

CHAPTER 2011-225

Committee Substitute for Committee Substitute for Committee Substitute for House Bill No. 993 and House Bill No. 7239

An act relating to rulemaking; amending s. 120.54, F.S.; requiring that an agency include in its notice of intended rulemaking a statement as to whether the proposed rule will require legislative ratification; providing for withdrawal of an adopted rule that is not ratified by the Legislature; clarifying that certain proposed rules are effective only when ratified by the Legislature; amending s. 120.541, F.S.; reducing the time before an agency files a rule for adoption within which the agency must notify the person who submitted a lower cost alternative and the Administrative Procedures Committee; excluding rules adopting federal standards and emergency rulemaking from certain provisions; amending s. 120.56, F.S.; reducing the time in which a substantially affected person may seek an administrative determination of the invalidity of a rule after the statement or revised statement of estimated regulatory costs is available; amending s. 120.74, F.S.; providing for agency reporting of certain annual regulatory plans; providing for certain omissions and suspensions of reports; creating s. 120.745, F.S.; providing for legislative review of agency rules in effect on or before November 16, 2010; providing definitions; requiring that each agency complete an enhanced biennial review of its existing rules; requiring a report of the enhanced biennial review; providing specifications for the report; providing for objections and the agency's response; requiring the performance of a compliance economic review and report under certain circumstances; providing specifications for the review; providing specifications for publishing the final report of the agency's review; requiring that an agency publish notices, determinations, and reports in a specified format; requiring the Department of State to publish certain notices in the Florida Administrative Weekly; providing specifications; providing for future review and repeal; providing for suspension of rulemaking authority for failure to comply with the certification requirements of the section; providing for an exemption from certain requirements; creating s. 120.7455, F.S.; providing that the Legislature may establish and maintain an Internet-based public survey of regulatory impacts; providing input details; providing that legislative leaders may certify in writing to certain individuals the establishment and identity of any such Internet-based survey; providing immunities from enforcement action or prosecution involving information solicited through the survey; providing protections from retaliatory enforcement actions; clarifying that the legal status of a rule that has been determined to be invalid is not changed by the amendment or creation of specified provisions by the act; amending s. 120.80, F.S.; exempting the adoption of certain amendments and the triennial updates to the Florida Building Code from required legislative ratification; exempting the adoption of certain amendments and the triennial updates to the Florida Fire Prevention Code from required legislative ratification; exempting the adoption of rules adjusting rates of certain transportation and expressway tolls from the preparation of a statement of estimated regulatory costs and from submission for legislative ratification; amending s. 120.81, F.S.; excluding the adoption of rules under chapter 2011-1, Laws of Florida, the Student Success Act, from

the preparation of a statement of estimated regulatory costs and from submission for legislative ratification; amending s. 120.569, F.S.; providing that a nonapplicant who petitions to challenge an agency's issuance of a license, permit, or conceptual approval in certain circumstances has the burden of ultimate persuasion and the burden of going forward with evidence; providing an effective date.

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

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

120.54 Rulemaking.—

(3) ADOPTION PROCEDURES.—

(a) Notices.—

1. Prior to the adoption, amendment, or repeal of any rule other than an emergency rule, an agency, upon approval of the agency head, shall give notice of its intended action, setting forth a short, plain explanation of the purpose and effect of the proposed action; the full text of the proposed rule or amendment and a summary thereof; a reference to the grant of rulemaking authority pursuant to which the rule is adopted; and a reference to the section or subsection of the Florida Statutes or the Laws of Florida being implemented or interpreted. The notice must include a summary of the agency's statement of the estimated regulatory costs, if one has been prepared, based on the factors set forth in s. 120.541(2); ~~and~~ a statement that any person who wishes to provide the agency with information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative as provided by s. 120.541(1), must do so in writing within 21 days after publication of the notice; and a statement as to whether, based on the statement of the estimated regulatory costs or other information expressly relied upon and described by the agency if no statement of regulatory costs is required, the proposed rule is expected to require legislative ratification pursuant to s. 120.541(3). The notice must state the procedure for requesting a public hearing on the proposed rule. Except when the intended action is the repeal of a rule, the notice must include a reference both to the date on which and to the place where the notice of rule development that is required by subsection (2) appeared.

