

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 993 Rulemaking
SPONSOR(S): Rulemaking & Regulation Subcommittee, Roberson
TIED BILLS: **IDEN./SIM. BILLS:** SB 1382

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Rulemaking & Regulation Subcommittee	9 Y, 5 N, As CS	Miller	Rubottom
2) Government Operations Subcommittee			
3) Rules & Calendar Committee			

SUMMARY ANALYSIS

The bill amends agency rulemaking procedures under Chapter 120, the Administrative Procedures Act (APA), revising various provisions to align with legislative ratification requirements enacted in 2010. Certain rulemaking timeframes are conformed with other periods required in the statutory rulemaking procedure. The Rulemaking & Regulation Subcommittee adopted amendments which provide for withdrawal of rules that are not effective because they were not ratified, exempts certain rulemaking from ratification requirements and create a summary process for statewide elected officers to direct the repeal of specific rules within the first 6 months of an elective term.

Particularly, the bill:

- Requires agencies to include in each notice of rulemaking whether the proposed rule will require legislative ratification;
- Expressly includes legislative ratification in the description of factors controlling when an adopted rule takes effect;
- Resolves a timing conflict created by Chapter 2010-279, Laws of Florida, by restoring certain time deadlines to the pre-2010 provisions;
- Exempts emergency rulemaking from the APA requirements to prepare a statement of estimated regulatory costs;
- Provides a procedure for agencies to withdraw rules prior to becoming effective if the rule is invalidated by a final order or is timely submitted to the Legislature but not ratified in the regular session;
- Provides a summary process of repealing rules determined to be invalid for failing to be submitted for legislative ratification;
- Excludes from the ratification requirement emergency rules, and rules adopting federal standards, the triennial update of the Florida Building Code, or the triennial update of the Florida Fire Prevention Code;
- Creates a summary process for statewide elected executive officers to direct the repeal of specific rules within the first 6 months of an elective term.

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

PRESENT SITUATION

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

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

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

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

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

An agency may repeal an effective rule only through the usual procedures for rule making.⁸ Newly-elected statewide executive officials⁹ are required to follow this process even if a careful initial review of programs within their respective jurisdictions discloses a number of rules which are obsolete or inconsistent with the policies of the elected official.

Rules normally must be filed for adoption no earlier than 28 days nor later than 90 days after the agency publishes the notice of proposed rule; the later deadline may change depending on different factors.¹⁰ To ensure completion of the rulemaking process, Chapter 120, the Administrative Procedures Act (APA), provides different times in which a party may challenge a proposed rule.¹¹ If an agency is required to prepare a SERC the rule cannot be filed for adoption until 21 days after the SERC is provided to parties and made publicly available.¹² The 2010 revision did not alter this requirement but created new paragraph s. 120.541(1)(d), F.S., delaying adoption of a rule for 45 days after the agency makes a revised SERC available and, in such cases, providing 44 days for a party to challenge a proposed rule.¹³ These revised times conflict with the various 21 day timeframes provided for different aspects of rulemaking, such as requesting a hearing and submitting materials responding to the rulemaking notice,¹⁴ filing notices of substantial changes due to an objection from

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

² s. 120.54(3)(a)1, F.S..

³ s. 120.55(1)(b)2, F.S.

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

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

⁶ s. 120.541(3), F.S.

⁷ s. 120.54(3)(d)3, F.S.

⁸ s. 120.54(3)(d)5, F.S.

⁹ The Governor, Chief Financial Officer, Attorney General, and Commissioner of Agriculture.

¹⁰ s. 120.54(3)(e)2, F.S. The 90 day period is extended for an additional 21 days if a party submits a lower cost regulatory alternative to a proposed rule and the agency is compelled to prepare a SERC if one was not previously done. s. 120.541(1)(a), as amended by Ch. 2010-279, s. 2, Laws of Florida.

¹¹ s. 120.56(2)(a), F.S. Originally, a party had 20 days after a SERC or revised SERC was made available in which to challenge a proposed rule.

¹² s. 120.54(3)(e)2, F.S.

¹³ s. 120.56(2)(a), F.S., as amended by Ch. 2010-279, s. 3, Laws of Florida.

¹⁴ s. 120.54(3)(c)1, F.S.

JAPC,¹⁵ or filing a rule for adoption if no objections are received in 21 days.¹⁶

EFFECT OF PROPOSED CHANGES

Technical Revisions

The bill amends s. 120.54(3)(a)1, F.S., relating to an agency's statutory notice of proposed rulemaking, to require the notice to include a statement as to whether legislative ratification will be required before the rule goes into effect. The bill also expressly includes legislative ratification in the statutory description of those contingencies affecting when a rule becomes effective.

