

By Senator Williams

4-1012-98

1 A bill to be entitled
2 An act relating to rulemaking; amending s.
3 120.54, F.S.; revising notice and time
4 requirements in rule adoption procedures;
5 revising the procedure for modification or
6 withdrawal of proposed rules; amending s.
7 120.541, F.S.; revising notice procedures for a
8 statement of estimated regulatory costs;
9 amending s. 120.545, F.S.; providing notice
10 requirements for committee review of rules;
11 amending s. 120.55, F.S.; providing for rule
12 publication requirements; amending s. 120.56,
13 F.S.; revising procedures for challenging
14 proposed rules; providing an effective date.

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

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18 Section 1. Subsection (3) of section 120.54, Florida
19 Statutes, is amended to read:

20 120.54 Rulemaking.--
21 (3) ADOPTION PROCEDURES.--
22 (a) Notices.--

23 1. Prior to the adoption, amendment, or repeal of any
24 rule other than an emergency rule, an agency, upon approval of
25 the agency head, shall give an initial notice of its intended
26 action, setting forth a short, plain explanation of the
27 purpose and effect of the proposed action; the full text of
28 the proposed rule or amendment and a summary thereof; a
29 reference to the specific rulemaking authority pursuant to
30 which the rule is adopted; and a reference to the section or
31 subsection of the Florida Statutes or the Laws of Florida

1 being implemented, interpreted, or made specific. The initial
2 notice must ~~shall~~ include a summary of the agency's statement
3 of the estimated regulatory costs, if one has been prepared,
4 based on the factors set forth in s. 120.541(2), and a
5 statement that any person who wishes to provide the agency
6 with information regarding the statement of estimated
7 regulatory costs, or to provide a proposal for a lower cost
8 regulatory alternative as provided by s. 120.541(1), must do
9 so in writing within 21 days after publication of the initial
10 notice. The initial notice must state the procedure for
11 requesting a public hearing on the proposed rule. Except when
12 the intended action is the repeal of a rule, the initial
13 notice must ~~shall~~ include a reference both to the date on
14 which and to the place where the notice of rule development
15 that is required by subsection (2) appeared.

16 2. The initial notice must ~~shall~~ be published in the
17 Florida Administrative Weekly not less than 45 ~~28~~ days before
18 ~~prior to the publication of final notice intended action.~~ The
19 proposed rule shall be available for inspection and copying by
20 the public at the time of the publication of initial notice.

21 3. The initial notice shall be mailed to all persons
22 named in the proposed rule and to all persons who, at least 14
23 days prior to such mailing, have made requests of the agency
24 for advance notice of its proceedings. The agency shall also
25 give such notice as is prescribed by rule to those particular
26 classes of persons to whom the intended action is directed.

27 4. The adopting agency shall file with the committee,
28 at least 45 ~~21~~ days before ~~prior to the publication of final~~
29 notice proposed adoption date, a copy of each rule it proposes
30 to adopt; a detailed written statement of the facts and
31 circumstances justifying the proposed rule; a copy of any

1 statement of estimated regulatory costs that has been prepared
2 pursuant to s. 120.541; a statement of the extent to which the
3 proposed rule relates to federal standards or rules on the
4 same subject; and the initial notice required by subparagraph
5 1.

6 (b) Special matters to be considered in rule
7 adoption.--

8 1. Statement of estimated regulatory costs.--Prior to
9 the adoption, amendment, or repeal of any rule other than an
10 emergency rule, an agency is encouraged to prepare a statement
11 of estimated regulatory costs of the proposed rule, as
12 provided by s. 120.541.

13 2. Small businesses, small counties, and small
14 cities.--

15 a. Each agency, before the adoption, amendment, or
16 repeal of a rule, shall consider the impact of the rule on
17 small businesses as defined by s. 288.703 and the impact of
18 the rule on small counties or small cities as defined by s.
19 120.52. Whenever practicable, an agency shall tier its rules
20 to reduce disproportionate impacts on small businesses, small
21 counties, or small cities to avoid regulating small
22 businesses, small counties, or small cities that do not
23 contribute significantly to the problem the rule is designed
24 to address. An agency may define the term "small business" to
25 include businesses employing more than 100 persons, may define
26 the term "small county" to include those with populations of
27 more than 75,000, and may define the term "small city" to
28 include those with populations of more than 10,000, if it
29 finds that such a definition is necessary to adapt a rule to
30 the needs and problems of small businesses, small counties, or
31 small cities. The agency shall consider each of the following

1 methods for reducing the impact of the proposed rule on small
2 businesses, small counties, and small cities, or any
3 combination of these entities:

4 (I) Establishing less stringent compliance or
5 reporting requirements in the rule.

