

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

27 publication of a revised statement of estimated
28 regulatory costs in response to such lower cost
29 regulatory alternatives; requiring the agency to
30 provide specified documents on a website under
31 specific circumstances; deleting definition of
32 "transactional costs"; providing additional
33 requirements for the calculation of estimated
34 regulatory costs; amending s. 190.005, F.S., relating
35 to the establishment of community development
36 districts; requiring a petition to include a statement
37 explaining the prospective economic impact of the
38 establishment of a proposed district; providing an
39 effective date.

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

42
43 Section 1. Subsections (2) and (3) of section 120.54,
44 Florida Statutes, are amended to read:

45 120.54 Rulemaking.—

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

47 (a) Except when the intended action is the repeal of a
48 rule, agencies shall provide notice of the development of
49 proposed rules by publication of a notice of rule development in
50 the Florida Administrative Register before providing notice of a
51 proposed rule as required by paragraph (3) (a). The notice of
52 rule development shall indicate the subject area to be addressed

53 by rule development, provide a short, plain explanation of the
54 purpose and effect of the proposed rule, cite the grant of
55 rulemaking authority pursuant to which the rule is proposed and
56 the section or subsection of the Florida Statutes or the Laws of
57 Florida being implemented or interpreted by the proposed rule
58 ~~specific legal authority for the proposed rule~~, and include the
59 preliminary text of the proposed rules, if available, or a
60 statement of how a person may promptly obtain, without cost, or
61 access online, a copy of any preliminary draft, when if
62 available. The notice shall also include a statement of how a
63 person may submit comments to the proposal and provide
64 information regarding the potential regulatory costs.

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

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

69 2. It avoids the use of unnecessary technical or
70 specialized language that is understood only by members of
71 particular trades or professions.

72 (c) An agency may hold public workshops for purposes of
73 rule development and information gathering for the preparation
74 of the statement of estimated regulatory costs. If requested in
75 writing by an affected person, an agency must hold public
76 workshops, including workshops in various regions of the state
77 or the agency's service area, for purposes of rule development
78 and information gathering for the preparation of the statement

79 of estimated regulatory cost ~~if requested in writing by any~~
80 ~~affected person,~~ unless the agency head explains in writing why
81 a workshop is unnecessary. The explanation is not final agency
82 action subject to review pursuant to ss. 120.569 and 120.57. ~~The~~
83 ~~failure to provide the explanation when required may be a~~
84 ~~material error in procedure pursuant to s. 120.56(1)(c).~~ When a
85 workshop or public hearing is held, the agency must ensure that
86 the persons responsible for preparing the proposed rule and the
87 statement of estimated regulatory costs are available to receive
88 public input, to explain the agency's proposal, and to respond
89 to questions or comments regarding the rule being developed and
90 the statement of estimated regulatory costs. The workshop may be
91 facilitated or mediated by a neutral third person, or the agency
92 may employ other types of dispute resolution alternatives for
93 the workshop that are appropriate for rule development,
94 including the preparation of any statement of estimated
95 regulatory costs. Notice of a rule development workshop shall be
96 by publication in the Florida Administrative Register not less
97 than 14 days before ~~prior to~~ the date on which the workshop is
98 scheduled to be held and shall indicate the subject area which
99 will be addressed; the agency contact person; and the place,
100 date, and time of the workshop.

101 (d)1. An agency may use negotiated rulemaking in
102 developing and adopting rules. The agency should consider the
103 use of negotiated rulemaking when complex rules are being
104 drafted or strong opposition to the rules is anticipated. The

105 agency should consider, but is not limited to considering,
106 whether a balanced committee of interested persons who will
107 negotiate in good faith can be assembled, whether the agency is
108 willing to support the work of the negotiating committee, and
109 whether the agency can use the group consensus as the basis for
110 its proposed rule. Negotiated rulemaking uses a committee of
111 designated representatives to draft a mutually acceptable
112 proposed rule and to develop information necessary to prepare a
113 statement of estimated regulatory costs, when applicable.

