

1 A bill to be entitled
2 An act relating to rulemaking; amending s. 120.54, F.S.;
3 requiring each agency, before adopting, amending, or
4 repealing a rule, to prepare a statement of estimated
5 regulatory costs of the proposed rule; providing that
6 failure to prepare such statement is a material failure to
7 follow applicable rulemaking procedures; amending s.
8 120.541, F.S.; requiring an agency to revise its statement
9 of estimated regulatory costs upon submission of a lower
10 cost regulatory alternative; removing the requirement that
11 a rule be declared invalid if it imposes regulatory costs
12 on certain persons or entities provided a less costly
13 alternative exists; revising the required information that
14 must be included in a statement of estimated regulatory
15 costs; requiring the Joint Administrative Procedures
16 Committee to determine whether any statement of estimated
17 regulatory costs complies with certain requirements;
18 prohibiting a rule from taking effect until it is
19 submitted to the Legislature for review if the rule
20 creates certain impediments or hindrances; allowing the
21 Legislature to reject, modify, or take no action relative
22 to a rule; providing a time certain for a rule to take
23 effect if the Legislature takes no action; providing that
24 the act is not applicable to certain specified rules;
25 providing an effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:
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29 Section 1. Paragraph (b) of subsection (3) of section
 30 120.54, Florida Statutes, is amended to read:

31 120.54 Rulemaking.—

32 (3) ADOPTION PROCEDURES.—

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

34 1. Statement of estimated regulatory costs.—Prior to the
 35 adoption, amendment, or repeal of any rule other than an
 36 emergency rule, an agency shall ~~is encouraged to~~ prepare a
 37 statement of estimated regulatory costs of the proposed rule, as
 38 provided by s. 120.541. The failure of the agency to prepare the
 39 statement of estimated regulatory costs as provided in this
 40 section is a material failure to follow the applicable
 41 rulemaking procedures or requirements set forth in this chapter.

42 ~~However, an agency shall prepare a statement of estimated~~
 43 ~~regulatory costs of the proposed rule, as provided by s.~~
 44 ~~120.541, if the proposed rule will have an impact on small~~
 45 ~~business.~~

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

47 a. Each agency, before the adoption, amendment, or repeal
 48 of a rule, shall consider the impact of the rule on small
 49 businesses as defined by s. 288.703 and the impact of the rule
 50 on small counties or small cities as defined by s. 120.52.
 51 Whenever practicable, an agency shall tier its rules to reduce
 52 disproportionate impacts on small businesses, small counties, or
 53 small cities to avoid regulating small businesses, small
 54 counties, or small cities that do not contribute significantly
 55 to the problem the rule is designed to address. An agency may
 56 define "small business" to include businesses employing more

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57 | than 200 persons, may define "small county" to include those
58 | with populations of more than 75,000, and may define "small
59 | city" to include those with populations of more than 10,000, if
60 | it finds that such a definition is necessary to adapt a rule to
61 | the needs and problems of small businesses, small counties, or
62 | small cities. The agency shall consider each of the following
63 | methods for reducing the impact of the proposed rule on small
64 | businesses, small counties, and small cities, or any combination
65 | of these entities:

66 | (I) Establishing less stringent compliance or reporting
67 | requirements in the rule.

68 | (II) Establishing less stringent schedules or deadlines in
69 | the rule for compliance or reporting requirements.

70 | (III) Consolidating or simplifying the rule's compliance
71 | or reporting requirements.

72 | (IV) Establishing performance standards or best management
73 | practices to replace design or operational standards in the
74 | rule.

75 | (V) Exempting small businesses, small counties, or small
76 | cities from any or all requirements of the rule.

77 | b.(I) If the agency determines that the proposed action
78 | will affect small businesses as defined by the agency as
79 | provided in sub-subparagraph a., the agency shall send written
80 | notice of the rule to the Small Business Regulatory Advisory
81 | Council and the Office of Tourism, Trade, and Economic
82 | Development not less than 28 days prior to the intended action.

83 | (II) Each agency shall adopt those regulatory alternatives
84 | offered by the Small Business Regulatory Advisory Council and

85 provided to the agency no later than 21 days after the council's
86 receipt of the written notice of the rule which it finds are
87 feasible and consistent with the stated objectives of the
88 proposed rule and which would reduce the impact on small
89 businesses. When regulatory alternatives are offered by the
90 Small Business Regulatory Advisory Council, the 90-day period
91 for filing the rule in subparagraph (e)2. is extended for a
92 period of 21 days.

93 (III) If an agency does not adopt all alternatives offered
94 pursuant to this sub-subparagraph, it shall, prior to rule
95 adoption or amendment and pursuant to subparagraph (d)1., file a
96 detailed written statement with the committee explaining the
97 reasons for failure to adopt such alternatives. Within 3 working
98 days of the filing of such notice, the agency shall send a copy
99 of such notice to the Small Business Regulatory Advisory
100 Council. The Small Business Regulatory Advisory Council may make
101 a request of the President of the Senate and the Speaker of the
102 House of Representatives that the presiding officers direct the
103 Office of Program Policy Analysis and Government Accountability
104 to determine whether the rejected alternatives reduce the impact
105 on small business while meeting the stated objectives of the
106 proposed rule. Within 60 days after the date of the directive
107 from the presiding officers, the Office of Program Policy
108 Analysis and Government Accountability shall report to the
109 Administrative Procedures Committee its findings as to whether
110 an alternative reduces the impact on small business while
111 meeting the stated objectives of the proposed rule. The Office
112 of Program Policy Analysis and Government Accountability shall

