

By the Committee on Governmental Oversight and Accountability

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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 requirements for the content  
4           of notices of rule development; revising the scope of  
5           public workshops to include information gathering for  
6           the preparation of statements of estimated regulatory  
7           costs; revising requirements for notices of proposed  
8           rules; requiring certain materials incorporated by  
9           reference to be accessible online at time of notice of  
10          proposed rule; authorizing electronic delivery of  
11          notices to persons who have requested advance notice  
12          of agency rulemaking proceedings; revising  
13          requirements for an agency's filing of specified  
14          information with the Administrative Procedures  
15          Committee; creating a presumption of adverse impact on  
16          small business in specified circumstances; requiring  
17          certain agency personnel to attend public hearings on  
18          proposed rules; requiring an agency to publish a  
19          notice of convening a separate proceeding in certain  
20          circumstances; tolling rulemaking deadlines during  
21          such separate proceedings; revising requirements for  
22          the contents of a notice of change; amending s.  
23          120.541, F.S.; revising requirements for substantially  
24          affected persons to submit proposals for lower cost  
25          regulatory alternatives to a proposed rule following a  
26          notice of change; revising requirements for an  
27          agency's consideration of such lower cost regulatory  
28          alternatives; providing for an agency's revision and  
29          publication of a revised statement of estimated

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30 regulatory costs in response to such lower cost  
31 regulatory alternatives; requiring the agency to  
32 provide specified documents on a website under  
33 specific circumstances; deleting the definition of the  
34 term "transactional costs"; providing additional  
35 requirements for the calculation of estimated  
36 regulatory costs; amending s. 190.005, F.S.; requiring  
37 a petition to include a statement explaining the  
38 prospective economic impact of the establishment of a  
39 proposed community development district; providing an  
40 effective date.

41  
42 Be It Enacted by the Legislature of the State of Florida:

43  
44 Section 1. Subsections (2) and (3) of section 120.54,  
45 Florida Statutes, are amended to read:

46 120.54 Rulemaking.—

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

48 (a) Except when the intended action is the repeal of a  
49 rule, agencies shall provide notice of the development of  
50 proposed rules by publication of a notice of rule development in  
51 the Florida Administrative Register before providing notice of a  
52 proposed rule as required by paragraph (3)(a). The notice of  
53 rule development shall indicate the subject area to be addressed  
54 by rule development, provide a short, plain explanation of the  
55 purpose and effect of the proposed rule, cite the grant of  
56 rulemaking authority pursuant to which the rule is proposed and  
57 the section or subsection of the Florida Statutes or the Laws of  
58 Florida being implemented or interpreted by the proposed rule

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59 ~~specific legal authority for the proposed rule,~~ and include the  
60 preliminary text of the proposed rules, if available, or a  
61 statement of how a person may promptly obtain, without cost, or  
62 access online, a copy of any preliminary draft, if available.  
63 The notice shall also include a statement of how a person may  
64 submit comments to the proposal and provide information  
65 regarding the potential regulatory costs.

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

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

70 2. It avoids the use of unnecessary technical or  
71 specialized language that is understood only by members of  
72 particular trades or professions.

73 (c) An agency may hold public workshops for purposes of  
74 rule development and information gathering for the preparation  
75 of the statement of estimated regulatory costs. If requested in  
76 writing by an affected person, an agency must hold public  
77 workshops, including workshops in various regions of the state  
78 or the agency's service area, for purposes of rule development  
79 and information gathering for the preparation of the statement  
80 of estimated regulatory cost ~~if requested in writing by any~~  
81 ~~affected person,~~ unless the agency head explains in writing why  
82 a workshop is unnecessary. The explanation is not final agency  
83 action subject to review pursuant to ss. 120.569 and 120.57. ~~The~~  
84 ~~failure to provide the explanation when required may be a~~  
85 ~~material error in procedure pursuant to s. 120.56(1)(e).~~ When a  
86 workshop or public hearing is held, the agency must ensure that  
87 the persons responsible for preparing the proposed rule and the

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88 statement of estimated regulatory costs are available to receive  
89 public input, to explain the agency's proposal, and to respond  
90 to questions or comments regarding the rule being developed and  
91 the statement of estimated regulatory costs. The workshop may be  
92 facilitated or mediated by a neutral third person, or the agency  
93 may employ other types of dispute resolution alternatives for  
94 the workshop that are appropriate for rule development,  
95 including the preparation of any statement of estimated  
96 regulatory costs. Notice of a rule development workshop shall be  
97 by publication in the Florida Administrative Register not less  
98 than 14 days before ~~prior to~~ the date on which the workshop is  
99 scheduled to be held and shall indicate the subject area which  
100 will be addressed; the agency contact person; and the place,  
101 date, and time of the workshop.

