



Rules & Calendar Committee

Wednesday, April 27, 2011
8:15 p.m. or 15 minutes upon completion of Session
404 House Office Building

MEETING PACKET

Dean Cannon
Speaker

Gary Aubuchon
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Rules & Calendar Committee

Start Date and Time: Wednesday, April 27, 2011 08:15 pm or 15 minutes upon adjournment of Session

End Date and Time: Wednesday, April 27, 2011 08:45 pm or 30 minutes upon convening

Location: 404 HOB

Duration: 0.50 hrs

Actionable Items

Set Special Order Calendar(s)

Consideration of the following bill(s):

PCSMB for CS/CS/HB 993 & HB 7239 -- Rulemaking and Administrative Procedures

NOTICE FINALIZED on 04/26/2011 16:17 by Hunter.Robert

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCSMB for CS/CS/HB 993 & HB 7239 Rulemaking and Administrative Procedures
SPONSOR(S): Government Operations Subcommittee, Rulemaking & Regulation Subcommittee, Roberson, K., Gaetz
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Rules & Calendar Committee		Miller	Birtman

SUMMARY ANALYSIS

The bill amends agency rulemaking procedures under the Administrative Procedure Act, and revises various provisions to align with legislative ratification requirements enacted in 2010. Certain rulemaking timeframes are conformed to other periods required in the statutory rulemaking process. The bill also provides for withdrawal of rules that are not effective because they were not ratified and exempts certain rulemaking from ratification requirements.

The bill also does the following:

- Requires agencies to include in each notice of rulemaking whether the proposed rule requires legislative ratification;
- Expressly includes legislative ratification in the description of factors controlling when an adopted rule takes effect;
- Resolves a timing conflict created by Chapter 2010-279, Laws of Florida, by restoring certain time deadlines to the pre-2010 provisions;
- Exempts emergency rulemaking, rules adopting federal standards, rules adjusting certain tolls, and rules implementing the 2011 Student Success Act from the requirements to prepare a statement of estimated regulatory costs and submission for legislative ratification;
- Provides a procedure for agencies to withdraw rules prior to becoming effective if the rule is invalidated by a final order or is timely submitted to the Legislature but not ratified in the regular session;
- Excludes from the ratification requirement the triennial update of the Florida Building Code and the triennial update of the Florida Fire Prevention Code.

The bill creates a one-time process requiring all agencies to undertake a comprehensive review of the economic impact of their respective rules effective on or before November 16, 2010. This follows the pattern of the review of statutory authority conducted after the 1996 substantive amendments to the Administrative Procedures Act (APA). Additionally, the bill requires each agency to identify all revenue rules and all rules under which the agency requires data reporting from external sources. The report will include the statutes authorizing the data collection, how the data is used by the agency, and the policies advanced by the program.

The bill creates s. 120.74(3), requiring agencies annually to report to the Legislature their intended rulemaking for the next fiscal year, excluding emergency rulemaking, and s. 120.74(4), modifying existing reporting requirements during the comprehensive review period.

New s. 120.745 creates the comprehensive review and reporting for older rules, including preparation of economic analyses to identify all rules that meet the same criteria that, for rules proposed after 11/16/2010, would require legislative ratification.

The comprehensive review will continue through the 2014 regular session of the Legislature to provide sufficient time for the agencies to conduct the review and for public participation, legislative consideration of the reports, and any action the Legislature chooses to take. The bill provides that the section creating the one time review is automatically repealed.

The bill also creates s. 120.7455, stating the Legislature may conduct an internet-based public survey about the impact of rules, laws, ordinance, and regulations on the ability of Floridians to engage in lawful conduct.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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This new section also provides use immunity from prosecution or enforcement actions for participating in the survey as well as protection from retaliatory agency enforcement actions arising out of a person's providing information to the Legislature.

The bill has an indeterminate, but insignificant, fiscal impact.

The bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

I. Rulemaking and Legislative Ratification

Background

HB 1565 was passed during the 2010 regular session but was vetoed by the Governor. On November 16, 2010, the Legislature, in special session, voted to override that veto and the bill became law as Chapter 2010-279, Laws of Florida. The law created s. 120.541(3), F.S., requiring submission of rules with certain economic impacts for ratification by the Legislature before taking effect.

The law also lengthened the time (from 21 days to 45 days) before an agency could adopt a rule after revising a required economic analysis and lengthened the time (from 20 days to 44 days) for a person to challenge the validity of a rule after the agency prepared the required economic analysis.¹ These changes created a potential timing conflict with existing provisions which allowed only 21 days to bring a challenge before the agency could file for final rule adoption if the economic analysis was not revised.

Under current law, an agency begins the formal rulemaking process by filing a notice of the proposed rule.² The notice is published by the Department of State in the Florida Administrative Weekly³ and must provide certain information, including the text of the proposed rule, a summary of the agency's statement of estimated regulatory costs (SERC), if one is prepared, and procedures for a party to request a public hearing on the proposed rule.

Present law distinguishes between a rule being "adopted" and becoming enforceable or "effective."⁴ Prior to the 2010 revision, the law provided only two conditions⁵ before a rule takes effect; after the revision, legislative ratification became the third.⁶ A rule filed for adoption may be modified or withdrawn before taking effect only in response to an objection from the Joint Administrative Procedures Committee of the Legislature (JAPC) or to extend the effective date for up to 60 days while the agency considers a JAPC objection.⁷ Once a rule goes into effect an agency may repeal the rule only through the usual procedures for rulemaking.⁸

An agency may repeal an effective rule only through the usual procedures for rule making.⁸ Newly-elected statewide executive officials are required to follow this process even if a careful initial review of programs within their respective jurisdictions discloses a number of rules which are obsolete or inconsistent with the policies of the elected official.

Rules must be filed for adoption no earlier than 28 days and not later than 90 days after the agency publishes the notice of proposed rule; however, the later deadline may change depending on different

¹ Chapter 2010-279, Laws Of Florida, created s. 120.541(1)(d), providing 45 days for an agency to make available a revised statement of estimated regulatory costs ("SERC"), and amended s. 120.56(2)(a), F.S., to provide 44 days from delivery of the revised SERC for a party to file a petition challenging the proposed rule.

² Section 120.54(3)(a)1., F.S.

³ Section 120.55(1)(b)2., F.S.

⁴ Section 120.54(3)(e)6., F.S. Before a rule becomes enforceable, thus "effective," the agency first must complete the rulemaking process and file the rule for adoption with the Department of State.

⁵ *Id.* A rule took effect either 20 days after being filed for adoption or on a date specified by statute. Rules not required to be filed with the Department of State took effect when adopted by the agency head or on a date specified by rule or statute.

⁶ Section 120.541(3), F.S.

⁷ Section 120.54(3)(d)3., F.S.

⁸ Section 120.54(3)(d)5., F.S.

factors.⁹ To ensure completion of the rulemaking process, Chapter 120, F.S., the Administrative Procedure Act (APA), provides different times in which a party may challenge a proposed rule.¹⁰ If an agency is required to prepare a SERC the rule cannot be filed for adoption until 21 days after the SERC is provided to parties and made publicly available.¹¹ The 2010 revision did not alter this requirement but created new paragraph s. 120.541(1)(d), F.S., delaying adoption of a rule for 45 days after the agency makes a *revised* SERC available and, in such cases, providing 44 days for a party to challenge a proposed rule.¹² These revised times conflict with the various 21 day timeframes provided for different aspects of rulemaking, such as requesting a hearing and submitting materials responding to the rulemaking notice,¹³ filing notices of substantial changes due to an objection from JAPC,¹⁴ or filing a rule for adoption if no objections are received in 21 days.¹⁵

Proposed Changes

Technical Revisions

The bill requires an agency's notice of proposed rulemaking under s. 120.54(3)(a)1., F.S., to include a statement as to whether, based on the statement of the estimated regulatory costs, the proposed rule is expected to require legislative ratification before the rule takes effect.

The bill resolves the timing conflicts created in the 2010 law by reversing the changes as follows:

- Instead of allowing 45 days, the bill requires submission of a revised SERC at least 21 days before the rule is filed for adoption; thus, conforming the time with that for adopting a rule after providing an original SERC.
- The bill reverts to 20 days the time for challenging a proposed rule after the agency provides a SERC or a revised SERC; thus, requiring the challenge to be brought during the usual waiting period of 28 days before the rule may be filed for adoption.

The requirement for legislative ratification adopted in 2010 created potential conflicts within the existing rulemaking procedures of the APA. Because of a statutory delay between filing a rule for adoption and the time a rule takes effect, current law allows an agency to withdraw the rule from further consideration only if the JAPC objects to the rule.¹⁶ A rule in effect cannot be withdrawn but only repealed through the standard rulemaking process.¹⁷

The new requirement for legislative ratification creates the possibility that an agency may adopt a rule that is never ratified, leaving an agency with no authority to withdraw or repeal the ineffective rule. Additionally, if a challenge to the rule brought subsequent to adoption results in a final order in which the agency would prefer to correct the rule, the agency could take no action.

A rule projected to have a specific economic impact exceeding \$1 million in the aggregate over 5 years¹⁸ must be ratified by the Legislature before taking effect.¹⁹ A rule must be filed for adoption before it may take effect²⁰ and cannot be filed for adoption until completion of the rulemaking process.²¹

⁹ Section 120.54(3)(e)2, F.S. The 90 day period is extended for an additional 21 days if a party submits a lower cost regulatory alternative to a proposed rule and the agency is compelled to prepare a SERC if one was not previously done. Section 120.541(1)(a), F.S., as amended by Chapter 2010-279, s. 2, L.O.F.

¹⁰ Section 120.56(2)(a), F.S. Originally, a party had 20 days after a SERC or revised SERC was made available in which to challenge a proposed rule.

¹¹ Section 120.54(3)(e)2., F.S.

¹² Section 120.56(2)(a), F.S., as amended by Chapter 2010-279, s. 3, L.O.F.

¹³ Section 120.54(3)(c)1., F.S.

¹⁴ Section 120.54(d)1., F.S.

¹⁵ Section 120.54(3)(e)6., F.S.

¹⁶ Section 120.54(3)(d)3., F.S.

¹⁷ Section 120.54(3)(d)5., F.S.

¹⁸ Section 120.541(2)(a), F.S.

¹⁹ Section 120.541(3), F.S.

²⁰ Section 120.54(3)(e)6., F.S.

²¹ Section 120.54(3)(e), F.S.

As a rule submitted under s. 120.541(3), F.S., becomes effective if ratified by the Legislature, a rule must be filed for adoption before being submitted for legislative ratification.

Another issue occurs when a rule takes effect without being submitted for legislative ratification but is later found by final adjudication or administrative order to be invalid because its actual economic effect showed that ratification was required. Because the rule met the statutory criteria mandating submission, but was never ratified, it never went into effect and the agency could not rely on it. In essence, an agency has an adopted rule that cannot be modified or possibly repealed.

Effect of Bill: Technical Revisions

The bill resolves these issues by authorizing:

- Withdrawal or modification of the rule in response to an objection by JAPC;
- Withdrawal or modification of the rule in response to a final order, not subject to further appeal, entered in a rule challenge brought after adoption but before the rule takes effect;
- Withdrawal, but not modification, if the rule requires ratification and more than 90 days have passed since the rule was filed for adoption without the Legislature ratifying the rule; and
- JAPC notifies the agency that an objection to the rule is being considered, in which case the rule may be modified to extend the effective date by not more than 60 days.

The bill expressly includes legislative ratification in the statutory description of those contingencies affecting when a rule becomes effective.

Exemption to SERC and Ratification Requirements

The bill exempts the adoption of emergency rules, rules adopting federal standards, the adjustment of certain tolls, and rulemaking required under Ch. 2011-01, the Student Success Act, from the requirements for preparation of a SERC and legislative ratification.

Emergency Rules

Agencies are authorized to respond to immediate dangers to the public health, safety, or welfare, by adopting emergency rules.²² Emergency rules are not adopted with the formalities required for usual rulemaking²³ but the action must be necessary to protect the public.²⁴ Prompt publication is required and prompt judicial review is available to test the agency's findings and basis for the emergency rule.²⁵ Emergency rules typically are effective immediately²⁶ upon filing but are of limited duration (up to 90 days), encouraging an agency to begin regular rulemaking to adopt a permanent rule on the same subject.²⁷ Emergency rules may not be renewed unless regular rulemaking is initiated to adopt a permanent rule and a challenge is pending to the proposed rule or the proposed rule is pending legislative ratification.²⁸

Prior to enactment of Chapter 2010-279, L.O.F., the regular rulemaking procedure expressly excluded the adoption of emergency rules from the requirement to prepare a SERC.²⁹ The 2010 act created an internal inconsistency by excluding SERCs prepared for emergency rules from the comprehensive economic analysis³⁰ required for regular rulemaking, implying SERCs would be required for emergency

²² Section 120.54(4), F.S.