6 (II) Establishing less stringent schedules or
7 deadlines in the rule for compliance or reporting
8 requirements.

9 (III) Consolidating or simplifying the rule's
10 compliance or reporting requirements.

11 (IV) Establishing performance standards or
12 best-management practices to replace design or operational
13 standards in the rule.

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

16 b.(I) If the agency determines that the proposed
17 action will affect small businesses as defined by the agency
18 as provided in sub-subparagraph a., the agency shall send
19 written notice of the rule to the small business ombudsman of
20 the Office of Tourism, Trade, and Economic Development not
21 less than 45 ~~28~~ days before ~~prior to~~ the publication of final
22 notice intended action.

23 (II) Each agency shall adopt those regulatory
24 alternatives offered by the small business ombudsman and
25 provided to the agency no later than 21 days after the
26 ombudsman's receipt of the written notice of the rule which it
27 finds are feasible and consistent with the stated objectives
28 of the proposed rule and which would reduce the impact on
29 small businesses. ~~When regulatory alternatives are offered by~~
30 ~~the small business ombudsman, the 90-day period for filing the~~
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1 ~~rule in subparagraph (e)2. is extended for a period of 21~~
2 ~~days.~~

3 (III) If an agency does not adopt all alternatives
4 offered pursuant to this sub-subparagraph, it shall, before
5 the publication of final notice ~~prior to rule adoption or~~
6 ~~amendment and pursuant to subparagraph (d)1.~~, file a detailed
7 written statement with the small business ombudsman and with
8 the committee explaining the reasons for failure to adopt such
9 alternatives. ~~Within 3 working days of the filing of such~~
10 ~~notice, the agency shall send a copy of such notice to the~~
11 ~~small business ombudsman.~~

12 (c) Hearings.--

13 1. If the intended action concerns any rule other than
14 one relating exclusively to procedure or practice, the agency
15 shall, on the request of any affected person received within
16 21 days after the date of publication of the initial notice of
17 intended agency action, give affected persons an opportunity
18 to present evidence and argument on all issues under
19 consideration. The agency may schedule a public hearing on the
20 rule and, if requested by any affected person, shall schedule
21 a public hearing on the rule. Any material pertinent to the
22 issues under consideration submitted to the agency within 21
23 days after the date of publication of the initial notice or
24 submitted at a public hearing must ~~shall~~ be considered by the
25 agency and made a part of the record of the rulemaking
26 proceeding.

27 2. Rulemaking proceedings shall be governed solely by
28 the provisions of this section unless a person timely asserts
29 that the person's substantial interests will be affected in
30 the proceeding and affirmatively demonstrates to the agency
31 that the proceeding does not provide adequate opportunity to

1 protect those interests. If the agency determines that the
2 rulemaking proceeding is not adequate to protect the person's
3 interests, it shall suspend the rulemaking proceeding and
4 convene a separate proceeding under the provisions of ss.
5 120.569 and 120.57. Similarly situated persons may be
6 requested to join and participate in the separate proceeding.
7 Upon conclusion of the separate proceeding, the rulemaking
8 proceeding shall be resumed.

9 (d) Publication of final notice;modification or
10 withdrawal of proposed rules.--

11 1. After the final public hearing on the proposed
12 rule, or after the time for requesting a hearing has expired,
13 the agency shall provide a final notice of its intent to
14 adopt, amend, or repeal a rule. A copy of the final notice
15 must be provided to the committee not less than 10 days before
16 publication of the final notice in the Florida Administrative
17 Weekly. The final notice must be published in the Florida
18 Administrative Weekly not less than 28 days before the
19 intended action. The final notice must contain:

20 a. A summary of any changes to the proposed rule, or,
21 if the rule has not been changed, a statement to that effect;

22 b. A reference to the issue of the Florida
23 Administrative Weekly which contains the initial text of the
24 proposed rule;

25 c. If changes have been made, the text of all changes
26 to the initial text or the complete final text of the proposed
27 rule;

28 d. A statement as to whether a statement of estimated
29 regulatory cost was prepared, and, if so, how to obtain a
30 copy; and

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1 e. A notice of the right to challenge the proposed
2 rule, including the deadline for filing a challenge, with a
3 reference to s. 120.56(2).

