

By the Committee on Governmental Oversight and Accountability

585-02716-15

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1 A bill to be entitled  
2 An act relating to administrative procedures; amending  
3 s. 120.54, F.S.; revising the deadline to propose  
4 rules implementing new laws; amending s. 120.74, F.S.;  
5 revising requirements for the annual review of agency  
6 rules; providing procedures for preparing and  
7 publishing regulatory plans; specifying requirements  
8 for such plans; requiring publication by specified  
9 dates of notices of rule development and of proposed  
10 rules necessary to implement new laws; providing for  
11 suspension of an agency's rulemaking authority under  
12 certain circumstances; providing for applicability;  
13 repealing s. 120.7455, F.S., relating to legislative  
14 survey of regulatory impacts; providing for rescission  
15 of the suspension of rulemaking authority made under  
16 s. 120.745, F.S.; providing effective dates.

17  
18 Be It Enacted by the Legislature of the State of Florida:

19  
20 Section 1. Paragraph (b) of subsection (1) of section  
21 120.54, Florida Statutes, is amended to read:

22 120.54 Rulemaking.—

23 (1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER THAN  
24 EMERGENCY RULES.—

25 (b) Whenever an act of the Legislature is enacted which  
26 requires implementation of the act by rules of an agency within  
27 the executive branch of state government, such rules shall be  
28 drafted and formally proposed as provided in this section within  
29 the times provided in s. 120.74(5) and (6) ~~180 days after the~~

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30 ~~effective date of the act, unless the act provides otherwise.~~

31 Section 2. Section 120.74, Florida Statutes, is amended to  
32 read:

33 (Substantial rewording of section. See  
34 s. 120.74, F.S., for present text.)

35 120.74 Agency annual rulemaking and regulatory plans;  
36 reports.-

37 (1) REGULATORY PLAN.-By October 1 of each year, each agency  
38 shall prepare an implementation and rulemaking plan.

39 (a) The plan must include a listing of each law enacted or  
40 amended during the previous 12 months which creates or modifies  
41 the duties or authority of the agency. If the Governor or the  
42 Attorney General provides a letter to the committee stating that  
43 a law affects all or most agencies, the agency may exclude the  
44 law from its plan. For each law listed by an agency under this  
45 paragraph, the plan must state:

46 1. Whether the agency must adopt rules to implement the  
47 law.

48 2. If rulemaking is necessary to implement the law:

49 a. Whether a notice of rule development has been published  
50 and, if so, the citation to such notice in the Florida  
51 Administrative Register.

52 b. The date by which the agency expects to publish the  
53 notice of proposed rule under s. 120.54(3)(a).

54 3. If rulemaking is not necessary to implement the law, a  
55 concise written explanation of the reasons why the law may be  
56 implemented without rulemaking.

57 (b) The plan must also include a listing of each law not  
58 otherwise listed pursuant to paragraph (a) which the agency

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59 expects to implement by rulemaking before the following July 1,  
60 except emergency rulemaking. For each law listed under this  
61 paragraph, the plan must state whether the rulemaking is  
62 intended to simplify, clarify, increase efficiency, improve  
63 coordination with other agencies, reduce regulatory costs, or  
64 delete obsolete, unnecessary, or redundant rules.

65 (c) The plan must include any desired update to the prior  
66 year's regulatory plan or supplement published pursuant to  
67 subsection (8). If, in a prior year, a law was identified under  
68 this paragraph or under subparagraph (a)1. as a law requiring  
69 rulemaking to implement but a notice of proposed rule has not  
70 been published:

71 1. The agency may identify and again list such law, noting  
72 the applicable notice of rule development by citation to the  
73 Florida Administrative Register; or

74 2. If the agency has subsequently determined that  
75 rulemaking is not necessary to implement the law, the agency may  
76 identify such law, reference the citation to the applicable  
77 notice of rule development in the Florida Administrative  
78 Register, and provide a concise written explanation of the  
79 reason why the law may be implemented without rulemaking.