²³ Section 120.54(4)(a), F.S., which expressly requires adoption of emergency rules to afford the procedural protection provided under other (unspecified) statutes, the Florida Constitution, or the U.S. Constitution.

²⁴ Section 120.54(4)(a)2., F.S.

²⁵ Section 120.54(4)(a)3., F.S.

²⁶ Section 120.54(4)(d), F.S.

²⁷ Section 120.54(4)(c), F.S.

²⁸ *Id.*

²⁹ Section 120.54(3)(b), F.S.

³⁰ Section 120.541(2)(a), F.S.

rules.³¹ Presently, one section of the APA now states emergency rulemaking does not require preparation of a SERC³² while another section implies a modified SERC is required.³³

The public policy behind emergency rulemaking differs from the concerns supporting preparation of SERCs and mandating legislative ratification. Keys to both of these requirements are time and deliberation of action, neither of which is available in a true emergency as recognized in the statute authorizing emergency rulemaking.³⁴ Because of the prior exclusion of emergency rulemaking from the SERC requirement, and because a permanent rule proposed to replace a similar emergency rule is subject to the full SERC and ratification requirements, the language adopted in 2010 should be conformed with the existing sections to eliminate this inconsistency.

Rules Adopting Federal Standards

Agencies authorized to implement, operate, or enforce federal programs frequently adopt rules substantially similar to the federal regulations created for such programs under federal law. The APA provides a separate, streamlined procedure for adopting such federal regulations in s. 120.54(6), F.S. This process permits an agency to implement the federal regulations and respond more promptly to changes in the federal law. An objection filed by a substantially affected person will require the agency to follow the standard rulemaking procedure under s. 120.54(3), F.S., unless the rule is not materially different from the federal regulation.³⁵

The current language of s. 120.541(1)(b), F.S., requires the preparation of a SERC for any proposed rule which adversely affects small businesses or will increase regulatory costs by more than \$200,000 in the aggregate during the first year the rule is effective. No distinction is made for emergency rules or rules adopting federal standards. The current language of s. 120.541(4), F.S., exempts both emergency rulemaking and adoption of rules incorporating federal standards only from the comprehensive economic analysis required for a SERC. The reference in the statute to "paragraph (2)(a)" appears to be inadvertent, creating both an inconsistency in the language and an inference these types of rulemaking will comply with the SERC requirement in s. 120.54(3)(b), F.S.

Adjustment of Tolls

Section 338.155(1), F.S., authorizes the Department of Transportation (DOT) to adopt rules relating to the payment, collection, and enforcement of tolls. Section 338.165(3), F.S., requires DOT, including the turnpike enterprise, to index toll rates on existing toll facilities "to the annual Consumer Price Index or similar inflation indicators." Toll rate adjustments for inflation may be made no more frequently than once a year and must be made no less frequently than once every 5 years. The bill exempts the indexing of toll rates from the statutory requirements for preparing SERCs and for legislative ratification. The adjustment of toll rates would remain subject to the procedure and scrutiny in the rulemaking process but the concern for additional legislative scrutiny imposed by ratification appears to be met by the standards imposed under the substantive statutes implemented by DOT rule.

Rulemaking Under the Student Success Act

Chapter 2011-01, Laws of Florida, the Student Success Act, significantly changed methods of evaluation and accountability in public education, including the compensation and retention of teachers. The act authorized rulemaking under several statute sections, including s. 1012.22, s. 1012.27, s. 1012.34, 1012.335, and s. 1012.795, F.S. As the act addresses a number of timelines required under the federal "Race to the Top" education program, and the required rulemaking must accord with the

³¹ "The Adoption of Federal Standards as it Relates to Preparation of a Statement of Estimated Regulatory Costs and Legislative Ratification," Memorandum from Department of Health to staff of the Rulemaking & Regulation Subcommittee (March 3, 2011), on file with staff of the Rulemaking & Regulation Subcommittee.

³² Section 120.54(3)(b), F.S.

³³ Section 120.541(4), F.S.

³⁴ Section 120.54(4), F.S.

³⁵ Section 120.54(6)(c), F.S.

procedures required under the APA, exempting rulemaking under these sections from the SERC and ratification requirements will enable timely implementation of the Act's requirements.

Effect of Bill: Exemptions to SERC and Ratification Requirements

The bill exempts the following both from the requirement of preparing a SERC and from legislative ratification:

- Emergency rulemaking under s. 120.54(4), F.S.;
- Rulemaking to adopt federal standards, pursuant to s. 120.54(6), F.S.;
- The adjustment of tolls under s. 338.165(3), F.S.;
- Rulemaking under the various sections created or affected by Ch. 2011-01, LOF, the Student Success Act.

Exemption Only to Required Legislative Ratification

Current law requires legislative ratification of all rules exceeding the statutory economic impact threshold. Mandatory updates to the Florida Building Code and the Florida Fire Prevention Code are required to be adopted every 3 years³⁶ and are developed with significant involvement of the Legislature and its substantive committees, business and industry representatives, local and state government, and the general public. In conjunction with these triennial updates, both codes are continually reviewed and revised by their respective authorities.³⁷ Other rules involve state adoption of federal standards for operation of programs involving significant federal oversight due to funding sources or implementation of federal law and are adopted under a procedure separate from regular rulemaking.³⁸ These types of rules are subject to economic scrutiny in the rulemaking process; but, the concern for additional legislative scrutiny imposed by ratification appears to be met by the standards imposed under the substantive statutes being implemented by rule.

The Florida Building Code

The Florida Building Code (Building Code) is the unified building code applicable statewide as authorized by statute.³⁹ The overall purpose for the Building Code is to create within a single set of documents uniform standards applicable to all aspects of construction in Florida to provide effective and reasonable protection for public health, safety, and welfare "...at the most reasonable cost to the consumer."⁴⁰ The Florida Building Commission ("Commission")⁴¹ is responsible for adopting, updating, and general administration of the Building Code. With certain exceptions, enforcement of the Building Code is through duly-authorized state and local agencies.⁴²

The law provides detailed sections on legislative intent⁴³, Building Code adoption and contents,⁴⁴ specific processes for different types of amendments,⁴⁵ the triennial comprehensive update conducted by the Commission,⁴⁶ and the Commission's powers.⁴⁷ The express intent of the law is for the

³⁶ Sections 553.73(7)(a) and 633.0215(1), F.S.

³⁷ Sections 553.73 and 633.0215, F.S.

³⁸ Section 120.54(6), F.S.

³⁹ Chapter 553, part IV, F.S., the Florida Building Code.

⁴⁰ Section 553.72(1), F.S.

⁴¹ Section 553.74, F.S.

⁴² Section 553.80, F.S.

⁴³ Section 553.72, F.S.

⁴⁴ Section 553.73(1)-(3), F.S.

⁴⁵ Section 553.73(3) and (9), F.S.-technical amendments, subsections (4) and (5)-amendments by local authorities, subsection (8)-substantive amendments.

⁴⁶ Section 553.73(7), F.S.

⁴⁷ Sections 553.74 - 553.77, F.S.

Commission to use the statutory rulemaking requirements and process⁴⁸ for adopting, amending, or updating the Building Code.⁴⁹

553.72 Intent. —

...

(3) It is the intent of the Legislature that the Florida Building Code be adopted, modified, updated, interpreted, and maintained by the Florida Building Commission in accordance with ss. 120.536(1) and 120.54 and enforced by authorized state and local government enforcement agencies.

This intent is made a specific requirement in the substantive sections on adoption,⁵⁰ amendments,⁵¹ and updates.⁵² In addition, a large number of substantive bills and amendments are considered by the Legislature each year, keeping the Legislature actively engaged in the process of continual revision.

The Commission is required to update the Building Code every 3 years, using the APA rulemaking process. The statute also provides a minimum time of 6 months between adoption of the updated Building Code and its effective date.⁵³ Because the Commission is housed in the Department of Community Affairs (DCA) solely for administrative purposes, DCA publishes the notices required for rulemaking⁵⁴ as part of its duties to provide the Commission with administrative and staff support.⁵⁵

The statute imposes detailed requirements the Commission must follow to adopt, amend, review, and update the Building Code in addition to following APA procedural requirements.⁵⁶ The resulting Building Code contains or incorporates the laws and rules pertaining to all major aspects of public and private building construction in Florida, from broad areas including design, physical construction, modification, repair, and even demolition,⁵⁷ to specific matters from structural and mechanical systems to elevators and coastal construction standards.⁵⁸ The Building Code must reference without change the Florida Fire Prevention and Life Safety Codes adopted by Department of Financial Services rule.⁵⁹ When updating the Building Code, the Commission is required to create the Building Code's foundation by incorporating the most current versions of a number of standard codes, such as the International Plumbing Code and the National Electrical Code.⁶⁰ The entire process of updating the Building Code is subject to extensive statutory direction,⁶¹ continual legislative revision, and the procedural protections of the APA rulemaking process.⁶²

The Florida Fire Prevention Code

One of the key components of the Florida Building Code cross-references to the separately-adopted Florida Fire Prevention Code (Fire Code). The State Fire Marshall is required to adopt a new edition of the Fire Code every 3 years through the rulemaking provisions of the APA.⁶³ The triennial update of the Fire Code is coordinated with that of the Building Code in order to prevent undue burdens on

⁴⁸ Sections 120.536(1) and 120.54, F.S. Chapter 120, F.S., is Florida's Administrative Procedure Act or "APA".

⁴⁹ Section 553.72(3), F.S.

⁵⁰ Section 553.73(1)(a), F.S.

⁵¹ Section 553.73(3), (8), and (9), F.S.

⁵² Section 553.73(7)(a), F.S.

⁵³ Section 553.73(7)(e), F.S.

⁵⁴ Notice of proposed rule 9N-1.001, to adopt the 2010 updates to the Code, published by DCA on January 7, 2011, at <https://www.flrules.org/gateway/ruleNo.asp?id=9N-1.001>.

⁵⁵ Section 553.75(3), F.S.

⁵⁶ Section 553.73, F.S.

⁵⁷ Section 553.73(1)(a), F.S.

⁵⁸ Section 553.73(2), F.S.

⁵⁹ Section 553.73(1)(c), F.S.

⁶⁰ Section 553.73(7)(a), F.S.

⁶¹ Chapter 553, part IV, F.S.

⁶² Sections 120.54 and 120.56, F.S.

⁶³ Section 633.0215(1), F.S.

businesses and consumers.⁶⁴ As part of the triennial update, the State Fire Marshall notifies each municipal, county, and special district fire department of the pending review and update. The local officials are required to provide copies of their local fire code amendments no later than 120 days before the date the State Fire Marshall is to adopt the triennial updates, in order for the Fire Marshall to determine whether the local provisions comply with the law.⁶⁵ Under present law, local fire code amendments are effective only until the adoption of the next triennial review.⁶⁶

Impact of Potential Legislative Ratification on Building and Fire Codes

DCA estimates compliance by businesses and consumers simply with the local construction permitting requirements resulting from the existence and enforcement of the Building Code readily exceed an aggregate of \$1 million over 5 years.⁶⁷ As the Building Code is adopted in compliance with legislative intent and protects public health, safety, and welfare at the least cost to the consumer,⁶⁸ the resulting direct or indirect regulatory costs are likely to exceed the statutory threshold requiring ratification.

The Commission currently is completing the third triennial update to the Code and has begun the rulemaking process.⁶⁹ DCA anticipates the rule incorporating the final version of the updated Code will be ready to file for adoption after May 6 but before June 30, 2011.⁷⁰ Absent the requirement of legislative ratification, the Code would become effective no later than December 31, 2011.⁷¹ However, since the regulatory costs resulting from the operation of the Code will exceed the level of economic impact requiring legislative ratification, and the Code will not be adopted through rulemaking prior to the end of the regular session of the Legislature, under present law the earliest the Code may be considered for ratification would be during the 2012 regular session.

The State Fire Marshall concurrently is preparing the triennial update of the Fire Code for adoption at the same time as the Building Code update.⁷²

Effect of Bill: Exemption Only From Ratification

The bill exempts rulemaking amendments and triennial updates to the Florida Building Code and Florida Fire Prevention Code from the requirement of legislative ratification. Rulemaking for these provisions will remain subject to the preparation of a comprehensive SERC and economic analysis in addition to the other procedural requirements of the APA.

II. *Rulemaking and Economic Review*

Rulemaking Authority

The APA establishes the process for administrative rulemaking. With the enactment of HB 1565 in November, 2010,⁷³ the Legislature amended the APA to control more closely the adoption of rules with significant economic impacts.

A rule is an agency statement of general applicability which interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency as well as certain types of forms.⁷⁴ Rulemaking authority is delegated by the Legislature⁷⁵ through statute and authorizes an

⁶⁴ 3/16/2011 memorandum from the State Fire Marshall's office, on file with staff of the Rulemaking & Regulation Subcommittee.

