

CHAPTER 2015-162

House Bill No. 7023

An act relating to administrative procedures; amending s. 120.54, F.S.; revising the deadline to propose rules implementing new laws; amending s. 120.74, F.S.; revising requirements for the annual review of agency rules; providing procedures for preparing and publishing regulatory plans; specifying requirements for such plans; requiring publication by specified dates of notices of rule development and of proposed rules necessary to implement new laws; prescribing procedures in the event of noncompliance by an agency; providing for applicability; repealing s. 120.7455, F.S., relating to the legislative survey of regulatory impacts; rescinding the suspension of rulemaking authority made under s. 120.745, F.S.; providing effective dates.

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

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

120.54 Rulemaking.—

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

(b) Whenever an act of the Legislature is enacted which requires implementation of the act by rules of an agency within the executive branch of state government, such rules shall be drafted and formally proposed as provided in this section within the times provided in s. 120.74(4) and (5) 180 days after the effective date of the act, unless the act provides otherwise.

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

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

120.74 Agency annual rulemaking and regulatory plans; reports.—

(1) REGULATORY PLAN.—By October 1 of each year, each agency shall prepare a regulatory plan.

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

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

2. If rulemaking is necessary to implement the law:

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

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

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

(b) The plan must also include a listing of each law not otherwise listed pursuant to paragraph (a) which the agency expects to implement by rulemaking before the following July 1, except emergency rulemaking. For each law listed under this paragraph, the plan must state whether the rulemaking is intended to simplify, clarify, increase efficiency, improve coordination with other agencies, reduce regulatory costs, or delete obsolete, unnecessary, or redundant rules.

(c) The plan must include any desired update to the prior year's regulatory plan or supplement published pursuant to subsection (7). If, in a prior year, a law was identified under this paragraph or under subparagraph (a)1. as a law requiring rulemaking to implement but a notice of proposed rule has not been published:

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

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

(d) The plan must include a certification executed on behalf of the agency by both the agency head, or, if the agency head is a collegial body, the presiding officer; and the individual acting as principal legal advisor to the agency head. The certification must:

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

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

(2) PUBLICATION AND DELIVERY TO THE COMMITTEE.—

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

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

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

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

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

(c) A regulatory plan prepared under subsection (1) and any regulatory plan published under this chapter before July 1, 2014, shall be maintained at an active website for 10 years after the date of initial publication on the agency’s website or another state website.

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

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

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

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

(5) DEADLINE TO PUBLISH PROPOSED RULE.—For each law for which implementing rulemaking is necessary as identified in the agency’s plan pursuant to subparagraph (1)(a)1. or subparagraph (1)(c)1., the agency shall publish a notice of proposed rule pursuant to s. 120.54(3)(a) by April 1 of the year following the deadline for the regulatory plan. This deadline may be extended if the agency publishes a notice of extension in the Florida Administrative Register identifying each rulemaking proceeding for which an extension is being noticed by citation to the applicable notice of rule development as published in the Florida Administrative Register. The agency shall include a concise statement in the notice of extension identifying any issues that are causing the delay in rulemaking. An extension shall expire on October 1 after the April 1 deadline, provided that the regulatory plan due on October 1 may further extend the rulemaking proceeding by identification pursuant to subparagraph (1)(c)1. or conclude the rulemaking proceeding by identification pursuant to subparagraph (1)(c)2. A published regulatory plan may be corrected at any time to accomplish the purpose of extending or concluding an affected rulemaking proceeding and is deemed corrected as of the October 1 due date. Upon publication of a correction, the agency shall publish in the Florida Administrative Register a notice of the date of the correction identifying the affected rulemaking proceeding by applicable citation to the Florida Administrative Register.

(6) CERTIFICATIONS.—Each agency shall file a certification with the committee upon compliance with subsection (4) and upon filing a notice under subsection (5) of either a deadline extension or a regulatory plan correction. A certification may relate to more than one notice or contemporaneous act. The date or dates of compliance shall be noted in each certification.

(7) SUPPLEMENTING THE REGULATORY PLAN.—After publication of the regulatory plan, the agency shall supplement the plan within 30 days after a bill becomes a law if the law is enacted before the next regular session of the Legislature and the law substantively modifies the agency’s specifically delegated legal duties, unless the law affects all or most state agencies as identified by letter to the committee from the Governor or the Attorney General. The supplement must include the information required in paragraph (1)(a) and shall be published as required in subsection (2), but no certification or delivery to the committee is required. The agency shall publish in the Florida Administrative Register notice of publication of the supplement, and include a hyperlink on its website or web address for direct access to the published supplement. For each law reported in the supplement, if rulemaking is necessary to implement the law, the agency shall publish a notice of rule development by the later of the date provided in subsection (4) or 60 days after the bill becomes a law, and a notice of proposed rule shall be published by the later of the date provided in subsection (5) or 120 days after the bill becomes a law. The proposed rule deadline may be extended to the following October 1 by notice as provided in subsection (5). If such proposed rule has not been filed by October 1, a law included in a

supplement shall also be included in the next annual plan pursuant to subsection (1).

(8) FAILURE TO COMPLY.—If an agency fails to comply with a requirement of paragraph (2)(a) or subsection (5), within 15 days after written demand from the committee or from the chair of any other legislative committee, the agency shall deliver a written explanation of the reasons for noncompliance to the committee, the President of the Senate, the Speaker of the House of Representatives, and the chair of any legislative committee requesting the explanation of the reasons for noncompliance.

(9) EDUCATIONAL UNITS.—This section does not apply to educational units.

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

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

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

Approved by the Governor June 11, 2015.

Filed in Office Secretary of State June 11, 2015.