

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on General Government

BILL: SB 1226

INTRODUCER: Senator Ring

SUBJECT: Administrative Procedures

DATE: February 10, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	Favorable
2.	<u>Davis</u>	<u>DeLoach</u>	<u>AGG</u>	Recommend: Favorable
3.	_____	_____	<u>FP</u>	_____

I. Summary:

SB 1226 requires a statement of estimated regulatory costs (SERC) to include the adverse impacts and regulatory costs estimated to occur five years after the effective date of a rule. If a portion of the rule is not fully implemented on the effective date of the rule, the SERC must include the adverse impacts and regulatory costs expected to occur within the first five years after implementation of that portion of the rule.

With these changes to the SERC, more administrative rules may exceed the cost thresholds (\$1 million within five years), thus requiring more rules to be subject to ratification by the legislature prior to taking effect.

This bill has an indeterminate fiscal impact.

The bill takes effect July 1, 2016.

II. Present Situation:

Rulemaking Authority and Legislative Ratification

A rule is an agency statement of general applicability that interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency as well as certain types of forms.¹ Rulemaking authority is delegated by the Legislature through statute and authorizes an agency to “adopt, develop, establish, or otherwise create”² a rule. Agencies do not have discretion as to whether to engage in rulemaking.³ To adopt a rule an agency must have a

¹ Section 120.52(16), F.S.

² Section 120.52(17), F.S.

³ Section 120.54(1)(a), F.S.

general grant of authority to implement a specific law by rulemaking.⁴ The statutory authority for rule making must be specific enough to guide an agency's rulemaking and an agency rule must not exceed the bounds of authority granted by the Legislature.⁵

An agency begins the formal rulemaking process by filing a notice of the proposed rule,⁶ which is published by the Department of State in the Florida Administrative Register.⁷ The notice must provide certain information, including the text of the proposed rule, and a summary of the agency's SERC if one is prepared. The public may also provide an agency with information regarding the SERC or provide proposals for a lower cost alternative to the rule.⁸

An agency is required to prepare a SERC if the proposed rule will have an adverse impact on small businesses or if it will increase regulatory costs more than \$200,000 (in aggregate) within one year after implementation.⁹

The SERC must include an economic analysis projecting a proposed rule's adverse effect on specified aspects of the state's economy or increase in regulatory costs.¹⁰ The economic analysis, mandated for each SERC, must analyze a rule's potential impact of over \$1 million over a five year period after the rule goes into effect. A SERC must provide one of the following analyses:

- The rule's likely adverse impact on economic growth, private-sector job creation or employment, or private-sector investment;¹¹
- The likely adverse impact on business competitiveness,¹² productivity, or innovation.¹³
- The analysis must discuss whether the rule is likely to increase regulatory costs, including any transactional costs.¹⁴

If the analysis shows the projected impact of the proposed rule in any one of these areas will exceed \$1 million in the aggregate for the five year period, the rule cannot go into effect until ratified by the Legislature.¹⁵ Legislative ratification is not required for adoption of any of the following types of rules: federal standards, amendments to the Florida Building Code or amendments to the Florida Building Code.¹⁶

A SERC must also contain estimates of the number of people and entities effected by the proposed rule; cost to the agency and any other governmental entity for implementing the proposed rule; and transactional costs likely to be incurred by people, entities, and governmental

⁴ Sections 120.52(8) & 120.536(1), F.S.

⁵ *Sloban v. Florida Board of Pharmacy*, 982 So. 2d 26 (Fla. 1st DCA 2008). *Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So. 2d 594 (Fla 1st DCA 2001).

⁶ Section 120.54(3)(a)1, F.S.

⁷ Section 120.55(1)(b)2, F.S.

⁸ Sections 120.54(3)(a)1., and 120.541(1)(a), F.S.

⁹ Section 120.541(1)(a), F.S.

¹⁰ Section 120.541(2)(a), F.S.

¹¹ Section 120.541(2)(a)1., F.S.

¹² This factor includes the ability of those doing business in Florida to compete with those doing business in other states or domestic markets.

¹³ Section 120.541(2)(a)2., F.S.

¹⁴ Section 120.541(2)(a)3., F.S.

¹⁵ Section 120.541(3), F.S.

¹⁶ Section 120.541(4), F.S.

agencies for compliance.¹⁷ Finally, a SERC must also contain an analysis of the proposed rule's impact on small businesses and local governments.¹⁸

III. Effect of Proposed Changes:

The bill requires a SERC to include the adverse impacts and regulatory costs estimated to occur five years after the effective date of a rule. If a portion of the rule is not fully implemented on the effective date of the rule, the SERC must include the adverse impacts and regulatory costs expected to occur within the first five years after implementation of that portion of the rule.

With these changes to the SERC, more administrative rules may exceed the cost thresholds (\$1 million within five years), thus requiring more rules to be subject to ratification by the legislature prior to taking effect.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of a state tax shares with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

SB 1226 may provide an enhanced estimation of economic impacts of agency rules and an enhanced opportunity of local government and private entities to participate in rulemaking and in estimating regulatory costs.

C. Government Sector Impact:

The bill has an indeterminate fiscal impact. Currently, state agencies are required to comply with notice, publication, and hearing requirements for preparing SERCs. The bill

¹⁷ Section 120.541(2)(b)-(d), F.S.

¹⁸ Section 120.541(2)(e), F.S.

provides additional requirements related to SERCs, which may require agencies to complete more SERCs. Also, the recognition of additional costs in a SERC may increase the number of administrative rules subject to legislative ratification prior to their becoming effective. Compliance with these additional requirements may require agencies to devote more resources to rulemaking.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Agencies may experience some difficulty making estimates for projected costs associated with unimplemented portions of a rule.

Additional administrative rules may be subject to ratification by the Legislature prior to taking effect because the recognition of additional costs may result in rules exceeding the adverse impacts and regulatory cost thresholds. To the extent the ratification process delays the full implementation of a legislatively mandated policy or program, the intent of the Legislature regarding that particular policy or program may be frustrated. The delay may be upwards of 14 months (in the case of a rule that is identified in May of one year and not being ratified until the next legislative session). On the other hand, a better estimate of the full costs and impacts of the policy or program on the private sector will be available for review by the Legislature.

VIII. Statutes Affected:

This bill substantially amends section 120.541 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.