

2010 SUMMARY OF AMENDMENTS TO CHAPTER 120

Chapter 2010-5, Laws of Florida, a reviser's bill, amended subparagraph 120.55(1)(a)1. to correct a reference to history notes found in s. 120.545(7), as a result of changes to chapter 120 by ch. 2008-104. Chapter 2010-5 also reenacted s. 120.52(2)-(22), F.S. Effective date: July 1, 2010.

Chapter 2010-78, Laws of Florida, amended paragraph 120.81(1)(e) to delete the requirement that state universities make filings with the Administrative Procedures Committee of documents required to be filed by s. 120.54 or s. 120.55(1)(a)4. Effective date: July 1, 2010.

Chapter 2010-102, Laws of Florida, amended subsection 120.542(9) to delete the requirement that agencies file a report with the Governor, Senate President, and House Speaker each October 1 listing the number of petitions filed requesting variances and waivers to agency rules and the disposition of all petitions. Effective date: May 27, 2010.

Chapter 2010-205, Laws of Florida, amended subsection 120.52(13), the definition of "party," to provide that a member government of a regional water supply authority is not subject to proceedings under ss. 120.569, 120.57 and 120.68 where it is a party to an interlocal agreement under ss. 163.01 and 373.713 that provides for alternative dispute resolution. Effective date: July 1, 2010.

Chapter 2010-279, Laws of Florida, amended several sections of chapter 120.
Section 120.54

- Subparagraph 120.54(3)(b)1. is amended to provide that an agency must prepare a statement of estimated regulatory costs if a proposed rule will have an adverse impact on small business or 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.
- Paragraph 120.54(4)(c) is amended to provide that an emergency rule shall not be effective for a period longer than 90 days and shall not be renewable, except when the agency has initiated rulemaking to adopt rules addressing the subject of the emergency rule and either: 1. a challenge to the proposed rules has been filed and remains pending; or 2. the proposed rules are awaiting ratification by the Legislature pursuant to s. 120.541(3). Paragraph 120.54(4)(c) is further amended to provide that nothing in the paragraph prohibits the agency from adopting a rule or rules identical to the emergency rule through the rulemaking procedures specified in subsection 120.54(3).

Section 120.541

- Paragraph 120.541(1)(b) is amended to provide that if a proposed rule will have an adverse impact on small business or if the proposed rule is likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate within

1 year after the implementation of the rule, the agency shall prepare a statement of estimated regulatory costs as required by s. 120.54(3)(b).

- Paragraph 120.54(1)(c) is amended to provide that the agency is required to revise a statement of estimated regulatory costs if any change to the rule made under s. 120.54(3)(d) increases the regulatory costs of the rule.
- Paragraph 120.541(1)(d) provides that at least 45 days before filing the rule for adoption, an agency that is required to revise a statement of estimated regulatory costs shall provide the statement to the person who submitted the lower cost regulatory alternative and to the committee, and shall provide notice on the agency's website that it is available to the public.
- Paragraph 120.541(1)(e) provides that notwithstanding s. 120.56(1)(c), the failure of the agency to prepare a statement of estimated regulatory costs or to respond to a written lower cost regulatory alternative as provided in this subsection is a material failure to follow the applicable rulemaking procedures or requirements set forth in chapter 120.
- Paragraph 120.541(1)(f) provides that an agency's failure to prepare a statement of estimated regulatory costs or to respond to a written lower cost regulatory alternative may not be raised in a proceeding challenging the validity of a rule pursuant to s. 120.52(8)(a) unless: 1. raised in a petition filed no later than 1 year after the effective date of the rule; and 2. raised by a person whose substantial interests are affected by the rule's regulatory costs.
- Paragraph 120.541(1)(g) provides that a rule that is challenged pursuant to s. 120.52(8)(f) may not be declared invalid unless: 1. the issue is raised in an administrative proceeding within 1 year after the effective date of the rule; 2. the challenge is to the agency's rejection of a lower cost regulatory alternative offered under paragraph (a) or s. 120.54(3)(b)2.b.; and 3. the substantial interests of the person challenging the rule are materially affected by the rejection.
- Subsection 120.541(2) is amended to provide that a statement of estimated regulatory costs shall include an economic analysis showing whether the rule directly or indirectly: 1. is likely to have an adverse impact on economic growth, private-sector job creation or employment, or private-sector investment in excess of \$1 million in the aggregate within 5 years after the implementation of the rule; 2. is likely to have an adverse impact on business competitiveness, including the ability of persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate within 5 years after the implementation of the rule; or 3. is likely to increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within 5 years after the implementation of the rule. In addition, the impact analysis for small businesses must include the basis for the agency's decision not to implement alternatives that would reduce adverse impacts on small businesses.
- Subsection 120.541(3) provides that if the adverse impact or regulatory costs of a rule exceed any of the criteria established in s. 120.541(2)(a), the rule must be submitted to the Senate President and House Speaker at least 30 days before the next regular legislative session and may not take effect until it has been ratified by the Legislature.

- Subsection 120.541(4) provides that s. 120.541(2)(a) does not apply to emergency rules adopted pursuant to s. 120.54(4) or the adoption of federal standards pursuant to s. 120.54(6).

Section 120.56

- Paragraph 120.56(2)(a) is amended to provide that a substantially affected person may seek an administrative determination of the invalidity of a proposed rule by filing a petition within 44 days after the statement of estimated regulatory costs or revised statement of estimated regulatory costs has been prepared and made available.
- Paragraph 120.56(4)(d) is amended to delete the provision relating to the impairment of contracts existing at the time a final order is entered.

Section 120.60

- Subsection 120.60(1) is amended to provide that an agency may establish by rule the time period for submitting any additional information requested by the agency. For good cause shown, the agency shall grant a request for extension of time for submitting the additional information. Further, if the applicant believes that the agency's request for additional information is not authorized by law or rule, the agency shall proceed to process the application at the applicant's request.
- Subsection 120.60(3) is amended to provide that written notice that an agency intends to grant or deny a license shall be delivered or mailed to each person who has made a written request for notice.

Effective date: November 17, 2010.