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

- Instead of allowing 45 days, the bill amends s. 120.54(3)(e)2, F.S., relating to when an agency is authorized to file a rule for final adoption, to require a revised SERC be provided at least 21 days before the rule is filed for adoption, conforming the time with that for adopting a rule after providing an original SERC.
- The bill amends s. 120.56(2)(a), relating to the time for bringing a challenge to a proposed rule, to revert to 20 days the time for challenging a proposed rule after the agency provides a SERC or a revised SERC, requiring the challenge be brought during the usual waiting period of 28 days before the rule may be filed for adoption.

The process for legislative ratification adopted in 2010 created potential technical conflicts within the existing rulemaking procedures of the APA. Because of the delay between filing a rule for adoption and the rule going into effect, current law allows an agency to withdraw the rule from further consideration only if the Joint Administrative Procedures Committee (JAPC) objects to the rule.¹⁷ A rule in effect cannot be withdrawn but only repealed through the standard rulemaking process.¹⁸ The new requirement for legislative ratification creates the possibility that an agency will adopt a rule which is never ratified, leaving an agency with no authority to withdraw or repeal the ineffective rule. Additionally, if a challenge to the rule brought subsequent to adoption results in a final order in response to which the agency would prefer to correct the rule, the agency could take no action.

A rule projected to have a specific economic impact exceeding \$1 million in the aggregate over 5 years¹⁹ must be ratified by the Legislature before going into effect.²⁰ A rule must be filed for adoption before it may go into effect²¹ and cannot be filed for adoption until completion of the rulemaking process.²² As a rule submitted under s. 120.541(3), F.S., becomes effective if ratified by the Legislature, a rule must be filed for adoption before being submitted for legislative ratification.

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

The bill resolves these issues by amending s. 120.54(3)(d)3, pertaining to when an agency is authorized to modify or withdraw a proposed rule after filing the rule for adoption, as follows:

¹⁵ s. 120.54(d)1, F.S.

¹⁶ s. 120.54(3)(e)6, F.S.

¹⁷ s. 120.54(3)(d)3, F.S.

¹⁸ s. 120.54(3)(d)5, F.S.

¹⁹ s. 120.541(2)(a), F.S.

²⁰ s. 120.541(3), F.S.

²¹ s. 120.54(3)(e)6, F.S.

²² s. 120.54(3)(e), F.S.

- Authorizing modification or withdrawal of rules in response to final orders in challenges brought after adoption but before the rule goes into effect;
- Authorizing withdrawal, but not modification, of rules timely submitted for ratification before a regular session but which are not ratified before the Legislature adjourns *sine die*; and
- Authorizing a summary process for an agency to repeal a rule by public notice if the rule was found invalid because it should have been submitted for ratification.

Emergency Rules

The bill amends s. 120.54(3)(b), F.S., and s. 120.541(4), F.S., and creates s. 120.541(5), F.S., to exempt emergency rulemaking from the requirement to prepare a SERC and the requirement for legislative ratification. Agencies are authorized to respond to immediate dangers to the public health, safety, or welfare, by adopting emergency rules.²³ Emergency rules are not adopted with the formalities required for usual rulemaking²⁴ but the action must be necessary to protect the public.²⁵ Prompt publication is required and prompt judicial review is available to test the agency's findings and basis for the emergency rule.²⁶ Emergency rules typically are effective immediately²⁷ upon filing but are of limited duration (up to 90 days), encouraging an agency to promptly begin regular rulemaking to adopt a permanent rule on the same subject.²⁸ Emergency rules may not be renewed unless regular rulemaking is initiated to adopt a permanent rule and 1) a challenge is pending to the proposed rule or 2) the proposed rule is pending legislative ratification.²⁹

Prior to the 2010 enactment the regular rulemaking procedure expressly excluded the adoption of emergency rules from the requirement to prepare a SERC.³⁰ The 2010 act³¹ created an internal inconsistency by excluding SERCs prepared for emergency rules from the comprehensive economic analysis³² required for regular rulemaking, implying SERCs would be required for emergency rules.³³ Presently, one section of the APA now states emergency rulemaking does not require preparation of a SERC³⁴ while another section implies a modified SERC is required.³⁵ The public policy behind emergency rulemaking differs from the concerns supporting preparation of SERCs and mandating legislative ratification. Keys to both of these requirements are time and deliberation of action, neither of which are available in a true emergency as recognized in the statute authorizing emergency rulemaking.³⁶ Because of the prior exclusion of emergency rulemaking from the SERC requirement, and because a permanent rule proposed to replace a similar emergency rule is subject to the full SERC and ratification requirements, the language adopted in 2010 should be conformed with the existing sections to eliminate this inconsistency.

