

1 A bill to be entitled

2 An act relating to administrative procedures; amending
3 s. 120.54, F.S.; revising requirements for the content
4 of notices of rule development; revising the scope of
5 public workshops to include information gathering for
6 the preparation of statements of estimated regulatory
7 costs; revising requirements for notices of proposed
8 rules; authorizing electronic delivery of notices to
9 persons who have requested advance notice of agency
10 rulemaking proceedings; revising requirements for an
11 agency's filing of specified information with the
12 Administrative Procedures Committee; creating a
13 presumption of adverse impact on small business in
14 specified circumstances; requiring certain agency
15 personnel to attend public hearings on proposed rules;
16 requiring an agency to publish a notice of convening a
17 separate proceeding in certain circumstances; tolling
18 rulemaking deadlines during such separate proceedings;
19 revising requirements for the contents of a notice of
20 change; amending s. 120.541, F.S.; revising
21 requirements for substantially affected persons to
22 submit proposals for lower cost regulatory
23 alternatives to a proposed rule following a notice of
24 change; revising requirements for an agency's
25 consideration of such lower cost regulatory
26 alternatives; providing for an agency's revision and

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27 publication of a revised statement of estimated
28 regulatory costs in response to such lower cost
29 regulatory alternatives; deleting definition of
30 "transactional costs"; providing additional
31 requirements for the calculation of estimated
32 regulatory costs; providing an effective date.
33

34 Be It Enacted by the Legislature of the State of Florida:
35

36 Section 1. Subsections (2) and (3) of section 120.54,
37 Florida Statutes, are amended to read:

38 120.54 Rulemaking.—

39 (2) RULE DEVELOPMENT; WORKSHOPS; NEGOTIATED RULEMAKING.—

40 (a) Except when the intended action is the repeal of a
41 rule, agencies shall provide notice of the development of
42 proposed rules by publication of a notice of rule development in
43 the Florida Administrative Register before providing notice of a
44 proposed rule as required by paragraph (3) (a). The notice of
45 rule development shall indicate the subject area to be addressed
46 by rule development, provide a short, plain explanation of the
47 purpose and effect of the proposed rule, cite the grant of
48 rulemaking authority pursuant to which the rule is proposed and
49 the section or subsection of the Florida Statutes or the Laws of
50 Florida being implemented or interpreted by the proposed rule
51 ~~specific legal authority for the proposed rule~~, and include the
52 preliminary text of the proposed rules, if available, or a

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53 statement of how a person may submit comments on the proposal,
54 provide the agency with information regarding the potential
55 regulatory costs, or promptly obtain, without cost, or access
56 online, a copy of any preliminary draft, when ~~if~~ available.

57 (b) All rules should be drafted in readable language. The
58 language is readable if:

59 1. It avoids the use of obscure words and unnecessarily
60 long or complicated constructions; and

61 2. It avoids the use of unnecessary technical or
62 specialized language that is understood only by members of
63 particular trades or professions.

64 (c) An agency may hold public workshops for purposes of
65 rule development and information gathering for the preparation
66 of the statement of estimated regulatory costs. If requested in
67 writing by an affected person, an agency must hold public
68 workshops, including workshops in various regions of the state
69 or the agency's service area, for purposes of rule development
70 and information gathering for the preparation of the statement
71 of estimated regulatory cost ~~if requested in writing by any~~
72 ~~affected person,~~ unless the agency head explains in writing why
73 a workshop is unnecessary. The explanation is not final agency
74 action subject to review pursuant to ss. 120.569 and 120.57. ~~The~~
75 ~~failure to provide the explanation when required may be a~~
76 ~~material error in procedure pursuant to s. 120.56(1)(e).~~ When a
77 workshop or public hearing is held, the agency must ensure that
78 the persons responsible for preparing the proposed rule and the

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79 statement of estimated regulatory costs are available to receive
80 public input, to explain the agency's proposal, and to respond
81 to questions or comments regarding the rule being developed and
82 the statement of estimated regulatory costs. The workshop may be
83 facilitated or mediated by a neutral third person, or the agency
84 may employ other types of dispute resolution alternatives for
85 the workshop that are appropriate for rule development,
86 including the preparation of any statement of estimated
87 regulatory costs. Notice of a rule development workshop shall be
88 by publication in the Florida Administrative Register not less
89 than 14 days before ~~prior to~~ the date on which the workshop is
90 scheduled to be held and shall indicate the subject area which
91 will be addressed; the agency contact person; and the place,
92 date, and time of the workshop.

