

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.; providing
10 circumstances under which an agency shall prepare or
11 revise a statement of estimated regulatory costs;
12 providing notice requirements; providing that an agency's
13 failure to prepare a statement of estimated regulatory
14 costs or respond to a written lower cost regulatory
15 alternative is a material failure to follow the applicable
16 rulemaking procedures or requirements of the chapter;
17 specifying circumstances under which certain challenges
18 may not be raised; providing exceptions; specifying the
19 requirements for an economic analysis on a proposed rule
20 or rule changes; requiring that a rule impact analysis for
21 small businesses include the agency's basis for not
22 implementing alternatives to a proposed rule; providing
23 circumstances under which a rule shall not take effect
24 until ratified by the Legislature; providing that the act
25 is not applicable to certain specified rules or standards;
26 amending s. 120.56, F.S.; providing for revised statements
27 of estimated regulatory costs as a basis for challenging a
28 rule; amending s. 120.60, F.S.; authorizing an agency to

29 provide by rule for the time period for submitting
 30 additional information needed for a license application;
 31 requiring that certain requests to receive notice relating
 32 to a license application be submitted in writing;
 33 providing an effective date.

34

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

36

37 Section 1. Paragraph (b) of subsection (3) and paragraph
 38 (c) of subsection (4) of section 120.54, Florida Statutes, are
 39 amended to read:

40

120.54 Rulemaking.—

41

(3) ADOPTION PROCEDURES.—

42

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

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1. Statement of estimated regulatory costs.—Prior to the
 44 adoption, amendment, or repeal of any rule other than an
 45 emergency rule, an agency is encouraged to prepare a statement
 46 of estimated regulatory costs of the proposed rule, as provided
 47 by s. 120.541. However, an agency must ~~shall~~ prepare a statement
 48 of estimated regulatory costs of the proposed rule, as provided
 49 by s. 120.541, if:

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

52

b. The proposed rule is likely to directly or indirectly
 53 increase regulatory costs in excess of \$200,000 in the aggregate
 54 in this state.

55

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

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a. Each agency, before the adoption, amendment, or repeal

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

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

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

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

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

84 | (V) Exempting small businesses, small counties, or small

85 cities from any or all requirements of the rule.

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

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

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

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

138 | (4) EMERGENCY RULES.—

139 | (c) An emergency rule adopted under this subsection shall
140 | not be effective for a period longer than 90 days and shall not

141 be renewable, except when the agency has initiated rulemaking to
 142 adopt rules addressing the subject of the emergency rule and
 143 either: ~~during the pendency of~~

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

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

148
 149 Nothing in this paragraph prohibits ~~However,~~ the agency from
 150 adopting a rule or rules identical to the emergency rule through
 151 ~~may take identical action by~~ the rulemaking procedures specified
 152 in subsection (3) this chapter.

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

155 120.541 Statement of estimated regulatory costs.—

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

167 ~~(b)~~ Upon the submission of the lower cost regulatory
 168 alternative, the agency shall prepare a statement of estimated

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

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

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

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

195 (e) Notwithstanding s. 120.56(1)(c), the failure of the
196 agency to prepare a statement of estimated regulatory costs or

197 to respond to a written lower cost regulatory alternative as
198 provided in this subsection is a material failure to follow the
199 applicable rulemaking procedures or requirements set forth in
200 this chapter.

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

211 1. ~~The issue is~~ Raised in a petition filed no later than
212 ~~an administrative proceeding within~~ 1 year after the effective
213 date of the rule; and

214 2. Raised by a person whose substantial interests are
215 affected by the rule's regulatory costs. ~~The substantial~~
216 ~~interests of the person challenging the agency's rejection of,~~
217 ~~or failure to consider, the lower cost regulatory alternative~~
218 ~~are materially affected by the rejection; and~~

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

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

225 (g) A rule that is challenged pursuant to s. 120.52(8)(f)
226 may not be declared invalid unless:

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

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

232 3. The substantial interests of the person challenging the
233 rule are materially affected by the rejection.

234 (2) A statement of estimated regulatory costs shall
235 include:

236 (a) An economic analysis showing whether the rule directly
237 or indirectly:

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

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

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

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

252 (c) ~~(b)~~ A good faith estimate of the cost to the agency,

253 and to any other state and local government entities, of
254 implementing and enforcing the proposed rule, and any
255 anticipated effect on state or local revenues.

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

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

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

276 (g)~~(f)~~ In the statement or revised statement, whichever
277 applies, a description of any regulatory alternatives ~~good faith~~
278 ~~written proposal~~ submitted under paragraph (1) (a) and ~~either~~ a
279 statement adopting the alternative or a statement of the reasons
280 for rejecting the alternative in favor of the proposed rule.

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

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

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

293 120.56 Challenges to rules.—

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

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

309 ~~shall~~ state with particularity the objections to the proposed
 310 rule and the reasons that the proposed rule is an invalid
 311 exercise of delegated legislative authority. The petitioner has
 312 the burden of going forward. The agency then has the burden to
 313 prove by a preponderance of the evidence that the proposed rule
 314 is not an invalid exercise of delegated legislative authority as
 315 to the objections raised. A ~~Any~~ person who is substantially
 316 affected by a change in the proposed rule may seek a
 317 determination of the validity of such change. A ~~Any~~ person who
 318 is not substantially affected by the proposed rule as initially
 319 noticed, but who is substantially affected by the rule as a
 320 result of a change, may challenge any provision of the rule and
 321 is not limited to challenging the change to the proposed rule.

322 (4) CHALLENGING AGENCY STATEMENTS DEFINED AS RULES;
 323 SPECIAL PROVISIONS.—

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

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

333 120.60 Licensing.—

334 (1) Upon receipt of ~~an application for~~ a license
 335 application, an agency shall examine the application and, within
 336 30 days after such receipt, notify the applicant of any apparent

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

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

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

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