

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 993 Rulemaking
SPONSOR(S): Roberson
TIED BILLS: **IDEN./SIM. BILLS:** SB 1382

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Rulemaking & Regulation Subcommittee		Miller	Rubottom

SUMMARY ANALYSIS

This bill refines certain agency rulemaking procedures under Chapter 120, the Administrative Procedures Act (“APA”), by referencing legislative ratification now included in s. 120.541(3). The bill also revises certain rulemaking timeframes to conform those times with other periods required in the rulemaking statute, s. 120.54.

HB 1565 was passed during the 2010 regular session but was vetoed by Governor Crist. On November 16, 2010, the Legislature in special session voted to override that veto and the bill became law as Chapter 2010-279. The law created new s. 120.541(3), requiring submission of rules with certain economic impacts for ratification by the Legislature before they may go into effect.

The law also lengthened the time (from 21 days to 45 days) before an agency could adopt a rule after revising a required economic analysis and lengthened the time (from 20 days to 44 days) for a person to challenge the validity of a rule after the agency prepared the required economic analysis. These changes created a potential timing conflict with existing provisions which only allowed 21 days before adopting a rule if the economic analysis was not revised.

The bill does the following:

1. Requires agencies to include in each notice of rulemaking whether the proposed rule will require legislative ratification.
2. Expressly includes legislative ratification in the description of factors controlling when an adopted rule takes effect.
3. Resolves the timing conflict created by Chapter 2010-279 by reverting the time deadlines back to the pre-2010 terms (45 days back to 21; 44 days back to 20).

These changes will have an insignificant fiscal impact on any party and do not conflict with constitutional provisions.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

This bill clarifies the application of the ratification requirement¹ to agency rulemaking. The bill also conforms time limits for delivering a revised statement of estimated regulatory costs and for challenging the validity of a proposed rule.²

¹ S. 120.541(3), F.S., created by Chapter 2010-279, Laws of Florida.

² Chapter 2010-279, Laws of Florida, created s. 120.541(1)(d), providing 45 days for an agency to make available a revised statement of estimated regulatory costs (“SERC”), and amended s. 120.56(2)(a) to provide 44 days from delivery of the revised SERC for a party to file a petition challenging the proposed rule.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0993.RRS

DATE: 3/21/2011

1. PRESENT SITUATION

Under current law, an agency begins the formal rulemaking process by filing a notice of the proposed rule.³ The notice is published by the Department of State in the Florida Administrative Weekly⁴ and must provide certain information, including the text of the proposed rule, a summary of the SERC (if one is prepared), and how a party may request a public hearing.

Present law distinguishes between a rule being “adopted” and becoming enforceable or “effective.”⁵ Prior to the 2010 revision the law provided only two contingencies⁶ to “effectiveness;” legislative ratification became the third.⁷

Rules normally must be filed for adoption no earlier than 28 days nor later than 90 days after the agency publishes the notice of proposed rule; the later deadline may change depending on different factors.⁸ To ensure completion of the rulemaking process, the APA provides different times in which a party may challenge a proposed rule.⁹ If an agency is required to prepare a SERC the rule cannot be filed for adoption until 21 days after the SERC is provided to parties and made publicly available.¹⁰

The 2010 revision did not alter this requirement but created new provisions delaying adoption of a rule for 45 days after the agency made a *revised* SERC available¹¹ and providing 44 days for a party to challenge a proposed rule.¹² These revised times conflict with the various 21 day timeframes provided for different aspects of rulemaking, such as filing a rule for adoption, requesting a hearing and submitting materials responding to the rulemaking notice,¹³ or filing notices of substantial changes due to an objection from the Joint Administrative Procedures Committee.¹⁴

2. IMPACT OF BILL

The bill would require an agency’s statutory notice of proposed rulemaking to include a statement as to whether legislative ratification will be required before the rule goes into effect. The bill also expressly includes legislative ratification in the statutory description of those contingencies affecting when a rule becomes effective.

The present bill resolves the timing conflicts created in the 2010 law reversing the changes as follows:

- Instead of allowing 45 days, the bill requires a revised SERC be provided at least 21 days before the rule is filed for adoption, conforming the time with that for adopting a rule after providing an original SERC.¹⁵

³ S. 120.54(3)(a)1.

⁴ S. 120.55(1)(b)2.

⁵ S. 120.54(3)(e)6. Before a rule becomes enforceable, thus “effective,” the agency first must complete the rulemaking process and file the rule for adoption.