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

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

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

(d) Modification or withdrawal of proposed rules.—

1. After the final public hearing on the proposed rule, or after the time for requesting a hearing has expired, if the rule has not been changed from the rule as previously filed with the committee, or contains only technical changes, the adopting agency shall file a notice to that effect with the committee at least 7 days prior to filing the rule for adoption. Any change, other than a technical change that does not affect the substance of the rule, must be supported by the record of public hearings held on the rule, must be in response to written material submitted to the agency within 21 days after the date of publication of the notice of intended agency action or submitted to the agency between the date of publication of the notice and the end of the final public hearing, or must be in response to a proposed objection by the committee. In addition, when any change is made in a proposed rule, other than a technical change, the adopting agency shall provide a copy of a notice of change by certified mail or actual delivery to any person who requests it in writing no later than 21 days after the notice required in paragraph (a). The agency shall file the notice of change with the committee, along with the reasons for the change, and provide the notice of change to persons requesting it, at least 21 days prior to filing the rule for adoption. The notice of change shall be published in the Florida Administrative Weekly at least 21 days prior to filing the rule for adoption. This subparagraph does not apply to emergency rules adopted pursuant to subsection (4).

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

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

a. When the committee objects to the rule;

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

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

d. ~~response to an objection by the committee or may be modified to extend the effective date by not more than 60 days~~ When the committee notifies ~~has notified~~ the

agency that an objection to the rule is being considered, in which case the rule may be modified to extend the effective date by not more than 60 days.

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

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

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

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

2. A rule may not be filed for adoption less than 28 days or more than 90 days after the notice required by paragraph (a), until 21 days after the notice of change required by paragraph (d), until 14 days after the final public hearing, until 21 days after a statement of estimated regulatory costs required under s. 120.541 has been provided to all persons who submitted a lower cost regulatory alternative and made available to the public, or until the administrative law judge has rendered a decision under s. 120.56(2), whichever applies. When a required notice of change is published prior to the expiration of the time to file the rule for adoption, the period during which a rule must be filed for adoption is extended to 45 days after the date of publication. If notice of a public hearing is published prior to the expiration of the time to file the rule for adoption, the period during which a rule must be filed for adoption is extended to 45 days after adjournment of the final hearing on the rule, 21 days after receipt of all material authorized to be submitted at the hearing, or 21 days after receipt of the transcript, if one is made, whichever is latest. The term “public hearing” includes any public meeting held by any agency at which the rule is considered. If a petition for an administrative determination under s. 120.56(2) is filed, the period during which a rule must be filed for adoption is extended to 60 days after the administrative law judge files the final order with the clerk or until 60 days after subsequent judicial review is complete.

3. At the time a rule is filed, the agency shall certify that the time limitations prescribed by this paragraph have been complied with, that all statutory rulemaking

requirements have been met, and that there is no administrative determination pending on the rule.

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

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

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

For the purposes of this paragraph, the term “administrative determination” does not include subsequent judicial review.

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

120.541 Statement of estimated regulatory costs.—

(1)

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

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

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

120.56 Challenges to rules.—

(2) CHALLENGING PROPOSED RULES; SPECIAL PROVISIONS.—

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

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

120.74 Agency review, revision, and report.—

(3) Beginning in 2012, and no later than July 1 of each year, each agency shall file with the President of the Senate, the Speaker of the House of Representatives, and the committee a regulatory plan identifying and describing each rule the agency proposes to adopt for the 12-month period beginning on the July 1 reporting date and ending on the subsequent June 30, excluding emergency rules.

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

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

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

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

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

(b) “Compliance economic review” means a good faith economic analysis that includes and presents the following information pertaining to a particular rule:

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

2. A statement of estimated regulatory costs as described in s. 120.541(2); however:

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

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

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

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

(d) “Revenue rules” means those rules fixing amounts or providing for the collection of money.

(e) “Rule” has the same general meaning and application as provided in s. 120.52(16), but for purposes of this section may include only those rules for which publication in the Florida Administrative Code is required pursuant to s. 120.55(1). As used in this section, the term “rule” means each entire statement and all subparts published under a complete title, chapter, and decimal rule number in the Florida Administrative Code in compliance with Florida Administrative Code Rule 1B-30.001.

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

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

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

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

1. Registration, license, or inspection fees.
2. Transportation service tolls for road, bridge, rail, air, waterway, or port access.
3. Fees for a specific service or purpose not included in subparagraph 1. or subparagraph 2.
4. Fines, penalties, costs, or attorney fees.
5. Any tax.
6. Any other amounts collected that are not covered under subparagraphs 1.-5.

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

1. The statute or statutes authorizing the collection of such data.
2. The purposes for which the agency uses the data and any purpose for which the data is used by others.
3. The policies supporting the reporting and retention of the data.
4. Whether and to what extent the data is exempt from public inspection under chapter 119.