102 (d)1. An agency may use negotiated rulemaking in developing  
103 and adopting rules. The agency should consider the use of  
104 negotiated rulemaking when complex rules are being drafted or  
105 strong opposition to the rules is anticipated. The agency should  
106 consider, but is not limited to considering, whether a balanced  
107 committee of interested persons who will negotiate in good faith  
108 can be assembled, whether the agency is willing to support the  
109 work of the negotiating committee, and whether the agency can  
110 use the group consensus as the basis for its proposed rule.  
111 Negotiated rulemaking uses a committee of designated  
112 representatives to draft a mutually acceptable proposed rule and  
113 to develop information necessary to prepare a statement of  
114 estimated regulatory costs, when applicable.

115 2. An agency that chooses to use the negotiated rulemaking  
116 process described in this paragraph shall publish in the Florida

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117 Administrative Register a notice of negotiated rulemaking that  
118 includes a listing of the representative groups that will be  
119 invited to participate in the negotiated rulemaking process. Any  
120 person who believes that his or her interest is not adequately  
121 represented may apply to participate within 30 days after  
122 publication of the notice. All meetings of the negotiating  
123 committee shall be noticed and open to the public pursuant to  
124 the provisions of this chapter. The negotiating committee shall  
125 be chaired by a neutral facilitator or mediator.

126 3. The agency's decision to use negotiated rulemaking, its  
127 selection of the representative groups, and approval or denial  
128 of an application to participate in the negotiated rulemaking  
129 process are not agency action. Nothing in this subparagraph is  
130 intended to affect the rights of a substantially ~~an~~ affected  
131 person to challenge a proposed rule developed under this  
132 paragraph in accordance with s. 120.56(2).

133 (3) ADOPTION PROCEDURES.—

134 (a) *Notices.*—

135 1. Before ~~Prior to~~ the adoption, amendment, or repeal of  
136 any rule other than an emergency rule, an agency, upon approval  
137 of the agency head, shall give notice of its intended action,  
138 setting forth a short, plain explanation of the purpose and  
139 effect of the proposed action; the full text of the proposed  
140 rule or amendment and a summary thereof; a reference to the  
141 grant of rulemaking authority pursuant to which the rule is  
142 adopted; and a reference to the section or subsection of the  
143 Florida Statutes or the Laws of Florida being implemented or  
144 interpreted. The notice must include a statement as to whether  
145 the agency held a public workshop for the purpose of development

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146 of the proposed rule, and if not, whether a workshop was  
147 requested in writing. If a rule development workshop was not  
148 held, the notice must include a copy of the written explanation  
149 from the agency head as to why a workshop was unnecessary. The  
150 notice must include a summary of the agency's statement of the  
151 estimated regulatory costs, including an electronic hyperlink to  
152 a copy of the statement of estimated regulatory costs on the  
153 agency's website, if a statement ~~one~~ has been prepared, based on  
154 the factors set forth in s. 120.541(2); a statement that any  
155 person who wishes to provide the agency with information  
156 regarding the statement of estimated regulatory costs, or to  
157 provide a proposal for a lower cost regulatory alternative as  
158 provided by s. 120.541(1), must do so in writing within 21 days  
159 after publication of the notice; and a statement as to whether,  
160 based on the statement of the estimated regulatory costs or  
161 other information expressly relied upon and described by the  
162 agency if no statement of regulatory costs is required, the  
163 proposed rule is expected to require legislative ratification  
164 pursuant to s. 120.541(3). The notice must state the procedure  
165 for requesting a public hearing on the proposed rule. Except  
166 when the intended action is the repeal of a rule, the notice  
167 must include a reference both to the date on which and to the  
168 place where the notice of rule development that is required by  
169 subsection (2) appeared.

170 2. The notice shall be published in the Florida  
171 Administrative Register at least ~~not less than~~ 28 days before  
172 ~~prior to~~ the intended action. The proposed rule shall be  
173 available for inspection and copying by the public at the time  
174 of the publication of notice. At the time of publication of the

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175 notice, the agency must make available by electronic hyperlink  
176 all materials incorporated by reference in the proposed rule.  
177 The notice shall include the electronic hyperlink for access to  
178 materials incorporated by reference. If the agency determines  
179 that posting would constitute a violation of federal copyright  
180 law, the notice must include the statement required in sub-  
181 subparagraph (1)(i)3.b.

182 3. The notice shall be mailed to all persons named in the  
183 proposed rule and mailed or delivered electronically to all  
184 persons who, at least 14 days before ~~prior to~~ such mailing, have  
185 made requests of the agency for advance notice of its  
186 proceedings. The agency shall also give such notice as is  
187 prescribed by rule to those particular classes of persons to  
188 whom the intended action is directed.

