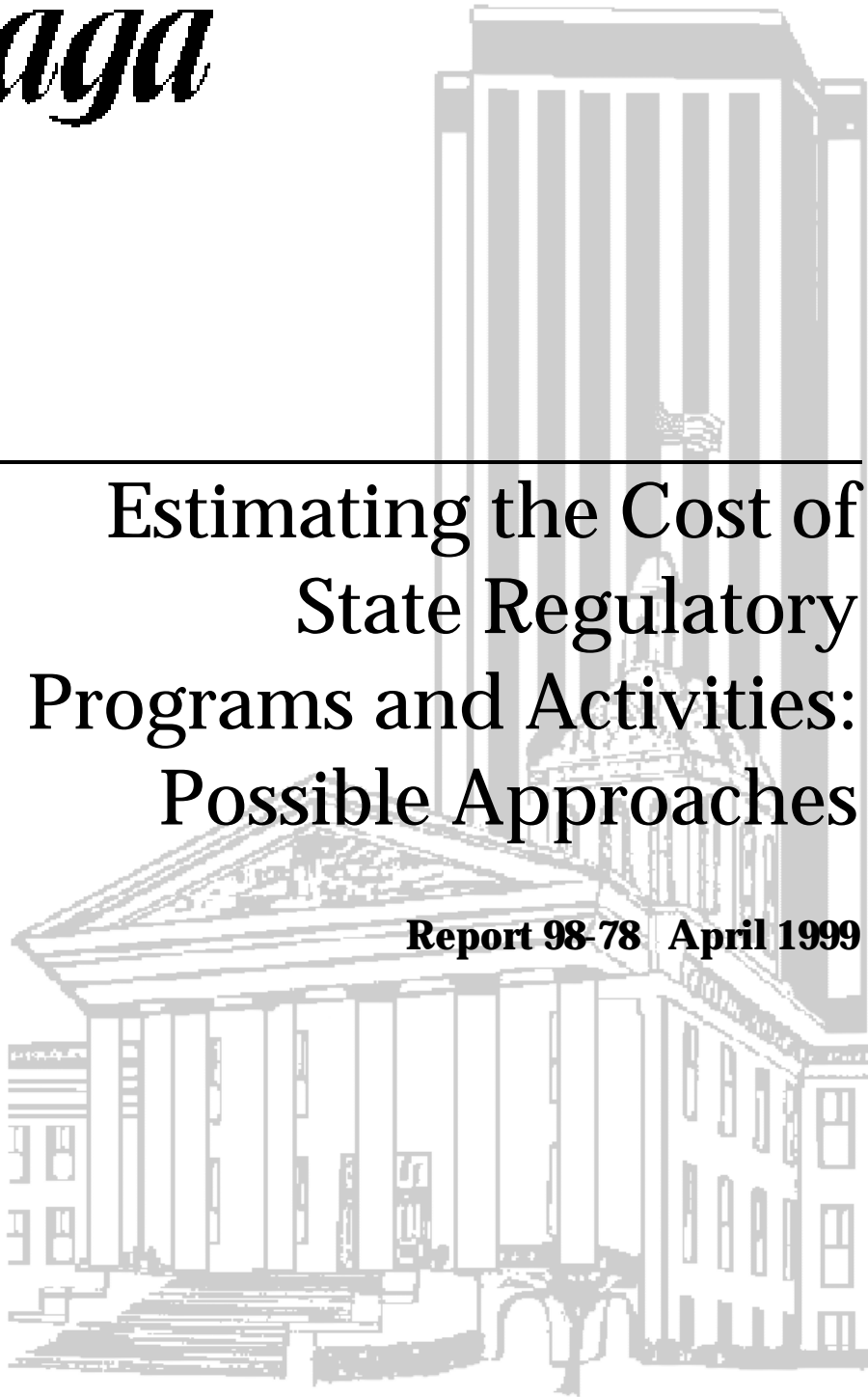


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Estimating the Cost of
State Regulatory
Programs and Activities:
Possible Approaches

Report 98-78 April 1999



*Office of Program Policy Analysis
and Government Accountability*

an office of the Florida Legislature

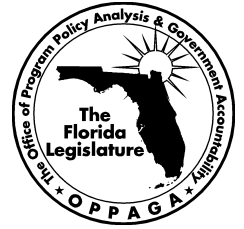
This review was made as a part of a series of justification reviews to be conducted by OPPAGA under the Government Performance and Accountability Act of 1994. This review was conducted by Nancy Dufoe and Steven Birnholtz under the supervision of Julie Ferris (850/487-4256). Copies of this report in print or alternate accessible format may be obtained by telephone (850/488-0021 or 800/531-2477), by FAX (850/487-3804), in person (Claude Pepper Building, Room 312, 111 W. Madison St.), or by mail (OPPAGA Report Production, P.O. Box 1735, Tallahassee, FL 32302).

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The Florida Legislature

OFFICE OF PROGRAM POLICY ANALYSIS AND GOVERNMENT ACCOUNTABILITY



John W. Turcotte, Director

April 1999

The President of the Senate,
the Speaker of the House of Representatives,
and the Joint Legislative Auditing Committee

Proviso language directed that OPPAGA determine possible approaches to estimate the cost of state regulatory programs and activities. The results of this study are presented to you in this report. This review was conducted by Cynthia Davis under the supervision of Julie Ferris.

Sincerely

John W. Turcotte
Director

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Estimating the Cost of State Regulatory Programs and Activities: Possible Approaches

Conclusions

As directed in proviso language, OPPAGA is proposing methodologies for estimating the cost of state regulation and establishing cost benefit considerations in rulemaking.

Conducting a study of the cost of state regulation is feasible but would likely require significant effort and cost. If the Legislature wishes to pursue such a study, it should direct the Governor's Office to contract with a private consultant with experience and expertise in conducting large-scale surveys and economic analyses.