⁶⁵ Section 633.0215(3)(a), F.S.

⁶⁶ Section 633.0215(3)(b), F.S.

⁶⁷ 3/11/2011 conversation with Jim Richmond, Asst. Gen. Counsel, DCA, general counsel for Florida Building Commission.

⁶⁸ Section 553.72, F.S.

⁶⁹ Notice of Proposed Rule 9N-1.001; see note 58, above.

⁷⁰ See note 67, above.

⁷¹ Section 553.73(7)(a), F.S.

⁷² See note 64, above.

⁷³ Ch. 2010-279, LOF.

⁷⁴ Section 120.52(16), F.S.; *Florida Department of Financial Services v. Capital Collateral Regional Counsel-Middle Region*, 969 So. 2d 527, 530 (Fla. 1st DCA 2007).

agency to “adopt, develop, establish, or otherwise create”⁷⁶ a rule. Agencies do not have discretion whether to engage in rulemaking.⁷⁷ To adopt a rule an agency must have a general grant of authority to implement a specific law by rulemaking.⁷⁸ The grant of rulemaking authority itself need not be detailed.⁷⁹ The specific statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.⁸⁰

The rulemaking requirements of the APA apply to “agencies,” defined by s. 120.52(1), F.S. Agencies include executive branch entities acting pursuant to powers other than those derived from the constitution. In addition to the Governor and Cabinet officers, the APA applies to a wide variety of entities with statewide or regional authority, such as all departments and entities specified in s. 20.04, F.S., the Board of Governors of the State University System, and regional water supply authorities, to local entities such as school districts or those specifically made subject to the APA.⁸¹

The development of the APA parallels the Legislature’s refinement of the strictures regulating the exercise of delegated authority by executive branch agencies. The initial version of the APA in 1974 provided a process for public adoption and adjudication of agency rules.⁸² A year later the Legislature first required agencies to provide a statement of estimated economic impact in the notice of initial rulemaking.⁸³ By the early 1990s the Legislature became increasingly concerned about the economic costs of agency rules and amended the APA to compel preparation of economic impact statements under certain circumstances.⁸⁴

The Legislature also determined greater clarity was required to guide and constrain agencies in exercising delegated authority. A comprehensive revision of the APA became law in 1996⁸⁵ expressly limiting rulemaking only to those areas where agencies had both the power to make rules and a substantive statute providing specific guidelines for those rules. To ensure all agency rules conformed with this standard of authority, the Legislature required every agency to review the express legal authority for each rule of the agency and to repeal those which lacked proper authority, over a period of three years.⁸⁶ Further clarification of the rulemaking authority was enacted in 1999 and the process for reviewing the substantive authority for rules was extended into 2001.⁸⁷

These initial review requirements were fulfilled and the reporting requirement was modified into an ongoing requirement. Under s. 120.74, F.S., agencies now are required to review their rules and perform the following:

- Identify and correct deficiencies;
- Clarify and simplify rules;
- Delete obsolete or unnecessary rules;
- Delete rules that are redundant of statutes;

⁷⁵ *Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So. 2d 594 (Fla. 1st DCA 2000).

⁷⁶ Section 120.52(17), F.S.

⁷⁷ Section 120.54(1)(a), F.S.

⁷⁸ Section 120.52(8) & s. 120.536(1), F.S.

⁷⁹ *Save the Manatee Club, Inc.*, supra at 599.

⁸⁰ *Sloban v. Florida Board of Pharmacy*, 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, 794 So. 2d 696, 704 (Fla. 1st DCA 2001).

⁸¹ The comprehensive list of entities is found in the definition at s. 120.52(1), F.S. There are certain exclusions for municipalities and municipality-created entities.

⁸² Ch. 74-310, Laws of Florida.

⁸³ Ch. 75-191, s. 3, Laws of Florida, amending s. 120.54(1), F.S. (Supp. 1974).

⁸⁴ Ch. 92-166, s. 4, Laws of Florida, amending s. 120.54(2)(b), F.S. (1991). See also Patricia Nelson, “Now What Do We Do? An Agency Perspective on Rulemaking After HB 1565 (and Executive Order 2011-01),” *The Florida Bar Administrative Law Section Newsletter*, Vol. XXXII, No. 3 (March 2011). The article presents a good overview of the history of economic analysis under the APA and presents one agency’s approach to implementing the requirements of s. 120.541(2)(a), F.S.

⁸⁵ Ch. 96-159, Laws of Florida.

⁸⁶ Ch. 96-159, s. 9, Laws of Florida.

⁸⁷ Ch. 99-379, s. 3, Laws of Florida.

- Improve efficiency, reduce paperwork, decrease costs to government and the private sector;
- Confer with agencies having concurrent jurisdiction and determine whether their rules can be coordinated; and
- Determine whether rules should be amended or repealed to reduce the impact on small business while meeting the stated objectives of the proposed rule.⁸⁸

By October 1 of each odd-numbered year, each agency must file a report with the Speaker, the President, the Joint Administrative Procedures Committee (JAPC), and each substantive committee of the Legislature, certifying compliance with the statute and providing the following information:

- Changes made to the agency's rules as a result of the review;
- Recommended statutory changes to promote efficiency, reduce paperwork, or decrease costs to government and the private sector;
- The economic impact of the rules on small business;
- The types of cases or disputes in which the agency is involved which should be conducted under the summary hearing process described in s. 120.574, F.S.⁸⁹

Background: Economic Review of Rules

With the development of stricter standards for exercising rulemaking authority the Legislature also imposed more comprehensive requirements for agencies to address the economic effect of their rules. By 1992 the Legislature had imposed specific elements for inclusion in economic impact statements, developed criteria for agencies to follow in considering the impact of a rule on small businesses, and required agencies to tier their rules in order to lessen economic impacts on small business.⁹⁰ The 1996 act expanded the criteria both for considering the impact on small business as well as preparing a more comprehensive statement of estimated regulatory costs.⁹¹ Agencies also were required to consider lower cost alternatives to the proposed rule.⁹² Preparation of a statement of estimated regulatory costs (SERC) was mandatory only in response to the filing of a lower cost alternative by a substantially affected party.⁹³

Statutory amendments in 2008 mandated preparation of a SERC if the agency's rule would affect small businesses.⁹⁴ In the same act the Legislature created the Small Business Regulatory Advisory Council⁹⁵ (SBRAC). The primary role of SBRAC is to review existing and proposed agency rules and to advocate for minimizing adverse impacts and economic hardship on small businesses.⁹⁶

The enactment of HB 1565 further increased legislative oversight of agency rulemaking by creating specific economic thresholds for stricter accountability. For all rulemaking initiated on or after November 17, 2010, s. 120.54(3)(b)1. and s. 120.541(1)(b), F.S., require agencies to prepare a SERC if the proposed rule either will have an adverse impact on small businesses or if the rule is likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate in the first year after the rule is implemented. Section 120.541(2)(a), F.S., now requires a complete SERC to include an economic analysis addressing whether the rule is likely to have one of three specific impacts, directly or indirectly, in excess of \$1 million in the aggregate within 5 years of going into effect:

- An adverse impact on economic growth, private sector job creation or employment, or private sector employment;

⁸⁸ Section 120.74(1), F.S.

⁸⁹ Section 120.74(2), F.S. Section 120.574, F.S., provides a summary procedure for administrative hearings if the parties agree.

⁹⁰ Section 120.54(2), F.S. (Supp. 1992).

⁹¹ Ch. 96-159, s. 10, Laws of Florida.

⁹² Section 120.54(3)(b)2.b., F.S. (Supp. 1996).

⁹³ Ch. 96-159, s. 11, Laws of Florida, creating s. 120.541, F.S.

⁹⁴ Ch. 2008-149, s. 7, Laws of Florida, amending s. 120.54(3)(b)1., F.S.

⁹⁵ Section 288.7001, F.S.

⁹⁶ Section 288.7001(3)(c), F.S.

- An adverse impact on business competitiveness, including competition with interstate firms, productivity, or innovation; or
- An increase in regulatory costs, including transactional costs.

The criteria under s. 120.541(2)(a), F.S., creates the threshold for required legislative ratification under s. 120.541(3), F.S. If the economic analysis required for the SERC finds the rule is likely to have one of the foregoing impacts, the rule cannot become effective unless submitted to the Speaker and the President and ratified by the Legislature.

The requirements of HB 1565 apply only to rules which had not become effective as of November 17, 2010, or are proposed for adoption after that date.⁹⁷ Rules which went into effect between July 1, 2008 and November 16, 2010, were subject to greater scrutiny about their potential costs to small businesses and Florida's economy due to the increased criteria for statutory review and the participation of SBRAC. For rules which went into effect before July 1, 2008, agencies only had to prepare a SERC if a party offered a lower cost alternative or the rule impacted small businesses.

Governor Scott's first executive order⁹⁸ created the Office of Fiscal Accountability and Regulatory Reform (OFARR) and mandated each agency under the Governor's authority to conduct a comprehensive review of all that agency's rules. To date the Governor's agencies have identified over 750 rules which may be repealed.⁹⁹ While certain economic factors are included in this review, Executive Order 2011-01 does not compel the same level of analysis required for a SERC under s. 120.54(3)(b) and s. 120.541(2), F.S.¹⁰⁰

Effect of Bill: Review of Existing Rules with Significant Economic Effect

The bill improves legislative oversight of administrative rulemaking with three modifications of the APA:

- The bill adds subsection 120.74(3), requiring agencies annually to prepare a regulatory plan of projected rulemaking, excluding emergency rulemaking, and to report these plans to the Legislature. Subsection 120.74(4) is also added to adjust certain reporting requirements to coordinate with the reports required under new s. 120.745.
- The bill creates s. 120.745, requiring all agencies to conduct a comprehensive review of their rules, identify those rules in effect on or before November 16, 2010 (the day before the ratification requirement went into effect) which have one of the significant economic impacts of over \$1 million as stated in s. 120.541(2)(a), F.S., complete modified economic reviews of all such rules over a two year period, and provide annual reports to the Legislature. Agencies must also identify and justify rules requiring data submissions from third parties. This provision will expire on July 1, 2014.
- The bill creates s. 120.7455, establishing the format for a Legislative project to gather information on burdensome administrative rules and providing use immunity and protections from agency retaliation to those parties who participate in the survey. This provision will continue in effect in order to preserve the provided immunity and protections.

Section 120.74(3): Annual Regulatory Plan and Report

Section 120.74, F.S., requires agencies to conduct a biennial review of their rules and report on specific topics to the Speaker, President, and JAPC. Section 5 of EO 2011-01 requires each agency under the

⁹⁷ The APA distinguishes between a rule being "adopted" and being enforceable or "effective." s. 120.54(3)(e)6, F.S. Before a rule becomes "effective" the agency first must complete the rulemaking process and file the rule for adoption with the Department of State.

⁹⁸ EO 2011-01.

⁹⁹ Presentation of Patricia Nelson, Deputy Director of OFARR, at March 23, 2011 meeting of Rulemaking & Regulation Subcommittee.

¹⁰⁰ Id.

authority of the Governor to prepare by July 1 of each year a regulatory plan identifying rulemaking the agency expects to pursue in the next fiscal year. The bill codifies this reporting planning requirement for all agencies and provides for annual reporting to the Speaker, President, and JAPC.

Section 120.74(4): Modification of Biennial Reporting Requirement During Effective Period of s. 120.745

The comprehensive review provided in new s. 120.745 coincides with the biennial reviews and reports required under s. 120.74, F.S. This new subsection (4) avoids duplication of effort on the part of the agencies by integrating elements of the report due in 2011 with the more comprehensive report due under s. 120.745(4) and by suspending the biennial report in 2013 due to the detailed reports due in 2012 and 2013 under s. 120.745(6).

Section 120.745: Comprehensive Rule Review with Emphasis on Economic Effects

After the 1996 substantive amendments to the APA, the Legislature adopted a one-time review process for all existing rules. Agencies were given a specific time in which to review their rules for compliance with the substantive law authorizing the rule. Similarly, the bill requires a review of existing rules to ensure conformity with the Legislature's expressed intent to minimize the adverse impacts of agency rulemaking on Florida's economy.

The review and reporting process begins in 2011 and ends in 2013. All agencies will be required to review and categorize their rules and provide a comprehensive report to the Speaker, President, and JAPC by December 1, 2011. For rules in effect on or before November 16, 2010, which the agency wants to retain without amendment, and which have or are projected to have one of the \$1 million fiscal impacts delineated in s. 120.541(2)(a), F.S., the agencies are required to divide such rules into two reporting groups: one group to be analyzed and reported by December 1, 2012 (Group 1), and the other by December 1, 2013 (Group 2). For each rule in these Groups the agency shall prepare a compliance economic review incorporating specific information required by the new statute. The bill provides for periods of public comment on the rules to be listed in Group 1 or Group 2 and on the resulting economic reviews, including opportunities to suggest lower cost regulatory alternatives to the existing rule. Comprehensive reports of these economic reviews will be due to the Speaker, President, and JAPC by the above dates. The Legislature thus will receive updated economic evaluations of older rules and may decide what action to take, if any.