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

125 3. The agency's decision to use negotiated rulemaking, its
126 selection of the representative groups, and approval or denial
127 of an application to participate in the negotiated rulemaking
128 process are not agency action. Nothing in this subparagraph is
129 intended to affect the rights of a substantially ~~an~~ affected
130 person to challenge a proposed rule developed under this

131 paragraph in accordance with s. 120.56(2).

132 (3) ADOPTION PROCEDURES.—

133 (a) Notices.—

134 1. Before ~~Prior to~~ the adoption, amendment, or repeal of
135 any rule other than an emergency rule, an agency, upon approval
136 of the agency head, shall give notice of its intended action,
137 setting forth a short, plain explanation of the purpose and
138 effect of the proposed action; the full text of the proposed
139 rule or amendment and a summary thereof; a reference to the
140 grant of rulemaking authority pursuant to which the rule is
141 adopted; and a reference to the section or subsection of the
142 Florida Statutes or the Laws of Florida being implemented or
143 interpreted. The notice must include a statement as to whether
144 the agency held a public workshop for the purpose of development
145 of the proposed rule, and if not, whether a workshop was
146 requested in writing. If a rule development workshop was not
147 held, the notice must include a copy of the written explanation
148 from the agency head as to why a workshop was unnecessary. The
149 notice must include a summary of the agency's statement of the
150 estimated regulatory costs, including an electronic hyperlink to
151 a copy of the statement of estimated regulatory costs on the
152 agency's website, if a statement ~~one~~ has been prepared, based on
153 the factors set forth in s. 120.541(2); a statement that any
154 person who wishes to provide the agency with information
155 regarding the statement of estimated regulatory costs, or to
156 provide a proposal for a lower cost regulatory alternative as

157 provided by s. 120.541(1), must do so in writing within 21 days
158 after publication of the notice; and a statement as to whether,
159 based on the statement of the estimated regulatory costs or
160 other information expressly relied upon and described by the
161 agency if no statement of regulatory costs is required, the
162 proposed rule is expected to require legislative ratification
163 pursuant to s. 120.541(3). The notice must state the procedure
164 for requesting a public hearing on the proposed rule. Except
165 when the intended action is the repeal of a rule, the notice
166 must include a reference both to the date on which and to the
167 place where the notice of rule development that is required by
168 subsection (2) appeared.

169 2. The notice shall be published in the Florida
170 Administrative Register at least ~~not less than~~ 28 days before
171 ~~prior to~~ the intended action. The proposed rule shall be
172 available for inspection and copying by the public at the time
173 of the publication of notice.

174 3. The notice shall be mailed to all persons named in the
175 proposed rule and mailed or delivered electronically to all
176 persons who, at least 14 days before ~~prior to~~ such mailing, have
177 made requests of the agency for advance notice of its
178 proceedings. The agency shall also give such notice as is
179 prescribed by rule to those particular classes of persons to
180 whom the intended action is directed.

181 4. The adopting agency shall file with the committee, at
182 least 21 days before ~~prior to~~ the proposed adoption date, a copy

183 of each rule it proposes to adopt; a copy of any material
184 incorporated by reference in the rule; a detailed written
185 statement of the facts and circumstances justifying the proposed
186 rule; a copy of any statement of estimated regulatory costs that
187 has been prepared pursuant to s. 120.541; a statement of the
188 extent to which the proposed rule relates to federal standards
189 or rules on the same subject; and the notice required by
190 subparagraph 1. In lieu of filing a required statement or copy
191 with the committee for each such rule, the agency may file with
192 the committee information providing an electronic hyperlink to a
193 readily accessible copy of the required statement or copy.