189 4. The adopting agency shall file with the committee, at  
190 least 21 days before ~~prior to~~ the proposed adoption date, a copy  
191 of each rule it proposes to adopt; a copy of any material  
192 incorporated by reference in the rule; a detailed written  
193 statement of the facts and circumstances justifying the proposed  
194 rule; a copy of any statement of estimated regulatory costs that  
195 has been prepared pursuant to s. 120.541; a statement of the  
196 extent to which the proposed rule relates to federal standards  
197 or rules on the same subject; and the notice required by  
198 subparagraph 1. In lieu of filing a required statement or copy  
199 with the committee for each such rule, the agency may file with  
200 the committee information providing an electronic hyperlink to a  
201 readily accessible copy of the required statement or copy.

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

203 1. Statement of estimated regulatory costs.—Before the

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204 adoption, amendment, or repeal of any rule other than an  
205 emergency rule, an agency is encouraged to prepare a statement  
206 of estimated regulatory costs of the proposed rule, as provided  
207 by s. 120.541. However, an agency must prepare a statement of  
208 estimated regulatory costs of the proposed rule, as provided by  
209 s. 120.541, if:

210 a. The proposed rule will have an adverse impact on small  
211 business; or

212 b. The proposed rule is likely to directly or indirectly  
213 increase regulatory costs in excess of \$200,000 in the aggregate  
214 in this state within 1 year after the implementation of the  
215 rule.

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

217 a. For purposes of this subsection and s. 120.541(2), an  
218 adverse impact on small business is presumed if, for any small  
219 business:

220 (I) An owner, officer, operator, or manager must complete  
221 any education, training, or testing to comply, or is likely to  
222 either expend 10 hours or purchase professional advice to  
223 understand and comply with the rule in the first year;

224 (II) Taxes or fees assessed on transactions are likely to  
225 increase by \$500 or more in the aggregate in 1 year;

226 (III) Prices charged for goods and services are restricted  
227 or are likely to increase because of the rule;

228 (IV) Specially trained, licensed, or tested employees will  
229 be required;

230 (V) Operating costs are expected to increase by at least  
231 \$1,000 annually; or

232 (VI) Capital expenditures in excess of \$1,000 are necessary



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233 to comply with the rule.

234 b. Each agency, before the adoption, amendment, or repeal  
235 of a rule, shall consider the impact of the rule on small  
236 businesses as defined by s. 288.703 and the impact of the rule  
237 on small counties or small cities as defined by s. 120.52.  
238 Whenever practicable, an agency shall tier its rules to reduce  
239 disproportionate impacts on small businesses, small counties, or  
240 small cities to avoid regulating small businesses, small  
241 counties, or small cities that do not contribute significantly  
242 to the problem the rule is designed to address. An agency may  
243 define "small business" to include businesses employing more  
244 than 200 persons, may define "small county" to include those  
245 with populations of more than 75,000, and may define "small  
246 city" to include those with populations of more than 10,000, if  
247 it finds that such a definition is necessary to adapt a rule to  
248 the needs and problems of small businesses, small counties, or  
249 small cities. The agency shall consider each of the following  
250 methods for reducing the impact of the proposed rule on small  
251 businesses, small counties, and small cities, or any combination  
252 of these entities:

253 (I) Establishing less stringent compliance or reporting  
254 requirements in the rule.

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

257 (III) Consolidating or simplifying the rule's compliance or  
258 reporting requirements.

259 (IV) Establishing performance standards or best management  
260 practices to replace design or operational standards in the  
261 rule.

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

264 ~~c.b.~~(I) If the agency determines that the proposed action  
265 will affect small businesses as defined by the agency as  
266 provided in sub-subparagraph b. a., the agency shall send  
267 written notice of the rule to the rules ombudsman in the  
268 Executive Office of the Governor at least 28 days before the  
269 intended action.

270 (II) Each agency shall adopt those regulatory alternatives  
271 offered by the rules ombudsman in the Executive Office of the  
272 Governor and provided to the agency no later than 21 days after  
273 the rules ombudsman's receipt of the written notice of the rule  
274 which it finds are feasible and consistent with the stated  
275 objectives of the proposed rule and which would reduce the  
276 impact on small businesses. When regulatory alternatives are  
277 offered by the rules ombudsman in the Executive Office of the  
278 Governor, the 90-day period for filing the rule in subparagraph  
279 (e)2. is extended for a period of 21 days.

280 (III) If an agency does not adopt all alternatives offered  
281 pursuant to this sub-subparagraph, it shall, before rule  
282 adoption or amendment and pursuant to subparagraph (d)1., file a  
283 detailed written statement with the committee explaining the  
284 reasons for failure to adopt such alternatives. Within 3 working  
285 days after the filing of such notice, the agency shall send a  
286 copy of such notice to the rules ombudsman in the Executive  
287 Office of the Governor.