The APA definition of "agency" includes most state governmental entities, including constitutionally-created bodies such as the Fish and Wildlife Conservation Commission and regional bodies such as water management districts. Most local governments are exempt but some may be included by special law.¹⁰¹ Section 120.745(1)(a) will exclude local governments with jurisdiction in only one county or less¹⁰² from the comprehensive review process. This recognizes the disparity in resources available to these local governmental units as opposed to entities receiving state funding and which enact rules having a regional or statewide impact.

By definition the bill includes in the required review only those rules required to be published in the Florida Administrative Code.¹⁰³ Rules identified for repeal or amendment will not require the economic reviews created under the bill because either action requires compliance with the current economic analysis procedures in the APA.¹⁰⁴

In addition to the review and identification of rules by December 1, 2011 based on economic effects, agencies must identify those rules defined as having an impact on state revenues. Agencies must also

¹⁰¹ Section 120.52(1), F.S.

¹⁰² Section 120.52(1)(c), F.S. The statute excludes from the APA officers and governmental entities with jurisdiction over one county or less unless the officer or entity is expressly made subject to the APA by general law, special law, or existing judicial decision. The full definition of "agency" also excludes a number of specific entities, principally municipalities.

¹⁰³ Section 120.55(1), F.S.

¹⁰⁴ Section 120.54(3)(d)5., Fla. Stat.

identify and support defined “data collection rules” which they intend to retain. A number of agency rules require non-governmental entities such as service providers or workers compensation insurance carriers to report certain data to the agency. Because of the economic impact on Florida businesses of these various data reporting requirements, the bill requires each agency to report all rules mandating such data reporting. The December 1, 2011 report will include the statutes authorizing the data collection, how the data is used by the agency, and the policies supporting continuation of the program.

The bill requires public notice of completing reports, listing of rules in Group 1 or Group 2, completing compliance economic reviews, and resolving public objections. Proposed s. 120.745(7) provides exclusive publication requirements, relying primarily on electronic postings on the websites of the agencies. Publication required under s. 120.745 will be deemed complete as of the date the required notice, determination or report is published on the agency’s website. Agencies must post the full text of documents required under s. 120.745 using links on their respective websites. Once a week each agency will provide the Department of State with copies of all notices published in the previous week on the agency’s Internet website for publication in the Florida Administrative Weekly.

To avoid unnecessary duplication of effort, the bill exempts from the compliance economic review those rules for which the agency completed the review process implemented under EO 2011-01, but only if the review under EO 2011-01 found the rule did not:

- Adversely affect the availability of business services;
- Adversely affect job creation or retention;
- Place unreasonable restrictions on access to employment; or
- Impose a significant regulatory related cost.

Further, an agency’s certification of its biennial review under s. 120.74, F.S., may omit any information included in the reports provided under s. 120.745, the reporting date is extended to December, 2011, and the biennial reporting requirement is excluded for 2013. To further assist agencies in preparing the report required in 2011, the bill provides instructions on a model reporting format. These provisions are intended to streamline the review and reporting process for agencies.

To monitor and enforce compliance with the new statute’s review and reporting requirements, proposed s. 120.745(8) requires each agency head to file with JAPC written certifications of compliance with key reporting requirements. Under the bill, agencies which fail to timely file these written certifications will have all rulemaking authority suspended until the certification is properly filed.

The bill provides agencies with an alternative to the detailed review and economic analysis process. No later than October 1, 2011, agencies may choose to cooperate with the review process conducted through OFARR. The agency head must certify this choice to JAPC. The agency’s data collection and revenue rules still must be identified by December 1, 2011, but the final report of economic analyses for rules having a significant regulatory cost or economic impact, as identified by OFARR, will not be due until December 1, 2013. This alternative eliminates any duplication of work already undertaken by OFARR under Executive Order 2011-1.

The review proceeds through the 2014 regular session of the Legislature to provide sufficient time for the agencies to conduct the comprehensive review and for public participation, legislative consideration of the reports, and any action the Legislature chooses to take. The bill excludes agency proceedings to repeal rules identified under s. 120.745 from the requirement to prepare a statement of estimated regulatory costs under s. 120.54 and s. 120.541.¹⁰⁵

Timeline for Review and Reporting

The following summarizes the timeline of required reporting under s. 120.745.

¹⁰⁵ Under s. 120.54(3)(d)e, F.S., agencies must use the same procedure to repeal rules as to adopt them, including the potential for mandatory preparation of a statement of estimated regulatory costs under s. 120.54 and s. 120.541, F.S.

Completion Date	GROUP 1 RULES	GROUP 2 RULES
10/1/2001	Agencies to certify with JAPC option to cooperate with OFARR review.	
12/1/2011	<i>Agencies cooperating with OFARR review: publish results including identification of data collection & revenue rules</i>	
	<p>Agencies not in OFARR review: File reports of results of biennial s. 120.74 review & review under s. 120.745(3).</p> <ul style="list-style-type: none"> • Report includes: <ul style="list-style-type: none"> ○ All rules defined in s. 120.745 as “revenue rules.” ○ All “data collection rules,” together with authorizing statute(s), uses of date reported, and policies supporting continuation of reporting program. ○ Rules to be repealed. ○ Rules to be amended. ○ Each rule effective on or before 11/16/2010, which the agency does not plan to repeal or amend before 12/31/2012, and which probably will have one of the effects in s. 120.541(2)(a) for the 5 year period beginning 1/1/2010. ○ Rules included in Group 1 and those included in Group 2. • Publish list of Group 1 and Group 2 Rules. • Begin consideration of objections to non-inclusion of rules in economic review schedule. • Written certification of completion by agency head. 	Agencies not in OFARR review: Publish list of Group 2 Rules.
5/1/2012	<p>Agencies not in OFARR review: complete compliance economic reviews for Group 1.</p> <ul style="list-style-type: none"> • Submit to SBRAC • Publish notice of Group 1 Rules for which compliance economic reviews were prepared • Begin public input of Lower Cost Regulatory Alternatives (LCRA) on Group 1 economic reviews. 	
6/1/2012	D/L for public objections to non-inclusion of rules in economic review schedule.	
6/15/2012	D/L for public to submit Lower Cost Regulatory LCRA for any Group 1 Rule.	
6/21/2012	Latest day for Agencies not in OFARR review to publish determination on public objections to non-inclusion of rules in economic review schedule.	
7/1/2012	<ul style="list-style-type: none"> • Latest day for Agencies not in OFARR review to publish notice of correcting report in response to sustaining an objection to non-inclusion in economic review schedule. • Written certification of completion of all objection determinations by agency head. 	
	<i>All Agencies: First annual regulatory plan submission under s. 120.74(3).</i>	
8/1/2012	D/L for SBRAC to submit LCRAs	

Completion Date	GROUP 1 RULES	GROUP 2 RULES
12/1/2012	<ul style="list-style-type: none"> Agencies not in OFARR review: publish final reports of Group 1 compliance economic reviews. Written certification of completion by agency head. Begin 120.54 rulemaking for Group 1 Rules listed for amendment or repeal. 	
5/1/2013	<p>Last week of 2013 Regular Session during which:</p> <ul style="list-style-type: none"> Legislature may review reports of Group 1 rule reviews. Legislature may act with respect to retained Group 1 rules. 	<p>Agencies not in OFARR review: complete compliance economic reviews for Group 2.</p> <ul style="list-style-type: none"> Submit to SBRAC Publish notice of rules for which compliance economic reviews were prepared, period for public input. Written certification of compliance by agency head.
6/15/2013		D/L for public to submit Lower Cost Regulatory Alternatives for any Group 2 rule (LCRA)
7/1/2013	<i>All Agencies: Second annual regulatory plan submission under s. 120.74(3).</i>	
8/1/2013		D/L for SBRAC to submit LCRAs
10/1/2013	<i>Agencies opting to cooperate with OFARR review: Head of agency to certify in writing the agency completed all economic estimates required under s. 120.745(9)(b).</i>	
12/1/2013	<i>Agencies opting to cooperate with OFARR review: Publication of reports for economic estimates required under s. 120.745(9)(b).</i>	
		<p>Agencies not in OFARR review: publish final reports of Group 2 compliance economic reviews.</p> <ul style="list-style-type: none"> Written certification of compliance by agency head. Begin 120.54 rulemaking for Group 2 Rules listed for amendment or repeal.
5/1/2014		<p>Last week of 2014 Regular Session during which:</p> <ul style="list-style-type: none"> Legislature may review reports of Group 2 rule reviews. Legislature may act with respect to retained Group 2 rules.
7/1/2014	<i>s. 120.745 stands repealed by terms of the act unless extended by the Legislature.</i>	

Section 120.7455: Legislative survey of Regulatory Impacts

The bill creates s. 120.7455, providing notice that from the effective date of the act to July 1, 2014, the Legislature may implement an internet-based public survey on the impact of regulatory rules in Florida, including the number and nature of regulations and permitting requirements affecting Floridians. Types of information which may be requested include the name of the business as registered in Florida, the number and identification of the agencies regulating the respondent's lawful activities, the number of permits, licenses, or registrations required for the respondent to engage in a lawful activity, and laws, rules, ordinances, or regulations the respondent alleges to be unreasonably burdensome. To

encourage participation and candor in any such survey, the bill provides use immunity from prosecution based on either the act of responding or the information provided. The bill also protects survey respondents from retaliatory acts of an agency based on providing or withholding information in the survey by allowing evidence of retaliatory conduct in mitigation of any proposed sanction, authorizing the presiding judge to award the minimum sanctions authorized by the Legislature.

Self-Repeal: the bill provides s. 120.745 will stand repealed as of July 1, 2014.

B. SECTION DIRECTORY:

Section 1: Amends s. 120.54, F.S., as amended by chapter 210-279, L.O.F., to clarify the procedures for standard rulemaking by requiring agencies to state in the notice of proposed rule whether ratification will be necessary; to expressly note ratification as a contingency for the rule to become effective; to authorize agencies to modify or withdraw a rule after entry of a final order in a challenge to the rule brought after the rule was filed for adoption but before it became effective, to withdraw a rule when the rule requires ratification and more than 90 days have passed since the rule was filed for adoption without the Legislature ratifying the rule, or to withdraw or modify a rule if the committee notifies the agency that an objection to the rule is being considered, in which case the rule may be modified to extend the effective date by not more than 60 days.

Section 2: Amends s. 120.541, F.S., to restore the time period for delaying rule adoption after an agency revises a SERC to that in effect prior to enactment of chapter 2010-279, L.O.F. Exempts emergency rulemaking and rulemaking to adopt federal standards from s. 120.541, including the SERC and legislative ratification requirements.

Section 3: Amends s. 120.56, F.S., to reverse the 2010 change for a party to challenge a proposed rule after preparation of a SERC to conform to other relevant time periods in the existing law.

Section 4: Creates new s. 120.74(3), requiring all agencies to adopt an annual regulatory plan and file the plan with the Speaker, President, and JAPC. Creates new s. 120.74(4), modifying the biennial review and reporting requirements of s. 120.74, F.S., for the years 2011 and 2013.

Section 5: Creates new s. 120.745, requiring all agencies to review all of their rules in effect on or before November 16, 2010, and submit such rules meeting the \$1 million over 5 years criteria in s. 120.541(2)(a), F.S., for legislative consideration.

120.745(1): Creates specific definitions for review process. Excludes certain local governmental entities from the comprehensive review requirement.

120.745(2): Requires each defined agency to perform an Enhanced Biennial Review of all rules in effect. Combines the review and report due under s. 120.74 with a one-time review of all rules in effect on or before 11/16/2010. Requires identifying and dividing those requiring further economic review into Groups 1 and 2. Extends biennial review reporting date to December 1, 2011.

120.745(3): Specifies the form and content of report of Enhanced Biennial Review and requires publication in the manner provided in s. 120.745(7). Requires publication of separate lists of Group 1 and Group 2 rules, and directions on how and where to file objections.

120.745(4): Creates process for public objection of agency decision on whether rule should be designated for economic review. Provides the agency's decision is final on whether rule is subject to compliance economic review.

