

FOR CONSIDERATION By the Committee on Health Regulation

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1 A bill to be entitled
2 An act relating to rulemaking; providing legislative
3 intent regarding the rulemaking process within the
4 Department of Health and the Agency for Health Care
5 Administration; amending s. 120.52, F.S.; defining the
6 term "prominent display" as it relates to the
7 Administrative Procedure Act; amending s. 120.525,
8 F.S.; requiring the Department of Health or the Agency
9 for Health Care Administration to meet certain notice
10 requirements by prominent display of such notices on
11 the home page of its website rather than by
12 publication in the Florida Administrative Weekly;
13 amending s. 120.54, F.S.; requiring the Department of
14 Health and the Agency for Health Care Administration
15 to submit a report to the Governor and Legislature if
16 a proposed rule does not become effective by the next
17 regular legislative session or within a specified
18 time; providing requirements for the report; requiring
19 the Department of Health and the Agency for Health
20 Care Administration to provide notice of updates of
21 public rulemaking related to a proposed rule on its
22 respective website and to persons requesting such
23 notification via e-mail; revising requirements for
24 notice of rule development to include notice via e-
25 mail; exempting the Department of Health and the
26 Agency for Health Care Administration from the
27 requirement to conduct public workshops throughout the
28 state; authorizing the Department of Health or the
29 Agency for Health Care Administration to schedule a

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30 workshop within a specified number of days after
31 publication of the workshop on its website; requiring
32 the department or agency to provide a toll-free
33 telephone number for the public to access a conference
34 call to the workshop under certain circumstances;
35 authorizing the agency head or the designee from the
36 Department of Health or the Agency for Health Care
37 Administration to approve of the agency's proposed
38 rule; requiring the Department of Health or the Agency
39 for Health Care Administration to include in its
40 notice of proposed rulemaking a short sentence
41 summarizing the conclusion reached in the agency's
42 statement of the estimated regulatory costs in
43 specified circumstances; requiring the Department of
44 Health or Agency for Health Care Administration to
45 provide notice by display on its respective website;
46 requiring the Department of Health or the Agency for
47 Health Care Administration to provide the Department
48 of State with an electronic link to the website where
49 the notice is displayed; requiring the Department of
50 State to maintain a copy of the notice and make it
51 available for public inspection; authorizing the
52 Department of Health or Agency for Health Care
53 Administration to e-mail notices to persons requesting
54 such notices; authorizing the Department of Health or
55 Agency for Health Care Administration to provide the
56 Administrative Procedures Committee with an electronic
57 link to obtain certain required documents; prohibiting
58 the Department of Health or Agency for Health Care

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59 Administration from suspending a rulemaking proceeding
60 in order to convene a substantial interest hearing;
61 requiring the Department of Health or the Agency for
62 Health Care Administration to provide notice of a
63 change in a proposed rule by e-mail rather than by
64 certified mail or actual delivery; requiring the
65 Department of Health or the Agency for Health Care
66 Administration to display the notice of change on its
67 website; requiring the Department of Health or the
68 Agency for Health Care Administration to provide the
69 Department of State with an electronic link to the
70 website where the notice of change is displayed;
71 requiring the Department of State to maintain a copy
72 of the notice of change and make it available for
73 public inspection; providing that, under certain
74 circumstances, a rule may be modified or withdrawn
75 only in response to the Legislature during the rule
76 ratification process or by certain other methods;
77 requiring an agency to give notice of such
78 modification or withdrawal by publication of the
79 notice or by display of the notice on its website;
80 authorizing a deputy secretary from the Department of
81 Health or the Agency for Health Care Administration to
82 approve of the filing of certain documents with the
83 Department of State; requiring the Department of
84 Health or the Agency for Health Care Administration to
85 provide notice of a rule that has not been adopted by
86 display on its website; requiring the Department of
87 Health or the Agency for Health Care Administration to

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88 display notice of intent to adopt a rule that complies
89 with federal law on its website; amending s. 120.541,
90 F.S.; authorizing the Department of Health or Agency
91 for Health Care Administration to base a statement of
92 estimated regulatory costs on good faith cost
93 estimates using subject-matter experts rather than
94 economic experts; amending s. 120.56, F.S.; requiring
95 the Department of Health and the Agency for Health
96 Care Administration to proceed with all other steps in
97 the rulemaking process after a petition for
98 administrative determination has been filed; creating
99 a presumption against certain persons which affects
100 their standing to challenge a rule proposed by the
101 Department of Health or the Agency for Health Care
102 Administration; amending ss. 120.80, 120.81, 420.9072,
103 and 420.9075, F.S.; conforming cross-references;
104 providing an effective date.

105
106 Be It Enacted by the Legislature of the State of Florida:

107
108 Section 1. It is the intent of the Legislature to expedite
109 the rulemaking process within the Department of Health and the
110 Agency for Health Care Administration by requiring that a date
111 be set for certain rules to become effective and by authorizing
112 the use of websites to meet the publication requirements under
113 the Administrative Procedure Act, which the Legislature finds is
114 essential to provide timely and necessary health care services
115 to this state's residents. In addition, it is the intent of the
116 Legislature to encourage early and timely participation in the

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117 rulemaking process for rules proposed by the Department of
118 Health or the Agency for Health Care Administration.

119 Section 2. Present subsections (15) through (22) of section
120 120.52, Florida Statutes, are renumbered as subsections (16)
121 through (23), respectively, and a new subsection (15) is added
122 to that section, to read:

123 120.52 Definitions.—As used in this act:

124 (15) "Prominent display" means text in a font larger than,
125 and in a color different from, the surrounding text.