The bill clarifies the SERC requirement in s. 120.54(3)(b), F.S., to expressly exclude adoption of emergency rules. The bill creates a new subsection 120.541(5) to expressly state all requirements of s. 120.541, F.S., including legislative ratification, do not apply to emergency rulemaking.

²³ s. 120.54(4), F.S.

²⁴ s. 120.54(4)(a), F.S., which expressly requires adoption of emergency rules to afford the procedural protection provided under other (unspecified) statutes, the Florida Constitution, or the U.S. Constitution.

²⁵ s. 120.54(4)(a)2, F.S.

²⁶ s. 120.54(4)(a)3, F.S.

²⁷ s. 120.54(4)(d), F.S.

²⁸ s. 120.54(4)(c), F.S.

²⁹ Id.

³⁰ s. 120.54(3)(b), F.S.

³¹ Ch. 2010-279, Laws of Florida.

³² s. 120.541(2)(a), F.S.

³³ "The Adoption of Federal Standards as it Relates to Preparation of a Statement of Estimated Regulatory Costs and Legislative Ratification," Memorandum from Department of Health to staff of the Rulemaking & Regulation Subcommittee (March 3, 2011), on file with staff of the Rulemaking & Regulation Subcommittee.

³⁴ s. 120.54(3)(b), F.S.

³⁵ s. 120.541(4), F.S.

³⁶ s. 120.54(4), F.S.

Exemptions to Required Legislative Ratification

Current law requires legislative ratification of all rules exceeding the statutory economic effect threshold. Mandatory updates to the Florida Building Code and the Florida Fire Prevention Code are required to be adopted every 3 years³⁷ and are developed with significant involvement of the Legislature and its substantive committees, business and industry representatives, local and state government, and the general public. Other rules involve state adoption of federal standards for operation of programs involving significant federal oversight due to funding sources or implementation of federal law and are adopted under a procedure separate from regular rulemaking.³⁸ These types of rules are subject to economic scrutiny in the rulemaking process but the concern for additional legislative scrutiny imposed by ratification appears to be met by the standards imposed under the substantive statutes being implemented by rule.

Adoption of Federal Standards

The bill makes a technical amendment to s. 120.541(4), F.S., to exempt rules adopting federal standards from required legislative ratification. The current language exempts both emergency rulemaking and adoption of rules incorporating federal standards only from the comprehensive economic analysis required for a SERC. The reference in the statute to “paragraph (2)(a)” appears to be inadvertent, as it created an inconsistency with the SERC requirement in s. 120.54(3)(b), F.S. The apparent intent was to exempt both emergency rulemaking and the adoption of rules incorporating federal standards from the ratification requirement, not the mandatory economic analysis.

The Florida Building Code

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

The law provides detailed sections on legislative intent⁴³, Building Code adoption and contents,⁴⁴ specific processes for different types of amendments,⁴⁵ the triennial comprehensive update conducted by the Commission,⁴⁶ and the Commission’s powers.⁴⁷ The express intent of the law is for the Commission to use the statutory rulemaking requirements and process⁴⁸ for adopting, amending, or updating the Building Code.⁴⁹

553.72 Intent. —

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³⁷ s. 553.73(7)(a), 633.0215(1), F.S.

³⁸ s. 120.54(6), F.S.

³⁹ Ch. 553, Part IV, Florida Building Code.

⁴⁰ s. 553.72(1), F.S.

⁴¹ s. 553.74, F.S.

⁴² s. 553.80, F.S.

⁴³ s. 553.72, F.S.

⁴⁴ s. 553.73(1)-(3), F.S.

⁴⁵ s. 553.73(3) & (9)-technical amendments, (4) & (5)-amendments by local authorities, (8)-substantive amendments.

⁴⁶ s. 553.73(7), F.S.

⁴⁷ s. 553.74 - 553.7, F.S.

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

⁴⁹ s. 553.72(3), F.S.

