

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; conforming provisions to changes made
11 by the act; amending s. 120.541, F.S.; conforming
12 provisions to changes made by the act; requiring the
13 Department of State to include on the Florida
14 Administrative Register website the agency website
15 addresses where statements of estimated regulatory
16 costs can be viewed in their entirety; requiring
17 certain agencies to provide such addresses and
18 revision notices to the department for publication in
19 the Florida Administrative Register; amending ss.
20 120.55 and 120.56, F.S.; conforming provisions to
21 changes made by the act; providing an effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. Paragraphs (a) and (b) of subsection (3) of

26 | section 120.54, Florida Statutes, are amended to read:
 27 | 120.54 Rulemaking.—
 28 | (3) ADOPTION PROCEDURES.—
 29 | (a) Notices.—
 30 | 1. Prior to the adoption, amendment, or repeal of any rule
 31 | other than an emergency rule, an agency, ~~upon approval of the~~
 32 | ~~agency head,~~ shall give notice of its intended action, setting
 33 | forth a short, plain explanation of the purpose and effect of
 34 | the proposed action; the full text of the proposed rule or
 35 | amendment and a summary thereof; a reference to the grant of
 36 | rulemaking authority pursuant to which the rule is adopted; and
 37 | a reference to the section or subsection of the Florida Statutes
 38 | or the Laws of Florida being implemented or interpreted. The
 39 | notice must include a summary of the agency's statement of the
 40 | estimated regulatory costs, ~~if one has been prepared,~~ based on
 41 | the factors set forth in s. 120.541(2); an agency website
 42 | address where the statement of estimated regulatory costs can be
 43 | viewed in its entirety; a statement that any person who wishes
 44 | to provide the agency with information regarding the statement
 45 | of estimated regulatory costs, or to provide a proposal for a
 46 | lower cost regulatory alternative as provided by s. 120.541(1),
 47 | must do so in writing within 21 days after publication of the
 48 | notice; and a statement as to whether, based on the statement of
 49 | the estimated regulatory costs ~~or other information expressly~~
 50 | ~~relied upon and described by the agency if no statement of~~

51 ~~regulatory costs is required~~, the proposed rule is expected to
52 require legislative ratification pursuant to s. 120.541(3). The
53 notice must state the procedure for requesting a public hearing
54 on the proposed rule. Except when the intended action is the
55 repeal of a rule, the notice must include a reference both to
56 the date on which and to the place where the notice of rule
57 development that is required by subsection (2) appeared.

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

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

69 4. The adopting agency shall file with the committee, at
70 least 21 days prior to the proposed adoption date, a copy of
71 each rule it proposes to adopt; a copy of any material
72 incorporated by reference in the rule; a detailed written
73 statement of the facts and circumstances justifying the proposed
74 rule; a copy of the ~~any~~ statement of estimated regulatory costs
75 ~~that has been~~ prepared pursuant to s. 120.541; a statement of

76 | the extent to which the proposed rule relates to federal
 77 | standards or rules on the same subject; and the notice required
 78 | by subparagraph 1.

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

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

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

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

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

100 | a. Each agency, before the adoption, amendment, or repeal

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

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

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

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

125 (IV) Establishing performance standards or best management

126 practices to replace design or operational standards in the
127 rule.

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

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

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

146 (III) If an agency does not adopt all alternatives offered
147 pursuant to this sub-subparagraph, it shall, before rule
148 adoption or amendment and pursuant to subparagraph (d)1., file a
149 detailed written statement with the committee explaining the
150 reasons for failure to adopt such alternatives. Within 3 working

151 days after the filing of such notice, the agency shall send a
152 copy of such notice to the rules ombudsman in the Executive
153 Office of the Governor.

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

157 120.541 Statement of estimated regulatory costs.—

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

174 ~~(b) If a proposed rule will have an adverse impact on~~
175 ~~small business or if the proposed rule is likely to directly or~~

176 ~~indirectly increase regulatory costs in excess of \$200,000 in~~
177 ~~the aggregate within 1 year after the implementation of the~~
178 ~~rule, the agency shall prepare a statement of estimated~~
179 ~~regulatory costs as required by s. 120.54(3)(b).~~

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

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

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

195 (e)~~(f)~~ An agency's failure to prepare a statement of
196 estimated regulatory costs or to respond to a written lower cost
197 regulatory alternative may not be raised in a proceeding
198 challenging the validity of a rule pursuant to s. 120.52(8)(a)
199 unless:

200 1. Raised in a petition filed no later than 1 year after

201 the effective date of the rule; and

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

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

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

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

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

213 (2) A statement of estimated regulatory costs shall
214 include:

215 (g) In the ~~statement or~~ revised statement, ~~whichever~~
216 ~~applies,~~ a description of any regulatory alternatives submitted
217 under paragraph (1) (a) and a statement adopting the alternative
218 or a statement of the reasons for rejecting the alternative in
219 favor of the proposed rule.

220 (6) The Department of State shall include on the Florida
221 Administrative Register website the agency website addresses
222 where statements of estimated regulatory costs can be viewed in
223 their entirety.

224 (a) An agency that prepares a statement of estimated
225 regulatory costs must provide, as part of the notice required

226 | under s. 120.54(3) (a), the agency website address where the
 227 | statement of estimated regulatory costs can be read in its
 228 | entirety to the department for publication in the Florida
 229 | Administrative Register.

230 | (b) An agency that revises a statement of estimated
 231 | regulatory costs must provide a notice that a revision has been
 232 | made that includes the agency website address where the revision
 233 | can be viewed in its entirety to the department for publication
 234 | in the Florida Administrative Register.

235 | Section 3. Subsection (6) of section 120.55, Florida
 236 | Statutes, is amended to read:

237 | 120.55 Publication.—

238 | (6) Any publication of a proposed rule promulgated by an
 239 | agency, whether published in the Florida Administrative Register
 240 | or elsewhere, shall include, along with the rule, the name of
 241 | the person or persons originating such rule, ~~the name of the~~
 242 | ~~agency head who approved the rule, and the date upon which the~~
 243 | ~~rule was approved.~~

244 | Section 4. Paragraph (a) of subsection (2) of section
 245 | 120.56, Florida Statutes, is amended to read:

246 | 120.56 Challenges to rules.—

247 | (2) CHALLENGING PROPOSED RULES; SPECIAL PROVISIONS.—

248 | (a) A petition alleging the invalidity of a proposed rule
 249 | shall be filed within 21 days after the date of publication of
 250 | the notice required by s. 120.54(3) (a); within 10 days after the

251 final public hearing is held on the proposed rule as provided by
252 s. 120.54(3)(e)2.; within 20 days after the statement of
253 estimated regulatory costs or revised statement of estimated
254 regulatory costs, if applicable, has been prepared and made
255 available as provided in s. 120.541(1)(c) ~~s. 120.541(1)(d)~~; or
256 within 20 days after the date of publication of the notice
257 required by s. 120.54(3)(d). The petitioner has the burden to
258 prove by a preponderance of the evidence that the petitioner
259 would be substantially affected by the proposed rule. The agency
260 then has the burden to prove by a preponderance of the evidence
261 that the proposed rule is not an invalid exercise of delegated
262 legislative authority as to the objections raised. A person who
263 is not substantially affected by the proposed rule as initially
264 noticed, but who is substantially affected by the rule as a
265 result of a change, may challenge any provision of the resulting
266 proposed rule.

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