



**RULEMAKING OVERSIGHT
&
REPEAL
SUBCOMMITTEE
MEETING**

**Tuesday, February 10th, 2015
10:30 a.m. – 12:30 p.m.**

306 House Office Building

MEETING PACKET



FLORIDA HOUSE OF REPRESENTATIVES
Rules, Calendar & Ethics Committee
Rulemaking Oversight & Repeal Subcommittee

Steve Crisafulli
Speaker

Lake Ray
Chair

AGENDA

Tuesday, February 10th, 2015
10:30 a.m. – 12:30 p.m.
306 House Office Building

- **Opening Remarks by Chair Ray**
- **Roll Call by Sonja Powell-Battles, CAA**
- **Announcements**
- **Consideration of the following proposed committee bill(s):**
 - **PCB RORS 15-01 -- ADMINISTRATIVE PROCEDURES**
- **Consideration of the following proposed committee bill(s):**
 - **PCB RORS 15-02 -- ADMINISTRATIVE PROCEDURES**
- **Closing Remarks**
- **Meeting Adjourned**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Rulemaking Oversight & Repeal Subcommittee

Start Date and Time: Tuesday, February 10, 2015 10:30 am
End Date and Time: Tuesday, February 10, 2015 12:30 pm
Location: 306 HOB
Duration: 2.00 hrs

Consideration of the following proposed committee bill(s):

PCB RORS 15-01 -- ADMINISTRATIVE PROCEDURES
PCB RORS 15-02 -- ADMINISTRATIVE PROCEDURES

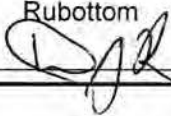
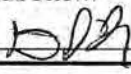
NOTICE FINALIZED on 02/03/2015 15:55 by Powell-Battles.Sonja

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB RORS 15-01 ADMINISTRATIVE PROCEDURES

SPONSOR(S): Rulemaking Oversight & Repeal Subcommittee

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Rulemaking Oversight & Repeal Subcommittee		Rubottom 	Rubottom 

SUMMARY ANALYSIS

Agencies must review their existing rules to identify and correct deficiencies, improve efficiencies, reduce paperwork and costs, clarify and simplify text, and revise or delete rules that become obsolete, unnecessary, or are redundant of statute. Biennially, each agency head is required to file a report with the Speaker of the House of Representatives, President of the Senate, and the Legislature's Joint Administrative Procedures Committee (JAPC) summarizing the results of this review and revision, suggesting certain legislative changes, and addressing the economic impact of the rules on small business. In 2011, the Legislature suspended biennial reporting for that year and required all agencies to review and report on the economic effect of all then-existing rules by the end of 2013. In the same act, the Legislature required agencies to file a separate annual "regulatory plan" outlining all rulemaking the agency intended to implement in the next fiscal year, except emergency rulemaking.

When a newly-enacted law requires an agency to adopt new or amend current administrative rules for proper implementation, current law requires the agency charged with enforcing that law to formally propose such rules within 180 days of the effective date of the law. While agencies generally comply with this deadline, there are numerous examples of agencies failing to act within 180 days or interpreting the new law as not requiring rulemaking for proper implementation. In some instances this delay or inaction persists for several years.

The bill replaces the biennial summary reporting requirement with an expanded, annual regulatory plan. It requires each agency to determine whether each new law creating or affecting the agency's authority will require new or amended rules. If so, the agency must initiate rulemaking by a specific time. If not, the agency must state concisely why the law may be implemented without additional rulemaking. The regulatory plan also must state each existing law on which the agency will initiate rulemaking in the current fiscal year. The plan must be certified by the agency head and general counsel and published on the agency's internet website, with a copy of the certification filed with JAPC. The existing 180-day requirement is revised to coincide with the specific publishing requirements.

The bill compels adherence with the new reporting requirements and action deadlines by suspending the rulemaking authority of an agency that fails to comply with specific requirements until that agency completes the required action or the end of the next regular legislative session, whichever is earlier. The bill repeals the retrospective economic review of existing rules and repeals the law pertaining to the online survey.

The bill may have an insignificant fiscal impact on state agencies.

The bill has an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Agency Rulemaking and Reporting Requirements

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.¹ The effect of an agency statement determines whether it meets the statutory definition of a rule, regardless of how the agency characterizes the statement.² If an agency statement generally requires compliance, creates certain rights while adversely affecting others, or otherwise has the direct and consistent effect of law, it is a rule.³

Rulemaking authority is delegated by the Legislature⁴ by law authorizing an agency to “adopt, develop, establish, or otherwise create”⁵ a rule. Agencies do not have discretion whether to engage in rulemaking.⁶ To adopt a rule an agency must have an express grant of authority to implement a specific law by rulemaking.⁷ The grant of rulemaking authority itself need not be detailed.⁸ The particular statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the agency from exercising unbridled discretion in creating policy or applying the law.⁹ A delegation of authority to an administrative agency by a law that is vague, uncertain, or so broad as to give no notice of what actions would violate the law, may unconstitutionally allow the agency to make the law.¹⁰ Because of this constitutional limitation on delegated rulemaking, the Legislature must provide minimal standards and guidelines in the law creating a program to provide for its proper administration by the agency. As such, the Legislature may delegate rulemaking authority to agencies but not the authority to determine what should be the law.

Section 120.54(1)(b), F.S.: The “180 Day” Requirement

An agency may not delay implementation of a statute pending adoption of specific rules unless there is an express provision prohibiting application of the statute before the implementing rules are adopted.¹¹ If a law is enacted that requires agency rulemaking for proper implementation, “such rules shall be drafted and formally proposed as provided in this section [s. 120.54, F.S.] within 180 days after the

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

² *Dept. of Administration v. Harvey*, 356 So. 2d 323, 325 (Fla. 1st DCA 1977).

³ *McDonald v. Dept. of Banking & Fin.*, 346 So.2d 569, 581 (Fla. 1st DCA 1977), articulated this principle subsequently cited in numerous cases. See *State of Florida, Dept. of Administration v. Stevens*, 344 So. 2d 290 (Fla. 1st DCA 1977); *Dept. of Administration v. Harvey*, 356 So. 2d 323 (Fla. 1st DCA 1977); *Balsam v. Dept. of Health and Rehabilitative Services*, 452 So.2d 976, 977-978 (Fla. 1st DCA 1984); *Dept. of Transp. v. Blackhawk Quarry Co.*, 528 So. 2d 447, 450 (Fla. 5th DCA 1988), rev. den. 536 So.2d 243 (Fla.1988); *Dept. of Natural Resources v. Wingfield*, 581 So. 2d 193, 196 (Fla. 1st DCA 1991); *Dept. of Revenue v. Vanjaria Enterprises, Inc.*, 675 So. 2d 252, 255 (Fla. 5th DCA 1996); *Volusia County School Board v. Volusia Homes Builders Association, Inc.*, 946 So. 2d 1084 (Fla. 5th DCA 2007); *Florida Dept. of Financial Services v. Capital Collateral Regional Counsel*, 969 So. 2d 527 (Fla. 1st DCA 2007); *Coventry First, LLC v. State of Florida, Office of Insurance Regulation*, 38 So. 3d 200 (Fla. 1st DCA 2010).

⁴ *Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So. 2d 594 (Fla. 1st DCA 2000).

⁵ Section 120.52(17), F.S.

⁶ Section 120.54(1)(a), F.S.

⁷ Sections 120.52(8) & 120.536(1), F.S. In 1996, the Legislature extensively revised agency rulemaking under the Administrative Procedure Act to require both the express grant of rulemaking authority and a specific law to be implemented by rule. Chapter 96-159, L.O.F.

⁸ *Save the Manatee Club, Inc.*, supra at 599.

⁹ *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).

¹⁰ *Conner v. Joe Hatton, Inc.*, 216 So. 2d 209 (Fla.1968).

¹¹ Section 120.54(1)(c), F.S.

effective date of the act, unless the act provides otherwise.”¹² This “180-day requirement” predates the 1996 APA revisions.¹³

The statute does not require complete adoption of rules within 180 days. An agency may comply with the statute merely by publishing a notice of proposed rule.¹⁴ Proposed rules can be repeatedly, substantially revised based on public input and may also be withdrawn. Consequently, the 180-day requirement does not ensure prompt rulemaking.

JAPC Monitoring and Agency Compliance

The Joint Administrative Procedures Committee (JAPC) monitors agency compliance with the 180-day requirement in furtherance of its rulemaking oversight duties.¹⁵ JAPC staff reviews legislation enacted each session to identify new or changed laws that appear to require the adoption of new rules or the amendment or repeal of existing rules. Where the law appears to mandate new rulemaking¹⁶ or restates an existing mandate for rulemaking, JAPC sends a letter reminding the agency of the 180-day requirement. If the text of proposed rules is not published, at least as part of a notice of rule development, within the 180-days, JAPC will follow with an inquiry as to when the agency will initiate public rulemaking on that issue.

Agencies generally comply with the 180-day requirement as a matter of maintaining an effective working relationship between the executive and legislative offices even though JAPC has no power to compel compliance. In recent years, JAPC has identified several agencies that had not proposed rules within 180 days of the enactment of laws appearing to mandate new rulemaking during the period of 2007-2011. At its meeting on February 18, 2013, JAPC heard presentations from 13 different agencies on whether rulemaking was necessary to implement particular laws and, if so, explanations for the lack of progress. Some members of JAPC asked whether these agencies treated the statute as a “suggestion” instead of a mandatory rulemaking requirement. Again, on February 2, 2015, JAPC received a report from committee staff reflecting continuing related problems.

“Directive” vs. “Mandate”

Courts generally interpret words in statutes such as “shall” or “must” as mandating a particular action where the alternative to the action is a possible deprivation of some right. However, use of such otherwise-mandatory terms where there is no effective consequence for the failure to act renders them *directory*, not compulsory.¹⁷ A person regulated by an agency or having a substantial interest in an agency rule may petition that agency to adopt, amend, or repeal a rule,¹⁸ including when the agency does not act within the 180-day requirement. The Administrative Procedure Act (APA) provides no other process to enforce the 180-day requirement, no legal sanction for failure to comply, nor the authority for any specific entity to compel compliance.

Section 120.74, F.S.: Biennial Reporting

1996 Reporting Requirement

As part of the comprehensive revision of the APA in 1996, agencies were required to review all rules adopted before October 1, 1996, identify those exceeding the rulemaking authority permitted under the revised APA, and report the results to JAPC. JAPC would prepare and submit a combined report of all

¹² Section 120.54(1)(b), F.S.

¹³ The 180 requirement was enacted as chapter 85-104, s. 7, L.O.F.

¹⁴ Section 120.54(3)(a), F.S. This is the common interpretation of the 180 day requirement. An alternative interpretation would be that a notice of rule development published under s. 120.54(2), F.S., including a *preliminary* draft of proposed rules, may be sufficient to comply.

¹⁵ Joint Rule 4.6.

¹⁶ Such as stating that the agency “shall adopt rules” or “shall establish” or “must establish” a particular standard or policy.

¹⁷ *S.R. v. State*, 346 So.2d 1018, 1019 (Fla. 1977); *Reid v. Southern Development Co.*, 42 So. 206, 208, 52 Fla. 595, 603 (Fla. 1906); *Ellsworth v. State*, 89 So.3d 1076, 1079 (Fla. 2d DCA 2012); *Kinder v. State*, 779 So.2d 512, 514 (Fla. 2d DCA 2000).