80 (d) The plan must include a certification executed on  
81 behalf of the agency by both the agency head, or, if the agency  
82 head is a collegial body, the chair or equivalent presiding  
83 officer; and the agency general counsel, or, if the agency does  
84 not have a general counsel, the individual acting as principal  
85 legal advisor to the agency head. The certification must:

86 1. Verify that the persons executing the certification have  
87 reviewed the plan.

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88       2. Verify that the agency regularly reviews all of its  
89 rules and identify the period during which all rules have most  
90 recently been reviewed to determine if the rules remain  
91 consistent with the agency's rulemaking authority and the laws  
92 implemented.

93       (2) PUBLICATION AND DELIVERY TO THE COMMITTEE.—

94       (a) By October 1 of each year, each agency shall:

95       1. Publish its regulatory plan on its website or on another  
96 state website established for publication of administrative law  
97 records. A clearly labeled hyperlink to the current plan must be  
98 included on the agency's primary website homepage.

99       2. Electronically deliver to the committee a copy of the  
100 certification required in paragraph (1)(d).

101       3. Publish in the Florida Administrative Register a notice  
102 identifying the date of publication of the agency's regulatory  
103 plan. The notice must include a hyperlink or website address  
104 providing direct access to the published plan.

105       (b) To satisfy the requirements of paragraph (a), a board  
106 established under s. 20.165(4), and any other board or  
107 commission receiving administrative support from the Department  
108 of Business and Professional Regulation, may coordinate with the  
109 Department of Business and Professional Regulation, and a board  
110 established under s. 20.43(3)(g) may coordinate with the  
111 Department of Health, for inclusion of the board's or  
112 commission's plan and notice of publication in the coordinating  
113 department's plan and notice and for the delivery of the  
114 required documentation to the committee.

115       (c) A regulatory plan prepared under subsection (1) and any  
116 regulatory plan published under this chapter before July 1,

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117 2014, shall be maintained at an active website for 10 years  
118 after the date of initial publication on the agency's website or  
119 another state website.

120 (3) INCLUSION IN LEGISLATIVE BUDGET REQUEST.—In addition to  
121 the requirements of s. 216.023 and pursuant to s. 216.351, a  
122 copy of the most recent certification executed under paragraph  
123 (1) (d), clearly designated as such, shall be included as part of  
124 the agency's legislative budget request.

125 (4) DEPARTMENT REVIEW OF BOARD PLAN.—By October 15 of each  
126 year:

127 (a) For each board established under s. 20.165(4) and any  
128 other board or commission receiving administrative support from  
129 the Department of Business and Professional Regulation, the  
130 Department of Business and Professional Regulation shall file  
131 with the committee a certification that the department has  
132 reviewed each board's and commission's regulatory plan. A  
133 certification may relate to more than one board or commission.

134 (b) For each board established under s. 20.43(3)(g), the  
135 Department of Health shall file with the committee a  
136 certification that the department has reviewed the board's  
137 regulatory plan. A certification may relate to more than one  
138 board.

139 (5) DEADLINE FOR RULE DEVELOPMENT.—By November 1 of each  
140 year, each agency shall publish a notice of rule development  
141 under s. 120.54(2) for each law identified in the agency's  
142 regulatory plan pursuant to subparagraph (1) (a)1. for which  
143 rulemaking is necessary to implement but for which the agency  
144 did not report the publication of a notice of rule development  
145 under subparagraph (1) (a)2.

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146       (6) DEADLINE TO PUBLISH PROPOSED RULE.—For each law for  
147 which implementing rulemaking is necessary as identified in the  
148 agency’s plan pursuant to subparagraph (1)(a)1. or subparagraph  
149 (1)(c)1., the agency shall publish a notice of proposed rule  
150 pursuant to s. 120.54(3)(a) by April 1 of the year following the  
151 deadline for the regulatory plan. This deadline may be extended  
152 if the agency publishes a notice of extension in the Florida  
153 Administrative Register identifying each rulemaking proceeding  
154 for which an extension is being noticed by citation to the  
155 applicable notice of rule development as published in the  
156 Florida Administrative Register. An extension shall expire on  
157 October 1 after the April 1 deadline, provided that the  
158 regulatory plan due on October 1 may further extend the  
159 rulemaking proceeding by identification pursuant to subparagraph  
160 (1)(c)1. or conclude the rulemaking proceeding by identification  
161 pursuant to subparagraph (1)(c)2. A published regulatory plan  
162 may be corrected at any time to accomplish the purpose of  
163 extending or concluding an affected rulemaking proceeding and is  
164 deemed corrected as of the October 1 due date. Upon publication  
165 of a correction, the agency shall publish in the Florida  
166 Administrative Register a notice of the date of the correction  
167 identifying the affected rulemaking proceeding by applicable  
168 citation to the Florida Administrative Register.

