

2011 SUMMARY OF AMENDMENTS TO CHAPTER 120

Chapter 2011-64, Laws of Florida, created subsection 120.80(17) to provide that the requirements of sections 120.54(3)(b) and 120.541 do not apply to the adjustment of toll charges.

Effective date: July 1, 2011.

Chapter 2011-142, Laws of Florida, amended paragraph 120.54(3)(b) to change the current reference to the Office of Tourism, Trade, and Economic Development to the newly created Department of Economic Opportunity, and amended subsection 120.80(10) to change the current references to the Agency for Workforce Innovation to the newly created Department of Economic Opportunity.

Effective date: July 1, 2011.

Chapter 2011-208, Laws of Florida, amended several provisions of chapter 120 to implement electronic filing of documents in administrative proceedings. Subsection 120.52(5), which defines “division,” is amended to provide that any document filed by a party represented by an attorney shall be filed by electronic means. Subsection 120.54(5) is amended to require the uniform rules of procedure to include references to a party’s e-mail address. Sections 120.56, 120.569 and 120.57 are amended to include references to filing by electronic means.

Effective date: July 1, 2011.

Chapter 2011-222, Laws of Florida, amended subsection 120.541(4) to provide that legislative ratification does not apply to triennial updates of and amendments to the Florida Building Code and the Florida Fire Prevention Code.

Effective date: July 1, 2011.

Chapter 2011-225, Laws of Florida, amended several sections of chapter 120.

Section 120.54

- Subparagraph 120.54(3)(a)1. is amended to require that the notice of proposed rulemaking include a statement as to whether the proposed rule is expected to require legislative ratification.
- Subparagraph 120.54(3)(d)3. is amended to provide that a rule may be modified or withdrawn after adoption and before the rule becomes effective only when the committee objects to the rule; when a final order is entered in a s. 120.56 rule challenge brought after adoption but before the rule becomes effective; if the rule requires ratification, when more than 90 days have passed without the Legislature ratifying the rule; and when the committee notifies the agency that an objection to the rule is being considered.
- Subparagraph 120.54(3)(e)6. is amended to provide that a proposed rule shall become effective upon ratification by the Legislature.

Section 120.541

- Paragraph 120.541(1)(d) is amended to change from 45 to 21 the number of days within which an agency must provide a revised statement of estimated regulatory costs.
- Subsection 120.541(4) is amended to state that s. 120.541 does not apply to the adoption of emergency rules or the adoption of federal standards.

Section 120.56

- Paragraph 120.56(2)(a) is amended to change from 44 to 20 the number of days within which a rule challenge may be filed after a statement of estimated regulatory costs has been made available.

Section 120.569

- Paragraph 120.569(2)(p) is created to provide that in any proceeding under chapters 373, 378 or 403, a third party challenge to an agency's issuance of a license, permit or conceptual approval must prove the case in opposition to the license, permit or conceptual approval by competent and substantial evidence.

Section 120.74

- Subsection 120.74(3) is created to provide that no later than July 1 of each year beginning in 2012, each agency shall provide to the Senate President, House Speaker and the committee a plan identifying each rule the agency plans to adopt in the next 12-month period, excluding emergency rules.
- Subsection 120.74(4) is created to provide exceptions to the reporting requirements of subsections (1) and (2) for the years 2011 and 2013.

Section 120.745 Legislative review of agency rules in effect on or before November 16, 2010, is created:

- Subsection (1) defines the terms "agency," "compliance economic review," "data collection rules," "revenue rules," and "rule" for the purposes of s. 120.745.
- Subsection (2) requires each agency to complete by December 1, 2011, an enhanced biennial review of the agency's existing rules, and describes the specific elements of the enhanced review.
- Subsection (3) requires each agency to publish no later than December 1, 2011, a report of the entire enhanced biennial review, and describes the format and content of the report.
- Subsection (4) provides for public comment on the enhanced biennial review and report, and describes the procedure and timeframes for submitting an objection to a report.
- Subsection (5) requires each agency to perform a compliance economic review and report for all rules, with one-half of the rules reviewed and reported on in 2012 and the remaining half reviewed and reported on in 2013. Certification and publication requirements, and an exemption from the compliance economic review requirement for certain rules, are described.

- Subsection (6) provides that the Legislature may consider legislation nullifying or altering a rule identified for retention without amendment in the compliance economic review report.
- Subsection (7) describes the manner of publication of the notices, determinations and reports required by s. 120.745.
- Subsection (8) provides that the failure of an agency to timely file any certification required by s. 120.745 will result in automatic suspension of the agency's entire rulemaking authority until the required certification is filed with JAPC, and tolls the deadline for certain actions.
- Subsection (9) provides for exemption from the enhanced biennial review and compliance economic review if an agency certifies to JAPC by October 1, 2011, that it has cooperated with OFARR in a review of the agency's rules.
- Subsection (10) provides that s. 120.745 is repealed July 1, 2014.

Section 120.7455 Legislative survey of regulatory impacts, is created:

- Subsection (1) provides that for the period July 1, 2011 – July 1, 2014, the Legislature may establish an Internet survey soliciting information from the public regarding regulatory impact.
- Subsection (2) provides that the Senate President and House Speaker may certify to the chair of JAPC and the Attorney General the establishment and identity of any Internet public survey.
- Subsection (3) provides that any person providing information is immune from any enforcement action or prosecution in certain circumstances.
- Subsection (4) provides that an alleged violator against whom an enforcement action is brought may object to a proposed penalty on the basis of retaliation for providing or withholding information pursuant to s. 120.7455.

Section 120.80

- Paragraph 120.80(16)(d) is created to provide that legislative ratification does not apply to the adoption of amendments and the triennial update to the Florida Building Code.
- Subsection 120.80(17) is created to provide that legislative ratification does not apply to the adoption of amendments and the triennial update to the Florida Fire Prevention Code.
- Subsection 120.80(18) is created to provide that legislative ratification, and the requirement to prepare a statement of estimated regulatory costs and to consider the impact of a rule on small businesses and small counties or small cities, do not apply to the adjustment of toll charges.

Section 120.81

- Subsection 120.81(1) is amended to provide that legislative ratification, and the requirement to prepare a statement of estimated regulatory costs and to consider the impact of a rule on small businesses and small counties or small cities, do not apply to the adoption of rules relating to public school personnel.

Effective date: Upon becoming a law.