93 (d)1. An agency may use negotiated rulemaking in
94 developing and adopting rules. The agency should consider the
95 use of negotiated rulemaking when complex rules are being
96 drafted or strong opposition to the rules is anticipated. The
97 agency should consider, but is not limited to considering,
98 whether a balanced committee of interested persons who will
99 negotiate in good faith can be assembled, whether the agency is
100 willing to support the work of the negotiating committee, and
101 whether the agency can use the group consensus as the basis for
102 its proposed rule. Negotiated rulemaking uses a committee of
103 designated representatives to draft a mutually acceptable
104 proposed rule and to develop information necessary to prepare a

105 statement of estimated regulatory costs, when applicable.

106 2. An agency that chooses to use the negotiated rulemaking
107 process described in this paragraph shall publish in the Florida
108 Administrative Register a notice of negotiated rulemaking that
109 includes a listing of the representative groups that will be
110 invited to participate in the negotiated rulemaking process. Any
111 person who believes that his or her interest is not adequately
112 represented may apply to participate within 30 days after
113 publication of the notice. All meetings of the negotiating
114 committee shall be noticed and open to the public pursuant to
115 the provisions of this chapter. The negotiating committee shall
116 be chaired by a neutral facilitator or mediator.

117 3. The agency's decision to use negotiated rulemaking, its
118 selection of the representative groups, and approval or denial
119 of an application to participate in the negotiated rulemaking
120 process are not agency action. Nothing in this subparagraph is
121 intended to affect the rights of a substantially ~~an~~ affected
122 person to challenge a proposed rule developed under this
123 paragraph in accordance with s. 120.56(2).

124 (3) ADOPTION PROCEDURES.—

125 (a) Notices.—

126 1. Before ~~Prior to~~ the adoption, amendment, or repeal of
127 any rule other than an emergency rule, an agency, upon approval
128 of the agency head, shall give notice of its intended action,
129 setting forth a short, plain explanation of the purpose and
130 effect of the proposed action; the full text of the proposed

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131 rule or amendment and a summary thereof; a reference to the
132 grant of rulemaking authority pursuant to which the rule is
133 adopted; and a reference to the section or subsection of the
134 Florida Statutes or the Laws of Florida being implemented or
135 interpreted. The notice must include a statement as to whether
136 the agency held a public workshop for the purpose of development
137 of the proposed rule, and if not, whether a workshop was
138 requested in writing. If a rule development workshop was not
139 held, the notice must include a copy of the written explanation
140 from the agency head as to why a workshop was unnecessary. The
141 notice must include a summary of the agency's statement of the
142 estimated regulatory costs, including an electronic hyperlink to
143 a copy of the statement of estimated regulatory costs on the
144 agency's website, if a statement ~~one~~ has been prepared, based on
145 the factors set forth in s. 120.541(2); a statement that any
146 person who wishes to provide the agency with information
147 regarding the statement of estimated regulatory costs, or to
148 provide a proposal for a lower cost regulatory alternative as
149 provided by s. 120.541(1), must do so in writing within 21 days
150 after publication of the notice; and a statement as to whether,
151 based on the statement of the estimated regulatory costs or
152 other information expressly relied upon and described by the
153 agency if no statement of regulatory costs is required, the
154 proposed rule is expected to require legislative ratification
155 pursuant to s. 120.541(3). The notice must state the procedure
156 for requesting a public hearing on the proposed rule. Except

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157 when the intended action is the repeal of a rule, the notice
158 must include a reference both to the date on which and to the
159 place where the notice of rule development that is required by
160 subsection (2) appeared.

161 2. The notice shall be published in the Florida
162 Administrative Register at least ~~not less than~~ 28 days before
163 ~~prior to~~ the intended action. The proposed rule shall be
164 available for inspection and copying by the public at the time
165 of the publication of notice.