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

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

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

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

The Florida Fire Prevention Code

One of the key components of the Florida Building Code cross-references to the separately-adopted Florida Fire Prevention Code (Fire Code). The State Fire Marshall is required to adopt a new edition of the Fire Code every 3 years through the rulemaking provisions of the APA.⁶³ The triennial update of the Fire Code is coordinated with that of the Building Code in order to prevent undue burdens on businesses and consumers.⁶⁴ As part of the triennial update, the State Fire Marshall notifies each municipal, county, and special district fire department of the pending review and update. The local officials are required to provide copies of their local fire code amendments no later than 120 days before the date the State Fire Marshall is to adopt the triennial updates, in order for the Fire Marshall to

⁵⁰ s. 553.73(1)(a), F.S.

⁵¹ s. 553.73(3), (8), & (9), F.S.

⁵² s. 553.73(7)(a), F.S.

⁵³ s. 553.73(7)(e), F.S.

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

⁵⁵ s. 553.75(3), F.S.

⁵⁶ s. 553.73, F.S.

⁵⁷ s. 553.73(1)(a), F.S.

⁵⁸ s. 553.73(2), F.S.

⁵⁹ s. 553.73(1)(c), F.S.

⁶⁰ s. 553.73(7)(a), F.S.

⁶¹ Ch. 553, Part IV, F.S.

⁶² s. 120.54, 120.56, F.S.

⁶³ s. 633.0215(1), F.S.

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

determine whether the local provisions comply with the law.⁶⁵ Under present law, local fire code amendments are effective only until the adoption of the next triennial review.⁶⁶

Impact of Potential Legislative Ratification on Building and Fire Codes

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

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

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

Summary of Exemptions Created by the Bill

The bill creates s. 120.541(5) to exempt the adoption of federal standards, the triennial update of the Building Code, and the triennial update of the Fire Code from required legislative ratification. The adoption of these rules still would be subject to the preparation of a comprehensive SERC and economic analysis.

Special Rule Repeal Authorization – Initial Period of Elected Term

A rule in effect may be repealed only through the standard rulemaking process.⁷³ This includes public notice of the proposed action and the opportunity for members of the public who have a substantial interest in the repeal to participate or even bring a legal challenge.⁷⁴ Following the standard process requires a minimum of 28 days from publication of the notice of the proposed repeal to the time the actual repeal may be adopted.⁷⁵ With the required statutory waiting periods, the earliest a rule repeal could take effect is 48 days from publication of the notice of proposed repeal.⁷⁶ Depending on the amount and nature of requested public participation, the period to repeal a rule could exceed 90 days.

The bill creates limited authorization and a summary process for statewide elected executive officers⁷⁷ to repeal rules within the first 6 months of an elected term. Key points of the process are:

⁶⁵ s. 633.0215(3)(a), F.S.

⁶⁶ s. 633.0215(3)(b), F.S.

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

⁶⁸ s. 553.72, F.S.

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

⁷⁰ See note 67, above.

⁷¹ S. 553.73(7)(a), F.S.

⁷² See note 64, above.

⁷³ s. 120.54(3)(d)5, F.S.

⁷⁴ s. 120.54(3), 120.56(2), F.S.

⁷⁵ s. 120.54(3)(e)2, F.S.

⁷⁶ s. 120.54(3)(e)6, F.S. If the repeal of a rule results in one of the significant economic consequences, it is possible such a repeal would require submission for legislative ratification.

⁷⁷ The Governor, Chief Financial Officer, Attorney General, and Commissioner of Agriculture.

- A legislative finding that requiring the usual rulemaking process may unnecessarily delay the efforts of newly-elected statewide executive officers to review the programs and policies over which they have jurisdiction;
- Authorization of a specified summary procedure to repeal rules;
- Statewide elected executive officers may only use this summary process during the first six months of their elected terms;
- For each rule or part of a rule to be repealed, the statewide elected executive officers must make a written finding directing the repeal;
- The written finding and a written notice of intent to repeal must be published on the website of the agency which adopted the rule or part of the rule to be repealed and in the Florida Administrative Weekly;
- The repeal of a rule or part of a rule will be complete 15 days after publication of the written notice on the agency's website;
- A substantially-affected party may file with the agency a written objection within 14 days of publication of the written notice on the agency's website;
- If an objection is filed the repeal is not effective until the statewide elected executive officers publishes the written ruling on the objection;
- The sections of the APA governing rulemaking, dispute resolution, hearings, and judicial enforcement will not apply to the summary repeal process. An objecting party is not entitled to a hearing but will have a limited right to appeal a decision overruling the objection to the First District Court of Appeals;
- A failure to object is treated as approving the repeal and a waiver of rights to any judicial review;
- This authority to direct repeal by summary process cannot be delegated but must be exercised by the statewide elected executive officers with sole authority over the agency, the Governor and Cabinet for Cabinet agencies, or all the statewide elected executive officers with joint authority over an agency (but less than the whole Cabinet).
- This summary procedure is only available until the 30th of June following the beginning of the statewide elected executive officer's elected term.

