

By the Committee on Governmental Oversight and Accountability

585-03271-14

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1 A bill to be entitled
2 An act relating to administrative procedures; amending
3 s. 120.54, F.S.; revising the deadline to propose
4 rules implementing new laws; amending s. 120.74, F.S.;
5 revising requirements for the periodic review of
6 agency rules; requiring agencies to annually review
7 rulemaking and prepare and publish regulatory plans;
8 specifying requirements for such plans; requiring an
9 agency to include a certification of the regulatory
10 plan in a legislative budget request; requiring
11 specified agencies to review the regulatory plans of
12 certain boards; requiring publication by specified
13 dates of notices of rule development and of proposed
14 rules necessary to implement new laws; requiring an
15 agency to file a certification with the Administrative
16 Procedures Committee; requiring an agency to complete
17 a supplement to the regulatory plan under certain
18 circumstances; establishing requirements for the
19 supplement; providing for suspension of an agency's
20 rulemaking authority for failure to comply with
21 specified provisions; providing for applicability;
22 repealing ss. 120.745 and 120.7455, F.S., relating to
23 legislative review of agency rules in effect on or
24 before a specified date and an Internet-based public
25 survey of regulatory impacts, respectively; providing
26 for rescission of the suspension of rulemaking
27 authority under such repealed provisions; providing
28 effective dates.
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30 Be It Enacted by the Legislature of the State of Florida:

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32 Section 1. Paragraph (b) of subsection (1) of section
33 120.54, Florida Statutes, is amended to read:

34 120.54 Rulemaking.—

35 (1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER THAN
36 EMERGENCY RULES.—

37 (b) Whenever an act of the Legislature is enacted which
38 requires implementation of the act by rules of an agency within
39 the executive branch of state government, such rules shall be
40 drafted and formally proposed as provided in this section within
41 the times provided in s. 120.74(5) and (6) ~~180 days after the~~
42 ~~effective date of the act, unless the act provides otherwise.~~

43 Section 2. Section 120.74, Florida Statutes, is amended to
44 read:

45 (Substantial rewording of section. See
46 s. 120.74, F.S., for present text.)

47 120.74 Agency annual rulemaking and regulatory plan;
48 reports.—

49 (1) RULEMAKING AND REGULATORY PLAN.—By October 1 of each
50 year, each agency shall prepare an implementation and rulemaking
51 plan.

52 (a) The plan shall include a listing of each law enacted or
53 amended during the previous 12 months which created or modified
54 the duties or authority of the agency. The plan may exclude any
55 law affecting all or most state agencies, if the law is
56 identified as such by letter to the committee from the Governor
57 or the Attorney General. For each law listed in the agency's
58 plan, the plan must state:

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- 59 1. Whether the agency must adopt rules to implement the
60 law.
- 61 2. If rulemaking is necessary to implement the law:
- 62 a. Whether a notice of rule development has been published,
63 and if so, the citation for such notice in the Florida
64 Administrative Register; and
- 65 b. The date by which the agency expects to publish the
66 notice of proposed rule under s. 120.54(3)(a).
- 67 3. If rulemaking is not necessary to implement the law, a
68 concise written explanation of the reasons that the law may be
69 implemented without rulemaking.
- 70 (b) The plan shall include a listing of every other law
71 that the agency expects to implement by rulemaking, excluding
72 emergency rulemaking, before the following June 30. For each law
73 listed pursuant to this paragraph, the plan must state whether
74 the rulemaking is intended to simplify, clarify, increase
75 efficiency, improve coordination with other agencies, reduce
76 regulatory costs, or delete obsolete, unnecessary, or redundant
77 rules.
- 78 (c) The plan shall include any desired update to the
79 previous year's regulatory plan or supplement published pursuant
80 to subsection (8). If a law was identified under this paragraph
81 or under subparagraph (a)1. in a previous year's regulatory plan
82 or supplement as a law requiring rulemaking for implementation
83 but a notice of proposed rule has not been published:
- 84 1. The agency may identify and relist such law noting the
85 applicable notice of rule development by citation to the Florida
86 Administrative Register, or
- 87 2. If the agency has subsequently determined that

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88 rulemaking is not necessary to implement the law, the agency may
89 identify such law, reference the citation of the applicable
90 notice of rule development in the Florida Administrative
91 Register, and state a concise written explanation of the reasons
92 that the law may be implemented without rulemaking.

