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 2 A bill to be entitled
 3 An act relating to administrative procedure; amending
 4 s. 120.54, F.S.; clarifying language; revising notice
 5 requirements; expanding scope of workshops and
 6 hearings; requiring electronic publication of
 7 statements of estimate regulatory cost; permitting
 8 electronic delivery of notices; authorizing electronic
 9 publication of certain rulemaking materials in lieu of
 10 delivery to the administrative procedures committee;
 11 creating presumption of adverse impact on small
 12 business in specified circumstances; requiring notice
 13 of separate proceeding; tolling rulemaking deadlines
 14 during separate proceeding; amending s. 120.541, F.S.;
 15 clarifying language; authorizing submission of lower
 16 cost alternative after notice of change in certain
 17 circumstances; authorizing modification of rule after
 18 submission of lower cost alternative; incorporating
 19 statutory provision establishing presumption of
 20 adverse impacting on small business; requiring
 21 revision of statement of estimated regulatory costs
 22 when rule is modified in certain cases; requiring
 23 summary of revised statement be included with notice
 24 of change in proposed rule; requiring revised
 25 statement of estimated regulatory costs to be

26 published in same manner as original; adding guidance
 27 for estimating regulatory costs; clarifying that
 28 regulatory costs are to be estimated for five year
 29 period after full implementation of rule; specifying
 30 cost items to consider in estimating economic impacts
 31 and impacts on small businesses; authorizing use of
 32 particular methods to estimate information necessary
 33 to prepare statement; specifying items to consider in
 34 estimating compliance costs; making conforming
 35 changes; providing an effective date.
 36

37 Be It Enacted by the Legislature of the State of Florida:
 38

39 Section 1. Subsections (2) and (3) of section 120.54,
 40 Florida Statutes, are amended to read:

41 120.54 Rulemaking.—

42 (2) RULE DEVELOPMENT; WORKSHOPS; NEGOTIATED RULEMAKING.—

43 (a) Except when the intended action is the repeal of a
 44 rule, agencies shall provide notice of the development of
 45 proposed rules by publication of a notice of rule development in
 46 the Florida Administrative Register before providing notice of a
 47 proposed rule as required by paragraph (3) (a). The notice of
 48 rule development shall indicate the subject area to be addressed
 49 by rule development, provide a short, plain explanation of the
 50 purpose and effect of the proposed rule, cite the ~~specific legal~~

51 ~~authority for the proposed rule~~ grant of rulemaking authority
 52 pursuant to which the rule is proposed and the section or
 53 subsection of the Florida Statutes or the Laws of Florida being
 54 implemented or interpreted by the proposed rule, and include the
 55 preliminary text of the proposed rules, if available, or a
 56 statement of how a person may submit comments on the proposal,
 57 provide the agency with information regarding the potential
 58 regulatory costs, or promptly obtain, without cost, or access
 59 online, a copy of any preliminary draft, ~~if~~when available.

60 (b) All rules should be drafted in readable language. The
 61 language is readable if:

- 62 1. It avoids the use of obscure words and unnecessarily
 63 long or complicated constructions; and
- 64 2. It avoids the use of unnecessary technical or
 65 specialized language that is understood only by members of
 66 particular trades or professions.

67 (c) An agency may hold public workshops for purposes of
 68 rule development. An agency must hold public workshops,
 69 including workshops in various regions of the state or the
 70 agency's service area, for purposes of rule development and to
 71 gather information for the preparation of any statement of
 72 estimated regulatory cost if a statement of estimated regulatory
 73 cost must be prepared, or if requested in writing by any
 74 affected person, unless the agency head explains in writing why
 75 a workshop is unnecessary. The explanation is not final agency

