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LEGISLATIVE ACTION

Senate

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House

The Committee on Commerce (Detert) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (b) of subsection (3) of section
120.54, Florida Statutes, is amended to read:

120.54 Rulemaking.—

(3) ADOPTION PROCEDURES.—

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

1. Statement of estimated regulatory costs.—Prior to the
adoption, amendment, or repeal of any rule other than an
emergency rule, an agency shall ~~is encouraged to~~ prepare a



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14 statement of estimated regulatory costs of the proposed rule, as
15 provided by s. 120.541. The failure of the agency to prepare the
16 statement of estimated regulatory costs as provided in this
17 section is a material failure to follow the applicable
18 rulemaking procedures or requirements set forth in this chapter.
19 ~~However, an agency shall prepare a statement of estimated~~
20 ~~regulatory costs of the proposed rule, as provided by s.~~
21 ~~120.541, if the proposed rule will have an impact on small~~
22 ~~business.~~

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

24 a. Each agency, before the adoption, amendment, or repeal
25 of a rule, shall consider the impact of the rule on small
26 businesses as defined by s. 288.703 and the impact of the rule
27 on small counties or small cities as defined by s. 120.52.
28 Whenever practicable, an agency shall tier its rules to reduce
29 disproportionate impacts on small businesses, small counties, or
30 small cities to avoid regulating small businesses, small
31 counties, or small cities that do not contribute significantly
32 to the problem the rule is designed to address. An agency may
33 define "small business" to include businesses employing more
34 than 200 persons, may define "small county" to include those
35 with populations of more than 75,000, and may define "small
36 city" to include those with populations of more than 10,000, if
37 it finds that such a definition is necessary to adapt a rule to
38 the needs and problems of small businesses, small counties, or
39 small cities. The agency shall consider each of the following
40 methods for reducing the impact of the proposed rule on small
41 businesses, small counties, and small cities, or any combination
42 of these entities:



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43 (I) Establishing less stringent compliance or reporting
44 requirements in the rule.

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

47 (III) Consolidating or simplifying the rule's compliance or
48 reporting requirements.

49 (IV) Establishing performance standards or best management
50 practices to replace design or operational standards in the
51 rule.

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

54 b.(I) If the agency determines that the proposed action
55 will affect small businesses as defined by the agency as
56 provided in sub-subparagraph a., the agency shall send written
57 notice of the rule to the Small Business Regulatory Advisory
58 Council and the Office of Tourism, Trade, and Economic
59 Development not less than 28 days prior to the intended action.

60 (II) Each agency shall adopt those regulatory alternatives
61 offered by the Small Business Regulatory Advisory Council and
62 provided to the agency no later than 21 days after the council's
63 receipt of the written notice of the rule which it finds are
64 feasible and consistent with the stated objectives of the
65 proposed rule and which would reduce the impact on small
66 businesses. When regulatory alternatives are offered by the
67 Small Business Regulatory Advisory Council, the 90-day period
68 for filing the rule in subparagraph (e)2. is extended for a
69 period of 21 days.

70 (III) If an agency does not adopt all alternatives offered
71 pursuant to this sub-subparagraph, it shall, prior to rule



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72 adoption or amendment and pursuant to subparagraph (d)1., file a
73 detailed written statement with the committee explaining the
74 reasons for failure to adopt such alternatives. Within 3 working
75 days of the filing of such notice, the agency shall send a copy
76 of such notice to the Small Business Regulatory Advisory
77 Council. The Small Business Regulatory Advisory Council may make
78 a request of the President of the Senate and the Speaker of the
79 House of Representatives that the presiding officers direct the
80 Office of Program Policy Analysis and Government Accountability
81 to determine whether the rejected alternatives reduce the impact
82 on small business while meeting the stated objectives of the
83 proposed rule. Within 60 days after the date of the directive
84 from the presiding officers, the Office of Program Policy
85 Analysis and Government Accountability shall report to the
86 Administrative Procedures Committee its findings as to whether
87 an alternative reduces the impact on small business while
88 meeting the stated objectives of the proposed rule. The Office
89 of Program Policy Analysis and Government Accountability shall
90 consider the proposed rule, the economic impact statement, the
91 written statement of the agency, the proposed alternatives, and
92 any comment submitted during the comment period on the proposed
93 rule. The Office of Program Policy Analysis and Government
94 Accountability shall submit a report of its findings and
95 recommendations to the Governor, the President of the Senate,
96 and the Speaker of the House of Representatives. The
97 Administrative Procedures Committee shall report such findings
98 to the agency, and the agency shall respond in writing to the
99 Administrative Procedures Committee if the Office of Program
100 Policy Analysis and Government Accountability found that the



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101 alternative reduced the impact on small business while meeting
102 the stated objectives of the proposed rule. If the agency will
103 not adopt the alternative, it must also provide a detailed
104 written statement to the committee as to why it will not adopt
105 the alternative.

106 Section 2. Section 120.541, Florida Statutes, is amended to
107 read:

108 120.541 Statement of estimated regulatory costs.—

109 (1) (a) A substantially affected person, within 21 days
110 after publication of the notice provided under s. 120.54(3) (a),
111 may submit to an agency a good faith written proposal for a
112 lower cost regulatory alternative to a proposed rule which
113 substantially accomplishes the objectives of the law being
114 implemented. The proposal may include the alternative of not
115 adopting any rule, so long as the proposal explains how the
116 lower costs and objectives of the law will be achieved by not
117 adopting any rule. If such a proposal is submitted, the 90-day
118 period for filing the rule is extended 21 days.