4 2. After the initial notice required by paragraph (a)
5 and before providing a copy of the final notice to the
6 committee, the agency may withdraw the rule upon publication
7 of notice in the Florida Administrative Weekly. Any changes to
8 the rule as initially noticed, other than technical changes
9 that do not affect the substance of the rule, must be
10 supported by the record of public hearings held on the rule,
11 must be in response to written material received within 30
12 days after the initial notice or received on or before the
13 date of the final public hearing, whichever is later, or must
14 be in response to a proposed objection by the committee.

15 3. After a copy of the final notice is provided to the
16 committee and prior to adoption, the agency may modify a rule
17 only in response to an objection by the committee, make
18 technical changes that do not affect the substance of the
19 rule, or withdraw the rule upon publication of notice in the
20 Florida Administrative Weekly.

21 4. After adoption and before the effective date of the
22 rule, the agency may modify a rule only in response to an
23 objection by the committee and make technical changes that do
24 not affect the substance of the rule.

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

28 6. In addition to other notice required by this
29 paragraph, at least 21 days before filing the rule for
30 adoption, the agency shall provide a copy of the final notice
31 to those persons described in subparagraph (a)3. in accordance

1 with the requirements of that subparagraph, and shall provide
2 a copy of the final notice by certified mail or actual
3 delivery to any person who requests it in writing no later
4 than 21 days after the initial notice.

5 ~~1. After the final public hearing on the proposed~~
6 ~~rule, or after the time for requesting a hearing has expired,~~
7 ~~if the rule has not been changed from the rule as previously~~
8 ~~filed with the committee, or contains only technical changes,~~
9 ~~the adopting agency shall file a notice to that effect with~~
10 ~~the committee at least 7 days prior to filing the rule for~~
11 ~~adoption. Any change, other than a technical change that does~~
12 ~~not affect the substance of the rule, must be supported by the~~
13 ~~record of public hearings held on the rule, must be in~~
14 ~~response to written material received on or before the date of~~
15 ~~the final public hearing, or must be in response to a proposed~~
16 ~~objection by the committee. In addition, when any change is~~
17 ~~made in a proposed rule, other than a technical change, the~~
18 ~~adopting agency shall provide a copy of a notice of change by~~
19 ~~certified mail or actual delivery to any person who requests~~
20 ~~it in writing no later than 21 days after the notice required~~
21 ~~in paragraph (a). The agency shall file the notice with the~~
22 ~~committee, along with the reasons for such change, and provide~~
23 ~~the notice to persons requesting it, at least 21 days prior to~~
24 ~~filing the rule for adoption. The notice shall be published in~~
25 ~~the Florida Administrative Weekly at least 21 days prior to~~
26 ~~filing the rule for adoption. This subparagraph does not~~
27 ~~apply to emergency rules adopted pursuant to subsection (4).~~

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

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1 ~~3. After adoption and before the effective date, a~~
2 ~~rule may be modified or withdrawn only in response to an~~
3 ~~objection by the committee or may be modified to extend the~~
4 ~~effective date by not more than 60 days when the committee has~~
5 ~~notified the agency that an objection to the rule is being~~
6 ~~considered.~~

7 ~~4. The agency shall give notice of its decision to~~
8 ~~withdraw or modify a rule in the first available issue of the~~
9 ~~publication in which the original notice of rulemaking was~~
10 ~~published, shall notify those persons described in~~
11 ~~subparagraph (a)3. in accordance with the requirements of that~~
12 ~~subparagraph, and shall notify the Department of State if the~~
13 ~~rule is required to be filed with the Department of State.~~

14 ~~5. After a rule has become effective, it may be~~
15 ~~repealed or amended only through the rulemaking procedures~~
16 ~~specified in this chapter.~~

17 (e) Filing for final adoption; effective date.--

18 1. If the adopting agency is required to publish its
19 rules in the Florida Administrative Code, it shall file with
20 the Department of State three certified copies of the rule it
21 proposes to adopt, a summary of the rule, a summary of any
22 hearings held on the rule, and a detailed written statement of
23 the facts and circumstances justifying the rule. Agencies not
24 required to publish their rules in the Florida Administrative
25 Code shall file one certified copy of the proposed rule, and
26 the other material required by this subparagraph, in the
27 office of the agency head, and such rules shall be open to the
28 public.