76 action subject to review pursuant to ss. 120.569 and 120.57. ~~The~~
 77 ~~failure to provide the explanation when required may be a~~
 78 ~~material error in procedure pursuant to s. 120.56(1)(c).~~ When a
 79 workshop or public hearing is held, the agency must ensure that
 80 the persons responsible for preparing the proposed rule and the
 81 statement of estimated regulatory costs are available to receive
 82 public input, to explain the agency's proposal, and to respond
 83 to questions or comments regarding the rule being developed and
 84 the statement of estimated regulatory costs. The workshop may be
 85 facilitated or mediated by a neutral third person, or the agency
 86 may employ other types of dispute resolution alternatives for
 87 the workshop that are appropriate for rule development including
 88 the preparation of any statement of estimated regulatory costs.
 89 Notice of a rule development workshop shall be by publication in
 90 the Florida Administrative Register not less than 14 days prior
 91 to the date on which the workshop is scheduled to be held and
 92 shall indicate the subject area which will be addressed; the
 93 agency contact person; and the place, date, and time of the
 94 workshop.

95 (d)1. An agency may use negotiated rulemaking in
 96 developing and adopting rules. The agency should consider the
 97 use of negotiated rulemaking when complex rules are being
 98 drafted or strong opposition to the rules is anticipated. The
 99 agency should consider, but is not limited to considering,
 100 whether a balanced committee of interested persons who will

101 negotiate in good faith can be assembled, whether the agency is
102 willing to support the work of the negotiating committee, and
103 whether the agency can use the group consensus as the basis for
104 its proposed rule. Negotiated rulemaking uses a committee of
105 designated representatives to draft a mutually acceptable
106 proposed rule and to develop information necessary to prepare a
107 statement of estimated regulatory cost when applicable.

108 2. An agency that chooses to use the negotiated rulemaking
109 process described in this paragraph shall publish in the Florida
110 Administrative Register a notice of negotiated rulemaking that
111 includes a listing of the representative groups that will be
112 invited to participate in the negotiated rulemaking process. Any
113 person who believes that his or her interest is not adequately
114 represented may apply to participate within 30 days after
115 publication of the notice. All meetings of the negotiating
116 committee shall be noticed and open to the public pursuant to
117 the provisions of this chapter. The negotiating committee shall
118 be chaired by a neutral facilitator or mediator.

119 3. The agency's decision to use negotiated rulemaking, its
120 selection of the representative groups, and approval or denial
121 of an application to participate in the negotiated rulemaking
122 process are not agency action. Nothing in this subparagraph is
123 intended to affect the rights of a ~~an~~ substantially affected
124 person to challenge a proposed rule developed under this
125 paragraph in accordance with s. 120.56(2).

126 (3) ADOPTION PROCEDURES.—
 127 (a) Notices.—
 128 1. Prior to the adoption, amendment, or repeal of any rule
 129 other than an emergency rule, an agency, upon approval of the
 130 agency head, shall give notice of its intended action, setting
 131 forth a short, plain explanation of the purpose and effect of
 132 the proposed action; the full text of the proposed rule or
 133 amendment and a summary thereof; a reference to the grant of
 134 rulemaking authority pursuant to which the rule is adopted; and
 135 a reference to the section or subsection of the Florida Statutes
 136 or the Laws of Florida being implemented or interpreted. The
 137 notice must include a statement whether the agency held any
 138 public workshop for the purpose of development of the proposed
 139 rule, and if not, whether a workshop was requested in writing
 140 and provide a copy of the written explanation of the agency head
 141 why a workshop was unnecessary. The notice must include a
 142 summary of the agency's statement of the estimated regulatory
 143 costs including an electronic hyperlink to a copy of the
 144 statement of estimated regulatory costs on the agency's website,
 145 if ~~one~~ a statement has been prepared, based on the factors set
 146 forth in s. 120.541(2); a statement that any person who wishes
 147 to provide the agency with information regarding the statement
 148 of estimated regulatory costs, or to provide a proposal for a
 149 lower cost regulatory alternative as provided by s. 120.541(1),
 150 must do so in writing within 21 days after publication of the

151 notice; and a statement as to whether, based on the statement of
152 the estimated regulatory costs or other information expressly
153 relied upon and described by the agency if no statement of
154 regulatory costs is required, the proposed rule is expected to
155 require legislative ratification pursuant to s. 120.541(3). The
156 notice must state the procedure for requesting a public hearing
157 on the proposed rule. Except when the intended action is the
158 repeal of a rule, the notice must include a reference both to
159 the date on which and to the place where the notice of rule
160 development that is required by subsection (2) appeared.

