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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/26/2011	.	
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The Committee on Budget (Richter) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

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



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14 forth a short, plain explanation of the purpose and effect of  
15 the proposed action; the full text of the proposed rule or  
16 amendment and a summary thereof; a reference to the grant of  
17 rulemaking authority pursuant to which the rule is adopted; and  
18 a reference to the section or subsection of the Florida Statutes  
19 or the Laws of Florida being implemented or interpreted. The  
20 notice must include a summary of the agency's statement of the  
21 estimated regulatory costs, if one has been prepared, based on  
22 the factors set forth in s. 120.541(2); ~~and~~ a statement that  
23 any person who wishes to provide the agency with information  
24 regarding the statement of estimated regulatory costs, or to  
25 provide a proposal for a lower cost regulatory alternative as  
26 provided by s. 120.541(1), must do so in writing within 21 days  
27 after publication of the notice; and a statement as to whether,  
28 based on the statement of the estimated regulatory costs, or  
29 other information expressly relied upon and described by the  
30 agency if no statement of regulatory costs is required, the  
31 proposed rule is expected to require legislative ratification  
32 pursuant to s. 120.541(3). The notice must state the procedure  
33 for requesting a public hearing on the proposed rule. Except  
34 when the intended action is the repeal of a rule, the notice  
35 must include a reference both to the date on which and to the  
36 place where the notice of rule development that is required by  
37 subsection (2) appeared.

38 2. The notice shall be published in the Florida  
39 Administrative Weekly not less than 28 days prior to the  
40 intended action. The proposed rule shall be available for  
41 inspection and copying by the public at the time of the  
42 publication of notice.



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

49           4. The adopting agency shall file with the committee, at  
50 least 21 days prior to the proposed adoption date, a copy of  
51 each rule it proposes to adopt; a copy of any material  
52 incorporated by reference in the rule; a detailed written  
53 statement of the facts and circumstances justifying the proposed  
54 rule; a copy of any statement of estimated regulatory costs that  
55 has been prepared pursuant to s. 120.541; a statement of the  
56 extent to which the proposed rule relates to federal standards  
57 or rules on the same subject; and the notice required by  
58 subparagraph 1.

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

60           1. After the final public hearing on the proposed rule, or  
61 after the time for requesting a hearing has expired, if the rule  
62 has not been changed from the rule as previously filed with the  
63 committee, or contains only technical changes, the adopting  
64 agency shall file a notice to that effect with the committee at  
65 least 7 days prior to filing the rule for adoption. Any change,  
66 other than a technical change that does not affect the substance  
67 of the rule, must be supported by the record of public hearings  
68 held on the rule, must be in response to written material  
69 submitted to the agency within 21 days after the date of  
70 publication of the notice of intended agency action or submitted  
71 to the agency between the date of publication of the notice and



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72 the end of the final public hearing, or must be in response to a  
73 proposed objection by the committee. In addition, when any  
74 change is made in a proposed rule, other than a technical  
75 change, the adopting agency shall provide a copy of a notice of  
76 change by certified mail or actual delivery to any person who  
77 requests it in writing no later than 21 days after the notice  
78 required in paragraph (a). The agency shall file the notice of  
79 change with the committee, along with the reasons for the  
80 change, and provide the notice of change to persons requesting  
81 it, at least 21 days prior to filing the rule for adoption. The  
82 notice of change shall be published in the Florida  
83 Administrative Weekly at least 21 days prior to filing the rule  
84 for adoption. This subparagraph does not apply to emergency  
85 rules adopted pursuant to subsection (4).

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

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

93 a. When the committee objects to the rule;

94 b. When a final order, which is not subject to further  
95 appeal, is entered in a rule challenge brought pursuant to s.  
96 120.56 after the date of adoption but before the rule becomes  
97 effective pursuant to subparagraph (e)6.;

98 c. If the rule requires ratification, when more than 90  
99 days have passed since the rule was filed for adoption without  
100 the Legislature ratifying the rule, in which case the rule may



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101 be withdrawn but may not be modified; or

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

106 4. The agency shall give notice of its decision to withdraw  
107 or modify a rule in the first available issue of the publication  
108 in which the original notice of rulemaking was published, shall  
109 notify those persons described in subparagraph (a)3. in  
110 accordance with the requirements of that subparagraph, and shall  
111 notify the Department of State if the rule is required to be  
112 filed with the Department of State.

