

Department of Education

Statement Of Estimated Regulatory Costs (SERC)

Division: Florida Colleges
Board: State Board of Education
Rule Number: Rule 6A-10.02413
Rule Description: Civic Literacy Competency
Contact Person: Dr. Carrie Henderson, Executive Vice Chancellor,
Carrie.Henderson@fldoe.org or 850-245-0407

Please remember to analyze the impact of the rule, NOT the statute, when completing this form.

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

- 1. Is the rule likely to reduce personal income? Yes No
- 2. Is the rule likely to reduce total non-farm employment? Yes No
- 3. Is the rule likely to reduce private housing starts? Yes No
- 4. Is the rule likely to reduce visitors to Florida? Yes No
- 5. Is the rule likely to reduce wages or salaries? Yes No
- 6. Is the rule likely to reduce property income? Yes No

Explanation:

If any of these questions are answered "Yes," presume that there is a likely and adverse impact in excess of \$1 million, and the rule must be submitted to the legislature for ratification.

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

- 1. Is the rule likely to raise the price of goods or services provided by Florida business? Yes No

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2. Is the rule likely to add regulation that is not present in other states or markets?

Yes No

3. Is the rule likely to reduce the quantity of goods or services Florida businesses are able to produce, i.e. will goods or services become too expensive to produce?

Yes No

4. Is the rule likely to cause Florida businesses to reduce workforces?

Yes No

5. Is the rule likely to increase regulatory costs to the extent that Florida businesses will be unable to invest in product development or other innovation?

Yes No

6. Is the rule likely to make illegal any product or service that is currently legal?

Yes No

Explanation:

If any of these questions are answered "Yes," presume that there is a likely and adverse impact in excess of \$1 million, and the rule must be submitted to the legislature for ratification.

C. Is the rule likely, **directly or indirectly**, to increase regulatory costs, including any transactional costs (see F below for examples of transactional costs), in excess of \$1 million in the aggregate within 5 years after the implementation of this rule?

1. Current one-time costs

2. New one-time costs

3. Subtract 1 from 2

4. Current recurring costs

5. New recurring costs

6. Subtract 4 from 5

7. Number of times costs will recur in 5 years

8. Multiply 6 times 7

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9. Add 3 to 8

If 9. is greater than \$1 million, there is likely an increase of regulatory costs in excess of \$1 million, and the rule must be submitted to the legislature for ratification.

D. Good faith estimates (numbers/types):

1. The number of individuals and entities likely to be required to comply with the rule. *(Please provide a reasonable explanation for the estimate used for the number of individuals and methodology used for deriving the estimate).*

All 28 Florida College System institutions will be required to comply with the rule. This number was obtained by noting the number of colleges in section 1000.21, Florida Statutes.

2. A general description of the types of individuals likely to be affected by the rule.

Florida College System institutions are locally governed, open-access institutions whose primary mission is responding to community needs for postsecondary academic education and career degree education. First-time-in-college students entering in 2018-19 and thereafter are affected by this rule, as they are required under section 1007.25, Florida Statutes, to demonstrate civic literacy competency.

E. Good faith estimates (costs):

1. Cost to the department of implementing the proposed rule:

None. The department intends to implement the proposed rule within its current workload, with existing staff.

Minimal. *(Provide a brief explanation).*

Other. *(Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).*

2. Cost to any other state and local government entities of implementing the proposed rule:

None. This proposed rule will only affect the department.

Minimal. *(Provide a brief explanation).* The FLDOE Office of Assessment maintains the Florida Civic Literacy Test. There is no fee for institutions to begin using the

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test on a local level. FLDOE will work with each institution to provide the questions and answer key at no cost. Locally, individual institutions will establish procedures for administering the assessment, with consideration given to technology, modality and proctoring. Depending on the mechanism by which the assessment will be administered, colleges may incur direct or indirect costs; this amount is indeterminable and will vary by college.

