

# CHAPTER 2012-27

## Committee Substitute for House Bill No. 7043

An act relating to obsolete or outdated programs and requirements; amending s. 110.123, F.S.; repealing provisions relating to the creation and duties of the Florida State Employee Wellness Council; amending ss. 120.54 and 120.745, F.S.; revising provisions relating to rule adoption by state agencies; requiring the rules ombudsman in the Executive Office of the Governor to assume certain duties formerly performed by the Small Business Regulatory Advisory Council; deleting provisions that require the Office of Program Policy Analysis and Government Accountability, upon request, to conduct a study and issue a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives regarding the impact on small business of certain proposed agency rules that have been rejected; repealing s. 258.155, F.S., relating to the Judah P. Benjamin Memorial at Gamble Plantation Historical Site Advisory Council; repealing s. 288.7001, F.S., relating to the Small Business Regulatory Advisory Council; repealing s. 288.7002, F.S., relating to the small business advocate; amending s. 316.2065, F.S.; removing a requirement to keep one hand on the handlebars while operating a bicycle; amending s. 339.64, F.S.; repealing provisions relating to the creation and duties of the Statewide Intermodal Transportation Advisory Council; repealing s. 381.90, F.S., relating to the creation, appointment, and duties of the Health Information Systems Council; repealing s. 624.916, F.S., relating to the developmental disabilities compact; repealing s. 1004.63, F.S., relating to the Florida Institute for Nuclear Detection and Security; amending ss. 322.27, 627.6686, and 641.31098, F.S.; correcting cross-references and conforming provisions to changes made by the act; providing an effective date.

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

Section 2. 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.—Before the adoption, amendment, or repeal of any rule other than an emergency rule, an agency is encouraged to prepare a statement of estimated regulatory

costs of the proposed rule, as provided by s. 120.541. However, an agency must prepare a statement of estimated regulatory costs of the proposed rule, as provided by s. 120.541, if:

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

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

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

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

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

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

(III) Consolidating or simplifying the rule’s compliance or reporting requirements.

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

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

b.(I) If the agency determines that the proposed action will affect small businesses as defined by the agency as provided in sub-subparagraph a., the agency shall send written notice of the rule to the rules

ombudsman in the Executive Office of the Governor ~~Small Business Regulatory Advisory Council and the Department of Economic Opportunity~~ at least 28 days before the intended action.

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

(III) If an agency does not adopt all alternatives offered pursuant to this sub-subparagraph, it shall, before rule adoption or amendment and pursuant to subparagraph (d)1., file a detailed written statement with the committee explaining the reasons for failure to adopt such alternatives. Within 3 working days after the filing of such notice, the agency shall send a copy of such notice to the rules ombudsman in the Executive Office of the Governor ~~Small Business Regulatory Advisory Council~~. ~~The Small Business Regulatory Advisory Council may make a request of the President of the Senate and the Speaker of the House of Representatives that the presiding officers direct the Office of Program Policy Analysis and Government Accountability to determine whether the rejected alternatives reduce the impact on small business while meeting the stated objectives of the proposed rule. Within 60 days after the date of the directive from the presiding officers, the Office of Program Policy Analysis and Government Accountability shall report to the Administrative Procedures Committee its findings as to whether an alternative reduces the impact on small business while meeting the stated objectives of the proposed rule. The Office of Program Policy Analysis and Government Accountability shall consider the proposed rule, the economic impact statement, the written statement of the agency, the proposed alternatives, and any comment submitted during the comment period on the proposed rule. The Office of Program Policy Analysis and Government Accountability shall submit a report of its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The Administrative Procedures Committee shall report such findings to the agency, and the agency shall respond in writing to the Administrative Procedures Committee if the Office of Program Policy Analysis and Government Accountability found that the alternative reduced the impact on small business while meeting the stated objectives of the proposed rule. If the agency will not adopt the alternative, it must also provide a detailed written statement to the committee as to why it will not adopt the alternative.~~

Section 3. Paragraphs (a) and (c) of subsection (5) of section 120.745, Florida Statutes, are amended to read:

120.745 Legislative review of agency rules in effect on or before November 16, 2010.—

(5) COMPLIANCE ECONOMIC REVIEW OF RULES AND REQUIRED REPORT.—Each agency shall perform a compliance economic review and report for all rules, including separate reviews of subparts, listed under Group 1 “Group 1 rules” or Group 2 “Group 2 rules” pursuant to subparagraph (2)(g)3. Group 1 rules shall be reviewed and reported on in 2012, and Group 2 rules shall be reviewed and reported on in 2013.

(a) No later than May 1, each agency shall:

1. Complete a compliance economic review for each entire rule or subpart in the appropriate group.
2. File the written certification of the agency head with the committee verifying the completion of each compliance economic review required for the respective year. The certification shall be dated and published as an addendum to the report required in subsection (3). The duty to certify completion of the required compliance economic reviews is the responsibility solely of the agency head as defined in s. 120.52(3) and may not be delegated to any other person. If the defined agency head is a collegial body, the written certification must be prepared by the chair or equivalent presiding officer of that body.
3. Publish a copy of the compliance economic review, directions on how and when interested parties may submit lower cost regulatory alternatives to the agency, and the date the notice is published in the manner provided in subsection (7).
4. Publish notice of the publications required in subparagraphs 2. and 3. in the manner provided in subsection (7).
5. Submit each compliance economic review to the rules ombudsman in the Executive Office of the Governor ~~Small Business Regulatory Advisory Council~~ for its review.

(c) No later than August 1, the rules ombudsman in the Executive Office of the Governor ~~Small Business Regulatory Advisory Council~~ may submit lower cost regulatory alternatives to any rule to the agency that adopted the rule. No later than June 15, other interested parties may submit lower cost regulatory alternatives to any rule.