288 (c) *Hearings.*—

289 1. If the intended action concerns any rule other than one  
290 relating exclusively to procedure or practice, the agency shall,

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291 on the request of any affected person received within 21 days  
292 after the date of publication of the notice of intended agency  
293 action, give affected persons an opportunity to present evidence  
294 and argument on all issues under consideration. The agency may  
295 schedule a public hearing on the proposed rule and, if requested  
296 by any affected person, shall schedule a public hearing on the  
297 proposed rule. When a public hearing is held, the agency must  
298 ensure that the persons responsible for preparing the proposed  
299 rule and the statement of estimated regulatory costs ~~staff~~ are  
300 available to explain the agency's proposal and to respond to  
301 questions or comments regarding the proposed rule, the statement  
302 of estimated regulatory costs, and the agency's decision whether  
303 to adopt a lower cost regulatory alternative submitted pursuant  
304 to s. 120.541(1)(a). If the agency head is a board or other  
305 collegial body created under s. 20.165(4) or s. 20.43(3)(g), and  
306 one or more requested public hearings is scheduled, the board or  
307 other collegial body shall conduct at least one of the public  
308 hearings itself and may not delegate this responsibility without  
309 the consent of those persons requesting the public hearing. Any  
310 material pertinent to the issues under consideration submitted  
311 to the agency within 21 days after the date of publication of  
312 the notice or submitted to the agency between the date of  
313 publication of the notice and the end of the final public  
314 hearing shall be considered by the agency and made a part of the  
315 record of the rulemaking proceeding.

316 2. Rulemaking proceedings shall be governed solely by the  
317 provisions of this section unless a person timely asserts that  
318 the person's substantial interests will be affected in the  
319 proceeding and affirmatively demonstrates to the agency that the

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320 proceeding does not provide adequate opportunity to protect  
321 those interests. If the agency determines that the rulemaking  
322 proceeding is not adequate to protect the person's interests, it  
323 shall suspend the rulemaking proceeding and convene a separate  
324 proceeding under ~~the provisions of~~ ss. 120.569 and 120.57. The  
325 agency shall publish notice of convening a separate proceeding  
326 in the Florida Administrative Register. Similarly situated  
327 persons may be requested to join and participate in the separate  
328 proceeding. Upon conclusion of the separate proceeding, the  
329 rulemaking proceeding shall be resumed. All timelines in this  
330 section are tolled during any suspension of the rulemaking  
331 proceeding under this subparagraph, beginning on the date that  
332 the notice of convening a separate proceeding is published and  
333 resuming on the day immediately after conclusion of the separate  
334 proceeding.

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

336 1. After the final public hearing on the proposed rule, or  
337 after the time for requesting a hearing has expired, if the  
338 proposed rule has not been changed from the proposed rule as  
339 previously filed with the committee, or contains only technical  
340 changes that do not affect the substance of the rule, the  
341 adopting agency shall file a notice to that effect with the  
342 committee at least 7 days before ~~prior to~~ filing the rule for  
343 adoption. Any change, other than a technical change ~~that does~~  
344 ~~not affect the substance of the rule,~~ must be supported by the  
345 record of public hearings held on the proposed rule, must be in  
346 response to written material submitted to the agency within 21  
347 days after the date of publication of the notice of intended  
348 agency action or submitted to the agency between the date of

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349 publication of the notice and the end of the final public  
350 hearing, or must be in response to a proposed objection by the  
351 committee. In addition, when any change is made in a proposed  
352 rule, other than a technical change, the adopting agency shall  
353 provide a copy of a notice of change by certified mail or actual  
354 delivery to any person who requests it in writing no later than  
355 21 days after the notice required in paragraph (a). The agency  
356 shall file the notice of change with the committee, along with  
357 the reasons for the change, and provide the notice of change to  
358 persons requesting it, at least 21 days before ~~prior to~~ filing  
359 the rule for adoption. The notice of change shall be published  
360 in the Florida Administrative Register at least 21 days before  
361 ~~prior to~~ filing the rule for adoption. The notice of change must  
362 include either a summary of any statement of estimated  
363 regulatory costs prepared as a consequence of the change, a  
364 summary of any revision of the statement of estimated regulatory  
365 costs required by s. 120.541(1)(c), or a statement that the  
366 proposed rule as changed does not require preparation of a  
367 statement of estimated regulatory costs under paragraph (b) and  
368 s. 120.541(1)(b). This subparagraph does not apply to emergency  
369 rules adopted pursuant to subsection (4).

370 2. After the notice required by paragraph (a) and before  
371 ~~prior to~~ adoption, the agency may withdraw the proposed rule in  
372 whole or in part.

