

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1163 Agency Rulemaking
SPONSOR(S): Spano
TIED BILLS: **IDEN./SIM. BILLS:** SB 1640

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee	13 Y, 0 N	Whittaker	Harrington
2) Transportation & Tourism Appropriations Subcommittee			
3) Government Accountability Committee			

SUMMARY ANALYSIS

A statement of estimated regulatory costs (SERC) is an agency estimate of the potential impact of a proposed rule on the public, particularly the potential costs to the public of complying with the rule, as well as the potential impact on agencies and other governmental entities to implement the rule. Agencies are encouraged to prepare a SERC before adopting, amending, or repealing any rule, however, a SERC must be prepared if the proposed rule will have a negative impact on small businesses or increase regulatory costs more than \$200,000 within one year after implementation.

The bill requires an agency to prepare a SERC before the adoption, amendment, or repeal of any rule other than an emergency rule.

The bill requires the Department of State (department) to maintain a website open to the public for the sole purpose of publishing SERCs. Agencies must provide all SERCs to the department for publication on the website. If an agency revises a SERC, the revised SERC must also be provided to the department for publication on the website. The bill further requires an agency to include a link on the agency website to the department's website. The department's website must be accessible to the public and may not require the use of login credentials for a person to access a SERC.

The bill also removes the requirement that the agency head approve certain rulemaking notices.

The bill may have a negative fiscal impact on state government. The bill does not appear to have a fiscal impact on local governments. See Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Rulemaking

The Administrative Procedure Act¹ sets forth a uniform set of procedures that agencies must follow when exercising delegated rulemaking authority. A rule is an agency statement of general applicability that interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency as well as certain types of forms.² Rulemaking authority is delegated by the Legislature through statute and authorizes an agency to “adopt, develop, establish, or otherwise create”³ a rule. Agencies do not have discretion whether to engage in rulemaking.⁴ To adopt a rule, an agency must have a general grant of authority to implement a specific law by rulemaking.⁵ The grant of rulemaking authority itself need not be detailed. The specific statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.⁶

An agency begins the formal rulemaking process, upon approval of the agency head, by filing a notice of the proposed rule.⁷ The notice is published by the Department of State in the Florida Administrative Register⁸ and must provide certain information, including the text of the proposed rule, a summary of the agency’s statement of estimated regulatory costs (SERC) if one is prepared, and how a party may request a public hearing on the proposed rule.⁹ Although the notice includes a summary of the SERC, if prepared, publication of the SERC is not required.

Statement of Estimated Regulatory Costs

A SERC is an agency estimate of the potential impact of a proposed rule on the public, particularly the potential costs to the public of complying with the rule as well as to the agency and other governmental entities to implement the rule.¹⁰ Agencies are encouraged to prepare a SERC before adopting, amending, or repealing any rule.¹¹ A SERC must be prepared if the proposed rule will have a negative impact on small businesses or increase regulatory costs more than \$200,000 within one year after implementation of the rule.¹²

A SERC must include estimates of:

- The number of people and entities effected by the proposed rule;
- The cost to the agency and other governmental entities to implement the proposed rule;
- Transactional costs likely to be incurred by people, entities, and governmental agencies for compliance; and
- An analysis of the proposed rule’s impact on small businesses, counties, and cities.¹³

¹ Chapter 120, F.S.

² Section 120.52(16), F.S.

³ Section 120.52(17), F.S.

⁴ Section 120.54(1)(a), F.S.

⁵ Sections 120.52(8) and 120.536(1), F.S.

⁶ *Sloban v. Florida Board of Pharmacy*, 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, 794 So. 2d 696, 704 (Fla. 1st DCA 2001).

⁷ Section 120.54(3)(a)1., F.S.

⁸ Section 120.55(1)(b), F.S.

⁹ Section 120.55(1)(b)1. and 2., F.S.

¹⁰ Section 120.541(2), F.S.

¹¹ Section 120.54(3)(b)1., F.S.

¹² Section 120.54(3)(b)1., F.S.

¹³ Section 120.541(2)(b)-(e), F.S.

The SERC must also include an economic analysis on the likelihood that the proposed rule will have an adverse impact in excess of \$1 million within the first 5 years of implementation on:

- Economic growth, private-sector job creation or employment, or private-sector investment;
- Business competitiveness, productivity, or innovation; or
- Regulatory costs, including any transactional costs.¹⁴

If the economic analysis results in an adverse impact or regulatory costs in excess of \$1 million within 5 years after implementation of the rule, then the rule must be ratified by the Legislature in order to take effect.¹⁵

At least 21 days before filing a rule for adoption, an agency that is required to revise a SERC must provide the statement to the person who submitted the lower cost regulatory alternative and to the committee and must provide notice on the agency's website that is available to the public.¹⁶

Effect of the Bill

The bill requires an agency to prepare a SERC before the adoption, amendment, or repeal of any rule other than an emergency rule.

The bill also requires the Department of State (department) to maintain a website open to the public for the sole purpose of publishing SERCs. Agencies must provide the department with all SERCs for publication on the website after proper notice is published. Revised SERCs must also be provided to the department for publication after proper notice is published.

The bill further requires an agency to include a link on its webpage to the department's SERC website. The department's website may not require the use of login credentials for a person to access a SERC.

Lastly, the bill removes the requirement that the agency head approve notices for rulemaking.

B. SECTION DIRECTORY:

Section 1. Amends s. 120.54, F.S., requiring an agency to prepare a SERC before adopting, amending, or repealing any rule other than an emergency rule.

Section 2. Amends s. 120.541, F.S., requiring the department to maintain a website that solely includes SERCs; requiring an agency that prepares or revises a SERC to provide the SERC to the department for publication on the website; requiring an agency to include an internet website link to the department's SERC website on the agency website; requiring the department's SERCs website to be accessible to the public; prohibiting the required use of login credentials for internet access to SERCs; conforming provisions to changes made by the act.

Section 3. Amends s. 120.56, F.S., conforming a cross-reference.

Section 4. Provides an effective date of July 1, 2017.

¹⁴ Section 120.541(2)(a), F.S.

¹⁵ Section 120.541(3), F.S.

¹⁶ Section 120.541(1)(d), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have a negative fiscal impact on state government because each agency must prepare a SERC for every rule. In addition, the department must create and maintain a website to publish the SERCs.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.