120.745(5): Requires compliance economic analysis for all rules listed in Group 1 or Group 2 as probably exceeding the \$ 1 million thresholds in s. 120.541(2)(a), F.S. Provides for publication of completed reviews and period for public submission of lower cost regulatory alternatives. Exempts certain rules reviewed under the Governor's EO 2011-01 unless certain specific adverse effects are found in the course of such review. Requires filing of comprehensive final reports with the Speaker,

President, and JAPC: by December 1, 2012 for Group 1 rules; by December 1, 2013, for Group 2 rules. For rules designated for repeal or amendment in Group 1 or 2 reports, requires initiating of proceedings. Exempts agency proceedings to repeal rules identified in reports filed under s. 120.745(5) from the requirement to prepare a statement of estimated regulatory costs.

120.745(6): References authority of Legislature to choose whether to act on information reported.

120.745(7): Creates specific provisions for notice and publication under the act. Includes specific directives for Internet URL addresses for publications of reports, determinations and notices.

120.745(8): Provides an agency's rulemaking authority is suspended for failing to meet a reporting deadline under the section. Rulemaking authority resumes upon proper compliance with the reporting requirements. The time for any response to a report of the agency is tolled during the period of a suspension.

120.745(9): Exempts agencies which choose to cooperate with the rule review process developed and managed by OFARR from certain reporting requirements and timelines.

120.745(10): Provides s. 120.745 is repealed effective on July 1, 2014.

Section 6: Creates s. 120.7455, providing for Internet-based public survey to collect information on rules, laws, ordinances, and regulations which impact the lawful activities of respondents, including unreasonably burdensome rules. Provides for use immunity and protection from retaliatory agency conduct for survey participants.

Section 7: Leaves unchanged the legal status of any rule determined to be invalid. This prevents any agency from using the process of review and submission to the Legislature to override a legal decision invalidating a rule.

Section 8: Creates s. 120.80(16)(d), exempting amendments and triennial updates to the Florida Building Code from the ratification requirement of s. 120.541(3). Creates s. 120.80(17), exempting amendments and triennial updates to the Florida Fire Prevention Code from the ratification requirement of s. 120.541(3). Creates s. 120.80(18), exempting adjustments of tolls by the Department of Transportation from the SERC and ratification requirements.

Section 9: Creates s. 120.81(1)(l), exempting rulemaking to implement Ch. 2011-01, LOF, the Student Success Act, from the requirements of preparing a SERC and submission for legislative ratification.

Section 10: Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The impact on revenues in both FY 2011-2012 and FY 2012-2013 is indeterminate, but insignificant. The bill authorizes no new revenue sources and existing revenues would not be increased by these clarifications of administrative procedure and the rule review process.

2. Expenditures:

Requiring disclosure in the rulemaking notice of whether the proposed rule may require ratification will have an indeterminate, but insignificant, impact on agency expenditures. Agencies currently must include in the rulemaking notice a summary of the SERC, if one was prepared,¹⁰⁶ and must prepare a SERC if the proposed rule will adversely affect small business or increase regulatory

¹⁰⁶ Section 120.54(3)(a)1., F.S.

costs more than \$200,000 in the aggregate within 1 year of implementation.¹⁰⁷ As agencies have a duty to address the fiscal impact of a proposed rule, and already incur the expense pertaining to the preparation of a SERC, the information is available to determine whether legislative ratification will be required. The bill thus requires reporting an element the supporting data for which should exist.

Clarifying the rulemaking procedures by including ratification as a separate contingency for the rule to become effective only states current law and imposes no additional tasks or expenditures. Reverting the times for filing for adoption (from 45 to 21 days) or challenging a proposed rule (from 44 to 20 days) after the agency provides a revised SERC conforms these processes to existing law.

Clarifying the exclusion of emergency rulemaking from the SERC and ratification requirements should not impact agency expenditures as SERCs were not previously required. The remaining exemptions created in the bill should be expense neutral.

Costs of review to agencies are indeterminate. By reducing duplication of activities for the agencies which completed reviews under existing OFARR guidelines and integrating the 2011 report with the review already required under s. 120.74, F.S., the costs for the comprehensive review in 2011 should be reduced. The agencies will experience increased costs in completing a compliance economic analysis required for each rule being retained without amendment and which is likely to meet the criteria of s. 120.541(2)(a), F.S. An estimate of any significant compliance review costs should be available for consideration in the 2012 Regular Session and ought to be included in agency budgets for FY-2013 and FY-2014. The cost of reporting will be reduced in 2013 by eliminating the rules review and report under s. 120.74, F.S., for that year. The available alternative of cooperating in an expanded review process with OFARR should further reduce potential costs.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Many local governments are not subject to Chapter 120, the Administrative Procedures Act.¹⁰⁸ For local governments subject to rulemaking under Chapter 120, the bill clarifies existing procedural requirements. The impact on revenues in both FY 2011-2012 and FY 2012-2013 is indeterminate but insignificant. The bill authorizes no new revenue sources and existing revenues would not be increased by these clarifications of administrative procedure.

2. Expenditures:

The analysis in section II.A.2 is applicable to those local governments subject to the review, analysis, and reporting requirements under s. 120.745. The impact on expenditures is indeterminate, but insignificant.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill imposes no new direct economic impacts on the private sector.

D. FISCAL COMMENTS:

No additional fiscal comments.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

¹⁰⁷ Section 120.54(3)(b)1., F.S.

¹⁰⁸ Section 120.52(1), F.S.

The bill imposes no duty on a municipality or county to expend funds or take action requiring the expenditure of funds. The bill neither reduces the authority for municipalities or counties to raise funds nor reduces the municipality/county share of state taxes.

Local governments subject to the APA are under the economic review requirements for rulemaking in s. 120.54 and 120.541, F.S., the ratification requirement of s. 120.541(3), F.S., and the biennial review and reporting requirement of s. 120.74, F.S. The required comprehensive review in s. 120.745 is an extension of the regulatory oversight to which these entities already are subject. Excluding smaller governmental entities, with jurisdiction over one county or less, prevents the imposition of a statewide comprehensive process solely due to the ancillary effect of a special law.

2. Other: No other constitutional issues appear.

Use immunity is not uncommon in criminal investigations and in Congressional investigations.¹⁰⁹ General law may limit the power of the state to use evidence or prosecute violators of laws and rules.

The bill changes the time for a party to challenge a proposed rule after the agency provides a SERC from 44 to 20 days. This may impact businesses outside the state intending to bring such challenges but treats all objecting parties the same regardless of where located.

B. RULE-MAKING AUTHORITY:

The bill revises and clarifies existing rulemaking procedures for all agencies under the APA. No rulemaking authority is provided.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

CS/CS/HB 993

Rulemaking & Regulation Subcommittee

On March 23, 2011, the Rulemaking & Regulation Subcommittee adopted 5 amendments to the original bill.

Amendment 1: Exempted emergency rulemaking from the SERC and ratification requirements of s. 120.54(3) and 120.541, F.S. The amendment revised Section 1 of the original bill to clarify the exclusion of emergency rulemaking from the SERC requirement in s. 120.54(3), F.S. The amendment also created new s. 120.54(5), completely excluding emergency rulemaking from the SERC and ratification requirements.

Amendment 2: Amended s.120.54(3)(d), F.S., authorizing agencies to withdraw or modify rules as a result of a final order in a challenge brought during the period between rule adoption and rule effectiveness, to withdraw rules submitted for ratification which are left unratified, and to summarily repeal rules found invalid because they were never submitted for legislative ratification.

Amendment 3/As amended by Amendment 4: This amendment was adopted after being revised by amendment-to-amendment 4, which exempted rules adopting federal standards, the triennial updates to the Florida Building Code, and the triennial updates to the Florida Fire Prevention Code from legislative ratification.

Amendment 5: Created the summary rule repeal process to be used by statewide elected officials within the first 6 months of an elected term. Provided for notice, opportunity for public objection to proposed

¹⁰⁹ See, 18 U.S.C. §§ 6001 *et seq.* (Federal statutory provisions.) For a concise discussion of the issues see, *The Power To Compel Testimony and Disclosure*, found on 4/7/11, at <http://supreme.justia.com/constitution/amendment-05/08-power-to-compel-testimony-and-disclosure.html>.

repeals, and judicial review. Avoiding any question about delegation of executive authority, the amendment prevents any statewide elected official from delegating this authority.

Amendment 6: Changes the effective date of the bill to upon becoming a law.

The Rulemaking & Regulation Subcommittee then passed the bill as a committee substitute, incorporating the amendments previously described.

Government Operations Subcommittee

On April 1, 2011, the Government Operations Subcommittee adopted a strike-all amendment to CS/HB 993 and passed the bill as a committee substitute. The committee substitute differs from CS/HB 993 in the following ways:

- Changes the circumstances under which a rule may be withdrawn or modified.
- Revises legislative findings related to newly elected statewide executive officers to include authority to initiate oversight of all rulemaking in agencies under their respective control.
- Adds a definition of "repealing authority".
- Revises provisions in the notice of repeal to require, among other things, notice of rules under review for repeal by March 1 of the inaugural year or in 2011 within 30 days of the effective date of the bill, and requires that repeal of rules may not be effective earlier than March 31 in the inaugural period.
- Revises provisions under judicial review requirements delineating elements that are part of the record for review.

HB 7239

On April 5, 2010, the Rulemaking & Regulatory Subcommittee adopted a strike-all amendment which differed from the initial published draft of PCB RRS 11-02a. Changes included:

- Adjusting the required filing of annual regulatory plans by agencies with the Speaker, the President, and JAPC to begin in 2012;
- Revising and reducing the elements to be included in the compliance economic reviews to be performed under the bill and requiring the 5 year period for the estimate described under s. 120.541(2), F.S., to begin on January 1, 2010;
- Deleting language indicating the legislative purpose for the section as redundant of terms of proposed s. 120.745;
- Streamlining the initial process for reviewing and categorizing an agency's rules to better integrate the required 2011 report with the requirements of s. 120.74;
- Revising the period for public objections to the listing of rules scheduled for further economic review to 6 months for all interested parties;
- Streamlining the compliance economic review process by exempting from further economic review those rules for which the Governor's Office of Fiscal Accountability and Regulatory Reform (OFARR) review found no specified adverse economic consequences and by revising the substantial reporting requirements to make the reports uniform for 2012 and 2013;
- Revising certain publication requirements;
- Deleting a provision for automatic repeal of rules reported as appropriate for repeal and restructuring an exemption from both the SERC requirement of s. 120.54 and all of s. 120.541, F.S., for proceedings to repeal rules identified by the reports required under s. 120.745;
- Renumbering the sections.

1 A bill to be entitled
 2 An act relating to rulemaking; amending s. 120.54, F.S.;
 3 requiring that an agency include in its notice of intended
 4 rulemaking a statement as to whether the proposed rule
 5 will require legislative ratification; providing for
 6 withdrawal of an adopted rule that is not ratified by the
 7 Legislature; clarifying that certain proposed rules are
 8 effective only when ratified by the Legislature; amending
 9 s. 120.541, F.S.; reducing the time before an agency files
 10 a rule for adoption within which the agency must notify
 11 the person who submitted a lower cost alternative and the
 12 Administrative Procedures Committee; excluding rules
 13 adopting federal standards and emergency rulemaking from
 14 certain provisions; amending s. 120.56, F.S.; reducing the
 15 time in which a substantially affected person may seek an
 16 administrative determination of the invalidity of a rule
 17 after the statement or revised statement of estimated
 18 regulatory costs is available; amending s. 120.74, F.S.;
 19 providing for agency reporting of certain annual
 20 regulatory plans; providing for certain omissions and
 21 suspensions of reports; creating s. 120.745, F.S.;
 22 providing for legislative review of agency rules in effect
 23 on or before November 16, 2010; providing definitions;
 24 requiring that each agency complete an enhanced biennial
 25 review of its existing rules; requiring a report of the
 26 enhanced biennial review; providing specifications for the
 27 report; providing for objections and the agency's
 28 response; requiring the performance of a compliance

29 economic review and report under certain circumstances;
 30 providing specifications for the review; providing
 31 specifications for publishing the final report of the
 32 agency's review; requiring that an agency publish notices,
 33 determinations, and reports in a specified format;
 34 requiring the Department of State to publish certain
 35 notices in the Florida Administrative Weekly; providing
 36 specifications; providing for future review and repeal;
 37 providing for suspension of rulemaking authority for
 38 failure to comply with the certification requirements of
 39 the section; providing for an exemption from certain
 40 requirements; creating s. 120.7455, F.S.; providing that
 41 the Legislature may establish and maintain an Internet-
 42 based public survey of regulatory impacts; providing input
 43 details; providing that legislative leaders may certify in
 44 writing to certain individuals the establishment and
 45 identity of any such Internet-based survey; providing
 46 immunities from enforcement action or prosecution
 47 involving information solicited through the survey;
 48 providing protections from retaliatory enforcement
 49 actions; clarifying that the legal status of a rule that
 50 has been determined to be invalid is not changed by the
 51 amendment or creation of specified provisions by the act;
 52 amending s. 120.80, F.S.; exempting the adoption of
 53 certain amendments and the triennial updates to the
 54 Florida Building Code from required legislative
 55 ratification; exempting the adoption of certain amendments
 56 and the triennial updates to the Florida Fire Prevention

57 Code from required legislative ratification; exempting the
 58 adoption of rules adjusting rates of certain
 59 transportation and expressway tolls from the preparation
 60 of a statement of estimated regulatory costs and from
 61 submission for legislative ratification; amending s.
 62 120.81, F.S.; excluding the adoption of rules under
 63 chapter 2011-1, Laws of Florida, the Student Success Act,
 64 from the preparation of a statement of estimated
 65 regulatory costs and from submission for legislative
 66 ratification; providing an effective date.

