

By Senator Bennett

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1 A bill to be entitled
2 An act relating to rulemaking; amending s. 120.54,
3 F.S.; requiring each agency to determine whether an
4 agency's rule would adversely affect small businesses
5 or increases the regulatory costs of small businesses;
6 requiring the agency to conduct an independent
7 economic analysis under certain specified
8 circumstances; requiring the agency to demonstrate
9 whether a rule will create new private-sector jobs and
10 reduce the unemployment rate for the state;
11 prohibiting a state agency from producing its own
12 economic analysis; requiring that the economic
13 analysis be certified as valid by the Office of
14 Economic and Demographic Research; requiring a rule to
15 be ratified by the Legislature if the state agency
16 cannot prove that the rule creates new jobs and lowers
17 the unemployment rate for the state; requiring that
18 rules subject to ratification be accompanied by a
19 report from the agency explaining why the rule does
20 not create new private-sector jobs and reduce the
21 unemployment rate for the state; providing that the
22 act is not applicable to rules initiated by an agency
23 pursuant to its emergency rulemaking powers; providing
24 an effective date.

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

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28 Section 1. Paragraph (b) of subsection (3) of section
29 120.54, Florida Statutes, is amended to read:

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30 120.54 Rulemaking.—

31 (3) ADOPTION PROCEDURES.—

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

33 1. Statement of estimated regulatory costs.—Prior to the
34 adoption, amendment, or repeal of any rule other than an
35 emergency rule, an agency is encouraged to prepare a statement
36 of estimated regulatory costs of the proposed rule, as provided
37 by s. 120.541. However, an agency shall prepare a statement of
38 estimated regulatory costs of the proposed rule, as provided by
39 s. 120.541, if the proposed rule will have an impact on small
40 business.

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

42 a. Each agency, before the adoption, amendment, or repeal
43 of a rule, shall consider the impact of the rule on small
44 businesses as defined by s. 288.703 and the impact of the rule
45 on small counties or small cities as defined by s. 120.52.
46 Whenever practicable, an agency shall tier its rules to reduce
47 disproportionate impacts on small businesses, small counties, or
48 small cities to avoid regulating small businesses, small
49 counties, or small cities that do not contribute significantly
50 to the problem the rule is designed to address. An agency may
51 define "small business" to include businesses employing more
52 than 200 persons, may define "small county" to include those
53 with populations of more than 75,000, and may define "small
54 city" to include those with populations of more than 10,000, if
55 it finds that such a definition is necessary to adapt a rule to
56 the needs and problems of small businesses, small counties, or
57 small cities. The agency shall consider each of the following
58 methods for reducing the impact of the proposed rule on small

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59 businesses, small counties, and small cities, or any combination
60 of these entities:

61 (I) Establishing less stringent compliance or reporting
62 requirements in the rule.

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

65 (III) Consolidating or simplifying the rule's compliance or
66 reporting requirements.

67 (IV) Establishing performance standards or best management
68 practices to replace design or operational standards in the
69 rule.

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

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

78 (II) Each agency shall adopt those regulatory alternatives
79 offered by the Small Business Regulatory Advisory Council and
80 provided to the agency no later than 21 days after the council's
81 receipt of the written notice of the rule which it finds are
82 feasible and consistent with the stated objectives of the
83 proposed rule and which would reduce the impact on small
84 businesses. When regulatory alternatives are offered by the
85 Small Business Regulatory Advisory Council, the 90-day period
86 for filing the rule in subparagraph (e)2. is extended for a
87 period of 21 days.

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88 (III) If an agency does not adopt all alternatives offered
89 pursuant to this sub-subparagraph, it shall, prior to rule
90 adoption or amendment and pursuant to subparagraph (d)1., file a
91 detailed written statement with the committee explaining the
92 reasons for failure to adopt such alternatives. Within 3 working
93 days of the filing of such notice, the agency shall send a copy
94 of such notice to the Small Business Regulatory Advisory
95 Council. The Small Business Regulatory Advisory Council may make
96 a request of the President of the Senate and the Speaker of the
97 House of Representatives that the presiding officers direct the
98 Office of Program Policy Analysis and Government Accountability
99 to determine whether the rejected alternatives reduce the impact
100 on small business while meeting the stated objectives of the
101 proposed rule. Within 60 days after the date of the directive
102 from the presiding officers, the Office of Program Policy
103 Analysis and Government Accountability shall report to the
104 Administrative Procedures Committee its findings as to whether
105 an alternative reduces the impact on small business while
106 meeting the stated objectives of the proposed rule. The Office
107 of Program Policy Analysis and Government Accountability shall
108 consider the proposed rule, the economic impact statement, the
109 written statement of the agency, the proposed alternatives, and
110 any comment submitted during the comment period on the proposed
111 rule. The Office of Program Policy Analysis and Government
112 Accountability shall submit a report of its findings and
113 recommendations to the Governor, the President of the Senate,
114 and the Speaker of the House of Representatives. The
115 Administrative Procedures Committee shall report such findings
116 to the agency, and the agency shall respond in writing to the

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117 Administrative Procedures Committee if the Office of Program
118 Policy Analysis and Government Accountability found that the
119 alternative reduced the impact on small business while meeting
120 the stated objectives of the proposed rule. If the agency will
121 not adopt the alternative, it must also provide a detailed
122 written statement to the committee as to why it will not adopt
123 the alternative.

124 3. Job creation.-

125 a. Except as provided in sub-subparagraph g., each agency
126 shall initially determine, before adopting, amending, or
127 repealing a rule, whether the rule would:

128 (I) Adversely affect small businesses; or

129 (II) Increase regulatory costs to those small businesses
130 affected.

131 b. If the agency initially determines the rule would
132 adversely affect small businesses or increase the regulatory
133 costs of small businesses, the agency shall retain an
134 independent entity to conduct an economic analysis to determine
135 the extent to which the rule as adopted, amended, or repealed,
136 would adversely affect a small business or increase its
137 regulatory costs. The agency shall also initiate an independent
138 economic analysis if it receives an electronic or written
139 request from the Small Business Regulatory Advisory Council to
140 do so.

141 c. The independent entity used to conduct the analysis may
142 be the Legislature or a third party. However, the agency
143 proposing the rule may not conduct its own economic analysis and
144 an agency may not conduct an analysis for any other agency. The
145 completed analysis must be certified as valid by the Office of

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146 Economic and Demographic Research.

147 d. If the independent analysis shows that the rule would
148 adversely affect small businesses or increase the regulatory
149 costs of small businesses, the agency shall request the
150 independent entity to further analyze whether the rule as
151 adopted, amended, or repealed, would:

152 (I) Result in the net creation of new private-sector jobs;
153 and

154 (II) Reduce the state's unemployment rate.

155 e. If an agency cannot demonstrate that the rule as
156 adopted, amended, or repealed would result in the net creation
157 of new private-sector jobs and reduce the state's unemployment
158 rate, the rule may not take effect until the rule is submitted
159 to and ratified by the Legislature.

160 f. Rules subject to ratification by the Legislature must be
161 accompanied by a report from the agency which explains why the
162 rule does not result in the creation of new private-sector jobs
163 or reduces the state's unemployment rate.

164 g. A proposed rule is not subject to this subparagraph if
165 the proposed rule is initiated by an agency pursuant to its
166 emergency rulemaking powers.

167 Section 2. This act shall take effect July 1, 2010.