

1 A bill to be entitled
2 An act relating to agency rulemaking; amending s.
3 120.54, F.S.; requiring certain notices to include an
4 agency website address for a specified purpose;
5 requiring an agency to prepare a statement of
6 estimated regulatory costs before adopting or amending
7 any rule other than an emergency rule; requiring an
8 agency to prepare a statement of estimated regulatory
9 costs before repealing a rule in certain
10 circumstances; amending s. 120.541, F.S.; conforming
11 provisions to changes made by the act; requiring the
12 Department of State to include on the Florida
13 Administrative Register website the agency website
14 addresses where statements of estimated regulatory
15 costs can be viewed in their entirety; requiring an
16 agency to include in its notice of intended action the
17 agency website address where the statement of
18 estimated regulatory costs can be read in its
19 entirety; requiring an agency to provide a notice of
20 revision when an agency revises a statement of
21 estimated regulatory costs; providing an effective
22 date.

23
24 Be It Enacted by the Legislature of the State of Florida:
25

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

28 120.54 Rulemaking.—

29 (3) ADOPTION PROCEDURES.—

30 (a) Notices.—

31 1. Prior to the adoption, amendment, or repeal of any rule
32 other than an emergency rule, an agency, ~~upon approval of the~~
33 ~~agency head,~~ shall give notice of its intended action, setting
34 forth a short, plain explanation of the purpose and effect of
35 the proposed action; the full text of the proposed rule or
36 amendment and a summary thereof; a reference to the grant of
37 rulemaking authority pursuant to which the rule is adopted; and
38 a reference to the section or subsection of the Florida Statutes
39 or the Laws of Florida being implemented or interpreted. The
40 notice must include a summary of the agency's statement of the
41 estimated regulatory costs, if one has been prepared, based on
42 the factors set forth in s. 120.541(2); an agency website
43 address where the statement of estimated regulatory costs can be
44 viewed in its entirety; a statement that any person who wishes
45 to provide the agency with information regarding the statement
46 of estimated regulatory costs, or to provide a proposal for a
47 lower cost regulatory alternative as provided by s. 120.541(1),
48 must do so in writing within 21 days after publication of the
49 notice; and a statement as to whether, based on the statement of
50 the estimated regulatory costs or other information expressly

51 | relied upon and described by the agency if no statement of
52 | regulatory costs is required, the proposed rule is expected to
53 | require legislative ratification pursuant to s. 120.541(3). The
54 | notice must state the procedure for requesting a public hearing
55 | on the proposed rule. Except when the intended action is the
56 | repeal of a rule, the notice must include a reference both to
57 | the date on which and to the place where the notice of rule
58 | development that is required by subsection (2) appeared.

59 | 2. The notice shall be published in the Florida
60 | Administrative Register not less than 28 days prior to the
61 | intended action. The proposed rule shall be available for
62 | inspection and copying by the public at the time of the
63 | publication of notice.

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

70 | 4. The adopting agency shall file with the committee, at
71 | least 21 days prior to the proposed adoption date, a copy of
72 | each rule it proposes to adopt; a copy of any material
73 | incorporated by reference in the rule; a detailed written
74 | statement of the facts and circumstances justifying the proposed
75 | rule; a copy of any statement of estimated regulatory costs that

76 | has been prepared pursuant to s. 120.541; a statement of the
 77 | extent to which the proposed rule relates to federal standards
 78 | or rules on the same subject; and the notice required by
 79 | subparagraph 1.

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

81 | 1. Statement of estimated regulatory costs.—Before the
 82 | adoption or, amendment, ~~or repeal~~ of any rule other than an
 83 | emergency rule, an agency must ~~is encouraged to~~ prepare a
 84 | statement of estimated regulatory costs of the proposed rule, as
 85 | provided by s. 120.541. However, an agency is not required to
 86 | prepare a statement of estimated regulatory costs for a rule
 87 | repeal unless such repeal would impose a regulatory cost. In any
 88 | challenge to a rule repeal, such rule repeal must be considered
 89 | presumptively correct by the committee, in any proceeding before
 90 | the division, or in any proceeding before a court of competent
 91 | jurisdiction. ~~However, an agency must prepare a statement of~~
 92 | ~~estimated regulatory costs of the proposed rule, as provided by~~
 93 | ~~s. 120.541, if:~~

94 | a. ~~The proposed rule will have an adverse impact on small~~
 95 | ~~business; or~~

96 | b. ~~The proposed rule is likely to directly or indirectly~~
 97 | ~~increase regulatory costs in excess of \$200,000 in the aggregate~~
 98 | ~~in this state within 1 year after the implementation of the~~
 99 | ~~rule.~~

100 | 2. Small businesses, small counties, and small cities.—

101 a. Each agency, before the adoption, amendment, or repeal
102 of a rule, shall consider the impact of the rule on small
103 businesses as defined by s. 288.703 and the impact of the rule
104 on small counties or small cities as defined by s. 120.52.
105 Whenever practicable, an agency shall tier its rules to reduce
106 disproportionate impacts on small businesses, small counties, or
107 small cities to avoid regulating small businesses, small
108 counties, or small cities that do not contribute significantly
109 to the problem the rule is designed to address. An agency may
110 define "small business" to include businesses employing more
111 than 200 persons, may define "small county" to include those
112 with populations of more than 75,000, and may define "small
113 city" to include those with populations of more than 10,000, if
114 it finds that such a definition is necessary to adapt a rule to
115 the needs and problems of small businesses, small counties, or
116 small cities. The agency shall consider each of the following
117 methods for reducing the impact of the proposed rule on small
118 businesses, small counties, and small cities, or any combination
119 of these entities:

120 (I) Establishing less stringent compliance or reporting
121 requirements in the rule.

