.0215.

(18) DEPARTMENT OF TRANSPORTATION.—Sections 120.54(3)(b) and 120.541 do not apply to the adjustment of tolls pursuant to s. 338.165(3).

Section 5. Paragraph (1) is added to subsection (1) of section 120.81, Florida Statutes, to read:

120.81 Exceptions and special requirements; general areas.—

(1) EDUCATIONAL UNITS.—

(1) Sections 120.54(3)(b) and 120.541 do not apply to the adoption of rules pursuant to s. 1012.22, s. 1012.27, s. 1012.34, s. 1012.335, or s. 1012.795.

Section 6. This act shall take effect upon becoming a law.