67
 68 Be It Enacted by the Legislature of the State of Florida:

69
 70 Section 1. Paragraphs (a), (d), and (e) of subsection (3)
 71 of section 120.54, Florida Statutes, as amended by chapter 2010-
 72 279, Laws of Florida, are amended to read:

73 120.54 Rulemaking.—

74 (3) ADOPTION PROCEDURES.—

75 (a) Notices.—

76 1. Prior to the adoption, amendment, or repeal of any rule
 77 other than an emergency rule, an agency, upon approval of the
 78 agency head, shall give notice of its intended action, setting
 79 forth a short, plain explanation of the purpose and effect of
 80 the proposed action; the full text of the proposed rule or
 81 amendment and a summary thereof; a reference to the grant of
 82 rulemaking authority pursuant to which the rule is adopted; and
 83 a reference to the section or subsection of the Florida Statutes
 84 or the Laws of Florida being implemented or interpreted. The

85 | notice must include a summary of the agency's statement of the
 86 | estimated regulatory costs, if one has been prepared, based on
 87 | the factors set forth in s. 120.541(2); ~~and~~ a statement that
 88 | any person who wishes to provide the agency with information
 89 | regarding the statement of estimated regulatory costs, or to
 90 | provide a proposal for a lower cost regulatory alternative as
 91 | provided by s. 120.541(1), must do so in writing within 21 days
 92 | after publication of the notice; and a statement as to whether,
 93 | based on the statement of the estimated regulatory costs or
 94 | other information expressly relied upon and described by the
 95 | agency if no statement of regulatory costs is required, the
 96 | proposed rule is expected to require legislative ratification
 97 | pursuant to s. 120.541(3). The notice must state the procedure
 98 | for requesting a public hearing on the proposed rule. Except
 99 | when the intended action is the repeal of a rule, the notice
 100 | must include a reference both to the date on which and to the
 101 | place where the notice of rule development that is required by
 102 | subsection (2) appeared.

103 | 2. The notice shall be published in the Florida
 104 | Administrative Weekly not less than 28 days prior to the
 105 | intended action. The proposed rule shall be available for
 106 | inspection and copying by the public at the time of the
 107 | publication of notice.

108 | 3. The notice shall be mailed to all persons named in the
 109 | proposed rule and to all persons who, at least 14 days prior to
 110 | such mailing, have made requests of the agency for advance
 111 | notice of its proceedings. The agency shall also give such
 112 | notice as is prescribed by rule to those particular classes of

113 persons to whom the intended action is directed.

114 4. The adopting agency shall file with the committee, at
 115 least 21 days prior to the proposed adoption date, a copy of
 116 each rule it proposes to adopt; a copy of any material
 117 incorporated by reference in the rule; a detailed written
 118 statement of the facts and circumstances justifying the proposed
 119 rule; a copy of any statement of estimated regulatory costs that
 120 has been prepared pursuant to s. 120.541; a statement of the
 121 extent to which the proposed rule relates to federal standards
 122 or rules on the same subject; and the notice required by
 123 subparagraph 1.

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

125 1. After the final public hearing on the proposed rule, or
 126 after the time for requesting a hearing has expired, if the rule
 127 has not been changed from the rule as previously filed with the
 128 committee, or contains only technical changes, the adopting
 129 agency shall file a notice to that effect with the committee at
 130 least 7 days prior to filing the rule for adoption. Any change,
 131 other than a technical change that does not affect the substance
 132 of the rule, must be supported by the record of public hearings
 133 held on the rule, must be in response to written material
 134 submitted to the agency within 21 days after the date of
 135 publication of the notice of intended agency action or submitted
 136 to the agency between the date of publication of the notice and
 137 the end of the final public hearing, or must be in response to a
 138 proposed objection by the committee. In addition, when any
 139 change is made in a proposed rule, other than a technical
 140 change, the adopting agency shall provide a copy of a notice of

141 change by certified mail or actual delivery to any person who
 142 requests it in writing no later than 21 days after the notice
 143 required in paragraph (a). The agency shall file the notice of
 144 change with the committee, along with the reasons for the
 145 change, and provide the notice of change to persons requesting
 146 it, at least 21 days prior to filing the rule for adoption. The
 147 notice of change shall be published in the Florida
 148 Administrative Weekly at least 21 days prior to filing the rule
 149 for adoption. This subparagraph does not apply to emergency
 150 rules adopted pursuant to subsection (4).

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

153 3. After adoption and before the rule becomes effective
 154 ~~date~~, a rule may be modified or withdrawn only in the following
 155 circumstances:

156 a. When the committee objects to the rule;

157 b. When a final order, which is not subject to further
 158 appeal, is entered in a rule challenge brought pursuant to s.
 159 120.56 after the date of adoption but before the rule becomes
 160 effective pursuant to subparagraph (e)6.;

161 c. If the rule requires ratification, when more than 90
 162 days have passed since the rule was filed for adoption without
 163 the Legislature ratifying the rule, in which case the rule may
 164 be withdrawn but may not be modified; or

165 d. ~~response to an objection by the committee or may be~~
 166 ~~modified to extend the effective date by not more than 60 days~~
 167 When the committee notifies ~~has notified~~ the agency that an
 168 objection to the rule is being considered, in which case the

169 rule may be modified to extend the effective date by not more
 170 than 60 days.

171 4. The agency shall give notice of its decision to
 172 withdraw or modify a rule in the first available issue of the
 173 publication in which the original notice of rulemaking was
 174 published, shall notify those persons described in subparagraph
 175 (a)3. in accordance with the requirements of that subparagraph,
 176 and shall notify the Department of State if the rule is required
 177 to be filed with the Department of State.

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

181 (e) Filing for final adoption; effective date.-

182 1. If the adopting agency is required to publish its rules
 183 in the Florida Administrative Code, the agency, upon approval of
 184 the agency head, shall file with the Department of State three
 185 certified copies of the rule it proposes to adopt; one copy of
 186 any material incorporated by reference in the rule, certified by
 187 the agency; a summary of the rule; a summary of any hearings
 188 held on the rule; and a detailed written statement of the facts
 189 and circumstances justifying the rule. Agencies not required to
 190 publish their rules in the Florida Administrative Code shall
 191 file one certified copy of the proposed rule, and the other
 192 material required by this subparagraph, in the office of the
 193 agency head, and such rules shall be open to the public.

194 2. A rule may not be filed for adoption less than 28 days
 195 or more than 90 days after the notice required by paragraph (a),
 196 until 21 days after the notice of change required by paragraph

197 (d), until 14 days after the final public hearing, until 21 days
198 after a statement of estimated regulatory costs required under
199 s. 120.541 has been provided to all persons who submitted a
200 lower cost regulatory alternative and made available to the
201 public, or until the administrative law judge has rendered a
202 decision under s. 120.56(2), whichever applies. When a required
203 notice of change is published prior to the expiration of the
204 time to file the rule for adoption, the period during which a
205 rule must be filed for adoption is extended to 45 days after the
206 date of publication. If notice of a public hearing is published
207 prior to the expiration of the time to file the rule for
208 adoption, the period during which a rule must be filed for
209 adoption is extended to 45 days after adjournment of the final
210 hearing on the rule, 21 days after receipt of all material
211 authorized to be submitted at the hearing, or 21 days after
212 receipt of the transcript, if one is made, whichever is latest.
213 The term "public hearing" includes any public meeting held by
214 any agency at which the rule is considered. If a petition for an
215 administrative determination under s. 120.56(2) is filed, the
216 period during which a rule must be filed for adoption is
217 extended to 60 days after the administrative law judge files the
218 final order with the clerk or until 60 days after subsequent
219 judicial review is complete.

220 3. At the time a rule is filed, the agency shall certify
221 that the time limitations prescribed by this paragraph have been
222 complied with, that all statutory rulemaking requirements have
223 been met, and that there is no administrative determination
224 pending on the rule.

225 4. At the time a rule is filed, the committee shall
 226 certify whether the agency has responded in writing to all
 227 material and timely written comments or written inquiries made
 228 on behalf of the committee. The department shall reject any rule
 229 that is not filed within the prescribed time limits; that does
 230 not comply with all statutory rulemaking requirements and rules
 231 of the department; upon which an agency has not responded in
 232 writing to all material and timely written inquiries or written
 233 comments; upon which an administrative determination is pending;
 234 or which does not include a statement of estimated regulatory
 235 costs, if required.

236 5. If a rule has not been adopted within the time limits
 237 imposed by this paragraph or has not been adopted in compliance
 238 with all statutory rulemaking requirements, the agency proposing
 239 the rule shall withdraw the rule and give notice of its action
 240 in the next available issue of the Florida Administrative
 241 Weekly.

242 6. The proposed rule shall be adopted on being filed with
 243 the Department of State and become effective 20 days after being
 244 filed, on a later date specified in the notice required by
 245 subparagraph (a)1., ~~or~~ on a date required by statute, or upon
 246 ratification by the Legislature pursuant to s. 120.541(3). Rules
 247 not required to be filed with the Department of State shall
 248 become effective when adopted by the agency head, ~~or~~ on a later
 249 date specified by rule or statute, or upon ratification by the
 250 Legislature pursuant to s. 120.541(3). If the committee notifies
 251 an agency that an objection to a rule is being considered, the
 252 agency may postpone the adoption of the rule to accommodate

253 review of the rule by the committee. When an agency postpones
 254 adoption of a rule to accommodate review by the committee, the
 255 90-day period for filing the rule is tolled until the committee
 256 notifies the agency that it has completed its review of the
 257 rule.

258
 259 For the purposes of this paragraph, the term "administrative
 260 determination" does not include subsequent judicial review.

261 Section 2. Paragraph (d) of subsection (1) and subsection
 262 (4) of section 120.541, Florida Statutes, as amended by chapter
 263 2010-279, Laws of Florida, are amended to read:

264 120.541 Statement of estimated regulatory costs.—

265 (1)

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

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

275 Section 3. Paragraph (a) of subsection (2) of section
 276 120.56, Florida Statutes, as amended by chapter 2010-279, Laws
 277 of Florida, is amended to read:

278 120.56 Challenges to rules.—

279 (2) CHALLENGING PROPOSED RULES; SPECIAL PROVISIONS.—

280 (a) A substantially affected person may seek an

281 administrative determination of the invalidity of a proposed
 282 rule by filing a petition seeking such a determination with the
 283 division within 21 days after the date of publication of the
 284 notice required by s. 120.54(3)(a); within 10 days after the
 285 final public hearing is held on the proposed rule as provided by
 286 s. 120.54(3)(e)2.; within 20 ~~44~~ days after the statement of
 287 estimated regulatory costs or revised statement of estimated
 288 regulatory costs, if applicable, has been prepared and made
 289 available as provided in s. 120.541(1)(d); or within 20 days
 290 after the date of publication of the notice required by s.
 291 120.54(3)(d). The petition must state with particularity the
 292 objections to the proposed rule and the reasons that the
 293 proposed rule is an invalid exercise of delegated legislative
 294 authority. The petitioner has the burden of going forward. The
 295 agency then has the burden to prove by a preponderance of the
 296 evidence that the proposed rule is not an invalid exercise of
 297 delegated legislative authority as to the objections raised. A
 298 person who is substantially affected by a change in the proposed
 299 rule may seek a determination of the validity of such change. A
 300 person who is not substantially affected by the proposed rule as
 301 initially noticed, but who is substantially affected by the rule
 302 as a result of a change, may challenge any provision of the rule
 303 and is not limited to challenging the change to the proposed
 304 rule.

305 Section 4. Subsections (3) and (4) are added to section
 306 120.74, Florida Statutes, to read:

307 120.74 Agency review, revision, and report.—

308 (3) Beginning in 2012, and no later than July 1 of each

309 year, each agency shall file with the President of the Senate,
 310 the Speaker of the House of Representatives, and the committee a
 311 regulatory plan identifying and describing each rule the agency
 312 proposes to adopt for the 12-month period beginning on the July
 313 1 reporting date and ending on the subsequent June 30, excluding
 314 emergency rules.