29 2. Filings must ~~shall~~ be made no less than 28 days nor
30 more than 120 ~~90~~ days after the initial notice required by
31 paragraph (a). ~~When a required notice of change is published~~

1 ~~prior to the expiration of the time to file the rule for~~
2 ~~adoption, the period during which a rule must be filed for~~
3 ~~adoption is extended to 45 days after the date of publication.~~
4 If notice of a public hearing is published before ~~prior to~~ the
5 expiration of the time to file the rule for adoption, the
6 period during which a rule must be filed for adoption is
7 extended to 45 days after adjournment of the final hearing on
8 the rule, 21 days after receipt of all material authorized to
9 be submitted at the hearing, or 21 days after receipt of the
10 transcript, if one is made, whichever is latest. The term
11 "public hearing" includes any public meeting held by any
12 agency at which the rule is considered. The filing of a
13 petition for an administrative determination under the
14 provisions of s. 120.56(2) shall toll the time ~~90-day~~ period
15 during which a rule must be filed for adoption until the
16 administrative law judge has filed the final order with the
17 clerk.

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

23 4. At the time a rule is filed, the committee shall
24 certify whether the agency has responded in writing to all
25 material and timely written comments or written inquiries made
26 on behalf of the committee. The department shall reject any
27 rule not filed within the prescribed time limits; that does
28 not satisfy all statutory rulemaking requirements; upon which
29 an agency has not responded in writing to all material and
30 timely written inquiries or written comments; upon which an
31 administrative determination is pending; or which does not

1 include a statement of estimated regulatory costs, if
2 required.

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

9 6. The proposed rule shall be adopted on being filed
10 with the Department of State and become effective 20 days
11 after being filed, on a later date specified in the rule, or
12 on a date required by statute. Rules not required to be filed
13 with the Department of State shall become effective when
14 adopted by the agency head or on a later date specified by
15 rule or statute. If the committee notifies an agency that an
16 objection to a rule is being considered, the agency may
17 postpone the adoption of the rule to accommodate review of the
18 rule by the committee. When an agency postpones adoption of a
19 rule to accommodate review by the committee, the time ~~90-day~~
20 period for filing the rule is tolled until the committee
21 notifies the agency that it has completed its review of the
22 rule.

23 Section 2. Paragraphs (a) and (b) of subsection (1) of
24 section 120.541, Florida Statutes, are amended to read:

25 120.541 Statement of estimated regulatory costs.--

26 (1)(a) A substantially affected person, within 21 days
27 after publication of the initial notice provided under s.
28 120.54(3)(a), may submit to an agency a good faith written
29 proposal for a lower cost regulatory alternative to a proposed
30 rule which substantially accomplishes the objectives of the
31 law being implemented. The proposal may include the

1 alternative of not adopting any rule, so long as the proposal
2 explains how the lower costs and objectives of the law will be
3 achieved by not adopting any rule. If such a proposal is
4 submitted, the 90-day period for filing the rule is extended
5 21 days.

6 (b) Upon the submission of the lower cost regulatory
7 alternative, the agency shall prepare a statement of estimated
8 regulatory costs as provided in subsection (2), or shall
9 revise its prior statement of estimated regulatory costs, and
10 either adopt the alternative or give a statement of the
11 reasons for rejecting the alternative in favor of the proposed
12 rule. The failure of the agency to prepare or revise the
13 statement of estimated regulatory costs as provided in this
14 paragraph is a material failure to follow the applicable
15 rulemaking procedures or requirements set forth in this
16 chapter. An agency required to prepare or revise a statement
17 of estimated regulatory costs as provided in this paragraph
18 shall make it available to the person who submits the lower
19 cost regulatory alternative and to the public before
20 publication of final notice ~~prior to filing the rule for~~
21 ~~adoption.~~

22 Section 3. Paragraph (e) of subsection (1) and
23 subsections (4), (5), and (6) of section 120.545, Florida
24 Statutes, are amended to read:

25 120.545 Committee review of agency rules.--

26 (1) As a legislative check on legislatively created
27 authority, the committee shall examine each proposed rule,
28 except for those proposed rules exempted by s. 120.81(1)(d)
29 and (2), and its accompanying material, and each emergency
30 rule, and may examine any existing rule, for the purpose of
31 determining whether:

1 (e) The notices ~~notice~~ given prior to its adoption
2 were was sufficient to give adequate notice of the purpose and
3 effect of the rule.

4 (4) If the agency elects to modify a proposed rule to
5 meet the committee's objection, it shall make only such
6 modifications as are necessary to meet the objection and shall
7 resubmit the rule to the committee. The agency shall give
8 notice of its election to modify a proposed rule to meet the
9 committee's objection by publishing a notice of change in the
10 first available issue of the Florida Administrative Weekly,
11 but shall not be required to conduct a public hearing. If the
12 agency elects to amend an existing rule to meet the
13 committee's objection, it need not publish a notice of rule
14 development, but shall notify the committee in writing and
15 shall initiate the amendment procedure by giving initial
16 notice in the next available issue of the Florida
17 Administrative Weekly. The committee shall give priority to
18 rules so modified or amended when setting its agenda.