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

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

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

1. The agency does not plan to repeal on or before December 31, 2012;
2. Was effective on or before November 16, 2010; and
3. Probably will have any of the economic impacts described in s. 120.541(2)(a), for 5 years beginning on July 1, 2011, excluding in such estimation any part or subpart identified for amendment under paragraph (e).

(h) Listing of all rules identified for compliance economic review in paragraph (g), divided into two approximately equal groups, identified as “Group 1” and “Group 2.” Such division shall be made at the agency’s discretion.

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

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

- (a) Column 1: Agency name.
- (b) Column 2: F.A.C. rule number, with subcolumns including:
 1. Column 2a: F.A.C. title and any subtitle or chapter designation; and
 2. Column 2b: F.A.C. number, excluding title and subtitle or chapter designation.
- (c) Column 3: OFARR reviewed rule under Executive Order 2011-01. Entries should be “Y” or “N.”

(d) Column 4: Revenue rule/fund or account with subcolumns including:

1. Column 4a: Licensure fees.
2. Column 4b: Transportation tolls.
3. Column 4c: Other fees.
4. Column 4d: Fines.
5. Column 4e: Tax.
6. Column 4f: Other revenue.

Entries should be “N” or the identification of the fund or account where receipts are deposited and provide notes indicating the statutory authority for revenue collection.

(e) Column 5: Data collection rule. Entries should be “Y” or “N.” If “Y,” provide notes supplying the information required in paragraph (2)(d).

(f) Column 6: Repeal. Entries should be “Y” or “N” for the entire rule. If “Y,” provide notes estimating the timetable for repeal.

(g) Column 7: Amend. Entries should be “Y” or “N,” based on the response required in paragraph (2)(f), and provide notes identifying each specific subpart that will be amended and estimating the timetable for amendment.

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

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

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

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

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

(c) The agency shall determine whether to sustain an objection based upon the information provided with the objection and whether any further review of information available to the agency is necessary to correct its report.

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

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

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

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

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

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

1. Complete a compliance economic review for each entire rule or subpart in the appropriate group.

2. File the written certification of the agency head with the committee verifying the completion of each compliance economic review required for the respective year. The certification shall be dated and published as an addendum to the report required in subsection (3). The duty to certify completion of the required compliance economic reviews is the responsibility solely of the agency head as defined in s. 120.52(3) and may not be delegated to any other person. If the defined agency head is a collegial body, the written certification must be prepared by the chair or equivalent presiding officer of that body.

3. Publish a copy of the compliance economic review, directions on how and when interested parties may submit lower cost regulatory alternatives to the agency, and the date the notice is published in the manner provided in subsection (7).

4. Publish notice of the publications required in subparagraphs 2. and 3. in the manner provided in subsection (7).

5. Submit each compliance economic review to the Small Business Regulatory Advisory Council for its review.

(b) Any agency rule, including subparts, reviewed pursuant to Executive Order 2011-01 are exempt from the compliance economic review if the review found that the rule:

1. Does not unnecessarily restrict entry into a profession or occupation;

2. Does not adversely affect the availability of professional or occupational services to the public;

3. Does not unreasonably affect job creation or job retention;

4. Does not place unreasonable restrictions on individuals attempting to find employment;

5. Does not impose burdensome costs on businesses; or

6. Is justifiable when the overall cost-effectiveness and economic impact of the regulation, including indirect costs to consumers, is considered.

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

(d) No later than December 1, each agency shall publish a final report of the agency's review under this subsection in the manner provided in subsection (7). For each rule the report shall include:

1. The text of the rule.

2. The compliance economic review for the rule.

3. All lower regulatory cost alternatives received by the agency.

4. The agency's written explanation for rejecting submitted lower regulatory cost alternatives.

5. The agency's justification to repeal or amend the rule or to retain the rule without amendment.

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

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

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

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

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

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

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

[Address of agency's Internet website]/2011 Rule review/
[Florida Administrative Code (F.A.C.) title and subtitle (if applicable) designation for the rules included].

(Example: http://www.dos.state.fl.us/2011_Rule_review/1S).

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

[Address of agency's Internet website]/2011 Rule review/
Economic Review/Schedule.

(Example: [http://www.dos.state.fl.us/2011 Rule review/
Economic Review/Schedule](http://www.dos.state.fl.us/2011_Rule_review/Economic_Review/Schedule))

3. Determinations under subsection (4):

[Address of agency's Internet website]/2011 Rule review/
Objection Determination/[F.A.C. Rule number].

(Example: [http://www.dos.state.fl.us/2011 Rule review/
Objection Determination/1S-1.001](http://www.dos.state.fl.us/2011_Rule_review/Objection_Determination/1S-1.001)).