126 Section 3. Subsection (1) of section 120.525, Florida
127 Statutes, is amended to read:

128 120.525 Meetings, hearings, and workshops.—

129 (1) Except in the case of emergency meetings, each agency
130 shall give notice of public meetings, hearings, and workshops by
131 publication in the Florida Administrative Weekly and on the
132 agency's website not less than 7 days before the event. The
133 Department of Health or the Agency for Health Care
134 Administration is not required to provide such notice by
135 publication in the Florida Administrative Weekly, but shall
136 provide such notice by prominent display on the home page of its
137 website. The notice shall include a statement of the general
138 subject matter to be considered.

139 Section 4. Subsections (1), (2), (3), and paragraph (a) of
140 subsection (6) of section 120.54, Florida Statutes, as amended
141 by chapter 2010-279, Laws of Florida, are amended to read:

142 120.54 Rulemaking.—

143 (1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER THAN
144 EMERGENCY RULES.—

145 (a) Rulemaking is not a matter of agency discretion. Each

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146 agency statement defined as a rule by s. 120.52 shall be adopted
147 by the rulemaking procedure provided by this section as soon as
148 feasible and practicable.

149 1. Rulemaking shall be presumed feasible unless the agency
150 proves that:

151 a. The agency has not had sufficient time to acquire the
152 knowledge and experience reasonably necessary to address a
153 statement by rulemaking; or

154 b. Related matters are not sufficiently resolved to enable
155 the agency to address a statement by rulemaking.

156 2. Rulemaking shall be presumed practicable to the extent
157 necessary to provide fair notice to affected persons of relevant
158 agency procedures and applicable principles, criteria, or
159 standards for agency decisions unless the agency proves that:

160 a. Detail or precision in the establishment of principles,
161 criteria, or standards for agency decisions is not reasonable
162 under the circumstances; or

163 b. The particular questions addressed are of such a narrow
164 scope that more specific resolution of the matter is impractical
165 outside of an adjudication to determine the substantial
166 interests of a party based on individual circumstances.

167 (b) Whenever an act of the Legislature is enacted which
168 requires implementation of the act by rules of an agency within
169 the executive branch of state government, such rules must ~~shall~~
170 be drafted and formally proposed as provided in this section
171 within 180 days after the effective date of the act, unless the
172 act provides otherwise. If the Department of Health or the
173 Agency for Health Care Administration is required to adopt a
174 rule to implement an act enacted by the Legislature and the

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175 proposed rule is not effective 30 days before the next regular
176 session or within 6 months after the effective date of the act
177 requiring adoption of the rule, if the next regular session is
178 less than 6 months following the effective date of the act, for
179 any reason other than the Legislature's refusal to ratify the
180 rule under s. 120.541(3) the Department of Health or the Agency
181 for Health Care Administration shall submit a written report to
182 the Governor, the President of the Senate, and the Speaker of
183 the House of Representatives within 30 days after the missed
184 deadline. The report must:

185 1. Identify the number and dates of workshops and hearings
186 that have been conducted;

187 2. Explain the reasons why the rule has not become
188 effective within the required time, any objection to the rule,
189 or any other relevant information regarding the lack of
190 timeliness of the rule's adoption; and

191 3. Contain recommendations for any legislative change that
192 might be appropriate.

193 (c) No statutory provision shall be delayed in its
194 implementation pending an agency's adoption of implementing
195 rules unless there is an express statutory provision prohibiting
196 its application until the adoption of implementing rules.

197 (d) In adopting rules, all agencies must, among the
198 alternative approaches to any regulatory objective and to the
199 extent allowed by law, choose the alternative that does not
200 impose regulatory costs on the regulated person, county, or city
201 which could be reduced by the adoption of less costly
202 alternatives that substantially accomplish the statutory
203 objectives.

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204 (e) No agency has inherent rulemaking authority, nor has
205 any agency authority to establish penalties for violation of a
206 rule unless the Legislature, when establishing a penalty,
207 specifically provides that the penalty applies to rules.

208 (f) An agency may adopt rules authorized by law and
209 necessary to the proper implementation of a statute prior to the
210 effective date of the statute, but the rules may not be
211 effective until the statute upon which they are based is
212 effective. An agency may not adopt retroactive rules, including
213 retroactive rules intended to clarify existing law, unless that
214 power is expressly authorized by statute.

215 (g) Each rule adopted shall contain only one subject.

216 (h) In rulemaking proceedings, the agency may recognize any
217 material which may be judicially noticed, and it may provide
218 that materials so recognized be incorporated into the record of
219 the proceeding. Before the record of any proceeding is
220 completed, all parties shall be provided a list of these
221 materials and given a reasonable opportunity to examine them and
222 offer written comments or written rebuttal.

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

227 2. An agency rule that incorporates by specific reference
228 another rule of that agency automatically incorporates
229 subsequent amendments to the referenced rule unless a contrary
230 intent is clearly indicated in the referencing rule. A notice of
231 amendments to a rule that has been incorporated by specific
232 reference in other rules of that agency must explain the effect

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233 of those amendments on the referencing rules.

234 3. In rules adopted after December 31, 2010, material may
235 not be incorporated by reference unless:

236 a. The material has been submitted in the prescribed
237 electronic format to the Department of State and the full text
238 of the material can be made available for free public access
239 through an electronic hyperlink from the rule making the
240 reference in the Florida Administrative Code; or

241 b. The agency has determined that posting the material on
242 the Internet for purposes of public examination and inspection
243 would constitute a violation of federal copyright law, in which
244 case a statement to that effect, along with the address of
245 locations at the Department of State and the agency at which the
246 material is available for public inspection and examination,
247 must be included in the notice required by subparagraph (3)(a)1.

