

By Senator Broxson

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1                   A bill to be entitled  
2           An act relating to administrative procedures; amending  
3           ss. 120.54, 120.541, and 120.56, F.S.; requiring an  
4           agency to prepare a statement of estimated regulatory  
5           costs before adoption, amendment, or repeal of any  
6           rule other than an emergency rule; conforming  
7           provisions and a cross-reference to changes made by  
8           the act; providing an effective date.

9  
10   Be It Enacted by the Legislature of the State of Florida:

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

14           120.54 Rulemaking.—

15           (3) ADOPTION PROCEDURES.—

16           (a) *Notices*.—

17           1. Prior to the adoption, amendment, or repeal of any rule  
18           other than an emergency rule, an agency, upon approval of the  
19           agency head, shall give notice of its intended action, setting  
20           forth a short, plain explanation of the purpose and effect of  
21           the proposed action; the full text of the proposed rule or  
22           amendment and a summary thereof; a reference to the grant of  
23           rulemaking authority pursuant to which the rule is adopted; and  
24           a reference to the section or subsection of the Florida Statutes  
25           or the Laws of Florida being implemented or interpreted. The  
26           notice must include a summary of the agency's statement of the  
27           estimated regulatory costs, ~~if one has been prepared,~~ based on  
28           the factors set forth in s. 120.541(2); a statement that any  
29           person who wishes to provide the agency with information

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30 regarding the statement of estimated regulatory costs, or to  
31 provide a proposal for a lower cost regulatory alternative as  
32 provided by s. 120.541(1), must do so in writing within 21 days  
33 after publication of the notice; and a statement as to whether,  
34 based on the statement of the estimated regulatory costs ~~or~~  
35 ~~other information expressly relied upon and described by the~~  
36 ~~agency if no statement of regulatory costs is required~~, the  
37 proposed rule is expected to require legislative ratification  
38 pursuant to s. 120.541(3). The notice must state the procedure  
39 for requesting a public hearing on the proposed rule. Except  
40 when the intended action is the repeal of a rule, the notice  
41 must include a reference both to the date on which and to the  
42 place where the notice of rule development that is required by  
43 subsection (2) appeared.

44 2. The notice shall be published in the Florida  
45 Administrative Register not less than 28 days prior to the  
46 intended action. The proposed rule shall be available for  
47 inspection and copying by the public at the time of the  
48 publication of notice.

49 3. The notice shall be mailed to all persons named in the  
50 proposed rule and to all persons who, at least 14 days prior to  
51 such mailing, have made requests of the agency for advance  
52 notice of its proceedings. The agency shall also give such  
53 notice as is prescribed by rule to those particular classes of  
54 persons to whom the intended action is directed.

55 4. The adopting agency shall file with the committee, at  
56 least 21 days prior to the proposed adoption date, a copy of  
57 each rule it proposes to adopt; a copy of any material  
58 incorporated by reference in the rule; a detailed written

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59 statement of the facts and circumstances justifying the proposed  
60 rule; a copy of any statement of estimated regulatory costs that  
61 has been prepared pursuant to s. 120.541; a statement of the  
62 extent to which the proposed rule relates to federal standards  
63 or rules on the same subject; and the notice required by  
64 subparagraph 1.

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

66 1. Statement of estimated regulatory costs.—Before the  
67 adoption, amendment, or repeal of any rule other than an  
68 emergency rule, an agency is required ~~encouraged~~ to prepare a  
69 statement of estimated regulatory costs of the proposed rule, as  
70 provided by s. 120.541. ~~However, an agency must prepare a~~  
71 ~~statement of estimated regulatory costs of the proposed rule, as~~  
72 ~~provided by 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

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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  
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

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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  
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. Paragraphs (a) and (b) of subsection (1) of  
135 section 120.541, Florida Statutes, are amended, and present  
136 paragraphs (c) through (g) of that subsection are redesignated  
137 as paragraphs (b) through (f), respectively, to read:

138 120.541 Statement of estimated regulatory costs.—

139 (1) (a) Within 21 days after publication of the notice  
140 required under s. 120.54(3)(a), a substantially affected person  
141 may submit to an agency a good faith written proposal for a  
142 lower cost regulatory alternative to a proposed rule which  
143 substantially accomplishes the objectives of the law being  
144 implemented. The proposal may include the alternative of not  
145 adopting any rule if the proposal explains how the lower costs

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146 and objectives of the law will be achieved by not adopting any  
147 rule. If such a proposal is submitted, the 90-day period for  
148 filing the rule is extended 21 days. Upon the submission of the  
149 lower cost regulatory alternative, the agency shall ~~prepare a~~  
150 ~~statement of estimated regulatory costs as provided in~~  
151 ~~subsection (2), or shall~~ revise its prior statement of estimated  
152 regulatory costs, and either adopt the alternative or provide a  
153 statement of the reasons for rejecting the alternative in favor  
154 of the proposed rule.

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

161 Section 3. Paragraph (a) of subsection (2) of section  
162 120.56, Florida Statutes, is amended to read:

163 120.56 Challenges to rules.—

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

165 (a) A petition alleging the invalidity of a proposed rule  
166 shall be filed within 21 days after the date of publication of  
167 the notice required by s. 120.54(3)(a); within 10 days after the  
168 final public hearing is held on the proposed rule as provided by  
169 s. 120.54(3)(e)2.; within 20 days after the statement of  
170 estimated regulatory costs or revised statement of estimated  
171 regulatory costs, if applicable, has been prepared and made  
172 available as provided in s. 120.541(1)(c) ~~s. 120.541(1)(d)~~; or  
173 within 20 days after the date of publication of the notice  
174 required by s. 120.54(3)(d). The petitioner has the burden to

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175 prove by a preponderance of the evidence that the petitioner  
176 would be substantially affected by the proposed rule. The agency  
177 then has the burden to prove by a preponderance of the evidence  
178 that the proposed rule is not an invalid exercise of delegated  
179 legislative authority as to the objections raised. A person who  
180 is not substantially affected by the proposed rule as initially  
181 noticed, but who is substantially affected by the rule as a  
182 result of a change, may challenge any provision of the resulting  
183 proposed rule.

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