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

[Address of agency's Internet website]/2011 Rule review/
Economic Review/[F.A.C. Rule number].

(Example: [http://www.dos.state.fl.us/2011 Rule review/
Economic Review/1S-1.001](http://www.dos.state.fl.us/2011_Rule_review/Economic_Review/1S-1.001)).

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

[Address of agency's Internet website]/2011 Rule review/
Economic Review/[YYYY Final Report].

(Example: [http://www.dos.state.fl.us/2011 Rule review/
Economic Review/2012 Final Report](http://www.dos.state.fl.us/2011_Rule_review/Economic_Review/2012_Final_Report)).

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

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

(Example: [http://www.dos.state.fl.us/2011 Rule review/Notices](http://www.dos.state.fl.us/2011_Rule_review/Notices)).

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

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

a. The name of the agency.

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

c. The particular Internet address through which the publication may be accessed.

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

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

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

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

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

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

(d) Failure to timely file a written certification required under paragraph (2)(i) tolls the time for public response, which period shall not begin until the date the agency files the written certification with the committee and publishes notice of the required certification in the manner provided in subsection (7). The period for public response shall be extended by the number of days equivalent to the period of suspension under this subsection.

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

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

(a) An agency is exempt from subsections (1)-(8) if it has cooperated or cooperates with OFARR in a review of the agency's rules in a manner consistent with Executive Order 2011-01, or any alternative review directed by OFARR; if the agency or OFARR

identifies each data collection rule and each revenue rule; and if the information developed thereby becomes publicly available on the Internet by December 1, 2011. Each such agency is exempt from the biennial review required in s. 120.74(2) for the year 2011.

(b) For each rule reviewed under this subsection, OFARR may identify whether the rule imposes a significant regulatory cost or economic impact and shall schedule and obtain or direct a reasonable economic estimate of such cost and impact for each rule so identified. A report on each such estimate shall be published on the Internet by December 31, 2013. On or before October 1, 2013, the agency head shall certify in writing to the committee that the agency has completed each economic estimate required under this paragraph and thereupon the agency is exempt from the biennial review required in s. 120.74(2) for the year 2013.

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

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

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

120.7455 Legislative survey of regulatory impacts.—

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

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

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

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

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

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

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

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

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

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

(4) Any alleged violator against whom an enforcement action is brought may object to any proposed penalty in excess of the minimum provided by law or rule on the basis that the action is in retaliation for the violator providing or withholding any information in response to the Legislature's solicitation of information pursuant to this section. If the presiding judge determines that the enforcement action was motivated in whole or in part by retaliation, any penalty imposed is limited to the minimum penalties provided by law for each separate violation adjudicated.

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

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

120.80 Exceptions and special requirements; agencies.—

(16) FLORIDA BUILDING COMMISSION.—

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

(b) The Florida Building Commission shall adopt within the Florida Building Code criteria and procedures for alternative means of compliance with the code or local amendments thereto, for enforcement by local governments, local enforcement districts, or other entities authorized by law to enforce the Florida Building Code. Appeals from the denial of the use of alternative means shall be heard by the local board, if one exists, and may be appealed to the Florida Building Commission.

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

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

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

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

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

120.81 Exceptions and special requirements; general areas.—

(1) EDUCATIONAL UNITS.—

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

Section 10. Paragraph (p) is added to subsection (2) of section 120.569, Florida Statutes, to read:

120.569 Decisions which affect substantial interests.—

(2)

(p) For any proceeding arising under chapter 373, chapter 378, or chapter 403, if a nonapplicant petitions as a third party to challenge an agency's issuance of a license, permit, or conceptual approval, the order of presentation in the proceeding is for the permit applicant to present a prima facie case demonstrating entitlement to the license, permit, or conceptual approval, followed by the agency. This demonstration may be made by entering into evidence the application and relevant material submitted to the agency in support of the application, and the agency's staff report or notice of intent to approve the permit, license, or conceptual approval. Subsequent to the presentation of the applicant's prima facie case and any direct evidence submitted by the agency, the petitioner initiating the action challenging the issuance of the license, permit, or conceptual approval has the burden of ultimate persuasion and has the burden of going forward to prove the case in opposition to the license, permit, or conceptual approval through the presentation of competent and substantial evidence. The permit applicant and agency may on rebuttal present any evidence relevant to demonstrating that the application meets the conditions

for issuance. Notwithstanding subsection (1), this paragraph applies to proceedings under s. 120.574.

Section 11. This act shall take effect upon becoming a law.

Approved by the Governor June 24, 2011.

Filed in Office Secretary of State June 24, 2011.