

By the Committees on Governmental Oversight and Accountability;
and Commerce; and Senators Bennett, Lynn, and Crist

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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, before adopting,
4 amending, or repealing certain rules, to prepare a
5 statement of estimated regulatory costs of the
6 proposed rule if the proposed rule has an adverse
7 effect on small business or increases regulatory costs
8 in excess of a specified amount; providing that an
9 emergency rule may be extended while awaiting
10 legislative ratification; amending s. 120.541, F.S.;
11 requiring each agency, before adopting, amending, or
12 repealing certain rules, to prepare a statement of
13 estimated regulatory costs of the proposed rule;
14 specifying the conditions under which a challenged
15 rule may not be declared invalid; specifying the
16 requirements of an economic analysis of proposed rules
17 or rule changes; prohibiting a rule from taking effect
18 until it is ratified by the Legislature; providing
19 that the act is not applicable to certain specified
20 rules; amending s. 120.56, F.S.; providing for revised
21 statements of estimated regulatory costs as a basis
22 for challenging a rule; amending s. 120.60, F.S.;
23 authorizing an agency to provide by rule for the time
24 period for submitting additional information needed
25 for a license application; requiring that certain
26 requests to receive notice relating to a license
27 application be submitted in writing; providing an
28 effective date.
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30 Be It Enacted by the Legislature of the State of Florida:

31
32 Section 1. Paragraph (b) of subsection (3) and paragraph
33 (c) of subsection (4) of section 120.54, Florida Statutes,
34 amended to read:

35 120.54 Rulemaking.—

36 (3) ADOPTION PROCEDURES.—

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

38 1. Statement of estimated regulatory costs.—Prior to the
39 adoption, amendment, or repeal of any rule other than an
40 emergency rule, an agency is encouraged to prepare a statement
41 of estimated regulatory costs of the proposed rule, as provided
42 by s. 120.541. However, an agency must ~~shall~~ prepare a statement
43 of estimated regulatory costs of the proposed rule, as provided
44 by s. 120.541, if:

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

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

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

51 a. Each agency, before the adoption, amendment, or repeal
52 of a rule, shall consider the impact of the rule on small
53 businesses as defined by s. 288.703 and the impact of the rule
54 on small counties or small cities as defined by s. 120.52.
55 Whenever practicable, an agency shall tier its rules to reduce
56 disproportionate impacts on small businesses, small counties, or
57 small cities to avoid regulating small businesses, small
58 counties, or small cities that do not contribute significantly

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59 to the problem the rule is designed to address. An agency may
60 define "small business" to include businesses employing more
61 than 200 persons, may define "small county" to include those
62 with populations of more than 75,000, and may define "small
63 city" to include those with populations of more than 10,000, if
64 it finds that such a definition is necessary to adapt a rule to
65 the needs and problems of small businesses, small counties, or
66 small cities. The agency shall consider each of the following
67 methods for reducing the impact of the proposed rule on small
68 businesses, small counties, and small cities, or any combination
69 of these entities:

70 (I) Establishing less stringent compliance or reporting
71 requirements in the rule.

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

74 (III) Consolidating or simplifying the rule's compliance or
75 reporting requirements.

76 (IV) Establishing performance standards or best management
77 practices to replace design or operational standards in the
78 rule.

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

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

87 (II) Each agency shall adopt those regulatory alternatives

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

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

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117 consider the proposed rule, the economic impact statement, the
118 written statement of the agency, the proposed alternatives, and
119 any comment submitted during the comment period on the proposed
120 rule. The Office of Program Policy Analysis and Government
121 Accountability shall submit a report of its findings and
122 recommendations to the Governor, the President of the Senate,
123 and the Speaker of the House of Representatives. The
124 Administrative Procedures Committee shall report such findings
125 to the agency, and the agency shall respond in writing to the
126 Administrative Procedures Committee if the Office of Program
127 Policy Analysis and Government Accountability found that the
128 alternative reduced the impact on small business while meeting
129 the stated objectives of the proposed rule. If the agency will
130 not adopt the alternative, it must also provide a detailed
131 written statement to the committee as to why it will not adopt
132 the alternative.

