

STORAGE NAME: h4279.grr
DATE: March 31, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
GOVERNMENTAL RULES AND REGULATIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 4279 (PCB GRR 98-01)

RELATING TO: State Government

SPONSOR(S): Committee on Governmental Rules and Regulations and Representative Wallace

COMPANION BILL(S): N/A

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) GOVERNMENTAL RULES AND REGULATIONS YEAS 4 NAYS 0
 - (2)
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I. SUMMARY:

Current law provides that state agencies are encouraged, but not required, to prepare a statement of estimated regulatory cost (SERC) for each proposed rule. As a result, the costs imposed upon the private sector and local governments by state rules and regulations is unknown.

PCB 98-01 directs the Office of Program Policy Analysis and Government Accountability (OPPAGA) to study, through its staff or through a vendor, the costs associated with state regulation. OPPAGA shall submit, by January 31, 1999, a report to the Legislature that provides:

- A comprehensive literature review of regulatory cost studies available at the federal, state and local levels and a bibliography of its findings;
- Estimates of the costs of state regulation for FY 1996-97, divided into administrative costs and compliance costs;
- Proposed methodologies for estimating state regulatory costs; and
- Recommendations to improve the state rulemaking process to more accurately consider the costs and benefits of proposed rules.

The bill authorizes a \$10,000 appropriation from the General Revenue Fund to OPPAGA for the purpose of conducting this study. The bill also directs the Bureau of Administrative Code to annually report the following statistics regarding state rules:

- The number of rules in the Florida Administrative Code;
- The number of rules in the Florida Administrative Code with cost estimates;
- The number of rules in the Florida Administrative Code without cost estimates;
- Summations of the cost estimates that do exist;
- The number of rules repealed and the cost savings realized by those repeals;
- The number of full-time equivalent employees engaged in regulatory activity; and
- The number of pages in the Florida Administrative Code.

The bill shall take effect upon becoming a law.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

The 1997 interim project by the Committee on Governmental Rules and Regulations evaluated the accomplishments of the agency rule reduction effort. While the number of rules decreased since 1995, a random sample revealed that 35 percent of these repealed rules were amended onto existing rules. In these instances, the regulatory burden was unchanged.

In addition, committee staff documented the number of rules and the number of pages in the Florida Administrative Code. As of June 1997, there were 27 volumes, 22,802 rules and 24,250 pages in the Florida Administrative Code. While these statistics depict the magnitude of state rules, they do not address the economic impact of Florida's regulatory structure.

The Bureau of Administrative Code

The Bureau of Administrative Code (Bureau), housed within the Department of State's Division of Elections, presently consists of nine positions. As required by Chapter 120, F.S., the Bureau coordinates and schedules the publication of the Florida Administrative Weekly (FAW), which contains all proposed state agency rules, public notices and bid proposals. The Bureau maintains a weekly count of the number of proposed and adopted rules, including the number of new, amended and repealed rules for each agency.

The Bureau also manages and coordinates the publication of the Florida Administrative Code and oversees the filing of administrative rules. The Bureau acts as liaison for the Division of Elections with the Joint Administrative Procedures Committee and assists state agencies and other members of the public in submitting rules to be filed for adoption.

The Bureau publishes the following statistics in the Division of Elections Annual Report:

- The number of FAW issues published;
- The average number of pages per FAW issue;
- The number of pages printed in the FAW;
- The number of FAW subscribers;
- The number of proposed rules published in the FAW;
- The number of pages printed in the FAW;
- The number of rules withdrawn;
- The cost of publishing the FAW and the total amount billed;
- The number of volumes in the Florida Administrative Code;
- The approximate number of pages in the Florida Administrative Code;
- The average number of pages per month of Code updates; and
- The number of permanent and emergency rules filed for adoption.

Statements of Estimated Regulatory Costs

Presently, state agencies do not routinely prepare estimates of the administrative or compliance costs attributable to state rules and regulations. As a result, very little is known about the economic impact of state rules upon the private sector and local governments.

Section 120.54(3)(b)1., F.S., provides that prior to the adoption, amendment, or repeal of any rule other than an emergency rule, state agencies are encouraged to prepare a statement of estimated regulatory costs (SERC) of the proposed rule. Agencies are only required to prepare a SERC if a substantially affected person submits a good faith written proposal for a lower cost regulatory alternative to the proposed rule that substantially accomplishes the objectives of the law being implemented. Such a proposal must be submitted to the agency within 21 days after the publication of the notice of the proposed rule in the Florida Administrative Weekly, as required by s. 120.54(3)(a), F.S.

When a lower cost regulatory alternative is submitted, the agency must prepare a SERC and either adopt the alternative proposal or issue a statement containing the reasons for rejecting the alternative in favor of the agency's proposed rule.

