



773552

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/20/2010	.	
	.	
	.	
	.	

---

---

The Committee on Governmental Oversight and Accountability  
(Dean) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

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

120.54 Rulemaking.—

(3) ADOPTION PROCEDURES.—

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

1. Statement of estimated regulatory costs.—Prior to the  
adoption, amendment, or repeal of any rule other than an



773552

13 emergency rule, an agency is encouraged to prepare a statement  
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 is likely to directly or indirectly  
21 increase regulatory costs in excess of \$200,000 in the aggregate  
22 in this state.

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

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



773552

42 of these entities:

43 (I) Establishing less stringent compliance or reporting  
44 requirements in the rule.

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

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

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

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

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

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

70 (III) If an agency does not adopt all alternatives offered



773552

71 pursuant to this sub-subparagraph, it shall, prior to rule  
72 adoption or amendment and pursuant to subparagraph (d)1., file a  
73 detailed written statement with the committee explaining the  
74 reasons for failure to adopt such alternatives. Within 3 working  
75 days of the filing of such notice, the agency shall send a copy  
76 of such notice to the Small Business Regulatory Advisory  
77 Council. The Small Business Regulatory Advisory Council may make  
78 a request of the President of the Senate and the Speaker of the  
79 House of Representatives that the presiding officers direct the  
80 Office of Program Policy Analysis and Government Accountability  
81 to determine whether the rejected alternatives reduce the impact  
82 on small business while meeting the stated objectives of the  
83 proposed rule. Within 60 days after the date of the directive  
84 from the presiding officers, the Office of Program Policy  
85 Analysis and Government Accountability shall report to the  
86 Administrative Procedures Committee its findings as to whether  
87 an alternative reduces the impact on small business while  
88 meeting the stated objectives of the proposed rule. The Office  
89 of Program Policy Analysis and Government Accountability shall  
90 consider the proposed rule, the economic impact statement, the  
91 written statement of the agency, the proposed alternatives, and  
92 any comment submitted during the comment period on the proposed  
93 rule. The Office of Program Policy Analysis and Government  
94 Accountability shall submit a report of its findings and  
95 recommendations to the Governor, the President of the Senate,  
96 and the Speaker of the House of Representatives. The  
97 Administrative Procedures Committee shall report such findings  
98 to the agency, and the agency shall respond in writing to the  
99 Administrative Procedures Committee if the Office of Program



773552

100 Policy Analysis and Government Accountability found that the  
101 alternative reduced the impact on small business while meeting  
102 the stated objectives of the proposed rule. If the agency will  
103 not adopt the alternative, it must also provide a detailed  
104 written statement to the committee as to why it will not adopt  
105 the alternative.

106 (4) EMERGENCY RULES.—

107 (c) An emergency rule adopted under this subsection shall  
108 not be effective for a period longer than 90 days and shall not  
109 be renewable, except when the agency has initiated rulemaking to  
110 adopt rules addressing the subject of the emergency rule and  
111 either: ~~during the pendency of~~

112 1. A challenge to the proposed rules has been filed and  
113 remains pending; or

114 2. The proposed rules are awaiting ratification by the  
115 Legislature pursuant to s. 120.541(3) ~~addressing the subject of~~  
116 the emergency rule.

117  
118 Nothing in this paragraph prohibits the agency from adopting a  
119 rule or rules identical to the emergency rule through ~~However,~~  
120 the agency may take identical action by the rulemaking  
121 procedures specified in subsection (3) this chapter.

122 Section 2. Section 120.541, Florida Statutes, is amended to  
123 read:

124 120.541 Statement of estimated regulatory costs.—

125 (1) (a) ~~A substantially affected person,~~ Within 21 days  
126 after publication of the notice required ~~provided~~ under s.  
127 120.54(3) (a), a substantially affected person may submit to an  
128 agency a good faith written proposal for a lower cost regulatory



773552

129 alternative to a proposed rule which substantially accomplishes  
130 the objectives of the law being implemented. The proposal may  
131 include the alternative of not adopting any rule ~~if, so long as~~  
132 the proposal explains how the lower costs and objectives of the  
133 law will be achieved by not adopting any rule. If such a  
134 proposal is submitted, the 90-day period for filing the rule is  
135 extended 21 days.