Other. *(Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).*

3. Cost to the department of enforcing the proposed rule:

None. The department intends to enforce the proposed rule within its current workload with existing staff.

Minimal. *(Provide a brief explanation).*

Other. *(Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).*

4. Cost to any other state and local government of enforcing the proposed rule:

None. This proposed rule will only affect the department.

Minimal. *(Provide a brief explanation).*

Other. *(Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).*

F. Good faith estimates (transactional costs) likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the proposed rule. *(Includes filing fees, cost of obtaining a license, cost of equipment required to be installed or used, cost of implementing processes and procedures, cost of modifying existing processes and procedures, additional operating costs incurred, cost of monitoring, and cost of reporting, or any other costs necessary to comply with the rule).*

None. This proposed rule will only affect the department.

Minimal. *(Provide a brief explanation).* Florida College System students who are required to demonstrate civic literacy competency may incur costs, depending on the method chosen to demonstrate competency. Under the existing rule, the range of costs to students is \$0 (for students who took one of the approved AP exams), to approximately \$80 (for students who took CLEP), to approximately \$215.94 (for students who take a 3-credit hour approved course with a standard tuition of \$71.98

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multiplied by 3 credit hours). The cost for the Florida Civic Literacy Test will be as low as \$0. However, colleges may choose to assess students a fee; this amount is indeterminable and will vary by college. It is possible the Florida Civic Literacy Test would save students and institutions money, as there is no charge to institutions in offering the test, and the costs of the CLEP or a course are high.

Other. *(Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).*

G. An analysis of the impact on small business as defined by s. 288.703, F.S., and an analysis of the impact on small counties and small cities as defined by s. 120.52, F.S. *(Includes:*

- Why the regulation is needed [e.g., How will the regulation make the regulatory process more efficient? Required to meet changes in federal law? Required to meet changes in state law?];*
- The type of small businesses that would be subject to the rule;*
- The probable impact on affected small businesses [e.g., increased reporting requirements; increased staffing; increased legal or accounting fees?];*
- The likely per-firm regulatory cost increase, if any).*

A small business is defined in Section 288.703, F.S., as "...an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than \$5 million or any firm based in this state which has a Small Business Administration 8(a) certification. As applicable to sole proprietorships, the \$5 million net worth requirement shall include both personal and business investments."

A small county is defined in Section 120.52(19), F.S., as "any county that has an unincarcerated population of 75,000 or less according to the most recent decennial census." And, a small city is defined in Section 120.52(18), F.S., as "any municipality that has an unincarcerated population of 10,000 or less according to the most recent decennial census."

The estimated number of small businesses that would be subject to the rule:

- 1-99 100-499 500-999
 1,000-4,999 More than 5,000
 Unknown, please explain:

Analysis of the impact on small business:

There is no small county or small city that will be impacted by this proposed rule.

A small county or small city will be impacted. Analysis:

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Lower impact alternatives were not implemented? Describe the alternatives and the basis for not implementing them.

H. Any additional information that the agency determines may be useful.

None.

Additional. The proposed amendment would add to rule an assessment for Florida College System students that has been available to state university students to demonstrate civic literacy competency since 2018.

I. A description of any good faith written proposal for a lower cost regulatory alternative to the proposed rule which substantially accomplishes the objectives of the law being implemented and either a statement adopting the alternative or a statement of the reasons rejecting the alternative in favor of the proposed rule.

No good faith written proposals for a lower cost regulatory alternative to the proposed rule were received.

See attachment "A".

Adopted in entirety.

Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*

Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).* The addition of the Florida Civic Literacy Test presents a no- to low-cost option that is accessible to all students—the test itself is free, so the only potential costs would be related to test administration. The lower cost regulatory alternative for proposed Rule 6A-10.02413, F.A.C., indicates the rule amendment is not needed because the existing rule offers a \$0 testing option to students through the inclusion of Advanced Placement (AP) Government and Politics: United States and AP United States History. The department rejects this alternative because neither of these assessments are available or accessible to any postsecondary student once they are admitted and enroll in the Florida College System. Under section 1007.23, F.S., "Advanced placement shall be the enrollment of an eligible secondary student in a course offered through the Advanced Placement Program administered by the College Board. Postsecondary credit for an advanced placement course shall be limited to students who score a minimum of 3, on a 5-point scale, on the corresponding Advanced Placement Examination" [emphasis added]. Students must achieve a score of 3 for AP Government and Politics: United States and 4 for AP United States History. For students who did not enroll in AP

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courses or earn scores on AP exams while in high school, the only testing option to demonstrate postsecondary civic literacy competency is CLEP: American Government, which costs approximately \$80. It is not a lower cost alternative to require a more expensive test or course for students when a lower cost assessment is available. In addition, providing this low- or no-cost assessment may help students demonstrate these competencies, complete their programs and move into employment more expeditiously. The claim that the job prospects of American History and American Government teachers at colleges will be negatively impacted by the rule is a matter of pure speculation and conjecture. Moreover, these speculative interests are not the subject of the regulation.

See attachment "B".

Adopted in entirety.

Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*

Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*

See attachment "C".

Adopted in entirety.

Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*

Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*

See attachment "D".

Adopted in entirety.

Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*

Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*

See attachment "E".

Adopted in entirety.

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Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*

Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*

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FW: Lower Cost Regulatory Alternative, Rule 6A-10.02413

Emerson, Christian <Christian.Emerson@fldoe.org>

Mon 5/4/2020 4:35 PM

To: Henderson, Carrie <Carrie.Henderson@fldoe.org>

Cc: Bone, Judy <Judy.Bone@fldoe.org>; Braun, Jamie <Jamie.Braun@fldoe.org>; Kelly, Alex <Alex.Kelly@fldoe.org>; Hall, Eric <Eric.Hall@fldoe.org>; Hebda, Kathy <Kathy.Hebda@fldoe.org>; Mears, Matthew <Matthew.Mears@fldoe.org>

Please provide a response to the lower cost regulatory alternative below.

120.541 Statement of estimated regulatory costs.—

(1)(a) Within 21 days after publication of the notice required under s. [120.54\(3\)\(a\)](#), a substantially affected person may submit to an agency a good faith written proposal for a lower cost regulatory alternative to a proposed rule which substantially accomplishes the objectives of the law being implemented. The proposal may include the alternative of not adopting any rule if the proposal explains how the lower costs and objectives of the law will be achieved by not adopting any rule. If such a proposal is submitted, the 90-day period for filing the rule is extended 21 days. Upon the submission of the lower cost regulatory alternative, the agency shall prepare a statement of estimated regulatory costs as provided in subsection (2), or shall revise its prior statement of estimated regulatory costs, and either adopt the alternative or provide a statement of the reasons for rejecting the alternative in favor of the proposed rule.

From: Robert Holladay <wingbiddlebaumjr@gmail.com>

Sent: Monday, May 04, 2020 4:09 PM

To: christian.emerson@fldoe.org

Cc: matthew.mears@fldoe.org; carrie.henderson@fldoe.org; Plante, Ken <PLANTE.KEN@leg.state.fl.us>; Oates, Jowanna <OATES.JOWANNA@leg.state.fl.us>; Tom Crapps <tom@meenanlawfirm.com>

Subject: Lower Cost Regulatory Alternative, Rule 6A-10.02413

Via Electronic Mail

Christian.Emerson@fldoe.org

Mr. Chris Emerson

Agency Clerk

Florida Department of Education

325 West Gaines Street, Suite 1514

Tallahassee, FL 32399-0400

**Re: Lower Cost Regulatory Alternative for Proposed Rule 6A-10.02413
and Public Records Request**

Dear Mr. Emerson:

Pursuant to the provisions of section 120.541(1), Florida Statutes, and the notice of proposed rule 6A-10.02413 that was published in the April 14, 2020, Florida Administrative Register, I submit this lower cost regulatory alternative.