161 2. The notice shall be published in the Florida
162 Administrative Register not less than 28 days prior to the
163 intended action. The proposed rule shall be available for
164 inspection and copying by the public at the time of the
165 publication of notice.

166 3. The notice shall be mailed to all persons named in the
167 proposed rule and mailed or delivered electronically to all
168 persons who, at least 14 days prior to such mailing, have made
169 requests of the agency for advance notice of its proceedings.
170 The agency shall also give such notice as is prescribed by rule
171 to those particular classes of persons to whom the intended
172 action is directed.

173 4. The adopting agency shall file with the committee, at
174 least 21 days prior to the proposed adoption date, a copy of
175 each rule it proposes to adopt; a copy of any material

176 incorporated by reference in the rule; a detailed written
 177 statement of the facts and circumstances justifying the proposed
 178 rule; a copy of any statement of estimated regulatory costs that
 179 has been prepared pursuant to s. 120.541; a statement of the
 180 extent to which the proposed rule relates to federal standards
 181 or rules on the same subject; and the notice required by
 182 subparagraph 1. In lieu of copies of materials, the agency may
 183 provide the committee with an electronic hyperlink to a webpage
 184 on the agency's website where copies of those materials are
 185 accessible.

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

187 1. Statement of estimated regulatory costs.—Before the
 188 adoption, amendment, or repeal of any rule other than an
 189 emergency rule, an agency is encouraged to prepare a statement
 190 of estimated regulatory costs of the proposed rule, as provided
 191 by s. 120.541. However, an agency must prepare a statement of
 192 estimated regulatory costs of the proposed rule, as provided by
 193 s. 120.541, if:

194 a. The proposed rule will have an adverse impact on small
 195 business; or

196 b. The proposed rule is likely to directly or indirectly
 197 increase regulatory costs in excess of \$200,000 in the aggregate
 198 in this state within 1 year after the implementation of the
 199 rule.

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

201 a. For purposes of this subsection and s. 120.541(2), an
 202 adverse impact on small business shall be presumed if, for any
 203 small business:

204 (I) An owner, officer, operator or manager must complete
 205 any education, training or testing to comply, or is likely to
 206 either expend 10 hours or purchase professional advice to
 207 understand and comply with the rule in the first year,

208 (II) Taxes or fees assessed on transactions are likely to
 209 increase by five hundred dollars or more in aggregate in one
 210 year,

211 (III) Prices charged for goods and services are restricted
 212 or are likely to increase because of the rule,

213 (IV) Specially trained, licensed, or tested employees will
 214 be required,

215 (V) Operating costs are expected to increase by one
 216 thousand dollars annually, or

217 (VI) Capital expenditures in excess of one thousand dollars
 218 are necessary to comply with the rule.

219 b. Each agency, before the adoption, amendment, or repeal
 220 of a rule, shall consider the impact of the rule on small
 221 businesses as defined by s. 288.703 and the impact of the rule
 222 on small counties or small cities as defined by s. 120.52.
 223 Whenever practicable, an agency shall tier its rules to reduce
 224 disproportionate impacts on small businesses, small counties, or
 225 small cities to avoid regulating small businesses, small

226 counties, or small cities that do not contribute significantly
 227 to the problem the rule is designed to address. An agency may
 228 define "small business" to include businesses employing more
 229 than 200 persons, may define "small county" to include those
 230 with populations of more than 75,000, and may define "small
 231 city" to include those with populations of more than 10,000, if
 232 it finds that such a definition is necessary to adapt a rule to
 233 the needs and problems of small businesses, small counties, or
 234 small cities. The agency shall consider each of the following
 235 methods for reducing the impact of the proposed rule on small
 236 businesses, small counties, and small cities, or any combination
 237 of these entities:

238 (I) Establishing less stringent compliance or reporting
 239 requirements in the rule.

