

FOR CONSIDERATION By the Committee on Governmental Oversight and Accountability

585-02150A-15

20157056pb

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 annual review of agency
6 rules; providing procedures for preparing and
7 publishing regulatory plans; specifying requirements
8 for such plans; requiring publication by specified
9 dates of notices of rule development and of proposed
10 rules necessary to implement new laws; providing for
11 suspension of an agency's rulemaking authority under
12 certain circumstances; providing for applicability;
13 repealing s. 120.7455, F.S., relating to legislative
14 survey of regulatory impacts; providing for rescission
15 of the suspension of rulemaking authority made under
16 s. 120.745, F.S.; providing effective dates.

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

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20 Section 1. Paragraph (b) of subsection (1) of section
21 120.54, Florida Statutes, is amended to read:

22 120.54 Rulemaking.—

23 (1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER THAN
24 EMERGENCY RULES.—

25 (b) Whenever an act of the Legislature is enacted which
26 requires implementation of the act by rules of an agency within
27 the executive branch of state government, such rules shall be
28 drafted and formally proposed as provided in this section within
29 the times provided in s. 120.74(5) and (6) ~~180 days after the~~

585-02150A-15

20157056pb

30 ~~effective date of the act, unless the act provides otherwise.~~

31 Section 2. Section 120.74, Florida Statutes, is amended to
32 read:

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

35 120.74 Agency annual rulemaking and regulatory plans;
36 reports.-

37 (1) REGULATORY PLAN.-By October 1 of each year, each agency
38 shall prepare an implementation and rulemaking plan.

39 (a) The plan must include a listing of each law enacted or
40 amended during the previous 12 months which creates or modifies
41 the duties or authority of the agency. If the Governor or the
42 Attorney General provides a letter to the committee stating that
43 a law affects all or most agencies, the agency may exclude the
44 law from its plan. For each law listed by an agency under this
45 paragraph, the plan must state:

46 1. Whether the agency must adopt rules to implement the
47 law.

48 2. If rulemaking is necessary to implement the law:

49 a. Whether a notice of rule development has been published
50 and, if so, the citation to such notice in the Florida
51 Administrative Register.

52 b. The date by which the agency expects to publish the
53 notice of proposed rule under s. 120.54(3)(a).

54 3. If rulemaking is not necessary to implement the law, a
55 concise written explanation of the reasons why the law may be
56 implemented without rulemaking.

57 (b) The plan must also include a listing of each law not
58 otherwise listed pursuant to paragraph (a) which the agency

585-02150A-15

20157056pb

59 expects to implement by rulemaking before the following July 1,
60 except emergency rulemaking. For each law listed under this
61 paragraph, the plan must state whether the rulemaking is
62 intended to simplify, clarify, increase efficiency, improve
63 coordination with other agencies, reduce regulatory costs, or
64 delete obsolete, unnecessary, or redundant rules.

65 (c) The plan must include any desired update to the prior
66 year's regulatory plan or supplement published pursuant to
67 subsection (8). If, in a prior year, a law was identified under
68 this paragraph or under subparagraph (a)1. as a law requiring
69 rulemaking to implement but a notice of proposed rule has not
70 been published:

71 1. The agency may identify and again list such law, noting
72 the applicable notice of rule development by citation to the
73 Florida Administrative Register; or

74 2. If the agency has subsequently determined that
75 rulemaking is not necessary to implement the law, the agency may
76 identify such law, reference the citation to the applicable
77 notice of rule development in the Florida Administrative
78 Register, and provide a concise written explanation of the
79 reason why the law may be implemented without rulemaking.

80 (d) The plan must include a certification executed on
81 behalf of the agency by both the agency head, or, if the agency
82 head is a collegial body, the chair or equivalent presiding
83 officer; and the agency general counsel, or, if the agency does
84 not have a general counsel, the individual acting as principal
85 legal advisor to the agency head. The certification must:

86 1. Verify that the persons executing the certification have
87 reviewed the plan.

585-02150A-15

20157056pb

88 2. Verify that the agency regularly reviews all of its
89 rules and identify the period during which all rules have most
90 recently been reviewed to determine if the rules remain
91 consistent with the agency's rulemaking authority and the laws
92 implemented.

93 (2) PUBLICATION AND DELIVERY TO THE COMMITTEE.—

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

95 1. Publish its regulatory plan on its website or on another
96 state website established for publication of administrative law
97 records. A clearly labeled hyperlink to the current plan must be
98 included on the agency's primary website homepage.

99 2. Electronically deliver to the committee a copy of the
100 certification required in paragraph (1)(d).

101 3. Publish in the Florida Administrative Register a notice
102 identifying the date of publication of the agency's regulatory
103 plan. The notice must include a hyperlink or website address
104 providing direct access to the published plan.

105 (b) To satisfy the requirements of paragraph (a), a board
106 established under s. 20.165(4), and any other board or
107 commission receiving administrative support from the Department
108 of Business and Professional Regulation, may coordinate with the
109 Department of Business and Professional Regulation, and a board
110 established under s. 20.43(3)(g) may coordinate with the
111 Department of Health, for inclusion of the board's or
112 commission's plan and notice of publication in the coordinating
113 department's plan and notice and for the delivery of the
114 required documentation to the committee.

115 (c) A regulatory plan prepared under subsection (1) and any
116 regulatory plan published under this chapter before July 1,

585-02150A-15

20157056pb

117 2014, shall be maintained at an active website for 10 years
118 after the date of initial publication on the agency's website or
119 another state website.

