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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/07/2010	.	
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The Committee on Commerce (Detert) recommended the following:

1 **Senate Substitute for Amendment (828726) (with title**
2 **amendment)**

3
4 Delete everything after the enacting clause
5 and insert:

6 Section 1. Paragraph (b) of subsection (3) of section
7 120.54, Florida Statutes, is amended to read:

8 120.54 Rulemaking.—

9 (3) ADOPTION PROCEDURES.—

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

11 1. Statement of estimated regulatory costs.—Prior to the
12 adoption, amendment, or repeal of any rule other than an
13 emergency rule, an agency is encouraged to prepare a statement



161142

14 of estimated regulatory costs of the proposed rule, as provided
15 by s. 120.541. However, an agency must ~~shall~~ prepare a statement
16 of estimated regulatory costs of the proposed rule, as provided
17 by s. 120.541, if:

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

20 b. The proposed rule may have an adverse economic impact in
21 excess of \$200,000 on the private-sector in Florida.

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

23 a. Each agency, before the adoption, amendment, or repeal
24 of a rule, shall consider the impact of the rule on small
25 businesses as defined by s. 288.703 and the impact of the rule
26 on small counties or small cities as defined by s. 120.52.
27 Whenever practicable, an agency shall tier its rules to reduce
28 disproportionate impacts on small businesses, small counties, or
29 small cities to avoid regulating small businesses, small
30 counties, or small cities that do not contribute significantly
31 to the problem the rule is designed to address. An agency may
32 define "small business" to include businesses employing more
33 than 200 persons, may define "small county" to include those
34 with populations of more than 75,000, and may define "small
35 city" to include those with populations of more than 10,000, if
36 it finds that such a definition is necessary to adapt a rule to
37 the needs and problems of small businesses, small counties, or
38 small cities. The agency shall consider each of the following
39 methods for reducing the impact of the proposed rule on small
40 businesses, small counties, and small cities, or any combination
41 of these entities:

42 (I) Establishing less stringent compliance or reporting



161142

43 requirements in the rule.

44 (II) Establishing less stringent schedules or deadlines in
45 the rule for compliance or reporting requirements.

46 (III) Consolidating or simplifying the rule's compliance or
47 reporting requirements.

48 (IV) Establishing performance standards or best management
49 practices to replace design or operational standards in the
50 rule.

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

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

59 (II) Each agency shall adopt those regulatory alternatives
60 offered by the Small Business Regulatory Advisory Council and
61 provided to the agency no later than 21 days after the council's
62 receipt of the written notice of the rule which it finds are
63 feasible and consistent with the stated objectives of the
64 proposed rule and which would reduce the impact on small
65 businesses. When regulatory alternatives are offered by the
66 Small Business Regulatory Advisory Council, the 90-day period
67 for filing the rule in subparagraph (e)2. is extended for a
68 period of 21 days.

69 (III) If an agency does not adopt all alternatives offered
70 pursuant to this sub-subparagraph, it shall, prior to rule
71 adoption or amendment and pursuant to subparagraph (d)1., file a



161142

72 detailed written statement with the committee explaining the
73 reasons for failure to adopt such alternatives. Within 3 working
74 days of the filing of such notice, the agency shall send a copy
75 of such notice to the Small Business Regulatory Advisory
76 Council. The Small Business Regulatory Advisory Council may make
77 a request of the President of the Senate and the Speaker of the
78 House of Representatives that the presiding officers direct the
79 Office of Program Policy Analysis and Government Accountability
80 to determine whether the rejected alternatives reduce the impact
81 on small business while meeting the stated objectives of the
82 proposed rule. Within 60 days after the date of the directive
83 from the presiding officers, the Office of Program Policy
84 Analysis and Government Accountability shall report to the
85 Administrative Procedures Committee its findings as to whether
86 an alternative reduces the impact on small business while
87 meeting the stated objectives of the proposed rule. The Office
88 of Program Policy Analysis and Government Accountability shall
89 consider the proposed rule, the economic impact statement, the
90 written statement of the agency, the proposed alternatives, and
91 any comment submitted during the comment period on the proposed
92 rule. The Office of Program Policy Analysis and Government
93 Accountability shall submit a report of its findings and
94 recommendations to the Governor, the President of the Senate,
95 and the Speaker of the House of Representatives. The
96 Administrative Procedures Committee shall report such findings
97 to the agency, and the agency shall respond in writing to the
98 Administrative Procedures Committee if the Office of Program
99 Policy Analysis and Government Accountability found that the
100 alternative reduced the impact on small business while meeting



