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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/24/2017	.	
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The Committee on Governmental Oversight and Accountability
(Broxson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

120.54 Rulemaking.—

(3) ADOPTION PROCEDURES.—

(a) *Notices*.—

1. Prior to the adoption, amendment, or repeal of any rule



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11 other than an emergency rule, an agency, ~~upon approval of the~~
12 ~~agency head,~~ shall give notice of its intended action, setting
13 forth a short, plain explanation of the purpose and effect of
14 the proposed action; the full text of the proposed rule or
15 amendment and a summary thereof; a reference to the grant of
16 rulemaking authority pursuant to which the rule is adopted; and
17 a reference to the section or subsection of the Florida Statutes
18 or the Laws of Florida being implemented or interpreted. The
19 notice must include a summary of the agency's statement of the
20 estimated regulatory costs, if one has been prepared, based on
21 the factors set forth in s. 120.541(2); an agency website
22 address where the statement of estimated regulatory costs can be
23 viewed in its entirety; a statement that any person who wishes
24 to provide the agency with information regarding the statement
25 of estimated regulatory costs, or to provide a proposal for a
26 lower cost regulatory alternative as provided by s. 120.541(1),
27 must do so in writing within 21 days after publication of the
28 notice; and a statement as to whether, based on the statement of
29 the estimated regulatory costs or other information expressly
30 relied upon and described by the agency if no statement of
31 regulatory costs is required, the proposed rule is expected to
32 require legislative ratification pursuant to s. 120.541(3). The
33 notice must state the procedure for requesting a public hearing
34 on the proposed rule. Except when the intended action is the
35 repeal of a rule, the notice must include a reference both to
36 the date on which and to the place where the notice of rule
37 development that is required by subsection (2) appeared.

38 2. The notice shall be published in the Florida
39 Administrative Register not less than 28 days prior to the



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40 intended action. The proposed rule shall be available for
41 inspection and copying by the public at the time of the
42 publication of notice.

43 3. The notice shall be mailed to all persons named in the
44 proposed rule and to all persons who, at least 14 days prior to
45 such mailing, have made requests of the agency for advance
46 notice of its proceedings. The agency shall also give such
47 notice as is prescribed by rule to those particular classes of
48 persons to whom the intended action is directed.

49 4. The adopting agency shall file with the committee, at
50 least 21 days prior to the proposed adoption date, a copy of
51 each rule it proposes to adopt; a copy of any material
52 incorporated by reference in the rule; a detailed written
53 statement of the facts and circumstances justifying the proposed
54 rule; a copy of any statement of estimated regulatory costs that
55 has been prepared pursuant to s. 120.541; a statement of the
56 extent to which the proposed rule relates to federal standards
57 or rules on the same subject; and the notice required by
58 subparagraph 1.

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

60 1. Statement of estimated regulatory costs.—Before the
61 adoption ~~or~~, amendment, ~~or repeal~~ of any rule other than an
62 emergency rule, an agency must ~~is encouraged to~~ prepare a
63 statement of estimated regulatory costs of the proposed rule, as
64 provided by s. 120.541. However, an agency is not required to
65 prepare a statement of estimated regulatory costs for a rule
66 repeal unless such repeal would impose a regulatory cost. In any
67 challenge to a rule repeal, such rule repeal must be considered
68 presumptively correct by the committee in any proceeding before



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69 the division or in any proceeding before a court of competent
70 jurisdiction ~~However, an agency must prepare a statement of~~
71 ~~estimated regulatory costs of the proposed rule, as provided by~~
72 ~~s. 120.541, if:~~