Purpose and Introduction

Purpose

As required by proviso language in Chapter 98-422, Laws of Florida, OPPAGA has studied the issue of government regulatory costs. As required by law, our study

- proposes methodologies for and the time and resources needed to estimate state agencies' costs of administering regulatory programs and activities (administrative costs) and businesses' costs in complying with those programs and activities (compliance costs.) These costs are to be further categorized into the costs of regulations designed to protect individual and societal health and safety (social regulatory costs) and those designed to regulate the market place (economic regulatory costs). In each of these categories, the cost of paperwork is to be separately identified.
- proposes methodologies for establishing cost benefit considerations in rulemaking and estimates the resources and time required to implement the these methodologies; and
- provides a comprehensive bibliography of published regulatory cost studies.

Introduction

Government regulation is pervasive and has a significant impact on the economy. Businesses must often comply with numerous regulations promulgated by multiple governmental entities. For example, the ornamental plant production industry in Florida must comply with over 75 rules and regulations issued by eight state agencies.

In recognition of the regulatory burden placed on businesses and individuals, policy makers at the state, federal, and international levels have attempted to reform the rule-making process to limit the adverse economic consequences of regulation. Part of this effort involves making better estimates of the costs of regulation during the decision-making process.

Little data are available on the cost of state regulation. Even under performance-based program budgeting, state agencies generally do not track how much they spend to administer individual regulatory

Purpose and Introduction

programs; instead these costs are generally aggregated into larger organizational or programmatic units. Even less data are available on how much it costs the private sector to comply with these state mandates.

In recent years, the federal government and academic researchers have conducted studies that attempt to identify regulatory costs. The most useful of these studies have been done at the federal level and have relied upon data that have been produced under various federal regulatory reform efforts. For example, the Congressional Budget Office is required to estimate the costs of certain federal mandates, and certain federal regulatory agencies have estimated the costs and benefits of proposed regulations.

The recent studies of federal regulatory costs have produced widely differing conclusions. For example, in 1996 the U.S. Office of Management and Budget estimated federal regulatory costs to be \$279 billion, while in 1995 an academic study estimated these costs to be \$668 billion. The apparent reason for these differing conclusions is the use of different estimation methodologies as well as differences in the federal regulations and types of compliance costs the studies included.

These studies illustrate that defining what constitutes “government regulation” has a significant effect on regulatory cost estimates. Many state laws and rules restrict private sector activity and have cost impacts. Some of these mandates (such as water quality standards and minimum wage requirements) are clearly regulatory in nature and would likely be included in any study. However, it is less clear whether costs of other government mandates, such as traffic laws, fishing catch limits, and required schooling of children should be estimated as well.

Similarly, the costs of regulation include both direct costs (such as the required investment in pollution control equipment or the cost of filling out paperwork) and indirect costs such as lost productivity and reduced competition. Limiting a study to direct regulatory costs would simplify the research design, but would result in understating the true costs of regulation. These issues would need to be resolved before the study could be undertaken and would significantly affect research costs.

Estimating Regulatory Costs

Conducting a study of the cost of state regulation would be costly, time-consuming, and could be best achieved through a contract with a private consultant.

Conducting a study to estimate the state's costs to administer regulatory programs and businesses' costs to comply with state regulations is feasible. However, because only limited data are currently available on these costs, such a study would require extensive data collection from both state agencies and private businesses. We estimate that a study to identify state agency regulatory administrative expenditures would cost between \$300,000 to \$800,000, with the lower figure applicable if paperwork costs were not separately identified. The potential cost to study private business regulatory compliance expenditures would depend on the number of businesses included in the study. Gathering data from a large number of firms would produce a more precise estimate of regulatory compliance costs (although the estimate would still be relatively imprecise), but a broad-based survey effort would require an estimated \$2.6 to \$3.5 million to conduct.

Given the size and complexity of this study, it is unlikely that a state agency would have the staff and resources to undertake it and continue to perform its other duties. For this reason, **we recommend that, if the Legislature wishes to pursue the study, it should direct the Governor's Office to contract with a consulting company with sufficient experience, expertise, and resources to carry out a large, multi-phase, multi-year project do the study.** The study could be conducted in two phases: first, the survey of state agencies to identify administrative costs; and second, the survey of private businesses to estimate compliance costs. Since the survey of private sector costs would benefit from information developed from the state agency survey, the state agency survey should be completed first. We estimate that the Governor's Office would need to dedicate at least one staff person, at a projected annual cost of \$50,000, to direct and oversee the study for its projected two- to three-year duration.

Proposed Assumptions Regarding the Scope of the Study

As discussed above, the scope and cost for a study of state regulations depends greatly on how broadly the term “state regulation” is defined and the types of regulatory costs the study is to include. To reasonably control these factors, we made several assumptions. These include limiting the scope of the study to regulations affecting private businesses and limiting the type of costs it would include.

In designing this methodology, we assumed that the regulatory programs of greatest interest to the legislature would be those affecting private businesses. Exhibit 1 shows the types of regulations that would thus be excluded from the study. Including these activities would substantially increase the cost of the study.

Exhibit 1

Limiting the Study Scope to Regulations Affecting Private Business Activity Would Exclude Some Government Activities That Could Be Considered Regulatory

Four activities would be excluded from the study.

