

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	_____	(Y/N)
ADOPTED AS AMENDED	_____	(Y/N)
ADOPTED W/O OBJECTION	_____	(Y/N)
FAILED TO ADOPT	_____	(Y/N)
WITHDRAWN	_____	(Y/N)
OTHER		

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1 Committee/Subcommittee hearing bill: Government Accountability  
 2 Committee

3 Representative Spano offered the following:

4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

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

9 120.54 Rulemaking.—

10 (3) ADOPTION PROCEDURES.—

11 (a) Notices.—

12 1. Prior to the adoption, amendment, or repeal of any rule  
 13 other than an emergency rule, an agency, ~~upon approval of the~~  
 14 ~~agency head,~~ shall give notice of its intended action, setting  
 15 forth a short, plain explanation of the purpose and effect of  
 16 the proposed action; the full text of the proposed rule or

Amendment No.

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

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

Amendment No.

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

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

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

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

62 1. Statement of estimated regulatory costs.—Before the  
63 adoption or, ~~amendment, or repeal~~ of any rule, other than an  
64 emergency rule, an agency must ~~is encouraged to~~ prepare a  
65 statement of estimated regulatory costs of the proposed rule, as  
66 provided by s. 120.541. However, an agency is not required to

Amendment No.

67 prepare a statement of estimated regulatory costs for a rule  
68 repeal unless such repeal would impose a regulatory cost. In any  
69 challenge to a rule repeal, such rule repeal must be considered  
70 presumptively correct by the committee, in any proceeding before  
71 the division, or in any proceeding before a court of competent  
72 jurisdiction. ~~However, an agency must prepare a statement of~~  
73 ~~estimated regulatory costs of the proposed rule, as provided by~~  
74 ~~s. 120.541, if:~~

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

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

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

82 a. Each agency, before the adoption, amendment, or repeal  
83 of a rule, shall consider the impact of the rule on small  
84 businesses as defined by s. 288.703 and the impact of the rule  
85 on small counties or small cities as defined by s. 120.52.  
86 Whenever practicable, an agency shall tier its rules to reduce  
87 disproportionate impacts on small businesses, small counties, or  
88 small cities to avoid regulating small businesses, small  
89 counties, or small cities that do not contribute significantly  
90 to the problem the rule is designed to address. An agency may  
91 define "small business" to include businesses employing more

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Amendment No.

92 | than 200 persons, may define "small county" to include those  
93 | with populations of more than 75,000, and may define "small  
94 | city" to include those with populations of more than 10,000, if  
95 | it finds that such a definition is necessary to adapt a rule to  
96 | the needs and problems of small businesses, small counties, or  
97 | small cities. The agency shall consider each of the following  
98 | methods for reducing the impact of the proposed rule on small  
99 | businesses, small counties, and small cities, or any combination  
100 | of these entities:

101 | (I) Establishing less stringent compliance or reporting  
102 | requirements in the rule.

103 | (II) Establishing less stringent schedules or deadlines in  
104 | the rule for compliance or reporting requirements.

105 | (III) Consolidating or simplifying the rule's compliance  
106 | or reporting requirements.

107 | (IV) Establishing performance standards or best management  
108 | practices to replace design or operational standards in the  
109 | rule.

110 | (V) Exempting small businesses, small counties, or small  
111 | cities from any or all requirements of the rule.

112 | b.(I) If the agency determines that the proposed action  
113 | will affect small businesses as defined by the agency as  
114 | provided in sub-subparagraph a., the agency shall send written  
115 | notice of the rule to the rules ombudsman in the Executive

Amendment No.

116 Office of the Governor at least 28 days before the intended  
117 action.

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

128 (III) If an agency does not adopt all alternatives offered  
129 pursuant to this sub-subparagraph, it shall, before rule  
130 adoption or amendment and pursuant to subparagraph (d)1., file a  
131 detailed written statement with the committee explaining the  
132 reasons for failure to adopt such alternatives. Within 3 working  
133 days after the filing of such notice, the agency shall send a  
134 copy of such notice to the rules ombudsman in the Executive  
135 Office of the Governor.

136 Section 2. Subsections (1) and (2) of section 120.541,  
137 Florida Statutes, are amended, and subsection (6) is added to  
138 that section, to read:

139 120.541 Statement of estimated regulatory costs.—

Amendment No.

140 (1) (a) Within 21 days after publication of the notice  
141 required under s. 120.54(3) (a), a substantially affected person  
142 may submit to an agency a good faith written proposal for a  
143 lower cost regulatory alternative to a proposed rule which  
144 substantially accomplishes the objectives of the law being  
145 implemented. The proposal may include the alternative of not  
146 adopting any rule if the proposal explains how the lower costs  
147 and objectives of the law will be achieved by not adopting any  
148 rule. If such a proposal is submitted, the 90-day period for  
149 filing the rule is extended 21 days. Upon the submission of the  
150 lower cost regulatory alternative, the agency shall ~~prepare a~~  
151 ~~statement of estimated regulatory costs as provided in~~  
152 ~~subsection (2), or shall~~ revise its prior statement of estimated  
153 regulatory costs, and either adopt the alternative or provide a  
154 statement of the reasons for rejecting the alternative in favor  
155 of the proposed rule.

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

162 (b)(e) The agency shall revise a statement of estimated  
163 regulatory costs if any change to the rule made under s.  
164 120.54(3) (d) increases the regulatory costs of the rule.