166 3. The notice shall be mailed to all persons named in the
167 proposed rule and mailed or delivered electronically to all
168 persons who, at least 14 days before ~~prior to~~ such mailing, have
169 made requests of the agency for advance notice of its
170 proceedings. The agency shall also give such notice as is
171 prescribed by rule to those particular classes of persons to
172 whom the intended action is directed.

173 4. The adopting agency shall file with the committee, at
174 least 21 days before ~~prior to~~ the proposed adoption date, a copy
175 of each rule it proposes to adopt; a copy of any material
176 incorporated by reference in the rule; a detailed written
177 statement of the facts and circumstances justifying the proposed
178 rule; a copy of any statement of estimated regulatory costs that
179 has been prepared pursuant to s. 120.541; a statement of the
180 extent to which the proposed rule relates to federal standards
181 or rules on the same subject; and the notice required by
182 subparagraph 1. In lieu of filing a required statement or copy

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183 with the committee for each such rule, the agency may file with
184 the committee information providing an electronic hyperlink to a
185 readily accessible copy of the required statement or copy.

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

187 1. Statement of estimated regulatory costs.—Before the
188 adoption, amendment, or repeal of any rule other than an
189 emergency rule, an agency is encouraged to prepare a statement
190 of estimated regulatory costs of the proposed rule, as provided
191 by s. 120.541. However, an agency must prepare a statement of
192 estimated regulatory costs of the proposed rule, as provided by
193 s. 120.541, if:

194 a. The proposed rule will have an adverse impact on small
195 business; or

196 b. The proposed rule is likely to directly or indirectly
197 increase regulatory costs in excess of \$200,000 in the aggregate
198 in this state within 1 year after the implementation of the
199 rule.

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

201 a. For purposes of this subsection and s. 120.541(2), an
202 adverse impact on small business is presumed if, for any small
203 business:

204 (I) An owner, officer, operator, or manager must complete
205 any education, training, or testing to comply, or is likely to
206 either expend 10 hours or purchase professional advice to
207 understand and comply with the rule in the first year;

208 (II) Taxes or fees assessed on transactions are likely to

209 increase by \$500 or more in the aggregate in 1 year;
210 (III) Prices charged for goods and services are restricted
211 or are likely to increase because of the rule;
212 (IV) Specially trained, licensed, or tested employees will
213 be required;
214 (V) Operating costs are expected to increase by at least
215 \$1,000 annually; or
216 (VI) Capital expenditures in excess of \$1,000 are
217 necessary to comply with the rule.
218 b. Each agency, before the adoption, amendment, or repeal
219 of a rule, shall consider the impact of the rule on small
220 businesses as defined by s. 288.703 and the impact of the rule
221 on small counties or small cities as defined by s. 120.52.
222 Whenever practicable, an agency shall tier its rules to reduce
223 disproportionate impacts on small businesses, small counties, or
224 small cities to avoid regulating small businesses, small
225 counties, or small cities that do not contribute significantly
226 to the problem the rule is designed to address. An agency may
227 define "small business" to include businesses employing more
228 than 200 persons, may define "small county" to include those
229 with populations of more than 75,000, and may define "small
230 city" to include those with populations of more than 10,000, if
231 it finds that such a definition is necessary to adapt a rule to
232 the needs and problems of small businesses, small counties, or
233 small cities. The agency shall consider each of the following
234 methods for reducing the impact of the proposed rule on small

235 businesses, small counties, and small cities, or any combination
 236 of these entities:

237 (I) Establishing less stringent compliance or reporting
 238 requirements in the rule.

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

241 (III) Consolidating or simplifying the rule's compliance
 242 or reporting requirements.

243 (IV) Establishing performance standards or best management
 244 practices to replace design or operational standards in the
 245 rule.

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

248 ~~c.b.~~(I) If the agency determines that the proposed action
 249 will affect small businesses as defined by the agency as
 250 provided in sub-subparagraph b. a., the agency shall send
 251 written notice of the rule to the rules ombudsman in the
 252 Executive Office of the Governor at least 28 days before the
 253 intended action.