161142

101 the stated objectives of the proposed rule. If the agency will
102 not adopt the alternative, it must also provide a detailed
103 written statement to the committee as to why it will not adopt
104 the alternative.

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

107 120.541 Statement of estimated regulatory costs.—

108 (1) (a) ~~A substantially affected person,~~ Within 21 days
109 after publication of the notice required ~~provided~~ under s.
110 120.54(3) (a), a substantially affected person may submit to an
111 agency a good faith written proposal for a lower cost regulatory
112 alternative to a proposed rule which substantially accomplishes
113 the objectives of the law being implemented. The proposal may
114 include the alternative of not adopting any rule ~~if, so long as~~
115 the proposal explains how the lower costs and objectives of the
116 law will be achieved by not adopting any rule. If such a
117 proposal is submitted, the time period for filing the rule under
118 s. 120.54(3) (e)2. ~~90-day period for filing the rule~~ is extended
119 90 ~~21~~ days.

120 ~~(b)~~ Upon the submission of the lower cost regulatory
121 alternative, the agency ~~shall prepare a statement of estimated~~
122 ~~regulatory costs as provided in subsection (2), or shall revise~~
123 its prior statement of estimated regulatory costs, and either
124 adopt the alternative or provide ~~give~~ a statement of the reasons
125 for rejecting the alternative in favor of the proposed rule. ~~The~~
126 ~~failure of the agency to prepare or revise the statement of~~
127 ~~estimated regulatory costs as provided in this paragraph is a~~
128 ~~material failure to follow the applicable rulemaking procedures~~
129 ~~or requirements set forth in this chapter. An agency required to~~



161142

130 ~~prepare or revise a statement of estimated regulatory costs as~~
131 ~~provided in this paragraph shall make it available to the person~~
132 ~~who submits the lower cost regulatory alternative and to the~~
133 ~~public prior to filing the rule for adoption.~~

134 (b) If a proposed rule will have an adverse impact on small
135 businesses or if the proposed rule may have an adverse economic
136 impact in excess of \$200,000 on the private-sector, the agency
137 shall prepare a statement of estimated regulatory costs as
138 required by s. 120.54(3)(b).

139 (c) The agency shall revise a statement of estimated
140 regulatory costs if any change to the rule made under s.
141 120.54(3)(d) increases the regulatory costs of the rule.

142 (d) At least 45 days before filing the rule for adoption,
143 an agency that is required to revise a statement of estimated
144 regulatory costs shall provide the statement to the person who
145 submitted the lower cost regulatory alternative and to the
146 committee, and provide notice on the agency's website that it is
147 available to the public.

148 (e) The failure of the agency to prepare or revise the
149 statement of estimated regulatory costs as provided in this
150 subsection is a material failure to follow the applicable
151 rulemaking procedures or requirements set forth in this chapter.

