

1 A bill to be entitled
 2 An act relating to agency rulemaking; amending s.
 3 120.54, F.S.; requiring an agency to prepare a
 4 statement of estimated regulatory costs before
 5 adopting, amending, or repealing any rule other than
 6 an emergency rule; amending s. 120.541, F.S.;
 7 requiring the Department of State to maintain a
 8 website that solely includes statements of estimated
 9 regulatory costs; requiring an agency that prepares or
 10 revises a statement to provide the statement to the
 11 department for publication on the website; requiring
 12 an agency to include an Internet website link to the
 13 department's website on the website of the agency;
 14 requiring the department's website to be accessible to
 15 the public; prohibiting the required use of login
 16 credentials for Internet access of certain statements;
 17 conforming provisions to changes made by the act;
 18 amending s. 120.56, F.S.; conforming a cross-
 19 reference; providing an effective date.

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

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 23 Section 1. Paragraphs (a) and (b) of subsection (3) of
 24 section 120.54, Florida Statutes, are amended to read:
 25 120.54 Rulemaking.—

26 (3) ADOPTION PROCEDURES.—
 27 (a) Notices.—
 28 1. Prior to the adoption, amendment, or repeal of any rule
 29 other than an emergency rule, an agency, ~~upon approval of the~~
 30 ~~agency head,~~ shall give notice of its intended action, setting
 31 forth a short, plain explanation of the purpose and effect of
 32 the proposed action; the full text of the proposed rule or
 33 amendment and a summary thereof; a reference to the grant of
 34 rulemaking authority pursuant to which the rule is adopted; and
 35 a reference to the section or subsection of the Florida Statutes
 36 or the Laws of Florida being implemented or interpreted. The
 37 notice must include a summary of the agency's statement of the
 38 estimated regulatory costs, ~~if one has been prepared,~~ based on
 39 the factors set forth in s. 120.541(2); a statement that any
 40 person who wishes to provide the agency with information
 41 regarding the statement of estimated regulatory costs, or to
 42 provide a proposal for a lower cost regulatory alternative as
 43 provided by s. 120.541(1), must do so in writing within 21 days
 44 after publication of the notice; and a statement as to whether,
 45 based on the statement of the estimated regulatory costs ~~or~~
 46 ~~other information expressly relied upon and described by the~~
 47 ~~agency if no statement of regulatory costs is required,~~ the
 48 proposed rule is expected to require legislative ratification
 49 pursuant to s. 120.541(3). The notice must state the procedure
 50 for requesting a public hearing on the proposed rule. Except

51 when the intended action is the repeal of a rule, the notice
52 must include a reference both to the date on which and to the
53 place where the notice of rule development that is required by
54 subsection (2) appeared.

55 2. The notice shall be published in the Florida
56 Administrative Register not less than 28 days prior to the
57 intended action. The proposed rule shall be available for
58 inspection and copying by the public at the time of the
59 publication of notice.

60 3. The notice shall be mailed to all persons named in the
61 proposed rule and to all persons who, at least 14 days prior to
62 such mailing, have made requests of the agency for advance
63 notice of its proceedings. The agency shall also give such
64 notice as is prescribed by rule to those particular classes of
65 persons to whom the intended action is directed.

66 4. The adopting agency shall file with the committee, at
67 least 21 days prior to the proposed adoption date, a copy of
68 each rule it proposes to adopt; a copy of any material
69 incorporated by reference in the rule; a detailed written
70 statement of the facts and circumstances justifying the proposed
71 rule; a copy of any statement of estimated regulatory costs that
72 has been prepared pursuant to s. 120.541; a statement of the
73 extent to which the proposed rule relates to federal standards
74 or rules on the same subject; and the notice required by
75 subparagraph 1.

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

77 1. Statement of estimated regulatory costs.—Before the
78 adoption, amendment, or repeal of any rule other than an
79 emergency rule, an agency must ~~is encouraged to~~ prepare a
80 statement of estimated regulatory costs of the proposed rule, as
81 provided by s. 120.541. ~~However, an agency must prepare a~~
82 ~~statement of estimated regulatory costs of the proposed rule, as~~
83 ~~provided by s. 120.541, if:~~

84 a. ~~The proposed rule will have an adverse impact on small~~
85 ~~business; or~~

86 b. ~~The proposed rule is likely to directly or indirectly~~
87 ~~increase regulatory costs in excess of \$200,000 in the aggregate~~
88 ~~in this state within 1 year after the implementation of the~~
89 ~~rule.~~

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

91 a. Each agency, before the adoption, amendment, or repeal
92 of a rule, shall consider the impact of the rule on small
93 businesses as defined by s. 288.703 and the impact of the rule
94 on small counties or small cities as defined by s. 120.52.
95 Whenever practicable, an agency shall tier its rules to reduce
96 disproportionate impacts on small businesses, small counties, or
97 small cities to avoid regulating small businesses, small
98 counties, or small cities that do not contribute significantly
99 to the problem the rule is designed to address. An agency may
100 define "small business" to include businesses employing more

101 than 200 persons, may define "small county" to include those
102 with populations of more than 75,000, and may define "small
103 city" to include those with populations of more than 10,000, if
104 it finds that such a definition is necessary to adapt a rule to
105 the needs and problems of small businesses, small counties, or
106 small cities. The agency shall consider each of the following
107 methods for reducing the impact of the proposed rule on small
108 businesses, small counties, and small cities, or any combination
109 of these entities:

110 (I) Establishing less stringent compliance or reporting
111 requirements in the rule.