254 (II) Each agency shall adopt those regulatory alternatives
 255 offered by the rules ombudsman in the Executive Office of the
 256 Governor and provided to the agency no later than 21 days after
 257 the rules ombudsman's receipt of the written notice of the rule
 258 which it finds are feasible and consistent with the stated
 259 objectives of the proposed rule and which would reduce the
 260 impact on small businesses. When regulatory alternatives are

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261 offered by the rules ombudsman in the Executive Office of the
262 Governor, the 90-day period for filing the rule in subparagraph
263 (e)2. is extended for a period of 21 days.

264 (III) If an agency does not adopt all alternatives offered
265 pursuant to this sub-subparagraph, it shall, before rule
266 adoption or amendment and pursuant to subparagraph (d)1., file a
267 detailed written statement with the committee explaining the
268 reasons for failure to adopt such alternatives. Within 3 working
269 days after the filing of such notice, the agency shall send a
270 copy of such notice to the rules ombudsman in the Executive
271 Office of the Governor.

272 (c) Hearings.—

273 1. If the intended action concerns any rule other than one
274 relating exclusively to procedure or practice, the agency shall,
275 on the request of any affected person received within 21 days
276 after the date of publication of the notice of intended agency
277 action, give affected persons an opportunity to present evidence
278 and argument on all issues under consideration. The agency may
279 schedule a public hearing on the proposed rule and, if requested
280 by any affected person, shall schedule a public hearing on the
281 proposed rule. When a public hearing is held, the agency must
282 ensure that the persons responsible for preparing the proposed
283 rule and the statement of estimated regulatory costs ~~staff~~ are
284 available to explain the agency's proposal and to respond to
285 questions or comments regarding the proposed rule, the statement
286 of estimated regulatory costs, and the agency's decision whether

287 to adopt a lower cost regulatory alternative submitted pursuant
288 to s. 120.541(1)(a). If the agency head is a board or other
289 collegial body created under s. 20.165(4) or s. 20.43(3)(g), and
290 one or more requested public hearings is scheduled, the board or
291 other collegial body shall conduct at least one of the public
292 hearings itself and may not delegate this responsibility without
293 the consent of those persons requesting the public hearing. Any
294 material pertinent to the issues under consideration submitted
295 to the agency within 21 days after the date of publication of
296 the notice or submitted to the agency between the date of
297 publication of the notice and the end of the final public
298 hearing shall be considered by the agency and made a part of the
299 record of the rulemaking proceeding.

300 2. Rulemaking proceedings shall be governed solely by the
301 provisions of this section unless a person timely asserts that
302 the person's substantial interests will be affected in the
303 proceeding and affirmatively demonstrates to the agency that the
304 proceeding does not provide adequate opportunity to protect
305 those interests. If the agency determines that the rulemaking
306 proceeding is not adequate to protect the person's interests, it
307 shall suspend the rulemaking proceeding and convene a separate
308 proceeding under ~~the provisions of ss. 120.569 and 120.57~~. The
309 agency shall publish notice of convening a separate proceeding
310 in the Florida Administrative Register. Similarly situated
311 persons may be requested to join and participate in the separate
312 proceeding. Upon conclusion of the separate proceeding, the

313 rulemaking proceeding shall be resumed. All timelines in this
314 section are tolled during any suspension of the rulemaking
315 proceeding under this subparagraph, beginning on the date that
316 the notice of convening a separate proceeding is published and
317 resuming on the day immediately after conclusion of the separate
318 proceeding.

319 (d) Modification or withdrawal of proposed rules.—

320 1. After the final public hearing on the proposed rule, or
321 after the time for requesting a hearing has expired, if the
322 proposed rule has not been changed from the proposed rule as
323 previously filed with the committee, or contains only technical
324 changes that do not affect the substance of the rule, the
325 adopting agency shall file a notice to that effect with the
326 committee at least 7 days before ~~prior to~~ filing the proposed
327 rule for adoption. Any change, other than a technical change
328 ~~that does not affect the substance of the rule~~, must be
329 supported by the record of public hearings held on the proposed
330 rule, must be in response to written material submitted to the
331 agency within 21 days after the date of publication of the
332 notice of intended agency action or submitted to the agency
333 between the date of publication of the notice and the end of the
334 final public hearing, or must be in response to a proposed
335 objection by the committee. In addition, when any change is made
336 in a proposed rule, other than a technical change, the adopting
337 agency shall provide a copy of a notice of change by certified
338 mail or actual delivery to any person who requests it in writing

