

CHAPTER 81-309

Committee Substitute for House Bill No. 216

An act relating to the Administrative Procedure Act; amending s. 120.54(3)(8), (11), Florida Statutes, 1980 Supplement; requiring certain materials to be considered and made part of the record; providing for incorporating into rules certain material by reference; providing certain deadlines for filing copies of certain rules; providing for withdrawal of a proposed rule under certain circumstances; adding s. 120.545(1)(f), (2)(c), Florida Statutes, 1980 Supplement; providing for review by the Administrative Procedures Committee of the economic impact statement accompanying a proposed rule; providing for agency response to such review; amending s. 120.53(1)(b), Florida Statutes; requiring that certain forms be filed with the Department of State; requiring the department to send a copy of such forms to the Joint Administrative Procedures Committee; providing when forms may become effective; amending s. 120.55(1)(a), (b), Florida Statutes, 1980 Supplement; providing that forms shall not be published in the Florida Administrative Code or the Florida Administrative Weekly, but shall be included in rules by reference; providing an effective date.

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

Section 1. Subsections (3), (8), and (11) of section 120.54, Florida Statutes, 1980 Supplement, are amended to read:

120.54 Rulemaking; adoption procedures.--

(3) If the intended action concerns any rule other than one relating exclusively to organization, procedure, or practice, the agency shall, on the request of any affected person received within 14 days after the date of publication of the notice, give affected persons an opportunity to present evidence and argument on all issues under consideration appropriate to inform it of their contentions. Prisoners, as defined in s. 944.02(5), may be limited by the Department of Corrections to an opportunity to submit written statements concerning intended action on any department rule. The agency may schedule a public hearing on the rule and, if requested by any affected person, shall schedule a public hearing on the rule. Any material pertinent to the issues under consideration submitted to the agency within 14 days after the date of publication of the notice or submitted at a public hearing shall be considered by the agency and made a part of the record of the rulemaking proceeding.

(8) Each rule adopted shall contain only one subject and shall be preceded by a concise statement of the purpose of the rule and reference to the rules repealed or amended, which statement need not be printed in the Florida Administrative Code. Pursuant to rule of the Department of State a rule may incorporate material

by reference but only as such material exists on the date the rule is adopted. For purposes of such rule, changes in such material shall have no effect with respect to rule unless the rule is amended to incorporate such material, as changed. No rule shall be amended by reference only. Amendments shall set out the amended rule in full in the same manner as required by the constitution for laws.

(11)(a) The adopting agency shall file with the committee, at least 21 days prior to the proposed adoption date, a copy of each rule it proposes to adopt, a detailed written statement of the facts and circumstances justifying the proposed rule, a copy of the estimate of economic impact required by subsection ~~(2)~~(4), a statement of the extent to which the proposed rule establishes standards more restrictive than federal standards or a statement that the proposed rule is no more restrictive than federal standards or that a federal rule on the same subject does not exist, and the notice required by subsection (1). After the final public hearing on the proposed rule, or after the time for requesting a hearing has expired, the adopting agency shall file any changes in the proposed rule and the reasons therefor with the committee or advise the committee that there are no changes. In addition, when any change is made in a proposed rule other than a technical change, the adopting agencies shall provide a detailed statement of such change by certified mail or actual delivery to any person who requests it in writing at the public hearing. The agency shall file the change with the committee, and provide the statement of change to persons requesting it, at least 7 days prior to filing the rule for adoption. Educational units, other than units of the State University System and local units of government with jurisdiction in only one county or part thereof shall not be required to make filings with the committee. This paragraph shall not apply to emergency rules adopted pursuant to subsection (9). However, agencies, other than those listed herein, adopting emergency rules shall file a copy of each emergency rule with the committee.

(b) If the adopting agency is required to publish its rules in the Florida Administrative Code, it shall file with the Department of State three certified copies of the rule it proposes to adopt, a summary of the rule, a summary of any hearings held on the rule, and a detailed written statement of the facts and circumstances justifying the rule. Agencies not required to publish their rules in the Florida Administrative Code shall file one certified copy of the proposed rule, and the other material required above, in the office of the agency head, and such rules shall be open to the public pursuant to s. 120.53(2). Filings shall be made no ~~not~~ less than 21 days nor ~~or~~ more than 90 days after the notice required by subsection (1), ~~if no public hearing is held~~. If a public hearing is held, the 90 day limit is extended to 21 days after adjournment of the final hearing on the rule, the adopting agency shall file within 21 days after receipt of all material authorized to be submitted at the hearing or after receipt of the transcript, if one is made, whichever is latest later. ~~If a public hearing is held and no material is authorized to be submitted and no transcript is made, filings shall be made not less than 21 days or more than 90 days after the notice required in subsection (1).~~ At the time a rule is filed, the agency shall certify that the time limitations prescribed by this subsection have been complied with and that there is no administrative

determination pending on the rule. The department shall reject any rule not filed within the prescribed time limits or upon which an administrative determination is pending. If a rule has not been adopted within the time limits imposed by this section, the agency proposing the rule shall withdraw the rule and give notice of its action in the same manner as is prescribed in paragraphs (a) and (b) of subsection (1).