315 (4) For the year 2011, the certification required in
 316 subsection (2) may omit any information included in the reports
 317 provided under s. 120.745. Reporting under subsections (1) and
 318 (2) shall be suspended for the year 2013, but required reporting
 319 under those subsections shall resume in 2015 and biennially
 320 thereafter.

321 Section 5. Section 120.745, Florida Statutes, is created
 322 to read:

323 120.745 Legislative review of agency rules in effect on or
 324 before November 16, 2010.—

325 (1) DEFINITIONS.—The following definitions apply
 326 exclusively to this section:

327 (a) "Agency" has the same meaning and application as
 328 provided in s. 120.52(1), but for the purposes of this section
 329 excludes each officer and governmental entity in the state with
 330 jurisdiction in one county or less than one county.

331 (b) "Compliance economic review" means a good faith
 332 economic analysis that includes and presents the following
 333 information pertaining to a particular rule:

334 1. A justification for the rule summarizing the benefits
 335 of the rule; and

336 2. A statement of estimated regulatory costs as described

337 in s. 120.541(2); however:

338 a. The applicable period for the economic analysis shall
 339 be 5 years beginning on July 1, 2011;

340 b. For the analysis required in s. 120.541(2)(a)3., the
 341 estimated regulatory costs over the 5-year period shall be used
 342 instead of the likely increase in regulatory costs after
 343 implementation; and

344 c. An explanation of the methodology used to conduct the
 345 analysis must be provided. A technical methodology need not be
 346 used to develop the statement of estimated regulatory costs, if
 347 the agency uses routine regulatory communications or its
 348 Internet website to reasonably survey regulated entities,
 349 political subdivisions, and local governments and makes good
 350 faith estimates of regulatory costs in conformity with
 351 recommendations from the Office of Fiscal Accountability and
 352 Regulatory Reform ("OFARR"), or from one or more legislative
 353 offices if requested by the agency and such request is approved
 354 by the President of the Senate and the Speaker of the House of
 355 Representatives.

356 (c) "Data collection rules" means those rules requiring
 357 the submission of data to the agency from external sources,
 358 including, but not limited to, local governments, service
 359 providers, clients, licensees, regulated entities, other
 360 constituents, and market participants.

361 (d) "Revenue rules" means those rules fixing amounts or
 362 providing for the collection of money.

363 (e) "Rule" has the same general meaning and application as
 364 provided in s. 120.52(16), but for purposes of this section may

365 include only those rules for which publication in the Florida
 366 Administrative Code is required pursuant to s. 120.55(1). As
 367 used in this section, the term "rule" means each entire
 368 statement and all subparts published under a complete title,
 369 chapter, and decimal rule number in the Florida Administrative
 370 Code in compliance with Florida Administrative Code Rule 1B-
 371 30.001.

372 (2) ENHANCED BIENNIAL REVIEW.—By December 1, 2011, each
 373 agency shall complete an enhanced biennial review of the
 374 agency's existing rules, which shall include, but is not limited
 375 to:

376 (a) Conduct of the review and submission of the report
 377 required by s. 120.74 and an explanation of how the agency has
 378 accomplished the requirements of s. 120.74(1). This paragraph
 379 extends the October 1 deadline provided in s. 120.74(2) for the
 380 year 2011.

381 (b) Review of each rule to determine whether the rule has
 382 been reviewed by OFARR pursuant to the Governor's Executive
 383 Order 2011-01.

384 (c) Review of each rule to determine whether the rule is a
 385 revenue rule, to identify the statute or statutes authorizing
 386 the collection of any revenue, to identify the fund or account
 387 into which revenue collections are deposited, and, for each
 388 revenue rule, to determine whether the rule authorizes, imposes,
 389 or implements:

- 390 1. Registration, license, or inspection fees.
- 391 2. Transportation service tolls for road, bridge, rail,
- 392 air, waterway, or port access.

393 3. Fees for a specific service or purpose not included in
 394 subparagraph 1. or subparagraph 2.

395 4. Fines, penalties, costs, or attorney fees.

396 5. Any tax.

397 6. Any other amounts collected that are not covered under
 398 subparagraphs 1.-5.

399 (d) Review of each rule to determine whether the rule is a
 400 data collection rule, providing the following information for
 401 each rule determined to be a data collection rule:

402 1. The statute or statutes authorizing the collection of
 403 such data.

404 2. The purposes for which the agency uses the data and any
 405 purpose for which the data is used by others.

406 3. The policies supporting the reporting and retention of
 407 the data.

408 4. Whether and to what extent the data is exempt from
 409 public inspection under chapter 119.

410 (e) Identification of each entire rule the agency plans to
 411 repeal and, if so, the estimated timetable for repeal.

412 (f) Identification of each entire rule or subpart of a
 413 rule the agency plans to amend to substantially reduce the
 414 economic impact and the estimated timetable for amendment.

415 (g) Identification of each rule for which the agency will
 416 be required to prepare a compliance economic review, to include
 417 each entire rule that:

418 1. The agency does not plan to repeal on or before
 419 December 31, 2012;

420 2. Was effective on or before November 16, 2010; and

421 3. Probably will have any of the economic impacts
 422 described in s. 120.541(2)(a), for 5 years beginning on July 1,
 423 2011, excluding in such estimation any part or subpart
 424 identified for amendment under paragraph (e).

425 (h) Listing of all rules identified for compliance
 426 economic review in paragraph (f), divided into two approximately
 427 equal groups, identified as "Group 1" and "Group 2." Such
 428 division shall be made at the agency's discretion.

429 (i) Written certification of the agency head to the
 430 committee verifying the completion of the report for all rules
 431 of the agency, including each separate part or subsection. The
 432 duty to certify completion of the report is the responsibility
 433 solely of the agency head as defined in s. 120.52(3) and may not
 434 be delegated to any other person. If the defined agency head is
 435 a collegial body, the written certification must be prepared by
 436 the chair or equivalent presiding officer of that body.

437 (3) PUBLICATION OF REPORT.—No later than December 1, 2011,
 438 each agency shall publish, in the manner provided in subsection
 439 (7), a report of the entire enhanced biennial review pursuant to
 440 subsection (2), including the results of the review; a complete
 441 list of all rules the agency has placed in Group 1 or Group 2;
 442 the name, physical address, fax number, and e-mail address for
 443 the person the agency has designated to receive all inquiries,
 444 public comments, and objections pertaining to the report; and
 445 the certification of the agency head pursuant to paragraph
 446 (2)(i). The report of results shall summarize certain
 447 information required in subsection (2) in a table consisting of
 448 the following columns:

- 449 (a) Column 1: Agency name.
- 450 (b) Column 2: F.A.C. rule number, with subcolumns
- 451 including:
- 452 1. Column 2a: F.A.C. title and any subtitle or chapter
- 453 designation; and
- 454 2. Column 2b: F.A.C. number, excluding title and subtitle
- 455 or chapter designation.
- 456 (c) Column 3: OFARR reviewed rule under Executive Order
- 457 2011-01. Entries should be "Y" or "N."
- 458 (d) Column 4: Revenue rule/fund or account with subcolumns
- 459 including:
- 460 1. Column 4a: Licensure fees.
- 461 2. Column 4b: Transportation tolls.
- 462 3. Column 4c: Other fees.
- 463 4. Column 4d: Fines.
- 464 5. Column 4e: Tax.
- 465 6. Column 4f: Other revenue.
- 466
- 467 Entries should be "N" or the identification of the fund or
- 468 account where receipts are deposited and provide notes
- 469 indicating the statutory authority for revenue collection.
- 470 (e) Column 5: Data collection rule. Entries should be "Y"
- 471 or "N." If "Y," provide notes supplying the information required
- 472 in paragraph (2)(d).
- 473 (f) Column 6: Repeal. Entries should be "Y" or "N" for the
- 474 entire rule. If "Y," provide notes estimating the timetable for
- 475 repeal.
- 476 (g) Column 7: Amend. Entries should be "Y" or "N," based

477 on the response required in paragraph (2)(f), and provide notes
 478 identifying each specific subpart that will be amended and
 479 estimating the timetable for amendment.

480 (h) Column 8: Effective on or before 11/16/2010. Entries
 481 should be "Y" or "N."

482 (i) Column 9: Section 120.541(2)(a) impacts. Entries
 483 should be "NA" if Column 8 is "N" or, if Column 6 is "Y," "NP"
 484 for not probable, based on the response required in subparagraph
 485 (2)(f)3., or "1" or "2," reflecting the group number assigned by
 486 the division required in paragraph (2)(h).

487 (4) PUBLIC COMMENT ON ENHANCED BIENNIAL REVIEW AND REPORT;
 488 OBJECTIONS.—Public input on reports required in subsection (3)
 489 may be provided by stating an objection to the information
 490 required in paragraphs (2)(b), (c), (d), and (g) and identifying
 491 the entire rule or any subpart to which the objection relates,
 492 and shall be submitted in writing or electronically to the
 493 person designated in the report.

494 (a) An objection under this subsection to a report that an
 495 entire rule or any subpart probably will not have, for 5 years
 496 beginning on July 1, 2011, any of the economic impacts described
 497 in s. 120.541(2)(a), must include allegations of fact upon which
 498 the objection is based, stating the precise information upon
 499 which a contrary evaluation of probable impact may be made.
 500 Allegations of fact related to other objections may be included.

501 (b) Objections may be submitted by any interested person
 502 no later than June 1, 2012.

503 (c) The agency shall determine whether to sustain an
 504 objection based upon the information provided with the objection

505 and whether any further review of information available to the
 506 agency is necessary to correct its report.

507 (d) No later than 20 days after the date an objection is
 508 submitted, the agency shall publish its determination of the
 509 objection in the manner provided in subsection (7).

510 (e) The agency's determination with respect to an
 511 objection is final but not a final agency action subject to
 512 further proceedings, hearing, or judicial review.

513 (f) If the agency sustains an objection, it shall amend
 514 its report within 10 days after the determination. The amended
 515 report shall indicate that a change has been made, the date of
 516 the last change, and identify the amended portions. The agency
 517 shall publish notice of the amendment in the manner provided in
 518 subsection (7).

519 (g) On or before July 1, 2012, the agency shall deliver a
 520 written certification of the agency head or designee to the
 521 committee verifying the completion of determinations of all
 522 objections under this subsection and of any report amendments
 523 required under paragraph (f). The certification shall be
 524 published as an addendum to the report required in subsection
 525 (3). Notice of the certification shall be published in the
 526 manner provided in subsection (7).

527 (5) COMPLIANCE ECONOMIC REVIEW OF RULES AND REQUIRED
 528 REPORT.—Each agency shall perform a compliance economic review
 529 and report for all rules, including separate reviews of
 530 subparts, listed under Group 1 "Group 1 rules" or Group 2 "Group
 531 2 rules" pursuant to subparagraph (2)(g)3. Group 1 rules shall
 532 be reviewed and reported on in 2012, and Group 2 rules shall be

533 reviewed and reported on in 2013.

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

535 1. Complete a compliance economic review for each entire

536 rule or subpart in the appropriate group.

537 2. File the written certification of the agency head with

538 the committee verifying the completion of each compliance

539 economic review required for the respective year. The

540 certification shall be dated and published as an addendum to the

541 report required in subsection (3). The duty to certify

542 completion of the required compliance economic reviews is the

543 responsibility solely of the agency head as defined in s.

544 120.52(3) and may not be delegated to any other person. If the

545 defined agency head is a collegial body, the written

546 certification must be prepared by the chair or equivalent

547 presiding officer of that body.

548 3. Publish a copy of the compliance economic review,

549 directions on how and when interested parties may submit lower

550 cost regulatory alternatives to the agency, and the date the

551 notice is published in the manner provided in subsection (7).

552 4. Publish notice of the publications required in

553 subparagraphs 2. and 3. in the manner provided in subsection

554 (7).

555 5. Submit each compliance economic review to the Small

556 Business Regulatory Advisory Council for its review.

557 (b) Any agency rule, including subparts, reviewed pursuant

558 to Executive Order 2011-01 are exempt from the compliance

559 economic review if the review found that the rule:

560 1. Does not unnecessarily restrict entry into a profession

561 or occupation;
 562 2. Does not adversely affect the availability of
 563 professional or occupational services to the public;
 564 3. Does not unreasonably affect job creation or job
 565 retention;
 566 4. Does not place unreasonable restrictions on individuals
 567 attempting to find employment;
 568 5. Does not impose burdensome costs on businesses; or
 569 6. Is justifiable when the overall cost-effectiveness and
 570 economic impact of the regulation, including indirect costs to
 571 consumers, is considered.
 572 (c) No later than August 1, the Small Business Regulatory
 573 Advisory Council may submit lower cost regulatory alternatives
 574 to any rule to the agency that adopted the rule. No later than
 575 June 15, other interested parties may submit lower cost
 576 regulatory alternatives to any rule.
 577 (d) No later than December 1, each agency shall publish a
 578 final report of the agency's review under this subsection in the
 579 manner provided in subsection (7). For each rule the report
 580 shall include:
 581 1. The text of the rule.
 582 2. The compliance economic review for the rule.
 583 3. All lower regulatory cost alternatives received by the
 584 agency.
 585 4. The agency's written explanation for rejecting
 586 submitted lower regulatory cost alternatives.
 587 5. The agency's justification to repeal or amend the rule
 588 or to retain the rule without amendment.