248 4. A rule may not be amended by reference only. Amendments
249 must set out the amended rule in full in the same manner as
250 required by the State Constitution for laws.

251 5. Notwithstanding any contrary provision in this section,
252 when an adopted rule of the Department of Environmental
253 Protection or a water management district is incorporated by
254 reference in the other agency's rule to implement a provision of
255 part IV of chapter 373, subsequent amendments to the rule are
256 not effective as to the incorporating rule unless the agency
257 incorporating by reference notifies the committee and the
258 Department of State of its intent to adopt the subsequent
259 amendment, publishes notice of such intent in the Florida
260 Administrative Weekly, and files with the Department of State a
261 copy of the amended rule incorporated by reference. Changes in

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262 the rule incorporated by reference are effective as to the other
263 agency 20 days after the date of the published notice and filing
264 with the Department of State. The Department of State shall
265 amend the history note of the incorporating rule to show the
266 effective date of such change. Any substantially affected person
267 may, within 14 days after the date of publication of the notice
268 of intent in the Florida Administrative Weekly, file an
269 objection to rulemaking with the agency. The objection shall
270 specify the portions of the rule incorporated by reference to
271 which the person objects and the reasons for the objection. The
272 agency shall not have the authority under this subparagraph to
273 adopt those portions of the rule specified in such objection.
274 The agency shall publish notice of the objection and of its
275 action in response in the next available issue of the Florida
276 Administrative Weekly.

277 6. The Department of State may adopt by rule requirements
278 for incorporating materials pursuant to this paragraph.

279 (j) A rule published in the Florida Administrative Code
280 must be indexed by the Department of State within 90 days after
281 the rule is filed. The Department of State shall by rule
282 establish procedures for indexing rules.

283 (k) An agency head may delegate the authority to initiate
284 rule development under subsection (2); however, rulemaking
285 responsibilities of an agency head under subparagraph (3)(a)1.,
286 subparagraph (3)(e)1., or subparagraph (3)(e)6. may not be
287 delegated or transferred, except as specifically authorized by
288 law.

289 (l) After the Department of Health or the Agency for Health
290 Care Administration has provided notice of the development of a

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291 proposed rule by publication in the Florida Administrative
292 Weekly, the Department of Health or the Agency for Health Care
293 Administration shall provide updates of public rulemaking
294 notices related to the proposed rule at the time such notices
295 are made public by prominent display on the home page of the
296 respective agency's website. The Department of Health or the
297 Agency for Health Care Administration shall also provide updates
298 to any person requesting such updates who consents to
299 notification via e-mail and provides the agency with a current,
300 valid e-mail address.

301 (2) RULE DEVELOPMENT; WORKSHOPS; NEGOTIATED RULEMAKING.—

302 (a) Except when the intended action is the repeal of a
303 rule, agencies shall provide notice of the development of
304 proposed rules by publication of a notice of rule development in
305 the Florida Administrative Weekly before providing notice of a
306 proposed rule as required by paragraph (3) (a). The notice of
307 rule development must: ~~shall~~

308 1. Indicate the subject area to be addressed by rule
309 development;~~;~~

310 2. Provide a short, plain explanation of the purpose and
311 effect of the proposed rule;~~;~~

312 3. Cite the specific legal authority for the proposed
313 rule;~~;~~ ~~and~~

314 4. Include the preliminary text of the proposed rules, if
315 available, or a statement of how a person may promptly obtain,
316 without cost, a copy of any preliminary draft, if available;
317 and~~;~~

318 5. Provide a mailing address, telephone number, and e-mail
319 address by which a person may request to receive via e-mail any

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320 public rulemaking notices related to the proposed rule.

321 (b) All rules should be drafted in readable language. The
322 language is readable if:

323 1. It avoids the use of obscure words and unnecessarily
324 long or complicated constructions; and

325 2. It avoids the use of unnecessary technical or
326 specialized language that is understood only by members of
327 particular trades or professions.

328 (c) An agency may hold public workshops for purposes of
329 rule development. An agency, except the Department of Health or
330 the Agency for Health Care Administration, must hold public
331 workshops, including workshops in various regions of the state
332 or the agency's service area, for purposes of rule development
333 if requested in writing by any affected person, unless the
334 agency head explains in writing why a workshop is unnecessary.
335 The explanation is not final agency action subject to review
336 pursuant to ss. 120.569 and 120.57. The failure to provide the
337 explanation when required may be a material error in procedure
338 pursuant to s. 120.56(1)(c). When a workshop or public hearing
339 is held, the agency must ensure that the persons responsible for
340 preparing the proposed rule are available to explain the
341 agency's proposal and to respond to questions or comments
342 regarding the rule being developed. The workshop may be
343 facilitated or mediated by a neutral third person, or the agency
344 may employ other types of dispute resolution alternatives for
345 the workshop that are appropriate for rule development. Notice
346 of a rule development workshop must ~~shall~~ be by publication in
347 the Florida Administrative Weekly not less than 14 days before
348 ~~prior to~~ the date on which the workshop is scheduled to be held

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349 and must ~~shall~~ indicate the subject area that ~~which~~ will be
350 addressed; the agency contact person; and the place, date, and
351 time of the workshop. However, the Department of Health or the
352 Agency for Health Care Administration may schedule a workshop 7
353 days after the notice of a rule development workshop is
354 displayed on its respective website. If the Department of Health
355 or the Agency for Health Care Administration schedules a
356 workshop within 7 days after such notice, the Department of
357 Health or the Agency for Health Care Administration shall
358 provide the public with access to the workshop by providing a
359 toll-free telephone number to call into a conference call for
360 the workshop.