- **Tax Requirements** - the forms and information needed to comply with sales tax, corporate income tax, and intangible tax laws and other law primarily intended for the assessment and collection of taxes
 - **Laws Governing Individual Behavior** - such as criminal law enforcement, child abuse investigation, and drivers licensing
 - **Vendor Qualifications** - the forms and information vendors need to participate in government programs such as the lottery or Medicaid
 - **Laws Governing Public Entities** - such as regulations that primarily affect cities, counties, and school boards
-

We also assumed that, when a state program is mandated by federal regulations, the study would not attempt to separate the costs of federal and state regulations. In many areas, state agencies administer federally mandated programs that are largely but not completely governed by federal regulations. For example, the Department of Labor and Employment Security administers worker safety programs that are largely mandated by federal laws, although Florida has adopted some similar and supplemental regulations. Most private businesses would likely be unable to distinguish between the two types of regulations (state versus federal) administered by the department. Thus, the entire administrative and compliance cost of worker-safety laws would be estimated even though much of these costs are due to federal rather than state regulation. Attempting to separate out these costs would require extensive

consultations with surveyed businesses and would likely significantly increase study costs.

We further assumed that the study would estimate only those costs businesses incur as a direct result of state regulation. Although businesses can incur other costs such as opportunity costs due to government regulations, these costs can be very difficult to estimate reliably. We also assumed that costs businesses incur as a result of noncompliance with regulations (such as administrative fines and shutdowns) would not be covered by the study. Exhibit 2 lists the types of costs the study would include and exclude. Attempting to estimate such costs could greatly limit the reliability and creditability of the cost estimates.

Exhibit 2

The types of regulatory costs included in the study should be limited

Costs to be included

- Wages and salaries of workers carrying out regulatory responsibilities
- Capital expenditures (such as equipment, material, and facilities)
- Employee training expenditures
- Other expense directly attributable to regulation

Costs to be excluded

- Lost productivity
 - Decreased competitiveness
 - Program/service/construction delays due to noncompliance with regulations
 - Resource misallocation
 - Opportunity costs
-

Finally, since regulatory costs include initial as well as ongoing costs, we recognize that the study would have to cover a long enough time period to capture both costs. Some regulatory costs such as research and development, planning, and building can be incurred over a long period of time and the timeframe covered by the study should be long enough to include these costs in the estimate of regulatory costs. For this reason, most studies of the cost of regulation cover from 5 to 20 years. Limiting the study to a relatively short time period such as a fiscal year would probably understate true regulatory costs. We recommend that the study cover at least a five-year time period.

Phase 1 - Estimating the State's Costs to Administer Regulatory Programs

The first phase of a study of the costs of state regulation would be to identify all the regulatory programs that Florida agencies administer and estimate these agencies' related administrative costs. This could be done

in two steps: (1) identifying state regulating programs, and (2) estimating the costs incurred to administer these programs

Step 1 – Compile a listing of state regulatory programs

To identify state regulatory programs, the consultant would need to perform several tasks. These involve reviewing the Florida Statutes and Florida Administrative Code as well as other resources such as the State Program Structure and the Florida Government Accountability Report. From these sources the consultant should be able to compile a preliminary listing of regulatory programs by agency. The consultant should then submit the preliminary listings to the agencies for review, comment, and clarification. This step should produce a listing of programs that includes:

- the name of the regulatory program or activity;
- the objectives and/or benefits of the program or activity;
- a general description of major regulatory requirements (such as fees, inspections, and equipment requirements); and
- a description of the entities regulated by the program or activity (if possible, a listing of the names and addresses of the regulatory entities should also be included).

Once this listing is complete, the consultant should classify each regulatory program and activity as social or economic regulation. In general, regulatory programs primarily intended to protect the health or well being of individuals or society are classified as social programs, while those primarily intended to govern the marketplace are classified as economic regulatory programs.

Step 2 – Identify agency costs to administer each regulatory program

Once the consultant has developed a list of regulatory programs and activities administered by state agencies, the next step will be to work with agencies to identify their costs of administering these functions. The basic regulatory costs state agencies incur are those costs of developing and ensuring compliance with regulations. These basic costs include the salaries, training, and expenses of

- staff involved in the rule-making process;
- maintaining records about entities receiving permits, licenses, or certificates;
- conducting compliance evaluations and inspections and responding to complaints; and
- legal proceedings resulting from enforcement actions.

Although state agencies vary in their organization, record keeping, and accounting systems, this type of basic direct cost data should be reasonably available. This task will be simplified because many agencies organize themselves around programmatic responsibilities, and thus

operate separate bureaus or divisions that administer specific regulatory programs. Agencies and agencies should be able to provide expenditure data for these divisions or units.

The study should also consider regulatory costs that could be incurred by entities other than those administering regulatory programs, such as costs the Division of Administrative Hearings incurs when it hears challenges to regulatory decisions. Because the state's accounting system does not currently allocate most of these costs to direct service programs, this task could be difficult and time-consuming.

It will be problematic for the consultant to estimate state agency paperwork costs as required by the proviso study definition. Paperwork costs include expenses such as producing documentation, updating files, data entry, and creating logs. These costs will be more difficult for agencies to estimate because they are so imbedded in many aspects of regulatory programs. Agencies also do not traditionally break out these costs and do not have standard methods for doing so. To develop a good estimate of paperwork costs, the contractor would have to spend considerable time working with agencies to develop the methods and unique instruments for capturing these costs. The cost of completing phase 1 of the regulatory cost study would likely be substantially reduced if paperwork costs were not required to be separated from overall agency administrative costs.

In summary, to estimate the costs agencies incur in administering regulatory programs and activities, a contractor would have to perform the following types of tasks:

- conduct individual and group meetings with staff of all 28 state agencies to determine the most effective and efficient way to gather information about regulatory program costs;
- prepare detailed data collection instruments to obtain cost information;
- customize data collection instruments and strategies to individual agencies as needed;
- pretest data collection instruments;
- collect data;
- follow-up with agencies to clarify data collection results;
- enter and analyze data; and
- write the report.

Estimated cost of phase 1

We estimate that the first phase of the regulatory cost study, identifying the administrative costs of state regulatory programs, would require between 2,000 and 3,500 hours. At an average consultant billing cost of \$150 per hour, this portion of the study would cost between \$300,000 and \$500,000. Capturing information about paperwork costs would add

significant time and resources to this effort, which would increase the estimated total person hours to 3,500 and 5,400 hours and increase the estimated contractor costs to between \$500,000 and \$800,000.