Amendment No.

165        ~~(c)-(d)~~ At least 21 days before filing the rule for  
166 adoption, an agency that is required to revise a statement of  
167 estimated regulatory costs shall provide the statement to the  
168 person who submitted the lower cost regulatory alternative and  
169 to the committee and shall provide notice on the agency's  
170 website that it is available to the public.

171        ~~(d)-(e)~~ Notwithstanding s. 120.56(1)(c), the failure of the  
172 agency to prepare a statement of estimated regulatory costs or  
173 to respond to a written lower cost regulatory alternative as  
174 provided in this subsection is a material failure to follow the  
175 applicable rulemaking procedures or requirements set forth in  
176 this chapter.

177        ~~(e)-(f)~~ An agency's failure to prepare a statement of  
178 estimated regulatory costs or to respond to a written lower cost  
179 regulatory alternative may not be raised in a proceeding  
180 challenging the validity of a rule pursuant to s. 120.52(8)(a)  
181 unless:

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

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

186        ~~(f)-(g)~~ A rule that is challenged pursuant to s.  
187 120.52(8)(f) may not be declared invalid unless:

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



Amendment No.

190 2. The challenge is to the agency's rejection of a lower  
191 cost regulatory alternative offered under paragraph (a) or s.  
192 120.54(3)(b)2.b.; and

193 3. The substantial interests of the person challenging the  
194 rule are materially affected by the rejection.

195 (2) A statement of estimated regulatory costs shall  
196 include:

197 (g) In the ~~statement or~~ revised statement, ~~whichever~~  
198 ~~applies~~, a description of any regulatory alternatives submitted  
199 under paragraph (1)(a) and a statement adopting the alternative  
200 or a statement of the reasons for rejecting the alternative in  
201 favor of the proposed rule.

202 (6) The Department of State shall include on the Florida  
203 Administrative Register website the agency website addresses  
204 where statements of estimated regulatory costs can be viewed in  
205 their entirety.

206 (a) An agency that prepares a statement of estimated  
207 regulatory costs must provide, as part of the notice required  
208 under s. 120.54(3)(a), the agency website address where the  
209 statement of estimated regulatory costs can be read in its  
210 entirety to the department for publication in the Florida  
211 Administrative Register.

212 (b) An agency that revises a statement of estimated  
213 regulatory costs must provide a notice that a revision has been  
214 made that includes the agency website address where the revision

Amendment No.

215 can be viewed in its entirety to the department for publication  
216 in the Florida Administrative Register.

217 Section 3. Subsection (6) of section 120.55, Florida  
218 Statutes, is amended to read:

219 120.55 Publication.—

220 (6) Any publication of a proposed rule promulgated by an  
221 agency, whether published in the Florida Administrative Register  
222 or elsewhere, shall include, along with the rule, the name of  
223 the person or persons originating such rule, ~~the name of the~~  
224 ~~agency head who approved the rule, and the date upon which the~~  
225 ~~rule was approved.~~

226 Section 4. Paragraph (a) of subsection (2) of section  
227 120.56, Florida Statutes, is amended to read:

228 120.56 Challenges to rules.—

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

230 (a) A petition alleging the invalidity of a proposed rule  
231 shall be filed within 21 days after the date of publication of  
232 the notice required by s. 120.54(3)(a); within 10 days after the  
233 final public hearing is held on the proposed rule as provided by  
234 s. 120.54(3)(e)2.; within 20 days after the statement of  
235 estimated regulatory costs or revised statement of estimated  
236 regulatory costs, if applicable, has been prepared and made  
237 available as provided in s. 120.54(1)(c) ~~(d)~~; or within 20 days  
238 after the date of publication of the notice required by s.  
239 120.54(3)(d). The petitioner has the burden to prove by a

Amendment No.

240 preponderance of the evidence that the petitioner would be  
241 substantially affected by the proposed rule. The agency then has  
242 the burden to prove by a preponderance of the evidence that the  
243 proposed rule is not an invalid exercise of delegated  
244 legislative authority as to the objections raised. A person who  
245 is not substantially affected by the proposed rule as initially  
246 noticed, but who is substantially affected by the rule as a  
247 result of a change, may challenge any provision of the resulting  
248 proposed rule.

249 Section 5. This act shall take effect on July 1, 2018

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**T I T L E A M E N D M E N T**

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Remove everything before the enacting clause and insert:

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An act relating to agency rulemaking; amending s. 120.54, F.S.;

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requiring certain notices to include an agency website address

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for a specified purpose; requiring an agency to prepare a

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statement of estimated regulatory costs before adopting or

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amending any rule other than an emergency rule; requiring an

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agency to prepare a statement of estimated regulatory costs

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before repealing a rule in certain circumstances; amending s.

261

120.541, F.S.; conforming provisions to changes made by the act;

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requiring the Department of State to include on the Florida

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Administrative Register website the agency website addresses

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where statements of estimated regulatory costs can be viewed in

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 83 (2018)

Amendment No.

265 | their entirety; requiring an agency to include in its notice of  
266 | intended action the agency website address where the statement  
267 | of estimated regulatory costs can be read in its entirety;  
268 | requiring an agency to provide a notice of revision when an  
269 | agency revises a statement of estimated regulatory costs;  
270 | amending ss. 120.55 and 120.56, F.S.; conforming provisions to  
271 | changes made by the act; providing an effective date.