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

242 (III) Consolidating or simplifying the rule's compliance
 243 or reporting requirements.

244 (IV) Establishing performance standards or best management
 245 practices to replace design or operational standards in the
 246 rule.

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

249 bc. (I) If the agency determines that the proposed action
 250 will affect small businesses as defined by the agency as

251 provided in sub-subparagraph ba., the agency shall send written
 252 notice of the rule to the rules ombudsman in the Executive
 253 Office of the Governor at least 28 days before the intended
 254 action.

255 (II) Each agency shall adopt those regulatory alternatives
 256 offered by the rules ombudsman in the Executive Office of the
 257 Governor and provided to the agency no later than 21 days after
 258 the rules ombudsman's receipt of the written notice of the rule
 259 which it finds are feasible and consistent with the stated
 260 objectives of the proposed rule and which would reduce the
 261 impact on small businesses. When regulatory alternatives are
 262 offered by the rules ombudsman in the Executive Office of the
 263 Governor, the 90-day period for filing the rule in subparagraph
 264 (e)2. is extended for a period of 21 days.

265 (III) If an agency does not adopt all alternatives offered
 266 pursuant to this sub-subparagraph, it shall, before rule
 267 adoption or amendment and pursuant to subparagraph (d)1., file a
 268 detailed written statement with the committee explaining the
 269 reasons for failure to adopt such alternatives. Within 3 working
 270 days after the filing of such notice, the agency shall send a
 271 copy of such notice to the rules ombudsman in the Executive
 272 Office of the Governor.

273 (c) Hearings.—

274 1. If the intended action concerns any rule other than one
 275 relating exclusively to procedure or practice, the agency shall,

276 on the request of any affected person received within 21 days
277 after the date of publication of the notice of intended agency
278 action, give affected persons an opportunity to present evidence
279 and argument on all issues under consideration. The agency may
280 schedule a public hearing on the proposed rule and, if requested
281 by any affected person, shall schedule a public hearing on the
282 proposed rule. When a public hearing is held, the agency must
283 ensure that the persons responsible for preparing the proposed
284 rule and the statement of estimated regulatory costs are ~~staff~~
285 ~~are~~ available to explain the agency's proposal and to respond to
286 questions or comments regarding the proposed rule, the statement
287 of estimated regulatory costs, and the agency's decision whether
288 to adopt offered lower cost regulatory alternatives. If the
289 agency head is a board or other collegial body created under s.
290 20.165(4) or s. 20.43(3)(g), and one or more requested public
291 hearings is scheduled, the board or other collegial body shall
292 conduct at least one of the public hearings itself and may not
293 delegate this responsibility without the consent of those
294 persons requesting the public hearing. Any material pertinent to
295 the issues under consideration submitted to the agency within 21
296 days after the date of publication of the notice or submitted to
297 the agency between the date of publication of the notice and the
298 end of the final public hearing shall be considered by the
299 agency and made a part of the record of the rulemaking
300 proceeding.

301 2. Rulemaking proceedings shall be governed solely by the
 302 provisions of this section unless a person timely asserts that
 303 the person's substantial interests will be affected in the
 304 proceeding and affirmatively demonstrates to the agency that the
 305 proceeding does not provide adequate opportunity to protect
 306 those interests. If the agency determines that the rulemaking
 307 proceeding is not adequate to protect the person's interests, it
 308 shall suspend the rulemaking proceeding and convene a separate
 309 proceeding under ~~the provisions of~~ ss. 120.569 and 120.57. The
 310 agency shall publish notice of convening the separate proceeding
 311 in the Florida Administrative Register. Similarly situated
 312 persons may be requested to join and participate in the separate
 313 proceeding. Upon conclusion of the separate proceeding, the
 314 rulemaking proceeding shall be resumed. All timelines in this
 315 section are tolled during any suspension of the rulemaking
 316 proceeding under this subparagraph, beginning on the date of
 317 publishing the notice of convening the separate proceeding and
 318 resuming on the date following the conclusion of the separate
 319 proceeding.

