

1                   A bill to be entitled  
2           An act relating to administrative procedure;  
3           amending s. 120.52, F.S.; revising the  
4           definition of "agency" under the Administrative  
5           Procedure Act; amending s. 120.541, F.S.;  
6           requiring an agency to prepare a statement of  
7           estimated regulatory costs, or revise a prior  
8           statement, when its preliminary estimate of the  
9           costs of implementing and enforcing a proposed  
10          rule and of transactional costs exceeds a  
11          specified limit; specifying conditions under  
12          which a rule may be declared invalid based on a  
13          challenge to such statement; creating s.  
14          11.516, F.S.; requiring the Office of Program  
15          Policy Analysis and Government Accountability  
16          to review and comment on such statements;  
17          creating the "Regulatory Sunrise Act";  
18          specifying factors to be considered by the  
19          Legislature in determining whether to implement  
20          a mandate upon a state agency to regulate a  
21          business or professional activity that would  
22          require rule adoption; providing an effective  
23          date.

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

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27           Section 1. Subsection (1) of section 120.52, Florida  
28   Statutes, is amended to read:

29           120.52 Definitions.--As used in this act:

30           (1) "Agency" means:  
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1 (a) The Governor in the exercise of all executive  
2 powers other than those derived from the constitution.

3 (b) Each state:

4 1. ~~State~~ Officer and ~~state~~ department, and each  
5 departmental unit described in s. 20.04.

6 2. Authority, including a regional water supply  
7 authority.

8 3. Board.

9 4. Commission, including the Commission on Ethics and  
10 the Fish and Wildlife Conservation Commission when acting  
11 pursuant to statutory authority derived from the Legislature.

12 5. Regional planning agency.

13 6. Multicounty special district with a majority of its  
14 governing board comprised of nonelected persons.

15 7. Educational units.

16 8. Entity described in chapters 163, 373, 380, and 582  
17 and s. 186.504.

18 (c) Each other unit of government in the state,  
19 including counties and municipalities, to the extent they are  
20 expressly made subject to this act by general or special law  
21 or existing judicial decisions.

22  
23 This definition does not include any legal entity or agency  
24 created in whole or in part pursuant to chapter 361, part II,  
25 an expressway authority pursuant to chapter 348, any legal or  
26 administrative entity created by an interlocal agreement  
27 pursuant to s. 163.01(7), unless any party to such agreement  
28 is otherwise an agency as defined in this subsection, or any  
29 multicounty special district with a majority of its governing  
30 board comprised of elected persons; however, this definition  
31 shall include a regional water supply authority.

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

3 120.541 Statement of estimated regulatory costs.--

4 (1)(a) A substantially affected person, within 21 days  
5 after publication of the notice provided under s.

6 120.54(3)(a), may submit to an agency a good faith written  
7 proposal for a lower cost regulatory alternative to a proposed  
8 rule which substantially accomplishes the objectives of the  
9 law being implemented. The proposal may include the  
10 alternative of not adopting any rule, so long as the proposal  
11 explains how the lower costs and objectives of the law will be  
12 achieved by not adopting any rule. If such a proposal is  
13 submitted, the 90-day period for filing the rule is extended  
14 21 days.

15 (b) Upon the submission of the lower cost regulatory  
16 alternative, the agency shall prepare a statement of estimated  
17 regulatory costs as provided in subsection (2), or shall  
18 revise its prior statement of estimated regulatory costs, and  
19 either adopt the alternative or give a statement of the  
20 reasons for rejecting the alternative in favor of the proposed  
21 rule. The failure of the agency to prepare or revise the  
22 statement of estimated regulatory costs as provided in this  
23 paragraph is a material failure to follow the applicable  
24 rulemaking procedures or requirements set forth in this  
25 chapter. An agency required to prepare or revise a statement  
26 of estimated regulatory costs as provided in this paragraph  
27 shall make it available to the person who submits the lower  
28 cost regulatory alternative and to the public prior to filing  
29 the rule for adoption.

30 (c) An agency shall prepare a statement of estimated  
31 regulatory costs, or revise its prior statement of estimated

1 regulatory costs, in all instances when the preliminary agency  
2 estimate of the annual costs of implementing and enforcing the  
3 proposed rule and of the transactional costs as described in  
4 paragraph (2)(c) exceeds in total \$1,500,000.

5 (d) The agency shall notify and provide a copy of the  
6 statement required under paragraph (c) to the Office of  
7 Program Policy Analysis and Government Accountability. The  
8 Office of Program Policy Analysis and Government  
9 Accountability shall have 21 days to review and comment on the  
10 statements of regulatory costs before the agencies may file  
11 such rule for adoption. The failure of the Office of Program  
12 Policy Analysis and Government Accountability to prepare  
13 comments upon a statement shall not be a basis of challenge to  
14 a proposed rule.