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

124 (III) Consolidating or simplifying the rule's compliance
125 or reporting requirements.

126 (IV) Establishing performance standards or best management
127 practices to replace design or operational standards in the
128 rule.

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

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

137 (II) Each agency shall adopt those regulatory alternatives
138 offered by the rules ombudsman in the Executive Office of the
139 Governor and provided to the agency no later than 21 days after
140 the rules ombudsman's receipt of the written notice of the rule
141 which it finds are feasible and consistent with the stated
142 objectives of the proposed rule and which would reduce the
143 impact on small businesses. When regulatory alternatives are
144 offered by the rules ombudsman in the Executive Office of the
145 Governor, the 90-day period for filing the rule in subparagraph
146 (e)2. is extended for a period of 21 days.

147 (III) If an agency does not adopt all alternatives offered
148 pursuant to this sub-subparagraph, it shall, before rule
149 adoption or amendment and pursuant to subparagraph (d)1., file a
150 detailed written statement with the committee explaining the

151 reasons for failure to adopt such alternatives. Within 3 working
152 days after the filing of such notice, the agency shall send a
153 copy of such notice to the rules ombudsman in the Executive
154 Office of the Governor.

155 Section 2. Subsection (1) of section 120.541, Florida
156 Statutes, is amended, and subsection (6) is added to that
157 section, to read:

158 120.541 Statement of estimated regulatory costs.—

159 (1) (a) Within 21 days after publication of the notice
160 required under s. 120.54(3)(a), a substantially affected person
161 may submit to an agency a good faith written proposal for a
162 lower cost regulatory alternative to a proposed rule which
163 substantially accomplishes the objectives of the law being
164 implemented. The proposal may include the alternative of not
165 adopting any rule if the proposal explains how the lower costs
166 and objectives of the law will be achieved by not adopting any
167 rule. If such a proposal is submitted, the 90-day period for
168 filing the rule is extended 21 days. Upon the submission of the
169 lower cost regulatory alternative, the agency shall ~~prepare a~~
170 ~~statement of estimated regulatory costs as provided in~~
171 ~~subsection (2), or shall~~ revise its prior statement of estimated
172 regulatory costs⁷ and either adopt the alternative or provide a
173 statement of the reasons for rejecting the alternative in favor
174 of the proposed rule.

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

181 (b)(e) The agency shall revise a statement of estimated
182 regulatory costs if any change to the rule made under s.
183 120.54(3)(d) increases the regulatory costs of the rule.

184 (c)(d) At least 21 days before filing the rule for
185 adoption, an agency that is required to revise a statement of
186 estimated regulatory costs shall provide the statement to the
187 person who submitted the lower cost regulatory alternative and
188 to the committee and shall provide notice on the agency's
189 website that it is available to the public.

190 (d)(e) Notwithstanding s. 120.56(1)(c), the failure of the
191 agency to prepare a statement of estimated regulatory costs or
192 to respond to a written lower cost regulatory alternative as
193 provided in this subsection is a material failure to follow the
194 applicable rulemaking procedures or requirements set forth in
195 this chapter.

196 (e)(f) An agency's failure to prepare a statement of
197 estimated regulatory costs or to respond to a written lower cost
198 regulatory alternative may not be raised in a proceeding

199 | challenging the validity of a rule pursuant to s. 120.52(8)(a)
 200 | unless:

201 | 1. Raised in a petition filed no later than 1 year after
 202 | the effective date of the rule; and

203 | 2. Raised by a person whose substantial interests are
 204 | affected by the rule's regulatory costs.

205 | (f)~~(g)~~ A rule that is challenged pursuant to s.
 206 | 120.52(8)(f) may not be declared invalid unless:

207 | 1. The issue is raised in an administrative proceeding
 208 | within 1 year after the effective date of the rule;

209 | 2. The challenge is to the agency's rejection of a lower
 210 | cost regulatory alternative offered under paragraph (a) or s.
 211 | 120.54(3)(b)2.b.; and

212 | 3. The substantial interests of the person challenging the
 213 | rule are materially affected by the rejection.

214 | (6) The Department of State shall include on the Florida
 215 | Administrative Register website the agency website addresses
 216 | where statements of estimated regulatory costs can be viewed in
 217 | their entirety.

218 | (a) An agency that prepares a statement of estimated
 219 | regulatory costs must provide, as part of the notice required
 220 | under s. 120.54(3)(a), the agency website address where the
 221 | statement of estimated regulatory costs can be read in its
 222 | entirety to the department for publication in the Florida
 223 | Administrative Register.

224 (b) An agency that revises a statement of estimated
225 regulatory costs must provide a notice that a revision has been
226 made and an agency website address where the revision can be
227 viewed for publication in the Florida Administrative Register.

228 Section 3. This act shall take effect July 1, 2018.