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

195 1. Statement of estimated regulatory costs.—Before the
196 adoption, amendment, or repeal of any rule other than an
197 emergency rule, an agency is encouraged to prepare a statement
198 of estimated regulatory costs of the proposed rule, as provided
199 by s. 120.541. However, an agency must prepare a statement of
200 estimated regulatory costs of the proposed rule, as provided by
201 s. 120.541, if:

202 a. The proposed rule will have an adverse impact on small
203 business; or

204 b. The proposed rule is likely to directly or indirectly
205 increase regulatory costs in excess of \$200,000 in the aggregate
206 in this state within 1 year after the implementation of the
207 rule.

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

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

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

216 (II) Taxes or fees assessed on transactions are likely to
 217 increase by \$500 or more in the aggregate in 1 year;

218 (III) Prices charged for goods and services are restricted
 219 or are likely to increase because of the rule;

220 (IV) Specially trained, licensed, or tested employees will
 221 be required;

222 (V) Operating costs are expected to increase by at least
 223 \$1,000 annually; or

224 (VI) Capital expenditures in excess of \$1,000 are
 225 necessary to comply with the rule.

226 b. Each agency, before the adoption, amendment, or repeal
 227 of a rule, shall consider the impact of the rule on small
 228 businesses as defined by s. 288.703 and the impact of the rule
 229 on small counties or small cities as defined by s. 120.52.
 230 Whenever practicable, an agency shall tier its rules to reduce
 231 disproportionate impacts on small businesses, small counties, or
 232 small cities to avoid regulating small businesses, small
 233 counties, or small cities that do not contribute significantly
 234 to the problem the rule is designed to address. An agency may

235 define "small business" to include businesses employing more
 236 than 200 persons, may define "small county" to include those
 237 with populations of more than 75,000, and may define "small
 238 city" to include those with populations of more than 10,000, if
 239 it finds that such a definition is necessary to adapt a rule to
 240 the needs and problems of small businesses, small counties, or
 241 small cities. The agency shall consider each of the following
 242 methods for reducing the impact of the proposed rule on small
 243 businesses, small counties, and small cities, or any combination
 244 of these entities:

245 (I) Establishing less stringent compliance or reporting
 246 requirements in the rule.

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

249 (III) Consolidating or simplifying the rule's compliance
 250 or reporting requirements.

251 (IV) Establishing performance standards or best management
 252 practices to replace design or operational standards in the
 253 rule.

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

256 ~~c.b.~~(I) If the agency determines that the proposed action
 257 will affect small businesses as defined by the agency as
 258 provided in sub-subparagraph b. a., the agency shall send
 259 written notice of the rule to the rules ombudsman in the
 260 Executive Office of the Governor at least 28 days before the

261 intended action.

262 (II) Each agency shall adopt those regulatory alternatives
263 offered by the rules ombudsman in the Executive Office of the
264 Governor and provided to the agency no later than 21 days after
265 the rules ombudsman's receipt of the written notice of the rule
266 which it finds are feasible and consistent with the stated
267 objectives of the proposed rule and which would reduce the
268 impact on small businesses. When regulatory alternatives are
269 offered by the rules ombudsman in the Executive Office of the
270 Governor, the 90-day period for filing the rule in subparagraph
271 (e)2. is extended for a period of 21 days.

272 (III) If an agency does not adopt all alternatives offered
273 pursuant to this sub-subparagraph, it shall, before rule
274 adoption or amendment and pursuant to subparagraph (d)1., file a
275 detailed written statement with the committee explaining the
276 reasons for failure to adopt such alternatives. Within 3 working
277 days after the filing of such notice, the agency shall send a
278 copy of such notice to the rules ombudsman in the Executive
279 Office of the Governor.

