

# CHAPTER 2012-63

## House Bill No. 541

An act relating to administrative procedures; amending s. 120.54, F.S.; directing an agency under the Administrative Procedure Act to send written notice of certain rules affecting small businesses to the rules ombudsman in the Executive Office of the Governor rather than to the Department of Economic Opportunity; amending s. 120.55, F.S.; revising provisions with respect to the revision and publication of the Florida Administrative Code to provide that the Department of State is not required to publish a printed version of the code but may contract with a publishing firm for a printed publication; providing that the electronic version of the code is the official compilation of the administrative rules of the state; providing for adopted rules and material incorporated by reference to be filed in electronic forms; renaming the “Florida Administrative Weekly” as the “Florida Administrative Register”; requiring a continuous revision and publication of the Florida Administrative Register on an Internet website managed by the Department of State; revising content and website search requirements; deleting a requirement to provide printed copies of the Florida Administrative Register to certain federal and state entities; providing a directive to the Division of Statutory Revision; providing an effective date.

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

Section 1. Paragraph (b) of subsection (3) of section 120.54, Florida Statutes, is amended to read:

120.54 Rulemaking.—

(3) ADOPTION PROCEDURES.—

(b) Special matters to be considered in rule adoption.—

1. Statement of estimated regulatory costs.—Before the adoption, amendment, or repeal of any rule other than an emergency rule, an agency is encouraged to prepare a statement of estimated regulatory costs of the proposed rule, as provided by s. 120.541. However, an agency must prepare a statement of estimated regulatory costs of the proposed rule, as provided by s. 120.541, if:

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

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

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

a. Each agency, before the adoption, amendment, or repeal of a rule, shall consider the impact of the rule on small businesses as defined by s. 288.703 and the impact of the rule on small counties or small cities as defined by s. 120.52. Whenever practicable, an agency shall tier its rules to reduce disproportionate impacts on small businesses, small counties, or small cities to avoid regulating small businesses, small counties, or small cities that do not contribute significantly to the problem the rule is designed to address. An agency may define “small business” to include businesses employing more than 200 persons, may define “small county” to include those with populations of more than 75,000, and may define “small city” to include those with populations of more than 10,000, if it finds that such a definition is necessary to adapt a rule to the needs and problems of small businesses, small counties, or small cities. The agency shall consider each of the following methods for reducing the impact of the proposed rule on small businesses, small counties, and small cities, or any combination of these entities:

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

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

(III) Consolidating or simplifying the rule’s compliance or reporting requirements.

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

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

b.(I) If the agency determines that the proposed action will affect small businesses as defined by the agency as provided in sub-subparagraph a., the agency shall send written notice of the rule to the Small Business Regulatory Advisory Council and the rules ombudsman in the Executive Office of the Governor ~~Department of Economic Opportunity~~ at least 28 days before the intended action.

(II) Each agency shall adopt those regulatory alternatives offered by the Small Business Regulatory Advisory Council and provided to the agency no later than 21 days after the council’s receipt of the written notice of the rule which it finds are feasible and consistent with the stated objectives of the proposed rule and which would reduce the impact on small businesses. When regulatory alternatives are

offered by the Small Business Regulatory Advisory Council, the 90-day period for filing the rule in subparagraph (e)2. is extended for a period of 21 days.

