

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 certain rules, to prepare a statement of
5 estimated regulatory costs of the proposed rule if the
6 proposed rule has adverse impacts on small business or
7 increases regulatory costs; providing an exception to
8 circumstances under which an emergency rule shall not be
9 effective; amending s. 120.541, F.S.; extending the time
10 period for filing a rule when a substantially affected
11 person submits a proposal for a lower cost regulatory
12 alternative; providing circumstances under which an agency
13 shall prepare or revise a statement of estimated
14 regulatory costs; providing notice requirements; providing
15 that an agency's failure to prepare or revise the
16 statement of estimated regulatory costs is a material
17 failure to follow the applicable rulemaking procedures or
18 requirements of the chapter; specifying conditions under
19 which a challenged rule may not be declared invalid;
20 specifying the requirements for an economic analysis on a
21 proposed rule or rule changes; requiring that a rule
22 impact analysis for small businesses include the agency's
23 basis for not implementing alternatives to a proposed
24 rule; providing circumstances under which a rule shall not
25 take effect until ratified by the Legislature; providing
26 that the act is not applicable to certain specified rules
27 or standards; amending s. 120.56, F.S.; providing for
28 revised statements of estimated regulatory costs as a

29 basis for challenging a rule; amending s. 120.60, F.S.;

30 authorizing an agency to provide by rule for the time

31 period for submitting additional information needed for a

32 license application; requiring that certain requests to

33 receive notice relating to a license application be

34 submitted in writing; providing an effective date.

35

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

37

38 Section 1. Paragraph (b) of subsection (3) and paragraph

39 (c) of subsection (4) of section 120.54, Florida Statutes, are

40 amended to read:

41 120.54 Rulemaking.—

42 (3) ADOPTION PROCEDURES.—

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

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

45 adoption, amendment, or repeal of any rule other than an

46 emergency rule, an agency is encouraged to prepare a statement

47 of estimated regulatory costs of the proposed rule, as provided

48 by s. 120.541. However, an agency must ~~shall~~ prepare a statement

49 of estimated regulatory costs of the proposed rule, as provided

50 by s. 120.541, if:

51 a. The proposed rule will have an adverse impact on small

52 business; or

53 b. The proposed rule is likely to directly or indirectly

54 increase regulatory costs in excess of \$200,000 in the aggregate

55 in this state.

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

57 | a. Each agency, before the adoption, amendment, or repeal
58 | of a rule, shall consider the impact of the rule on small
59 | businesses as defined by s. 288.703 and the impact of the rule
60 | on small counties or small cities as defined by s. 120.52.
61 | Whenever practicable, an agency shall tier its rules to reduce
62 | disproportionate impacts on small businesses, small counties, or
63 | small cities to avoid regulating small businesses, small
64 | counties, or small cities that do not contribute significantly
65 | to the problem the rule is designed to address. An agency may
66 | define "small business" to include businesses employing more
67 | than 200 persons, may define "small county" to include those
68 | with populations of more than 75,000, and may define "small
69 | city" to include those with populations of more than 10,000, if
70 | it finds that such a definition is necessary to adapt a rule to
71 | the needs and problems of small businesses, small counties, or
72 | small cities. The agency shall consider each of the following
73 | methods for reducing the impact of the proposed rule on small
74 | businesses, small counties, and small cities, or any combination
75 | of these entities:

76 | (I) Establishing less stringent compliance or reporting
77 | requirements in the rule.

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

80 | (III) Consolidating or simplifying the rule's compliance
81 | or reporting requirements.

82 | (IV) Establishing performance standards or best management
83 | practices to replace design or operational standards in the
84 | rule.

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

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

93 (II) Each agency shall adopt those regulatory alternatives
94 offered by the Small Business Regulatory Advisory Council and
95 provided to the agency no later than 21 days after the council's
96 receipt of the written notice of the rule which it finds are
97 feasible and consistent with the stated objectives of the
98 proposed rule and which would reduce the impact on small
99 businesses. When regulatory alternatives are offered by the
100 Small Business Regulatory Advisory Council, the 90-day period
101 for filing the rule in subparagraph (e)2. is extended for a
102 period of 21 days.