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

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

117 1. If the adopting agency is required to publish its rules  
118 in the Florida Administrative Code, the agency, upon approval of  
119 the agency head, shall file with the Department of State three  
120 certified copies of the rule it proposes to adopt; one copy of  
121 any material incorporated by reference in the rule, certified by  
122 the agency; a summary of the rule; a summary of any hearings  
123 held on the rule; and a detailed written statement of the facts  
124 and circumstances justifying the rule. Agencies not required to  
125 publish their rules in the Florida Administrative Code shall  
126 file one certified copy of the proposed rule, and the other  
127 material required by this subparagraph, in the office of the  
128 agency head, and such rules shall be open to the public.

129 2. A rule may not be filed for adoption less than 28 days



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130 or more than 90 days after the notice required by paragraph (a),  
131 until 21 days after the notice of change required by paragraph  
132 (d), until 14 days after the final public hearing, until 21 days  
133 after a statement of estimated regulatory costs required under  
134 s. 120.541 has been provided to all persons who submitted a  
135 lower cost regulatory alternative and made available to the  
136 public, or until the administrative law judge has rendered a  
137 decision under s. 120.56(2), whichever applies. When a required  
138 notice of change is published prior to the expiration of the  
139 time to file the rule for adoption, the period during which a  
140 rule must be filed for adoption is extended to 45 days after the  
141 date of publication. If notice of a public hearing is published  
142 prior to the expiration of the time to file the rule for  
143 adoption, the period during which a rule must be filed for  
144 adoption is extended to 45 days after adjournment of the final  
145 hearing on the rule, 21 days after receipt of all material  
146 authorized to be submitted at the hearing, or 21 days after  
147 receipt of the transcript, if one is made, whichever is latest.  
148 The term "public hearing" includes any public meeting held by  
149 any agency at which the rule is considered. If a petition for an  
150 administrative determination under s. 120.56(2) is filed, the  
151 period during which a rule must be filed for adoption is  
152 extended to 60 days after the administrative law judge files the  
153 final order with the clerk or until 60 days after subsequent  
154 judicial review is complete.

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



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159 pending on the rule.

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

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

177 6. The proposed rule shall be adopted on being filed with  
178 the Department of State and become effective 20 days after being  
179 filed, on a later date specified in the notice required by  
180 subparagraph (a)1., ~~or~~ on a date required by statute, or upon  
181 ratification by the Legislature pursuant to s. 120.541(3). Rules  
182 not required to be filed with the Department of State shall  
183 become effective when adopted by the agency head, ~~or~~ on a later  
184 date specified by rule or statute, or upon ratification by the  
185 Legislature pursuant to s. 120.541(3). If the committee notifies  
186 an agency that an objection to a rule is being considered, the  
187 agency may postpone the adoption of the rule to accommodate



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188 review of the rule by the committee. When an agency postpones  
189 adoption of a rule to accommodate review by the committee, the  
190 90-day period for filing the rule is tolled until the committee  
191 notifies the agency that it has completed its review of the  
192 rule.

193  
194 For the purposes of this paragraph, the term "administrative  
195 determination" does not include subsequent judicial review.

196 Section 2. Paragraph (d) of subsection (1) and subsection  
197 (4) of section 120.541, Florida Statutes, as amended by chapter  
198 2010-279, Laws of Florida, are amended to read:

199 120.541 Statement of estimated regulatory costs.—

200 (1)

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

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

210 Section 3. Paragraph (a) of subsection (2) of section  
211 120.56, Florida Statutes, as amended by chapter 2010-279, Laws  
212 of Florida, is amended to read:

213 120.56 Challenges to rules.—

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

215 (a) A substantially affected person may seek an  
216 administrative determination of the invalidity of a proposed





