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2010 Legislature

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

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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.—

43 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:

50 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 within 1 year after the implementation of the
 55 rule.

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

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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.

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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

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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

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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 90-day period for filing the rule is
 167 extended 21 days.

168 ~~(b)~~ Upon the submission of the lower cost regulatory

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

182 (b) If a proposed rule will have an adverse impact on
 183 small business or if the proposed rule is likely to directly or
 184 indirectly increase regulatory costs in excess of \$200,000 in
 185 the aggregate within 1 year after the implementation of the
 186 rule, 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.

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197 (e) Notwithstanding s. 120.56(1)(c), the failure of the
 198 agency to prepare a statement of estimated regulatory costs or
 199 to respond to a written lower cost regulatory alternative as
 200 provided in this subsection is a material failure to follow the
 201 applicable rulemaking procedures or requirements set forth in
 202 this chapter.

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

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

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

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

224 b. ~~The challenge is to the agency's rejection under~~

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225 ~~paragraph (b) of a lower cost regulatory alternative submitted~~
 226 ~~under paragraph (a).~~

227 (g) A rule that is challenged pursuant to s. 120.52(8)(f)
 228 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 rule 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 within 5
 243 years after the implementation of the rule;

244 2. Is likely to have an adverse impact on business
 245 competitiveness, including the ability of persons doing business
 246 in the state to compete with persons doing business in other
 247 states or domestic markets, productivity, or innovation in
 248 excess of \$1 million in the aggregate within 5 years after the
 249 implementation of the rule; or

250 3. Is likely to increase regulatory costs, including any
 251 transactional costs, in excess of \$1 million in the aggregate
 252 within 5 years after the implementation of the rule.

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253 **(b)** A good faith estimate of the number of individuals and
 254 entities likely to be required to comply with the rule, together
 255 with a general description of the types of individuals likely to
 256 be affected by the rule.

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

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

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

279 **(f)**~~(e)~~ Any additional information that the agency
 280 determines may be useful.

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281 (g) ~~(f)~~ In the statement or revised statement, whichever
 282 applies, a description of any regulatory alternatives ~~good faith~~
 283 ~~written proposal~~ submitted under paragraph (1) (a) and ~~either~~ a
 284 statement adopting the alternative or a statement of the reasons
 285 for rejecting the alternative in favor of the proposed rule.

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

292 (4) Paragraph (2) (a) does not apply to the adoption of
 293 emergency rules pursuant to s. 120.54(4) or the adoption of
 294 federal standards pursuant to s. 120.54(6).

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

298 120.56 Challenges to rules.—

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

300 (a) A ~~Any~~ substantially affected person may seek an
 301 administrative determination of the invalidity of a ~~any~~ proposed
 302 rule by filing a petition seeking such a determination with the
 303 division within 21 days after the date of publication of the
 304 notice required by s. 120.54(3) (a); ~~7~~ within 10 days after the
 305 final public hearing is held on the proposed rule as provided by
 306 s. 120.54(3) (e) 2.; ~~7~~ within 44 ~~20~~ days after the statement of
 307 estimated regulatory costs or revised statement of estimated
 308 regulatory costs, if applicable, has been prepared and made

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309 ~~available as provided in s. 120.541(1)(d); required pursuant to~~
 310 ~~s. 120.541, if applicable, has been provided to all persons who~~
 311 ~~submitted a lower cost regulatory alternative and made available~~
 312 ~~to the public,~~ or within 20 days after the date of publication
 313 of the notice required by s. 120.54(3)(d). The petition must
 314 ~~shall~~ state with particularity the objections to the proposed
 315 rule and the reasons that the proposed rule is an invalid
 316 exercise of delegated legislative authority. The petitioner has
 317 the burden of going forward. The agency then has the burden to
 318 prove by a preponderance of the evidence that the proposed rule
 319 is not an invalid exercise of delegated legislative authority as
 320 to the objections raised. A ~~Any~~ person who is substantially
 321 affected by a change in the proposed rule may seek a
 322 determination of the validity of such change. A ~~Any~~ person who
 323 is not substantially affected by the proposed rule as initially
 324 noticed, but who is substantially affected by the rule as a
 325 result of a change, may challenge any provision of the rule and
 326 is not limited to challenging the change to the proposed rule.

327 (4) CHALLENGING AGENCY STATEMENTS DEFINED AS RULES;
 328 SPECIAL PROVISIONS.—

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

336 Section 4. Subsections (1) and (3) of section 120.60,

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337 Florida Statutes, are amended to read:
 338 120.60 Licensing.—
 339 (1) Upon receipt of ~~an application for~~ a license
 340 application, an agency shall examine the application and, within
 341 30 days after such receipt, notify the applicant of any apparent
 342 errors or omissions and request any additional information the
 343 agency is permitted by law to require. An agency may ~~shall~~ not
 344 deny a license for failure to correct an error or omission or to
 345 supply additional information unless the agency timely notified
 346 the applicant within this 30-day period. The agency may
 347 establish by rule the time period for submitting any additional
 348 information requested by the agency. For good cause shown, the
 349 agency shall grant a request for an extension of time for
 350 submitting the additional information. If the applicant believes
 351 the agency's request for additional information is not
 352 authorized by law or rule, the agency, at the applicant's
 353 request, shall proceed to process the application. An
 354 application is ~~shall be considered~~ complete upon receipt of all
 355 requested information and correction of any error or omission
 356 for which the applicant was timely notified or when the time for
 357 such notification has expired. An ~~Every~~ application for a
 358 license must ~~shall~~ be approved or denied within 90 days after
 359 receipt of a completed application unless a shorter period of
 360 time for agency action is provided by law. The 90-day time
 361 period is ~~shall be~~ tolled by the initiation of a proceeding
 362 under ss. 120.569 and 120.57. Any application for a license
 363 which ~~that~~ is not approved or denied within the 90-day or
 364 shorter time period, within 15 days after conclusion of a public

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365 hearing held on the application, or within 45 days after a
366 recommended order is submitted to the agency and the parties,
367 whichever action and timeframe is latest and applicable, is
368 considered approved unless the recommended order recommends that
369 the agency deny the license. Subject to the satisfactory
370 completion of an examination if required as a prerequisite to
371 licensure, any license that is considered approved shall be
372 issued and may include such reasonable conditions as are
373 authorized by law. Any applicant for licensure seeking to claim
374 licensure by default under this subsection shall notify the
375 agency clerk of the licensing agency, in writing, of the intent
376 to rely upon the default license provision of this subsection,
377 and may ~~shall~~ not take any action based upon the default license
378 until after receipt of such notice by the agency clerk.

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

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393 | certify the date the notice was mailed or delivered, and the
394 | notice and the certification must ~~shall~~ be filed with the agency
395 | clerk.

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