Pursuant to s.120.541, F.S., a SERC shall contain the following:

- A good faith estimate of the number of individuals and entities likely to be required to comply with the rule, and a general description of the types of individuals likely to be affected by the rule;
- A good faith estimate of the cost to the agency and other state and local governmental entities, of implementing and enforcing the proposed rule, as well as any anticipated effect on state or local revenues;
- A good faith estimate of the transactional costs likely to be incurred by individuals and entities, including local governments, required to comply with the requirements of the rule. "Transactional costs" are defined as direct costs that are readily ascertainable based upon standard business practices, and include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used or procedures required to be employed in complying with the rule, additional operating costs incurred, and the cost of monitoring and reporting;
- An analysis of the impact on small businesses, small counties and small cities;
- Any additional information that the agency determines may be useful; and
- A description of any good faith written alternative submitted to the agency, and an agency statement either adopting the alternative or rejecting it in favor of the agency's proposed rule.

The Sunrise Act

Section 11.62, F.S., commonly referred to as the Sunrise Act, was adopted in 1991 to provide a mechanism for reviewing proposals to regulate previously unregulated professions or occupations to determine if the need to protect the public through regulation outweighs the resulting restrictions on competition and the costs of such regulation.

The Sunrise Act states that it is the intent of the Legislature that no profession or occupation be subject to regulation unless such regulation is necessary to protect the public and that no profession or occupation be regulated in a manner that unnecessarily restricts entry into the practice of that profession or occupation or adversely affects the

availability of their services to the public. The Sunrise Act requires the proponents of new regulatory legislation to provide certain information to the legislative committees reviewing the regulatory proposal, including:

- The cost of regulation, including the indirect cost to consumers, and the method proposed to finance the regulation;
- A description of the voluntary efforts made by members of the profession or occupation to protect the public and a statement of reasons why these efforts are not adequate to protect the public; and
- An explanation of the reasons why other types of less restrictive regulation would not effectively protect the public.

According to a 1997 Senate interim report on the Sunrise Act, legislation which proposes new regulation is typically referred to the Regulated Industries and Health Care Committee in the Senate and the Business Regulation and Consumer Affairs Committee and the Health Care Standards and Regulatory Reform Committee in the House. The report states that the House committees commonly conduct each sunrise review as an interim project, prior to the adoption of the proposed regulation, while the Senate committees are more informal, including any relevant information in the bill analysis document. Both the House and Senate committees use questionnaires to elicit the required information from the proponents of the regulation.

Studies on the Costs of Regulation

During the interim, staff conducted a literature review of existing studies on the cost of regulation. Staff was unable to locate any studies which estimated regulatory costs in Florida, but found several studies estimating the costs associated with federal regulation. The three most widely-cited federal studies are described below:

Hahn & Hird Study

In 1991, Robert Hahn, resident scholar at the American Enterprise Institute and John Hird, Professor at the University of Massachusetts, published the first comprehensive estimates of the costs and benefits of federal economic and social regulation in the *Yale Journal on Regulation*. Their study examined several areas of economic regulation, including airlines, rail, natural gas, trade barriers, agricultural price supports, postal rates, and telecommunications; and social regulation, including the environment, highway safety, OSHA, drugs, EEO, and consumer product safety. Hahn and Hird estimated the 1988 total costs of federal regulation at \$153.5 billion (in 1988 dollars).

Hopkins Study

Thomas Hopkins, Professor of Economics at the Rochester Institute of Technology, published a study on the costs and benefits of federal regulation in 1992, and updated that study in 1995. Hopkins defines regulation broadly to include three major groups of federal requirements: environmental and risk reduction regulations, price and entry control regulations, and paperwork regulations. Hopkins estimates the total 1995 regulatory costs attributable to the federal government at \$668 billion (in 1995 dollars).

Office of Management and Budget Study

The 104th Congress directed the OMB to prepare a report estimating the total costs and benefits of federal regulation. In its report, OMB identified four major groups of regulation: environmental, other social, economic and paperwork. OMB estimates the 1997 costs of federal regulation at \$279 billion (in 1996 dollars). OMB's figures differ from the Hopkins estimate for two reasons: 1) OMB did not include transfer costs (the amount a regulatory change redistributes from one group to another), and 2) OMB only incorporated paperwork costs imposed by independent agencies.

It is important to note that all three of the above-mentioned studies were constructed based upon regulatory cost data accumulated and published by selected federal agencies, such as the Department of Commerce and the Environmental Protection Agency, and OMB records documenting the costs associated with "major" regulations, defined as regulations with costs of \$100 million or more.

Additionally, the Center for the Study of American Business (CSAB) in St. Louis recently prepared a report on the administrative costs of federal regulation. The CSAB reviewed the staffing and spending levels of 61 federal regulatory agencies and charted their change over time. The CSAB derived its data from the Budget of the US Government.

