

By the Committee on Commerce; and Senator Bennett

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1 A bill to be entitled
2 An act relating to rulemaking; amending s. 120.54,
3 F.S.; requiring each agency, before adopting,
4 amending, or repealing certain rules, to prepare a
5 statement of estimated regulatory costs of the
6 proposed rule if the proposed rule has certain adverse
7 impacts on small business or the private sector;
8 amending s. 120.541, F.S.; requiring each agency,
9 before adopting, amending, or repealing certain rules,
10 to prepare a statement of estimated regulatory costs
11 of the proposed rule; specifying the conditions under
12 which a challenged rule may not be declared invalid;
13 specifying the requirements of an economic analysis on
14 proposed rule or rule changes; prohibiting a rule from
15 taking effect until it is submitted to the Legislature
16 for review under certain circumstances; providing a
17 time certain for a rule to take effect if the
18 Legislature take no action; providing that the act is
19 not applicable to certain specified rules; providing
20 an effective date.

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. Paragraph (b) of subsection (3) of section
25 120.54, Florida Statutes, is amended to read:

26 120.54 Rulemaking.—

27 (3) ADOPTION PROCEDURES.—

28 (b) *Special matters to be considered in rule adoption.*—

29 1. Statement of estimated regulatory costs.—Prior to the

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30 adoption, amendment, or repeal of any rule other than an
31 emergency rule, an agency is encouraged to prepare a statement
32 of estimated regulatory costs of the proposed rule, as provided
33 by s. 120.541. However, an agency must ~~shall~~ prepare a statement
34 of estimated regulatory costs of the proposed rule, as provided
35 by s. 120.541, if:

36 a. The proposed rule will have an adverse impact on small
37 business; or

38 b. The proposed rule may have an adverse economic impact in
39 excess of \$200,000 on the private-sector in Florida.

40 2. Small businesses, small counties, and small cities.—

41 a. Each agency, before the adoption, amendment, or repeal
42 of a rule, shall consider the impact of the rule on small
43 businesses as defined by s. 288.703 and the impact of the rule
44 on small counties or small cities as defined by s. 120.52.
45 Whenever practicable, an agency shall tier its rules to reduce
46 disproportionate impacts on small businesses, small counties, or
47 small cities to avoid regulating small businesses, small
48 counties, or small cities that do not contribute significantly
49 to the problem the rule is designed to address. An agency may
50 define "small business" to include businesses employing more
51 than 200 persons, may define "small county" to include those
52 with populations of more than 75,000, and may define "small
53 city" to include those with populations of more than 10,000, if
54 it finds that such a definition is necessary to adapt a rule to
55 the needs and problems of small businesses, small counties, or
56 small cities. The agency shall consider each of the following
57 methods for reducing the impact of the proposed rule on small
58 businesses, small counties, and small cities, or any combination

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59 of these entities:

60 (I) Establishing less stringent compliance or reporting
61 requirements in the rule.

62 (II) Establishing less stringent schedules or deadlines in
63 the rule for compliance or reporting requirements.

64 (III) Consolidating or simplifying the rule's compliance or
65 reporting requirements.

66 (IV) Establishing performance standards or best management
67 practices to replace design or operational standards in the
68 rule.

69 (V) Exempting small businesses, small counties, or small
70 cities from any or all requirements of the rule.

71 b.(I) If the agency determines that the proposed action
72 will affect small businesses as defined by the agency as
73 provided in sub-subparagraph a., the agency shall send written
74 notice of the rule to the Small Business Regulatory Advisory
75 Council and the Office of Tourism, Trade, and Economic
76 Development not less than 28 days prior to the intended action.

77 (II) Each agency shall adopt those regulatory alternatives
78 offered by the Small Business Regulatory Advisory Council and
79 provided to the agency no later than 21 days after the council's
80 receipt of the written notice of the rule which it finds are
81 feasible and consistent with the stated objectives of the
82 proposed rule and which would reduce the impact on small
83 businesses. When regulatory alternatives are offered by the
84 Small Business Regulatory Advisory Council, the 90-day period
85 for filing the rule in subparagraph (e)2. is extended for a
86 period of 21 days.