Section 2. Paragraph (b) of subsection (1) of section 120.53, Florida Statutes, is amended to read:

120.53 Adoption of rules of procedure and public inspection.--

(1) In addition to other requirements imposed by law, each agency shall:

(b) Adopt rules of practice setting forth the nature and requirements of all formal and informal procedures, including a list of all forms and instructions used by the agency in its dealings with the public. The list of forms and instructions shall include the title of each form or instruction and a statement of the manner in which the form or instruction may be obtained without cost. Each agency shall file with the Department of State a copy of each form used by the agency in its dealings with the public. The department shall immediately send a copy of the form to the committee. A form may become effective no earlier than 20 days after it is filed with the department.

Section 3. Paragraph (f) is added to subsection (1) of section 120.545, Florida Statutes, 1980 Supplement, and paragraph (c) is added to subsection (2) of said section to read:

120.545 Committee review of agency rules.--

(1) As a legislative check on legislatively created authority, the committee shall examine each proposed rule, except for those proposed rules exempted by s. 120.54{11}{a), and its accompanying material, and may examine any existing rule, for the purpose of determining whether:

If) The economic impact statement accompanying the rule is adequate to accurately inform the public of the economic effect of the rule.

If the committee objects to a proposed or existing rule, it shall, within 5 days of the objection, certify that fact to the agency whose rule has been examined and include with the certification a statement detailing its objections with particularity.

(2) Within 30 days of receipt of the objection, if the agency is headed by an individual, or within 45 days of receipt of the objection, if the agency is headed by a collegial body, the agency shall:

(c) If the rule is either an existing or proposed rule and the objection is to the economic impact statement:

1. Prepare a corrected economic impact statement, give notice of the availability of the corrected economic impact statement in the first available issue of the Florida Administrative Weekly, and file copies of the corrected statement with the committee and the Department of State; or

2. Notify the committee that it refuses to prepare a corrected economic impact statement.

Section 4. Paragraphs (a) and (b) of subsection (1) of section 120.55, Florida Statutes, 1980 Supplement, are amended to read:

120.55 Publication.--

(1) The Department of State shall:

(a) Publish in a permanent compilation entitled "Florida Administrative Code" all rules adopted by each agency, citing the specific rulemaking authority pursuant to which each rule was adopted, all history notes as authorized in s. 120.545(8), and complete indexes to all rules contained in the code. Supplementation shall be made as often as practicable, but at least monthly. Rules general in form but applicable to only one school district, community college district, or county, or a part thereof, or to the Florida School for the Deaf and the Blind and university rules relating to internal personnel or business and finance shall not be published in the Florida Administrative Code. Exclusion from publication in the Florida Administrative Code shall not affect their validity or effectiveness. Forms shall not be published in the Florida Administrative Code, but shall be included in rules by reference. The reference shall state at a minimum the title and the effective date of the form and an explanation of how the form may be obtained. The department shall publish, at the beginning of the section of the code dealing with an agency that files copies of its rules with the department, a summary or listing of all rules of said agency excluded from publication in the code and a statement as to where said rule may be inspected or examined. The department shall also publish, at the beginning of the section of the code dealing with an agency, any exemptions granted that agency pursuant to s. 120.63, including the termination date of the exemption and a statement whether the exemption can be renewed pursuant to s. 120.63(2)(b). The department shall, by July 1, 1981, contract with a publishing firm for the publication, in a timely and useful form, of the Florida Administrative Code; however, the department shall retain responsibility for the code as provided in this section. This publication shall be the official compilation of the administrative rules of Florida.

(b) Publish a weekly publication entitled the "Florida Administrative Weekly," which shall contain:

1. Notice of adoption of, and an index to, all rules filed during the preceding week.

2. All hearing notices required by s. 120.54(1), showing the time, place, and date of the hearings and the text of all rules proposed for consideration or a reference to the location in the Florida Administrative Weekly where the text of the proposed rules is published. Forms shall not be published in the Florida Administrative Weekly, but shall be included in the rules by reference. The reference shall state, at a minimum, the title and the effective date of the form and an explanation of how the form may be obtained.

3. All notices of meetings, hearings, and workshops conducted in accordance with the provisions of s. 120.53(1)(d), including a statement of the manner in which a copy of the agenda may be obtained.

4. A notice of each request for authorization to amend or repeal an existing model rule or for the adoption of new model rules.

5. A notice of each request for exemption from any provision of this chapter.

6. Notice of petitions for declaratory statements or administrative determinations.

7. A summary of each objection to any rule filed by the Administrative Procedures Committee during the preceding week.

8. Any other material required or authorized by law or deemed useful by the department.

The department may contract with a publishing firm for publication of the Florida Administrative Weekly.

Section 5. This act shall take effect October 1, 1981.

Approved by the Governor July 8, 1981.

Filed in Office Secretary of State July 9, 1981