589 6. The written certification of the agency head to the
590 committee verifying the completion of the reviews and reporting
591 required under this subsection for that year. The certification
592 shall be dated and published as an addendum to the report
593 required in subsection (3). The duty to certify completion of
594 the report is the responsibility solely of the agency head as
595 defined in s. 120.52(3) and may not be delegated to any other
596 person. If the defined agency head is a collegial body, the
597 written certification must be prepared by the chair or
598 equivalent presiding officer of that body.

599 (e) Notice of publication of the final report and
600 certification shall be published in the manner provided in
601 subsection (7).

602 (f) By December 1, each agency shall begin proceedings
603 under s. 120.54(3) to amend or repeal those rules so designated
604 in the report under this subsection. Proceedings to repeal rules
605 are exempt from the requirements for the preparation,
606 consideration, or use of a statement of estimated regulatory
607 costs under s. 120.54 and the provisions of s. 120.541.

608 (6) LEGISLATIVE CONSIDERATION.—With respect to a rule
609 identified for retention without amendment in the report
610 required in subsection (5), the Legislature may consider
611 specific legislation nullifying the rule or altering the
612 statutory authority for the rule.

613 (7) MANNER OF PUBLICATION OF NOTICES, DETERMINATIONS, AND
614 REPORTS.—Agencies shall publish notices, determinations, and
615 reports required under this section exclusively in the following
616 manner:

617 (a) The agency shall publish each notice, determination,
 618 and complete report on its Internet website. If the agency does
 619 not have an Internet website, the information shall be published
 620 on the committee's Internet website using
 621 www.japc.state.fl.us/[agency name] / in place of the address of
 622 the agency's Internet website. The following URL formats shall
 623 be used:

624 1. Reports required under subsection (3), including any
 625 reports amended as a result of a determination under subsection
 626 (4):

627 [Address of agency's Internet website]/2011 Rule review/
 628 [Florida Administrative Code (F.A.C.) title and subtitle
 629 (if applicable) designation for the rules included] .
 630 (Example: http://www.dos.state.fl.us/2011 Rule review/1S).

631 2. The lists of Group 1 rules and Group 2 rules, required
 632 under subsection (3):

633 [Address of agency's Internet website]/2011 Rule review/
 634 Economic Review/Schedule.
 635 (Example: http://www.dos.state.fl.us/2011 Rule review/
 636 Economic Review/Schedule)

637 3. Determinations under subsection (4):

638 [Address of agency's Internet website]/2011 Rule review/
 639 Objection Determination/[F.A.C. Rule number] .
 640 (Example: http://www.dos.state.fl.us/2011 Rule review/
 641 Objection Determination/1S-1.001).

642 4. Completed compliance economic reviews reported under
 643 subsection (5):

644 [Address of agency's Internet website]/2011 Rule review/

645 Economic Review/[F.A.C.Rule number] .
 646 (Example: http://www.dos.state.fl.us/2011 Rule review/
 647 Economic Review/1S-1.001).

648 5. Final reports under paragraph (5) (d), with the
 649 appropriate year:

650 [Address of agency's Internet website] /2011 Rule review/
 651 Economic Review/[YYYY Final Report] .
 652 (Example: http://www.dos.state.fl.us/2011 Rule review/
 653 Economic Review/2012 Final Report).

654 (b)1. Each notice shall be published using the following
 655 URL format:

656 [Address of agency's Internet website] /
 657 2011 Rule review/Notices.

658 (Example:
 659 http://www.dos.state.fl.us/2011 Rule review/Notices).

660 2. Once each week a copy of all notices published in the
 661 previous week on the Internet under this paragraph shall be
 662 delivered to the Department of State, for publication in the
 663 next available issue of the Florida Administrative Weekly, and a
 664 copy shall be delivered by electronic mail to the committee.

665 3. Each notice shall identify the publication for which
 666 notice is being given and include:

667 a. The name of the agency.

668 b. The name, physical address, fax number, and e-mail
 669 address for the person designated to receive all inquiries,
 670 public comments, and objections pertaining to the publication
 671 identified in the notice.

672 c. The particular Internet address through which the

673 publication may be accessed.

674 d. The date the notice and publication is first published
 675 on the agency's Internet website.

676 (c) Publication pursuant to this section is deemed to be
 677 complete as of the date the notice, determination, or report is
 678 posted on the agency's Internet website.

679 (8) FAILURE TO FILE CERTIFICATION OF COMPLETION.-If an
 680 agency fails to timely file any written certification required
 681 in paragraph (2)(i), paragraph (4)(g), subparagraph (5)(a)2., or
 682 subparagraph (5)(d)6., the entire rulemaking authority delegated
 683 to the agency by the Legislature under any statute or law shall
 684 be suspended automatically as of the due date of the required
 685 certification and shall remain suspended until the date that the
 686 agency files the required certification with the committee.

687 (a) During the period of any suspension under this
 688 subsection, the agency has no authority to engage in rulemaking
 689 under s. 120.54.

690 (b) A suspension under this subsection does not authorize
 691 an agency to promulgate any statement defined as a rule under s.
 692 120.52(16).

693 (c) A suspension under this subsection shall toll the time
 694 requirements under s. 120.54 for any rulemaking proceeding the
 695 agency initiated before the date of suspension, which time
 696 requirements shall resume on the date the agency files the
 697 written certification with the committee and publishes notice of
 698 the required certification in the manner provided in subsection
 699 (7).

700 (d) Failure to timely file a written certification

701 required under paragraph (2)(i) tolls the time for public
 702 response, which period shall not begin until the date the agency
 703 files the written certification with the committee and publishes
 704 notice of the required certification in the manner provided in
 705 subsection (7). The period for public response shall be extended
 706 by the number of days equivalent to the period of suspension
 707 under this subsection.

708 (e) Failure to timely file a written certification
 709 required under subparagraph (5)(a)2. shall toll the deadline for
 710 submission of lower cost regulatory alternatives for any rule or
 711 subpart for which a compliance economic review has not been
 712 timely published. The period of tolling shall be the number of
 713 days after May 1 until the date of the certification as
 714 published.

715 (9) EXEMPTION FROM ENHANCED BIENNIAL REVIEW AND COMPLIANCE
 716 ECONOMIC REVIEW.—

717 (a) An agency is exempt from subsections (1)-(8) if it has
 718 cooperated or cooperates with OFARR in a review of the agency's
 719 rules in a manner consistent with Executive Order 2011-01, or
 720 any alternative review directed by OFARR; if the agency or OFARR
 721 identifies each data collection rule and each revenue rule; and
 722 if the information developed thereby becomes publicly available
 723 on the Internet by December 1, 2011. Each such agency is exempt
 724 from the biennial review required in s. 120.74(2) for the year
 725 2011.

726 (b) For each rule reviewed under this subsection, OFARR
 727 may identify whether the rule imposes a significant regulatory
 728 cost or economic impact and shall schedule and obtain or direct

729 a reasonable economic estimate of such cost and impact for each
 730 rule so identified. A report on each such estimate shall be
 731 published on the Internet by December 31, 2013. On or before
 732 October 1, 2013, the agency head shall certify in writing to the
 733 committee that the agency has completed each economic estimate
 734 required under this paragraph and thereupon the agency is exempt
 735 from the biennial review required in s. 120.74(2) for the year
 736 2013.

737 (c) The exemption under this paragraph does not apply
 738 unless the agency head certifies in writing to the committee, on
 739 or before October 1, 2011, that the agency has chosen such
 740 exemption and has cooperated with OFARR in undertaking the
 741 review required in paragraph (a).

742 (10) REPEAL.—This section is repealed July 1, 2014.

743 Section 6. Section 120.7455, Florida Statutes, is created
 744 to read:

745 120.7455 Legislative survey of regulatory impacts.—

746 (1) From July 1, 2011, until July 1, 2014, the Legislature
 747 may establish and maintain an Internet-based public survey of
 748 regulatory impact soliciting information from the public
 749 regarding the kind and degree of regulation affecting private
 750 activities in the state. The input may include, but need not be
 751 limited to:

752 (a) The registered business name or other name of each
 753 reporting person.

754 (b) The number and identity of agencies licensing,
 755 inspecting, registering, permitting, or otherwise regulating
 756 lawful activities of the reporting person.

757 (c) The types, numbers, and nature of licenses, permits,
 758 and registrations required for various lawful activities of the
 759 reporting person.

760 (d) The identity of local, state, and federal agencies,
 761 and other entities acting under color of law which regulate the
 762 lawful activities of the reporting person or otherwise exercise
 763 power to enforce laws applicable to such activities.

764 (e) The identification and nature of each ordinance, law,
 765 or administrative rule or regulation deemed unreasonably
 766 burdensome by the reporting person.

767 (2) The President of the Senate and the Speaker of the
 768 House of Representatives may certify in writing to the chair of
 769 the committee and to the Attorney General the establishment and
 770 identity of any Internet-based public survey established under
 771 this section.

772 (3) Any person reporting or otherwise providing
 773 information solicited by the Legislature in conformity with this
 774 section is immune from any enforcement action or prosecution
 775 that:

776 (a) Is instituted on account of, or in reliance upon, the
 777 fact of reporting or nonreporting of information in response to
 778 the Legislature's solicitation of information pursuant to this
 779 section; or

780 (b) Uses information provided in response to the
 781 Legislature's solicitation of information pursuant to this
 782 section.

783 (4) Any alleged violator against whom an enforcement
 784 action is brought may object to any proposed penalty in excess

785 of the minimum provided by law or rule on the basis that the
 786 action is in retaliation for the violator providing or
 787 withholding any information in response to the Legislature's
 788 solicitation of information pursuant to this section. If the
 789 presiding judge determines that the enforcement action was
 790 motivated in whole or in part by retaliation, any penalty
 791 imposed is limited to the minimum penalties provided by law for
 792 each separate violation adjudicated.

793 Section 7. The amendment of section 120.74, Florida
 794 Statutes, and the creation of sections 120.745 and 120.7455,
 795 Florida Statutes, by this act does not change the legal status
 796 of a rule that has otherwise been judicially or administratively
 797 determined to be invalid.

798 Section 8. Subsection (16) of section 120.80, Florida
 799 Statutes, is amended, and subsections (17) and (18) are added to
 800 that section, to read:

801 120.80 Exceptions and special requirements; agencies.—

802 (16) FLORIDA BUILDING COMMISSION.—

803 (a) Notwithstanding the provisions of s. 120.542, the
 804 Florida Building Commission may not accept a petition for waiver
 805 or variance and may not grant any waiver or variance from the
 806 requirements of the Florida Building Code.

807 (b) The Florida Building Commission shall adopt within the
 808 Florida Building Code criteria and procedures for alternative
 809 means of compliance with the code or local amendments thereto,
 810 for enforcement by local governments, local enforcement
 811 districts, or other entities authorized by law to enforce the
 812 Florida Building Code. Appeals from the denial of the use of

813 alternative means shall be heard by the local board, if one
 814 exists, and may be appealed to the Florida Building Commission.

815 (c) Notwithstanding ss. 120.565, 120.569, and 120.57, the
 816 Florida Building Commission and hearing officer panels appointed
 817 by the commission in accordance with s. 553.775(3)(c)1. may
 818 conduct proceedings to review decisions of local building code
 819 officials in accordance with s. 553.775(3)(c).

820 (d) Section 120.541(3) does not apply to the adoption of
 821 amendments and the triennial update to the Florida Building Code
 822 expressly authorized by s. 553.73.

823 (17) STATE FIRE MARSHAL.—Section 120.541(3) does not apply
 824 to the adoption of amendments and the triennial update to the
 825 Florida Fire Prevention Code expressly authorized by s.
 826 633.0215.

827 (18) DEPARTMENT OF TRANSPORTATION.—Sections 120.54(3)(b)
 828 and 120.541 do not apply to the adjustment of tolls pursuant to
 829 s. 338.165(3).

830 Section 9. Paragraph (1) is added to subsection (1) of
 831 section 120.81, Florida Statutes, to read:

832 120.81 Exceptions and special requirements; general
 833 areas.—

834 (1) EDUCATIONAL UNITS.—

835 (1) Sections 120.54(3)(b) and 120.541 do not apply to the
 836 adoption of rules pursuant to s. 1012.22, s. 1012.27, s.
 837 1012.34, s. 1012.335, or s. 1012.795.

838 Section 10. This act shall take effect upon becoming a
 839 law.