¹⁸ Section 120.54(7)(a), F.S. If the agency denies the petition, the requesting party may seek judicial review of that decision. Sections 120.52(2) and 120.68, F.S.

agency reviews to the President of the Senate and Speaker of the House of Representatives for legislative consideration.¹⁹

Another 1996 revision required ongoing agency rulemaking review, revision, and reporting.²⁰ Under that law, as amended, each agency must review its rules every two years and amend or repeal rules as necessary to comply with specific requirements.²¹ Biennially, the agency head must report the results and other required information to the President of the Senate, Speaker of the House of Representatives, JAPC, and "each appropriate standing committee of the Legislature" on October 1.²²

Limited Utility of s. 120.74, F.S., Reports

Agencies as defined in the APA,²³ including school districts, comply with the requirements of s. 120.74, F.S., typically by filing summary reports that verify the agency performed the required reviews, list rules identified in the review for amendment or repeal, and state a finding of no undue economic impact on small businesses (a required subject of the report). For example, a 2009 report from a school district identified the following changes to the student code of conduct:

The Code of Student Conduct is reviewed and revised annually and serves as the School Board's policies and procedures for governing student behavior on school grounds, at school activities, and while being transported to and from school. The majority of the recommended changes for 2008-09 are minor revisions in punctuation, spelling, language, or order of paragraphs.²⁴

The 2013 report for the same school district states the following as "what & why the policy changed" for the student code of conduct:

The Code of Student Conduct is reviewed and revised annually and serves as the School Board's policies and procedures for governing student behavior on school grounds, at school activities, and while being transported to and from school.²⁵

A different school district submitted substantially the same reports for 2009 and 2013, commenting only on that district's review and management of forms. That district's reports included no information on whether any rules were identified as requiring revision or repeal due to changes in law.²⁶

Educational units were exempted from the biennial reporting requirement in 2014.²⁷

Reports by state agencies have reflected inconsistent application of the requirement for the report to "specify any changes made to [the agency's] rules as a result of the review. . ."²⁸ One agency's 2009 report identified each rule requiring repeal or amendment and new rules required by program changes,

¹⁹ Chapter 96-159, s. 9(2), L.O.F.

²⁰ Chapter 96-399, s. 46, L.O.F, codified as s. 120.74, F.S. In both 2006 and 2008, the Legislature added substantive provisions to this section. Chapters 2006-82, s. 9, and 2008-149, s. 8, L.O.F.

²¹ Identify and correct deficiencies; clarify and simplify its rules; delete rules that are obsolete, unnecessary, or merely repeat statutory language; improve efficiency, reduce paperwork, decrease costs to private sector and government; coordinate rules with agencies having concurrent or overlapping jurisdiction. Section 120.74(1), F.S.

²² Section 120.74(2), F.S.

²³ Section 120.52(1), F.S.

²⁴ School Board of Manatee County, "Section 120.74 Report" (Sept. 29, 2009), received by JAPC on Nov. 3, 2009 (on file with the Rulemaking Oversight and Repeal Subcommittee).

²⁵ School Board of Manatee County, "Section 120.74 Report" (Sept. 24, 2013), received by the House on Oct. 3, 2013 (on file with the Rulemaking Oversight and Repeal Subcommittee).

²⁶ School Board of Santa Rosa County, 2009 Report received by JAPC on Sept. 30, 2009, and 2013 Report received by the House on Aug. 26, 2013 (on file with the Rulemaking Oversight and Repeal Subcommittee).

²⁷ Section 2, Ch. 2014-39, L.O.F. (s. 120.74(5), F.S.)

²⁸ Section 120.74(2), F.S.

including a brief explanation of the reason for the amendment or adoption.²⁹ In contrast, a different agency simply identified obsolete rules for repeal, without stating why the rules were obsolete, and listed a rule for amendment to update documents incorporated by reference, without identifying the documents so referenced.³⁰ Some agencies provided lengthy lists of rules identified for amendment or repeal with little explanation other than repeating the terms of the review statute as to the reason for such proposed action.³¹

Regulatory Plans

In 2011, the reporting requirements were amended to require that each agency file an annual regulatory plan in addition to the biennial reports.³² The regulatory plan identifies those rules the agency intends to adopt, amend, or repeal during the next fiscal year. These reports have not proven any more substantive than the biennial reports described above.

Effect of the Bill

The bill retains the requirement that agencies identify and proceed with rulemaking necessitated by changes in newly-enacted law, but revises the deadlines, method for compliance, and reporting requirements in the APA.

The bill replaces the biennial reporting with an expanded annual regulatory plan. The regulatory plan requires each agency to identify those laws enacted or amended during the previous 12 months that created or modified the duties or authority of the agency. The plan may exclude any law affecting all or most agencies, if the law is identified as such by letter to JAPC from the Governor or the Attorney General. The plan also must identify whether rulemaking is necessary to implement the newly-enacted provisions.

For each law identified in the regulatory plan as requiring rulemaking, the agency must state whether a notice of rule development has been published, and the date by which the agency expects to publish the notice of proposed rule.

The bill imposes specific deadlines for the agency to publish the Notice of Rule Development and Notice of Proposed Rule. Specifically, the bill requires agencies to publish a Notice of Rule Development by November 1 for each law identified in the regulatory plan for which rulemaking is necessary to implement.

The bill requires an agency to move forward with rulemaking by publishing a Notice of Proposed Rule by April 1 of the year after the submission of the regulatory plan. If the agency is unable to publish the notice by April 1, the agency may extend the deadline to the following October 1, which is the deadline for the next regulatory plan. The Notice of Extension must be published in the Florida Administrative Register (FAR) and reference the published Notice of Rule Development. If the agency needs additional time, the agency must re-list the law on the next regulatory plan. Re-listing the law on a subsequent regulatory plan further extends the deadline for the Notice of Proposed Rule.

If the agency states rulemaking is not necessary to implement the new law, the regulatory plan must contain a concise written explanation supporting that conclusion. An agency also is required to identify all other laws the agency expects to implement by rulemaking, except emergency rulemaking, before the following July 1. For each law listed, the agency must indicate whether the rulemaking is intended

²⁹ Dept. of Children and Families, "Biennial rule review report required by section 120.74, Florida Statutes" (Oct. 1, 2009), received by JAPC on Oct. 7, 2009.

³⁰ Dept. of Agriculture and Consumer Services, "August 20, 2009 Memorandum regarding §120.74, Florida Statutes, Rule Review" (Oct. 1, 2009), received by JAPC on Oct. 1, 2009.

³¹ Dept. of Business & Professional Regulation, "Section 120.74, Florida Statutes Biennial Report to the Legislature" (Oct. 1, 2009), received by JAPC on Oct. 5, 2009; Dept. of Environmental Protection, 2009 Report received by JAPC on Oct. 2, 2009.

³² Chapter 2011-225, s. 4, L.O.F. The bill also suspended reporting in 2011 and 2013 under ss. 120.74(1) and (2), F.S., to avoid duplication with the economic reviews and reports under s. 120.745, F.S.

to simplify, clarify, increase efficiency, improve coordination with other agencies, reduce regulatory costs, or delete obsolete, unnecessary, or redundant rules.

The regulatory plan must verify that the agency continuously reviews and revises its rules to maintain conformity with applicable law. The regulatory plan must be certified by both the agency head and the agency's primary lawyer. Copies of the certification will be delivered to JAPC and included with the agency's annual legislative budget request filed with the House of Representatives, Senate, and Executive Office of the Governor.

The agency is responsible for publishing its regulatory plan on its website or another state website established for publication of administrative law records. The agency must publish notice of publication in the FAR along with a hyperlink to the regulatory plan.

The bill further requires an agency to file with JAPC a certification of compliance with the publishing requirement for the Notice of Rule Development and for each Notice of Extension or regulatory plan correction filed. A copy of each Notice of Proposed Rule will continue to be delivered to JAPC.

By October 15 of each year:

- The Department of Business and Professional Regulation must file with JAPC a certification that it has reviewed the regulatory plan for each board established under s. 20.165(4), F.S., and any other board or commission receiving administrative support from the department.
- The Department of Health must file with JAPC a certification that the department has reviewed the regulatory plan for each board established under s. 20.43(3), F.S.

A certification by the Department of Business and Professional Regulation or the Department of Health may relate to more than one board.

An agency is required to supplement its regulatory plan if a law enacted during a special session affects the agency's duties or authority. The supplement must be completed within 30 days after a bill becomes a law if the law is enacted before the next regular legislative session and the law modifies the agency's specifically legislated duties.

To ensure compliance with the law, the rulemaking authority of an agency that fails to comply with any of the following requirements of the bill is suspended until the agency completes the required action or until the end of the subsequent regular legislative session, whichever occurs first:

- By October 1, the agency must publish the annual regulatory plan on its website, deliver a copy to JAPC, and publish a notice in the FAR.
- The agency must publish any required Notice of Proposed Rule by April 1, or must file a Notice of Extension, which extends the period to the next October 1.

During the suspension, the agency may complete any rulemaking actions required by the revised statute, including publishing Notices of Rule Development and Notices of Proposed Rules, and may conduct any public hearings that were noticed prior to the period of suspension. The suspension does not authorize an agency to promulgate or apply a statement defined as a rule, unless the statement was filed for adoption prior to the suspension. The suspension tolls the time for filing any already-pending rules for adoption; time resumes running when the agency meets the statutory requirements to remove the suspension. An agency's authority to adopt emergency rules or rules necessary to comply with federal law would not be suspended.

Educational entities, such as school districts, are exempted entirely from the requirements in the bill.

Retrospective Economic Review of Rules

Background

In November 2010, the Legislature enacted HB 1565 (2010)³³ overriding a gubernatorial veto. The law created a new limitation on agency rulemaking: any rule adopted after the date of the act, whether a new or amended rule, that may likely have a significant economic impact, could not go into effect unless first ratified by the Legislature.³⁴ The law requires an agency to prepare a full Statement of Estimated Regulatory Costs (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.³⁵ Additionally, the SERC must 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.³⁶

The requirements of chapter 2010-279, L.O.F., applied only to rules which had not become effective as of November 17, 2010, or were proposed for adoption after that date. Existing rules were not subject to the ratification requirement. In 2011 the Legislature passed CS/CS/CS/HB 993 & HB 7239, including a provision requiring a retrospective economic analysis of those existing rules.³⁷ All agencies required to publish their rules in the Florida Administrative Code (F.A.C.)³⁸ were required to review their rules, identify those potentially having one of the impacts described in s. 120.541(2)(a), F.S., over a five year period, complete a comprehensive economic review of such rules, and publicly publish the results and certify their compliance with the statute to JAPC. In 2011, all agencies were to publish the results of their initial reviews and identify existing rules likely to have significant economic impacts.³⁹ At the agency's discretion, the agency may submit the compliance economic reviews in two approximately equal groups: Group 1 reviews were to be published by December 1, 2012, and the remaining reviews in Group 2 were to be published by December 1, 2013.⁴⁰

Concurrently with the development of HB 993 and HB 7239, the Governor directed a review of all existing agency rules through the newly-created Office of Fiscal Accountability and Regulatory Reform (OFARR).⁴¹ Because most agencies participated in this review, and many of the elements were similar to the retrospective economic reviews contemplated by the Legislature, the bill exempted those agencies participating in the Governor's review from most of the new law's requirements. These "exempt" agencies were required to publish their initial determination of those rules requiring compliance economic reviews in 2011⁴² and all final reviews by December 31, 2013.⁴³

³³ Chapter 2010-279, L.O.F.

³⁴ Section 120.541(3), F.S.

³⁵ Sections 120.54(3)(b)1. and 120.541(1)(b), F.S.

³⁶ Section 120.541(2)(a), F.S. The three impacts are whether the rule will have 1) an adverse impact on economic growth, private sector job creation or employment, or private sector employment; 2) an adverse impact on business competitiveness, including competition with interstate firms, productivity, or innovation; or 3) an increase in regulatory costs, including transactional costs as defined by s. 120.541(2)(d), F.S.

³⁷ Chapter 2011-225, s. 5, L.O.F, codified as s. 120.745, F.S.

³⁸ A provision in the act designed specifically to *de facto* exclude educational units (defined in s. 120.52(6), F.S.) which do not publish their rules in the F.A.C. pursuant to s. 120.55(1)(a)2., F.S. Certain other publication requirements also do not apply to educational units. Section 120.81(1), F.S.

³⁹ Section 120.745(2), F.S. The statute required each agency to publish the number of its rules implementing or affecting state revenues (revenue rules), requiring submission of information or data by third parties (data collection rules), rules to be repealed, rules to be amended to reduce economic impacts, and those rules that would be reported in Groups 1 or 2.

⁴⁰ Section 120.745(5), F.S.

⁴¹ Executive Order 11-01, subsequently revised by Executive Order 11-72 and replaced by Executive Order 11-211.

