

Section 120.541

CHAPTER 96-159

Section 1. It is the intent of the Legislature to consider the impact of any agency rulemaking required by proposed legislation and to determine whether the proposed legislation provides adequate and appropriate standards and guidelines to direct the agency's implementation of the proposed legislation.

Section 11. Section 120.541, Florida Statutes, is created to read:

120.541 Statement of estimated regulatory costs

(1)(a) A substantially affected person, within 21 days after publication of the notice provided under s. 120.54(3)(a), may submit to an agency a good faith written proposal for a lower cost regulatory alternative to a proposed rule which substantially accomplishes the objectives of the law being implemented. The proposal may include the alternative of not adopting any rule, so long as the proposal explains how the lower costs and objectives of the law will be achieved by not adopting any rule.

(b) Upon the submission of the lower cost regulatory alternative, the agency shall prepare a statement of estimated regulatory costs as provided in subsection (2), or shall revise its prior statement of estimated regulatory costs, and either adopt the alternative or give a statement of the reasons for rejecting the alternative in favor of the proposed rule. The failure of the agency to prepare or revise the statement of estimated regulatory costs as provided in this paragraph is a material failure to follow the applicable rulemaking procedures or requirements set forth in this chapter. An agency required to prepare or revise a statement of estimated regulatory costs as provided in this paragraph shall make it available to the person who submits the lower cost regulatory alternative and to the public prior to filing the rule for adoption.

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

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

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

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

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

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

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

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

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

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

(e) Any additional information that the agency determines may be useful.

(f) In the statement or revised statement, whichever applies, a description of any good faith written proposal submitted under paragraph (1)(a) and either a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule.

CHAPTER 97-176

Committee Substitute for Senate Bill No. 1066

Section 4. Paragraph (a) of subsection (1) of section 120.541, Florida Statutes, 1996 Supplement, is amended to read:

120.541 Statement of estimated regulatory costs.—

(1)(a) A substantially affected person, within 21 days after publication of the notice provided under s. 120.54(3)(a), may submit to an agency a good faith written proposal for

a lower cost regulatory alternative to a proposed rule which substantially accomplishes the objectives of the law being implemented. The proposal may include the alternative of not adopting any rule, so long as the proposal explains how the lower costs and objectives of the law will be achieved by not adopting any rule. If such a proposal is submitted, the 90-day period for filing the rule is extended 21 days.

CHAPTER 2010-279

Council Substitute for Council Substitute for House Bill No. 1565

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

120.541 Statement of estimated regulatory costs.—

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

~~(b) Upon the submission of the lower cost regulatory alternative, the agency shall prepare a statement of estimated regulatory costs as provided in subsection (2), or shall revise its prior statement of estimated regulatory costs, and either adopt the alternative or provide give a statement of the reasons for rejecting the alternative in favor of the proposed rule. The failure of the agency to prepare or revise the statement of estimated regulatory costs as provided in this paragraph is a material failure to follow the applicable rulemaking procedures or requirements set forth in this chapter. An agency required to prepare or revise a statement of estimated regulatory costs as provided in this paragraph shall make it available to the person who submits the lower cost regulatory alternative and to the public prior to filing the rule for adoption.~~

(b) If a proposed rule will have an adverse impact on small business or if the proposed rule is likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate within 1 year after the implementation of the rule, the agency shall prepare a statement of estimated regulatory costs as required by s. 120.54(3)(b).

(c) The agency shall revise a statement of estimated regulatory costs if any change to the rule made under s. 120.54(3)(d) increases the regulatory costs of the rule.

(d) At least 45 days before filing the rule for adoption, an agency that is required to revise a statement of estimated regulatory costs shall provide the statement to the person who submitted the lower cost regulatory alternative and to the committee and shall provide notice on the agency's website that it is available to the public.