103 (III) If an agency does not adopt all alternatives offered
104 pursuant to this sub-subparagraph, it shall, prior to rule
105 adoption or amendment and pursuant to subparagraph (d)1., file a
106 detailed written statement with the committee explaining the
107 reasons for failure to adopt such alternatives. Within 3 working
108 days of the filing of such notice, the agency shall send a copy
109 of such notice to the Small Business Regulatory Advisory
110 Council. The Small Business Regulatory Advisory Council may make
111 a request of the President of the Senate and the Speaker of the
112 House of Representatives that the presiding officers direct the

113 Office of Program Policy Analysis and Government Accountability
114 to determine whether the rejected alternatives reduce the impact
115 on small business while meeting the stated objectives of the
116 proposed rule. Within 60 days after the date of the directive
117 from the presiding officers, the Office of Program Policy
118 Analysis and Government Accountability shall report to the
119 Administrative Procedures Committee its findings as to whether
120 an alternative reduces the impact on small business while
121 meeting the stated objectives of the proposed rule. The Office
122 of Program Policy Analysis and Government Accountability shall
123 consider the proposed rule, the economic impact statement, the
124 written statement of the agency, the proposed alternatives, and
125 any comment submitted during the comment period on the proposed
126 rule. The Office of Program Policy Analysis and Government
127 Accountability shall submit a report of its findings and
128 recommendations to the Governor, the President of the Senate,
129 and the Speaker of the House of Representatives. The
130 Administrative Procedures Committee shall report such findings
131 to the agency, and the agency shall respond in writing to the
132 Administrative Procedures Committee if the Office of Program
133 Policy Analysis and Government Accountability found that the
134 alternative reduced the impact on small business while meeting
135 the stated objectives of the proposed rule. If the agency will
136 not adopt the alternative, it must also provide a detailed
137 written statement to the committee as to why it will not adopt
138 the alternative.

139 (4) EMERGENCY RULES.—

140 (c) An emergency rule adopted under this subsection shall

141 not be effective for a period longer than 90 days and shall not
 142 be renewable, except when the agency has initiated rulemaking to
 143 adopt rules addressing the subject of the emergency rule and
 144 either: ~~during the pendency of~~

145 1. A challenge to the proposed rules has been filed and
 146 remains pending; or ~~addressing the subject of the emergency rule~~

147 2. The proposed rules are awaiting ratification by the
 148 Legislature pursuant to s. 120.541(3).

149
 150 Nothing in this paragraph prohibits ~~However,~~ the agency from
 151 adopting a rule or rules identical to the emergency rule through
 152 ~~may take identical action by the rulemaking procedures specified~~
 153 in subsection (3) ~~this chapter.~~

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

156 120.541 Statement of estimated regulatory costs.—

157 (1) (a) ~~A substantially affected person,~~ Within 21 days
 158 after publication of the notice required ~~provided~~ under s.
 159 120.54(3) (a), a substantially affected person may submit to an
 160 agency a good faith written proposal for a lower cost regulatory
 161 alternative to a proposed rule which substantially accomplishes
 162 the objectives of the law being implemented. The proposal may
 163 include the alternative of not adopting any rule ~~if, so long as~~
 164 the proposal explains how the lower costs and objectives of the
 165 law will be achieved by not adopting any rule. If such a
 166 proposal is submitted, the time period for filing the rule under
 167 s. 120.54(3) (e) 2. ~~90-day period for filing the rule is extended~~
 168 90 ~~21~~ days.