280 (c) Hearings.—

281 1. If the intended action concerns any rule other than one
282 relating exclusively to procedure or practice, the agency shall,
283 on the request of any affected person received within 21 days
284 after the date of publication of the notice of intended agency
285 action, give affected persons an opportunity to present evidence
286 and argument on all issues under consideration. The agency may

287 | schedule a public hearing on the proposed rule and, if requested
288 | by any affected person, shall schedule a public hearing on the
289 | proposed rule. When a public hearing is held, the agency must
290 | ensure that the persons responsible for preparing the proposed
291 | rule and the statement of estimated regulatory costs ~~staff~~ are
292 | available to explain the agency's proposal and to respond to
293 | questions or comments regarding the proposed rule, the statement
294 | of estimated regulatory costs, and the agency's decision whether
295 | to adopt a lower cost regulatory alternative submitted pursuant
296 | to s. 120.541(1)(a). If the agency head is a board or other
297 | collegial body created under s. 20.165(4) or s. 20.43(3)(g), and
298 | one or more requested public hearings is scheduled, the board or
299 | other collegial body shall conduct at least one of the public
300 | hearings itself and may not delegate this responsibility without
301 | the consent of those persons requesting the public hearing. Any
302 | material pertinent to the issues under consideration submitted
303 | to the agency within 21 days after the date of publication of
304 | the notice or submitted to the agency between the date of
305 | publication of the notice and the end of the final public
306 | hearing shall be considered by the agency and made a part of the
307 | record of the rulemaking proceeding.

308 | 2. Rulemaking proceedings shall be governed solely by the
309 | provisions of this section unless a person timely asserts that
310 | the person's substantial interests will be affected in the
311 | proceeding and affirmatively demonstrates to the agency that the
312 | proceeding does not provide adequate opportunity to protect

313 those interests. If the agency determines that the rulemaking
 314 proceeding is not adequate to protect the person's interests, it
 315 shall suspend the rulemaking proceeding and convene a separate
 316 proceeding under ~~the provisions of~~ ss. 120.569 and 120.57. The
 317 agency shall publish notice of convening a separate proceeding
 318 in the Florida Administrative Register. Similarly situated
 319 persons may be requested to join and participate in the separate
 320 proceeding. Upon conclusion of the separate proceeding, the
 321 rulemaking proceeding shall be resumed. All timelines in this
 322 section are tolled during any suspension of the rulemaking
 323 proceeding under this subparagraph, beginning on the date that
 324 the notice of convening a separate proceeding is published and
 325 resuming on the day immediately after conclusion of the separate
 326 proceeding.

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

328 1. After the final public hearing on the proposed rule, or
 329 after the time for requesting a hearing has expired, if the
 330 proposed rule has not been changed from the proposed rule as
 331 previously filed with the committee, or contains only technical
 332 changes that do not affect the substance of the rule, the
 333 adopting agency shall file a notice to that effect with the
 334 committee at least 7 days before ~~prior to~~ filing the proposed
 335 rule for adoption. Any change, other than a technical change
 336 ~~that does not affect the substance of the rule,~~ must be
 337 supported by the record of public hearings held on the proposed
 338 rule, must be in response to written material submitted to the

339 agency within 21 days after the date of publication of the
340 notice of intended agency action or submitted to the agency
341 between the date of publication of the notice and the end of the
342 final public hearing, or must be in response to a proposed
343 objection by the committee. In addition, when any change is made
344 in a proposed rule, other than a technical change, the adopting
345 agency shall provide a copy of a notice of change by certified
346 mail or actual delivery to any person who requests it in writing
347 no later than 21 days after the notice required in paragraph
348 (a). The agency shall file the notice of change with the
349 committee, along with the reasons for the change, and provide
350 the notice of change to persons requesting it, at least 21 days
351 before ~~prior to~~ filing the proposed rule for adoption. The
352 notice of change shall be published in the Florida
353 Administrative Register at least 21 days before ~~prior to~~ filing
354 the rule for adoption. The notice of change must include either
355 a summary of any statement of estimated regulatory costs
356 prepared as a consequence of the change, a summary of any
357 revision of the statement of estimated regulatory costs required
358 by s. 120.541(1)(c), or a statement that the proposed rule as
359 changed does not require preparation of a statement of estimated
360 regulatory costs under paragraph (b) and s. 120.541(1)(b). This
361 subparagraph does not apply to emergency rules adopted pursuant
362 to subsection (4).

