

By Senator Bennett

21-01480-11

20111382

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

18  
19 Be It Enacted by the Legislature of the State of Florida:

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21       Section 1. Paragraphs (a) and (e) of subsection (3) of  
22       section 120.54, Florida Statutes, as amended by chapter 2010-  
23       279, Laws of Florida, are amended to read:

24       120.54 Rulemaking.—

25       (3) ADOPTION PROCEDURES.—

26       (a) *Notices.*—

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

21-01480-11

20111382

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

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

56 3. The notice shall be mailed to all persons named in the  
57 proposed rule and to all persons who, at least 14 days prior to  
58 such mailing, have made requests of the agency for advance

21-01480-11

20111382

59 notice of its proceedings. The agency shall also give such  
60 notice as is prescribed by rule to those particular classes of  
61 persons to whom the intended action is directed.

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

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

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

85 2. A rule may not be filed for adoption less than 28 days  
86 or more than 90 days after the notice required by paragraph (a),  
87 until 21 days after the notice of change required by paragraph

21-01480-11

20111382

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

111 3. At the time a rule is filed, the agency shall certify  
112 that the time limitations prescribed by this paragraph have been  
113 complied with, that all statutory rulemaking requirements have  
114 been met, and that there is no administrative determination  
115 pending on the rule.

116 4. At the time a rule is filed, the committee shall certify

21-01480-11

20111382

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

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

133 6. The proposed rule shall be adopted on being filed with  
134 the Department of State and become effective 20 days after being  
135 filed, on a later date specified in the notice required by  
136 subparagraph (a)1., ~~or~~ on a date required by statute, or when  
137 ratified by the Legislature pursuant to s. 120.541(3). Rules not  
138 required to be filed with the Department of State shall become  
139 effective when adopted by the agency head, ~~or~~ on a later date  
140 specified by rule or statute, or when ratified by the  
141 Legislature pursuant to s. 120.541(3). If the committee notifies  
142 an agency that an objection to a rule is being considered, the  
143 agency may postpone the adoption of the rule to accommodate  
144 review of the rule by the committee. When an agency postpones  
145 adoption of a rule to accommodate review by the committee, the

21-01480-11

20111382

146 90-day period for filing the rule is tolled until the committee  
147 notifies the agency that it has completed its review of the  
148 rule.

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

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

155 120.541 Statement of estimated regulatory costs.—

156 (1)

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

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

166 120.56 Challenges to rules.—

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

168 (a) A substantially affected person may seek an  
169 administrative determination of the invalidity of a proposed  
170 rule by filing a petition seeking such a determination with the  
171 division within 21 days after the date of publication of the  
172 notice required by s. 120.54(3)(a); within 10 days after the  
173 final public hearing is held on the proposed rule as provided by  
174 s. 120.54(3)(e)2.; within 20 ~~44~~ days after the statement of

21-01480-11

20111382

175 estimated regulatory costs or revised statement of estimated  
176 regulatory costs, if applicable, has been prepared and made  
177 available as provided in s. 120.541(1)(d); or within 20 days  
178 after the date of publication of the notice required by s.  
179 120.54(3)(d). The petition must state with particularity the  
180 objections to the proposed rule and the reasons that the  
181 proposed rule is an invalid exercise of delegated legislative  
182 authority. The petitioner has the burden of going forward. The  
183 agency then has the burden to prove by a preponderance of the  
184 evidence that the proposed rule is not an invalid exercise of  
185 delegated legislative authority as to the objections raised. A  
186 person who is substantially affected by a change in the proposed  
187 rule may seek a determination of the validity of such change. A  
188 person who is not substantially affected by the proposed rule as  
189 initially noticed, but who is substantially affected by the rule  
190 as a result of a change, may challenge any provision of the rule  
191 and is not limited to challenging the change to the proposed  
192 rule.

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