339 no later than 21 days after the notice required in paragraph
340 (a). The agency shall file the notice of change with the
341 committee, along with the reasons for the change, and provide
342 the notice of change to persons requesting it, at least 21 days
343 before ~~prior to~~ filing the proposed rule for adoption. The
344 notice of change shall be published in the Florida
345 Administrative Register at least 21 days before ~~prior to~~ filing
346 the rule for adoption. The notice of change must include either
347 a summary of any statement of estimated regulatory costs
348 prepared as a consequence of the change, a summary of any
349 revision of the statement of estimated regulatory costs required
350 by s. 120.541(1)(c), or a statement that the proposed rule as
351 changed does not require preparation of a statement of estimated
352 regulatory costs under paragraph (b) and s. 120.541(1)(b). This
353 subparagraph does not apply to emergency rules adopted pursuant
354 to subsection (4).

355 2. After the notice required by paragraph (a) and before
356 ~~prior to~~ adoption, the agency may withdraw the proposed rule in
357 whole or in part.

358 3. After adoption and before the rule becomes effective, a
359 rule may be modified or withdrawn only in the following
360 circumstances:

- 361 a. When the committee objects to the rule;
- 362 b. When a final order, which is not subject to further
363 appeal, is entered in a rule challenge brought pursuant to s.
364 120.56 after the date of adoption but before the rule becomes

365 effective pursuant to subparagraph (e)6.;

366 c. If the rule requires ratification, when more than 90
367 days have passed since the rule was filed for adoption without
368 the Legislature ratifying the rule, in which case the rule may
369 be withdrawn but may not be modified; or

370 d. When the committee notifies the agency that an
371 objection to the rule is being considered, in which case the
372 rule may be modified to extend the effective date by not more
373 than 60 days.

374 4. The agency shall give notice of its decision to
375 withdraw or modify a rule in the first available issue of the
376 publication in which the original notice of rulemaking was
377 published, shall notify those persons described in subparagraph
378 (a)3. in accordance with the requirements of that subparagraph,
379 and shall notify the Department of State if the rule is required
380 to be filed with the Department of State.

381 5. After a rule has become effective, it may be repealed
382 or amended only through the rulemaking procedures specified in
383 this chapter.

384 (e) Filing for final adoption; effective date.—

385 1. If the adopting agency is required to publish its rules
386 in the Florida Administrative Code, the agency, upon approval of
387 the agency head, shall file with the Department of State three
388 certified copies of the rule it proposes to adopt; one copy of
389 any material incorporated by reference in the rule, certified by
390 the agency; a summary of the rule; a summary of any hearings

391 held on the rule; and a detailed written statement of the facts
392 and circumstances justifying the rule. Agencies not required to
393 publish their rules in the Florida Administrative Code shall
394 file one certified copy of the proposed rule, and the other
395 material required by this subparagraph, in the office of the
396 agency head, and such rules shall be open to the public.

397 2. A rule may not be filed for adoption less than 28 days
398 or more than 90 days after the notice required by paragraph (a),
399 until 21 days after the notice of change required by paragraph
400 (d), until 14 days after the final public hearing, until 21 days
401 after a statement of estimated regulatory costs required under
402 s. 120.541 has been provided to all persons who submitted a
403 lower cost regulatory alternative and made available to the
404 public at a readily accessible page on the agency's website, or
405 until the administrative law judge has rendered a decision under
406 s. 120.56(2), whichever applies. When a required notice of
407 change is published before ~~prior to~~ the expiration of the time
408 to file the rule for adoption, the period during which a rule
409 must be filed for adoption is extended to 45 days after the date
410 of publication. If notice of a public hearing is published
411 before ~~prior to~~ the expiration of the time to file the rule for
412 adoption, the period during which a rule must be filed for
413 adoption is extended to 45 days after adjournment of the final
414 hearing on the rule, 21 days after receipt of all material
415 authorized to be submitted at the hearing, or 21 days after
416 receipt of the transcript, if one is made, whichever is latest.