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

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

155 (c) The agency shall revise a statement of estimated  
156 regulatory costs if any change to the rule made under s.  
157 120.54(3)(d) increases the regulatory costs of the rule.



773552

158 (d) At least 45 days before filing the rule for adoption,  
159 an agency that is required to revise a statement of estimated  
160 regulatory costs shall provide the statement to the person who  
161 submitted the lower cost regulatory alternative and to the  
162 committee, and provide notice on the agency's website that it is  
163 available to the public.

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

168 (f)(e) A rule that is challenged as an invalid exercise of  
169 delegated legislative authority pursuant to s. 120.52(8)(a)  
170 because of the failure to prepare or revise the ~~No rule shall be~~  
171 ~~declared invalid because it imposes regulatory costs on the~~  
172 ~~regulated person, county, or city which could be reduced by the~~  
173 ~~adoption of less costly alternatives that substantially~~  
174 ~~accomplish the statutory objectives, and no rule shall be~~  
175 ~~declared invalid based upon a challenge to the agency's~~  
176 ~~statement of estimated regulatory costs~~ may not be declared  
177 invalid, unless:

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

180 2. The agency's failure to prepare or revise the statement  
181 of estimated regulatory costs materially affects the substantial  
182 interests of the person challenging the rule. ~~The substantial~~  
183 ~~interests of the person challenging the agency's rejection of,~~  
184 ~~or failure to consider, the lower cost regulatory alternative~~  
185 ~~are materially affected by the rejection; and~~

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



773552

187 ~~statement of estimated regulatory costs as required by paragraph~~  
188 ~~(b); or~~

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

192 (g) A rule that is challenged as an invalid exercise of  
193 delegated legislative authority pursuant to s. 120.52(8)(f) may  
194 not be declared invalid unless:

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

197 2. The challenge is to the agency's rejection of a lower  
198 cost regulatory alternative offered under paragraph (a) or s.  
199 120.54(3)(b)2.b.; and

200 3. The substantial interests of the person challenging the  
201 rule are materially affected by the rejection.

202 (2) A statement of estimated regulatory costs shall  
203 include:

204 (a) An economic analysis showing whether the rule directly  
205 or indirectly:

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

209 2. Is likely to have an adverse impact on business  
210 competitiveness, including the ability of persons doing business  
211 in Florida to compete with persons doing business in other  
212 states or domestic markets, productivity, or innovation in  
213 excess of \$1 million in the aggregate; or

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





773552

216           **(b)** A good faith estimate of the number of individuals and  
217 entities likely to be required to comply with the rule, together  
218 with a general description of the types of individuals likely to  
219 be affected by the rule.

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

224           **(d)**~~(c)~~ A good faith estimate of the transactional costs  
225 likely to be incurred by individuals and entities, including  
226 local government entities, required to comply with the  
227 requirements of the rule. As used in this section ~~paragraph~~,  
228 "transactional costs" are direct costs that are readily  
229 ascertainable based upon standard business practices, and  
230 include filing fees, the cost of obtaining a license, the cost  
231 of equipment required to be installed or used or procedures  
232 required to be employed in complying with the rule, additional  
233 operating costs incurred, ~~and~~ the cost of monitoring and  
234 reporting, and any other costs necessary to comply with the  
235 rule.

236           **(e)**~~(d)~~ An analysis of the impact on small businesses as  
237 defined by s. 288.703, and an analysis of the impact on small  
238 counties and small cities as defined in ~~by~~ s. 120.52. The impact  
239 analysis for small businesses must include the basis for the  
240 agency's decision not to implement alternatives that would  
241 reduce adverse impacts on small businesses.