113 consider the proposed rule, the economic impact statement, the
 114 written statement of the agency, the proposed alternatives, and
 115 any comment submitted during the comment period on the proposed
 116 rule. The Office of Program Policy Analysis and Government
 117 Accountability shall submit a report of its findings and
 118 recommendations to the Governor, the President of the Senate,
 119 and the Speaker of the House of Representatives. The
 120 Administrative Procedures Committee shall report such findings
 121 to the agency, and the agency shall respond in writing to the
 122 Administrative Procedures Committee if the Office of Program
 123 Policy Analysis and Government Accountability found that the
 124 alternative reduced the impact on small business while meeting
 125 the stated objectives of the proposed rule. If the agency will
 126 not adopt the alternative, it must also provide a detailed
 127 written statement to the committee as to why it will not adopt
 128 the alternative.

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

131 120.541 Statement of estimated regulatory costs.—

132 (1) (a) A substantially affected person, within 21 days
 133 after publication of the notice provided under s. 120.54(3) (a),
 134 may submit to an agency a good faith written proposal for a
 135 lower cost regulatory alternative to a proposed rule which
 136 substantially accomplishes the objectives of the law being
 137 implemented. The proposal may include the alternative of not
 138 adopting any rule, so long as the proposal explains how the
 139 lower costs and objectives of the law will be achieved by not
 140 adopting any rule. If such a proposal is submitted, the 90-day

141 period for filing the rule is extended 21 days.

142 (b) Upon the submission of the lower cost regulatory
 143 alternative, the agency ~~shall prepare a statement of estimated~~
 144 ~~regulatory costs as provided in subsection (2), or~~ shall revise
 145 its prior statement of estimated regulatory costs, and either
 146 adopt the alternative or give a statement of the reasons for
 147 rejecting the alternative in favor of the proposed rule. The
 148 failure of the agency to prepare or revise the statement of
 149 estimated regulatory costs as provided in this paragraph is a
 150 material failure to follow the applicable rulemaking procedures
 151 or requirements set forth in this chapter. An agency required to
 152 prepare or revise a statement of estimated regulatory costs as
 153 provided in this paragraph shall make it available to the person
 154 who submits the lower cost regulatory alternative and to the
 155 public prior to filing the rule for adoption.

156 ~~(c) No rule shall be declared invalid because it imposes~~
 157 ~~regulatory costs on the regulated person, county, or city which~~
 158 ~~could be reduced by the adoption of less costly alternatives~~
 159 ~~that substantially accomplish the statutory objectives, and no~~
 160 ~~rule shall be declared invalid based upon a challenge to the~~
 161 ~~agency's statement of estimated regulatory costs, unless:~~

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

164 ~~2. The substantial interests of the person challenging the~~
 165 ~~agency's rejection of, or failure to consider, the lower cost~~
 166 ~~regulatory alternative are materially affected by the rejection;~~
 167 ~~and~~

168 ~~3.a. The agency has failed to prepare or revise the~~

169 ~~statement of estimated regulatory costs as required by paragraph~~
 170 ~~(b); or~~

171 ~~b. The challenge is to the agency's rejection under~~
 172 ~~paragraph (b) of a lower cost regulatory alternative submitted~~
 173 ~~under paragraph (a).~~

174 (2) A statement of estimated regulatory costs shall
 175 include:

176 (a) An economic analysis showing whether the rule:

177 1. Creates a regulatory environment that could impede or
 178 hinder economic growth and private-sector job creation;

179 2. Expands the growth of state government, where not
 180 recognized by the enabling statute;

181 3. Increases regulatory costs to small businesses; and

182 4. Is likely to adversely impact private-sector job
 183 creation or result in higher unemployment.

184 (b) A good faith estimate of the number of individuals and
 185 entities likely to be required to comply with the rule, together
 186 with a general description of the types of individuals likely to
 187 be affected by the rule.

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

192 (d) ~~(c)~~ A good faith estimate of the transactional costs
 193 likely to be incurred by individuals and entities, including
 194 local government entities, required to comply with the
 195 requirements of the rule. As used in this paragraph,
 196 "transactional costs" are direct costs that are readily

197 ascertainable based upon standard business practices, and
198 include filing fees, the cost of obtaining a license, the cost
199 of equipment required to be installed or used or procedures
200 required to be employed in complying with the rule, additional
201 operating costs incurred, and the cost of monitoring and
202 reporting.

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

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

208 ~~(g)~~(f) In the statement or revised statement, whichever
209 applies, a description of any good faith written proposal
210 submitted under paragraph (1) (a) and either a statement adopting
211 the alternative or a statement of the reasons for rejecting the
212 alternative in favor of the proposed rule.

213 (3) The committee shall determine whether any statement of
214 estimated regulatory costs prepared by an agency complies with
215 subsection (2). If the evidence shows that a proposed rule will
216 create a regulatory environment that impedes or hinders economic
217 growth and private-sector job creation, expand the growth of
218 state government where not anticipated by the enabling statute,
219 increase the regulatory costs to small businesses, or is likely
220 to adversely impact private-sector job creation or result in
221 higher unemployment, the rule may not take effect until it is
222 submitted to the Legislature for review at the next regularly
223 scheduled session. The Legislature may reject, modify, or take
224 no action relative to the rule. If the Legislature takes no

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225 | action, the rule shall take effect upon adjournment sine die of
226 | that session.

227 | (4) Paragraph (2)(a) does not apply to the adoption of
228 | emergency rules.

229 | Section 3. This act shall take effect July 1, 2010.