⁴² As required by the statute, exempt agencies published the number of identified revenue rules (2,078), data collection rules (3,529), rules to be repealed (1,852), rules to be amended to reduce economic impacts (1,441), and rules requiring compliance economic reviews (3,056). At <https://www.myfloridalicense.com/rulereview/Rule-Review-Reports.html> (last accessed February 4, 2014).

⁴³ Section 120.745(9), F.S.

All agencies complied with the required retrospective review and publication of reports. Of those agencies not participating in the OFARR review process, only five⁴⁴ identified rules requiring compliance economic reviews.⁴⁵ Of the 161 compliance economic reviews published by these five agencies in 2012, only 72 reviews showed the subject rule as having a specific impact exceeding \$1 million over the 5 year period from July 1, 2011 to July 1, 2016.

Effect of the Bill

In December 2013, the retrospective economic reviews of all agency rules were completed with the publication of the required compliance economic reviews. Accordingly, the bill repeals s. 120.745, F.S., effective upon the bill becoming law.

Your Voice Survey

Background

As part of the increased oversight of agency rulemaking enacted in 2011, the Legislature sought public participation and input about the effect of agency rules through use of an online survey. Those wanting to comment on any rule could log in to the survey form,⁴⁶ respond to a series of questions intended to identify the particular rule and the context of the comment, and provide as much information as the participant thought necessary. Access to the online form was directed primarily through the website of the Florida House of Representatives and was known as the "Your Voice Survey."

To encourage public participation and obtain as wide a variety of comments as possible during the period of July 1, 2011 through July 1, 2014, s. 120.7455, F.S.,⁴⁷ was enacted to provide certain limited protections from enforcement actions based on any response to the survey. Specifically, a person reporting or providing information solicited by the Legislature in conformity with the law is immune from any enforcement action or prosecution based on such reporting.⁴⁸ If a person was subject to a penalty in excess of the minimum provided by law or rule, and such person proved the enforcement action was in retaliation for providing or withholding any information in response to the survey, the penalty would be limited to the minimum provided for each separate violation.⁴⁹

The survey was initiated in October 2011, and received 2,723 responses through October 22, 2013. No response appeared to place the participant in jeopardy of prosecution or administrative enforcement. However, the survey responses were of limited value. Many respondents voiced support or disapproval for issues outside the scope of the survey, such as federal laws, regulations or policies, unrelated state statutes, or local ordinances. Fewer than 200 respondents directly addressed a particular agency rule, and of those, no more than 40 respondents provided information about the economic or policy impacts of the rule. Because the limited protection in the statute proved to be unnecessary, no apparent purpose is served by continuing the statute.

Effect of the Bill

The bill repeals s. 120.7455, F.S., effective upon the bill becoming law.

⁴⁴ Dept. of Agriculture and Consumer Services, Dept. of Citrus, Dept. of Financial Services, Office of Financial Regulation, and Public Service Commission.

⁴⁵ As required by the statute, "non-exempt" agencies published the number of identified revenue rules (508), data collection rules (1,169), rules to be repealed (482), rules to be amended to reduce economic impacts (189), and rules requiring compliance economic reviews to be reported in Group 1 (161) and Group 2 (182).

⁴⁶ At <http://www.surveymonkey.com/s/FloridaRegReformSurvey> (last accessed February 4, 2014).

⁴⁷ Chapter 2011-225, s. 6, L.O.F.

⁴⁸ Section 120.7455(3), F.S. The protection also extends to the non-reporting of such information or the use of information provided in response to the survey.

⁴⁹ Section 120.7455(4), F.S.

B. SECTION DIRECTORY:

Section 1: Amends s. 120.54, F.S., revising the deadline to propose rules implementing new laws.

Section 2: Amends s. 120.74, F.S., revising requirements for the annual review of agency rules; providing procedures for preparing and publishing regulatory plans; specifying requirements for such plans; requiring publication by specified dates of notices of rule development and of proposed rules necessary to implement new laws; providing for applicability; providing for suspension of an agency's rulemaking authority under certain circumstances.

Section 3: Repeals ss. 120.745 and 120.7455, F.S., relating to legislative review of agency rules in effect on or before a specified date and an Internet-based public survey of regulatory impacts, respectively; providing for rescission of the suspension of rulemaking authority under such repealed provisions.

Section 4: Provides an effective date of July 1, 2015, except as otherwise provided in this act.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill requires agencies to publish in the FAR a notice identifying the date of publication along with a hyperlink to the regulatory plan, which has an associated cost. There is an increased workload on state agencies to adhere to the annual reporting requirements and action deadlines prescribed in the bill. The additional publication requirements and increased workload will have an insignificant fiscal impact on agencies and can be handled within existing resources. Regulatory plans have been published for the past three years without significant costs incurred.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take any action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires no additional rulemaking by any agency. The main analysis discusses particular changes to the accountability of agencies exercising rulemaking authority and to rulemaking to implement new laws.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to administrative procedures; amending
 3 s. 120.54, F.S.; revising the deadline to propose
 4 rules implementing new laws; amending s. 120.74, F.S.;
 5 revising requirements for the annual review of agency
 6 rules; providing procedures for preparing and
 7 publishing regulatory plans; specifying requirements
 8 for such plans; requiring publication by specified
 9 dates of notices of rule development and of proposed
 10 rules necessary to implement new laws; providing for
 11 applicability; providing for suspension of an agency's
 12 rulemaking authority under certain circumstances;
 13 repealing s. 120.745 F.S., relating to legislative
 14 review of agency rules in effect on or before a
 15 specified date; repealing s. 120.7455, F.S., relating
 16 to an Internet-based public survey of regulatory
 17 impacts; providing for rescission of the suspension of
 18 rulemaking authority under such repealed provisions;
 19 providing effective dates.

20
 21 Be It Enacted by the Legislature of the State of Florida:

22
 23 Section 1. Paragraph (b) of subsection (1) of section
 24 120.54, Florida Statutes, is amended to read:

25 120.54 Rulemaking.—

26 (1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER THAN

27 EMERGENCY RULES.—

28 (b) Whenever an act of the Legislature is enacted which
 29 requires implementation of the act by rules of an agency within
 30 the executive branch of state government, such rules shall be
 31 drafted and formally proposed as provided in this section within
 32 the times provided in s. 120.74(5) and (6) ~~180 days after the~~
 33 ~~effective date of the act, unless the act provides otherwise.~~

34 Section 2. Section 120.74, Florida Statutes, is amended to
 35 read:

36 (Substantial rewording of section. See
 37 s. 120.74, F.S., for present text.)

38 120.74 Agency annual rulemaking and regulatory plans;
 39 reports.—

40 (1) REGULATORY PLAN.—By October 1 of each year, each
 41 agency shall prepare an implementation and rulemaking plan.

42 (a) The plan must include a listing of each law enacted or
 43 amended during the previous 12 months that creates or modifies
 44 the duties or authority of the agency. If the Governor or the
 45 Attorney General provides a letter to the committee stating that
 46 a law affects all or most agencies, the agency may exclude the
 47 law from its plan. For each law listed by an agency under this
 48 paragraph, the plan must state:

49 1. Whether the agency must adopt rules to implement the
 50 law.

51 2. If rulemaking is necessary to implement the law:

52 a. Whether a notice of rule development has been

53 published, and if so, the citation to such notice in the Florida
 54 Administrative Register.

55 b. The date by which the agency expects to publish the
 56 notice of proposed rule under s. 120.54(3)(a).

57 3. If rulemaking is not necessary to implement the law, a
 58 concise written explanation of the reasons why the law may be
 59 implemented without rulemaking.

60 (b) The plan must also include a listing of each law not
 61 otherwise listed pursuant to paragraph (a) that the agency
 62 expects to implement by rulemaking before the following July 1,
 63 except emergency rulemaking. For each law listed under this
 64 paragraph, the plan must state whether the rulemaking is
 65 intended to simplify, clarify, increase efficiency, improve
 66 coordination with other agencies, reduce regulatory costs, or
 67 delete obsolete, unnecessary, or redundant rules.

68 (c) The plan must include any desired update to the prior
 69 year's regulatory plan or supplement published pursuant to
 70 subsection (8). If in a prior year a law was identified under
 71 this paragraph or under subparagraph (1)(a)1. as a law requiring
 72 rulemaking to implement but a notice of proposed rule has not
 73 been published:

74 1. The agency may identify and again list such law, noting
 75 the applicable notice of rule development by citation to the
 76 Florida Administrative Register; or

77 2. If the agency has subsequently determined that
 78 rulemaking is not necessary to implement the law, the agency may

79 identify such law, reference the citation to the applicable
 80 notice of rule development in the Florida Administrative
 81 Register, and provide a concise written explanation of the
 82 reason why the law may be implemented without rulemaking.

83 (d) The plan shall include a certification executed on
 84 behalf of the agency by both the agency head or, if the agency
 85 head is a collegial body, the chair or equivalent presiding
 86 officer, and the agency general counsel or, if the agency does
 87 not have a general counsel, the individual acting as principal
 88 legal advisor to the agency head. The certification must:

89 1. Verify that the persons executing the certification
 90 have reviewed the plan.

91 2. Verify that the agency regularly reviews all of its
 92 rules and identify the period during which all rules have most
 93 recently been reviewed to determine if the rules remain
 94 consistent with the agency's rulemaking authority and the laws
 95 implemented.

96 (2) PUBLICATION AND DELIVERY TO THE COMMITTEE.—

97 (a) By October 1 of each year, each agency shall:

98 1. Publish its regulatory plan on its website or on
 99 another state website established for publication of
 100 administrative law records. A clearly labeled hyperlink to the
 101 current plan must be included on the agency's primary website
 102 homepage.

103 2. Deliver by electronic communication to the committee a
 104 copy of the certification required in paragraph (1) (d).

105 3. Publish in the Florida Administrative Register a notice
 106 identifying the date of publication of the agency's regulatory
 107 plan. The notice shall include a hyperlink or website address
 108 providing direct access to the published plan.

109 (b) To satisfy the requirements of paragraph (a), each
 110 board established by s. 20.165(4), and any other board or
 111 commission receiving administrative support from the Department
 112 of Business and Professional Regulation, may coordinate with the
 113 Department of Business and Professional Regulation, and each
 114 board established by s. 20.43(3)(g) may coordinate with the
 115 Department of Health, for inclusion of the board's or
 116 commission's plan and notice of publication in the coordinating
 117 department's plan and notice and for the delivery of the
 118 required documentation to the committee.

119 (c) A regulatory plan prepared under subsection (1) and
 120 any regulatory plan published under this chapter before July 1,
 121 2014, shall be maintained at an active website for 10 years
 122 after the date of initial publication on the agency's website or
 123 another state website.

124 (3) INCLUSION IN LEGISLATIVE BUDGET REQUEST.—In addition
 125 to the requirements of s. 216.023 and pursuant to s. 216.351, a
 126 copy of the most recent certification executed under paragraph
 127 (1)(d), clearly designated as such, shall be included as part of
 128 the agency's legislative budget request.

129 (4) DEPARTMENT REVIEW OF BOARD PLAN.—By October 15 of each
 130 year:

131 (a) For each board established under s. 20.165(4) and any
 132 other board or commission receiving administrative support from
 133 the Department of Business and Professional Regulation, the
 134 Department of Business and Professional Regulation shall file
 135 with the committee a certification that the department has
 136 reviewed each board's regulatory plan. A certification may
 137 relate to more than one board.

138 (b) For each board established under s. 20.43(3), the
 139 Department of Health shall file with the committee a
 140 certification that the department has reviewed the board's
 141 regulatory plan. A certification may relate to more than one
 142 board.

143 (5) DEADLINE FOR RULE DEVELOPMENT.—By November 1 of each
 144 year, each agency shall publish a notice of rule development
 145 under s. 120.54(2) for each law identified in the agency's
 146 regulatory plan pursuant to subparagraph (1)(a)1. for which
 147 rulemaking is necessary to implement but for which the agency
 148 did not report the publication of a notice of rule development
 149 under subparagraph (1)(a)2.