119 (b) Upon the submission of the lower cost regulatory
120 alternative, the agency ~~shall prepare a statement of estimated~~
121 ~~regulatory costs as provided in subsection (2), or shall revise~~
122 its prior statement of estimated regulatory costs, and either
123 adopt the alternative or give a statement of the reasons for
124 rejecting the alternative in favor of the proposed rule. The
125 failure of the agency to prepare or revise the statement of
126 estimated regulatory costs as provided in this paragraph is a
127 material failure to follow the applicable rulemaking procedures
128 or requirements set forth in this chapter. An agency required to
129 prepare or revise a statement of estimated regulatory costs as



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130 provided in this paragraph shall make it available to the person
131 who submits the lower cost regulatory alternative and to the
132 public prior to filing the rule for adoption.

133 ~~(c) No rule shall be declared invalid because it imposes~~
134 ~~regulatory costs on the regulated person, county, or city which~~
135 ~~could be reduced by the adoption of less costly alternatives~~
136 ~~that substantially accomplish the statutory objectives, and no~~
137 ~~rule shall be declared invalid based upon a challenge to the~~
138 ~~agency's statement of estimated regulatory costs, unless:~~

139 ~~1. The issue is raised in an administrative proceeding~~
140 ~~within 1 year after the effective date of the rule; and~~

141 ~~2. The substantial interests of the person challenging the~~
142 ~~agency's rejection of, or failure to consider, the lower cost~~
143 ~~regulatory alternative are materially affected by the rejection;~~
144 ~~and~~

145 ~~3.a. The agency has failed to prepare or revise the~~
146 ~~statement of estimated regulatory costs as required by paragraph~~
147 ~~(b); or~~

148 ~~b. The challenge is to the agency's rejection under~~
149 ~~paragraph (b) of a lower cost regulatory alternative submitted~~
150 ~~under paragraph (a).~~

151 (2) A statement of estimated regulatory costs shall
152 include:

153 (a) An economic analysis showing whether the rule:

154 1. Creates a regulatory environment that could impede or
155 hinder economic growth and private-sector job creation;

156 2. Expands the growth of state government, where not
157 recognized by the enabling statute;

158 3. Increases regulatory costs to small businesses; and



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159 4. Is likely to adversely impact private-sector job
160 creation or result in higher unemployment.

161 (b) A good faith estimate of the number of individuals and
162 entities likely to be required to comply with the rule, together
163 with a general description of the types of individuals likely to
164 be affected by the rule.

165 (c)~~(b)~~ A good faith estimate of the cost to the agency, and
166 to any other state and local government entities, of
167 implementing and enforcing the proposed rule, and any
168 anticipated effect on state or local revenues.

169 (d)~~(e)~~ A good faith estimate of the transactional costs
170 likely to be incurred by individuals and entities, including
171 local government entities, required to comply with the
172 requirements of the rule. As used in this paragraph,
173 "transactional costs" are direct costs that are readily
174 ascertainable based upon standard business practices, and
175 include filing fees, the cost of obtaining a license, the cost
176 of equipment required to be installed or used or procedures
177 required to be employed in complying with the rule, additional
178 operating costs incurred, and the cost of monitoring and
179 reporting.

180 (e)~~(d)~~ An analysis of the impact on small businesses as
181 defined by s. 288.703, and an analysis of the impact on small
182 counties and small cities as defined by s. 120.52.

183 (f)~~(e)~~ Any additional information that the agency
184 determines may be useful.

185 (g)~~(f)~~ In the statement or revised statement, whichever
186 applies, a description of any good faith written proposal
187 submitted under paragraph (1) (a) and either a statement adopting



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188 the alternative or a statement of the reasons for rejecting the
189 alternative in favor of the proposed rule.

190 (3) The committee shall determine whether any statement of
191 estimated regulatory costs prepared by an agency complies with
192 subsection (2). If the evidence shows that a proposed rule will
193 create a regulatory environment that impedes or hinders economic
194 growth and private-sector job creation, expand the growth of
195 state government where not anticipated by the enabling statute,
196 increase the regulatory costs to small businesses, or is likely
197 to adversely impact private-sector job creation or result in
198 higher unemployment, the rule may not take effect until it is
199 submitted to the Legislature for review at the next regularly
200 scheduled session. The Legislature may reject, modify, or take
201 no action relative to the rule. If the Legislature takes no
202 action, the rule shall take effect upon adjournment sine die of
203 that session.

204 (4) Paragraph (2) (a) does not apply to the adoption of
205 emergency rules.

206 Section 3. This act shall take effect July 1, 2010.

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208 ===== T I T L E A M E N D M E N T =====

209 And the title is amended as follows:

210 Delete everything before the enacting clause
211 and insert:

212 A bill to be entitled
213 An act relating to rulemaking; amending s. 120.54,
214 F.S.; requiring each agency, before adopting,
215 amending, or repealing a rule, to prepare a statement
216 of estimated regulatory costs of the proposed rule;



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217 providing that failure to prepare such statement is a
218 material failure to follow applicable rulemaking
219 procedures; amending s. 120.541, F.S.; requiring an
220 agency to revise its statement of estimated regulatory
221 costs upon submission of a lower cost regulatory
222 alternative; removing the requirement that a rule be
223 declared invalid if it imposes regulatory costs on
224 certain persons or entities if a less costly
225 alternative exists; revising the required information
226 that must be included in a statement of estimated
227 regulatory costs; requiring the Joint Administrative
228 Procedures Committee to determine whether any
229 statement of estimated regulatory costs complies with
230 certain requirements; prohibiting a rule from taking
231 effect until it is submitted to the Legislature for
232 review if the rule creates certain impediments or
233 hindrances; allowing the Legislature to reject,
234 modify, or take no action relative to a rule;
235 providing a time certain for a rule to take effect if
236 the Legislature takes no action; providing that the
237 act is not applicable to certain specified rules;
238 providing an effective date.