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

114 (III) Consolidating or simplifying the rule's compliance
115 or reporting requirements.

116 (IV) Establishing performance standards or best management
117 practices to replace design or operational standards in the
118 rule.

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

121 b.(I) If the agency determines that the proposed action
122 will affect small businesses as defined by the agency as
123 provided in sub-subparagraph a., the agency shall send written
124 notice of the rule to the rules ombudsman in the Executive
125 Office of the Governor at least 28 days before the intended

126 | action.

127 | (II) Each agency shall adopt those regulatory alternatives
 128 | offered by the rules ombudsman in the Executive Office of the
 129 | Governor and provided to the agency no later than 21 days after
 130 | the rules ombudsman's receipt of the written notice of the rule
 131 | which it finds are feasible and consistent with the stated
 132 | objectives of the proposed rule and which would reduce the
 133 | impact on small businesses. When regulatory alternatives are
 134 | offered by the rules ombudsman in the Executive Office of the
 135 | Governor, the 90-day period for filing the rule in subparagraph
 136 | (e)2. is extended for a period of 21 days.

137 | (III) If an agency does not adopt all alternatives offered
 138 | pursuant to this sub-subparagraph, it shall, before rule
 139 | adoption or amendment and pursuant to subparagraph (d)1., file a
 140 | detailed written statement with the committee explaining the
 141 | reasons for failure to adopt such alternatives. Within 3 working
 142 | days after the filing of such notice, the agency shall send a
 143 | copy of such notice to the rules ombudsman in the Executive
 144 | Office of the Governor.

145 | Section 2. Paragraphs (a) and (b) of subsection (1) of
 146 | section 120.541, Florida Statutes, are amended, and subsection
 147 | (6) is added to that section, to read:

148 | 120.541 Statement of estimated regulatory costs.—

149 | (1) (a) Within 21 days after publication of the notice
 150 | required under s. 120.54(3) (a), a substantially affected person

151 may submit to an agency a good faith written proposal for a
152 lower cost regulatory alternative to a proposed rule which
153 substantially accomplishes the objectives of the law being
154 implemented. The proposal may include the alternative of not
155 adopting any rule if the proposal explains how the lower costs
156 and objectives of the law will be achieved by not adopting any
157 rule. If such a proposal is submitted, the 90-day period for
158 filing the rule is extended 21 days. Upon the submission of the
159 lower cost regulatory alternative, the agency ~~shall prepare a~~
160 ~~statement of estimated regulatory costs as provided in~~
161 ~~subsection (2), or~~ shall revise its prior statement of estimated
162 regulatory costs, and either adopt the alternative or provide a
163 statement of the reasons for rejecting the alternative in favor
164 of the proposed rule.

165 ~~(b) If a proposed rule will have an adverse impact on~~
166 ~~small business or if the proposed rule is likely to directly or~~
167 ~~indirectly increase regulatory costs in excess of \$200,000 in~~
168 ~~the aggregate within 1 year after the implementation of the~~
169 ~~rule, the agency shall prepare a statement of estimated~~
170 ~~regulatory costs as required by s. 120.54(3)(b).~~

171 (6) The Department of State shall maintain a website that
172 solely includes statements of estimated regulatory costs.

173 (a) An agency that prepares a statement of estimated
174 regulatory costs must provide, after publication of the notice
175 required under s. 120.54(3)(a), the statement to the department

176 for publication on the website.

177 (b) An agency that revises a statement of estimated
 178 regulatory costs must provide, after publication of the notice
 179 required under paragraph (1) (d), the statement to the department
 180 for publication on the website.

181 (c) An agency must include an Internet website link to the
 182 department's website on the agency's website.

183 (d) The department's website must be accessible to the
 184 public and may not require the use of any login credential in
 185 order for a person to access a statement of estimated regulatory
 186 costs.

187 Section 3. Paragraph (a) of subsection (2) of section
 188 120.56, Florida Statutes, is amended to read:

189 120.56 Challenges to rules.—

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

191 (a) A petition alleging the invalidity of a proposed rule
 192 shall be filed within 21 days after the date of publication of
 193 the notice required by s. 120.54(3) (a); within 10 days after the
 194 final public hearing is held on the proposed rule as provided by
 195 s. 120.54(3) (e)2.; within 20 days after the statement of
 196 estimated regulatory costs or revised statement of estimated
 197 regulatory costs, if applicable, has been prepared and made
 198 available as provided in s. 120.541(1) (c) ~~120.541(1) (d)~~; or
 199 within 20 days after the date of publication of the notice
 200 required by s. 120.54(3) (d). The petitioner has the burden to

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201 | prove by a preponderance of the evidence that the petitioner
202 | would be substantially affected by the proposed rule. The agency
203 | then has the burden to prove by a preponderance of the evidence
204 | that the proposed rule is not an invalid exercise of delegated
205 | legislative authority as to the objections raised. A person who
206 | is not substantially affected by the proposed rule as initially
207 | noticed, but who is substantially affected by the rule as a
208 | result of a change, may challenge any provision of the resulting
209 | proposed rule.

210 | Section 4. This act shall take effect July 1, 2017.