133 (4) EMERGENCY RULES.—

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

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

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

144
145 Nothing in this paragraph prohibits the agency from adopting a

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146 rule or rules identical to the emergency rule through ~~However,~~
147 ~~the agency may take identical action by~~ the rulemaking
148 procedures specified in subsection (3) ~~this chapter.~~

149 Section 2. Section 120.541, Florida Statutes, is amended to
150 read:

151 120.541 Statement of estimated regulatory costs.—

152 (1) (a) ~~A substantially affected person,~~ Within 21 days
153 after publication of the notice required ~~provided~~ under s.
154 120.54(3) (a), a substantially affected person may submit to an
155 agency a good faith written proposal for a lower cost regulatory
156 alternative to a proposed rule which substantially accomplishes
157 the objectives of the law being implemented. The proposal may
158 include the alternative of not adopting any rule if, ~~so long as~~
159 the proposal explains how the lower costs and objectives of the
160 law will be achieved by not adopting any rule. If such a
161 proposal is submitted, the 90-day period for filing the rule is
162 extended 21 days.

163 ~~(b)~~ Upon the submission of the lower cost regulatory
164 alternative, the agency shall prepare a statement of estimated
165 regulatory costs as provided in subsection (2), or shall revise
166 its prior statement of estimated regulatory costs, and ~~either~~
167 adopt the alternative or provide ~~give~~ a statement of the reasons
168 for rejecting the alternative in favor of the proposed rule. ~~The~~
169 ~~failure of the agency to prepare or revise the statement of~~
170 ~~estimated regulatory costs as provided in this paragraph is a~~
171 ~~material failure to follow the applicable rulemaking procedures~~
172 ~~or requirements set forth in this chapter. An agency required to~~
173 ~~prepare or revise a statement of estimated regulatory costs as~~
174 ~~provided in this paragraph shall make it available to the person~~

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175 ~~who submits the lower cost regulatory alternative and to the~~
176 ~~public prior to filing the rule for adoption.~~

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

182 (c) The agency shall revise a statement of estimated
183 regulatory costs if any change to the rule made under s.
184 120.54(3)(d) increases the regulatory costs of the rule.

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

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

195 (f)~~(e)~~ A rule that is challenged as an invalid exercise of
196 delegated legislative authority pursuant to s. 120.52(8)(a)
197 because of the failure to prepare or revise the ~~No rule shall be~~
198 declared invalid because it imposes regulatory costs on the
199 regulated person, county, or city which could be reduced by the
200 adoption of less costly alternatives that substantially
201 accomplish the statutory objectives, and no rule shall be
202 declared invalid based upon a challenge to the agency's
203 statement of estimated regulatory costs may not be declared

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204 invalid, unless:

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

207 2. The agency's failure to prepare or revise the statement
208 of estimated regulatory costs materially affects the substantial
209 interests of the person challenging the rule. ~~The substantial~~
210 ~~interests of the person challenging the agency's rejection of,~~
211 ~~or failure to consider, the lower cost regulatory alternative~~
212 ~~are materially affected by the rejection; and~~

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

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

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

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

224 2. The challenge is to the agency's rejection of a lower
225 cost regulatory alternative offered under paragraph (a) or s.
226 120.54(3)(b)2.b.; and

227 3. The substantial interests of the person challenging the
228 rule are materially affected by the rejection.

229 (2) A statement of estimated regulatory costs shall
230 include:

231 (a) An economic analysis showing whether the rule directly
232 or indirectly:

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

236 2. Is likely to have an adverse impact on business
237 competitiveness, including the ability of persons doing business
238 in Florida to compete with persons doing business in other
239 states or domestic markets, productivity, or innovation in
240 excess of \$1 million in the aggregate; or

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

243 (b) A good faith estimate of the number of individuals and
244 entities likely to be required to comply with the rule, together
245 with a general description of the types of individuals likely to
246 be affected by the rule.

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

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

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262 rule.

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

269 (f)-(e) Any additional information that the agency
270 determines may be useful.

271 (g)-(f) In the statement or revised statement, whichever
272 applies, a description of any regulatory alternatives ~~good faith~~
273 ~~written proposal~~ submitted under paragraph (1)(a) and ~~either~~ a
274 statement adopting the alternative or a statement of the reasons
275 for rejecting the alternative in favor of the proposed rule.

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

282 (4) Paragraph (2)(a) does not apply to the adoption of
283 emergency rules pursuant to s. 120.54(4) or the adoption of
284 federal standards pursuant to s. 120.54(6).