B. EFFECT OF PROPOSED CHANGES:

PCB 98-01 requires the Department of State's Bureau of Administrative Code, in cooperation with the Joint Administrative Procedures Committee, to issue an annual report on state rules and regulations. The annual report shall include the following statistics:

- The number of rules in the Florida Administrative Code;
- The number of rules in the Florida Administrative Code with cost estimates;
- The number of rules in the Florida Administrative Code without cost estimates;
- Summations of the cost estimates that do exist;
- The number of rules repealed and the cost savings realized by those repeals;
- The number of full-time equivalent employees engaged in regulatory activity; and
- The number of pages in the Florida Administrative Code.

The bill also directs the Office of Program Policy Analysis and Government Accountability (OPPAGA) to study, through its staff or by contract with a vendor, the costs of state regulation. OPPAGA shall submit to the Speaker of the House of Representatives and the President of the Senate, no later than January 31, 1999, a report that provides:

(1) A comprehensive literature review of regulatory cost studies in existence at the federal, state and local levels. OPPAGA shall include a detailed bibliography of these studies in its report to the Legislature;

(2) Estimates of the total costs of state regulation for FY 1996-97, divided into the following categories:

(a) Administrative Costs - the costs incurred by the state to administer regulatory programs; and

(b) Compliance Costs - the costs incurred by the private sector and local governments to comply with state regulation. Compliance costs shall be further divided as follows:

1. Economic regulation: industry-specific regulations and other regulated activities in industries using economic controls such as price ceilings and service parameters. Costs associated with economic regulation shall be categorized as either operational costs or capital costs;

2. Social regulation: regulations designed to achieve goals such as cleaner air, equal employment opportunity, safer work environments and consumer safety. Costs associated with social regulation shall be categorized as either operational costs or capital costs; and

3. Paperwork costs: requirements associated with paperwork burdens not directly linked to a social or economic regulatory objective. Paperwork costs shall consist of the operational costs incurred by the private sector and local governments to comply with state paperwork requirements.

PCB 98-01 provides that OPPAGA shall identify the range of regulatory costs associated with economic, social, and paperwork compliance costs, and then sum these amounts to arrive at a total compliance cost estimate. The costs shall be described in the aggregate and on a per capita basis. The bill directs OPPAGA to identify in its report any federally-mandated or federally-delegated regulatory programs operated by the state.

The bill also directs OPPAGA to propose methodologies for estimating the compliance costs and administrative costs attributable to regulation in Florida, and to make recommendations to improve the state's rulemaking process to more accurately consider the costs and benefits of proposed rules.

An appropriation of \$10,000 from the General Revenue Fund is allocated to OPPAGA for the purpose of conducting this study.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

The bill directs OPPAGA to issue a report on the cost of state regulation, and provides an appropriation from the General Revenue Fund to conduct the study.

- (3) any entitlement to a government service or benefit?

N/A

- b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

- (2) what is the cost of such responsibility at the new level/agency?

N/A

- (3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

N/A

- b. Does the bill require or authorize an increase in any fees?

N/A

- c. Does the bill reduce total taxes, both rates and revenues?

N/A

- d. Does the bill reduce total fees, both rates and revenues?

N/A

- e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

N/A

E. SECTION-BY-SECTION RESEARCH:

Please See the Effect of Proposed Changes Section.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

<u>Expenditures</u>	<u>1998-99</u>
Office of Program Policy Analysis and Government Accountability	
General Revenue Fund	\$10,000

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

<u>Expenditures</u>	<u>1998-99</u>
Office of Program Policy Analysis and Government Accountability General Revenue Fund	\$10,000

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to expend funds or take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

The primary difficulty in estimating Florida's regulatory costs is the current lack of compliance cost information. Chapter 120, F.S., only requires state agencies to prepare a SERC for a proposed rule when a substantially affected person submits a good faith written proposal of a lower cost alternative. Otherwise, agencies are not compelled to perform cost estimates.

The Committee on Governmental Rules and Regulations is aware that the present lack of compliance cost data makes it difficult to obtain accurate estimates of total regulatory costs. It is the intent of the sponsor that OPPAGA utilize applicable cost data gathered through the comprehensive literature search as well as existing governmental data to formulate a good faith estimate of the administrative costs and compliance costs of state regulation. The Committee believes it is important for the Legislature to examine the economic impact of the state's regulatory structure.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Governmental Rules and Regulations adopted 1 amendment to PCB GRR 98-01. The amendment provides that the Joint Administrative Procedures Committee shall annually publish the regulatory statistics prescribed in Section 1 of the bill.

STORAGE NAME: h4279.grr

DATE: March 31, 1998

PAGE 12

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL RULES AND REGULATIONS:

Prepared by:

Legislative Research Director:

Angela Price

David M. Greenbaum