As a history teacher in the Florida College system, I am substantially affected by this proposed rule amendment. If this proposed rule goes into effect, high school students will be allowed to avoid the civic literacy competency requirements of section 1007.25(4), Florida Statutes. Specifically, students seeking entry into the Florida College system will no longer take American History AMHX020 or American Government POSX041 because the State Board of Education will allow them to take a test that is, at best,

suitable for middle or high school students. The Florida Civic Literacy Test has approximately half of its questions and answers available on-line and there is with no limitation on the number of times a student can take that test. This will result in virtually no students taking courses in American History or American Government when enrolled in Florida's public colleges, defeating and undermining the legislature's intent when it enacted the law implemented, section 1007.25(4), Florida Statutes, in 2017.

As an American History teacher, I and other American History and American Government teachers at Florida's colleges, will suffer economic harm and potential job loss due to this rule amendment.

The Proposed Rule Amendment Will Not Lower Regulatory Costs, is an Invalid Exercise of Delegated Legislative Authority, and Should Not Be Adopted

Section 120.541(1), Florida Statutes, provides that a lower cost regulatory alternative may include the option of not adopting the rule if the proposal explains how the lower costs and objective of the law will be achieved by not adopting the rule.

Nothing in the law implemented requires this proposed rule amendment; in fact, I contend that the proposed rule amendment is an invalid exercise of delegated legislative authority. Keeping the existing rule intact without this change will accomplish the objectives of the law implemented, section 1007.25(4), Florida Statutes, while keeping regulatory costs low.

The notice of proposed rule summarizes the statement of estimated regulatory costs. Significantly, the notice and the Statement of Estimated Regulatory Costs (SERC) specifically state: "Under the existing rule, the range of costs to students is \$0 (for students who took one of the approved AP exams), to approximately \$80 (for students who took CLEP), to approximately \$215.94 (for students who take a 3-credit hour approved course with a standard tuition of \$71.98 multiplied by 3 credit hours)." This summary and the SERC also state that the ultimate cost to students taking the "Florida Civic Literacy Test" is indeterminate.

As the State Board of Education admits the existing rule offers a \$0 option to students seeking to bypass the course requirements of section 1007.25(4), Florida Statutes, and is apparently unable to quantify the cost of the proposed rule amendment, there is absolutely no need to amend this proposed rule. As the proposed rule is an invalid exercise of delegated legislative authority and it appears that the State Board of Education will apply the rule amendment retroactively in violation of the Administrative Procedure Act, the objectives of section 1007.25(4), Florida Statutes, will be met if this proposed rule amendment is withdrawn.

As the existing rule imposes potential regulatory costs of \$0 to \$215.94, the proposed rule amendment will not lower regulatory costs. It appears the objective of the State Board of Education in adopting this rule is not to lower regulatory costs, but instead is to provide the option of an easy memorization test in lieu of a true civic literacy assessment or coursework required in the existing rule.

Revised Statement of Estimated Regulatory Costs

Section 120.541(1), Florida Statutes, requires the State Board of Education to revise its prior statement of estimated regulatory costs upon submission of a lower cost regulatory alternative. Please provide me with a copy of that revised statement of estimated regulatory costs upon its completion.

Public Requests Request: Statement of Estimated Regulatory Costs

Please provide me with a copy of the Statement of Estimated Regulatory Costs originally prepared for this proposed rule.

Sincerely,

Robert B. Holladay
Adjunct Professor of History
Tallahassee Community College

cc: Mr. Matthew Mears, General Counsel
matthew.mears@fldoe.org

Dr. Carrie Henderson
carrie.henderson@fldoe.org

Mr. Kenneth J. Plante, Coordinator, JAPC
plante.ken@leg.state.fl.us

Mr. Thomas P. Crapps, Esq.
The Meenan Law Firm
tom@meenanlawfirm.com