361 (d)1. An agency may use negotiated rulemaking in developing
362 and adopting rules. The agency should consider the use of
363 negotiated rulemaking when complex rules are being drafted or
364 strong opposition to the rules is anticipated. The agency should
365 consider, but is not limited to considering, whether a balanced
366 committee of interested persons who will negotiate in good faith
367 can be assembled, whether the agency is willing to support the
368 work of the negotiating committee, and whether the agency can
369 use the group consensus as the basis for its proposed rule.
370 Negotiated rulemaking uses a committee of designated
371 representatives to draft a mutually acceptable proposed rule.

372 2. An agency that chooses to use the negotiated rulemaking
373 process described in this paragraph shall publish in the Florida
374 Administrative Weekly a notice of negotiated rulemaking that
375 includes a listing of the representative groups that will be
376 invited to participate in the negotiated rulemaking process. Any
377 person who believes that his or her interest is not adequately

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378 represented may apply to participate within 30 days after
379 publication of the notice. All meetings of the negotiating
380 committee shall be noticed and open to the public pursuant to
381 the provisions of this chapter. The negotiating committee shall
382 be chaired by a neutral facilitator or mediator.

383 3. The agency's decision to use negotiated rulemaking, its
384 selection of the representative groups, and approval or denial
385 of an application to participate in the negotiated rulemaking
386 process are not agency action. Nothing in this subparagraph is
387 intended to affect the rights of an affected person to challenge
388 a proposed rule developed under this paragraph in accordance
389 with s. 120.56(2).

390 (3) ADOPTION PROCEDURES.—

391 (a) *Notices.*—

392 1. Before ~~Prior~~ to the adoption, amendment, or repeal of
393 any rule other than an emergency rule, an agency, upon approval
394 of the agency head, or, for the Department of Health or the
395 Agency for Health Care Administration, upon approval of the
396 agency head or designee, shall give notice of its intended
397 action, setting forth a short, plain explanation of the purpose
398 and effect of the proposed action; the full text of the proposed
399 rule or amendment and a summary thereof; a reference to the
400 grant of rulemaking authority pursuant to which the rule is
401 adopted; and a reference to the section or subsection of the
402 Florida Statutes or the Laws of Florida being implemented or
403 interpreted. The notice must include:

404 a. A summary of the agency's statement of the estimated
405 regulatory costs, if one has been prepared; or

406 b. For the Department of Health or the Agency for Health

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407 Care Administration, a short sentence summarizing the conclusion
408 reached in the statement of the estimated regulatory costs, if a
409 statement has been prepared,

410
411 based on the factors set forth in s. 120.541(2), and a statement
412 that any person who wishes to provide the agency with
413 information regarding the statement of estimated regulatory
414 costs, or to provide a proposal for a lower cost regulatory
415 alternative as provided by s. 120.541(1), must do so in writing
416 within 21 days after publication of the notice. The notice must
417 state the procedure for requesting a public hearing on the
418 proposed rule. Except when the intended action is the repeal of
419 a rule, the notice must include a reference both to the date on
420 which and to the place where the notice of rule development that
421 is required by subsection (2) appeared.

422 2. The notice shall be published in the Florida
423 Administrative Weekly not less than 28 days before ~~prior to~~ the
424 intended action, except that the Department of Health or the
425 Agency for Health Care Administration shall provide such notice
426 by display on its respective website not less than 28 days
427 before the intended action. The notice must remain on the
428 website until the rule becomes effective or is withdrawn. At the
429 time of such notice, the Department of Health or the Agency for
430 Health Care Administration shall provide the Department of State
431 with an electronic link to the website where the notice is
432 displayed. The Department of State shall maintain a copy of the
433 notice displayed on the website and make the notice available
434 for public inspection. The proposed rule shall be available for
435 inspection and copying by the public at the time of the

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436 publication and posting of notice.

437 3. The notice shall be mailed to all persons named in the
438 proposed rule and to all persons who, at least 14 days before
439 ~~prior to~~ such mailing, have made requests of the agency for
440 advance notice of its proceedings. The Department of Health or
441 the Agency for Health Care Administration may satisfy this
442 requirement via e-mail if the person requesting such notice
443 consents to notification by e-mail and provides the agency with
444 a current, valid e-mail address. The agency shall also give such
445 notice as is prescribed by rule to those particular classes of
446 persons to whom the intended action is directed.

447 4. The adopting agency shall file with the committee, at
448 least 21 days prior to the proposed adoption date, a copy of
449 each rule it proposes to adopt; a copy of any material
450 incorporated by reference in the rule; a detailed written
451 statement of the facts and circumstances justifying the proposed
452 rule; a copy of any statement of estimated regulatory costs that
453 has been prepared pursuant to s. 120.541; a statement of the
454 extent to which the proposed rule relates to federal standards
455 or rules on the same subject; and the notice required by
456 subparagraph 1. The Department of Health or the Agency for
457 Health Care Administration may provide the committee with an
458 electronic link to access copies of such documents rather than
459 providing the committee with hard copies.

460 (b) *Special matters to be considered in rule adoption.*—

461 1. Statement of estimated regulatory costs.—Prior to the
462 adoption, amendment, or repeal of any rule other than an
463 emergency rule, an agency is encouraged to prepare a statement
464 of estimated regulatory costs of the proposed rule, as provided

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465 by s. 120.541. However, an agency must prepare a statement of
466 estimated regulatory costs of the proposed rule, as provided by
467 s. 120.541, if:

468 a. The proposed rule will have an adverse impact on small
469 business; or

470 b. The proposed rule is likely to directly or indirectly
471 increase regulatory costs in excess of \$200,000 in the aggregate
472 in this state within 1 year after the implementation of the
473 rule.