19 (5) If the agency elects to withdraw a proposed rule
20 as a result of a committee objection, it shall notify the
21 committee, in writing, of its election and shall give notice
22 of the withdrawal in the next available issue of the Florida
23 Administrative Weekly. The rule shall be withdrawn without a
24 public hearing, effective upon publication of the notice in
25 the Florida Administrative Weekly. If the agency elects to
26 repeal an existing rule as a result of a committee objection,
27 it shall notify the committee, in writing, of its election and
28 shall initiate rulemaking procedures for that purpose by
29 giving initial notice in the next available issue of the
30 Florida Administrative Weekly.

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1 (6) If an agency elects to amend or repeal an existing
2 rule as a result of a committee objection, it shall complete
3 the process within 90 days after giving initial notice in the
4 Florida Administrative Weekly.

5 Section 4. Paragraph (b) of subsection (1) of section
6 120.55, Florida Statutes, is amended to read:

7 120.55 Publication.--

8 (1) The Department of State shall:

9 (b) Publish a weekly publication entitled the "Florida
10 Administrative Weekly," which must ~~shall~~ contain:

11 1. Notice of adoption of, and an index to, all rules
12 filed during the preceding week.

13 2. All rulemaking notices required by s. 120.54 ~~s.~~
14 ~~120.54(3)(a), showing the text of all rules proposed for~~
15 ~~consideration or a reference to the location in the Florida~~
16 ~~Administrative Weekly where the text of the proposed rules is~~
17 ~~published.~~

18 3. All notices of public meetings, hearings, and
19 workshops conducted in accordance with the provisions of s.
20 120.525, including a statement of the manner in which a copy
21 of the agenda may be obtained.

22 4. A notice of each request for authorization to amend
23 or repeal an existing uniform rule or for the adoption of new
24 uniform rules.

25 5. Notice of petitions for declaratory statements or
26 administrative determinations.

27 6. A summary of each objection to any rule filed by
28 the Administrative Procedures Committee during the preceding
29 week.

30 7. Any other material required or authorized by law or
31 deemed useful by the department.

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The department may contract with a publishing firm for publication of the Florida Administrative Weekly.

Section 5. Paragraphs (a) and (b) of subsection (2) of section 120.56, Florida Statutes, are amended to read:

120.56 Challenges to rules.--

(2) CHALLENGING PROPOSED RULES; SPECIAL PROVISIONS.--

(a) Any substantially affected person may seek an administrative determination of the invalidity of any proposed rule by filing a petition seeking such a determination with the division within 21 days after the date of publication of the final 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)(c), within 20 days after the preparation of a statement of estimated regulatory costs required pursuant to s. 120.541, if applicable, or within 20 days after the date of publication of the notice required by s. 120.54(3)(d). The petition must ~~shall~~ state with particularity the objections to the proposed rule and the reasons that the proposed rule is an invalid exercise of delegated legislative authority. The agency then has the burden to prove that the proposed rule is not an invalid exercise of delegated legislative authority as to the objections raised. ~~Any person who is substantially affected by a change in the proposed rule may seek a determination of the validity of such change. Any person not substantially affected by the proposed rule as initially noticed, but who is substantially affected by the rule as a result of a change, may challenge any provision of the rule and is not limited to challenging the change to the proposed rule.~~

1 (b) The administrative law judge may declare the
2 proposed rule wholly or partly invalid. The proposed rule or
3 provision of a proposed rule declared invalid shall be
4 withdrawn by the adopting agency and shall not be adopted. No
5 rule shall be filed for adoption until 28 days after the final
6 notice required by ~~s. 120.54(3)(a)~~, until 21 days after the
7 notice required by s. 120.54(3)(d), until 14 days after the
8 public hearing, until 21 days after preparation of a statement
9 of estimated regulatory costs required pursuant to s. 120.541,
10 or until the administrative law judge has rendered a decision,
11 whichever applies. ~~However, the agency may proceed with all~~
12 ~~other steps in the rulemaking process, including the holding~~
13 ~~of a factfinding hearing.~~In the event part of a proposed rule
14 is declared invalid, the adopting agency may, in its sole
15 discretion, withdraw the proposed rule in its entirety. The
16 agency whose proposed rule has been declared invalid in whole
17 or part shall give notice of the decision in the first
18 available issue of the Florida Administrative Weekly.

19 Section 6. This act shall take effect October 1, 1998.

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SENATE SUMMARY

Revises rulemaking procedures under chapter 120, F.S.
(See bill for details.)