320 (d) Modification or withdrawal of proposed rules.—

321 1. After the final public hearing on the proposed rule, or
 322 after the time for requesting a hearing has expired, if the
 323 proposed rule has not been changed from the proposed rule as
 324 previously filed with the committee, or contains only technical
 325 changes that do not affect the substance of the rule, the

326 adopting agency shall file a notice to that effect with the
327 committee at least 7 days prior to filing the proposed rule for
328 adoption. Any change, other than a technical change ~~that does~~
329 ~~not affect the substance of the rule~~, must be supported by the
330 record of public hearings held on the proposed rule, must be in
331 response to written material submitted to the agency within 21
332 days after the date of publication of the notice of intended
333 agency action or submitted to the agency between the date of
334 publication of the notice and the end of the final public
335 hearing, or must be in response to a proposed objection by the
336 committee. In addition, when any change is made in a proposed
337 rule, other than a technical change, the adopting agency shall
338 provide a copy of a notice of change by certified mail or actual
339 delivery to any person who requests it in writing no later than
340 21 days after the notice required in paragraph (a). The agency
341 shall file the notice of change with the committee, along with
342 the reasons for the change, and provide the notice of change to
343 persons requesting it, at least 21 days prior to filing the
344 proposed rule for adoption. The notice of change shall be
345 published in the Florida Administrative Register at least 21
346 days prior to filing the rule for adoption. The notice of change
347 must include either a summary of any statement of estimated
348 regulatory costs prepared as a consequence of the change, or a
349 summary of any revision of the statement of estimated regulatory
350 costs required by s. 120.541(1)(c), or a statement that the

351 proposed rule as changed does not require preparation of a
 352 statement of estimated regulatory costs under ss. 120.54(3)(b)1.
 353 and 120.541(1)(b). This subparagraph does not apply to emergency
 354 rules adopted pursuant to subsection (4).

355 2. After the notice required by paragraph (a) and prior to
 356 adoption, the agency may withdraw the proposed rule in whole or
 357 in part.

358 3. After adoption and before the rule becomes effective, a
 359 rule may be modified or withdrawn only in the following
 360 circumstances:

- 361 a. When the committee objects to the rule;
- 362 b. When a final order, which is not subject to further
 363 appeal, is entered in a rule challenge brought pursuant to s.
 364 120.56 after the date of adoption but before the rule becomes
 365 effective pursuant to subparagraph (e)6.;
- 366 c. If the rule requires ratification, when more than 90
 367 days have passed since the rule was filed for adoption without
 368 the Legislature ratifying the rule, in which case the rule may
 369 be withdrawn but may not be modified; or
- 370 d. When the committee notifies the agency that an
 371 objection to the rule is being considered, in which case the
 372 rule may be modified to extend the effective date by not more
 373 than 60 days.

374 4. The agency shall give notice of its decision to
 375 withdraw or modify a rule in the first available issue of the

376 publication in which the original notice of rulemaking was
 377 published, shall notify those persons described in subparagraph
 378 (a)3. in accordance with the requirements of that subparagraph,
 379 and shall notify the Department of State if the rule is required
 380 to be filed with the Department of State.

381 5. After a rule has become effective, it may be repealed
 382 or amended only through the rulemaking procedures specified in
 383 this chapter.

