

By Senator Broxson

1-00695-18

2018912\_\_

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:

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.—

1-00695-18

2018912\_\_

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.

1-00695-18

2018912\_\_

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

1-00695-18

2018912\_\_

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

1-00695-18

2018912\_\_

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

1-00695-18

2018912\_\_

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

1-00695-18

2018912\_\_

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.