87 (III) If an agency does not adopt all alternatives offered

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88 pursuant to this sub-subparagraph, it shall, prior to rule
89 adoption or amendment and pursuant to subparagraph (d)1., file a
90 detailed written statement with the committee explaining the
91 reasons for failure to adopt such alternatives. Within 3 working
92 days of the filing of such notice, the agency shall send a copy
93 of such notice to the Small Business Regulatory Advisory
94 Council. The Small Business Regulatory Advisory Council may make
95 a request of the President of the Senate and the Speaker of the
96 House of Representatives that the presiding officers direct the
97 Office of Program Policy Analysis and Government Accountability
98 to determine whether the rejected alternatives reduce the impact
99 on small business while meeting the stated objectives of the
100 proposed rule. Within 60 days after the date of the directive
101 from the presiding officers, the Office of Program Policy
102 Analysis and Government Accountability shall report to the
103 Administrative Procedures Committee its findings as to whether
104 an alternative reduces the impact on small business while
105 meeting the stated objectives of the proposed rule. The Office
106 of Program Policy Analysis and Government Accountability shall
107 consider the proposed rule, the economic impact statement, the
108 written statement of the agency, the proposed alternatives, and
109 any comment submitted during the comment period on the proposed
110 rule. The Office of Program Policy Analysis and Government
111 Accountability shall submit a report of its findings and
112 recommendations to the Governor, the President of the Senate,
113 and the Speaker of the House of Representatives. The
114 Administrative Procedures Committee shall report such findings
115 to the agency, and the agency shall respond in writing to the
116 Administrative Procedures Committee if the Office of Program

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117 Policy Analysis and Government Accountability found that the
118 alternative reduced the impact on small business while meeting
119 the stated objectives of the proposed rule. If the agency will
120 not adopt the alternative, it must also provide a detailed
121 written statement to the committee as to why it will not adopt
122 the alternative.

123 Section 2. Section 120.541, Florida Statutes, is amended to
124 read:

125 120.541 Statement of estimated regulatory costs.—

126 (1) (a) ~~A substantially affected person,~~ Within 21 days
127 after publication of the notice required ~~provided~~ under s.
128 120.54(3) (a), a substantially affected person may submit to an
129 agency a good faith written proposal for a lower cost regulatory
130 alternative to a proposed rule which substantially accomplishes
131 the objectives of the law being implemented. The proposal may
132 include the alternative of not adopting any rule ~~if, so long as~~
133 the proposal explains how the lower costs and objectives of the
134 law will be achieved by not adopting any rule. If such a
135 proposal is submitted, the time period for filing the rule under
136 s. 120.54(3) (e)2. ~~90-day period for filing the rule~~ is extended
137 90 ~~21~~ days.

138 ~~(b)~~ Upon the submission of the lower cost regulatory
139 alternative, the agency ~~shall prepare a statement of estimated~~
140 ~~regulatory costs as provided in subsection (2), or shall revise~~
141 its prior statement of estimated regulatory costs, and either
142 adopt the alternative or provide ~~give~~ a statement of the reasons
143 for rejecting the alternative in favor of the proposed rule. ~~The~~
144 ~~failure of the agency to prepare or revise the statement of~~
145 ~~estimated regulatory costs as provided in this paragraph is a~~

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146 ~~material failure to follow the applicable rulemaking procedures~~
147 ~~or requirements set forth in this chapter. An agency required to~~
148 ~~prepare or revise a statement of estimated regulatory costs as~~
149 ~~provided in this paragraph shall make it available to the person~~
150 ~~who submits the lower cost regulatory alternative and to the~~
151 ~~public prior to filing the rule for adoption.~~

152 (b) If a proposed rule will have an adverse impact on small
153 businesses or if the proposed rule may have an adverse economic
154 impact in excess of \$200,000 on the private sector, the agency
155 shall prepare a statement of estimated regulatory costs as
156 required by s. 120.54(3) (b) .

157 (c) The agency shall revise a statement of estimated
158 regulatory costs if any change to the rule made under s.
159 120.54(3) (d) increases the regulatory costs of the rule.

160 (d) At least 45 days before filing the rule for adoption,
161 an agency that is required to revise a statement of estimated
162 regulatory costs shall provide the statement to the person who
163 submitted the lower cost regulatory alternative and to the
164 committee, and provide notice on the agency's website that it is
165 available to the public.

166 (e) The failure of the agency to prepare or revise the
167 statement of estimated regulatory costs as provided in this
168 subsection is a material failure to follow the applicable
169 rulemaking procedures or requirements set forth in this chapter.