384 (e) Filing for final adoption; effective date.—

385 1. If the adopting agency is required to publish its rules
 386 in the Florida Administrative Code, the agency, upon approval of
 387 the agency head, shall file with the Department of State three
 388 certified copies of the rule it proposes to adopt; one copy of
 389 any material incorporated by reference in the rule, certified by
 390 the agency; a summary of the rule; a summary of any hearings
 391 held on the rule; and a detailed written statement of the facts
 392 and circumstances justifying the rule. Agencies not required to
 393 publish their rules in the Florida Administrative Code shall
 394 file one certified copy of the proposed rule, and the other
 395 material required by this subparagraph, in the office of the
 396 agency head, and such rules shall be open to the public.

397 2. A rule may not be filed for adoption less than 28 days
 398 or more than 90 days after the notice required by paragraph (a),
 399 until 21 days after the notice of change required by paragraph
 400 (d), until 14 days after the final public hearing, until 21 days

401 after a statement of estimated regulatory costs required under
402 s. 120.541 has been provided to all persons who submitted a
403 lower cost regulatory alternative and made available to the
404 public at a readily accessible page on the agency's website, or
405 until the administrative law judge has rendered a decision under
406 s. 120.56(2), whichever applies. When a required notice of
407 change is published prior to the expiration of the time to file
408 the rule for adoption, the period during which a rule must be
409 filed for adoption is extended to 45 days after the date of
410 publication. If notice of a public hearing is published prior to
411 the expiration of the time to file the rule for adoption, the
412 period during which a rule must be filed for adoption is
413 extended to 45 days after adjournment of the final hearing on
414 the rule, 21 days after receipt of all material authorized to be
415 submitted at the hearing, or 21 days after receipt of the
416 transcript, if one is made, whichever is latest. The term
417 "public hearing" includes any public meeting held by any agency
418 at which the rule is considered. If a petition for an
419 administrative determination under s. 120.56(2) is filed, the
420 period during which a rule must be filed for adoption is
421 extended to 60 days after the administrative law judge files the
422 final order with the clerk or until 60 days after subsequent
423 judicial review is complete.

424 3. At the time a rule is filed, the agency shall certify
425 that the time limitations prescribed by this paragraph have been

426 | complied with, that all statutory rulemaking requirements have
 427 | been met, and that there is no administrative determination
 428 | pending on the rule.

429 | 4. At the time a rule is filed, the committee shall
 430 | certify whether the agency has responded in writing to all
 431 | material and timely written comments or written inquiries made
 432 | on behalf of the committee. The Department of State ~~department~~
 433 | shall reject any rule that is not filed within the prescribed
 434 | time limits; that does not comply with all statutory rulemaking
 435 | requirements and rules of the Department of State ~~department~~;
 436 | upon which an agency has not responded in writing to all
 437 | material and timely written inquiries or written comments; upon
 438 | which an administrative determination is pending; or which does
 439 | not include a statement of estimated regulatory costs, if
 440 | required.

441 | 5. If a rule has not been adopted within the time limits
 442 | imposed by this paragraph or has not been adopted in compliance
 443 | with all statutory rulemaking requirements, the agency proposing
 444 | the rule shall withdraw the proposed rule and give notice of its
 445 | action in the next available issue of the Florida Administrative
 446 | Register.

447 | 6. The proposed rule shall be adopted on being filed with
 448 | the Department of State and become effective 20 days after being
 449 | filed, on a later date specified in the notice required by
 450 | subparagraph (a)1., on a date required by statute, or upon

451 ratification by the Legislature pursuant to s. 120.541(3). Rules
 452 not required to be filed with the Department of State shall
 453 become effective when adopted by the agency head, on a later
 454 date specified by rule or statute, or upon ratification by the
 455 Legislature pursuant to s. 120.541(3). If the committee notifies
 456 an agency that an objection to a rule is being considered, the
 457 agency may postpone the adoption of the rule to accommodate
 458 review of the rule by the committee. When an agency postpones
 459 adoption of a rule to accommodate review by the committee, the
 460 90-day period for filing the rule is tolled until the committee
 461 notifies the agency that it has completed its review of the
 462 rule.