93 (d) The plan shall include the following certification
94 executed on behalf of the agency by both the agency head, or if
95 the agency head is a collegial body, the chair or equivalent
96 presiding officer, and the agency general counsel, or if the
97 agency does not have a general counsel, the individual acting as
98 the principal legal advisor to the agency head:

99 1. Verifying that the persons authorized to certify have
100 reviewed the plan.

101 2. Verifying that the agency regularly reviews all of its
102 rules and identifying the period during which all rules have
103 most recently been reviewed to determine if they remain
104 consistent with the agency's rulemaking authority and the law
105 implemented.

106 (2) PUBLICATION AND DELIVERY OF PLAN.-

107 (a) By October 1 of each year, each agency shall:

108 1. Publish its regulatory plan on its website or another
109 state website established for publication of administrative law
110 records. A clearly labeled hyperlink to the plan must be
111 included on the agency's primary website homepage.

112 2. Deliver by electronic means to the committee a copy of
113 the certification required in paragraph (1) (d).

114 3. Publish in the Florida Administrative Register a notice
115 of the date of publication of the agency's regulatory plan,
116 which notice must include a hyperlink or website address

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117 providing direct access to the published plan.

118 (b) To satisfy the requirements of paragraph (a), each
119 board established under s. 20.165(4), and any other board or
120 commission receiving administrative support from the Department
121 of Business and Professional Regulation, may coordinate with the
122 department, and each board established under s. 20.43(3) may
123 coordinate with the Department of Health, for inclusion of the
124 board's or commission's plan and notice of publication in the
125 coordinating department's plan and notice and delivery of the
126 required documentation to the committee.

127 (c) A regulatory plan published pursuant to former s.
128 120.74(3), Florida Statutes 2011, shall be maintained at an
129 active website address for 10 years from the date of initial
130 publication.

131 (3) INCLUSION IN LEGISLATIVE BUDGET REQUEST.—In addition to
132 the requirements of s. 216.023, and pursuant to s. 216.351, a
133 copy of the most recent certification executed under paragraph
134 (1) (d), clearly designated as such, shall be included as part of
135 the agency's legislative budget request.

136 (4) DEPARTMENT REVIEW OF BOARD PLAN.—By October 15 of each
137 year:

138 (a) For each board established under s. 20.165(4), and each
139 other board or commission receiving administrative support from
140 the Department of Business and Professional Regulation, the
141 department shall file with the committee a certification that
142 the department has reviewed the board's regulatory plan. A
143 certification may apply to more than one board.

144 (b) For each board established under s. 20.43(3), the
145 Department of Health shall file with the committee a

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146 certification that the department has reviewed the board's
147 regulatory plan. A certification may apply to more than one
148 board.

149 (5) DEADLINE FOR RULE DEVELOPMENT.—By November 1 of each
150 year, each agency shall publish a notice of rule development
151 under s. 120.54(2) for each law identified in the agency's plan
152 pursuant to subparagraph (1)(a)1. for which rulemaking is
153 necessary for implementation but for which the agency did not
154 report the publication of a notice of rule development under
155 subparagraph (1)(a)2.

156 (6) DEADLINE TO PUBLISH PROPOSED RULE.—For each law for
157 which rulemaking is necessary for implementation, as identified
158 in the agency's plan pursuant to subparagraph (1)(a)1. or
159 subparagraph (1)(c)1., the agency shall publish a notice of
160 proposed rule pursuant to s. 120.54(3)(a) by April 1 of the year
161 after the deadline for the plan. The April 1 deadline may be
162 extended if the agency publishes a notice of extension in the
163 Florida Administrative Register identifying such rulemaking
164 proceeding for which an extension is being noticed by citation
165 to the applicable notice of rule development as published in the
166 Florida Administrative Register. Such an extension shall expire
167 on the October 1 following the April 1 deadline, provided that
168 the regulatory plan due on October 1 may further extend the
169 rulemaking proceeding by identification pursuant to subparagraph
170 (1)(c)1. or conclude the rulemaking proceeding by identification
171 pursuant to subparagraph (1)(c)2. A published regulatory plan
172 may be corrected at any time to accomplish the purpose of
173 extending or concluding an affected rulemaking proceeding and
174 shall be deemed corrected as of the October 1 due date. Upon

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175 publication of any such correction, the agency shall publish a
176 notice in the Florida Administrative Register stating the date
177 of the correction and shall identify any affected rulemaking
178 proceeding by applicable citation to the Florida Administrative
179 Register.