150 (6) DEADLINE TO PUBLISH PROPOSED RULE.—For each law for
 151 which implementing rulemaking is necessary as identified in the
 152 agency's plan pursuant to subparagraph (1)(a)1. or subparagraph
 153 (1)(c)1., the agency shall publish a notice of proposed rule
 154 pursuant to s. 120.54(3)(a) by April 1 of the year following the
 155 deadline for the regulatory plan. This deadline may be extended
 156 if the agency publishes a notice of extension in the Florida

157 Administrative Register identifying each rulemaking proceeding
 158 for which an extension is being noticed by citation to the
 159 applicable notice of rule development as published in the
 160 Florida Administrative Register. An extension shall expire on
 161 October 1 after the April 1 deadline, provided that the
 162 regulatory plan due on October 1 may further extend the
 163 rulemaking proceeding by identification pursuant to subparagraph
 164 (1)(c)1. or conclude the rulemaking proceeding by identification
 165 pursuant to subparagraph (1)(c)2. A published regulatory plan
 166 may be corrected at any time to accomplish the purpose of
 167 extending or concluding an affected rulemaking proceeding and is
 168 deemed corrected as of the October 1 due date. Upon publication
 169 of a correction, the agency shall publish in the Florida
 170 Administrative Register a notice of the date of the correction
 171 identifying the affected rulemaking proceeding by applicable
 172 citation to the Florida Administrative Register.

173 (7) CERTIFICATIONS.—Each agency shall file a certification
 174 with the committee upon compliance with subsection (5), upon
 175 filing a notice under subsection (6) of either a deadline
 176 extension or a regulatory plan correction, and upon the
 177 completion of an act that terminates a suspension under
 178 subsection (9). A certification may relate to more than one
 179 notice or contemporaneous act. The date or dates of compliance
 180 shall be noted in each certification.

181 (8) SUPPLEMENTING THE REGULATORY PLAN.—After publication
 182 of the regulatory plan, the agency shall supplement the plan

183 within 30 days after a bill becomes a law, if the law is enacted
184 before the next regular session of the Legislature and the law
185 substantively modifies the agency's specifically delegated legal
186 duties, unless the law affects all or most state agencies as
187 identified by letter to the committee from the Governor or the
188 Attorney General. The supplement shall include the information
189 required in paragraph (1) (a) and shall be published as required
190 in subsection (2), but no certification or delivery to the
191 committee is required. The agency shall publish in the Florida
192 Administrative Register notice of publication of the supplement,
193 and include a hyperlink or web address for direct access to the
194 published supplement. For each law reported in the supplement,
195 if rulemaking is necessary to implement the law, the agency
196 shall publish a notice of rule development by the later of the
197 date provided in subsection (5) or 60 days after the bill
198 becomes a law, and a notice of proposed rule shall be published
199 by the later of the date provided in subsection (6) or 120 days
200 after the bill becomes a law. The proposed rule deadline may be
201 extended to the following October 1 by notice as provided in
202 subsection (6). If such proposed rule has not been filed by
203 October 1, a law included in a supplement shall also be included
204 in the next annual plan pursuant to subsection (1).

205 (9) FAILURE TO COMPLY.—If an agency fails to comply with a
206 requirement of paragraph (2) (a) or subsection (6), the entire
207 rulemaking authority delegated to the agency by the Legislature
208 under any statute or law shall be suspended automatically as of

209 the due date of the required action and shall remain suspended
 210 until the date the agency completes the required act or until
 211 the end of the next regular session of the Legislature,
 212 whichever occurs first.

213 (a) During a period of suspension under this subsection,
 214 the agency has no authority to file rules for adoption under s.
 215 120.54, but may complete any action required by this section and
 216 may conduct public hearings that were noticed before the period
 217 of suspension.

218 (b) A suspension under this subsection does not authorize
 219 an agency to promulgate or apply a statement defined as a rule
 220 under s. 120.52(16) unless the statement was filed for adoption
 221 under s. 120.54(3) before the suspension.

222 (c) A suspension under this subsection tolls the time
 223 requirements under s. 120.54 for filing a rule for adoption in a
 224 rulemaking proceeding initiated by the agency before the date of
 225 the suspension. The time requirements shall resume on the date
 226 the suspension ends.

227 (d) This subsection does not suspend the adoption of
 228 emergency rules under s. 120.54(4) or rulemaking necessary to
 229 ensure the state's compliance with federal law.

230 (10) EDUCATIONAL UNITS.—This section does not apply to
 231 educational units.

232 Section 3. Effective upon this act becoming a law:

233 (1) Sections 120.745 and 120.7455, Florida Statutes, are
 234 repealed.

235 (2) Any suspension of rulemaking authority under s.
236 120.745, Florida Statutes, or s. 120.7455, Florida Statutes, is
237 rescinded. This subsection does not affect any restriction,
238 suspension, or prohibition of rulemaking authority under any
239 other provision of law.

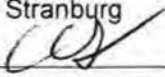
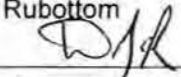
240 (3) This section serves no other purpose and shall not be
241 codified in the Florida Statutes.

242 Section 4. Except as otherwise expressly provided in this
243 act and except for this section, which shall take effect upon
244 this act becoming a law, this act shall take effect July 1,
245 2015.

PCB RORS 15-02

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB RORS 15-02 ADMINISTRATIVE PROCEDURES
SPONSOR(S): Rulemaking Oversight & Repeal Subcommittee
TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Rulemaking Oversight & Repeal Subcommittee		Stranburg 	Rubottom 

SUMMARY ANALYSIS

PCB RORS 14-02 amends the rulemaking procedures of the Administrative Procedure Act to improve public notices and the preparation of statements of estimated regulatory costs (SERC) beginning in the period of rule development. The PCB also revises the requirements for preparing a SERC to improve and standardize guidance for administrative agencies in preparing information necessary for decision makers and affected constituencies to understand the economic and policy impacts of proposed rules.

The PCB amends the statutory rulemaking process by:

- Conforming the information required in notices of rule development to certain information required for notices of proposed rules.
- Requiring published notices of proposed rules to state whether the agency conducted a rule development workshop.
- Requires agencies to make certain documents available by hyperlink from published notices to the agency website.
- Amending the requirements for rule development to include in workshops and other public hearings the development of information beneficial to the preparation of a SERC.
- Requiring agencies to ensure the availability of personnel responsible for preparing a SERC at rule development workshops, hearings, and public hearings on proposed rules.
- Creates 6 new factors agencies must consider when evaluating the impact of proposed rules on small businesses, presuming each of these factors to be adverse to small business.
- Clarifies present statutes on hearings, agency responses to submitted lower cost regulatory alternatives, and conforms other provisions to these changes.

The statutory requirements for preparing a SERC are revised by:

- Authorizing agencies to respond to a lower cost regulatory alternative by modifying a proposed rule to substantially reduce estimated regulatory costs, and, if so, requiring the agency to revise its SERC and include a summary of the revised SERC in subsequent rulemaking notices.
- Requires agencies to provide the rules ombudsman with any revised SERC.
- Makes publication of the SERC a mandatory element of the preparation of a SERC.
- Creates new s. 120.541(5), F.S., extensively revising the impacts and costs agencies must evaluate when preparing a SERC, providing specific guidance on discrete types of costs and economic impacts necessary for more thorough and useful information on the impact of a proposed rule.

The PCB provides an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

1. Present Situation

Agency Rulemaking

One important aspect of the Administrative Procedure Act (APA)¹ is the emphasis on public notice and opportunity for participation in agency rulemaking. A rule is an agency statement of general applicability interpreting, implementing, or prescribing law or policy, including the procedure and practice requirements of an agency, as well as certain types of forms.² The APA provides specific requirements agencies must follow in order to adopt rules.³

With some exceptions,⁴ required rulemaking begins with an agency publishing a notice of rule development in the Florida Administrative Register (F.A.R.).⁵ If the agency conducts public rule development workshops,⁶ the persons responsible for preparing the draft rule under consideration must be available to explain the proposal and respond to public questions or comments.⁷

Once the final form of the proposed rule is developed (whether the proposal creates a new rule or amends or repeals an existing rule), the agency must publish a notice of the proposed rule before it may be adopted.⁸ The publication of this notice triggers certain deadlines for the rulemaking process.⁹ Each notice must include the full text of the proposed rule and other additional information, such as a summary of the agency's statement of estimated regulatory costs (SERC) and the opportunity for anyone to provide the agency with information pertaining to the SERC or to propose a lower cost regulatory alternative to the proposed rule. The notice must also state the procedure to request a hearing on the proposed rule.¹⁰

At a public rulemaking hearing agency staff must be available to explain the proposed rule and respond to public questions or comments. Material pertaining to the proposed rulemaking submitted to the agency between the date of publishing the notice of proposed rule and the end of the final public hearing must be considered by the agency and made a part of the rulemaking record.¹¹ If a person substantially affected by the proposed rule shows the proceeding does not provide adequate opportunity to protect those interests, and the agency concurs, the agency must suspend the rulemaking proceeding and convene a separate, more formal proceeding, including referring the matter

¹ Ch. 120, F.S.

² 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).

³ Section 120.54, F.S.

⁴ Rule repeals do not require initial rule development. Section 120.54(2)(a), F.S. Emergency rulemaking proceeds separately under s. 120.54(4), F.S.

⁵ Section 120.54(2)(a), F.S. The APA is silent on the initial, internal process an agency follows prior to initiating public rule development. *Adam Smith Enterprises, Inc. v. Dept. of Environmental Regulation*, 553 So. 2d 1260, 1265, n. 4 (Fla. 1st DCA 1990).

⁶ An agency must conduct public workshops if so requested in writing by any affected person unless the agency head explains in writing why a workshop is not necessary. Section 120.52(c), F.S.

⁷ Section 120.52(c), F.S.

⁸ Section 120.54(3)(a)1., F.S.

⁹ Persons affected by the proposed rule have 21 days from the date of publication to request a hearing on the proposed rule. Section 120.54(3)(c), F.S. Those wanting to submit a lower cost regulatory alternative to the proposed rule have the same 21 day time limit. Sections 120.54(3)(a)1., 120.54(1)(a), F.S. The agency must wait at least 28 days from the date of publication before filing the proposed rule for final adoption. Section 120.54(3)(a)2., (3)(e)1., F.S.

¹⁰ Section 120.54(3)(a)1., F.S.

¹¹ Section 120.54(3)(c)1., F.S.

to the Division of Administrative Hearings (DOAH). Once the separate proceeding concludes the rulemaking proceeding resumes.¹²

Subsequent to the final rulemaking hearing, if the agency makes any substantial change to the proposed rule the agency must provide additional notice and publish a notice of change in the F.A.R. at least 21 days before the rule may be filed for adoption.¹³ If the change increases the regulatory costs of the rule the agency must revise its SERC.¹⁴

Statement of Estimated Regulatory Costs (SERC)

A SERC is an agency estimate of the potential impact of a proposed rule on the public, particularly the potential costs to the public of complying with the rule as well as to the agency and other governmental entities to implement the rule.¹⁵ Agencies are encouraged to prepare a SERC before adopting, amending, or repealing any rule,¹⁶ but are required to prepare a SERC if:

- The proposed rule will have an adverse impact on small businesses;¹⁷
- The proposed rule is likely to directly or indirectly increase aggregate regulatory costs by more than \$200,000 in the first year after the rule is implemented;¹⁸ or
- If a substantially affected person submits a proposal for a lower cost regulatory alternative to the proposed rule. The proposal must substantially accomplish the same objectives in the law being implemented by the agency.¹⁹

Each SERC at a minimum must contain the following elements:

- An economic analysis of the proposed rule's potential direct or indirect impacts,²⁰ including whether any of the following exceed an aggregate of \$1,000,000 in the first 5 years after implementing the rule:
 - Any adverse impact on economic growth, private sector job creation or employment, or private sector investment;²¹
 - Any adverse impact on business competitiveness (including the ability to compete with businesses in other states or markets), productivity, or innovation;²² or
 - Any likely increase in regulatory costs (including transactional costs).²³
- A good faith estimate of the number and a general description of the individuals and entities required to comply with the rule.²⁴
- A good faith estimate of the cost of implementing the rule to the agency and any other state or local governmental entities, including any anticipated impacts on state or local revenues.²⁵
- A good faith estimate of the transactional costs members of the public and local governmental entities are likely to incur to comply with the rule.²⁶

¹² Section 120.54(3)(c)2., F.S.