463
 464 For the purposes of this paragraph, the term "administrative
 465 determination" does not include subsequent judicial review.

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

468 120.541 Statement of estimated regulatory costs.—

469 (1) (a) Within 21 days after publication of the notice of
 470 proposed rule required under s. 120.54(3) (a), or of a notice of
 471 change under s. 120.54(3) (d)1., a substantially affected person
 472 may submit to an agency a good faith written proposal for a
 473 lower cost regulatory alternative to a proposed rule which
 474 substantially accomplishes the objectives of the law being
 475 implemented. The proposal may include the alternative of not

476 adopting any rule if the proposal explains how the lower costs
477 and objectives of the law will be achieved by not adopting any
478 rule. If submitted after a notice of change, a proposal may only
479 be made in good faith if the person reasonably believes and
480 notes their reasons for believing that the proposed rule as
481 changed by the notice of change increases the regulatory costs
482 or creates an adverse impact on small business that was not
483 created by the previous proposal. If such a proposal is
484 submitted, the 90-day period for filing the rule is extended 21
485 days. Upon the submission of the lower cost regulatory
486 alternative, the agency shall prepare a statement of estimated
487 regulatory costs as provided in subsection (2), or shall revise
488 its prior statement of estimated regulatory costs, and either
489 adopt the alternative, modify the proposed rule to substantially
490 reduce the regulatory costs, or provide a statement of the
491 reasons for rejecting the alternative in favor of the proposed
492 rule.

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

500 (c) The agency shall revise a statement of estimated

501 regulatory costs if any change to the rule made under s.
 502 120.54(3) (d) increases the regulatory costs of the rule or if
 503 the rule is modified in response to the submission of a lower
 504 cost regulatory alternative. A summary of the revised statement
 505 must be included with any subsequent notice published under s.
 506 120.54(3).

507 (d) At least 21 days before filing the proposed rule for
 508 adoption, an agency that is required to revise a statement of
 509 estimated regulatory costs shall provide the statement to the
 510 person who submitted the lower cost regulatory alternative, to
 511 the rules ombudsman, and to the committee and shall be published
 512 and made available in the same manner as the original statement
 513 of estimated regulatory costs~~provide notice on the agency's~~
 514 ~~website that it is available to the public.~~

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

521 (f) An agency's failure to prepare and publish a statement
 522 of estimated regulatory costs or to respond to a written lower
 523 cost regulatory alternative may not be raised in a proceeding
 524 challenging the validity of a rule pursuant to s. 120.52(8) (a)
 525 unless:

526 1. Raised in a petition filed no later than 1 year after
527 the effective date of the rule; and

528 2. Raised by a person whose substantial interests are
529 affected by the rule's regulatory costs.

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

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

534 2. The challenge is to the agency's rejection of a lower
535 cost regulatory alternative offered under paragraph (a) or s.
536 120.54(3)(b)2.~~bc~~.; and

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

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

541 (a) An economic analysis showing whether the rule directly
542 or indirectly:

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

547 2. Is likely to have an adverse impact on business
548 competitiveness, including the ability of persons doing business
549 in the state to compete with persons doing business in other
550 states or domestic markets, productivity, or innovation in

551 excess of \$1 million in the aggregate within 5 years after the
 552 implementation of the rule; or

553 3. Is likely to increase regulatory costs, including ~~any~~
 554 ~~transactional~~ all costs and impacts estimated in the statement,
 555 in excess of \$1 million in the aggregate within 5 years after
 556 the implementation of the rule.