417 The term "public hearing" includes any public meeting held by
418 any agency at which the rule is considered. If a petition for an
419 administrative determination under s. 120.56(2) is filed, the
420 period during which a rule must be filed for adoption is
421 extended to 60 days after the administrative law judge files the
422 final order with the clerk or until 60 days after subsequent
423 judicial review is complete.

424 3. At the time a rule is filed, the agency shall certify
425 that the time limitations prescribed by this paragraph have been
426 complied with, that all statutory rulemaking requirements have
427 been met, and that there is no administrative determination
428 pending on the rule.

429 4. At the time a rule is filed, the committee shall
430 certify whether the agency has responded in writing to all
431 material and timely written comments or written inquiries made
432 on behalf of the committee. The Department of State shall reject
433 any rule that is not filed within the prescribed time limits;
434 that does not comply with all statutory rulemaking requirements
435 and rules of the Department of State; upon which an agency has
436 not responded in writing to all material and timely written
437 inquiries or written comments; upon which an administrative
438 determination is pending; or which does not include a statement
439 of estimated regulatory costs, if required.

440 5. If a rule has not been adopted within the time limits
441 imposed by this paragraph or has not been adopted in compliance
442 with all statutory rulemaking requirements, the agency proposing

443 the rule shall withdraw the proposed rule and give notice of its
444 action in the next available issue of the Florida Administrative
445 Register.

446 6. The proposed rule shall be adopted on being filed with
447 the Department of State and become effective 20 days after being
448 filed, on a later date specified in the notice required by
449 subparagraph (a)1., on a date required by statute, or upon
450 ratification by the Legislature pursuant to s. 120.541(3). Rules
451 not required to be filed with the Department of State shall
452 become effective when adopted by the agency head, on a later
453 date specified by rule or statute, or upon ratification by the
454 Legislature pursuant to s. 120.541(3). If the committee notifies
455 an agency that an objection to a rule is being considered, the
456 agency may postpone the adoption of the rule to accommodate
457 review of the rule by the committee. When an agency postpones
458 adoption of a rule to accommodate review by the committee, the
459 90-day period for filing the rule is tolled until the committee
460 notifies the agency that it has completed its review of the
461 rule.

462
463 For the purposes of this paragraph, the term "administrative
464 determination" does not include subsequent judicial review.

465 Section 2. Section 120.541, Florida Statutes, is amended
466 to read:

467 120.541 Statement of estimated regulatory costs.—

468 (1)(a) Within 21 days after publication of the notice of

469 proposed rule required under s. 120.54(3) (a), or of a notice of
470 change under s. 120.54(3) (d)1., a substantially affected person
471 may submit to an agency a good faith written proposal for a
472 lower cost regulatory alternative to a proposed rule which
473 substantially accomplishes the objectives of the law being
474 implemented. The proposal may include the alternative of not
475 adopting any rule if the proposal explains how the lower costs
476 and objectives of the law will be achieved by not adopting any
477 rule. If submitted after a notice of change, a proposal is
478 deemed to be made in good faith only if the person reasonably
479 believes and the proposal states the person's reasons for
480 believing that the proposed rule as changed by the notice of
481 change increases the regulatory costs or creates an adverse
482 impact on small business that was not created by the previous
483 proposal. If such a proposal is submitted, the 90-day period for
484 filing the rule is extended 21 days. Upon the submission of the
485 lower cost regulatory alternative, the agency shall prepare a
486 statement of estimated regulatory costs as provided in
487 subsection (2), or shall revise its prior statement of estimated
488 regulatory costs, and either adopt the alternative, modify the
489 proposed rule to substantially reduce the regulatory costs, or
490 provide a statement of the reasons for rejecting the alternative
491 in favor of the proposed rule.

492 (b) If a proposed rule will have an adverse impact on
493 small business as set forth in s. 120.54(3) (b) or if the
494 proposed rule is likely to directly or indirectly increase

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495 regulatory costs in excess of \$200,000 in the aggregate within 1
496 year after the implementation of the rule, the agency shall
497 prepare a statement of estimated regulatory costs as required by
498 s. 120.54(3)(b).

