

1 A bill to be entitled
 2 An act relating to rulemaking; amending s. 120.54, F.S.;
 3 requiring that an agency include in its notice of intended
 4 rulemaking a statement as to whether the proposed rule
 5 will require legislative ratification; clarifying that
 6 certain proposed rules are adopted only when ratified by
 7 the Legislature; amending s. 120.541, F.S.; reducing the
 8 time before an agency files a rule for adoption within
 9 which the agency must notify the person who submitted a
 10 lower cost alternative and the Administrative Procedures
 11 Committee; amending s. 120.56, F.S.; reducing the time in
 12 which a substantially affected person may seek an
 13 administrative determination of the invalidity of a rule
 14 after the statement or revised statement of estimated
 15 regulatory costs is available; providing an effective
 16 date.

17
 18 Be It Enacted by the Legislature of the State of Florida:
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20 Section 1. Paragraphs (a) and (e) of subsection (3) of
 21 section 120.54, Florida Statutes, as amended by chapter 2010-
 22 279, Laws of Florida, are amended to read:

23 120.54 Rulemaking.—

24 (3) ADOPTION PROCEDURES.—

25 (a) *Notices*.—

26 1. Prior to the adoption, amendment, or repeal of any rule
 27 other than an emergency rule, an agency, upon approval of the
 28 agency head, shall give notice of its intended action, setting

29 | forth a short, plain explanation of the purpose and effect of
30 | the proposed action; the full text of the proposed rule or
31 | amendment and a summary thereof; a reference to the grant of
32 | rulemaking authority pursuant to which the rule is adopted; and
33 | a reference to the section or subsection of the Florida Statutes
34 | or the Laws of Florida being implemented or interpreted. The
35 | notice must include a summary of the agency's statement of the
36 | estimated regulatory costs, if one has been prepared, based on
37 | the factors set forth in s. 120.541(2), ~~and~~ a statement that any
38 | person who wishes to provide the agency with information
39 | regarding the statement of estimated regulatory costs, or to
40 | provide a proposal for a lower cost regulatory alternative as
41 | provided by s. 120.541(1), must do so in writing within 21 days
42 | after publication of the notice, and a statement as to whether
43 | the proposed rule will require legislative ratification pursuant
44 | to s. 120.541(3). The notice must state the procedure for
45 | requesting a public hearing on the proposed rule. Except when
46 | the intended action is the repeal of a rule, the notice must
47 | include a reference both to the date on which and to the place
48 | where the notice of rule development that is required by
49 | subsection (2) appeared.

50 | 2. The notice shall be published in the Florida
51 | Administrative Weekly not less than 28 days prior to the
52 | intended action. The proposed rule shall be available for
53 | inspection and copying by the public at the time of the
54 | publication of notice.

55 | 3. The notice shall be mailed to all persons named in the
56 | proposed rule and to all persons who, at least 14 days prior to

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57 such mailing, have made requests of the agency for advance
58 notice of its proceedings. The agency shall also give such
59 notice as is prescribed by rule to those particular classes of
60 persons to whom the intended action is directed.

61 4. The adopting agency shall file with the committee, at
62 least 21 days prior to the proposed adoption date, a copy of
63 each rule it proposes to adopt; a copy of any material
64 incorporated by reference in the rule; a detailed written
65 statement of the facts and circumstances justifying the proposed
66 rule; a copy of any statement of estimated regulatory costs that
67 has been prepared pursuant to s. 120.541; a statement of the
68 extent to which the proposed rule relates to federal standards
69 or rules on the same subject; and the notice required by
70 subparagraph 1.

71 (e) *Filing for final adoption; effective date.*—

72 1. If the adopting agency is required to publish its rules
73 in the Florida Administrative Code, the agency, upon approval of
74 the agency head, shall file with the Department of State three
75 certified copies of the rule it proposes to adopt; one copy of
76 any material incorporated by reference in the rule, certified by
77 the agency; a summary of the rule; a summary of any hearings
78 held on the rule; and a detailed written statement of the facts
79 and circumstances justifying the rule. Agencies not required to
80 publish their rules in the Florida Administrative Code shall
81 file one certified copy of the proposed rule, and the other
82 material required by this subparagraph, in the office of the
83 agency head, and such rules shall be open to the public.

