

Bill No. SB 1594

Barcode 712638

CHAMBER ACTION

Senate

House

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

Comm: RE
04/23/2007 04:25 PM

.
. .
. .
. .
. .
. .

The Committee on Judiciary (Gaetz) recommended the following
amendment to amendment (841926):

Senate Amendment (with title amendment)

On page 3, line 29, through
page 7, line 27, delete those lines

and insert:

Section 3. Paragraph (i) of subsection (1), paragraphs
(a), (c), and (e) of subsection (3), and paragraph (a) of
subsection (4) of section 120.54, Florida Statutes, are
amended, and paragraph (k) is added to subsection (1) of that
section, to read:

120.54 Rulemaking.--

(1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER
THAN EMERGENCY RULES.--

(i)1. A rule may incorporate material by reference but
only as the material exists on the date the rule is adopted.
For purposes of the rule, changes in the material are not
effective unless the rule is amended to incorporate the
changes. Material incorporated by reference in a rule may not

Bill No. SB 1594

Barcode 712638

1 incorporate additional material by reference unless the rule
2 specifically identifies the additional material.

3 2. An agency rule that incorporates by specific
4 reference another rule of that agency automatically
5 incorporates subsequent amendments to the referenced rule,
6 unless a contrary intent is clearly indicated in the
7 referencing rule. Any notice of amendments to a rule that has
8 been incorporated by specific reference in other rules of that
9 agency must explain the effect of the amendments on the
10 referencing rules.

11 3. In rules adopted after December 31, 2009, material
12 may not be incorporated by reference unless:

13 a. The material has been submitted in the prescribed
14 electronic format to the Department of State and can be made
15 available for free public access through an electronic
16 hyperlink from the rule in the Florida Administrative Code
17 making the reference; or

18 b. The agency has determined that posting the material
19 on the Internet for purposes of public examination and
20 inspection would constitute a violation of federal copyright
21 law, in which case a statement to that effect, along with the
22 address of locations at the Department of State and the agency
23 at which the material is available for public examination and
24 inspection, is included in the notice required by subparagraph
25 (3)(a)1.

26 4. A rule may not be amended by reference only.
27 Amendments must set out the amended rule in full in the same
28 manner as required by the State Constitution for laws. ~~The~~
29 Department of State may prescribe by rule requirements for
30 incorporating materials by reference pursuant to this
31 paragraph.

Bill No. SB 1594

Barcode 712638

1 5.2. Notwithstanding any contrary provision in this
2 section, when an adopted rule of the Department of
3 Environmental Protection or a water management district is
4 incorporated by reference in the other agency's rule to
5 implement a provision of part IV of chapter 373, subsequent
6 amendments to the rule are not effective as to the
7 incorporating rule unless the agency incorporating by
8 reference notifies the committee and the Department of State
9 of its intent to adopt the subsequent amendment, publishes
10 notice of such intent in the Florida Administrative Weekly,
11 and files with the Department of State a copy of the amended
12 rule incorporated by reference. Changes in the rule
13 incorporated by reference are effective as to the other agency
14 20 days after the date of the published notice and filing with
15 the Department of State. The Department of State shall amend
16 the history note of the incorporating rule to show the
17 effective date of such change. Any substantially affected
18 person may, within 14 days after the date of publication of
19 the notice of intent in the Florida Administrative Weekly,
20 file an objection to rulemaking with the agency. The objection
21 shall specify the portions of the rule incorporated by
22 reference to which the person objects and the reasons for the
23 objection. The agency does ~~shall~~ not have the authority under
24 this subparagraph to adopt those portions of the rule
25 specified in such objection. The agency shall publish notice
26 of the objection and of its action in response in the next
27 available issue of the Florida Administrative Weekly.

28 6. The Department of State may prescribe by rule
29 requirements for incorporating materials pursuant to this
30 paragraph.

31 (k) Rulemaking responsibilities of an agency head

Bill No. SB 1594

Barcode 712638

1 under subparagraph (3)(a)1., subparagraph (3)(e)1., or
2 subparagraph (3)(e)6. may not be delegated or transferred.

