

Chapter 86-30

Committee Substitute for Senate Bill No. 631

An act relating to the Administrative Procedure Act; amending s. 120.54, F.S., relating to the adoption of rules; extending the time limits for agencies and affected parties to file notices and take certain actions pertaining to the adoption of rules; extending the time within which affected persons may request a hearing with respect thereto; providing an effective date.

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

Section 1. Subsection (1), paragraph (a) of subsection (3), paragraphs (a), (b), and (c) of subsection (4), paragraph (b) of subsection (11), and paragraph (b) of subsection (13) of section 120.54, Florida Statutes, are amended to read:

120.54 Rulemaking; adoption procedures.--

(1) Prior to the adoption, amendment, or repeal of any rule not described in subsection (9), an agency shall give notice of its intended action, setting forth a short and plain explanation of the purpose and effect of the proposed rule, the specific legal authority under which its adoption is authorized, and a summary of the estimate of the economic impact of the proposed rule on all persons affected by it.

(a) Except as otherwise provided in this paragraph, the notice shall be mailed to the committee, to all persons named in the proposed rule, and to all persons who have made requests of the agency for advance notice of its proceedings at least 14 days prior to such mailing. The agency shall also give such notice as is prescribed by rule to those particular classes of persons to whom the intended action is directed. Notice of intent by an educational unit to adopt, amend, or repeal any rule not described in subsection (9) shall be made:

1. By publication in a newspaper of general circulation in the affected area;
2. By mail to all persons who have made requests of the educational unit for advance notice of its proceedings and to organizations representing persons affected by the proposed rule; and
3. By posting in appropriate places so that those particular classes of persons to whom the intended action is directed may be duly notified.

Such publication, mailing, and posting of notice shall occur at least 21 ~~14~~ days prior to the intended action.

(b) The notice shall be published in the Florida Administrative Weekly not less than 28 ~~14~~ days prior to the intended action, except that notice of actions proposed by educational units or units of government with jurisdiction in only one county or a part thereof need not be published in the Florida Administrative Weekly or transmitted to the committee. The proposed rule shall be available for inspection and copying by the public at the time of the publication of notice.

(3)(a) If the intended action concerns any rule other than one relating exclusively to organization, procedure, or practice, the agency shall, on the request of any

affected person received within 21 14 days after the date of publication of the notice, give affected persons an opportunity to present evidence and argument on all is under consideration appropriate to inform it of their contentions. Prisoners, as defined in s. 944.02(5), may be limited by Department of Corrections to an opportunity to submit written statements concerning intended action on any department rule. agency may schedule a public hearing on the rule and, if requested any affected person, shall schedule a public hearing on the r Any material pertinent to the issues under consideration submitted the agency within 21 14-days after the date of publication of notice or submitted at a public hearing shall be considered by agency and made a part of the record of the rulemaking proceeding

(4)(a) Any substantially affected person may seek administrative determination of the invalidity of any proposed on the ground that the proposed rule is an invalid exercise, delegated legislative authority.

(b) The request seeking a determination under this subsection shall be in writing and must be filed with the division within ~ days after the date of publication of the notice. It must state' particularity the provisions of the rule or economic impact statement alleged to be invalid with sufficient explanation of the fact or grounds for the alleged invalidity and facts sufficient to show I the person challenging the proposed rule would be substantially affected by it.

(c) Immediately upon receipt of the petition, the division shall forward copies of the petition to the agency whose rule challenged, the Department of State, and the committee. Within days after receiving the petition, the division director, if determines that the petition complies with the above requirement shall assign a hearing officer who shall conduct a hearing within days thereafter, unless the petition is withdrawn. Within 30 (after conclusion of the hearing, the hearing officer shall render decision and state the reasons therefor in writing. The division shall forthwith transmit copies of the hearing officer's decision the Department of State and to the committee. The hearing officer may declare the proposed rule wholly or partly invalid. The proposed rule or provision of a proposed rule declared invalid shall withdrawn from the committee by the adopting agency and shall not adopted. No rule shall be filed for adoption until 28 ~~24~~ days at the notice required by subsection (1) or until the hearing officer has rendered his decision, as the case may be. However, the age may proceed with all other steps in the rulemaking process, including the holding of a factfinding hearing pursuant to subsection (3). the event part of a proposed rule is declared invalid, the adopt agency may, in its sole discretion, withdraw the proposed rule in entirety. The agency whose proposed rule has been declared invalid in whole or part shall give notice of the decision in the first available issue of the Florida Administrative Weekly.

(11)

(b) If the adopting agency is required to publish its rules the Florida Administrative Code, it shall file with the Department State three certified copies of the rule it proposes to adopt summary of the rule, a summary of any hearings held on the rule, a detailed written statement of the facts and circumstances justifying the rule. Agencies not required to publish their rules the Florida Administrative Code shall file one certified copy of proposed rule, and the other material required above, in the office of the agency head; and such rules shall be open to the public pursuant to x. 120.53(2). Filings shall be made no less than 28 ~~24~~ days nor more than 90 days after the notice required by subsection (1). If a public hearing is held, the 90-day limit is extended to 21 days after adjournment of the final hearing on the rule, 21 days after receipt of all material authorized to be submitted at the hearing, or 21 days after

receipt of the transcript, if one is made, whichever is latest. For purposes of this paragraph, the term "public hearing" includes any public meeting held by any agency at which the rule is considered. The filing of a petition for an administrative determination under the provisions of subsection (4) will toll the 90-day period during which a rule must be filed for adoption until the hearing officer has filed his order with the clerk. At the time a rule is filed, the agency shall certify that the time limitations prescribed by this subsection have been complied with and that there is no administrative determination pending on the rule. The department shall reject any rule not filed within the prescribed time limits or upon which an administrative determination is pending. If a rule has not been adopted within the time limits imposed by this section, the agency proposing the rule shall withdraw the rule and give notice of its action in the same manner as is prescribed in paragraphs (l)(a) and (b).

(13)

(b) After the notice required in subsection (1) and prior to adoption, the agency may withdraw the rule in whole or in part or may make such changes in the rule as are supported by the record of public hearings held on the rule, technical changes which do not affect the substance of the rule, changes in response to written material relating to the rule received by the agency within 21 ~~14~~ days after the notice and made a part of the record of the proceeding, or changes in response to a proposed objection by the committee. After adoption and before the effective date, a rule may be modified or withdrawn only in response to an objection by the committee or may be modified to extend the effective date by not more than 60 days when the committee has notified the agency that an objection to the rule is being considered. The agency shall give notice of its decision to withdraw or modify a rule in the first available issue of the publication in which the original notice of rulemaking was published and shall notify the Department of State if the rule is required to be filed with the Department of State. After a rule has become effective, it may be repealed or amended only through regular rulemaking procedures.

Section 2. This act shall take effect October 1, 1986. Approved by the Governor May 23, 1986.

Filed in Office Secretary of State May 23, 1986.

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