⁶ Id. A rule became effective either 20 days after being filed for adoption or on a date specified by statute. Rules not required to be filed with the Department of State became effective when adopted by the agency head or on a date specified by rule or statute.

⁷ S. 120.541(3).

⁸ S. 120.54(3)(e)2. The 90 day period is extended for an additional 21 days if a party submits a lower cost regulatory alternative to a proposed rule and the agency is compelled to prepare a SERC if one was not previously done. S. 120.541(1)(a), as amended by Ch. 2010-279, s. 2, Laws of Florida.

⁹ S. 120.56(2)(a). Originally, a party had 20 days after a SERC or revised SERC was made available in which to challenge a proposed rule.

¹⁰ S. 120.54(3)(e)2.

¹¹ S. 120.541(1)(d).

¹² S. 120.56(2)(a), as amended by Ch. 2010-279, s. 3, Laws of Florida.

¹³ S. 120.54(3)(c)1.

¹⁴ S. 120.54(d)1.

¹⁵ S. 120.54(3)(e)2.

- The bill reverts the time to 20 days for challenging a proposed rule after the agency provides a SERC, requiring the challenge be brought during the waiting period before the rule may be filed for adoption.

B. SECTION DIRECTORY:

Section 1: Clarifies the procedures for standard rulemaking¹⁶ by requiring agencies to state in the notice of proposed rule whether ratification will be necessary. Expressly notes ratification as a contingency for the rule to become effective.

Section 2: Reverses the 2010 changes to time periods for delaying rule adoption after an agency revises a SERC (from 45 days back to 21 days) and for a party to challenge a proposed rule after preparation of a SERC (from 44 days back to 20 days) to conform with other relevant time periods in the existing law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The impact on revenues in both FY 2011-2012 and FY 2012-2013 is indeterminate but insignificant. The bill authorizes no new revenue sources and existing revenues would not be increased by these clarifications of administrative procedure.

2. Expenditures:

Requiring disclosure in the rulemaking notice of whether the proposed rule may require ratification will have an indeterminate but insignificant impact on agency expenditures. Agencies currently must include in the rulemaking notice a summary of the SERC if one was prepared¹⁷ and must prepare a SERC if the proposed rule will adversely affect small business or increase regulatory costs more than \$200,000 in the aggregate within 1 year of implementation.¹⁸ As agencies have a duty to address the fiscal impact of a proposed rule, and already incur the expense pertaining to the preparation of a SERC, the information is available to determine whether legislative ratification will be required. The bill thus requires reporting an element the supporting data for which should exist.

Clarifying the rulemaking procedures by including ratification as a separate contingency for the rule to become effective only states current law and imposes no additional tasks or expenditures. Reverting the times for filing for adoption (from 45 to 21 days) or challenging a proposed rule (from 44 to 20 days) after the agency provides a revised SERC conforms these processes to existing law.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Many local governments are not subject to Chapter 120, the Administrative Procedures Act.¹⁹ For local governments subject to rulemaking under Chapter 120, the bill clarifies existing procedural requirements. The impact on revenues in both FY 2011-2012 and FY 2012-2013 is indeterminate but insignificant. The bill authorizes no new revenue sources and existing revenues would not be increased by these clarifications of administrative procedure.

2. Expenditures:

The analysis in section II.A.2 is applicable to those local governments subject to Chapter 120 rulemaking. The impact on expenditures is indeterminate but insignificant.

¹⁶ S. 120.54(3).

¹⁷ S. 120.54(3)(a)1.

¹⁸ S. 120.54(3)(b)1.

¹⁹ S. 120.52(1).

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill imposes no new direct economic impacts on the private sector.

D. FISCAL COMMENTS:

No additional fiscal comments.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill imposes no duty on a municipality or county to expend funds or take action requiring the expenditure of funds. The bill neither reduces the authority for municipalities or counties to raise funds nor reduces the municipality/county share of state taxes.

2. Other:

The bill changes the time for a party to challenge a proposed rule after the agency provides a SERC (from 44 to 20 days). This may impact businesses outside the state intending to bring such challenges but treats all objecting parties the same regardless of where located. There are no other constitutional issues pertaining to the bill.

B. RULE-MAKING AUTHORITY:

No rulemaking authority is provided because none is needed. The bill revises and clarifies existing rulemaking procedures for all agencies under Ch. 120.

C. DRAFTING ISSUES OR OTHER COMMENTS:

No other comments.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES