

By Senator Broxson

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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; providing for the consideration of
11 challenges to a rule repeal; amending s. 120.541,
12 F.S.; requiring the Department of State to include on
13 the Florida Administrative Register website the agency
14 website addresses where statements of estimated
15 regulatory costs can be viewed in their entirety;
16 requiring an agency to include in its notice of
17 intended action the agency website address where the
18 statement of estimated regulatory costs can be read in
19 its entirety; requiring an agency to provide a notice
20 of revision when the 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:

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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.—

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(a) *Notices.*—

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

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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

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88 challenge to a rule repeal, such rule repeal must be considered
89 presumptively correct by the Administrative Procedures
90 Committee, in any proceeding before the Division of
91 Administrative Hearings, or in any proceeding before a court of
92 competent jurisdiction. However, an agency must prepare a
93 statement of estimated regulatory costs of the proposed rule, as
94 provided by s. 120.541, if:

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

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

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

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

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117 small cities. The agency shall consider each of the following
118 methods for reducing the impact of the proposed rule on small
119 businesses, small counties, and small cities, or any combination
120 of these entities:

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

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

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

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

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

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

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

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146 Governor, the 90-day period for filing the rule in subparagraph
147 (e)2. is extended for a period of 21 days.

148 (III) If an agency does not adopt all alternatives offered
149 pursuant to this sub-subparagraph, it shall, before rule
150 adoption or amendment and pursuant to subparagraph (d)1., file a
151 detailed written statement with the committee explaining the
152 reasons for failure to adopt such alternatives. Within 3 working
153 days after the filing of such notice, the agency shall send a
154 copy of such notice to the rules ombudsman in the Executive
155 Office of the Governor.

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

159 120.541 Statement of estimated regulatory costs.-

160 (1)

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

167 (6) The Department of State shall include on the Florida
168 Administrative Register website the agency website addresses
169 where statements of estimated regulatory costs can be viewed in
170 their entirety.

171 (a) An agency that prepares a statement of estimated
172 regulatory costs must provide, as part of the notice required
173 under s. 120.54(3)(a), the agency website address where the
174 statement of estimated regulatory cost can be read in its

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175 entirety to the department for publication in the Florida
176 Administrative Register.

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

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