363 2. After the notice required by paragraph (a) and before
364 ~~prior to~~ adoption, the agency may withdraw the proposed rule in

365 whole or in part.

366 3. After adoption and before the rule becomes effective, a
367 rule may be modified or withdrawn only in the following
368 circumstances:

369 a. When the committee objects to the rule;

370 b. When a final order, which is not subject to further
371 appeal, is entered in a rule challenge brought pursuant to s.
372 120.56 after the date of adoption but before the rule becomes
373 effective pursuant to subparagraph (e)6.;

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

378 d. When the committee notifies the agency that an
379 objection to the rule is being considered, in which case the
380 rule may be modified to extend the effective date by not more
381 than 60 days.

382 4. The agency shall give notice of its decision to
383 withdraw or modify a rule in the first available issue of the
384 publication in which the original notice of rulemaking was
385 published, shall notify those persons described in subparagraph
386 (a)3. in accordance with the requirements of that subparagraph,
387 and shall notify the Department of State if the rule is required
388 to be filed with the Department of State.

389 5. After a rule has become effective, it may be repealed
390 or amended only through the rulemaking procedures specified in

391 | this chapter.

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

393 | 1. If the adopting agency is required to publish its rules
 394 | in the Florida Administrative Code, the agency, upon approval of
 395 | the agency head, shall file with the Department of State three
 396 | certified copies of the rule it proposes to adopt; one copy of
 397 | any material incorporated by reference in the rule, certified by
 398 | the agency; a summary of the rule; a summary of any hearings
 399 | held on the rule; and a detailed written statement of the facts
 400 | and circumstances justifying the rule. Agencies not required to
 401 | publish their rules in the Florida Administrative Code shall
 402 | file one certified copy of the proposed rule, and the other
 403 | material required by this subparagraph, in the office of the
 404 | agency head, and such rules shall be open to the public.

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

417 must be filed for adoption is extended to 45 days after the date
418 of publication. If notice of a public hearing is published
419 before ~~prior to~~ the expiration of the time to file the rule for
420 adoption, the period during which a rule must be filed for
421 adoption is extended to 45 days after adjournment of the final
422 hearing on the rule, 21 days after receipt of all material
423 authorized to be submitted at the hearing, or 21 days after
424 receipt of the transcript, if one is made, whichever is latest.
425 The term "public hearing" includes any public meeting held by
426 any agency at which the rule is considered. If a petition for an
427 administrative determination under s. 120.56(2) is filed, the
428 period during which a rule must be filed for adoption is
429 extended to 60 days after the administrative law judge files the
430 final order with the clerk or until 60 days after subsequent
431 judicial review is complete.

432 3. At the time a rule is filed, the agency shall certify
433 that the time limitations prescribed by this paragraph have been
434 complied with, that all statutory rulemaking requirements have
435 been met, and that there is no administrative determination
436 pending on the rule.

437 4. At the time a rule is filed, the committee shall
438 certify whether the agency has responded in writing to all
439 material and timely written comments or written inquiries made
440 on behalf of the committee. The Department of State shall reject
441 any rule that is not filed within the prescribed time limits;
442 that does not comply with all statutory rulemaking requirements

443 and rules of the Department of State; upon which an agency has
444 not responded in writing to all material and timely written
445 inquiries or written comments; upon which an administrative
446 determination is pending; or which does not include a statement
447 of estimated regulatory costs, if required.

448 5. If a rule has not been adopted within the time limits
449 imposed by this paragraph or has not been adopted in compliance
450 with all statutory rulemaking requirements, the agency proposing
451 the rule shall withdraw the proposed rule and give notice of its
452 action in the next available issue of the Florida Administrative
453 Register.