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

244           **(g)**~~(f)~~ In the statement or revised statement, whichever



773552

245 applies, a description of any regulatory alternatives ~~good faith~~  
246 ~~written proposal~~ submitted under paragraph (1) (a) and ~~either~~ a  
247 statement adopting the alternative or a statement of the reasons  
248 for rejecting the alternative in favor of the proposed rule.

249 (3) If the adverse impact or regulatory costs of the rule  
250 exceed any of the criteria established in paragraph (2) (a), the  
251 rule shall be submitted to the President of the Senate and  
252 Speaker of the House of Representatives no later than 30 days  
253 before the next regular legislative session, and the rule may  
254 not take effect until it is ratified by the Legislature.

255 (4) Paragraph (2) (a) does not apply to the adoption of  
256 emergency rules pursuant to s. 120.54(4) or the adoption of  
257 federal standards pursuant to s. 120.54(6).

258 Section 3. Paragraph (a) of subsection (2) and paragraph  
259 (d) of subsection (4) of section 120.56, Florida Statutes, is  
260 amended to read:

261 120.56 Challenges to rules.—

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

263 (a) A ~~Any~~ substantially affected person may seek an  
264 administrative determination of the invalidity of a ~~any~~ proposed  
265 rule by filing a petition seeking such a determination with the  
266 division within 21 days after the date of publication of the  
267 notice required by s. 120.54(3) (a); ~~;~~ within 10 days after the  
268 final public hearing is held on the proposed rule as provided by  
269 s. 120.54(3) (e)2.; ~~;~~ within 44 ~~20~~ days after the statement of  
270 estimated regulatory costs or revised statement of estimated  
271 regulatory costs, if applicable, has been prepared and made  
272 available as provided in s. 120.541(1) (d); ~~required pursuant to~~  
273 ~~s. 120.541, if applicable, has been provided to all persons who~~



773552

274 ~~submitted a lower cost regulatory alternative and made available~~  
275 ~~to the public,~~ or within 20 days after the date of publication  
276 of the notice required by s. 120.54(3)(d). The petition must  
277 ~~shall~~ state with particularity the objections to the proposed  
278 rule and the reasons that the proposed rule is an invalid  
279 exercise of delegated legislative authority. The petitioner has  
280 the burden of going forward. The agency then has the burden to  
281 prove by a preponderance of the evidence that the proposed rule  
282 is not an invalid exercise of delegated legislative authority as  
283 to the objections raised. A ~~Any~~ person who is substantially  
284 affected by a change in the proposed rule may seek a  
285 determination of the validity of such change. A ~~Any~~ person not  
286 substantially affected by the proposed rule as initially  
287 noticed, but who is substantially affected by the rule as a  
288 result of a change, may challenge any provision of the rule and  
289 is not limited to challenging the change to the proposed rule.

290 (4) CHALLENGING AGENCY STATEMENTS DEFINED AS RULES; SPECIAL  
291 PROVISIONS.-

292 (d) If an administrative law judge enters a final order  
293 that all or part of an agency statement violates s.  
294 120.54(1)(a), the agency shall immediately discontinue all  
295 reliance upon the statement or any substantially similar  
296 statement as a basis for agency action. ~~This paragraph shall not~~  
297 ~~be construed to impair the obligation of contracts existing at~~  
298 ~~the time the final order is entered.~~