152 (f) ~~(e)~~ A rule that is challenged pursuant to s.
153 120.52(8)(a) because of the failure to prepare or revise the ~~No~~
154 rule shall be declared invalid because it imposes regulatory
155 costs on the regulated person, county, or city which could be
156 reduced by the adoption of less costly alternatives that
157 substantially accomplish the statutory objectives, and no rule
158 shall be declared invalid based upon a challenge to the agency's



161142

159 statement of estimated regulatory costs may not be declared
160 invalid, unless:

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

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

169 ~~3.a. The agency has failed to prepare or revise the~~
170 ~~statement of estimated regulatory costs; or~~

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

173 (g) A rule that is challenged by a substantially affected
174 person pursuant to s. 120.52(8)(f) because the rule imposes
175 regulatory costs on the regulated person, county, or city which
176 could be reduced by the adoption of less costly alternatives
177 that substantially accomplish the statutory objectives may not
178 be declared invalid unless:

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

181 2. The challenge is to the agency's rejection of a lower
182 cost regulatory alternative offered under paragraph (a) or s.
183 120.54(3)(b)2.b.; and

184 3. The substantial interests of the person challenging the
185 agency are materially affected by the rejection.

186 (2) A statement of estimated regulatory costs shall
187 include:



161142

188 (a) An economic analysis showing whether the rule directly
189 or indirectly:

190 1. Is likely to have an adverse impact in excess of \$1
191 million in the aggregate on economic growth, private-sector job
192 creation or employment, business competitiveness, private-sector
193 investment, productivity, innovation or the ability of persons
194 doing business in Florida to compete with persons doing business
195 in other states or domestic markets;

196 2. Expands the growth of state government, where not
197 expressly recognized by the enabling statute; or

198 3. Increases regulatory costs, including any costs incurred
199 to comply with proposed regulations, to small business by \$1
200 million or more in the aggregate.

201 (b) A good faith estimate of the number of individuals and
202 entities likely to be required to comply with the rule, together
203 with a general description of the types of individuals likely to
204 be affected by the rule.

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

209 (d) ~~(e)~~ A good faith estimate of the transactional costs
210 likely to be incurred by individuals and entities, including
211 local government entities, required to comply with the
212 requirements of the rule. As used in this paragraph,
213 "transactional costs" are direct costs that are readily
214 ascertainable based upon standard business practices, and
215 include filing fees, the cost of obtaining a license, the cost
216 of equipment required to be installed or used or procedures



161142

217 required to be employed in complying with the rule, additional
218 operating costs incurred, and the cost of monitoring and
219 reporting.

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

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

225 (g)~~(f)~~ In the statement or revised statement, whichever
226 applies, a description of any good faith written proposal
227 submitted under paragraph (1) (a) and either a statement adopting
228 the alternative or a statement of the reasons for rejecting the
229 alternative in favor of the proposed rule.

230 (3) If the adverse impact or regulatory costs of the rule
231 exceed any of the criteria established in subsection (2) (a),
232 then the rule may not take effect until it is submitted to the
233 Legislature for review at the next regularly scheduled session.
234 The Legislature may reject, modify, or take no action relative
235 to the rule. If the Legislature takes no action, the rule will
236 take effect upon sine die.

237 (4) Subsection (2) (a) shall not apply to the adoption of
238 emergency rules pursuant to s. 120.54(4) or the adoption of
239 federal standards pursuant to s. 120.54(6).

240 Section 3. This act shall take effect upon becoming a law.

241
242
243 ===== T I T L E A M E N D M E N T =====

244 And the title is amended as follows:

245 Delete everything before the enacting clause



161142

246 and insert:

247 A bill to be entitled
248 An act relating to rulemaking; amending s.
249 120.54, F.S., requiring each agency, before adopting,
250 amending, or repealing certain rules, to prepare a
251 statement of estimated regulatory costs of the
252 proposed rule if the proposed rule has certain adverse
253 impacts on small business or the private sector;
254 amending s. 120.541, F.S.; requiring each agency,
255 before adopting, amending, or repealing certain rules,
256 to prepare a statement of estimated regulatory costs
257 of the proposed rule; specifying the conditions under
258 which a challenged rule may not be declared invalid;
259 specifying the requirements of an economic analysis on
260 proposed rule or rule changes; prohibiting a rule from
261 taking effect until it is submitted to the Legislature
262 for review under certain circumstances; providing a
263 time certain for a rule to take effect if the
264 Legislature take no action; providing that the act is
265 not applicable to certain specified rules; providing
266 an effective date.
267