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

288 120.56 Challenges to rules.—

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

290 (a) A ~~Any~~ substantially affected person may seek an

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291 administrative determination of the invalidity of a any proposed
292 rule by filing a petition seeking such a determination with the
293 division within 21 days after the date of publication of the
294 notice required by s. 120.54(3) (a); ~~7~~ within 10 days after the
295 final public hearing is held on the proposed rule as provided by
296 s. 120.54(3) (e)2.; ~~7~~ within 44 ~~20~~ days after the statement of
297 estimated regulatory costs or revised statement of estimated
298 regulatory costs, if applicable, has been prepared and made
299 available as provided in s. 120.541(1) (d); ~~required pursuant to~~
300 ~~s. 120.541, if applicable, has been provided to all persons who~~
301 ~~submitted a lower cost regulatory alternative and made available~~
302 ~~to the public,~~ or within 20 days after the date of publication
303 of the notice required by s. 120.54(3) (d). The petition must
304 ~~shall~~ state with particularity the objections to the proposed
305 rule and the reasons that the proposed rule is an invalid
306 exercise of delegated legislative authority. The petitioner has
307 the burden of going forward. The agency then has the burden to
308 prove by a preponderance of the evidence that the proposed rule
309 is not an invalid exercise of delegated legislative authority as
310 to the objections raised. A Any person who is substantially
311 affected by a change in the proposed rule may seek a
312 determination of the validity of such change. A Any person not
313 substantially affected by the proposed rule as initially
314 noticed, but who is substantially affected by the rule as a
315 result of a change, may challenge any provision of the rule and
316 is not limited to challenging the change to the proposed rule.

317 (4) CHALLENGING AGENCY STATEMENTS DEFINED AS RULES; SPECIAL
318 PROVISIONS.—

319 (d) If an administrative law judge enters a final order

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320 that all or part of an agency statement violates s.
321 120.54(1)(a), the agency shall immediately discontinue all
322 reliance upon the statement or any substantially similar
323 statement as a basis for agency action. ~~This paragraph shall not~~
324 ~~be construed to impair the obligation of contracts existing at~~
325 ~~the time the final order is entered.~~

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

328 120.60 Licensing.—

329 (1) Upon receipt of ~~an application for~~ a license
330 application, an agency shall examine the application and, within
331 30 days after such receipt, notify the applicant of any apparent
332 errors or omissions and request any additional information the
333 agency is permitted by law to require. An agency may ~~shall~~ not
334 deny a license for failure to correct an error or omission or to
335 supply additional information unless the agency timely notified
336 the applicant within this 30-day period. The agency may
337 establish by rule the time period for submitting any additional
338 information requested by the agency. For good cause shown, the
339 agency shall grant a request for an extension of time for
340 submitting the additional information. If the applicant believes
341 the agency's request for additional information is not
342 authorized by law or rule, the agency, at the applicant's
343 request, shall proceed to process the application. An
344 application is ~~shall be~~ considered complete upon receipt of all
345 requested information and correction of any error or omission
346 for which the applicant was timely notified or when the time for
347 such notification has expired. An ~~Every~~ application for a
348 license must ~~shall~~ be approved or denied within 90 days after

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349 receipt of a completed application unless a shorter period of
350 time for agency action is provided by law. The 90-day time
351 period is ~~shall be~~ tolled by the initiation of a proceeding
352 under ss. 120.569 and 120.57. Any application for a license
353 which ~~that~~ is not approved or denied within the 90-day or
354 shorter time period, within 15 days after conclusion of a public
355 hearing held on the application, or within 45 days after a
356 recommended order is submitted to the agency and the parties,
357 whichever action and timeframe is latest and applicable, is
358 considered approved unless the recommended order recommends that
359 the agency deny the license. Subject to the satisfactory
360 completion of an examination if required as a prerequisite to
361 licensure, any license that is considered approved shall be
362 issued and may include such reasonable conditions as are
363 authorized by law. Any applicant for licensure seeking to claim
364 licensure by default under this subsection shall notify the
365 agency clerk of the licensing agency, in writing, of the intent
366 to rely upon the default license provision of this subsection,
367 and shall not take any action based upon the default license
368 until after receipt of such notice by the agency clerk.

369 (3) Each applicant shall be given written notice, either
370 personally or by mail that the agency intends to grant or deny,
371 or has granted or denied, the application for license. The
372 notice must state with particularity the grounds or basis for
373 the issuance or denial of the license, except when issuance is a
374 ministerial act. Unless waived, a copy of the notice shall be
375 delivered or mailed to each party's attorney of record and to
376 each person who has made a written request for ~~requested~~ notice
377 of agency action. Each notice must ~~shall~~ inform the recipient of

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378 the basis for the agency decision, ~~shall~~ inform the recipient of
379 any administrative hearing pursuant to ss. 120.569 and 120.57 or
380 judicial review pursuant to s. 120.68 which may be available,
381 ~~shall~~ indicate the procedure that ~~which~~ must be followed, and
382 ~~shall~~ state the applicable time limits. The issuing agency shall
383 certify the date the notice was mailed or delivered, and the
384 notice and the certification must ~~shall~~ be filed with the agency
385 clerk.

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