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

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

565 (d) A good faith estimate of the ~~transactional~~ compliance
 566 costs likely to be incurred by individuals and entities,
 567 including local government entities, required to comply with the
 568 requirements of the rule. ~~As used in this section,~~
 569 ~~"transactional costs" are direct costs that are readily~~
 570 ~~ascertainable based upon standard business practices, and~~
 571 ~~include filing fees, the cost of obtaining a license, the cost~~
 572 ~~of equipment required to be installed or used or procedures~~
 573 ~~required to be employed in complying with the rule, additional~~
 574 ~~operating costs incurred, the cost of monitoring and reporting,~~
 575 ~~and any other costs necessary to comply with the rule.~~

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

582 (f) Any additional information that the agency determines
 583 may be useful.

584 (g) ~~In the statement or revised statement, whichever~~
 585 ~~applies, a~~ description of any regulatory alternatives submitted
 586 under paragraph (1)(a) and a statement adopting the alternative
 587 or a statement of the reasons for rejecting the alternative in
 588 favor of the proposed rule.

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

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

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

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

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

601 633.202.

602 (5) (a) For purposes of subsections (2) and (3), impacts

603 and costs incurred within 5 years after the implementation of

604 the rule shall include the applicable costs and impacts within

605 the first 5 years after the effective date of the rule adjusted

606 to account for any additional costs and impacts within five

607 years after the full implementation and enforcement of all

608 provisions of the rule if any provisions of the rule are not

609 fully implemented and enforceable upon the effective date.

610 (b) In evaluating the impacts described in paragraphs

611 (2) (a) and (2) (e), an agency shall include good faith estimates

612 of market impacts likely to result from compliance with the

613 rule, including but not limited to:

614 1. Increased customer charges for goods and services,

615 2. Decreased market value of goods and services produced,

616 provided, or sold,

617 3. Increased costs resulting from the purchase of

618 substitute or alternative products or services,

619 4. The reasonable value of time to be expended by owners,

620 officers, operators and managers to understand and comply

621 including but not limited to time expended to complete required

622 education, training or testing,

623 5. Capital costs,

624 6. Any other impacts suggested by the Rules Ombudsman, the

625 agency head's appointing authority, or interested persons.

626 (c) In estimating the information required in paragraphs
 627 (2) (b)-(e), the agency may utilize reasonably applicable surveys
 628 of individuals, businesses, business organizations and
 629 representatives, cities, and counties to collect data helpful to
 630 estimate the costs and impacts. The agency shall also solicit
 631 helpful information in each notice related to the proposed rule.
 632 The rules ombudsman and the committee may recommend survey
 633 instruments and methods to assist agencies in administering this
 634 section. Such recommendations and agency decisions regarding
 635 surveys and methods do not constitute rules or agency actions
 636 under this chapter.

637 (d) In estimating compliance costs under paragraph (2) (d),
 638 the agency shall consider, among other matters, all direct and
 639 indirect costs necessary to comply with the rule that are
 640 readily ascertainable based upon standard business practices,
 641 including but not limited to costs related to:

- 642 1. Filing fees,
- 643 2. Obtaining a license,
- 644 3. Necessary equipment,
- 645 4. Installation, utilities and maintenance of necessary
 646 equipment,
- 647 5. Necessary operations and procedures,
- 648 6. Accounting, financial, information and management
 649 systems, and other administrative processes,
- 650 7. Other processes,

- 651 8. Labor based on relevant rates of wages, salaries and
- 652 benefits,
- 653 9. Materials and supplies,
- 654 10. Capital expenditures including financing costs,
- 655 11. Professional and technical services including
- 656 contracted services necessary to implement and maintain
- 657 compliance,
- 658 12. Monitoring and reporting,
- 659 13. Qualifying and recurring education, training and
- 660 testing,
- 661 14. Travel,
- 662 15. Insurance and surety requirements,
- 663 16. A fair and reasonable allocation of administrative and
- 664 other overhead,
- 665 17. Reduced sales or other revenues,
- 666 18. Other items suggested by the rules ombudsman, the
- 667 committee, or any interested person, business organization or
- 668 business representative.
- 669 Section 3. This act shall take effect July 1, 2014.