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

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

127 (a) For each board established under s. 20.165(4) and any
128 other board or commission receiving administrative support from
129 the Department of Business and Professional Regulation, the
130 Department of Business and Professional Regulation shall file
131 with the committee a certification that the department has
132 reviewed each board's and commission's regulatory plan. A
133 certification may relate to more than one board or commission.

134 (b) For each board established under s. 20.43(3)(g), the
135 Department of Health shall file with the committee a
136 certification that the department has reviewed the board's
137 regulatory plan. A certification may relate to more than one
138 board.

139 (5) DEADLINE FOR RULE DEVELOPMENT.—By November 1 of each
140 year, each agency shall publish a notice of rule development
141 under s. 120.54(2) for each law identified in the agency's
142 regulatory plan pursuant to subparagraph (1) (a)1. for which
143 rulemaking is necessary to implement but for which the agency
144 did not report the publication of a notice of rule development
145 under subparagraph (1) (a)2.

585-02150A-15

20157056pb

146 (6) DEADLINE TO PUBLISH PROPOSED RULE.—For each law for
147 which implementing rulemaking is necessary as identified in the
148 agency’s plan pursuant to subparagraph (1)(a)1. or subparagraph
149 (1)(c)1., the agency shall publish a notice of proposed rule
150 pursuant to s. 120.54(3)(a) by April 1 of the year following the
151 deadline for the regulatory plan. This deadline may be extended
152 if the agency publishes a notice of extension in the Florida
153 Administrative Register identifying each rulemaking proceeding
154 for which an extension is being noticed by citation to the
155 applicable notice of rule development as published in the
156 Florida Administrative Register. An extension shall expire on
157 October 1 after the April 1 deadline, provided that the
158 regulatory plan due on October 1 may further extend the
159 rulemaking proceeding by identification pursuant to subparagraph
160 (1)(c)1. or conclude the rulemaking proceeding by identification
161 pursuant to subparagraph (1)(c)2. A published regulatory plan
162 may be corrected at any time to accomplish the purpose of
163 extending or concluding an affected rulemaking proceeding and is
164 deemed corrected as of the October 1 due date. Upon publication
165 of a correction, the agency shall publish in the Florida
166 Administrative Register a notice of the date of the correction
167 identifying the affected rulemaking proceeding by applicable
168 citation to the Florida Administrative Register.

169 (7) CERTIFICATIONS.—Each agency shall file a certification
170 with the committee upon compliance with subsection (5), upon
171 filing a notice under subsection (6) of either a deadline
172 extension or a regulatory plan correction, and upon the
173 completion of an act that terminates a suspension under
174 subsection (9). A certification may relate to more than one

585-02150A-15

20157056pb

175 notice or contemporaneous act. The date or dates of compliance
176 shall be noted in each certification.

177 (8) SUPPLEMENTING THE REGULATORY PLAN.—After publication of
178 the regulatory plan, the agency shall supplement the plan within
179 30 days after a bill becomes a law if the law is enacted before
180 the next regular session of the Legislature and the law
181 substantively modifies the agency's specifically delegated legal
182 duties, unless the law affects all or most state agencies as
183 identified by letter to the committee from the Governor or the
184 Attorney General. The supplement must include the information
185 required in paragraph (1) (a) and shall be published as required
186 in subsection (2), but no certification or delivery to the
187 committee is required. The agency shall publish in the Florida
188 Administrative Register notice of publication of the supplement,
189 and include a hyperlink on its website or web address for direct
190 access to the published supplement. For each law reported in the
191 supplement, if rulemaking is necessary to implement the law, the
192 agency shall publish a notice of rule development by the later
193 of the date provided in subsection (5) or 60 days after the bill
194 becomes a law, and a notice of proposed rule shall be published
195 by the later of the date provided in subsection (6) or 120 days
196 after the bill becomes a law. The proposed rule deadline may be
197 extended to the following October 1 by notice as provided in
198 subsection (6). If such proposed rule has not been filed by
199 October 1, a law included in a supplement shall also be included
200 in the next annual plan pursuant to subsection (1).

201 (9) FAILURE TO COMPLY.—If an agency fails to comply with a
202 requirement of paragraph (2) (a) or subsection (6), the entire
203 rulemaking authority delegated to the agency by the Legislature

585-02150A-15

20157056pb

204 under any statute or law shall be suspended automatically as of
205 the due date of the required action and shall remain suspended
206 until the date the agency completes the required act or until
207 the end of the next regular session of the Legislature,
208 whichever occurs first.

209 (a) During a period of suspension under this subsection,
210 the agency has no authority to file rules for adoption under s.
211 120.54, but may complete any action required by this section and
212 may conduct public hearings that were noticed before the period
213 of suspension.

214 (b) A suspension under this subsection does not authorize
215 an agency to adopt or apply a statement defined as a rule under
216 s. 120.52(16) unless the statement was filed for adoption under
217 s. 120.54(3) before the suspension.

218 (c) A suspension under this subsection tolls the time
219 requirements under s. 120.54 for filing a rule for adoption in a
220 rulemaking proceeding initiated by the agency before the date of
221 the suspension. The time requirements shall resume on the date
222 the suspension ends.

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

226 (10) EDUCATIONAL UNITS.—This section does not apply to
227 educational units.

228 Section 3. Section 120.7455, Florida Statutes, is repealed.

229 Section 4. Effective upon this act becoming a law, any
230 suspension of rulemaking authority under s. 120.745, Florida
231 Statutes is rescinded. This section does not affect any
232 restriction, suspension, or prohibition of rulemaking authority

585-02150A-15

20157056pb

233 under any other provision of law.

234 Section 5. Except as otherwise expressly provided in this
235 act and except for this section, which shall take effect upon
236 this act becoming a law, this act shall take effect July 1,
237 2015.