169       (7) CERTIFICATIONS.—Each agency shall file a certification  
170 with the committee upon compliance with subsection (5), upon  
171 filing a notice under subsection (6) of either a deadline  
172 extension or a regulatory plan correction, and upon the  
173 completion of an act that terminates a suspension under  
174 subsection (9). A certification may relate to more than one

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175 notice or contemporaneous act. The date or dates of compliance  
176 shall be noted in each certification.

177 (8) SUPPLEMENTING THE REGULATORY PLAN.—After publication of  
178 the regulatory plan, the agency shall supplement the plan within  
179 30 days after a bill becomes a law if the law is enacted before  
180 the next regular session of the Legislature and the law  
181 substantively modifies the agency's specifically delegated legal  
182 duties, unless the law affects all or most state agencies as  
183 identified by letter to the committee from the Governor or the  
184 Attorney General. The supplement must include the information  
185 required in paragraph (1) (a) and shall be published as required  
186 in subsection (2), but no certification or delivery to the  
187 committee is required. The agency shall publish in the Florida  
188 Administrative Register notice of publication of the supplement,  
189 and include a hyperlink on its website or web address for direct  
190 access to the published supplement. For each law reported in the  
191 supplement, if rulemaking is necessary to implement the law, the  
192 agency shall publish a notice of rule development by the later  
193 of the date provided in subsection (5) or 60 days after the bill  
194 becomes a law, and a notice of proposed rule shall be published  
195 by the later of the date provided in subsection (6) or 120 days  
196 after the bill becomes a law. The proposed rule deadline may be  
197 extended to the following October 1 by notice as provided in  
198 subsection (6). If such proposed rule has not been filed by  
199 October 1, a law included in a supplement shall also be included  
200 in the next annual plan pursuant to subsection (1).

201 (9) FAILURE TO COMPLY.—If an agency fails to comply with a  
202 requirement of paragraph (2) (a) or subsection (6), the entire  
203 rulemaking authority delegated to the agency by the Legislature

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204 under any statute or law shall be suspended automatically as of  
205 the due date of the required action and shall remain suspended  
206 until the date the agency completes the required act or until  
207 the end of the next regular session of the Legislature,  
208 whichever occurs first.

209 (a) During a period of suspension under this subsection,  
210 the agency has no authority to file rules for adoption under s.  
211 120.54, but may complete any action required by this section and  
212 may conduct public hearings that were noticed before the period  
213 of suspension.

214 (b) A suspension under this subsection does not authorize  
215 an agency to adopt or apply a statement defined as a rule under  
216 s. 120.52(16) unless the statement was filed for adoption under  
217 s. 120.54(3) before the suspension.

218 (c) A suspension under this subsection tolls the time  
219 requirements under s. 120.54 for filing a rule for adoption in a  
220 rulemaking proceeding initiated by the agency before the date of  
221 the suspension. The time requirements shall resume on the date  
222 the suspension ends.

223 (d) This subsection does not suspend the adoption of  
224 emergency rules under s. 120.54(4) or rulemaking necessary to  
225 ensure the state's compliance with federal law.

226 (10) EDUCATIONAL UNITS.—This section does not apply to  
227 educational units.

228 Section 3. Section 120.7455, Florida Statutes, is repealed.

229 Section 4. Effective upon this act becoming a law, any  
230 suspension of rulemaking authority under s. 120.745, Florida  
231 Statutes is rescinded. This section does not affect any  
232 restriction, suspension, or prohibition of rulemaking authority

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233 under any other provision of law.

234       Section 5. Except as otherwise expressly provided in this  
235 act and except for this section, which shall take effect upon  
236 this act becoming a law, this act shall take effect July 1,  
237 2015.