¹³ Section 120.54(3)(d)1., F.S.

¹⁴ Section 120.541(1)(c), F.S.

¹⁵ Section 120.541(2), F.S. Beginning in 1975, the APA required agencies to estimate the economic impact of proposed rules or explain why such an estimate could not be prepared. Ch. 75-191, s. 3, LOF, codified at 120.54(1), Fla. Stat. (1975).

¹⁶ Section 120.54(3)(b)1., F.S.

¹⁷ Sections 120.54(3)(b)1.a. & 120.541(1)(b), F.S.

¹⁸ Sections 120.54(3)(b)1.b. & 120.541(1)(b), F.S.

¹⁹ Section 120.541(1)(a), F.S. Upon the submission of the lower cost regulatory alternative, the agency must revise its initial SERC, or prepare one if not done previously, and either adopt the proposed alternative or state its reasons for rejecting the proposal.

²⁰ Section 120.541(2)(a), F.S.

²¹ Section 120.541(2)(a)1., F.S.

²² Section 120.541(2)(a)2., F.S.

²³ Section 120.541(2)(a)3., F.S.

²⁴ Section 120.541(2)(b), F.S.

²⁵ Section 120.541(2)(c), F.S.

²⁶ Section 120.541(2)(d), F.S. The definition of "transactional costs" is discussed later in this analysis.

- An analysis of the impact of the rule on small businesses, including the agency's explanation for not implementing alternatives which could reduce adverse impacts, and of the impact on small counties and small cities.²⁷
- A description of each lower cost regulatory alternative submitted to the agency with a statement adopting the alternative or explaining the reasons for rejection.²⁸

Additional information may be included if the agency determines such would be useful.²⁹ The agency's failure to prepare a SERC when required or failure to respond to a written proposed lower cost regulatory alternative³⁰ is a material failure to follow the APA rulemaking requirements.³¹ Consequently, if challenged the rule could be found to be an invalid exercise of delegated legislative authority.³² Even when the agency properly prepares a SERC and responds to all proposed lower cost regulatory alternatives, the resulting rule could be challenged as an invalid exercise of delegated legislative authority if the rule imposes regulatory costs greater than a proposed alternative which substantially accomplishes the same result.³³

The specific requirements of s. 120.541, F.S., were adopted in 1996 as part of the comprehensive revision of the APA.³⁴ The revisions resulted from the Final Report of the Commission appointed by the Governor to study and recommend improvements to the APA, particularly in rulemaking and making agencies more accountable to the Legislature and the public.³⁵ The Commission found the purpose for economic impact statements was to assist both the government and the public to understand the potential financial impacts of a rule before adoption but "(t)he quality of economic analyses ... prepared by state agencies is inadequate, and existing law requirements ... are ineffective."³⁶ Although the Commission recommended a number of revisions to improve the evaluation of costs, which serve as the basis for the present statute, these recommendations provided little guidance on the actual cost components relevant to evaluating the potential impact of a proposed rule.³⁷

²⁷ Section 120.541(2)(e), F.S. This statute incorporates the definitions of "small city" and "small county" in ss. 120.52(18) & 120.52(19), F.S., respectively. The statute also incorporates the definition of "small business" in s. 288.703, F.S. *Compare, s. 120.54(3)(b)2., F.S.*, which uses similar language requiring agencies to consider the impact of every proposed rule, amendment, or repeal on small businesses, small cities, and small counties but also permits agencies to rely on expanded versions of these definitions if necessary to more adapt the rule for more specific needs or problems. Section 120.54(3)(b)2.a., F.S., specifies 5 methods agencies must consider to reduce the rule's impact on small businesses, cities, and counties. If the agency determines the rule will affect defined small businesses, notice of the rule must be sent to the rules ombudsman in the Executive Office of the Governor. Section 120.54(3)(b)2.b.(I), F.S. The agency must adopt regulatory alternatives reducing impacts on small businesses timely offered by the rules ombudsman or provide JAPC a written explanation for failing to do so. Section 120.54(3)(b)2.b.(II), (III), F.S.

²⁸ Section 120.541(2)(g), F.S.

²⁹ Section 120.541(2)(f), F.S.

³⁰ The party submitting a proposal to the agency must designate it as a lower cost regulatory alternative or at a minimum discuss cost issues with the proposed rule in order to inform the agency of the purpose of the submittal. A party challenging the validity of a school board rule argued the board failed to prepare a SERC after receiving a lower cost regulatory alternative. The administrative law judge (ALJ) found the proposal submitted to the board neither referenced s. 120.541, F.S., nor asserted it would result in lower costs. The ALJ ruled the failure to demonstrate the proposal presented a lower cost alternative meant the agency was not informed of the purpose of the submission and thus had a duty to prepare a SERC or respond to a lower cost regulatory alternative. *RHC and Associates, Inc. v. Hillsborough County School Board*, Final Order, DOAH Case no. 02-3138RP at <http://www.doah.state.fl.us/ALJ/searchDOAH/> (accessed 1/28/2014).

³¹ Section 120.541(1)(e), F.S. Unlike other failures to follow the APA rulemaking requirements, this provision prevents the challenged agency from rebutting the presumed material failure by proving the substantial interests of the petitioner and the fairness of the proceedings were not impaired. Section 120.56(1)(c), F.S. This limitation applies only if the challenge is brought by a substantially affected person within one year from the rule going into effect. Section 120.541(1)(f), F.S.

³² Section 120.52(8)(a), F.S.

³³ Section 120.52(8)(f), F.S. This type of challenge must be to the agency's rejection of a lower cost regulatory alternative and brought by a substantially affected person within a year of the rule going into effect. Section 120.541(1)(g), F.S.

³⁴ Ch.96-159, s. 11, LOF.

³⁵ *Final Report of the Governor's Administrative Procedure Act Review Commission*, 1 (Feb. 20, 1996), at <http://japc.state.fl.us/research.cfm> (accessed 1/29/2014).

³⁶ *Final Report of the Governor's APA Review Commission*, supra at 31.

³⁷ *Final Report of the Governor's APA Review Commission*, supra at 32.

For example, neither a definition nor examples of "regulatory costs" are found in the APA although the concept is important to an agency's economic analysis. "Transactional costs" are defined as direct costs of compliance, readily ascertainable based on standard business practices, including:

- Filing fees;
- Costs to obtain a license;
- Costs of equipment installed or used for rule compliance;
- Costs of procedures required for compliance;
- Additional operating costs;
- Costs for monitoring and reporting; and
- Any other necessary costs of compliance.³⁸

The statute does not provide guidance or reference on how agencies are to identify and apply standard business practices in the development of required SERCs. As a result, some agencies with access to, and familiarity with, cost impact data from entities affected by specific rules provide comprehensive analyses of such impacts in SERCs.³⁹ Other agencies, less familiar with costs to individuals and entities to conduct the regulated activities and comply with specific rules, prepare SERCs which do not reflect the full impact of particular rules.⁴⁰

2. *Effect of Proposed Changes*

PCB RO&RS 14-02 amends the rulemaking procedures of the APA to improve public notices and the preparation of SERCs, beginning in the period of rule development. Agencies are provided specific factors to consider when evaluating the overall impact on small businesses of a proposed rule, amendment, or repeal. The requirement for an agency conducting a public workshop or hearing to make available certain personnel is expanded to include those responsible for preparing the SERC and responding to lower cost regulatory alternatives. The statute controlling the actual preparation of SERCs is revised to clarify agency responsibilities for public notice and responding to lower cost regulatory alternatives. A new subsection provides agencies flexibility for obtaining necessary data and increases legislative guidance for evaluating cost impacts by identifying specific cost and economic factors all agencies must consider when preparing a SERC.

Revisions to Rulemaking Requirements

Section 120.54(2): Rule Development

³⁸ Section 120.541(2)(d), F.S.

³⁹ Presentations of Curt Kiser, General Counsel, and Bill McNulty, Economic Analyst, of the Public Service Commission, at scheduled meeting of Rulemaking Oversight & Repeal Subcommittee on November 5, 2013, at http://myfloridahouse.gov/VideoPlayer.aspx?eventID=2443575804_2013111059&committeeID=2727 (accessed 1/31/2014).

⁴⁰ Presentation of Dept. of Elder Affairs at scheduled meeting of RO&RS on March 27, 2013. *See*, 3-27-2013 Subcommittee Action Packet, 45-52. The agency was revising several rules in Ch. 58A-5, F.A.C., including increased training and testing requirements for administrators, managers, and staff of assisted living facilities (ALF). The SERC prepared by the agency initially concluded the proposed rules would increase regulatory costs by less than \$1,000,000 over the first five years of implementation. However, as adduced by the Subcommittee during the agency's presentation, a number of cost factors were not considered in preparing the SERC, including the time and expense for testing to *all* applicants (not merely those passing the test), increased training and labor costs to ALFs, and even the costs of implementation and operation to the agency. The SERC also did not account for the delayed effective dates for some of the rules, resulting in the agency measuring cost impacts for the first 5 years from the initial effective date of some rules rather than a full 5 years for each rule. When questioned on these assumptions, the agency conceded the SERC should have indicated an overall cost impact exceeding \$1,000,000 for the first 5 years of full implementation of all the subject rules. An audio recording of the meeting is at http://myfloridahouse.gov/FileStores/AdHoc/PodCasts/03_27_2013/Rulemaking_Oversight_Repeal_2013_03_27.mp3 (accessed 1/31/2014).

The PCB conforms the requirement for information in a notice of rule development⁴¹ to that required for a notice of proposed rule.⁴² In notices of rule development, agencies will be required to provide:

- Citations to the grant of rulemaking authority and the specific law(s) being implemented under which the proposed rule will be developed;⁴³
- Information on how the public may comment on the proposed rule development and provide the agency with information on regulatory costs which may result from a proposed rule; and
- How the public may access online a draft of the rule being developed (when available).

Agencies conducting public rule development workshops⁴⁴ will be required to ensure the attendance at such workshops not only of the people responsible for preparing the proposed rule but also those responsible for preparing the SERC to receive public input, explain the agency's proposal, and respond to public questions or comments. The PCB deletes a sentence stating an agency's failure to provide the agency head's written explanation as to why a requested workshop was not necessary "may be a material error" in the rulemaking procedure because the statement is redundant of s. 120.56(1)(c), F.S.

The PCB makes technical revisions conforming the rule development statute to these changes.

Section 120.54(3): Rule Adoption

The PCB makes several changes to the requirement for notices of proposed rules:⁴⁵

- Additional information must be included in the published notice of proposed rule:⁴⁶
 - The notice must state whether the agency held a public workshop for rule development. If not, whether the agency received a written request to conduct a workshop.
 - If the agency did not conduct a workshop, the agency head provide a written explanation as to why the workshop was unnecessary.
 - The required summary of the SERC (if one is prepared) must include a hyperlink to a copy of the SERC on the agency's website.
- When an agency must deliver additional copies of the published notice of proposed rule to those who requested advance notice of the agency's proceedings,⁴⁷ agencies will have the option of providing such copies by mail or electronic delivery.
- In lieu of filing physical copies of a required statement or copy of additional material incorporated by reference in the proposed rule,⁴⁸ the agency may provide the Joint Administrative Procedures Committee (JAPC)⁴⁹ access to a copy of these materials by hyperlink to a webpage on the agency's website.

The guidance and direction for agencies to consider the impact on small businesses of proposed rules⁵⁰ is revised. A rule will be presumed to have an adverse impact, and a SERC will be required, if for any small business:

- The owner or other specified person must complete any education, training or testing, is likely to expend 10 or more hours, or must hire a professional, in order to understand and comply with the rule in the first year.

⁴¹ Section 120.54(2)(a), F.S.

⁴² Section 120.54(3)(a)1., F.S.

⁴³ Staff of JAPC has suggested conforming the notice of rule development to the present requirements for notices of proposed rule. Adding statutory citations at the initiation of rulemaking will helpfully define the scope of rule development. It therefore can guide and assist public participation.

⁴⁴ Section 120.54(2)(c), F.S.

⁴⁵ Section 120.54(3)(a), F.S.

⁴⁶ Section 120.54(3)(a)1., F.S.

⁴⁷ Section 120.54(3)(a)3., F.S.