15 (e)(c) No rule shall be declared invalid because it  
16 imposes regulatory costs on the regulated person, county, or  
17 city which could be reduced by the adoption of less costly  
18 alternatives that substantially accomplish the statutory  
19 objectives, and no rule shall be declared invalid based upon a  
20 challenge to the agency's statement of estimated regulatory  
21 costs, unless:

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

24 2. When a lower cost regulatory alternative as  
25 described in paragraph (a) has been filed,the substantial  
26 interests of the person challenging the agency's rejection of,  
27 or failure to consider, the lower cost regulatory alternative  
28 are materially affected by the rejection; and

29 3.a. The agency has failed to prepare or revise the  
30 statement of estimated regulatory costs as required by this  
31 subsection ~~paragraph (b)~~; or

1           b. The challenge is to the agency's rejection under  
2 paragraph (b) of a lower cost regulatory alternative submitted  
3 under paragraph (a).

4           (2) A statement of estimated regulatory costs shall  
5 include:

6           (a) A good faith estimate of the number of individuals  
7 and entities likely to be required to comply with the rule,  
8 together with a general description of the types of  
9 individuals likely to be affected by the rule.

10           (b) A good faith estimate of the cost to the agency,  
11 and to any other state and local government entities, of  
12 implementing and enforcing the proposed rule, and any  
13 anticipated effect on state or local revenues.

14           (c) A good faith estimate of the transactional costs  
15 likely to be incurred by individuals and entities, including  
16 local government entities, required to comply with the  
17 requirements of the rule. As used in this paragraph,  
18 "transactional costs" are direct costs that are readily  
19 ascertainable based upon standard business practices, and  
20 include filing fees, the cost of obtaining a license, the cost  
21 of equipment required to be installed or used or procedures  
22 required to be employed in complying with the rule, additional  
23 operating costs incurred, and the cost of monitoring and  
24 reporting.

25           (d) An analysis of the impact on small businesses as  
26 defined by s. 288.703, and an analysis of the impact on small  
27 counties and small cities as defined by s. 120.52.

28           (e) Any additional information that the agency  
29 determines may be useful.

30           (f) In the statement or revised statement, whichever  
31 applies, a description of any good faith written proposal

1 submitted under paragraph (1)(a) and either a statement  
2 adopting the alternative or a statement of the reasons for  
3 rejecting the alternative in favor of the proposed rule.

4 Section 3. Section 11.516, Florida Statutes, is  
5 created to read:

6 11.516 Review of statements of estimated regulatory  
7 costs.--The Office of Program Policy Analysis and Government  
8 Accountability shall review and comment on each statement of  
9 estimated regulatory costs prepared in accordance with s.  
10 120.541(1)(c). The office shall review the submitted  
11 statements for reasonableness of methodologies and provide  
12 commentary to the agency and to the Joint Administrative  
13 Procedure Committee on improving the methodologies used to  
14 prepare the statements.

15 Section 4. Legislative review of proposed  
16 regulation.--

17 (1) This section may be cited as the "Regulatory  
18 Sunrise Act."

19 (2) As used in this section, "regulation" means  
20 authority granted a state agency, as defined by s. 120.52,  
21 Florida Statutes, to regulate a business or professional  
22 activity not being regulated at that time, which would require  
23 the agency to adopt administrative rules pursuant to chapter  
24 120, Florida Statutes, to implement, operate, or enforce.

25 (3) In determining whether to implement a proposed  
26 regulation, the Legislature shall consider the following  
27 factors:

28 (a) Whether the proposed regulation will promote the  
29 public health, safety, or welfare.

30 (b) Whether the public is or can be effectively  
31 protected by other means.

1           (c) Whether the overall cost effectiveness and  
2 economic impact of the proposed regulation will be favorable.  
3 When determining the overall cost effectiveness and economic  
4 impact of the proposed regulation, the Legislature shall  
5 obtain:

6           1. A good faith estimate of the number of individuals  
7 and entities likely to be required to comply with the  
8 regulation.

9           2. A good faith estimate of the cost to state and  
10 local government entities of implementing, operating, and  
11 enforcing the proposed regulation and any anticipated effect  
12 on state or local revenues.

13           3. A good faith estimate of the transactional costs  
14 likely to be incurred by individuals and entities, including  
15 local government entities, required to comply with the  
16 requirements of the proposed regulation. As used in this  
17 subparagraph, "transactional costs" are direct costs that are  
18 readily ascertainable based upon standard business practices,  
19 and include filing fees, the cost of obtaining a license or  
20 permit, the cost of equipment required to be installed or used  
21 or procedures required to be employed in complying with the  
22 regulation, additional operating costs incurred, and the cost  
23 of monitoring and reporting.

24           4. An analysis of the impact on small businesses as  
25 defined by s. 288.703, Florida Statutes, and an analysis of  
26 the impact on small counties and small cities as defined by s.  
27 120.52, Florida Statutes.

28           Section 5. This act shall take effect October 1, 2000.  
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