474 2. Small businesses, small counties, and small cities.—

475 a. Each agency, before the adoption, amendment, or repeal
476 of a rule, shall consider the impact of the rule on small
477 businesses as defined by s. 288.703 and the impact of the rule
478 on small counties or small cities as defined by s. 120.52.
479 Whenever practicable, an agency shall tier its rules to reduce
480 disproportionate impacts on small businesses, small counties, or
481 small cities to avoid regulating small businesses, small
482 counties, or small cities that do not contribute significantly
483 to the problem the rule is designed to address. An agency may
484 define "small business" to include businesses employing more
485 than 200 persons, may define "small county" to include those
486 with populations of more than 75,000, and may define "small
487 city" to include those with populations of more than 10,000, if
488 it finds that such a definition is necessary to adapt a rule to
489 the needs and problems of small businesses, small counties, or
490 small cities. The agency shall consider each of the following
491 methods for reducing the impact of the proposed rule on small
492 businesses, small counties, and small cities, or any combination
493 of these entities:

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494 (I) Establishing less stringent compliance or reporting
495 requirements in the rule.

496 (II) Establishing less stringent schedules or deadlines in
497 the rule for compliance or reporting requirements.

498 (III) Consolidating or simplifying the rule's compliance or
499 reporting requirements.

500 (IV) Establishing performance standards or best management
501 practices to replace design or operational standards in the
502 rule.

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

505 b.(I) If the agency determines that the proposed action
506 will affect small businesses as defined by the agency as
507 provided in sub-subparagraph a., the agency shall send written
508 notice of the rule to the Small Business Regulatory Advisory
509 Council and the Office of Tourism, Trade, and Economic
510 Development not less than 28 days prior to the intended action.

511 (II) Each agency shall adopt those regulatory alternatives
512 offered by the Small Business Regulatory Advisory Council and
513 provided to the agency no later than 21 days after the council's
514 receipt of the written notice of the rule which it finds are
515 feasible and consistent with the stated objectives of the
516 proposed rule and which would reduce the impact on small
517 businesses. When regulatory alternatives are offered by the
518 Small Business Regulatory Advisory Council, the 90-day period
519 for filing the rule in subparagraph (e)2. is extended for a
520 period of 21 days.

521 (III) If an agency does not adopt all alternatives offered
522 pursuant to this sub-subparagraph, it shall, prior to rule

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523 adoption or amendment and pursuant to subparagraph (d)1., file a
524 detailed written statement with the committee explaining the
525 reasons for failure to adopt such alternatives. Within 3 working
526 days of the filing of such notice, the agency shall send a copy
527 of such notice to the Small Business Regulatory Advisory
528 Council. The Small Business Regulatory Advisory Council may make
529 a request of the President of the Senate and the Speaker of the
530 House of Representatives that the presiding officers direct the
531 Office of Program Policy Analysis and Government Accountability
532 to determine whether the rejected alternatives reduce the impact
533 on small business while meeting the stated objectives of the
534 proposed rule. Within 60 days after the date of the directive
535 from the presiding officers, the Office of Program Policy
536 Analysis and Government Accountability shall report to the
537 Administrative Procedures Committee its findings as to whether
538 an alternative reduces the impact on small business while
539 meeting the stated objectives of the proposed rule. The Office
540 of Program Policy Analysis and Government Accountability shall
541 consider the proposed rule, the economic impact statement, the
542 written statement of the agency, the proposed alternatives, and
543 any comment submitted during the comment period on the proposed
544 rule. The Office of Program Policy Analysis and Government
545 Accountability shall submit a report of its findings and
546 recommendations to the Governor, the President of the Senate,
547 and the Speaker of the House of Representatives. The
548 Administrative Procedures Committee shall report such findings
549 to the agency, and the agency shall respond in writing to the
550 Administrative Procedures Committee if the Office of Program
551 Policy Analysis and Government Accountability found that the

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552 alternative reduced the impact on small business while meeting
553 the stated objectives of the proposed rule. If the agency will
554 not adopt the alternative, it must also provide a detailed
555 written statement to the committee as to why it will not adopt
556 the alternative.

557 (c) *Hearings.*—

558 1. If the intended action concerns any rule other than one
559 relating exclusively to procedure or practice, the agency shall,
560 on the request of any affected person received within 21 days
561 after the date of publication of the notice of intended agency
562 action, give affected persons an opportunity to present evidence
563 and argument on all issues under consideration. The agency may
564 schedule a public hearing on the rule and, if requested by any
565 affected person, shall schedule a public hearing on the rule.
566 When a public hearing is held, the agency must ensure that staff
567 are available to explain the agency's proposal and to respond to
568 questions or comments regarding the rule. If the agency head is
569 a board or other collegial body created under s. 20.165(4) or s.
570 20.43(3)(g), and one or more requested public hearings is
571 scheduled, the board or other collegial body shall conduct at
572 least one of the public hearings itself and may not delegate
573 this responsibility without the consent of those persons
574 requesting the public hearing. Any material pertinent to the
575 issues under consideration submitted to the agency within 21
576 days after the date of publication of the notice or submitted to
577 the agency between the date of publication of the notice and the
578 end of the final public hearing shall be considered by the
579 agency and made a part of the record of the rulemaking
580 proceeding.