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

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

79 2. Small businesses, small counties, and small cities.-

80 a. Each agency, before the adoption, amendment, or repeal
81 of a rule, shall consider the impact of the rule on small
82 businesses as defined by s. 288.703 and the impact of the rule
83 on small counties or small cities as defined by s. 120.52.
84 Whenever practicable, an agency shall tier its rules to reduce
85 disproportionate impacts on small businesses, small counties, or
86 small cities to avoid regulating small businesses, small
87 counties, or small cities that do not contribute significantly
88 to the problem the rule is designed to address. An agency may
89 define "small business" to include businesses employing more
90 than 200 persons, may define "small county" to include those
91 with populations of more than 75,000, and may define "small
92 city" to include those with populations of more than 10,000, if
93 it finds that such a definition is necessary to adapt a rule to
94 the needs and problems of small businesses, small counties, or
95 small cities. The agency shall consider each of the following
96 methods for reducing the impact of the proposed rule on small
97 businesses, small counties, and small cities, or any combination



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98 of these entities:

99 (I) Establishing less stringent compliance or reporting
100 requirements in the rule.

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

103 (III) Consolidating or simplifying the rule's compliance or
104 reporting requirements.

105 (IV) Establishing performance standards or best management
106 practices to replace design or operational standards in the
107 rule.

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

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

116 (II) Each agency shall adopt those regulatory alternatives
117 offered by the rules ombudsman in the Executive Office of the
118 Governor and provided to the agency no later than 21 days after
119 the rules ombudsman's receipt of the written notice of the rule
120 which it finds are feasible and consistent with the stated
121 objectives of the proposed rule and which would reduce the
122 impact on small businesses. When regulatory alternatives are
123 offered by the rules ombudsman in the Executive Office of the
124 Governor, the 90-day period for filing the rule in subparagraph
125 (e)2. is extended for a period of 21 days.

126 (III) If an agency does not adopt all alternatives offered



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127 pursuant to this sub-subparagraph, it shall, before rule
128 adoption or amendment and pursuant to subparagraph (d)1., file a
129 detailed written statement with the committee explaining the
130 reasons for failure to adopt such alternatives. Within 3 working
131 days after the filing of such notice, the agency shall send a
132 copy of such notice to the rules ombudsman in the Executive
133 Office of the Governor.

134 Section 2. Paragraph (b) of subsection (1) of section
135 120.541, Florida Statutes, is amended, and subsection (6) is
136 added to that section, to read:

137 120.541 Statement of estimated regulatory costs.-

138 (1)

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

145 (6) The Department of State shall include on the Florida
146 Administrative Register website the agency website addresses
147 where statements of estimated regulatory costs can be viewed in
148 their entirety.

149 (a) An agency that prepares a statement of estimated
150 regulatory costs must provide, as part of the notice required
151 under s. 120.54(3)(a), the agency website address where the
152 statement of estimated regulatory costs can be read in its
153 entirety to the department for publication in the Florida
154 Administrative Register.

155 (b) An agency that revises a statement of estimated



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156 regulatory costs must provide a notice that a revision has been
157 made and an agency website address where the revision can be
158 viewed for publication in the Florida Administrative Register.

159 Section 3. This act shall take effect July 1, 2017.
160

161 ===== T I T L E A M E N D M E N T =====

162 And the title is amended as follows:

163 Delete everything before the enacting clause
164 and insert:

165 A bill to be entitled
166 An act relating to agency rulemaking; amending s.
167 120.54, F.S.; removing the requirement that an agency
168 head approve certain notices of intended agency action
169 before publication; requiring certain notices of
170 intended agency action to include an agency website
171 address for a specified purpose; requiring an agency
172 to prepare a statement of estimated regulatory costs
173 before adopting or amending any rule other than an
174 emergency rule; requiring an agency to prepare a
175 statement of estimated regulatory costs before
176 repealing a rule in certain circumstances; amending s.
177 120.541, F.S.; requiring the Department of State to
178 include on the Florida Administrative Register website
179 the agency website addresses where statements of
180 estimated regulatory costs can be viewed in their
181 entirety; requiring an agency to include in its notice
182 of intended agency action the agency website address
183 where the statement of estimated regulatory cost can
184 be read in its entirety; requiring an agency to



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185 provide a notice of revision when an agency revises a
186 statement of estimated regulatory costs; providing an
187 effective date.