454 6. The proposed rule shall be adopted on being filed with
455 the Department of State and become effective 20 days after being
456 filed, on a later date specified in the notice required by
457 subparagraph (a)1., on a date required by statute, or upon
458 ratification by the Legislature pursuant to s. 120.541(3). Rules
459 not required to be filed with the Department of State shall
460 become effective when adopted by the agency head, on a later
461 date specified by rule or statute, or upon ratification by the
462 Legislature pursuant to s. 120.541(3). If the committee notifies
463 an agency that an objection to a rule is being considered, the
464 agency may postpone the adoption of the rule to accommodate
465 review of the rule by the committee. When an agency postpones
466 adoption of a rule to accommodate review by the committee, the
467 90-day period for filing the rule is tolled until the committee
468 notifies the agency that it has completed its review of the

469 rule.

470

471 For the purposes of this paragraph, the term "administrative
472 determination" does not include subsequent judicial review.

473 Section 2. Section 120.541, Florida Statutes, is amended
474 to read:

475 120.541 Statement of estimated regulatory costs.—

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

495 subsection (2), or shall revise its prior statement of estimated
496 regulatory costs, and either adopt the alternative proposal,
497 reject the alternative proposal, or modify the proposed rule to
498 substantially reduce the regulatory costs. If the agency rejects
499 the alternative proposal or modifies the proposed rule, the
500 agency shall ~~or~~ provide a statement of the reasons for rejecting
501 the alternative proposal in favor of the proposed or modified
502 rule.

503 (b) If a proposed rule will have an adverse impact on
504 small business as set forth in s. 120.54(3)(b) or if the
505 proposed rule is likely to directly or indirectly increase
506 regulatory costs in excess of \$200,000 in the aggregate within 1
507 year after the implementation of the rule, the agency shall
508 prepare a statement of estimated regulatory costs as required by
509 s. 120.54(3)(b).

510 (c) The agency shall revise a statement of estimated
511 regulatory costs if any change to the rule made under s.
512 120.54(3)(d) increases the regulatory costs of the rule or if
513 the rule is modified in response to the submission of a lower
514 cost regulatory alternative. A summary of the revised statement
515 must be included with any subsequent notice published under s.
516 120.54(3).

517 (d) At least 21 days before filing the proposed rule for
518 adoption, an agency that is required to revise a statement of
519 estimated regulatory costs shall provide the statement to the
520 person who submitted the lower cost regulatory alternative, to

521 the rules ombudsman in the Executive Office of the Governor, and
522 to the committee. The revised statement shall be published and
523 made available in the same manner as the original statement of
524 estimated regulatory costs ~~and shall provide notice on the~~
525 ~~agency's website that it is available to the public.~~

526 (e) Notwithstanding s. 120.56(1)(c), the failure of the
527 agency to prepare and publish a statement of estimated
528 regulatory costs or to respond to a written lower cost
529 regulatory alternative as provided in this subsection is a
530 material failure to follow the applicable rulemaking procedures
531 or requirements set forth in this chapter.

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

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

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

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

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

545 2. The challenge is to the agency's rejection of a lower
546 cost regulatory alternative offered under paragraph (a) or s.

547 120.54(3)(b)2.c. ~~120.54(3)(b)2.b.~~; and

548 3. The substantial interests of the person challenging the
549 rule are materially affected by the rejection.

550 (h) Any of the following documents prepared by or on
551 behalf of an agency shall be publicly available on the agency's
552 website, or on another state website established for publication
553 of administrative law records, until the rule to which the
554 document applies is withdrawn or repealed, or until the rule is
555 amended accompanied by the preparation of a new statement of
556 estimated regulatory costs:

557 1. A statement of estimated regulatory costs prepared with
558 respect to a rule proposed or filed for adoption after November
559 16, 2010;

560 2. A revision of a statement of estimated regulatory costs
561 prepared with respect to a rule proposed or filed for adoption
562 after November 16, 2010;

563 3. A compliance economic review published pursuant to s.
564 120.745(5); or

565 4. A report on an economic estimate of regulatory costs
566 and economic impact published pursuant to s. 120.745(9)(b).