169 ~~(b)~~ Upon the submission of the lower cost regulatory
170 alternative, the agency shall ~~prepare a statement of estimated~~
171 ~~regulatory costs as provided in subsection (2), or~~ shall revise
172 its prior statement of estimated regulatory costs, and either
173 adopt the alternative or provide ~~give~~ a statement of the reasons
174 for rejecting the alternative in favor of the proposed rule. ~~The~~
175 ~~failure of the agency to prepare or revise the statement of~~
176 ~~estimated regulatory costs as provided in this paragraph is a~~
177 ~~material failure to follow the applicable rulemaking procedures~~
178 ~~or requirements set forth in this chapter. An agency required to~~
179 ~~prepare or revise a statement of estimated regulatory costs as~~
180 ~~provided in this paragraph shall make it available to the person~~
181 ~~who submits the lower cost regulatory alternative and to the~~
182 ~~public prior to filing the rule for adoption.~~

183 (b) If a proposed rule will have an adverse impact on
184 small business or if the proposed rule is likely to directly or
185 indirectly increase regulatory costs in excess of \$200,000 in
186 the aggregate, the agency shall prepare a statement of estimated
187 regulatory costs as required by s. 120.54(3)(b).

188 (c) The agency shall revise a statement of estimated
189 regulatory costs if any change to the rule made under s.
190 120.54(3)(d) increases the regulatory costs of the rule.

191 (d) At least 45 days before filing the rule for adoption,
192 an agency that is required to revise a statement of estimated
193 regulatory costs shall provide the statement to the person who
194 submitted the lower cost regulatory alternative and to the
195 committee and shall provide notice on the agency's website that
196 it is available to the public.

197 (e) The failure of the agency to prepare or revise the
 198 statement of estimated regulatory costs as provided in this
 199 section is a material failure to follow the applicable
 200 rulemaking procedures or requirements set forth in this chapter.

201 (f)-(e) A rule that is challenged pursuant to s.
 202 120.52(8) (a) because of the failure to prepare or revise the ~~No~~
 203 ~~rule shall be declared invalid because it imposes regulatory~~
 204 ~~costs on the regulated person, county, or city which could be~~
 205 ~~reduced by the adoption of less costly alternatives that~~
 206 ~~substantially accomplish the statutory objectives, and no rule~~
 207 ~~shall be declared invalid based upon a challenge to the agency's~~
 208 ~~statement of estimated regulatory costs~~ may not be declared
 209 invalid, unless:

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

212 2. The agency's failure to prepare or revise the statement
 213 of estimated regulatory costs materially affects the substantial
 214 interests of the person challenging the agency. ~~The substantial~~
 215 ~~interests of the person challenging the agency's rejection of,~~
 216 ~~or failure to consider, the lower cost regulatory alternative~~
 217 ~~are materially affected by the rejection; and~~

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

221 b. ~~The challenge is to the agency's rejection under~~
 222 ~~paragraph (b) of a lower cost regulatory alternative submitted~~
 223 ~~under paragraph (a).~~

224 (g) A rule that is challenged pursuant to s. 120.52(8) (f)

225 because the rule imposes regulatory costs on the regulated
226 person, county, or city which could be reduced by the adoption
227 of less costly alternatives that substantially accomplish the
228 statutory objectives may not be declared invalid unless:

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

231 2. The challenge is to the agency's rejection of a lower
232 cost regulatory alternative offered under paragraph (a) or s.
233 120.54(3)(b)2.b.; and

234 3. The substantial interests of the person challenging the
235 agency are materially affected by the rejection.

236 (2) A statement of estimated regulatory costs shall
237 include:

238 (a) An economic analysis showing whether the rule directly
239 or indirectly:

240 1. Is likely to have an adverse impact on economic growth,
241 private-sector job creation or employment, or private-sector
242 investment in excess of \$1 million in the aggregate;

243 2. Is likely to have an adverse impact on business
244 competitiveness, including the ability of persons doing business
245 in the state to compete with persons doing business in other
246 states or domestic markets, productivity, or innovation in
247 excess of \$1 million in the aggregate; or

248 3. Is likely to increase regulatory costs, including any
249 transactional costs, in excess of \$1 million in the aggregate.

250 (b) A good faith estimate of the number of individuals and
251 entities likely to be required to comply with the rule, together
252 with a general description of the types of individuals likely to

253 | be affected by the rule.