Phase 2 - Estimating Regulatory Compliance Costs

Determining the costs businesses incur to comply with state regulatory programs and activities will be more complex and produce less accurate results than determining the state's cost of administering these programs and activities. Due to data limitations, these studies have typically been expensive and imprecise.

For example, the U.S. General Accounting Office (GAO) recently spent approximately \$300,000 to \$400,000 conducting a two-year study in an attempt to determine the costs businesses incur complying with government regulation. Although the study identified specific regulations businesses believed to be particularly burdensome, GAO was unable to determine their cost of complying with these and other government regulations for two primary reasons. First, businesses were unable to determine how much of their costs were due to regulation or to practices they would otherwise follow. For example, even without government regulations requiring medical degrees for doctors and nurses, most health care providers probably would require their medical staff to have these degrees. Second, even with substantial assistance from GAO, most businesses were unable to separate their compliance costs from other business costs. Due to this lack of information and the time and resources needed to respond to questions about compliance costs, most businesses contacted by GAO declined to participate in the study – only 15 of the 51 businesses initially contacted fully participated in the study.

The existing studies of the cost burden businesses bear as a result of federal regulations have used previous studies and industry-specific databases to estimate the percentage of resources businesses used to comply with federal regulations. However, such a study cannot be replicated at the state level because similar information about is not readily available at the state level.

Accordingly, a Florida study would need to collect original data on private sector compliance costs. The study would need to develop methodologies for five research steps:

- identifying the major industries sectors and classifications sectors that contribute to Florida's economy;
- determining the size and number of businesses within each of these industries or sectors;
- within each sector, selecting "typical" businesses to participate in the study;

- contacting and obtaining cost information from the selected businesses;
- analyzing the collected data to estimate total and per capita compliance cost.

Step 1 –Identify major business sectors

The first step the consultant will need to take is to identify the major industries and business sectors contributing to Florida's economy. One possible source for this data is the U.S. Census Bureau, which categorizes businesses using the North American Industry Classification System (NAICS). Under this system, businesses are grouped into 20 broad industry sectors (such as wholesale trade, construction, and information), which are then further subdivided into more than 1,000 classifications (such as cellular and other wireless communication businesses). The consultant should use these data to identify the types of businesses that should be contacted regarding Florida regulatory compliance costs. A complicating factor in using these census data is that the U.S. Census Bureau is still in the process of implementing NAICS, and data on the classification of Florida businesses may not yet be fully available.

Step 2 –Identify businesses in each industry sector

In this step, the consultant would identify the size and number of businesses within each of industry sector and classification. This step, called developing a sampling frame, is needed in order to develop a valid sample of businesses that will be contacted to collect regulatory cost information.

To carry out this step, the consultant should examine many data sources including U.S. census data, unemployment compensation records, Department of State corporation records, sales tax records, and state agency records of licensees, permit or certificate holders, or other regulated entities. In addition, the consultant may have to gather information from other sources, such as trade associations or companies that compile lists of businesses for marketing or research purposes.

The consultant would then need to check this information to determine its coverage, currency, and accuracy. Lack of complete, current, and accurate information about what businesses are affected by Florida regulation could limit the credibility of the study. Given the potential problems posed by variation in the formatting of this information, collecting and analyzing this information could be time consuming and expensive.

Step 3 –Selecting the study sample

Using the information collected in step 2, the consultant next would determine how to sample the businesses that would participate in the study. This step is key to the success of the overall study. Due to the differences between the types of businesses that operate in the Florida

and the state regulations that different types of businesses are subject to, the study must collect information from a broad cross-section of businesses in order to obtain credible information about regulatory compliance costs. Although obtaining statistically significant samples from each industry classification that has a significant presence in Florida would likely be prohibitively expensive, the consultant should develop a sampling technique that would be seen to be reasonably representative of the businesses within each broad industry sector.

Because other regulatory cost studies such as the GAO study found that many businesses decline to participate in these studies, the consultant should begin with a large initial sample. To help select the sample, the consultant should obtain input from relevant trade associations and other stakeholders. Since over 700 associations are registered lobbyists with the Florida legislature, identifying and contacting the relevant associations could be time consuming.

Step 4 –Obtaining cost information from selected businesses

After identifying the study sample, the consultant should develop data collection instruments and contact the selected businesses to obtain regulatory compliance cost estimates. Due to the differences in the types of businesses contacted and the regulations with which they must comply, the consultant may need to customize the data collection instruments for different industry classifications. The data collection instruments will need to include specific instructions and definitions the surveyed businesses are to follow in estimating their regulatory compliance costs.

To maximize the study's usefulness, the contractor could collect other information about the businesses' perceptions of government regulations. For example, the consultant could ask businesses to identify which regulations they find most time-consuming to comply with or which ones they believe provide the least benefits. Appendix C contains a list of questions the consultant may consider asking.

In order to obtain an acceptable survey response rate, it is likely that the consultant will need to conduct extensive follow-up work to re-survey businesses that did not respond to the initial questionnaire. The consultant may need to provide technical assistance to help businesses complete the survey form. In addition, the consultant could conduct site visits to a subset of the surveyed forms to verify the information being reported.

Step 5 –Data analysis

In this step, the consultant would need to determine how to use the cost information it obtains to estimate overall cost businesses incur to comply with state regulatory programs and activities. The methods the consultant would use in this step would depend on the sampling scheme, the consistency of the information it received from the businesses within

each industry, and the proportion of the state's economy each industry contributes. Since weighing potentially divergent cost information is likely to be methodologically difficult and subject to challenge, the consultant may wish to involve stakeholders in this part of the analysis. The consultant should use information about the types of regulatory programs and activities businesses are subject to, to classify the costs as social or compliance costs. Once the total cost estimate is calculated, the consultant would divide this cost by the state population to develop a per-capita regulatory cost figure.