⁴⁸ Section 120.54(1)(i)1., 2., 3., F.S.

⁴⁹ Section 120.54(3)(a)4., F.S.

⁵⁰ Section 120.54(3)(b)2.a., F.S. The PCB inserts the new provisions as a revised 120.54(3)(b)2.a., renumbering existing (3)(b)2.a. as (3)(b)2.b.

- Taxes or fees assessed on transactions are likely to increase by at least \$500 in the aggregate in one year due to the rule.
- Prices charged for goods and services are restricted or likely to increase due to the rule.
- Compliance with the rule will require specially trained, licensed, or tested employees.
- Operating costs are expected to increase by \$1,000 annually because of the rule.
- Compliance requires capital expenditures of at least \$1,000.

Consistent with the revised requirements for rule development workshops, agencies will be required to ensure the availability at hearings on proposed rules both of those responsible for preparing the proposed rule and those responsible for preparing the SERC. Those made available must be able to explain the proposed rule and the SERC and respond to public questions or comments about the proposed rule, SERC, and the agency's decision whether to adopt offered lower cost regulatory alternatives.

An agency deciding to commence a requested separate, more formal proceeding⁵¹ will be required to publish notice of that proceeding in the F.A.R. The PCB expressly tolls all timelines under the standard rulemaking procedures during the suspension of the rulemaking proceeding until the date following the conclusion of the separate proceeding.

An agency publishing a notice of change to a proposed rule will be required to include one of the following:

- A summary of the SERC prepared as a consequence of the change to the proposed rule; or
- A summary of the revision to the SERC required by s. 120.541(1)(c), F.S.; or
- A statement the proposed rule as changed does not require preparation of a SERC.

In addition to technical changes conforming other statutory provisions to these changes, the PCB requires agencies to make a SERC available to the public at a readily accessible page on the agency's website.⁵²

Section 120.541: Statements of Estimated Regulatory Costs

The PCB expressly provides for the submission of lower cost regulatory alternatives in response to any non-technical noticed change to the proposed rule. Submissions of lower cost regulatory alternatives responding to notices of change will only be in good faith if the person submitting the alternative notes the reason for believing the change creates increased regulatory costs or an adverse effect on small businesses that was not created by the original proposed rule.

An agency receiving a proposed lower cost regulatory alternative will now have the choice of modifying the proposed rule to substantially reduce regulatory costs in addition to either adopting the proposal or stating its reasons for rejecting the alternative in favor of the proposed rule. If so, the agency also must revise the SERC. When a SERC is revised because a change to a proposed rule increases the projected regulatory costs or the agency modified the rule in response to a lower cost regulatory alternative, a summary of the revised SERC must be included in subsequent published rulemaking notices. Under the PCB, the revised SERC must be served on the rules ombudsman⁵³, in addition to the party submitting the lower cost regulatory alternative and JAPC, and must be published in the same manner as the original SERC.

The PCB significantly revises the guidance on which agencies must rely when preparing SERCs. The definition and use of "transactional" costs is replaced with more specific terms.

⁵¹ Section 120.54(3)(c)2., F.S.

⁵² Section 120.54(3)(e)2., F.S.

⁵³ The rule ombudsman is appointed by the Governor and located in the Executive Office of the Governor. Section 288.7015, F.S.

- The required economic analysis must still analyze the proposed rule's impact on regulatory costs, which will include all costs and impacts estimated in the SERC.
- The agency must estimate the number of small businesses and other entities required to comply with the proposed rule, in addition to individuals.
- The SERC must estimate the costs of compliance by individuals and entities.
- The PCB creates s. 120.541(5)(a), requiring agencies to estimate all impacts and costs for the first 5 years after full implementation of all provisions of the rule, not simply from the effective date of the proposed rule.
- New s. 120.541(5)(b) requires estimates of economic, market and small business impacts likely to result from compliance with the proposed rule and provides specific guidance for agencies to consider elements such as:
 - Increased consumer prices;
 - Increased costs due to obtaining substitute or alternative products or services;
 - The value of time expended by business owners and other business personnel to comply with the proposed rule;
 - Capital costs incurred to comply with the proposed rule.
- New s. 120.541(5)(c) provides agencies with specific guidance and flexibility for obtaining information and data necessary to prepare economic analyses.
- New s. 120.541(5)(d) directs agencies to consider all direct and indirect costs of rule compliance and provides 18 specific types of costs as examples, including:
 - Filing fees;
 - Costs of obtaining a license;
 - Costs to obtain, install, and maintain equipment necessary for compliance;
 - Costs related to accounting, financial, information, and management systems;
 - Labor costs;
 - Costs of education, training, and testing necessary for compliance;
 - Allocation of administrative and other overhead.

Section 190.005: Community Development Districts

The PCB provides that a petition for the establishment of a community development district filed with the Florida Land and Water Adjudicatory Commission need not contain a SERC, but rather must contain a statement explaining the prospective economic impact of the establishment of the proposed district. This is a reversion to language similar to language added in 84-360, L.O.F.

B. SECTION DIRECTORY:

Section 1: Amends s. 120.54, F.S., revising rulemaking notice, workshop, and hearing requirements, updating publication requirements to include internet access to certain documents, creating specific guidance for agency evaluation of prospective adverse impacts on small businesses by new rules, clarifies requirements for responding to lower cost regulatory alternatives, makes necessary conforming changes.

Section 2: Amends s. 120.541, F.S., revising and expanding agency responsibilities in preparing SERCs and responding to submitted lower cost regulatory alternatives, requiring provision of revised SERCs to the rules ombudsman, creating new s. 120.541(5), F.S., extensively revising the impacts and costs agencies must evaluate when preparing a SERC, providing specific guidance on discrete types of costs and economic impacts necessary for more thorough and useful information on the impact of a proposed rule.

Section 3: Amends s. 190.005, requiring a petition to establish a community development district to include a statement of prospective economic impact of the establishment of a proposed district

Section 4: Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The PCB may have an indeterminate fiscal impact on state government. See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The PCB is expected to provide a better estimation of economic impacts of agency rules, a better opportunity of local government and private entities to participate in rulemaking and in estimating regulatory costs with the clear intent to better facilitate the selection of lower cost alternatives. In addition, more complete estimates of regulatory costs and economic impacts may bring more agency rules under the scrutiny of legislative ratification prior to their becoming effective.

D. FISCAL COMMENTS:

State agencies currently are required to comply with notice, publication, and hearing requirements for rulemaking and with the requirements for preparing SERCs. The bill adds to these requirements. Compliance with these additional requirements may require agencies to devote more resources to rulemaking. The bill also specifically provides for electronic and internet provision of many documents that must currently be delivered in paper form. This might result in cost savings for some agencies.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The PCB does not appear to require counties or municipalities to take any action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The PCB does not create any additional rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Website Posting of a SERC

The PCB requires an agency to make publicly available on a website a SERC, revised SERC, compliance economic review, or report on an economic estimate or regulatory costs and economic impact, until the rule is withdrawn or repealed, or until the rule is amended with preparation of a new SERC. It is unclear what the effect of this requirement is for a proposed rule that is revised to no longer require a SERC or other economic impact report.

Other Comments: Economic Impact on Economic Growth, Employment, Small Businesses

The PCB provides that an agency evaluating the potential impact of a rule on economic growth, employment, private sector investment, and small businesses must consider factors such as increased customer charges for goods and services, decreased market value of goods and services, increased costs resulting from the purchase of substitute or alternative products or services, and value of time required for understanding and compliance of the rule. It is unclear if an agency would have the ability to develop meaningful estimates of such factors without access to reliable data, which may not be available.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

27 publication of a revised statement of estimated
 28 regulatory costs in response to such lower cost
 29 regulatory alternatives; requiring the agency to
 30 provide specified documents on a website under
 31 specific circumstances; deleting definition of
 32 "transactional costs"; providing additional
 33 requirements for the calculation of estimated
 34 regulatory costs; amending s. 190.005, F.S., relating
 35 to the establishment of community development
 36 districts; requiring a petition to include a statement
 37 explaining the prospective economic impact of the
 38 establishment of a proposed district; providing an
 39 effective date.

40
 41 Be It Enacted by the Legislature of the State of Florida:

42
 43 Section 1. Subsections (2) and (3) of section 120.54,
 44 Florida Statutes, are amended to read:

45 120.54 Rulemaking.—

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

47 (a) Except when the intended action is the repeal of a
 48 rule, agencies shall provide notice of the development of
 49 proposed rules by publication of a notice of rule development in
 50 the Florida Administrative Register before providing notice of a
 51 proposed rule as required by paragraph (3) (a). The notice of
 52 rule development shall indicate the subject area to be addressed

53 by rule development, provide a short, plain explanation of the
 54 purpose and effect of the proposed rule, cite the grant of
 55 rulemaking authority pursuant to which the rule is proposed and
 56 the section or subsection of the Florida Statutes or the Laws of
 57 Florida being implemented or interpreted by the proposed rule
 58 ~~specific legal authority for the proposed rule~~, and include the
 59 preliminary text of the proposed rules, if available, or a
 60 statement of how a person may promptly obtain, without cost, or
 61 access online, a copy of any preliminary draft, when if
 62 available. The notice shall also include a statement of how a
 63 person may submit comments to the proposal and provide
 64 information regarding the potential regulatory costs.

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

- 67 1. It avoids the use of obscure words and unnecessarily
 68 long or complicated constructions; and
- 69 2. It avoids the use of unnecessary technical or
 70 specialized language that is understood only by members of
 71 particular trades or professions.

72 (c) An agency may hold public workshops for purposes of
 73 rule development and information gathering for the preparation
 74 of the statement of estimated regulatory costs. If requested in
 75 writing by an affected person, an agency must hold public
 76 workshops, including workshops in various regions of the state
 77 or the agency's service area, for purposes of rule development
 78 and information gathering for the preparation of the statement

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

101 (d)1. An agency may use negotiated rulemaking in
102 developing and adopting rules. The agency should consider the
103 use of negotiated rulemaking when complex rules are being
104 drafted or strong opposition to the rules is anticipated. The

105 agency should consider, but is not limited to considering,
 106 whether a balanced committee of interested persons who will
 107 negotiate in good faith can be assembled, whether the agency is
 108 willing to support the work of the negotiating committee, and
 109 whether the agency can use the group consensus as the basis for
 110 its proposed rule. Negotiated rulemaking uses a committee of
 111 designated representatives to draft a mutually acceptable
 112 proposed rule and to develop information necessary to prepare a
 113 statement of estimated regulatory costs, when applicable.

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

125 3. The agency's decision to use negotiated rulemaking, its
 126 selection of the representative groups, and approval or denial
 127 of an application to participate in the negotiated rulemaking
 128 process are not agency action. Nothing in this subparagraph is
 129 intended to affect the rights of a substantially ~~an~~ affected
 130 person to challenge a proposed rule developed under this

131 paragraph in accordance with s. 120.56(2).

132 (3) ADOPTION PROCEDURES.—

133 (a) Notices.—

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

157 provided by s. 120.541(1), must do so in writing within 21 days
158 after publication of the notice; and a statement as to whether,
159 based on the statement of the estimated regulatory costs or
160 other information expressly relied upon and described by the
161 agency if no statement of regulatory costs is required, the
162 proposed rule is expected to require legislative ratification
163 pursuant to s. 120.541(3). The notice must state the procedure
164 for requesting a public hearing on the proposed rule. Except
165 when the intended action is the repeal of a rule, the notice
166 must include a reference both to the date on which and to the
167 place where the notice of rule development that is required by
168 subsection (2) appeared.

169 2. The notice shall be published in the Florida
170 Administrative Register at least ~~not less than~~ 28 days before
171 ~~prior to~~ the intended action. The proposed rule shall be
172 available for inspection and copying by the public at the time
173 of the publication of notice.

174 3. The notice shall be mailed to all persons named in the
175 proposed rule and mailed or delivered electronically to all
176 persons who, at least 14 days before ~~prior to~~ such mailing, have
177 made requests of the agency for advance notice of its
178 proceedings. The agency shall also give such notice as is
179 prescribed by rule to those particular classes of persons to
180 whom the intended action is directed.