499 (c) The agency shall revise a statement of estimated
500 regulatory costs if any change to the rule made under s.
501 120.54(3)(d) increases the regulatory costs of the rule or if
502 the rule is modified in response to the submission of a lower
503 cost regulatory alternative. A summary of the revised statement
504 must be included with any subsequent notice published under s.
505 120.54(3).

506 (d) At least 21 days before filing the proposed rule for
507 adoption, an agency that is required to revise a statement of
508 estimated regulatory costs shall provide the statement to the
509 person who submitted the lower cost regulatory alternative, to
510 the rules ombudsman in the Executive Office of the Governor, and
511 to the committee. The revised statement shall be published and
512 made available in the same manner as the original statement of
513 estimated regulatory costs and shall provide notice on the
514 agency's website that it is available to the public.

515 (e) Notwithstanding s. 120.56(1)(c), the failure of the
516 agency to prepare and publish a statement of estimated
517 regulatory costs or to respond to a written lower cost
518 regulatory alternative as provided in this subsection is a
519 material failure to follow the applicable rulemaking procedures
520 or requirements set forth in this chapter.

521 (f) An agency's failure to prepare and publish a statement
 522 of estimated regulatory costs or to respond to a written lower
 523 cost regulatory alternative may not be raised in a proceeding
 524 challenging the validity of a rule pursuant to s. 120.52(8)(a)
 525 unless:

526 1. Raised in a petition filed no later than 1 year after
 527 the effective date of the rule; and

528 2. Raised by a person whose substantial interests are
 529 affected by the rule's regulatory costs.

530 (g) A rule that is challenged pursuant to s. 120.52(8)(f)
 531 may not be declared invalid unless:

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

534 2. The challenge is to the agency's rejection of a lower
 535 cost regulatory alternative offered under paragraph (a) or s.
 536 120.54(3)(b)~~2.~~bc.; and

537 3. The substantial interests of the person challenging the
 538 rule are materially affected by the rejection.

539 (2) A statement of estimated regulatory costs shall
 540 include:

541 (a) An economic analysis showing whether the rule directly
 542 or indirectly:

543 1. Is likely to have an adverse impact on economic growth,
 544 private sector job creation or employment, or private sector
 545 investment in excess of \$1 million in the aggregate within 5
 546 years after the implementation of the rule;

547 2. Is likely to have an adverse impact on business
548 competitiveness, including the ability of persons doing business
549 in the state to compete with persons doing business in other
550 states or domestic markets, productivity, or innovation in
551 excess of \$1 million in the aggregate within 5 years after the
552 implementation of the rule; or

553 3. Is likely to increase regulatory costs, including all
554 any transactional costs and impacts estimated in the statement,
555 in excess of \$1 million in the aggregate within 5 years after
556 the implementation of the rule.

557 (b) A good faith estimate of the number of individuals,
558 small businesses, and other entities likely to be required to
559 comply with the rule, together with a general description of the
560 types of individuals likely to be affected by the rule.

561 (c) A good faith estimate of the cost to the agency, and
562 to any other state and local government entities, of
563 implementing and enforcing the proposed rule, and any
564 anticipated effect on state or local revenues.

565 (d) A good faith estimate of the compliance ~~transactional~~
566 costs likely to be incurred by individuals and entities,
567 including local government entities, required to comply with the
568 requirements of the rule. ~~As used in this section,~~
569 ~~"transactional costs" are direct costs that are readily~~
570 ~~ascertainable based upon standard business practices, and~~
571 ~~include filing fees, the cost of obtaining a license, the cost~~
572 ~~of equipment required to be installed or used or procedures~~

573 ~~required to be employed in complying with the rule, additional~~
574 ~~operating costs incurred, the cost of monitoring and reporting,~~
575 ~~and any other costs necessary to comply with the rule.~~

576 (e) An analysis of the impact on small businesses as
577 defined by s. 288.703, and an analysis of the impact on small
578 counties and small cities as defined in s. 120.52. The impact
579 analysis for small businesses must include the basis for the
580 agency's decision not to implement alternatives that would
581 reduce adverse impacts on small businesses.

582 (f) Any additional information that the agency determines
583 may be useful.