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

(f)(e) An agency's failure to prepare a statement of estimated regulatory costs or to respond to a written lower cost regulatory alternative may not be raised in a proceeding challenging the validity of a rule pursuant to s. 120.52(8)(a) No rule shall be declared invalid because it imposes regulatory costs on the regulated person, county, or city which could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives, and no rule shall be declared invalid based upon a challenge to the agency's statement of regulatory costs, unless:

1. The issue is Raised in a petition filed no later than an administrative proceeding within 1 year after the effective date of the rule; and

2. Raised by a person whose substantial interests are affected by the rule's regulatory costs. The substantial interests of the person challenging the agency's rejection of, or failure to consider, the lower cost regulatory alternative are materially affected by the rejection; and

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

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

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

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

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

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

(2) A statement of estimated regulatory costs shall include: (a) An economic analysis showing whether the rule directly or indirectly:

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

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

3. Is likely to increase regulatory costs, including any transactional costs, in excess of \$1 million in the aggregate within 5 years after the implementation of the rule.

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

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

(d)(e)—A good faith estimate of the transactional costs likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the rule. As used in this section paragraph, “transactional costs” are direct costs that are readily ascertainable based upon standard business practices, and include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used or procedures required to be employed in complying with the rule, additional operating costs incurred, and the cost of monitoring and reporting, and any other costs necessary to comply with the rule.

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

(f)(e)—Any additional information that the agency determines may be useful.

(g)(f)—In the statement or revised statement, whichever applies, a description of any regulatory alternatives good faith written proposal submitted under paragraph (1)(a) and either a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule.

(3) If the adverse impact or regulatory costs of the rule exceed any of the criteria established in paragraph (2)(a), the rule shall be submitted to the President of the Senate and Speaker of the House of Representatives no later than 30 days prior to the next

regular legislative session, and the rule may not take effect until it is ratified by the Legislature.

(4) Paragraph (2)(a) does not apply to the adoption of emergency rules pursuant to s. 120.54(4) or the adoption of federal standards pursuant to s. 120.54(6).

CHAPTER 2011-222

Committee Substitute for Committee Substitute for Committee Substitute for House Bill No. 849

Section 1. Subsection (4) of section 120.541, Florida Statutes, as amended by chapter 2010-279, Laws of Florida, is amended to read:

120.541 Statement of estimated regulatory costs.—

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

(4) Subsection (3) Paragraph (2)(a) does not apply to the adoption of:

(a) emergency rules pursuant to s. 120.54(4) or the adoption of Federal standards pursuant to s. 120.54(6).

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

(c) Triennial updates of and amendments to the Florida Fire Prevention Code which are expressly authorized by s. 633.0215.

CHAPTER 2011-225

Committee Substitute for Committee Substitute for Committee Substitute for House Bill No. 993 and House Bill No. 7239

Section 2. Paragraph (d) of subsection (1) and subsection (4) of section 120.541, Florida Statutes, as amended by chapter 2010-279, Laws of Florida, are amended to read:

120.541 Statement of estimated regulatory costs.—

(1)

(d) At least ~~21~~ 45 days before filing the rule for adoption, an agency that is required to revise a statement of estimated regulatory costs shall provide the statement to the person who submitted the lower cost regulatory alternative and to the committee and shall provide notice on the agency's website that it is available to the public.

(4) ~~This section Paragraph (2)(a)~~ does not apply to the adoption of emergency rules pursuant to s. 120.54(4) or the adoption of federal standards pursuant to s. 120.54(6).

CHAPTER 2013-183

Committee Substitute for Committee Substitute for Senate Bill No. 1410

Section 92. Subsection (4) of section 120.541, Florida Statutes, as amended by section 1 of chapter 2011-222, 2011 Laws of Florida, is amended to read:

120.541 Statement of estimated regulatory costs.—

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

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

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

(c) Triennial updates of and amendments to the Florida Fire Prevention Code which are expressly authorized by s. 633.202 ~~s. 633.0215~~.

CHAPTER 2016-232

House Bill No. 981

Section 1. Subsection (5) is added to section 120.541, Florida Statutes, to read:

120.541 Statement of estimated regulatory costs.—

(5) For purposes of subsections (2) and (3), adverse impacts and regulatory costs likely to occur within 5 years after implementation of the rule include adverse impacts and regulatory costs estimated to occur within 5 years after the effective date of the rule. However, if any provision of the rule is not fully implemented upon the effective date of the rule, the adverse impacts and regulatory costs associated with such provision must be

adjusted to include any additional adverse impacts and regulatory costs estimated to occur within 5 years after implementation of such provision.