181 4. The adopting agency shall file with the committee, at
182 least 21 days before ~~prior to~~ the proposed adoption date, a copy

183 of each rule it proposes to adopt; a copy of any material
 184 incorporated by reference in the rule; a detailed written
 185 statement of the facts and circumstances justifying the proposed
 186 rule; a copy of any statement of estimated regulatory costs that
 187 has been prepared pursuant to s. 120.541; a statement of the
 188 extent to which the proposed rule relates to federal standards
 189 or rules on the same subject; and the notice required by
 190 subparagraph 1. In lieu of filing a required statement or copy
 191 with the committee for each such rule, the agency may file with
 192 the committee information providing an electronic hyperlink to a
 193 readily accessible copy of the required statement or copy.

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

195 1. Statement of estimated regulatory costs.—Before the
 196 adoption, amendment, or repeal of any rule other than an
 197 emergency rule, an agency is encouraged to prepare a statement
 198 of estimated regulatory costs of the proposed rule, as provided
 199 by s. 120.541. However, an agency must prepare a statement of
 200 estimated regulatory costs of the proposed rule, as provided by
 201 s. 120.541, if:

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

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

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

209 a. For purposes of this subsection and s. 120.541(2), an
210 adverse impact on small business is presumed if, for any small
211 business:

212 (I) An owner, officer, operator, or manager must complete
213 any education, training, or testing to comply, or is likely to
214 either expend 10 hours or purchase professional advice to
215 understand and comply with the rule in the first year;

216 (II) Taxes or fees assessed on transactions are likely to
217 increase by \$500 or more in the aggregate in 1 year;

218 (III) Prices charged for goods and services are restricted
219 or are likely to increase because of the rule;

220 (IV) Specially trained, licensed, or tested employees will
221 be required;

222 (V) Operating costs are expected to increase by at least
223 \$1,000 annually; or

224 (VI) Capital expenditures in excess of \$1,000 are
225 necessary to comply with the rule.

226 b. Each agency, before the adoption, amendment, or repeal
227 of a rule, shall consider the impact of the rule on small
228 businesses as defined by s. 288.703 and the impact of the rule
229 on small counties or small cities as defined by s. 120.52.
230 Whenever practicable, an agency shall tier its rules to reduce
231 disproportionate impacts on small businesses, small counties, or
232 small cities to avoid regulating small businesses, small
233 counties, or small cities that do not contribute significantly
234 to the problem the rule is designed to address. An agency may

235 define "small business" to include businesses employing more
 236 than 200 persons, may define "small county" to include those
 237 with populations of more than 75,000, and may define "small
 238 city" to include those with populations of more than 10,000, if
 239 it finds that such a definition is necessary to adapt a rule to
 240 the needs and problems of small businesses, small counties, or
 241 small cities. The agency shall consider each of the following
 242 methods for reducing the impact of the proposed rule on small
 243 businesses, small counties, and small cities, or any combination
 244 of these entities:

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

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

249 (III) Consolidating or simplifying the rule's compliance
 250 or reporting requirements.

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

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

256 c.b.(I) If the agency determines that the proposed action
 257 will affect small businesses as defined by the agency as
 258 provided in sub-subparagraph b. a., the agency shall send
 259 written notice of the rule to the rules ombudsman in the
 260 Executive Office of the Governor at least 28 days before the

261 intended action.

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

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

280 (c) Hearings.—

281 1. If the intended action concerns any rule other than one
 282 relating exclusively to procedure or practice, the agency shall,
 283 on the request of any affected person received within 21 days
 284 after the date of publication of the notice of intended agency
 285 action, give affected persons an opportunity to present evidence
 286 and argument on all issues under consideration. The agency may

287 schedule a public hearing on the proposed rule and, if requested
288 by any affected person, shall schedule a public hearing on the
289 proposed rule. When a public hearing is held, the agency must
290 ensure that the persons responsible for preparing the proposed
291 rule and the statement of estimated regulatory costs ~~staff~~ are
292 available to explain the agency's proposal and to respond to
293 questions or comments regarding the proposed rule, the statement
294 of estimated regulatory costs, and the agency's decision whether
295 to adopt a lower cost regulatory alternative submitted pursuant
296 to s. 120.541(1)(a). If the agency head is a board or other
297 collegial body created under s. 20.165(4) or s. 20.43(3)(g), and
298 one or more requested public hearings is scheduled, the board or
299 other collegial body shall conduct at least one of the public
300 hearings itself and may not delegate this responsibility without
301 the consent of those persons requesting the public hearing. Any
302 material pertinent to the issues under consideration submitted
303 to the agency within 21 days after the date of publication of
304 the notice or submitted to the agency between the date of
305 publication of the notice and the end of the final public
306 hearing shall be considered by the agency and made a part of the
307 record of the rulemaking proceeding.

308 2. Rulemaking proceedings shall be governed solely by the
309 provisions of this section unless a person timely asserts that
310 the person's substantial interests will be affected in the
311 proceeding and affirmatively demonstrates to the agency that the
312 proceeding does not provide adequate opportunity to protect

313 those interests. If the agency determines that the rulemaking
314 proceeding is not adequate to protect the person's interests, it
315 shall suspend the rulemaking proceeding and convene a separate
316 proceeding under ~~the provisions of~~ ss. 120.569 and 120.57. The
317 agency shall publish notice of convening a separate proceeding
318 in the Florida Administrative Register. Similarly situated
319 persons may be requested to join and participate in the separate
320 proceeding. Upon conclusion of the separate proceeding, the
321 rulemaking proceeding shall be resumed. All timelines in this
322 section are tolled during any suspension of the rulemaking
323 proceeding under this subparagraph, beginning on the date that
324 the notice of convening a separate proceeding is published and
325 resuming on the day immediately after conclusion of the separate
326 proceeding.

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

328 1. After the final public hearing on the proposed rule, or
329 after the time for requesting a hearing has expired, if the
330 proposed rule has not been changed from the proposed rule as
331 previously filed with the committee, or contains only technical
332 changes that do not affect the substance of the rule, the
333 adopting agency shall file a notice to that effect with the
334 committee at least 7 days before ~~prior to~~ filing the proposed
335 rule for adoption. Any change, other than a technical change
336 ~~that does not affect the substance of the rule,~~ must be
337 supported by the record of public hearings held on the proposed
338 rule, must be in response to written material submitted to the

339 agency within 21 days after the date of publication of the
340 notice of intended agency action or submitted to the agency
341 between the date of publication of the notice and the end of the
342 final public hearing, or must be in response to a proposed
343 objection by the committee. In addition, when any change is made
344 in a proposed rule, other than a technical change, the adopting
345 agency shall provide a copy of a notice of change by certified
346 mail or actual delivery to any person who requests it in writing
347 no later than 21 days after the notice required in paragraph
348 (a). The agency shall file the notice of change with the
349 committee, along with the reasons for the change, and provide
350 the notice of change to persons requesting it, at least 21 days
351 before ~~prior to~~ filing the proposed rule for adoption. The
352 notice of change shall be published in the Florida
353 Administrative Register at least 21 days before ~~prior to~~ filing
354 the rule for adoption. The notice of change must include either
355 a summary of any statement of estimated regulatory costs
356 prepared as a consequence of the change, a summary of any
357 revision of the statement of estimated regulatory costs required
358 by s. 120.541(1)(c), or a statement that the proposed rule as
359 changed does not require preparation of a statement of estimated
360 regulatory costs under paragraph (b) and s. 120.541(1)(b). This
361 subparagraph does not apply to emergency rules adopted pursuant
362 to subsection (4).

363 2. After the notice required by paragraph (a) and before
364 ~~prior to~~ adoption, the agency may withdraw the proposed rule in

365 whole or in part.

366 3. After adoption and before the rule becomes effective, a
367 rule may be modified or withdrawn only in the following
368 circumstances:

369 a. When the committee objects to the rule;

370 b. When a final order, which is not subject to further
371 appeal, is entered in a rule challenge brought pursuant to s.
372 120.56 after the date of adoption but before the rule becomes
373 effective pursuant to subparagraph (e)6.;

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

378 d. When the committee notifies the agency that an
379 objection to the rule is being considered, in which case the
380 rule may be modified to extend the effective date by not more
381 than 60 days.

382 4. The agency shall give notice of its decision to
383 withdraw or modify a rule in the first available issue of the
384 publication in which the original notice of rulemaking was
385 published, shall notify those persons described in subparagraph
386 (a)3. in accordance with the requirements of that subparagraph,
387 and shall notify the Department of State if the rule is required
388 to be filed with the Department of State.

389 5. After a rule has become effective, it may be repealed
390 or amended only through the rulemaking procedures specified in

391 this chapter.

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

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

405 2. A rule may not be filed for adoption less than 28 days
 406 or more than 90 days after the notice required by paragraph (a),
 407 until 21 days after the notice of change required by paragraph
 408 (d), until 14 days after the final public hearing, until 21 days
 409 after a statement of estimated regulatory costs required under
 410 s. 120.541 has been provided to all persons who submitted a
 411 lower cost regulatory alternative and made available to the
 412 public at a readily accessible page on the agency's website, or
 413 until the administrative law judge has rendered a decision under
 414 s. 120.56(2), whichever applies. When a required notice of
 415 change is published before ~~prior to~~ the expiration of the time
 416 to file the rule for adoption, the period during which a rule

417 must be filed for adoption is extended to 45 days after the date
418 of publication. If notice of a public hearing is published
419 before ~~prior to~~ the expiration of the time to file the rule for
420 adoption, the period during which a rule must be filed for
421 adoption is extended to 45 days after adjournment of the final
422 hearing on the rule, 21 days after receipt of all material
423 authorized to be submitted at the hearing, or 21 days after
424 receipt of the transcript, if one is made, whichever is latest.
425 The term "public hearing" includes any public meeting held by
426 any agency at which the rule is considered. If a petition for an
427 administrative determination under s. 120.56(2) is filed, the
428 period during which a rule must be filed for adoption is
429 extended to 60 days after the administrative law judge files the
430 final order with the clerk or until 60 days after subsequent
431 judicial review is complete.

432 3. At the time a rule is filed, the agency shall certify
433 that the time limitations prescribed by this paragraph have been
434 complied with, that all statutory rulemaking requirements have
435 been met, and that there is no administrative determination
436 pending on the rule.

437 4. At the time a rule is filed, the committee shall
438 certify whether the agency has responded in writing to all
439 material and timely written comments or written inquiries made
440 on behalf of the committee. The Department of State shall reject
441 any rule that is not filed within the prescribed time limits;
442 that does not comply with all statutory rulemaking requirements

443 and rules of the Department of State; upon which an agency has
444 not responded in writing to all material and timely written
445 inquiries or written comments; upon which an administrative
446 determination is pending; or which does not include a statement
447 of estimated regulatory costs, if required.

448 5. If a rule has not been adopted within the time limits
449 imposed by this paragraph or has not been adopted in compliance
450 with all statutory rulemaking requirements, the agency proposing
451 the rule shall withdraw the proposed rule and give notice of its
452 action in the next available issue of the Florida Administrative
453 Register.

454 6. The proposed rule shall be adopted on being filed with
455 the Department of State and become effective 20 days after being
456 filed, on a later date specified in the notice required by
457 subparagraph (a)1., on a date required by statute, or upon
458 ratification by the Legislature pursuant to s. 120.541(3). Rules
459 not required to be filed with the Department of State shall
460 become effective when adopted by the agency head, on a later
461 date specified by rule or statute, or upon ratification by the
462 Legislature pursuant to s. 120.541(3). If the committee notifies
463 an agency that an objection to a rule is being considered, the
464 agency may postpone the adoption of the rule to accommodate
465 review of the rule by the committee. When an agency postpones
466 adoption of a rule to accommodate review by the committee, the
467 90-day period for filing the rule is tolled until the committee
468 notifies the agency that it has completed its review of the

469 rule.

470

471 For the purposes of this paragraph, the term "administrative
472 determination" does not include subsequent judicial review.