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581 2. Rulemaking proceedings shall be governed solely by the
582 provisions of this section unless a person timely asserts that
583 the person's substantial interests will be affected in the
584 proceeding and affirmatively demonstrates to the agency that the
585 proceeding does not provide adequate opportunity to protect
586 those interests. If the agency determines that the rulemaking
587 proceeding is not adequate to protect the person's interests, it
588 shall suspend the rulemaking proceeding and convene a separate
589 proceeding under the provisions of ss. 120.569 and 120.57.
590 Similarly situated persons may be requested to join and
591 participate in the separate proceeding. Upon conclusion of the
592 separate proceeding, the rulemaking proceeding shall be resumed.
593 The Department of Health or the Agency for Health Care
594 Administration may not suspend the rulemaking proceeding to
595 convene a substantial interest hearing under s. 120.569.

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

597 1. After the final public hearing on the proposed rule, or
598 after the time for requesting a hearing has expired, if the rule
599 has not been changed from the rule as previously filed with the
600 committee, or contains only technical changes, the adopting
601 agency shall file a notice to that effect with the committee at
602 least 7 days before ~~prior to~~ filing the rule for adoption. Any
603 change, other than a technical change that does not affect the
604 substance of the rule, must be supported by the record of public
605 hearings held on the rule, must be in response to written
606 material submitted to the agency within 21 days after the date
607 of publication of the notice of intended agency action or
608 submitted to the agency between the date of publication of the
609 notice and the end of the final public hearing, or must be in

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610 response to a proposed objection by the committee. In addition,
611 when any change is made in a proposed rule, other than a
612 technical change, the adopting agency shall provide a copy of a
613 notice of change by certified mail or actual delivery to any
614 person who requests it in writing no later than 21 days after
615 the notice required in paragraph (a). The Department of Health
616 or the Agency for Health Care Administration may provide a copy
617 of such notice via e-mail rather than by certified mail or by
618 actual delivery if the person requesting such notice consents to
619 notification by e-mail and provides the agency with a current,
620 valid e-mail address. The agency shall file the notice of change
621 with the committee, along with the reasons for the change, and
622 provide the notice of change to persons requesting it, at least
623 21 days before ~~prior to~~ filing the rule for adoption. The notice
624 of change must ~~shall~~ be published in the Florida Administrative
625 Weekly at least 21 days before ~~prior to~~ filing the rule for
626 adoption, except that the Department of Health or the Agency for
627 Health Care Administration shall display the notice of change on
628 its website at least 21 days before filing the rule for
629 adoption, and such notice must remain on the website until the
630 rule is adopted or withdrawn. At the time of such notice, the
631 Department of Health or the Agency for Health Care
632 Administration shall provide the Department of State with an
633 electronic link to the website where the notice is displayed.
634 The Department of State shall maintain a copy of the notice
635 displayed on the website and make the notice available for
636 public inspection. This subparagraph does not apply to emergency
637 rules adopted pursuant to subsection (4).

638 2. After the notice required by paragraph (a) and prior to

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639 adoption, the agency may withdraw the rule in whole or in part.

640 3. After adoption and before the effective date, a rule may
641 be modified or withdrawn only in response to the Legislature
642 during the process of rule ratification or to an objection by
643 the committee or may be modified to extend the effective date by
644 not more than 60 days when the committee has notified the agency
645 that an objection to the rule is being considered.

646 4. The agency shall:

647 a. Give notice of its decision to withdraw or modify a rule
648 in the first available issue of the publication in which the
649 original notice of rulemaking was published or give such notice
650 on its website, if the original notice of rulemaking was
651 provided on the agency's website; ~~shall~~

652 b. Notify those persons described in subparagraph (a)3. in
653 accordance with the requirements of that subparagraph; ~~and~~
654 ~~shall~~

655 c. Notify the Department of State if the rule is required
656 to be filed with the Department of State.

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

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

661 1. If the adopting agency is required to publish its rules
662 in the Florida Administrative Code, the agency, upon approval of
663 the agency head, shall file with the Department of State three
664 certified copies of the rule it proposes to adopt; one copy of
665 any material incorporated by reference in the rule, certified by
666 the agency; a summary of the rule; a summary of any hearings
667 held on the rule; and a detailed written statement of the facts

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668 and circumstances justifying the rule. For the Department of
669 Health or the Agency for Health Care Administration, a deputy
670 secretary may approve the filing of such documents with the
671 Department of State. Agencies not required to publish their
672 rules in the Florida Administrative Code shall file one
673 certified copy of the proposed rule, and the other material
674 required by this subparagraph, in the office of the agency head,
675 and such rules shall be open to the public.

676 2. A rule may not be filed for adoption less than 28 days
677 or more than 90 days after the notice required by paragraph (a),
678 until 21 days after the notice of change required by paragraph
679 (d), until 14 days after the final public hearing, until 21 days
680 after a statement of estimated regulatory costs required under
681 s. 120.541 has been provided to all persons who submitted a
682 lower cost regulatory alternative and made available to the
683 public, or until the administrative law judge has rendered a
684 decision under s. 120.56(2), whichever applies. When a required
685 notice of change is published prior to the expiration of the
686 time to file the rule for adoption, the period during which a
687 rule must be filed for adoption is extended to 45 days after the
688 date of publication. If notice of a public hearing is published
689 prior to the expiration of the time to file the rule for
690 adoption, the period during which a rule must be filed for
691 adoption is extended to 45 days after adjournment of the final
692 hearing on the rule, 21 days after receipt of all material
693 authorized to be submitted at the hearing, or 21 days after
694 receipt of the transcript, if one is made, whichever is latest.
695 The term "public hearing" includes any public meeting held by
696 any agency at which the rule is considered. If a petition for an

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697 administrative determination under s. 120.56(2) is filed, the
698 period during which a rule must be filed for adoption is
699 extended to 60 days after the administrative law judge files the
700 final order with the clerk or until 60 days after subsequent
701 judicial review is complete.