Estimated cost of phase 2

Given the complexity of estimating the overall costs business incur complying with state regulations, we estimate that the potential cost of such a study could range from \$2.6 to \$3.5 million. This estimate is based on the assumption that the study would collect data for only 35 to 50 industry classifications that are deemed to represent significant business groups that are subject to substantial state regulatory costs. Expanding the survey to include others of the over 1,000 industry groups would increase study costs.

We also assumed that the study would survey and work with a small sample (three to five) of businesses within each industry classification studied. This small sample size would not produce results that are statistically representative of the entire business community within the industry groups, but would provide useful information about how much individual businesses within these groups pay in regulatory costs. Increasing the sample size would theoretically improve the precision of the cost estimate but would also significantly increase study costs. However, given the lack of precision in the cost data businesses will likely be able to provide, increasing the sample size is unlikely to materially increase the precision of the cost estimate of regulatory costs.

Conclusions

As shown by our proposed methodology, estimating the administrative and compliance costs of state regulatory programs and activities would be a complex and costly project. Similar studies done at the federal level suggest that business response rates are likely to be low and cost data is likely to be incomplete. In addition, the usefulness of cost information could be limited if information about the benefits of regulatory programs and activities is not available. Nevertheless, such a study could be an important first step in identifying the cost and benefits of regulatory programs, which could lead to decisions to eliminate or change programs that cost more than they produce in benefits.

Due to the large scope of the project, if the Legislature wishes the study to be performed, we recommend that it appropriate funds to the Governor's Office of Planning and Budgeting and direct the office to hire a consultant

Estimating Regulatory Costs

with experience and expertise in conducting large-scale surveys and economic analyses. The project could be contracted out as a single study or it could be contracted out as two studies, one for administrative costs and one for compliance. The consultant should be selected through a request for proposal basis.

Due to the substantial costs of the study, we also recommend that the Legislature consider options to limit its scope. We developed several options that range from minor to major changes in the study objectives. The Legislature could focus the study according to one or more of these options.

- Option 1 – The Legislature could direct the study to examine only the state’s costs of administering regulatory programs and activities. This is the least costly part of the study and has a much higher potential for obtaining reasonably accurate cost estimates, particularly if the costs of paperwork do not have to be broken out as a separate category.
- Option 2 – The Legislature could eliminate the compliance cost estimate portion of the study and, as an alternative, substitute a general survey of businesses or business associations to identify problem regulations and develop possible remedies for inefficient or ineffective regulations.
- Option 3 – The Legislature could limit the study to determining the compliance cost for specific industries or business sectors. The industries or sectors selected could be those with the greatest impact on Florida’s economy, those believed to have the highest compliance costs, or most affected by the problem regulations as identified by the general survey in Option 2.

Incorporating Cost-Benefit Considerations in Rulemaking

Florida's existing rule-making requirements enable business to request agencies to perform analyses of the potential costs of proposed state regulations. Although additional analyses could be required, they may not be necessary.

At the state, federal, and international levels, ongoing discussions on how to reform regulatory rule making are taking place. One impetus for these discussions is the cost burden experienced by regulated entities.

Governments have attempted to reform regulatory rule making by:

- mandating new regulatory programs and activities only when necessary,
- being more responsive and flexible to less costly alternatives proposed by regulated entities, and
- ensuring that the benefits accruing from regulatory programs justify their administrative and compliance costs.

Like other governmental entities, Florida has been taking steps to ensure that costs are considered in the rule-making process. Section 120.54, F.S., enacted in 1976, required every agency to prepare an economic impact statement prior to the adoption, amendment, or repeal of any rule. The economic impact statement was to quantify the short- and long-term consequences of rules and to do the following:

- describe the proposed regulatory action and its purpose, legal authority, and implementation plan;
- determine the least costly method for achieving the stated purpose;
- compare the cost-benefits of taking the proposed action and the cost-benefits taking no action;
- determine whether the proposed action would be the most efficient allocation of public and private resources;
- analyze the effect of the proposed action on competition;
- determine the economic impact of the proposed action on preserving an open market for employment; and

Incorporating Cost-Benefit Savings in Rulemaking

- determine the economic impact of the proposed action, including a description of the persons bearing the costs of the action and the persons benefiting directly and indirectly from the action.

By 1985, the Legislature had passed additional legislation requiring both the Senate and the House to consider the economic impact proposed general or specific laws would have on the public and agencies of the government before they enacted the proposed laws. In addition, state agencies were required to expand the economic impact statement by considering the potential impact of proposed rules on small businesses and by developing reasonable alternatives to the proposed action.

Due to the time and cost of developing economic impact statements for all proposed rules, in 1992 the Legislature revised these requirements. This change made development of economic impact statements mandatory only in instances where agencies determined that proposed rules would have a significant adverse impact on state or local governments, consumers, or individual industries or where the Governor, civic and political groups, or non-profit organizations submitted written requests for these statements.

In 1996, the Legislature further streamlined rule-making requirements. Acting on the recommendations of the Governor's Administrative Procedures Act Review Commission, the Legislature replaced the requirement for agencies to develop economic impact statements with the requirement that they develop statements of estimated regulatory costs. The reasons for the replacement were given in the commission's report:

The quality of economic analyses of proposed rules prepared by state agencies is not adequate and existing law requirements concerning preparation of economic impact statements are ineffective. Additionally, current law requires agencies to choose the regulatory alternative that imposes the lowest net cost to "society," a vague concept that is difficult to quantify. A simpler and more effective means of evaluating costs would be through use of a Statement of Regulatory Costs.