(III) If an agency does not adopt all alternatives offered pursuant to this sub-subparagraph, it shall, before rule adoption or amendment and pursuant to subparagraph (d)1., file a detailed written statement with the committee explaining the reasons for failure to adopt such alternatives. Within 3 working days after the filing of such notice, the agency shall send a copy of such notice to the Small Business Regulatory Advisory Council. The Small Business Regulatory Advisory Council may make a request of the President of the Senate and the Speaker of the House of Representatives that the presiding officers direct the Office of Program Policy Analysis and Government Accountability to determine whether the rejected alternatives reduce the impact on small business while meeting the stated objectives of the proposed rule. Within 60 days after the date of the directive from the presiding officers, the Office of Program Policy Analysis and Government Accountability shall report to the Administrative Procedures Committee its findings as to whether an alternative reduces the impact on small business while meeting the stated objectives of the proposed rule. The Office of Program Policy Analysis and Government Accountability shall consider the proposed rule, the economic impact statement, the written statement of the agency, the proposed alternatives, and any comment submitted during the comment period on the proposed rule. The Office of Program Policy Analysis and Government Accountability shall submit a report of its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The Administrative Procedures Committee shall report such findings to the agency, and the agency shall respond in writing to the Administrative Procedures Committee if the Office of Program Policy Analysis and Government Accountability found that the alternative reduced the impact on small business while meeting the stated objectives of the proposed rule. If the agency will not adopt the alternative, it must also provide a detailed written statement to the committee as to why it will not adopt the alternative.

Section 2. Section 120.55, Florida Statutes, is amended to read:

120.55 Publication.—

(1) The Department of State shall:

(a)1. Through a continuous revision and publication system, compile and publish electronically, on an Internet website managed by the department, the “Florida Administrative Code.” The Florida Administrative Code shall contain all rules adopted by each agency, citing the grant of rulemaking

authority and the specific law implemented pursuant to which each rule was adopted, all history notes as authorized in s. 120.545(7), complete indexes to all rules contained in the code, and any other material required or authorized by law or deemed useful by the department. The electronic code shall display each rule chapter currently in effect in browse mode and allow full text search of the code and each rule chapter. The department ~~shall publish a printed version of the Florida Administrative Code and~~ may contract with a publishing firm for ~~a such~~ printed publication; however, the department shall retain responsibility for the code as provided in this section. ~~Supplementation of the printed code shall be made as often as practicable, but at least monthly.~~ The electronic ~~printed~~ publication shall be the official compilation of the administrative rules of this state. The Department of State shall retain the copyright over the Florida Administrative Code.

2. Rules general in form but applicable to only one school district, community college district, or county, or a part thereof, or state 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 the validity or effectiveness of such rules.

3. At the beginning of the section of the code dealing with an agency that files copies of its rules with the department, the department shall publish the address and telephone number of the executive offices of each agency, the manner by which the agency indexes its rules, a listing of all rules of that agency excluded from publication in the code, and a statement as to where those rules may be inspected.

4. Forms shall not be published in the Florida Administrative Code; but any form which an agency uses in its dealings with the public, along with any accompanying instructions, shall be filed with the committee before it is used. Any form or instruction which meets the definition of “rule” provided in s. 120.52 shall be incorporated by reference into the appropriate rule. The reference shall specifically state that the form is being incorporated by reference and shall include the number, title, and effective date of the form and an explanation of how the form may be obtained. Each form created by an agency which is incorporated by reference in a rule notice of which is given under s. 120.54(3)(a) after December 31, 2007, must clearly display the number, title, and effective date of the form and the number of the rule in which the form is incorporated.

5. The department shall allow adopted rules and material incorporated by reference to be filed in electronic form as prescribed by department rule. When a rule is filed for adoption with incorporated material in electronic form, the department’s publication of the Florida Administrative Code on its Internet website must contain a hyperlink from the incorporating reference in the rule directly to that material. The department may not allow hyperlinks from rules in the Florida Administrative Code to any

material other than that filed with and maintained by the department, but may allow hyperlinks to incorporated material maintained by the department from the adopting agency's website or other sites.

(b) Electronically publish on an Internet website managed by the department a continuous revision and weekly publication entitled the "Florida Administrative Register Weekly," which shall serve as the official ~~Internet website for such~~ publication and must contain:

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

~~1.2~~ All notices required by s. 120.54(3)(a), showing the text of all rules proposed for consideration.

~~2.3~~ All notices of public meetings, hearings, and workshops conducted in accordance with ~~the provisions of~~ s. 120.525, including a statement of the manner in which a copy of the agenda may be obtained.