84 2. A rule may not be filed for adoption less than 28 days

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85 or more than 90 days after the notice required by paragraph (a),
86 until 21 days after the notice of change required by paragraph
87 (d), until 14 days after the final public hearing, until 21 days
88 after a statement of estimated regulatory costs required under
89 s. 120.541 has been provided to all persons who submitted a
90 lower cost regulatory alternative and made available to the
91 public, or until the administrative law judge has rendered a
92 decision under s. 120.56(2), whichever applies. When a required
93 notice of change is published prior to the expiration of the
94 time to file the rule for adoption, the period during which a
95 rule must be filed for adoption is extended to 45 days after the
96 date of publication. If notice of a public hearing is published
97 prior to the expiration of the time to file the rule for
98 adoption, the period during which a rule must be filed for
99 adoption is extended to 45 days after adjournment of the final
100 hearing on the rule, 21 days after receipt of all material
101 authorized to be submitted at the hearing, or 21 days after
102 receipt of the transcript, if one is made, whichever is latest.
103 The term "public hearing" includes any public meeting held by
104 any agency at which the rule is considered. If a petition for an
105 administrative determination under s. 120.56(2) is filed, the
106 period during which a rule must be filed for adoption is
107 extended to 60 days after the administrative law judge files the
108 final order with the clerk or until 60 days after subsequent
109 judicial review is complete.

110 3. At the time a rule is filed, the agency shall certify
111 that the time limitations prescribed by this paragraph have been
112 complied with, that all statutory rulemaking requirements have

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113 | been met, and that there is no administrative determination
114 | pending on the rule.

115 | 4. At the time a rule is filed, the committee shall
116 | certify whether the agency has responded in writing to all
117 | material and timely written comments or written inquiries made
118 | on behalf of the committee. The department shall reject any rule
119 | that is not filed within the prescribed time limits; that does
120 | not comply with all statutory rulemaking requirements and rules
121 | of the department; upon which an agency has not responded in
122 | writing to all material and timely written inquiries or written
123 | comments; upon which an administrative determination is pending;
124 | or which does not include a statement of estimated regulatory
125 | costs, if required.

126 | 5. If a rule has not been adopted within the time limits
127 | imposed by this paragraph or has not been adopted in compliance
128 | with all statutory rulemaking requirements, the agency proposing
129 | the rule shall withdraw the rule and give notice of its action
130 | in the next available issue of the Florida Administrative
131 | Weekly.

132 | 6. The proposed rule shall be adopted on being filed with
133 | the Department of State and become effective 20 days after being
134 | filed, on a later date specified in the notice required by
135 | subparagraph (a)1., ~~or~~ on a date required by statute, or when
136 | ratified by the Legislature pursuant to s. 120.541(3). Rules not
137 | required to be filed with the Department of State shall become
138 | effective when adopted by the agency head, ~~or~~ on a later date
139 | specified by rule or statute, or when ratified by the
140 | Legislature pursuant to s. 120.541(3). If the committee notifies

141 an agency that an objection to a rule is being considered, the
 142 agency may postpone the adoption of the rule to accommodate
 143 review of the rule by the committee. When an agency postpones
 144 adoption of a rule to accommodate review by the committee, the
 145 90-day period for filing the rule is tolled until the committee
 146 notifies the agency that it has completed its review of the
 147 rule.

148
 149 For the purposes of this paragraph, the term "administrative
 150 determination" does not include subsequent judicial review.

151 Section 2. Paragraph (d) of subsection (1) of section
 152 120.541, Florida Statutes, as amended by chapter 2010-279, Laws
 153 of Florida, is amended to read:

154 120.541 Statement of estimated regulatory costs.—

155 (1)

156 (d) At least 21 ~~45~~ days before filing the rule for
 157 adoption, an agency that is required to revise a statement of
 158 estimated regulatory costs shall provide the statement to the
 159 person who submitted the lower cost regulatory alternative and
 160 to the committee and shall provide notice on the agency's
 161 website that it is available to the public.

162 Section 3. Paragraph (a) of subsection (2) of section
 163 120.56, Florida Statutes, as amended by chapter 2010-279, Laws
 164 of Florida, is amended to read:

165 120.56 Challenges to rules.—

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

167 (a) A substantially affected person may seek an
 168 administrative determination of the invalidity of a proposed

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169 rule by filing a petition seeking such a determination with the
170 division within 21 days after the date of publication of the
171 notice required by s. 120.54(3)(a); within 10 days after the
172 final public hearing is held on the proposed rule as provided by
173 s. 120.54(3)(e)2.; within 20 44 days after the statement of
174 estimated regulatory costs or revised statement of estimated
175 regulatory costs, if applicable, has been prepared and made
176 available as provided in s. 120.54(1)(d); or within 20 days
177 after the date of publication of the notice required by s.
178 120.54(3)(d). The petition must state with particularity the
179 objections to the proposed rule and the reasons that the
180 proposed rule is an invalid exercise of delegated legislative
181 authority. The petitioner has the burden of going forward. The
182 agency then has the burden to prove by a preponderance of the
183 evidence that the proposed rule is not an invalid exercise of
184 delegated legislative authority as to the objections raised. A
185 person who is substantially affected by a change in the proposed
186 rule may seek a determination of the validity of such change. A
187 person who is not substantially affected by the proposed rule as
188 initially noticed, but who is substantially affected by the rule
189 as a result of a change, may challenge any provision of the rule
190 and is not limited to challenging the change to the proposed
191 rule.

192 Section 4. This act shall take effect July 1, 2011.