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

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

718 5. If a rule has not been adopted within the time limits
719 imposed by this paragraph or has not been adopted in compliance
720 with all statutory rulemaking requirements, the agency proposing
721 the rule shall withdraw the rule and give notice of its action
722 in the next available issue of the Florida Administrative
723 Weekly. The Department of Health or the Agency for Health Care
724 Administration shall provide such notice by display of the
725 notice on its website.

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726 6. The proposed rule shall be adopted on being filed with
727 the Department of State and become effective 20 days after being
728 filed, on a later date specified in the notice required by
729 subparagraph (a)1., or on a date required by statute. Rules not
730 required to be filed with the Department of State shall become
731 effective when adopted by the agency head or on a later date
732 specified by rule or statute. If the committee notifies an
733 agency that an objection to a rule is being considered, the
734 agency may postpone the adoption of the rule to accommodate
735 review of the rule by the committee. When an agency postpones
736 adoption of a rule to accommodate review by the committee, the
737 90-day period for filing the rule is tolled until the committee
738 notifies the agency that it has completed its review of the
739 rule.

740

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

743 (6) ADOPTION OF FEDERAL STANDARDS.—Notwithstanding any
744 contrary provision of this section, in the pursuance of state
745 implementation, operation, or enforcement of federal programs,
746 an agency is empowered to adopt rules substantively identical to
747 regulations adopted pursuant to federal law, in accordance with
748 the following procedures:

749 (a) The agency shall publish notice of intent to adopt a
750 rule pursuant to this subsection in the Florida Administrative
751 Weekly at least 21 days before ~~prior to~~ filing the rule with the
752 Department of State, except that the Department of Health or the
753 Agency for Health Care Administration shall display a notice of
754 intent to adopt a rule pursuant to this subsection on its

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755 website at least 21 days before filing the rule with the
756 Department of State. The agency shall provide a copy of the
757 notice of intent to adopt a rule to the committee at least 21
758 days before ~~prior to~~ the date of filing with the Department of
759 State. Before ~~Prior to~~ filing the rule with the Department of
760 State, the agency shall consider any written comments received
761 within 14 days after the date of publication of the notice of
762 intent to adopt a rule. The rule must ~~shall~~ be adopted upon
763 filing with the Department of State. Substantive changes from
764 the rules as noticed shall require republishing of notice as
765 required in this subsection.

766 Section 5. Subsection (2) of section 120.541, Florida
767 Statutes, as amended by chapter 2010-279, Laws of Florida, is
768 amended to read:

769 120.541 Statement of estimated regulatory costs.—

770 (2) For the Department of Health or the Agency for Health
771 Care Administration, a statement of estimated regulatory costs
772 shall be based on the agency's good faith cost estimates from
773 the application of common sense and logic to the readily
774 available or obtainable facts on hand. The Department of Health
775 or the Agency for Health Care Administration is not required to
776 use or hire an economic expert, but the involved subject-matter
777 experts shall use their best judgment under the circumstances. A
778 statement of estimated regulatory costs must ~~shall~~ include:

779 (a) An economic analysis showing whether the rule directly
780 or indirectly:

781 1. Is likely to have an adverse impact on economic growth,
782 private sector job creation or employment, or private sector
783 investment in excess of \$1 million in the aggregate within 5

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784 years after the implementation of the rule;

785 2. Is likely to have an adverse impact on business
786 competitiveness, including the ability of persons doing business
787 in the state to compete with persons doing business in other
788 states or domestic markets, productivity, or innovation in
789 excess of \$1 million in the aggregate within 5 years after the
790 implementation of the rule; or

791 3. Is likely to increase regulatory costs, including any
792 transactional costs, in excess of \$1 million in the aggregate
793 within 5 years after the implementation of the rule.

794 (b) A good faith estimate of the number of individuals and
795 entities likely to be required to comply with the rule, together
796 with a general description of the types of individuals likely to
797 be affected by the rule.

798 (c) A good faith estimate of the cost to the agency, and to
799 any other state and local government entities, of implementing
800 and enforcing the proposed rule, and any anticipated effect on
801 state or local revenues.

802 (d) A good faith estimate of the transactional costs likely
803 to be incurred by individuals and entities, including local
804 government entities, required to comply with the requirements of
805 the rule. As used in this section, "transactional costs" are
806 direct costs that are readily ascertainable based upon standard
807 business practices, and include filing fees, the cost of
808 obtaining a license, the cost of equipment required to be
809 installed or used or procedures required to be employed in
810 complying with the rule, additional operating costs incurred,
811 the cost of monitoring and reporting, and any other costs
812 necessary to comply with the rule.

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813 (e) An analysis of the impact on small businesses as
814 defined by s. 288.703, and an analysis of the impact on small
815 counties and small cities as defined in s. 120.52. The impact
816 analysis for small businesses must include the basis for the
817 agency's decision not to implement alternatives that would
818 reduce adverse impacts on small businesses.

819 (f) Any additional information that the agency determines
820 may be useful.

821 (g) In the statement or revised statement, whichever
822 applies, a description of any regulatory alternatives submitted
823 under paragraph (1)(a) and a statement adopting the alternative
824 or a statement of the reasons for rejecting the alternative in
825 favor of the proposed rule.

826 Section 6. Subsection (2) of section 120.56, Florida
827 Statutes, as amended by chapter 2010-279, Laws of Florida, is
828 amended to read:

829 120.56 Challenges to rules.—

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

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

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842 120.54(3)(d). The petition must state with particularity the
843 objections to the proposed rule and the reasons that the
844 proposed rule is an invalid exercise of delegated legislative
845 authority. The petitioner has the burden of going forward. The
846 agency then has the burden to prove by a preponderance of the
847 evidence that the proposed rule is not an invalid exercise of
848 delegated legislative authority as to the objections raised. A
849 person who is substantially affected by a change in the proposed
850 rule may seek a determination of the validity of such change. A
851 person who is not substantially affected by the proposed rule as
852 initially noticed, but who is substantially affected by the rule
853 as a result of a change, may challenge any provision of the rule
854 and is not limited to challenging the change to the proposed
855 rule.