~~3.4~~ A notice of each request for authorization to amend or repeal an existing uniform rule or for the adoption of new uniform rules.

~~4.5~~ Notice of petitions for declaratory statements or administrative determinations.

~~5.6~~ A summary of each objection to any rule filed by the Administrative Procedures Committee ~~during the preceding week.~~

~~7. A cumulative list of all rules that have been proposed but not filed for adoption.~~

~~6.8~~ Any other material required or authorized by law or deemed useful by the department.

The department may contract with a publishing firm for a printed publication ~~shall publish a printed version~~ of the Florida Administrative Register Weekly and make copies available on an annual subscription basis. ~~The department may contract with a publishing firm for printed publication of the Florida Administrative Weekly.~~

~~(c) Review notices for compliance with format and numbering requirements before publishing them on the Florida Administrative Weekly Internet website.~~

~~(c)~~(d) Prescribe by rule the style and form required for rules, notices, and other materials submitted for filing.

~~(e)~~ Correct grammatical, typographical, and like errors not affecting the construction or meaning of the rules, after having obtained the advice and consent of the appropriate agency, and insert history notes.

~~(d)~~(f) Charge each agency using the Florida Administrative Register Weekly a space rate to cover the costs related to the Florida Administrative Register Weekly and the Florida Administrative Code.

~~(e)~~(g) Maintain a permanent record of all notices published in the Florida Administrative Register Weekly.

(2) The Florida Administrative Register Weekly Internet website must allow users to:

~~(a)~~ Search for notices by type, publication date, rule number, word, subject, and agency.;

(b) Search a database that makes available all notices published on the website for a period of at least 5 years.;

(c) Subscribe to an automated e-mail notification of selected notices to be sent out before or concurrently with ~~weekly~~ publication of the ~~printed and~~ electronic Florida Administrative Register Weekly. Such notification must include in the text of the e-mail a summary of the content of each notice.;

(d) View agency forms and other materials submitted to the department in electronic form and incorporated by reference in proposed rules.;

(e) Comment on proposed rules.

(3) Publication of material required by paragraph (1)(b) on the Florida Administrative Register Weekly Internet website does not preclude publication of such material on an agency's website or by other means.

(4) Each agency shall provide copies of its rules upon request, with citations to the grant of rulemaking authority and the specific law implemented for each rule.

(5) Any publication of a proposed rule promulgated by an agency, whether published in the Florida Administrative ~~Register Code~~ or elsewhere, shall include, along with the rule, the name of the person or persons originating such rule, the name of the agency head who approved the rule, and the date upon which the rule was approved.

(6) Access to the Florida Administrative ~~Register Weekly~~ Internet website and its contents, including the e-mail notification service, shall be free for the public.

~~(7)(a) Each year the Department of State shall furnish the Florida Administrative Weekly, without charge and upon request, as follows:~~

~~1. One subscription to each federal and state court having jurisdiction over the residents of the state; the Legislative Library; each state university library; the State Library; each depository library designated pursuant to s. 257.05; and each standing committee of the Senate and House of Representatives and each state legislator.~~

~~2. Two subscriptions to each state department.~~

~~3. Three subscriptions to the library of the Supreme Court of Florida, the library of each state district court of appeal, the division, the library of the Attorney General, each law school library in Florida, the Secretary of the Senate, and the Clerk of the House of Representatives.~~

~~4. Ten subscriptions to the committee.~~

~~(b) The Department of State shall furnish one copy of the Florida Administrative Weekly, at no cost, to each clerk of the circuit court and each state department, for posting for public inspection.~~

~~(7)(8)(a)~~ All fees and moneys collected by the Department of State under this chapter shall be deposited in the Records Management Trust Fund for the purpose of paying for costs incurred by the department in carrying out this chapter.

(b) The unencumbered balance in the Records Management Trust Fund for fees collected pursuant to this chapter may not exceed \$300,000 at the beginning of each fiscal year, and any excess shall be transferred to the General Revenue Fund.