

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 Committee on Fiscal Policy

BILL: SB 1226

INTRODUCER: Senator Ring

SUBJECT: Administrative Procedures

DATE: February 16, 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>Pace</u>	<u>Hrdlicka</u>	<u>FP</u>	Pre-meeting

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 be adjusted to include the adverse impacts and regulatory costs expected to occur within the first five years after full implementation of that portion of the rule.

With these changes to the SERC, more administrative rules may exceed the cost thresholds (\$1 million within 5 years), requiring more rules to be ratified by the legislature prior to taking effect.

This bill has an indeterminate fiscal impact on state agencies.

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.¹ Rulemaking authority is delegated by the Legislature in law to an agency, and authorizes an agency to adopt, develop, establish, or otherwise create a rule.² An agency may not engage in rulemaking unless it has a legislative grant of authority to do so.³ The statutory authority for rulemaking 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.⁴

¹ Section 120.52(16), F.S.

² Section 120.52(17), F.S.

³ See ss. 120.52(8) and 120.536(1), F.S.

⁴ See *Sloban v. Florida Board of Pharmacy*, 982 So. 2d 26 (Fla. 1st DCA 2008) and *Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So. 2d 594 (Fla 1st DCA 2000).

Prior to the adoption, amendment, or repeal of any rule an agency must file a notice of the proposed rule in the Florida Administrative Register.⁵ The notice of the proposed rule must include:

- An explanation of the purpose and effect;
- The specific legal authority for the rule;
- The full text of the rule; and
- A summary of the agency's SERC, if one is prepared.⁶

Within 21 days of the notice, the public may provide an agency with information regarding the SERC or provide proposals for a lower cost alternative to the rule.⁷

SERC Requirements

Agencies must prepare a SERC for a rule that has an adverse impact on small businesses or that increases regulatory costs more than \$200,000 within 1 year after implementation of the rule.⁸

A SERC must include estimates of:

- The number of people and entities effected by the proposed rule;
- The cost to the agency and other governmental entities to implement the proposed rule;
- Transactional costs likely to be incurred by people, entities, and governmental agencies for compliance; and
- An analysis of the proposed rule's impact on small businesses, counties, and cities.⁹

The SERC must also include an economic analysis on the likelihood that the proposed rule will have an adverse impact in excess of \$1 million within the first 5 years of implementation on:

- Economic growth, private-sector job creation or employment, or private-sector investment;
- Business competitiveness,¹⁰ productivity, or innovation; or
- Regulatory costs, including any transactional costs.¹¹

If the economic analysis results in an adverse impact or regulatory costs in excess of \$1 million within 5 years after implementation of the rule, then the rule must be ratified by the Legislature in order to take effect.¹²

⁵ See ss. 120.54(2)(a) and 120.55(1)(b), F.S.

⁶ Section 120.54(3)(a)1., F.S.

⁷ See ss. 120.54(3)(a)1. and 120.541(1)(a), F.S.

⁸ Section 120.541(1)(a), F.S.

⁹ Section 120.541(2)(b)-(e), F.S. A small city has an unincarcerated population of 10,000 or less. A small county has an unincarcerated population of 75,000 or less. A small business employs less than 200 people, and has a net worth of \$5 million or less.

¹⁰ Business competitiveness includes the ability of those doing business in Florida to compete with those doing business in other states or domestic markets.

¹¹ Section 120.541(2)(a), F.S.

¹² Section 120.541(3), F.S. Legislative ratification is not required for adoption of federal standards, amendments to the Florida Building Code, or amendments to the Florida Fire Prevention Code. See s. 120.541(4), F.S.

III. Effect of Proposed Changes:

The bill requires a SERC to include the adverse impacts and regulatory costs estimated to occur within 5 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 be adjusted to include the adverse impacts and regulatory costs expected to occur within the first 5 years after full implementation of that portion of the rule.

The bill may result in more rules that require legislative ratification due to an increased number of rules that have adverse impacts and regulatory costs that exceed \$1 million within 5-years of full implementation.

The bill is effective on July 1, 2016.

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:

If the provisions of the bill result in agencies publishing more SERCs, then there may be additional opportunities for public input on proposed rules through the additional SERCs.

C. Government Sector Impact:

The bill has an indeterminate fiscal impact on state agencies. To meet the additional SERC requirements created in the bill, agencies may have to complete more SERCs. The workload increase maybe require agencies to devote more resources to rulemaking. The bill may also result in more rules being subject to legislative ratification before they may become effective.

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.