567 (2) A statement of estimated regulatory costs shall
568 include:

569 (a) An economic analysis showing whether the rule directly
570 or indirectly:

571 1. Is likely to have an adverse impact on economic growth,
572 private sector job creation or employment, or private sector

573 investment in excess of \$1 million in the aggregate within 5
574 years after the implementation of the rule;

575 2. Is likely to have an adverse impact on business
576 competitiveness, including the ability of persons doing business
577 in the state to compete with persons doing business in other
578 states or domestic markets, productivity, or innovation in
579 excess of \$1 million in the aggregate within 5 years after the
580 implementation of the rule; or

581 3. Is likely to increase regulatory costs, including all
582 ~~any transactional costs and impacts estimated in the statement,~~
583 in excess of \$1 million in the aggregate within 5 years after
584 the implementation of the rule.

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

589 (c) A good faith estimate of the cost to the agency, and
590 to any other state and local government entities, of
591 implementing and enforcing the proposed rule, and any
592 anticipated effect on state or local revenues.

593 (d) A good faith estimate of the compliance ~~transactional~~
594 costs likely to be incurred by individuals and entities,
595 including local government entities, required to comply with the
596 requirements of the rule. ~~As used in this section,~~
597 ~~"transactional costs" are direct costs that are readily~~
598 ~~ascertainable based upon standard business practices, and~~

599 ~~include filing fees, the cost of obtaining a license, the cost~~
600 ~~of equipment required to be installed or used or procedures~~
601 ~~required to be employed in complying with the rule, additional~~
602 ~~operating costs incurred, the cost of monitoring and reporting,~~
603 ~~and any other costs necessary to comply with the rule.~~

604 (e) An analysis of the impact on small businesses as
605 defined by s. 288.703, and an analysis of the impact on small
606 counties and small cities as defined in s. 120.52. The impact
607 analysis for small businesses must include the basis for the
608 agency's decision not to implement alternatives that would
609 reduce adverse impacts on small businesses.

610 (f) Any additional information that the agency determines
611 may be useful.

612 (g) ~~In the statement or revised statement, whichever~~
613 ~~applies,~~ A description of any regulatory alternatives submitted
614 under paragraph (1) (a) and a statement adopting the alternative
615 or a statement of the reasons for rejecting the alternative in
616 favor of the proposed rule.

617 (3) If the adverse impact or regulatory costs of the rule
618 exceed any of the criteria established in paragraph (2) (a), the
619 rule shall be submitted to the President of the Senate and
620 Speaker of the House of Representatives no later than 30 days
621 before ~~prior to~~ the next regular legislative session, and the
622 rule may not take effect until it is ratified by the
623 Legislature.

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

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

626 (b) Triennial updates of and amendments to the Florida
627 Building Code which are expressly authorized by s. 553.73.

628 (c) Triennial updates of and amendments to the Florida
629 Fire Prevention Code which are expressly authorized by s.
630 633.202.

631 (5) (a) For purposes of subsections (2) and (3), impacts
632 and costs incurred within 5 years after implementation of the
633 rule shall include the applicable costs and impacts estimated to
634 be incurred within the first 5 years after the effective date of
635 the rule. However, if any provisions of the rule are not fully
636 implemented and enforceable upon the effective date of the rule,
637 the impacts and costs must be adjusted to include any additional
638 costs and impacts estimated to be incurred within 5 years after
639 the implementation and enforcement of the provisions of the rule
640 that were not fully implemented upon the effective date of the
641 rule.

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

- 646 1. Increased customer charges for goods and services.
- 647 2. Decreased market value of goods and services produced,
648 provided, or sold.
- 649 3. Increased costs resulting from the purchase of
650 substitute or alternative products or services.

651 4. The reasonable value of time to be expended by owners,
652 officers, operators, and managers to understand and comply,
653 including, but not limited to, time expended to complete
654 required education, training, or testing.

655 5. Capital costs.