373 3. After adoption and before the rule becomes effective, a  
374 rule may be modified or withdrawn only in the following  
375 circumstances:

- 376 a. When the committee objects to the rule;  
377 b. When a final order, which is not subject to further

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378 appeal, is entered in a rule challenge brought pursuant to s.  
379 120.56 after the date of adoption but before the rule becomes  
380 effective pursuant to subparagraph (e)6.;

381 c. If the rule requires ratification, when more than 90  
382 days have passed since the rule was filed for adoption without  
383 the Legislature ratifying the rule, in which case the rule may  
384 be withdrawn but may not be modified; or

385 d. When the committee notifies the agency that an objection  
386 to the rule is being considered, in which case the rule may be  
387 modified to extend the effective date by not more than 60 days.

388 4. The agency shall give notice of its decision to withdraw  
389 or modify a rule in the first available issue of the publication  
390 in which the original notice of rulemaking was published, shall  
391 notify those persons described in subparagraph (a)3. in  
392 accordance with the requirements of that subparagraph, and shall  
393 notify the Department of State if the rule is required to be  
394 filed with the Department of State.

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

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

399 1. If the adopting agency is required to publish its rules  
400 in the Florida Administrative Code, the agency, upon approval of  
401 the agency head, shall file with the Department of State three  
402 certified copies of the rule it proposes to adopt; one copy of  
403 any material incorporated by reference in the rule, certified by  
404 the agency; a summary of the rule; a summary of any hearings  
405 held on the rule; and a detailed written statement of the facts  
406 and circumstances justifying the rule. Agencies not required to

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407 publish their rules in the Florida Administrative Code shall  
408 file one certified copy of the proposed rule, and the other  
409 material required by this subparagraph, in the office of the  
410 agency head, and such rules shall be open to the public.

411 2. A rule may not be filed for adoption less than 28 days  
412 or more than 90 days after the notice required by paragraph (a),  
413 until 21 days after the notice of change required by paragraph  
414 (d), until 14 days after the final public hearing, until 21 days  
415 after a statement of estimated regulatory costs required under  
416 s. 120.541 has been provided to all persons who submitted a  
417 lower cost regulatory alternative and made available to the  
418 public at a readily accessible page on the agency's website, or  
419 until the administrative law judge has rendered a decision under  
420 s. 120.56(2), whichever applies. When a required notice of  
421 change is published before ~~prior to~~ the expiration of the time  
422 to file the rule for adoption, the period during which a rule  
423 must be filed for adoption is extended to 45 days after the date  
424 of publication. If notice of a public hearing is published  
425 before ~~prior to~~ the expiration of the time to file the rule for  
426 adoption, the period during which a rule must be filed for  
427 adoption is extended to 45 days after adjournment of the final  
428 hearing on the rule, 21 days after receipt of all material  
429 authorized to be submitted at the hearing, or 21 days after  
430 receipt of the transcript, if one is made, whichever is latest.  
431 The term "public hearing" includes any public meeting held by  
432 any agency at which the rule is considered. If a petition for an  
433 administrative determination under s. 120.56(2) is filed, the  
434 period during which a rule must be filed for adoption is  
435 extended to 60 days after the administrative law judge files the

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436 final order with the clerk or until 60 days after subsequent  
437 judicial review is complete.

438         3. At the time a rule is filed, the agency shall certify  
439 that the time limitations prescribed by this paragraph have been  
440 complied with, that all statutory rulemaking requirements have  
441 been met, and that there is no administrative determination  
442 pending on the rule.

443         4. At the time a rule is filed, the committee shall certify  
444 whether the agency has responded in writing to all material and  
445 timely written comments or written inquiries made on behalf of  
446 the committee. The Department of State shall reject any rule  
447 that is not filed within the prescribed time limits; that does  
448 not comply with all statutory rulemaking requirements and rules  
449 of the Department of State; upon which an agency has not  
450 responded in writing to all material and timely written  
451 inquiries or written comments; upon which an administrative  
452 determination is pending; or which does not include a statement  
453 of estimated regulatory costs, if required.

454         5. If a rule has not been adopted within the time limits  
455 imposed by this paragraph or has not been adopted in compliance  
456 with all statutory rulemaking requirements, the agency proposing  
457 the rule shall withdraw the proposed rule and give notice of its  
458 action in the next available issue of the Florida Administrative  
459 Register.

460         6. The proposed rule shall be adopted on being filed with  
461 the Department of State and become effective 20 days after being  
462 filed, on a later date specified in the notice required by  
463 subparagraph (a)1., on a date required by statute, or upon  
464 ratification by the Legislature pursuant to s. 120.541(3). Rules



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465 not required to be filed with the Department of State shall  
466 become effective when adopted by the agency head, on a later  
467 date specified by rule or statute, or upon ratification by the  
468 Legislature pursuant to s. 120.541(3). If the committee notifies  
469 an agency that an objection to a rule is being considered, the  
470 agency may postpone the adoption of the rule to accommodate  
471 review of the rule by the committee. When an agency postpones  
472 adoption of a rule to accommodate review by the committee, the  
473 90-day period for filing the rule is tolled until the committee  
474 notifies the agency that it has completed its review of the  
475 rule.