473 Section 2. Section 120.541, Florida Statutes, is amended
474 to read:

475 120.541 Statement of estimated regulatory costs.—

476 (1) (a) Within 21 days after publication of the notice of
477 proposed rule required under s. 120.54(3)(a), or of a notice of
478 change under s. 120.54(3)(d)1., a substantially affected person
479 may submit to an agency a good faith written proposal for a
480 lower cost regulatory alternative to a proposed rule which
481 substantially accomplishes the objectives of the law being
482 implemented. The proposal may include the alternative of not
483 adopting any rule if the proposal explains how the lower costs
484 and objectives of the law will be achieved by not adopting any
485 rule. If submitted after a notice of change, a proposal is
486 deemed to be made in good faith only if the person reasonably
487 believes and the proposal states the person's reasons for
488 believing that the proposed rule as changed by the notice of
489 change increases the regulatory costs or creates an adverse
490 impact on small business that was not created by the previous
491 proposal. If ~~such~~ a proposal is submitted, the 90-day period for
492 filing the rule is extended 21 days. Upon the submission of the
493 lower cost regulatory alternative, the agency shall prepare a
494 statement of estimated regulatory costs as provided in

495 subsection (2), or shall revise its prior statement of estimated
 496 regulatory costs, and either adopt the alternative proposal,
 497 reject the alternative proposal, or modify the proposed rule to
 498 substantially reduce the regulatory costs. If the agency rejects
 499 the alternative proposal or modifies the proposed rule, the
 500 agency shall ~~ex~~ provide a statement of the reasons for rejecting
 501 the alternative proposal in favor of the proposed or modified
 502 rule.

503 (b) If a proposed rule will have an adverse impact on
 504 small business as set forth in s. 120.54(3)(b) or if the
 505 proposed rule is likely to directly or indirectly increase
 506 regulatory costs in excess of \$200,000 in the aggregate within 1
 507 year after the implementation of the rule, the agency shall
 508 prepare a statement of estimated regulatory costs as required by
 509 s. 120.54(3)(b).

510 (c) The agency shall revise a statement of estimated
 511 regulatory costs if any change to the rule made under s.
 512 120.54(3)(d) increases the regulatory costs of the rule or if
 513 the rule is modified in response to the submission of a lower
 514 cost regulatory alternative. A summary of the revised statement
 515 must be included with any subsequent notice published under s.
 516 120.54(3).

517 (d) At least 21 days before filing the proposed rule for
 518 adoption, an agency that is required to revise a statement of
 519 estimated regulatory costs shall provide the statement to the
 520 person who submitted the lower cost regulatory alternative, to

521 the rules ombudsman in the Executive Office of the Governor, and
 522 to the committee. The revised statement shall be published and
 523 made available in the same manner as the original statement of
 524 estimated regulatory costs and shall provide notice on the
 525 agency's website that it is available to the public.

526 (e) Notwithstanding s. 120.56(1)(c), the failure of the
 527 agency to prepare and publish a statement of estimated
 528 regulatory costs or to respond to a written lower cost
 529 regulatory alternative as provided in this subsection is a
 530 material failure to follow the applicable rulemaking procedures
 531 or requirements set forth in this chapter.

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

- 537 1. Raised in a petition filed no later than 1 year after
 538 the effective date of the rule; and
- 539 2. Raised by a person whose substantial interests are
 540 affected by the rule's regulatory costs.

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

- 543 1. The issue is raised in an administrative proceeding
 544 within 1 year after the effective date of the rule;
- 545 2. The challenge is to the agency's rejection of a lower
 546 cost regulatory alternative offered under paragraph (a) or s.

547 120.54(3)(b)2.c. ~~120.54(3)(b)2.b.~~; and

548 3. The substantial interests of the person challenging the
549 rule are materially affected by the rejection.

550 (h) Any of the following documents prepared by or on
551 behalf of an agency shall be publicly available on the agency's
552 website, or on another state website established for publication
553 of administrative law records, until the rule to which the
554 document applies is withdrawn or repealed, or until the rule is
555 amended accompanied by the preparation of a new statement of
556 estimated regulatory costs:

557 1. A statement of estimated regulatory costs prepared with
558 respect to a rule proposed or filed for adoption after November
559 16, 2010;

560 2. A revision of a statement of estimated regulatory costs
561 prepared with respect to a rule proposed or filed for adoption
562 after November 16, 2010;

563 3. A compliance economic review published pursuant to s.
564 120.745(5); or

565 4. A report on an economic estimate of regulatory costs
566 and economic impact published pursuant to s. 120.745(9)(b).

567 (2) A statement of estimated regulatory costs shall
568 include:

569 (a) An economic analysis showing whether the rule directly
570 or indirectly:

571 1. Is likely to have an adverse impact on economic growth,
572 private sector job creation or employment, or private sector

573 investment in excess of \$1 million in the aggregate within 5
 574 years after the implementation of the rule;

575 2. Is likely to have an adverse impact on business
 576 competitiveness, including the ability of persons doing business
 577 in the state to compete with persons doing business in other
 578 states or domestic markets, productivity, or innovation in
 579 excess of \$1 million in the aggregate within 5 years after the
 580 implementation of the rule; or

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

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

589 (c) A good faith estimate of the cost to the agency, and
 590 to any other state and local government entities, of
 591 implementing and enforcing the proposed rule, and any
 592 anticipated effect on state or local revenues.

593 (d) A good faith estimate of the compliance ~~transactional~~
 594 costs likely to be incurred by individuals and entities,
 595 including local government entities, required to comply with the
 596 requirements of the rule. ~~As used in this section,~~
 597 ~~"transactional costs" are direct costs that are readily~~
 598 ~~ascertainable based upon standard business practices, and~~

599 ~~include filing fees, the cost of obtaining a license, the cost~~
 600 ~~of equipment required to be installed or used or procedures~~
 601 ~~required to be employed in complying with the rule, additional~~
 602 ~~operating costs incurred, the cost of monitoring and reporting,~~
 603 ~~and any other costs necessary to comply with the rule.~~

604 (e) An analysis of the impact on small businesses as
 605 defined by s. 288.703, and an analysis of the impact on small
 606 counties and small cities as defined in s. 120.52. The impact
 607 analysis for small businesses must include the basis for the
 608 agency's decision not to implement alternatives that would
 609 reduce adverse impacts on small businesses.

610 (f) Any additional information that the agency determines
 611 may be useful.

612 (g) ~~In the statement or revised statement, whichever~~
 613 ~~applies,~~ A description of any regulatory alternatives submitted
 614 under paragraph (1)(a) and a statement adopting the alternative
 615 or a statement of the reasons for rejecting the alternative in
 616 favor of the proposed rule.

617 (3) If the adverse impact or regulatory costs of the rule
 618 exceed any of the criteria established in paragraph (2)(a), the
 619 rule shall be submitted to the President of the Senate and
 620 Speaker of the House of Representatives no later than 30 days
 621 before ~~prior to~~ the next regular legislative session, and the
 622 rule may not take effect until it is ratified by the
 623 Legislature.

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

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

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

628 (c) Triennial updates of and amendments to the Florida
629 Fire Prevention Code which are expressly authorized by s.
630 633.202.

631 (5) (a) For purposes of subsections (2) and (3), impacts
632 and costs incurred within 5 years after implementation of the
633 rule shall include the applicable costs and impacts estimated to
634 be incurred within the first 5 years after the effective date of
635 the rule. However, if any provisions of the rule are not fully
636 implemented and enforceable upon the effective date of the rule,
637 the impacts and costs must be adjusted to include any additional
638 costs and impacts estimated to be incurred within 5 years after
639 the implementation and enforcement of the provisions of the rule
640 that were not fully implemented upon the effective date of the
641 rule.

642 (b) In evaluating the impacts described in paragraphs
643 (2) (a) and (2) (e), an agency shall include good faith estimates
644 of market impacts likely to result from compliance with the
645 rule, including:

- 646 1. Increased customer charges for goods and services.
- 647 2. Decreased market value of goods and services produced,
648 provided, or sold.
- 649 3. Increased costs resulting from the purchase of
650 substitute or alternative products or services.

651 4. The reasonable value of time to be expended by owners,
 652 officers, operators, and managers to understand and comply,
 653 including, but not limited to, time expended to complete
 654 required education, training, or testing.

655 5. Capital costs.

656 6. Any other impacts suggested by the rules ombudsman, the
 657 agency head's appointing authority, or interested persons.

658 (c) In estimating the information required in paragraphs
 659 (2)(b)-(e), the agency may use reasonably applicable surveys of
 660 individuals, businesses, business organizations and
 661 representatives, cities, and counties to collect data helpful to
 662 estimate the costs and impacts. The agency shall also solicit
 663 helpful information in each notice related to the proposed rule.
 664 The rules ombudsman and the committee may recommend survey
 665 instruments and methods to assist agencies in administering this
 666 section. Such recommendations and agency decisions regarding
 667 surveys and methods do not constitute rules or agency actions
 668 under this chapter.

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

- 674 1. Filing fees.
- 675 2. Obtaining a license.
- 676 3. Necessary equipment.

- 677 4. Installation, utilities, and maintenance of necessary
- 678 equipment.
- 679 5. Necessary operations and procedures.
- 680 6. Accounting, financial, information and management
- 681 systems, and other administrative processes.
- 682 7. Other processes.
- 683 8. Labor based on relevant rates of wages, salaries and
- 684 benefits.
- 685 9. Materials and supplies.
- 686 10. Capital expenditures including financing costs.
- 687 11. Professional and technical services, including
- 688 contracted services necessary to implement and maintain
- 689 compliance.
- 690 12. Monitoring and reporting.
- 691 13. Qualifying and recurring education, training, and
- 692 testing.
- 693 14. Travel.
- 694 15. Insurance and surety requirements.
- 695 16. A fair and reasonable allocation of administrative
- 696 costs and other overhead.
- 697 17. Reduced sales or other revenues.
- 698 18. Other items suggested by the rules ombudsman, the
- 699 committee, or any interested person, business organization, or
- 700 business representative.

701 Section 3. Paragraph (a) of subsection (1) of section

702 190.005, Florida Statutes, is amended to read:

703 190.005 Establishment of district.—

704 (1) The exclusive and uniform method for the establishment
 705 of a community development district with a size of 1,000 acres
 706 or more shall be pursuant to a rule, adopted under chapter 120
 707 by the Florida Land and Water Adjudicatory Commission, granting
 708 a petition for the establishment of a community development
 709 district.

710 (a) A petition for the establishment of a community
 711 development district shall be filed by the petitioner with the
 712 Florida Land and Water Adjudicatory Commission. The petition
 713 shall contain:

714 1. A metes and bounds description of the external
 715 boundaries of the district. Any real property within the
 716 external boundaries of the district which is to be excluded from
 717 the district shall be specifically described, and the last known
 718 address of all owners of such real property shall be listed. The
 719 petition shall also address the impact of the proposed district
 720 on any real property within the external boundaries of the
 721 district which is to be excluded from the district.

722 2. The written consent to the establishment of the
 723 district by all landowners whose real property is to be included
 724 in the district or documentation demonstrating that the
 725 petitioner has control by deed, trust agreement, contract, or
 726 option of 100 percent of the real property to be included in the
 727 district, and when real property to be included in the district
 728 is owned by a governmental entity and subject to a ground lease

729 as described in s. 190.003(14), the written consent by such
 730 governmental entity.

731 3. A designation of five persons to be the initial members
 732 of the board of supervisors, who shall serve in that office
 733 until replaced by elected members as provided in s. 190.006.

734 4. The proposed name of the district.

735 5. A map of the proposed district showing current major
 736 trunk water mains and sewer interceptors and outfalls if in
 737 existence.

738 6. Based upon available data, the proposed timetable for
 739 construction of the district services and the estimated cost of
 740 constructing the proposed services. These estimates shall be
 741 submitted in good faith but are not binding and may be subject
 742 to change.

743 7. A designation of the future general distribution,
 744 location, and extent of public and private uses of land proposed
 745 for the area within the district by the future land use plan
 746 element of the effective local government comprehensive plan of
 747 which all mandatory elements have been adopted by the applicable
 748 general-purpose local government in compliance with the
 749 Community Planning Act.

750 8. A statement explaining the prospective economic impact
 751 of establishment of the proposed district ~~of estimated~~
 752 ~~regulatory costs in accordance with the requirements of s.~~
 753 ~~120.541.~~

754 Section 4. This act shall take effect July 1, 2015.