Statements of estimated regulatory costs are simpler and easier to prepare than economic impact statements since they focus on likely administrative and compliance costs of proposed regulations rather than their potential costs benefits. Section 120.541(2), F.S., requires statements of estimated regulatory costs to include the following elements:

- a good faith estimate of the number of individuals and entities likely to be required to comply with the rule and a general description of the types of individuals likely to be affected by the rule;
- a good faith estimate of the cost to the agency and any other state and local government entities implementing and enforcing the proposed rule and any effect on state or local revenues;

Incorporating Cost-Benefit Savings in Rulemaking

- a good faith estimate of the transactional costs likely to be incurred by individuals and entities that are required to comply with the requirements of the rule; and
- an analysis of the impact on small businesses, small counties, and small cities.

Statements of estimated regulatory costs are required during rule making only when an affected entity proposes a lower cost alternative to the proposed rule or requests such a statement. This appears to be a reasonable approach to ensuring that the likely costs of proposed rules will not be unnecessarily burdensome while maintaining the efficiency of the rule-making process.

Although the current provisions for estimating the potential cost of proposed regulations appears to be adequate, options exist for strengthening them. For example, the Legislature could require statements of estimated regulatory costs when preliminary agency estimates of the potential cost of proposed rules exceed certain thresholds. Or it could require these statements to be developed for all rules that would potentially affect the costs of certain types of business. In addition, the Legislature could require the administrative procedures committee to establish a database to track the estimated costs of proposed rules over time. This would allow the Legislature to accumulate the estimated costs of regulations that are likely to result in high administrative or compliance costs.

The Legislature could also consider strengthening provisions for the cost analyses it conducts when enacting new legislation. Currently s. 11.62, F.S., known as the Sunshine Act requires the Legislature to conduct cost-benefit analyses when it considers regulating a new profession or occupation. However, it does not require similar analyses when the Legislature enacts new provisions governing professions or occupations that are already regulated or when it enacts regulatory laws that affect other entities. The Legislature could consider mandating these analyses for legislation that affected industries believe will increase their compliance cost.

Annotated Bibliography

Australia. Department of State Development, Office of Regulation Reform – Regulatory Impact Statement Handbook.

This handbook describes the steps involved in determining the need for and preparing a regulatory impact statement (RIS).

Committee for Economic Development, Research and Policy Committee (1998). *Modernizing Government Regulation: The Need for Action*. New York: Committee for Economic Development

This document can be found at <http://www.ced.org/docs/moderniz.htm>.

This policy statement from the Research and Policy Committee of the Committee for Economic Development includes several recommendations on how the federal government can overhaul the existing regulatory legislative procedures. The statement places emphasis on the need for increased regulatory accountability and responsiveness to the regulatory actions of other industrial nations. One of the recommendations states that Congress could not consider any regulatory legislation that did not have an available cost-benefit analysis.

Douglass, Christopher, Michael Orlando, and Melinda Warren., 1997. *Regulatory Changes and Trends: An Analysis of the 1998 Budget of the U.S. Government*. St. Louis, MO: Center for the Study of American Business, Washington University.

The Center for the Study of American Business website at <http://csab.wustl.edu/> contains current research and publications related to various topics including regulation.

This report provides the details of a study on federal regulatory activity spending. It divides regulatory agencies into two main categories, social and economic, and seven subcategories, which are noted below.

Social Regulation

- Consumer Safety and Health
- Job Safety and other Working Conditions
- Environment
- Energy

Economic Regulation

- Finance and Banking
- Industry-Specific Regulation
- General Business

Florida. Governor's APA Review Commission. 1996. *Final Report of the Governor's Administrative Procedure Act Review Commission*. Tallahassee, FL.

This review recommended that Florida adopt a different method of estimating the cost of proposed legislative action in place of the existing economic impact statement. "The

quality of economic analyses of proposed rules prepared by state agencies is not adequate and existing law requirements concerning preparation of economic impact statements are ineffective." Additionally, current law requires agencies to choose the regulatory alternative that imposes the lowest net cost to "society," a vague concept that is difficult to quantify. A simpler and more effective means of evaluating costs would be through use of a Statement of Regulatory Costs (SERC). The review goes on to propose the necessary elements to include in preparing a SERC. The review emphasized the point that a broad requirement of a SERC was unnecessary, "Agencies should be required to prepare SERCs with these elements when a substantially affected person has submitted to the agency a bona fide written proposal for a lower cost regulatory alternative."

Hopkins, Thomas. 1996. *Regulatory Costs in Profile, Policy Study #132*. St. Louis, MO: Center for the Study of American Business, Washington University.

The Center for the Study of American Business website at <http://csab.wustl.edu/> contains current research and publications related to various topics including regulation.

This study attempts to examine and estimate the cost of regulation with respect to the federal government. The different categories of regulation were broken down into three groups.

Environmental and Risk Reduction
Regulation (Social)

- Air emission controls
- Water pollution controls
- Solid waste disposal regulation
- Handling and labeling of hazardous materials
- Noise regulation
- Superfund compliance
- Nuclear power safety

Price and Entry Control Regulation
(Economic)

- International trade restrictions
- Wage and hour standards
- Regulations on pricing and marketing of agricultural products/services
- Energy rate and conservation regulations
- Energy rate and conservation regulations
- Transportation price and entry restrictions
- Communication rate and entry regulation
- Financial, banking, insurance regulations

Paperwork Regulation (Process)

- Tax compliance
- Health-care regulatory cost control systems
- Federal mandates

Annotated Bibliography

Hughes, Samuel. (June 1996). *Regulatory Budgeting, Working Paper No. 160* St. Louis, MO: Center for the Study of American Business, Washington University.

The Center for the Study of American Business website at <http://csab.wustl.edu/> contains current research and publications related to various topics including regulation.