584 (g) ~~In the statement or revised statement, whichever~~
585 ~~applies,~~ A description of any regulatory alternatives submitted
586 under paragraph (1)(a) and a statement adopting the alternative
587 or a statement of the reasons for rejecting the alternative in
588 favor of the proposed rule.

589 (3) If the adverse impact or regulatory costs of the rule
590 exceed any of the criteria established in paragraph (2)(a), the
591 rule shall be submitted to the President of the Senate and
592 Speaker of the House of Representatives no later than 30 days
593 before ~~prior to~~ the next regular legislative session, and the
594 rule may not take effect until it is ratified by the
595 Legislature.

596 (4) Subsection (3) does not apply to the adoption of:

597 (a) Federal standards pursuant to s. 120.54(6).

598 (b) Triennial updates of and amendments to the Florida

599 Building Code which are expressly authorized by s. 553.73.

600 (c) Triennial updates of and amendments to the Florida
 601 Fire Prevention Code which are expressly authorized by s.
 602 633.202.

603 (5) (a) For purposes of subsections (2) and (3), impacts
 604 and costs incurred within 5 years after implementation of the
 605 rule shall include the applicable costs and impacts estimated to
 606 be incurred within the first 5 years after the effective date of
 607 the rule. However, if any provisions of the rule are not fully
 608 implemented and enforceable upon the effective date of the rule,
 609 the impacts and costs must be adjusted to include any additional
 610 costs and impacts estimated to be incurred within 5 years after
 611 the implementation and enforcement of the provisions of the rule
 612 that were not fully implemented upon the effective date of the
 613 rule.

614 (b) In evaluating the impacts described in paragraphs
 615 (2) (a) and (2) (e), an agency shall include good faith estimates
 616 of market impacts likely to result from compliance with the
 617 rule, including:

- 618 1. Increased customer charges for goods and services.
- 619 2. Decreased market value of goods and services produced,
 620 provided, or sold.
- 621 3. Increased costs resulting from the purchase of
 622 substitute or alternative products or services.
- 623 4. The reasonable value of time to be expended by owners,
 624 officers, operators, and managers to understand and comply,

625 including, but not limited to, time expended to complete
626 required education, training, or testing.

627 5. Capital costs.

628 6. Any other impacts suggested by the rules ombudsman, the
629 agency head's appointing authority, or interested persons.

630 (c) In estimating the information required in paragraphs
631 (2) (b) - (e), the agency may use reasonably applicable surveys of
632 individuals, businesses, business organizations and
633 representatives, cities, and counties to collect data helpful to
634 estimate the costs and impacts. The agency shall also solicit
635 helpful information in each notice related to the proposed rule.
636 The rules ombudsman and the committee may recommend survey
637 instruments and methods to assist agencies in administering this
638 section. Such recommendations and agency decisions regarding
639 surveys and methods do not constitute rules or agency actions
640 under this chapter.

641 (d) In estimating compliance costs under paragraph (2) (d),
642 the agency shall consider, among other matters, all direct and
643 indirect costs necessary to comply with the rule that are
644 readily ascertainable based upon standard business practices,
645 including, but not limited to, costs related to:

646 1. Filing fees.

647 2. Obtaining a license.

648 3. Necessary equipment.

649 4. Installation, utilities, and maintenance of necessary
650 equipment.

- 651 5. Necessary operations and procedures.
- 652 6. Accounting, financial, information and management
- 653 systems, and other administrative processes.
- 654 7. Other processes.
- 655 8. Labor based on relevant rates of wages, salaries and
- 656 benefits.
- 657 9. Materials and supplies.
- 658 10. Capital expenditures including financing costs.
- 659 11. Professional and technical services, including
- 660 contracted services necessary to implement and maintain
- 661 compliance.
- 662 12. Monitoring and reporting.
- 663 13. Qualifying and recurring education, training, and
- 664 testing.
- 665 14. Travel.
- 666 15. Insurance and surety requirements.
- 667 16. A fair and reasonable allocation of administrative
- 668 costs and other overhead.
- 669 17. Reduced sales or other revenues.
- 670 18. Other items suggested by the rules ombudsman, the
- 671 committee, or any interested person, business organization, or
- 672 business representative.
- 673 Section 3. This act shall take effect July 1, 2014.