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217 rule by filing a petition seeking such a determination with the  
218 division within 21 days after the date of publication of the  
219 notice required by s. 120.54(3) (a); within 10 days after the  
220 final public hearing is held on the proposed rule as provided by  
221 s. 120.54(3) (e)2.; within 20 44 days after the statement of  
222 estimated regulatory costs or revised statement of estimated  
223 regulatory costs, if applicable, has been prepared and made  
224 available as provided in s. 120.541(1) (d); or within 20 days  
225 after the date of publication of the notice required by s.  
226 120.54(3) (d). The petition must state with particularity the  
227 objections to the proposed rule and the reasons that the  
228 proposed rule is an invalid exercise of delegated legislative  
229 authority. The petitioner has the burden of going forward. The  
230 agency then has the burden to prove by a preponderance of the  
231 evidence that the proposed rule is not an invalid exercise of  
232 delegated legislative authority as to the objections raised. A  
233 person who is substantially affected by a change in the proposed  
234 rule may seek a determination of the validity of such change. A  
235 person who is not substantially affected by the proposed rule as  
236 initially noticed, but who is substantially affected by the rule  
237 as a result of a change, may challenge any provision of the rule  
238 and is not limited to challenging the change to the proposed  
239 rule.

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

243 120.80 Exceptions and special requirements; agencies.—

244 (16) FLORIDA BUILDING COMMISSION.—

245 (a) Notwithstanding the provisions of s. 120.542, the



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246 Florida Building Commission may not accept a petition for waiver  
247 or variance and may not grant any waiver or variance from the  
248 requirements of the Florida Building Code.

249 (b) The Florida Building Commission shall adopt within the  
250 Florida Building Code criteria and procedures for alternative  
251 means of compliance with the code or local amendments thereto,  
252 for enforcement by local governments, local enforcement  
253 districts, or other entities authorized by law to enforce the  
254 Florida Building Code. Appeals from the denial of the use of  
255 alternative means shall be heard by the local board, if one  
256 exists, and may be appealed to the Florida Building Commission.

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

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

265 (17) STATE FIRE MARSHAL.—Section 120.541(3) does not apply  
266 to the adoption of amendments and the triennial update to the  
267 Florida Fire Prevention Code expressly authorized by s.  
268 633.0215.

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

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

274 120.81 Exceptions and special requirements; general areas.—



275 (1) EDUCATIONAL UNITS.-  
276 (1) Sections 120.54(3)(b) and 120.541 do not apply to the  
277 adoption of rules pursuant to s. 1012.22, s. 1012.27, s.  
278 1012.34, s. 1012.335, or s. 1012.795.

279 Section 6. This act shall take effect upon becoming a law.  
280

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

282 And the title is amended as follows:

283 Delete everything before the enacting clause  
284 and insert:

285 A bill to be entitled  
286 An act relating to rulemaking; amending s. 120.54,  
287 F.S.; requiring that an agency include in its notice  
288 of intended rulemaking a statement as to whether the  
289 proposed rule will require legislative ratification;  
290 providing for modification or withdrawal of an adopted  
291 rule that is not ratified by the Legislature;  
292 clarifying that certain proposed rules are effective  
293 only when ratified by the Legislature; amending s.  
294 120.541, F.S.; reducing the time before an agency  
295 files a rule for adoption within which the agency must  
296 notify the person who submitted a lower cost  
297 alternative and the Administrative Procedures  
298 Committee; excluding rules adopting federal standards  
299 and emergency rulemaking from certain provisions;  
300 amending s. 120.56, F.S.; reducing the time within  
301 which a substantially affected person may seek an  
302 administrative determination of the invalidity of a  
303 rule after the statement or revised statement of



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304 estimated regulatory costs is available; amending s.  
305 120.80, F.S.; exempting the adoption of certain  
306 amendments and the triennial updates to the Florida  
307 Building Code from required legislative ratification;  
308 exempting the adoption of certain amendments and the  
309 triennial updates to the Florida Fire Prevention Code  
310 from required legislative ratification; exempting the  
311 adoption of rules adjusting rates of certain  
312 transportation and expressway tolls from the  
313 preparation of a statement of estimated regulatory  
314 costs and from submission for legislative  
315 ratification; amending s. 120.81, F.S.; excluding the  
316 adoption of rules under chapter 2011-1, Laws of  
317 Florida, the Student Success Act, from the preparation  
318 of a statement of estimated regulatory costs and from  
319 submission for legislative ratification; providing an  
320 effective date.