This study addresses the increase in “on-budget” spending for the federal government’s regulatory agencies and how accountability might be established through regulatory budgeting. It also some of the steps involved in estimating regulatory costs and, more specifically, calculating incremental costs. The categories of regulation are broken down into two groups.

Social	Highway Safety OSHA Nuclear Power Drugs EEOC
Economic	International Trade Telecommunications Agricultural Price Supports Airline Rail Postal Milk Natural Gas

Moore, John L. 1995. *Report to Congress: Cost-Benefit Analysis: Issues in Its Use in Regulation*. Washington, D.C.: U.S. Library of Congress, Congressional Research Service.

The author looks at the inherent strengths and weaknesses of cost-benefit analysis, impact and risk assessment and cost-effectiveness measures. Moore explains when the use of each is most appropriate. He emphasizes that not only can cost-benefit analyses be expensive and difficult to explain, it relies heavily on indirect methods of value estimation to approximate monetary values of public goods which often have no private market equivalents.

New York. Governor’s Office of Regulatory Reform. 1996. *Cost-Benefit Handbook: A Guide for New York State’s Regulatory Agencies*. New York: GORR.

This handbook was drafted in response to regulatory reform efforts in the state of New York. It goes into some basic questions about proposed regulations and alternative actions; the costs of proposed regulations and alternative actions; benefits of proposed regulations; and regulatory costs and benefits. The handbook gives a breakdown of regulatory compliance costs noted below.

- Capital costs (list separately land, structure and equipment)

- Ongoing operational costs (include separately labor, materials, energy costs and purchased services)
- Ongoing transaction costs (reflect the time and value to do paperwork and other administrative compliance by entities subject to the regulations)
- Start-up compliance costs (not captured in any of the above categories)

New York. 1998. State Administrative Procedures Act, S. 202.

New York requires by law that either a notice of proposed rule making, notice of revised rule making, notice of adoption or a notice of emergency adoption must be submitted to the Secretary of State's Office prior to the adoption of the rule. The state's Administrative Procedures Act requires that the notice include, in full or summary form depending on length, a regulatory impact statement, a regulatory flexibility analysis, and a rural area flexibility analysis. SAPA 202 spells out in-depth the basic elements that need to be included in each of the required analyses.

Perry, William J. 1994. *The DOD Regulatory Cost Premium: A Quantitative Assessment*. Office of the Undersecretary of Defense for Acquisition and Technology: Coopers & Lybrand. <http://www.acq.osd.mil/ar/perry1.htm>

This study was performed in an attempt to assist the Department of Defense's (DOD) reform efforts by providing credible estimates of the industry cost impact of DOD regulation and oversight. The study outlines a number of regulatory compliance costs categories and functions.

- Quality Assurance (Testing specifications, general specifications, inspection procedures)
- Accounting/Finance
- Engineering
- Contracting/Purchasing
- Logistics, Material Management, and Government Property
- Program Management
- Data Management

Stevens, L. Nye. 1996. *Regulatory Burden: Measurement Challenges and Concerns Raised by Selected Companies, Chapter Report*. Washington, D.C.:GAO. GAO/GGD-97-2.

This report details the limitations and difficulties that the General Accounting Office experienced in its attempt to get business to provide regulatory cost information and the private sectors identification of problematic regulations. The major findings of the study are noted below.

- Many companies declined to participate in the study because of resource constraints or data limitations that would be involved with providing responses to study questions.
- Companies and federal agencies have difficulty in developing comprehensive lists of federal regulations that apply to specific businesses.
- Companies do not distinguish regulatory costs from other costs in their accounting systems.

Annotated Bibliography

- Companies have great difficulty in providing the incremental costs incurred with regulatory compliance.

The study defines direct costs as those that regulated entities incur in complying with regulatory requirements. These include the wages and salaries of workers carrying out regulatory responsibilities; capital expenditures (e.g., wastewater treatment facilities or safety equipment); employee training expenses; and other costs incurred as a direct result of regulatory requirements.

United States. Presidential/Congressional Commission on Risk Assessment and Risk Management. 1997. "Uses and Limitations of Economic Analysis in Regulatory Decision-Making." *Risk Assessment and Risk Management in Regulatory Decision-Making*.

This article looks at the limitations and uses of several types of economic analysis, which are used in regulatory decision making. The report looks at risk assessment, benefit-cost, and cost effectiveness analyses. The study found that risk assessment and economic analysis can be resource intensive activities which are based on multiple assumptions. Despite the required investment of resources, the results are often uncertain. Therefore these results can contribute only part of the information needed in decision making. One concern with the use of economic analyses in decision making is that too much emphasis is placed on the assignment of a dollar value to elements that are difficult if not impossible to quantify. Another concern is that regulatory decisions are made solely on the basis of the monetized costs compared to monetized benefits.

U.S. Office of Management and Budget. 1992. *Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs, OMB Circular NO. A-94*. Washington, D.C.:OMB

This OMB memorandum provides general guidance for conducting benefit-cost and cost-effectiveness analyses by laying out the similar elements found in each method. It also provides specific guidelines on the application of appropriate discount rates in the evaluation of monetized costs and benefits. The appendix is updated on a yearly basis to reflect changes in the discount rates used to establish net present values of monetized costs and benefits.

U.S. Office of Management and Budget, Office of Federal Financial Management. 1995. *OMB Circular A-87, Cost Principles for Local, State and Indian Tribal Governments*. Washington, D.C.: OMB.

This document can be found at

<http://www.whitehouse.gov/WH/EOP/OMB/html/circulars/a087/a087-all.html>

This circular establishes principles and standards for determining costs for federal awards. It also defines and outlines many cost terms and accounting procedures involved in allocation plans. The study defines direct costs as those that can be identified specifically with a particular final cost objective. Examples include compensation of employees for the time devoted and identified specifically to the performance of regulations; costs of materials acquired, consumed, or expended specifically to the performance of those awards; equipment and other approved capital expenditures; and travel expenses incurred specifically to carry out regulatory-related activities.