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

301 120.60 Licensing.-

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



773552

303 application, an agency shall examine the application and, within  
304 30 days after such receipt, notify the applicant of any apparent  
305 errors or omissions and request any additional information the  
306 agency is permitted by law to require. An agency may ~~shall~~ not  
307 deny a license for failure to correct an error or omission or to  
308 supply additional information unless the agency timely notified  
309 the applicant within this 30-day period. The agency may  
310 establish by rule the time period for submitting any additional  
311 information requested by the agency. For good cause shown, the  
312 agency shall grant a request for an extension of time for  
313 submitting the additional information. If the applicant believes  
314 the agency's request for additional information is not  
315 authorized by law or rule, the agency, at the applicant's  
316 request, shall proceed to process the application. An  
317 application is ~~shall be~~ considered complete upon receipt of all  
318 requested information and correction of any error or omission  
319 for which the applicant was timely notified or when the time for  
320 such notification has expired. An ~~Every~~ application for a  
321 license must ~~shall~~ be approved or denied within 90 days after  
322 receipt of a completed application unless a shorter period of  
323 time for agency action is provided by law. The 90-day time  
324 period is ~~shall be~~ tolled by the initiation of a proceeding  
325 under ss. 120.569 and 120.57. Any application for a license  
326 which ~~that~~ is not approved or denied within the 90-day or  
327 shorter time period, within 15 days after conclusion of a public  
328 hearing held on the application, or within 45 days after a  
329 recommended order is submitted to the agency and the parties,  
330 whichever action and timeframe is latest and applicable, is  
331 considered approved unless the recommended order recommends that



773552

332 the agency deny the license. Subject to the satisfactory  
333 completion of an examination if required as a prerequisite to  
334 licensure, any license that is considered approved shall be  
335 issued and may include such reasonable conditions as are  
336 authorized by law. Any applicant for licensure seeking to claim  
337 licensure by default under this subsection shall notify the  
338 agency clerk of the licensing agency, in writing, of the intent  
339 to rely upon the default license provision of this subsection,  
340 and shall not take any action based upon the default license  
341 until after receipt of such notice by the agency clerk.

342 (3) Each applicant shall be given written notice, ~~either~~  
343 personally or by mail that the agency intends to grant or deny,  
344 or has granted or denied, the application for license. The  
345 notice must state with particularity the grounds or basis for  
346 the issuance or denial of the license, except when issuance is a  
347 ministerial act. Unless waived, a copy of the notice shall be  
348 delivered or mailed to each party's attorney of record and to  
349 each person who has made a written request for ~~requested~~ notice  
350 of agency action. Each notice must ~~shall~~ inform the recipient of  
351 the basis for the agency decision, ~~shall~~ inform the recipient of  
352 any administrative hearing pursuant to ss. 120.569 and 120.57 or  
353 judicial review pursuant to s. 120.68 which may be available,  
354 ~~shall~~ indicate the procedure that ~~which~~ must be followed, and  
355 ~~shall~~ state the applicable time limits. The issuing agency shall  
356 certify the date the notice was mailed or delivered, and the  
357 notice and the certification must ~~shall~~ be filed with the agency  
358 clerk.

359 Section 5. This act shall take effect upon becoming a law.  
360



773552

361 ===== T I T L E A M E N D M E N T =====

362 And the title is amended as follows:

363

364 Delete everything before the enacting clause  
365 and insert:

366

A bill to be entitled

367

An act relating to rulemaking; amending s. 120.54,

368

F.S.; requiring each agency, before adopting,

369

amending, or repealing certain rules, to prepare a

370

statement of estimated regulatory costs of the

371

proposed rule if the proposed rule has an adverse

372

effect on small business or increases regulatory costs

373

in excess of a specified amount; providing that an

374

emergency rule may be extended while awaiting

375

legislative ratification; amending s. 120.541, F.S.;

376

requiring each agency, before adopting, amending, or

377

repealing certain rules, to prepare a statement of

378

estimated regulatory costs of the proposed rule;

379

specifying the conditions under which a challenged

380

rule may not be declared invalid; specifying the

381

requirements of an economic analysis of proposed rules

382

or rule changes; prohibiting a rule from taking effect

383

until it is ratified by the Legislature; providing

384

that the act is not applicable to certain specified

385

rules; amending s. 120.56, F.S.; providing for revised

386

statements of estimated regulatory costs as a basis

387

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

388

authorizing an agency to provide by rule for the time

389

period for submitting additional information needed



773552

390 for a license application; requiring that certain  
391 requests to receive notice relating to a license  
392 application be submitted in writing; providing an  
393 effective date.