254 | (c)~~(b)~~ A good faith estimate of the cost to the agency,
 255 | and to any other state and local government entities, of
 256 | implementing and enforcing the proposed rule, and any
 257 | anticipated effect on state or local revenues.

258 | (d)~~(e)~~ A good faith estimate of the transactional costs
 259 | likely to be incurred by individuals and entities, including
 260 | local government entities, required to comply with the
 261 | requirements of the rule. As used in this section ~~paragraph~~,
 262 | "transactional costs" are direct costs that are readily
 263 | ascertainable based upon standard business practices, and
 264 | include filing fees, the cost of obtaining a license, the cost
 265 | of equipment required to be installed or used or procedures
 266 | required to be employed in complying with the rule, additional
 267 | operating costs incurred, ~~and~~ the cost of monitoring and
 268 | reporting, and any other costs necessary to comply with the
 269 | rule.

270 | (e)~~(d)~~ An analysis of the impact on small businesses as
 271 | defined by s. 288.703, and an analysis of the impact on small
 272 | counties and small cities as defined in ~~by~~ s. 120.52. The impact
 273 | analysis for small businesses must include the basis for the
 274 | agency's decision not to implement alternatives that would
 275 | reduce adverse impacts on small businesses.

276 | (f)~~(e)~~ Any additional information that the agency
 277 | determines may be useful.

278 | (g)~~(f)~~ In the statement or revised statement, whichever
 279 | applies, a description of any regulatory alternatives ~~good faith~~
 280 | ~~written proposal~~ submitted under paragraph (1) (a) and ~~either a~~

281 statement adopting the alternative or a statement of the reasons
 282 for rejecting the alternative in favor of the proposed rule.

283 (3) If the adverse impact or regulatory costs of the rule
 284 exceed any of the criteria established in paragraph (2) (a), the
 285 rule shall be submitted to the President of the Senate and
 286 Speaker of the House of Representatives no later than 30 days
 287 prior to the next regular legislative session, and the rule may
 288 not take effect until it is ratified by the Legislature.

289 (4) Paragraph (2) (a) does not apply to the adoption of
 290 emergency rules pursuant to s. 120.54(4) or the adoption of
 291 federal standards pursuant to s. 120.54(6).

292 Section 3. Paragraph (a) of subsection (2) and paragraph
 293 (d) of subsection (4) of section 120.56, Florida Statutes, are
 294 amended to read:

295 120.56 Challenges to rules.—

296 (2) CHALLENGING PROPOSED RULES; SPECIAL PROVISIONS.—

297 (a) A ~~Any~~ substantially affected person may seek an
 298 administrative determination of the invalidity of a ~~any~~ proposed
 299 rule by filing a petition seeking such a determination with the
 300 division within 21 days after the date of publication of the
 301 notice required by s. 120.54(3) (a); ~~it~~ it within 10 days after the
 302 final public hearing is held on the proposed rule as provided by
 303 s. 120.54(3) (e)2.; ~~it~~ it within 44 ~~20~~ days after the statement of
 304 estimated regulatory costs or revised statement of estimated
 305 regulatory costs, if applicable, has been prepared and made
 306 available as provided in s. 120.541(1) (d); ~~required pursuant to~~
 307 ~~s. 120.541, if applicable, has been provided to all persons who~~
 308 ~~submitted a lower cost regulatory alternative and made available~~

309 ~~to the public,~~ or within 20 days after the date of publication
 310 of the notice required by s. 120.54(3)(d). The petition must
 311 ~~shall~~ state with particularity the objections to the proposed
 312 rule and the reasons that the proposed rule is an invalid
 313 exercise of delegated legislative authority. The petitioner has
 314 the burden of going forward. The agency then has the burden to
 315 prove by a preponderance of the evidence that the proposed rule
 316 is not an invalid exercise of delegated legislative authority as
 317 to the objections raised. A ~~Any~~ person who is substantially
 318 affected by a change in the proposed rule may seek a
 319 determination of the validity of such change. A ~~Any~~ person who
 320 is not substantially affected by the proposed rule as initially
 321 noticed, but who is substantially affected by the rule as a
 322 result of a change, may challenge any provision of the rule and
 323 is not limited to challenging the change to the proposed rule.

