

CS/CS/HB 1565 — Rulemaking

by the Economic Development & Community Affairs Policy Council, the Government Affairs Policy Committee, Rep. Dorworth and others (CS/CS/SB 1844 by the Governmental Oversight and Accountability Committee, the Commerce Committee, and Senators Bennett, Lynn, and Crist)

Currently under the Administrative Procedure Act in ch. 120, F.S., each agency, before the adoption, amendment, or repeal of a rule, must consider that rule's impact on small businesses, small counties, and small cities as defined by current law, and prepare a statement of estimated regulatory costs (SERC). An agency is required to provide the Small Business Advisory Council (SBRAC) and the Governor's Office of Tourism, Trade, and Economic Development with notice of a proposed rule that affects small businesses 28 days prior to its adoption. SBRAC or a substantially affected person then has 21 days after receiving notice of a rule in which to review the impact of that rule on small businesses and to offer alternatives to lessen the identified impact. If a lower cost alternative is offered by SBRAC or a substantially affected person, rule adoption is delayed an additional 21 days (on top of the basic 90 days) to give the agency time for analysis and response. If an agency does not adopt an alternative offered by SBRAC, it must, prior to rule adoption or amendment, file a detailed written statement with the Joint Administrative Procedures Committee (JAPC) and SBRAC explaining the reasons for failure to adopt the alternatives. Similarly, the agency must make available to the substantially affected person that suggested a lower cost alternative a copy of the revised SERC. Florida law does not specifically require an agency to provide a substantially affected person a copy of its statement of reasons for rejecting the alternative, but most agencies do, as a matter of practice.

This bill requires an agency to prepare a SERC prior to the adoption, amendment, or repeal of any rule that has an adverse impact on small business or is likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate.

When a lower regulatory cost alternative to a proposed rule is submitted to an agency, the agency is required to revise its earlier SERC and either adopt the alternative or give a statement of the reasons for rejecting the alternative in favor of the proposed rule. The agency must provide a copy of its revised SERC to the substantially affected person that submitted the alternative and to JAPC within 45 days of filing the proposed rule for adoption.

The bill also:

- Provides certain exceptions to the 90-day limitation for and the renewability of emergency rules.
- Rewords the statute to clarify the grounds for challenging the validity of a SERC, and the grounds by which a rule may be declared invalid by an administrative law judge.
- Expands the requirements for a SERC to include an economic analysis of whether the proposed rule directly or indirectly is likely to have an adverse impact in excess of \$1 million in the aggregate within 5 years after the rule's implementation on:
 - Economic growth, private-sector job creation or employment, or private-sector investment;

- Business competitiveness, private-sector investment, productivity, innovation, or the ability of persons doing business in Florida to compete with out-of-state businesses or domestic markets; or
- Increases in regulatory costs, including any transactional costs.
- If the economic analysis portions of the SERC indicate the proposal will do any of the things reviewed in the economic analysis, the rule must be submitted to the President of the Senate and the Speaker of the House of Representatives 30 days before the next regular legislative session. The rule may not take effect until ratified by the Legislature.
- Gives any substantially affected person 44 days, instead of 20, after the SERC or revised SERC has been prepared and made available to the public to seek a determination from an administrative law judge that the proposed rule is invalid.

Finally, the bill gives agencies the ability to establish by rule the time period for requiring additional information from an applicant for a license, and may offer an extension to a license applicant for good cause. However, if the applicant believes the agency's request for additional information is not authorized by rule or law, then the agency, at the applicant's request, must proceed with processing the application.

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 36-0; House 113-0