856 (b) The administrative law judge may declare the proposed
857 rule wholly or partly invalid. Unless the decision of the
858 administrative law judge is reversed on appeal, the proposed
859 rule or provision of a proposed rule declared invalid shall not
860 be adopted. After a petition for administrative determination
861 has been filed, the agency may, except that the Department of
862 Health or the Agency for Health Care Administration shall,
863 proceed with all other steps in the rulemaking process,
864 including the holding of a factfinding hearing. If ~~In the event~~
865 part of a proposed rule is declared invalid, the adopting agency
866 may, in its sole discretion, withdraw the proposed rule in its
867 entirety. The agency whose proposed rule has been declared
868 invalid in whole or part shall give notice of the decision in
869 the first available issue of the Florida Administrative Weekly.

870 (c) When any substantially affected person seeks

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871 determination of the invalidity of a proposed rule pursuant to
872 this section, the proposed rule is not presumed to be valid or
873 invalid.

874 (d) For the purpose of this subsection only, there is a
875 presumption that a person is not a substantially affected person
876 if he or she cannot provide documentary evidence that he or she
877 has attended at least one hearing or workshop in person or
878 electronically or has provided written comments or concerns to
879 the Department of Health or the Agency for Health Care
880 Administration during the rulemaking process, or if the
881 Department of Health or the Agency for Health Care
882 Administration determines that the person did not participate in
883 the rulemaking process before the date of the rule challenge,
884 unless the rule challenge is based on a change in the proposed
885 rule.

886 Section 7. Subsection (11) of section 120.80, Florida
887 Statutes, is amended to read:

888 120.80 Exceptions and special requirements; agencies.—

889 (11) NATIONAL GUARD.—Notwithstanding s. 120.52(17)
890 ~~120.52(16)~~, the enlistment, organization, administration,
891 equipment, maintenance, training, and discipline of the militia,
892 National Guard, organized militia, and unorganized militia, as
893 provided by s. 2, Art. X of the State Constitution, are not
894 rules as defined by this chapter.

895 Section 8. Paragraph (c) of subsection (1) of section
896 120.81, Florida Statutes, is amended to read:

897 120.81 Exceptions and special requirements; general areas.—

898 (1) EDUCATIONAL UNITS.—

899 (c) Notwithstanding s. 120.52(17) ~~120.52(16)~~, any tests,

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900 test scoring criteria, or testing procedures relating to student
901 assessment which are developed or administered by the Department
902 of Education pursuant to s. 1003.43, s. 1003.438, s. 1008.22, or
903 s. 1008.25, or any other statewide educational tests required by
904 law, are not rules.

905 Section 9. Paragraph (a) of subsection (1) of section
906 420.9072, Florida Statutes, is amended to read:

907 420.9072 State Housing Initiatives Partnership Program.—The
908 State Housing Initiatives Partnership Program is created for the
909 purpose of providing funds to counties and eligible
910 municipalities as an incentive for the creation of local housing
911 partnerships, to expand production of and preserve affordable
912 housing, to further the housing element of the local government
913 comprehensive plan specific to affordable housing, and to
914 increase housing-related employment.

915 (1) (a) In addition to the legislative findings set forth in
916 s. 420.6015, the Legislature finds that affordable housing is
917 most effectively provided by combining available public and
918 private resources to conserve and improve existing housing and
919 provide new housing for very-low-income households, low-income
920 households, and moderate-income households. The Legislature
921 intends to encourage partnerships in order to secure the
922 benefits of cooperation by the public and private sectors and to
923 reduce the cost of housing for the target group by effectively
924 combining all available resources and cost-saving measures. The
925 Legislature further intends that local governments achieve this
926 combination of resources by encouraging active partnerships
927 between government, lenders, builders and developers, real
928 estate professionals, advocates for low-income persons, and

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929 community groups to produce affordable housing and provide
930 related services. Extending the partnership concept to encompass
931 cooperative efforts among small counties as defined in s.
932 120.52(20) ~~120.52(19)~~, and among counties and municipalities is
933 specifically encouraged. Local governments are also intended to
934 establish an affordable housing advisory committee to recommend
935 monetary and nonmonetary incentives for affordable housing as
936 provided in s. 420.9076.

937 Section 10. Subsection (7) of section 420.9075, Florida
938 Statutes, is amended to read:

939 420.9075 Local housing assistance plans; partnerships.—

940 (7) The moneys deposited in the local housing assistance
941 trust fund shall be used to administer and implement the local
942 housing assistance plan. The cost of administering the plan may
943 not exceed 5 percent of the local housing distribution moneys
944 and program income deposited into the trust fund. A county or an
945 eligible municipality may not exceed the 5-percent limitation on
946 administrative costs, unless its governing body finds, by
947 resolution, that 5 percent of the local housing distribution
948 plus 5 percent of program income is insufficient to adequately
949 pay the necessary costs of administering the local housing
950 assistance plan. The cost of administering the program may not
951 exceed 10 percent of the local housing distribution plus 5
952 percent of program income deposited into the trust fund, except
953 that small counties, as defined in s. 120.52(20) ~~120.52(19)~~, and
954 eligible municipalities receiving a local housing distribution
955 of up to \$350,000 may use up to 10 percent of program income for
956 administrative costs.

957 Section 11. This act shall take effect July 1, 2011.