U.S., Office of Management and Budget. 1996. *Economic Analysis of Federal Regulations Under Executive Order 12866*. Washington, D.C.: OMB.

This "best practices" document explains that at a minimum the economic analysis of "economically significant" rules should address the need for the proposed action, examine alternative approaches (both regulatory and non-regulatory), and should analyze the benefits and costs associate with each alternative as well as the proposed action. The OMB document provides general guidance in the preparation of economic analyses including assumptions inherent at each stage of the preparation.

U.S. Office of Management and Budget, Office of Information and Regulatory Affairs. 1997. *Report to Congress on the Costs and Benefits of Federal Regulations*. Washington, D.C.: OMB.

This document can be found at <http://www.whitehouse.gov/WH/EOP/OMB/html/intro.htm>.

The Office of Management and Budget (OMB) completed this document in an effort to satisfy the dictates of Section 645 of the Treasury, Postal Services, and General Government Appropriations Act, 1997 (P.L. 104-208). The report was to provide (1) estimates of the total annual costs and benefits of Federal regulatory programs, including the quantitative and nonquantitative measures of regulatory costs and benefits; (2) estimates of costs and benefits of each rule that is likely to have a gross annual impact of \$100 million or more in increased costs; assess the direct and indirect impacts of federal rules on the private sector, State and local government, and the Federal government, and; (3) recommendations from the Director [of the OMB] and a description of significant public comments to reform or eliminate any Federal regulatory program or program element that is inefficient, ineffective, or is not a sound use of the Nation's resources. According to this study the categories of regulation are defined as social and economic, as discussed below.

Social

This category of regulation includes rules designed to advance the health and safety of consumers and workers, as well as regulations aimed at promoting social goals such as equal opportunity, equal access to facilities, and protection from fraud and deception. Social regulation is mainly concerned with controlling the harmful or unintended consequences (e.g., air pollution, occupationally induced illness referred to as "negative externalities." This is done through such measures as regulating the amount of the externality, regulating how a product is produced or used, and disclosing information about certain products, services, or manufacturing processes.

Economic

This category of regulation directly restricts or limits entities primary economic activities. Banking regulation is included in this category and involves such things as chartering, branching, interest rate, and activity regulation. Safety and soundness regulation and consumer information and protection regulations also fall under the economic category.

Annotated Bibliography

U.S. Senate Committee on Governmental Affairs. 1995. *Regulatory Reform: Information on Costs, Cost-Effectiveness, and Mandated Deadlines for Regulations*. Washington, D.C. GAO/PEMD-95-18BR.

This report is a study of the cost and cost-effectiveness of regulations and the degree to which agencies' regulatory agendas are controlled by the legislative and judicial branches. Hopkins' cost categories and estimates are referenced.

U.S. Small Business Administration Office of the Chief Counsel for Advocacy. 1995. *The Changing Burden of Regulation, Paperwork, and Tax Compliance on Small Business, Report to Congress*. Washington, D.C.

This report addresses the burden of regulation, paperwork, and tax requirements, how that burden affects the cost structure of small firms, and, ultimately, how it may affect their profitability. Within the report it is stated that fixed information-gathering costs (paperwork costs) are the same for all firms regardless of size and can be spread among more units of output, dollars of sales, or employees. This study also makes reference to the tiering of laws and rules as a method of alleviating the disproportionate burden some regulations place on smaller organizations.

Appendix B

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Qualitative Survey Questions

Note: Most questions could be asked at any of the three stages given proper rewording.

I. Prior to Enactment

(How could this regulation potentially affect your organization?)

- Does your firm already meet the requirements of this potential regulation?
- What requirements of the potential regulation are inconsistent with your current practice?
- Do the requirements of this regulation contradict or duplicate other obligations your firm must meet?
- What might be the source(s) of any problems arising from the requirements of this potential regulation?
- Would this regulation directly affect demand for your products or service?
- Would this regulation affect the ability of your firm to introduce new/improved products or services?
- Would this regulation affect the ability of your firm to adopt new/improved technologies or business practices?
- Would this particular regulations prevent your from taking up new opportunities, or expanding your business?

II. During Rulemaking Process

(Which organizational functions will this regulation affect the most?)

- Will this regulation directly affect the labor, goods or services used by your firm?
- Will this regulation directly affect other business conditions affecting your firm?
- Is this type of regulation common to your business/sector?
- Which types of regulations impose the greatest burden? - Examples

III. Post Evaluation

(How much is regulation costing your organization and is this figure constant, static, etc.?)

- In what areas do you seek professional advice in complying with regulations e.g. costs of accountants, lawyers, and consultants?
- Are compliance costs increasing, decreasing, or remaining the same?
- Have any recent government initiatives made a material difference to compliance costs?
- What regulations can be reduced or eliminated?

Qualitative Survey Questions

- How can the paper burden be reduced / are there ways of meeting government's objectives that impose less cost?
- What do you think should be the greatest priorities for reform?
- What difference would any suggestions you have make to your business?
- Describe the nature of regulations in which:
 - the regulation is too complex and changes frequently;
 - regulation is administered inflexibly, does not recognize individual circumstances;
 - regulation restricts entry to new markets;
 - regulations cumulatively impose high costs on your business/sector;
 - regulation differs across jurisdictions;
 - it takes too long to fill out the paperwork necessary to comply with government requirements;
 - there are delays in approvals; and
 - there are other costs of compliance (e.g., modifications to the workplace, operational procedures, etc.).
- Can you provide estimates of net impact of costs and/or benefits?
- Can you provide estimate the net impact on personnel requirements?



This office provides objective, independent, professional analyses of state policies and services to assist the Florida Legislature in decision making, to ensure government accountability, and to recommend the best use of public resources.