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

658 (c) In estimating the information required in paragraphs
659 (2) (b)-(e), the agency may use reasonably applicable surveys of
660 individuals, businesses, business organizations and
661 representatives, cities, and counties to collect data helpful to
662 estimate the costs and impacts. The agency shall also solicit
663 helpful information in each notice related to the proposed rule.
664 The rules ombudsman and the committee may recommend survey
665 instruments and methods to assist agencies in administering this
666 section. Such recommendations and agency decisions regarding
667 surveys and methods do not constitute rules or agency actions
668 under this chapter.

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

674 1. Filing fees.

675 2. Obtaining a license.

676 3. Necessary equipment.

- 677 | 4. Installation, utilities, and maintenance of necessary
- 678 | equipment.
- 679 | 5. Necessary operations and procedures.
- 680 | 6. Accounting, financial, information and management
- 681 | systems, and other administrative processes.
- 682 | 7. Other processes.
- 683 | 8. Labor based on relevant rates of wages, salaries and
- 684 | benefits.
- 685 | 9. Materials and supplies.
- 686 | 10. Capital expenditures including financing costs.
- 687 | 11. Professional and technical services, including
- 688 | contracted services necessary to implement and maintain
- 689 | compliance.
- 690 | 12. Monitoring and reporting.
- 691 | 13. Qualifying and recurring education, training, and
- 692 | testing.
- 693 | 14. Travel.
- 694 | 15. Insurance and surety requirements.
- 695 | 16. A fair and reasonable allocation of administrative
- 696 | costs and other overhead.
- 697 | 17. Reduced sales or other revenues.
- 698 | 18. Other items suggested by the rules ombudsman, the
- 699 | committee, or any interested person, business organization, or
- 700 | business representative.

701 | Section 3. Paragraph (a) of subsection (1) of section
 702 | 190.005, Florida Statutes, is amended to read:

703 190.005 Establishment of district.—

704 (1) The exclusive and uniform method for the establishment
705 of a community development district with a size of 1,000 acres
706 or more shall be pursuant to a rule, adopted under chapter 120
707 by the Florida Land and Water Adjudicatory Commission, granting
708 a petition for the establishment of a community development
709 district.

710 (a) A petition for the establishment of a community
711 development district shall be filed by the petitioner with the
712 Florida Land and Water Adjudicatory Commission. The petition
713 shall contain:

714 1. A metes and bounds description of the external
715 boundaries of the district. Any real property within the
716 external boundaries of the district which is to be excluded from
717 the district shall be specifically described, and the last known
718 address of all owners of such real property shall be listed. The
719 petition shall also address the impact of the proposed district
720 on any real property within the external boundaries of the
721 district which is to be excluded from the district.

722 2. The written consent to the establishment of the
723 district by all landowners whose real property is to be included
724 in the district or documentation demonstrating that the
725 petitioner has control by deed, trust agreement, contract, or
726 option of 100 percent of the real property to be included in the
727 district, and when real property to be included in the district
728 is owned by a governmental entity and subject to a ground lease

729 as described in s. 190.003(14), the written consent by such
 730 governmental entity.

731 3. A designation of five persons to be the initial members
 732 of the board of supervisors, who shall serve in that office
 733 until replaced by elected members as provided in s. 190.006.

734 4. The proposed name of the district.

735 5. A map of the proposed district showing current major
 736 trunk water mains and sewer interceptors and outfalls if in
 737 existence.

738 6. Based upon available data, the proposed timetable for
 739 construction of the district services and the estimated cost of
 740 constructing the proposed services. These estimates shall be
 741 submitted in good faith but are not binding and may be subject
 742 to change.

743 7. A designation of the future general distribution,
 744 location, and extent of public and private uses of land proposed
 745 for the area within the district by the future land use plan
 746 element of the effective local government comprehensive plan of
 747 which all mandatory elements have been adopted by the applicable
 748 general-purpose local government in compliance with the
 749 Community Planning Act.

750 8. A statement explaining the prospective economic impact
 751 of establishment of the proposed district ~~of estimated~~
 752 ~~regulatory costs in accordance with the requirements of s.~~
 753 ~~120.541.~~

754 Section 4. This act shall take effect July 1, 2014.