476  
477 For the purposes of this paragraph, the term "administrative  
478 determination" does not include subsequent judicial review.

479 Section 2. Section 120.541, Florida Statutes, is amended to  
480 read:

481 120.541 Statement of estimated regulatory costs.—

482 (1) (a) Within 21 days after publication of the notice of  
483 proposed rule required under s. 120.54(3) (a), or of a notice of  
484 change under s. 120.54(3) (d)1., a substantially affected person  
485 may submit to an agency a good faith written proposal for a  
486 lower cost regulatory alternative to a proposed rule which  
487 substantially accomplishes the objectives of the law being  
488 implemented. The proposal may include the alternative of not  
489 adopting any rule if the proposal explains how the lower costs  
490 and objectives of the law will be achieved by not adopting any  
491 rule. If submitted after a notice of change, a proposal is  
492 deemed to be made in good faith only if the person reasonably  
493 believes and the proposal states the person's reasons for

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494 believing that the proposed rule as changed by the notice of  
495 change increases the regulatory costs or creates an adverse  
496 impact on small business that was not created by the previous  
497 proposal. If ~~such~~ a proposal is submitted, the 90-day period for  
498 filing the rule is extended 21 days. Upon the submission of the  
499 lower cost regulatory alternative, the agency shall prepare a  
500 statement of estimated regulatory costs as provided in  
501 subsection (2), or shall revise its prior statement of estimated  
502 regulatory costs, and either adopt the alternative proposal,  
503 reject the alternative proposal, or modify the proposed rule to  
504 substantially reduce the regulatory costs. If the agency rejects  
505 the alternative proposal or modifies the proposed rule, the  
506 agency shall ~~or~~ provide a statement of the reasons for rejecting  
507 the alternative proposal in favor of the proposed or modified  
508 rule.

509 (b) If a proposed rule will have an adverse impact on small  
510 business as set forth in s. 120.54(3)(b) or if the proposed rule  
511 is likely to directly or indirectly increase regulatory costs in  
512 excess of \$200,000 in the aggregate within 1 year after the  
513 implementation of the rule, the agency shall prepare a statement  
514 of estimated regulatory costs as required by s. 120.54(3)(b).

515 (c) The agency shall revise a statement of estimated  
516 regulatory costs if any change to the rule made under s.  
517 120.54(3)(d) increases the regulatory costs of the rule or if  
518 the rule is modified in response to the submission of a lower  
519 cost regulatory alternative. A summary of the revised statement  
520 must be included with any subsequent notice published under s.  
521 120.54(3).

522 (d) At least 21 days before filing the rule for adoption,

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523 an agency that is required to revise a statement of estimated  
524 regulatory costs shall provide the statement to the person who  
525 submitted the lower cost regulatory alternative, to the rules  
526 ombudsman in the Executive Office of the Governor, and to the  
527 committee. The revised statement shall be published and made  
528 available in the same manner as the original statement of  
529 estimated regulatory costs ~~and shall provide notice on the~~  
530 ~~agency's website that it is available to the public.~~

531 (e) Notwithstanding s. 120.56(1)(c), the failure of the  
532 agency to prepare and publish a statement of estimated  
533 regulatory costs or to respond to a written lower cost  
534 regulatory alternative as provided in this subsection is a  
535 material failure to follow the applicable rulemaking procedures  
536 or requirements set forth in this chapter.

537 (f) An agency's failure to prepare and publish a statement  
538 of estimated regulatory costs or to respond to a written lower  
539 cost regulatory alternative may not be raised in a proceeding  
540 challenging the validity of a rule pursuant to s. 120.52(8)(a)  
541 unless:

542 1. Raised in a petition filed no later than 1 year after  
543 the effective date of the rule; and

544 2. Raised by a person whose substantial interests are  
545 affected by the rule's regulatory costs.

546 (g) A rule that is challenged pursuant to s. 120.52(8)(f)  
547 may not be declared invalid unless:

548 1. The issue is raised in an administrative proceeding  
549 within 1 year after the effective date of the rule;

550 2. The challenge is to the agency's rejection of a lower  
551 cost regulatory alternative offered under paragraph (a) or s.

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552 120.54(3)(b)2.c. ~~s. 120.54(3)(b)2.b.~~; and

553 3. The substantial interests of the person challenging the  
554 rule are materially affected by the rejection.