324 (4) CHALLENGING AGENCY STATEMENTS DEFINED AS RULES;
 325 SPECIAL PROVISIONS.—

326 (d) If an administrative law judge enters a final order
 327 that all or part of an agency statement violates s.
 328 120.54(1)(a), the agency must ~~shall~~ immediately discontinue all
 329 reliance upon the statement or any substantially similar
 330 statement as a basis for agency action. ~~This paragraph shall not~~
 331 ~~be construed to impair the obligation of contracts existing at~~
 332 ~~the time the final order is entered.~~

333 Section 4. Subsections (1) and (3) of section 120.60,
 334 Florida Statutes, are amended to read:

335 120.60 Licensing.—

336 (1) Upon receipt of an ~~application for~~ a license

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337 application, an agency shall examine the application and, within
338 30 days after such receipt, notify the applicant of any apparent
339 errors or omissions and request any additional information the
340 agency is permitted by law to require. An agency may ~~shall~~ not
341 deny a license for failure to correct an error or omission or to
342 supply additional information unless the agency timely notified
343 the applicant within this 30-day period. The agency may
344 establish by rule the time period for submitting any additional
345 information requested by the agency. For good cause shown, the
346 agency shall grant a request for an extension of time for
347 submitting the additional information. If the applicant believes
348 the agency's request for additional information is not
349 authorized by law or rule, the agency, at the applicant's
350 request, shall proceed to process the application. An
351 application is ~~shall be considered~~ complete upon receipt of all
352 requested information and correction of any error or omission
353 for which the applicant was timely notified or when the time for
354 such notification has expired. An ~~Every~~ application for a
355 license must ~~shall~~ be approved or denied within 90 days after
356 receipt of a completed application unless a shorter period of
357 time for agency action is provided by law. The 90-day time
358 period is ~~shall be~~ tolled by the initiation of a proceeding
359 under ss. 120.569 and 120.57. Any application for a license
360 which ~~that~~ is not approved or denied within the 90-day or
361 shorter time period, within 15 days after conclusion of a public
362 hearing held on the application, or within 45 days after a
363 recommended order is submitted to the agency and the parties,
364 whichever action and timeframe is latest and applicable, is

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365 considered approved unless the recommended order recommends that
366 the agency deny the license. Subject to the satisfactory
367 completion of an examination if required as a prerequisite to
368 licensure, any license that is considered approved shall be
369 issued and may include such reasonable conditions as are
370 authorized by law. Any applicant for licensure seeking to claim
371 licensure by default under this subsection shall notify the
372 agency clerk of the licensing agency, in writing, of the intent
373 to rely upon the default license provision of this subsection,
374 and may ~~shall~~ not take any action based upon the default license
375 until after receipt of such notice by the agency clerk.

376 (3) Each applicant shall be given written notice, either
377 personally or by mail, that the agency intends to grant or deny,
378 or has granted or denied, the application for license. The
379 notice must state with particularity the grounds or basis for
380 the issuance or denial of the license, except when issuance is a
381 ministerial act. Unless waived, a copy of the notice shall be
382 delivered or mailed to each party's attorney of record and to
383 each person who has made a written request for ~~requested~~ notice
384 of agency action. Each notice must ~~shall~~ inform the recipient of
385 the basis for the agency decision, ~~shall~~ inform the recipient of
386 any administrative hearing pursuant to ss. 120.569 and 120.57 or
387 judicial review pursuant to s. 120.68 which may be available,
388 ~~shall~~ indicate the procedure that ~~which~~ must be followed, and
389 ~~shall~~ state the applicable time limits. The issuing agency shall
390 certify the date the notice was mailed or delivered, and the
391 notice and the certification must ~~shall~~ be filed with the agency
392 clerk.

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Section 5. This act shall take effect upon becoming a law.