

FOR CONSIDERATION By the Committee on Governmental Oversight and Accountability

585-02802-14

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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; deleting the definition of

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30 the term "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
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:

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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)(c).~~ 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
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

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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 developing
94 and adopting rules. The agency should consider the use of
95 negotiated rulemaking when complex rules are being drafted or
96 strong opposition to the rules is anticipated. The agency should
97 consider, but is not limited to considering, whether a balanced
98 committee of interested persons who will negotiate in good faith
99 can be assembled, whether the agency is willing to support the
100 work of the negotiating committee, and whether the agency can
101 use the group consensus as the basis for its proposed rule.
102 Negotiated rulemaking uses a committee of designated
103 representatives to draft a mutually acceptable proposed rule and
104 to develop information necessary to prepare a statement of
105 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.

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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
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

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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
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

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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
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:

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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 necessary
217 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

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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 or
242 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
261 offered by the rules ombudsman in the Executive Office of the

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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

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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.-*

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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

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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 objection
371 to the rule is being considered, in which case the rule may be
372 modified to extend the effective date by not more than 60 days.

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

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378 notify the Department of State if the rule is required to be
379 filed with the Department of State.

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

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

384 1. If the adopting agency is required to publish its rules
385 in the Florida Administrative Code, the agency, upon approval of
386 the agency head, shall file with the Department of State three
387 certified copies of the rule it proposes to adopt; one copy of
388 any material incorporated by reference in the rule, certified by
389 the agency; a summary of the rule; a summary of any hearings
390 held on the rule; and a detailed written statement of the facts
391 and circumstances justifying the rule. Agencies not required to
392 publish their rules in the Florida Administrative Code shall
393 file one certified copy of the proposed rule, and the other
394 material required by this subparagraph, in the office of the
395 agency head, and such rules shall be open to the public.

396 2. A rule may not be filed for adoption less than 28 days
397 or more than 90 days after the notice required by paragraph (a),
398 until 21 days after the notice of change required by paragraph
399 (d), until 14 days after the final public hearing, until 21 days
400 after a statement of estimated regulatory costs required under
401 s. 120.541 has been provided to all persons who submitted a
402 lower cost regulatory alternative and made available to the
403 public at a readily accessible page on the agency's website, or
404 until the administrative law judge has rendered a decision under
405 s. 120.56(2), whichever applies. When a required notice of
406 change is published before ~~prior to~~ the expiration of the time

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

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

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

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436 inquiries or written comments; upon which an administrative
437 determination is pending; or which does not include a statement
438 of estimated regulatory costs, if required.

439 5. If a rule has not been adopted within the time limits
440 imposed by this paragraph or has not been adopted in compliance
441 with all statutory rulemaking requirements, the agency proposing
442 the rule shall withdraw the proposed rule and give notice of its
443 action in the next available issue of the Florida Administrative
444 Register.

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

461
462 For the purposes of this paragraph, the term "administrative
463 determination" does not include subsequent judicial review.

464 Section 2. Section 120.541, Florida Statutes, is amended to

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465 read:

466 120.541 Statement of estimated regulatory costs.-

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

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

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

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

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

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

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

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523 unless:

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

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

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

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

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

535 3. The substantial interests of the person challenging the
536 rule are materially affected by the rejection.

537 (2) A statement of estimated regulatory costs shall
538 include:

539 (a) An economic analysis showing whether the rule directly
540 or indirectly:

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

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

551 3. Is likely to increase regulatory costs, including all

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552 ~~any transactional costs and impacts estimated in the statement,~~
553 in excess of \$1 million in the aggregate within 5 years after
554 the implementation of the rule.

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

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

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

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

580 (f) Any additional information that the agency determines

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581 may be useful.

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

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

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

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

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

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

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

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610 rule.

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

615 1. Increased customer charges for goods and services.

616 2. Decreased market value of goods and services produced,
617 provided, or sold.

618 3. Increased costs resulting from the purchase of
619 substitute or alternative products or services.

620 4. The reasonable value of time to be expended by owners,
621 officers, operators, and managers to understand and comply,
622 including, but not limited to, time expended to complete
623 required education, training, or testing.

624 5. Capital costs.

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

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

638 (d) In estimating compliance costs under paragraph (2) (d),

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639 the agency shall consider, among other matters, all direct and
640 indirect costs necessary to comply with the rule that are
641 readily ascertainable based upon standard business practices,
642 including, but not limited to, costs related to:

643 1. Filing fees.

644 2. Obtaining a license.

645 3. Necessary equipment.

646 4. Installation, utilities, and maintenance of necessary
647 equipment.

648 5. Necessary operations and procedures.

649 6. Accounting, financial, information and management
650 systems, and other administrative processes.

651 7. Other processes.

652 8. Labor based on relevant rates of wages, salaries and
653 benefits.

654 9. Materials and supplies.

655 10. Capital expenditures including financing costs.

656 11. Professional and technical services, including
657 contracted services necessary to implement and maintain
658 compliance.

659 12. Monitoring and reporting.

660 13. Qualifying and recurring education, training, and
661 testing.

662 14. Travel.

663 15. Insurance and surety requirements.

664 16. A fair and reasonable allocation of administrative
665 costs and other overhead.

666 17. Reduced sales or other revenues.

667 18. Other items suggested by the rules ombudsman, the

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668 committee, or any interested person, business organization, or
669 business representative.

670 Section 3. This act shall take effect July 1, 2014.