555 (h) Any of the following documents prepared by or on behalf  
556 of an agency shall be publicly available on the agency's  
557 website, or on another state website established for publication  
558 of administrative law records, until the rule to which the  
559 document applies is withdrawn or repealed, or until the rule is  
560 amended and accompanied by the preparation of a new statement of  
561 estimated regulatory costs:

562 1. A statement of estimated regulatory costs prepared with  
563 respect to a rule proposed or filed for adoption after November  
564 16, 2010;

565 2. A revision of a statement of estimated regulatory costs  
566 prepared with respect to a rule proposed or filed for adoption  
567 after November 16, 2010;

568 3. A compliance economic review published pursuant to s.  
569 120.745(5); or

570 4. A report on an economic estimate of regulatory costs and  
571 economic impact published pursuant to s. 120.745(9)(b).

572 (2) A statement of estimated regulatory costs shall  
573 include:

574 (a) An economic analysis showing whether the rule directly  
575 or indirectly:

576 1. Is likely to have an adverse impact on economic growth,  
577 private sector job creation or employment, or private sector  
578 investment in excess of \$1 million in the aggregate within 5  
579 years after the implementation of the rule;

580 2. Is likely to have an adverse impact on business

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581 competitiveness, including the ability of persons doing business  
582 in the state to compete with persons doing business in other  
583 states or domestic markets, productivity, or innovation in  
584 excess of \$1 million in the aggregate within 5 years after the  
585 implementation of the rule; or

586 3. Is likely to increase regulatory costs, including all  
587 any ~~transactional~~ costs and impacts estimated in the statement,  
588 in excess of \$1 million in the aggregate within 5 years after  
589 the implementation of the rule.

590 (b) A good faith estimate of the number of individuals,  
591 small businesses, and other entities likely to be required to  
592 comply with the rule, together with a general description of the  
593 types of individuals likely to be affected by the rule.

594 (c) A good faith estimate of the cost to the agency, and to  
595 any other state and local government entities, of implementing  
596 and enforcing the proposed rule, and any anticipated effect on  
597 state or local revenues.

598 (d) A good faith estimate of the compliance ~~transactional~~  
599 costs likely to be incurred by individuals and entities,  
600 including local government entities, required to comply with the  
601 requirements of the rule. ~~As used in this section,~~  
602 ~~"transactional costs" are direct costs that are readily~~  
603 ~~ascertainable based upon standard business practices, and~~  
604 ~~include filing fees, the cost of obtaining a license, the cost~~  
605 ~~of equipment required to be installed or used or procedures~~  
606 ~~required to be employed in complying with the rule, additional~~  
607 ~~operating costs incurred, the cost of monitoring and reporting,~~  
608 ~~and any other costs necessary to comply with the rule.~~

609 (e) An analysis of the impact on small businesses as

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610 defined by s. 288.703, and an analysis of the impact on small  
611 counties and small cities as defined in s. 120.52. The impact  
612 analysis for small businesses must include the basis for the  
613 agency's decision not to implement alternatives that would  
614 reduce adverse impacts on small businesses.

615 (f) Any additional information that the agency determines  
616 may be useful.

617 ~~(g) In the statement or revised statement, whichever~~  
618 ~~applies,~~ A description of any regulatory alternatives submitted  
619 under paragraph (1) (a) and a statement adopting the alternative  
620 or a statement of the reasons for rejecting the alternative in  
621 favor of the proposed rule.

622 (3) If the adverse impact or regulatory costs of the rule  
623 exceed any of the criteria established in paragraph (2) (a), the  
624 rule shall be submitted to the President of the Senate and  
625 Speaker of the House of Representatives no later than 30 days  
626 before ~~prior to~~ the next regular legislative session, and the  
627 rule may not take effect until it is ratified by the  
628 Legislature.

629 (4) Subsection (3) does not apply to the adoption of:

630 (a) Federal standards pursuant to s. 120.54(6).

631 (b) Triennial updates of and amendments to the Florida  
632 Building Code which are expressly authorized by s. 553.73.

633 (c) Triennial updates of and amendments to the Florida Fire  
634 Prevention Code which are expressly authorized by s. 633.202.

635 (5) (a) For purposes of subsections (2) and (3), impacts and  
636 costs incurred within 5 years after implementation of the rule  
637 shall include the applicable costs and impacts estimated to be  
638 incurred within the first 5 years after the effective date of

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639 the rule. However, if any provisions of the rule are not fully  
640 implemented and enforceable upon the effective date of the rule,  
641 the impacts and costs must be adjusted to include any additional  
642 costs and impacts estimated to be incurred within 5 years after  
643 the implementation and enforcement of the provisions of the rule  
644 that were not fully implemented upon the effective date of the  
645 rule.

646 (b) In evaluating the impacts described in paragraphs  
647 (2) (a) and (2) (e), an agency shall include good faith estimates  
648 of market impacts likely to result from compliance with the  
649 rule, including:

650 1. Increased customer charges for goods and services.

651 2. Decreased market value of goods and services produced,  
652 provided, or sold.