180 (7) CERTIFICATION.—Each agency shall file a certification
181 with the committee upon compliance with subsection (5), upon
182 filing a notice for a deadline extension or a plan correction
183 under subsection (6), and upon completion of any act that
184 terminates a suspension under subsection (9). A certification
185 may apply to more than one notice or contemporaneous act. The
186 certification shall note the date or dates of compliance.

187 (8) SUPPLEMENTING THE REGULATORY PLAN.—After preparation of
188 the regulatory plan, the agency shall supplement the plan within
189 30 days after enactment of a law enacted before the next regular
190 session of the Legislature if such law substantively modifies
191 legal duties specifically delegated to the agency, unless the
192 law affects all or most state agencies as identified by letter
193 to the committee from the Governor or the Attorney General. The
194 supplement shall include information required under paragraph
195 (1) (a) and shall be published as required under subsection (2).
196 An agency is not required to have the supplement delivered to or
197 certified by the committee. The agency shall publish a notice of
198 publication of the supplement, including a hyperlink or Internet
199 address for direct access to the published supplement, in the
200 Florida Administrative Register. If rulemaking is necessary for
201 implementing a law reported in a supplement, the agency shall
202 publish a notice of rule development as provided in subsection
203 (5) or 60 days after the effective date of the law, whichever

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204 occurs last. The agency shall publish a notice of proposed rule
205 as provided in subsection (6) or 120 days after the effective
206 date of the law, whichever occurs last. The deadline for
207 publishing a notice of proposed rule may be extended to the
208 following October 1 if notice is provided in accordance with
209 subsection (6). If such proposed rule has not been filed by
210 October 1, a law included in a supplement shall also be included
211 in the next annual regulatory plan issued pursuant to subsection
212 (1).

213 (9) FAILURE TO COMPLY.—If an agency fails to comply with a
214 requirement in paragraph (2) (a) or subsection (6), the entire
215 rulemaking authority delegated to the agency by the Legislature
216 under any statute or law shall be suspended automatically as of
217 the due date of the required action and shall remain suspended
218 until the date the agency completes the required action or until
219 the end of the next regular session of the Legislature,
220 whichever occurs first.

221 (a) During a period of suspension pursuant to this
222 subsection, the agency has no authority to file rules for
223 adoption under s. 120.54, but may complete any action required
224 by this section and may conduct any public hearings that were
225 noticed before the period of suspension began.

226 (b) A suspension under this subsection does not authorize
227 an agency to promulgate or apply a statement defined as a rule
228 under s. 120.52(16), unless the statement was filed for adoption
229 under s. 120.54(3) before the period of suspension began.

230 (c) A suspension under this subsection shall toll the time
231 requirements under s. 120.54 for filing any rule for adoption in
232 a rulemaking proceeding initiated by the agency before the date

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233 of suspension, which time requirements shall resume on the date
234 the suspension ends.

235 (d) This subsection does not suspend the adoption of
236 emergency rules under s. 120.54(4) or rulemaking necessary to
237 ensure state compliance with federal law.

238 (10) EXCLUSION OF EDUCATIONAL UNITS.—This section does not
239 apply to educational units.

240 Section 3. Effective upon this act becoming a law:

241 (1) Sections 120.745 and 120.7455, Florida Statutes, are
242 repealed.

243 (2) Any suspension of rulemaking authority under s.
244 120.745, Florida Statutes, or s. 120.7455, Florida Statutes, is
245 rescinded. This subsection does not affect any restriction,
246 suspension, or prohibition of rulemaking authority under any
247 other provision of law.

248 (3) This section serves no other purpose and shall not be
249 codified in the Florida Statutes.

250 Section 4. Except as otherwise expressly provided in this
251 act and except for this section, which shall take effect upon
252 this act becoming a law, this act shall take effect July 1,
253 2014.