3 (3) ADOPTION PROCEDURES.--

4 (a) Notices.--

5 1. Prior to the adoption, amendment, or repeal of any
6 rule other than an emergency rule, an agency, upon approval of
7 the agency head, shall give notice of its intended action,
8 setting forth a short, plain explanation of the purpose and
9 effect of the proposed action; the full text of the proposed
10 rule or amendment and a summary thereof; a reference to the
11 grant of ~~specific~~ rulemaking authority pursuant to which the
12 rule is adopted; and a reference to the section or subsection
13 of the Florida Statutes or the Laws of Florida being
14 implemented ~~or, interpreted, or made specific~~. The notice must
15 ~~shall~~ include a summary of the agency's statement of the
16 estimated regulatory costs, if one has been prepared, based on
17 the factors set forth in s. 120.541(2), and a statement that
18 any person who wishes to provide the agency with information
19 regarding the statement of estimated regulatory costs, or to
20 provide a proposal for a lower cost regulatory alternative as
21 provided by s. 120.541(1), must do so in writing within 21
22 days after publication of the notice. The notice must state
23 the procedure for requesting a public hearing on the proposed
24 rule. Except when the intended action is the repeal of a rule,
25 the notice must ~~shall~~ include a reference both to the date on
26 which and to the place where the notice of rule development
27 that is required by subsection (2) appeared.

28 2. The notice shall be published in the Florida
29 Administrative Weekly not less than 28 days prior to the
30 intended action. The proposed rule shall be available for
31 inspection and copying by the public at the time of the

Bill No. SB 1594

Barcode 712638

1 publication of notice.

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

8 4. The adopting agency shall file with the committee,
9 at least 21 days prior to the proposed adoption date, a copy
10 of each rule it proposes to adopt; a copy of any material
11 incorporated by reference in the rule; a detailed written
12 statement of the facts and circumstances justifying the
13 proposed rule; a copy of any statement of estimated regulatory
14 costs that has been prepared pursuant to s. 120.541; a
15 statement of the extent to which the proposed rule relates to
16 federal standards or rules on the same subject; and the notice
17 required by subparagraph 1.

18 (c) Hearings.--

19 1. If the intended action concerns any rule other than
20 one relating exclusively to procedure or practice, the agency
21 shall, on the request of any affected person received within
22 21 days after the date of publication of the notice of
23 intended agency action, give affected persons an opportunity
24 to present evidence and argument on all issues under
25 consideration. The agency may schedule a public hearing on the
26 rule and, if requested by any affected person, shall schedule
27 a public hearing on the rule. If the agency head is a board or
28 other collegial body created under s. 20.165(4) or s.
29 20.43(3)(g), the board or other collegial body shall conduct
30 the requested public hearing itself and may not delegate this
31 responsibility without the consent of the persons requesting

Bill No. SB 1594

Barcode 712638

1 the public hearing. Any material pertinent to the issues under
 2 consideration submitted to the agency within 21 days after the
 3 date of publication of the notice or submitted at a public
 4 hearing shall be considered by the agency and made a part of
 5 the record of the rulemaking proceeding.

6 2. Rulemaking proceedings shall be governed solely by
 7 the provisions of this section unless a person timely asserts
 8 that the person's substantial interests will be affected in
 9 the proceeding and affirmatively demonstrates to the agency
 10 that the proceeding does not provide adequate opportunity to
 11 protect those interests. If the agency determines that the
 12 rulemaking proceeding is not adequate to protect the person's
 13 interests, it shall suspend the rulemaking proceeding and
 14 convene a separate proceeding under the provisions of ss.
 15 120.569 and 120.57. Similarly situated persons may be
 16 requested to join and participate in the separate proceeding.
 17 Upon conclusion of the separate proceeding, the rulemaking
 18 proceeding shall be resumed.

19
 20

21 ===== T I T L E A M E N D M E N T =====

22 And the title is amended as follows:

23 On page 18, line 10, following the word "head"

24

25 insert:

26 , including those relating to conducting a
 27 public hearing,

28
 29
 30
 31