653 3. Increased costs resulting from the purchase of  
654 substitute or alternative products or services.

655 4. The reasonable value of time to be expended by owners,  
656 officers, operators, and managers to understand and comply,  
657 including, but not limited to, time expended to complete  
658 required education, training, or testing.

659 5. Capital costs.

660 6. Any other impacts suggested by the rules ombudsman, the  
661 agency head's appointing authority, or interested persons.

662 (c) In estimating the information required in paragraphs  
663 (2) (b) - (e), the agency may use reasonably applicable surveys of  
664 individuals, businesses, business organizations and  
665 representatives, cities, and counties to collect data helpful to  
666 estimate the costs and impacts. The agency shall also solicit  
667 helpful information in each notice related to the proposed rule.

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668 The rules ombudsman and the committee may recommend survey  
669 instruments and methods to assist agencies in administering this  
670 section. Such recommendations and agency decisions regarding  
671 surveys and methods do not constitute rules or agency actions  
672 under this chapter.

673 (d) In estimating compliance costs under paragraph (2) (d),  
674 the agency shall consider, among other matters, all direct and  
675 indirect costs necessary to comply with the rule that are  
676 readily ascertainable based upon standard business practices,  
677 including, but not limited to, costs related to:

678 1. Filing fees.

679 2. Obtaining a license.

680 3. Necessary equipment.

681 4. Installation, utilities, and maintenance of necessary  
682 equipment.

683 5. Necessary operations and procedures.

684 6. Accounting, financial, information and management  
685 systems, and other administrative processes.

686 7. Other processes.

687 8. Labor based on relevant rates of wages, salaries and  
688 benefits.

689 9. Materials and supplies.

690 10. Capital expenditures including financing costs.

691 11. Professional and technical services, including  
692 contracted services necessary to implement and maintain  
693 compliance.

694 12. Monitoring and reporting.

695 13. Qualifying and recurring education, training, and  
696 testing.



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- 697       14. Travel.
- 698       15. Insurance and surety requirements.
- 699       16. A fair and reasonable allocation of administrative  
700 costs and other overhead.
- 701       17. Reduced sales or other revenues.
- 702       18. Other items suggested by the rules ombudsman, the  
703 committee, or any interested person, business organization, or  
704 business representative.

705       Section 3. Paragraph (a) of subsection (1) of section  
706 190.005, Florida Statutes, is amended to read:

707       190.005 Establishment of district.—

708       (1) The exclusive and uniform method for the establishment  
709 of a community development district with a size of 1,000 acres  
710 or more shall be pursuant to a rule, adopted under chapter 120  
711 by the Florida Land and Water Adjudicatory Commission, granting  
712 a petition for the establishment of a community development  
713 district.

714       (a) A petition for the establishment of a community  
715 development district shall be filed by the petitioner with the  
716 Florida Land and Water Adjudicatory Commission. The petition  
717 shall contain:

718       1. A metes and bounds description of the external  
719 boundaries of the district. Any real property within the  
720 external boundaries of the district which is to be excluded from  
721 the district shall be specifically described, and the last known  
722 address of all owners of such real property shall be listed. The  
723 petition shall also address the impact of the proposed district  
724 on any real property within the external boundaries of the  
725 district which is to be excluded from the district.

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726           2. The written consent to the establishment of the district  
727 by all landowners whose real property is to be included in the  
728 district or documentation demonstrating that the petitioner has  
729 control by deed, trust agreement, contract, or option of 100  
730 percent of the real property to be included in the district, and  
731 when real property to be included in the district is owned by a  
732 governmental entity and subject to a ground lease as described  
733 in s. 190.003(14), the written consent by such governmental  
734 entity.

735           3. A designation of five persons to be the initial members  
736 of the board of supervisors, who shall serve in that office  
737 until replaced by elected members as provided in s. 190.006.

738           4. The proposed name of the district.

739           5. A map of the proposed district showing current major  
740 trunk water mains and sewer interceptors and outfalls if in  
741 existence.

742           6. Based upon available data, the proposed timetable for  
743 construction of the district services and the estimated cost of  
744 constructing the proposed services. These estimates shall be  
745 submitted in good faith but are not binding and may be subject  
746 to change.

747           7. A designation of the future general distribution,  
748 location, and extent of public and private uses of land proposed  
749 for the area within the district by the future land use plan  
750 element of the effective local government comprehensive plan of  
751 which all mandatory elements have been adopted by the applicable  
752 general-purpose local government in compliance with the  
753 Community Planning Act.

754           8. A statement explaining the prospective economic impact

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755 of establishment of the proposed district ~~of estimated~~  
756 ~~regulatory costs in accordance with the requirements of s.~~  
757 ~~120.541.~~

758 Section 4. This act shall take effect July 1, 2015.