170 (f)(e) A rule that is challenged pursuant to s.
171 120.52(8) (a) because of the failure to prepare or revise the ~~No~~
172 ~~rule shall be declared invalid because it imposes regulatory~~
173 ~~costs on the regulated person, county, or city which could be~~
174 ~~reduced by the adoption of less costly alternatives that~~

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175 ~~substantially accomplish the statutory objectives, and no rule~~
176 ~~shall be declared invalid based upon a challenge to the agency's~~
177 ~~statement of estimated regulatory costs may not be declared~~
178 ~~invalid~~, unless:

179 1. The issue is raised in an administrative proceeding
180 within 1 year after the effective date of the rule; and

181 2. The agency's failure to prepare or revise the statement
182 of estimated regulatory costs materially affects the substantial
183 interests of the person challenging the agency. ~~The substantial~~
184 ~~interests of the person challenging the agency's rejection of,~~
185 ~~or failure to consider, the lower cost regulatory alternative~~
186 ~~are materially affected by the rejection; and~~

187 3.a. ~~The agency has failed to prepare or revise the~~
188 ~~statement of estimated regulatory costs as required by paragraph~~
189 ~~(b); or~~

190 b. ~~The challenge is to the agency's rejection under~~
191 ~~paragraph (b) of a lower cost regulatory alternative submitted~~
192 ~~under paragraph (a).~~

193 (g) A rule that is challenged by a substantially affected
194 person pursuant to s. 120.52(8)(f) because the rule imposes
195 regulatory costs on the regulated person, county, or
196 municipality which could be reduced by the adoption of less
197 costly alternatives that substantially accomplish the statutory
198 objectives may not be declared invalid unless:

199 1. The issue is raised in an administrative proceeding
200 within 1 year after the effective date of the rule;

201 2. The challenge is to the agency's rejection of a lower-
202 cost regulatory alternative offered under paragraph (a) or s.
203 120.54(3)(b)2.b.; and

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204 3. The substantial interests of the person challenging the
205 agency are materially affected by the rejection.

206 (2) A statement of estimated regulatory costs shall
207 include:

208 (a) An economic analysis showing whether the rule directly
209 or indirectly:

210 1. Is likely to have an adverse impact in excess of \$1
211 million in the aggregate on economic growth, private-sector job
212 creation or employment, business competitiveness, private-sector
213 investment, productivity, innovation, or the ability of persons
214 doing business in Florida to compete with persons doing business
215 in other states or domestic markets;

216 2. Expands the growth of state government, where not
217 expressly recognized by the enabling statute; or

218 3. Increases regulatory costs, including any costs incurred
219 to comply with proposed regulations, to small business by \$1
220 million or more in the aggregate.

221 (b) A good faith estimate of the number of individuals and
222 entities likely to be required to comply with the rule, together
223 with a general description of the types of individuals likely to
224 be affected by the rule.

225 (c) ~~(b)~~ A good faith estimate of the cost to the agency, and
226 to any other state and local government entities, of
227 implementing and enforcing the proposed rule, and any
228 anticipated effect on state or local revenues.

229 (d) ~~(e)~~ A good faith estimate of the transactional costs
230 likely to be incurred by individuals and entities, including
231 local government entities, required to comply with the
232 requirements of the rule. As used in this paragraph,

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233 "transactional costs" are direct costs that are readily
234 ascertainable based upon standard business practices, and
235 include filing fees, the cost of obtaining a license, the cost
236 of equipment required to be installed or used or procedures
237 required to be employed in complying with the rule, additional
238 operating costs incurred, and the cost of monitoring and
239 reporting.

240 ~~(e)~~ ~~(d)~~ An analysis of the impact on small businesses as
241 defined by s. 288.703, and an analysis of the impact on small
242 counties and small cities as defined by s. 120.52.

243 ~~(f)~~ ~~(e)~~ Any additional information that the agency
244 determines may be useful.

245 ~~(g)~~ ~~(f)~~ In the statement or revised statement, whichever
246 applies, a description of any good faith written proposal
247 submitted under paragraph (1) (a) and either a statement adopting
248 the alternative or a statement of the reasons for rejecting the
249 alternative in favor of the proposed rule.

250 (3) If the adverse impact or regulatory costs of the rule
251 exceed any of the criteria established in paragraph (2) (a), the
252 rule may not take effect until it is submitted to the
253 Legislature for review at the next regularly scheduled session.
254 The Legislature may reject, modify, or take no action relative
255 to the rule. If the Legislature takes no action, the rule shall
256 take effect upon sine die.

257 (4) Paragraph (2) (a) does not apply to the adoption of
258 emergency rules pursuant to s. 120.54(4) or the adoption of
259 federal standards pursuant to s. 120.54(6).

260 Section 3. This act shall take effect upon becoming a law.