The Governor's first executive order⁷⁸ created the Office of Fiscal Accountability and Regulatory Reform (OFARR) and mandated each agency under the Governor's authority to conduct a comprehensive review of all that agency's rules. To date the Governor's agencies have identified over 750 rules which may be repealed.⁷⁹ Initiating the standard rulemaking process to repeal each such rule would delay such repeal for at least 48 days. Accordingly, the bill provides its terms become effective when signed into law so that the summary process would be available to all statewide elected officials during in their respective elected terms.

⁷⁸ EO 11-01.

⁷⁹ Presentation of Patricia Nelson, Deputy Director of OFARR, at March 23, 2011 meeting of Rulemaking & Regulation Subcommittee.

B. SECTION DIRECTORY:

Section 1:

- Clarifies the procedures for standard rulemaking by requiring agencies to state in the notice of proposed rule whether ratification will be necessary.
- Expressly notes ratification as a contingency for the rule to become effective.
- Creates s. 120.54(3)(b)3 to exempt emergency rulemaking from the requirement to prepare a statement of estimated regulatory costs.
- Amends s. 120.54(3)(d)3 to:
 - Authorize agencies to modify or withdraw a rule after entry of a final order in a challenge to the rule brought after the rule was filed for adoption but before it became effective;
 - Authorize agencies to withdraw rules adopted and submitted for legislative ratification but which are not ratified before the adjournment *sine die* of that regular session.
 - Authorize a summary process for agencies to withdraw rules which were not submitted for ratification but later found invalid because they should have been submitted for ratification.

Section 2:

- Restores the time period for delaying rule adoption after an agency revises a SERC to that in effect prior to enactment of ch. 2010-279, L.O.F. (from 45 days back to 21 days).
- Amends s. 120.541(4) to exempt rules adopting federal standards, the triennial update of the Florida Building Code, and the triennial update of the Florida Fire Prevention Code from the requirement of legislative ratification.
- Creates new s. 120.541(5) excluding emergency rulemaking from the entire section, including the required SERC contents and the requirement of legislative ratification.

Section 3: Creates s. 120.547, authorizing a summary procedure for statewide elected officials to direct the repeal of rules in agencies under their respective authority, commencing with the beginning of the official's elected term and ending on the following June 30.

Section 4: Reverses the 2010 change for a party to challenge a proposed rule after preparation of a SERC (from 44 days back to 20 days) to conform with other relevant time periods in the existing law.

Section 5: Provides that the bill will be effective on becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

Requiring disclosure in the rulemaking notice of whether the proposed rule may require ratification will have an indeterminate but insignificant impact on agency expenditures. Agencies currently must include in the rulemaking notice a summary of the SERC if one was prepared⁸⁰ and must prepare a SERC if the proposed rule will adversely affect small business or increase regulatory costs more than \$200,000 in the aggregate within 1 year of implementation.⁸¹ As agencies have a duty to address the fiscal impact of a proposed rule, and already incur the expense pertaining to the

⁸⁰ s. 120.54(3)(a)1, F.S.

⁸¹ s. 120.54(3)(b)1, F.S.

preparation of a SERC, the information is available to determine whether legislative ratification will be required. The bill thus requires reporting an element the supporting data for which should exist.

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

Clarifying the exclusion of emergency rulemaking from the SERC and ratification requirements should not impact agency expenditures as SERCs were not previously required. Exempting rules adopting federal standards, the Florida Building Code, and the Florida Fire Prevention Code from the ratification requirement should be expense neutral as those rulemaking processes do not require any expenditures.

Providing agencies a summary process to withdraw rules not ratified by the Legislature or to repeal rules found invalid for failing to be ratified will reduce agency expenditures that may be necessary to prevent such rules from interfering with proper implementation of statutes. Providing elected statewide officials with a summary process to repeal rules in the first six months of an elected term would save the cost of formal rule repeal procedures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Many local governments are not subject to Chapter 120, the Administrative Procedures Act.⁸² For local governments subject to rulemaking under Chapter 120, the bill clarifies existing procedural requirements. The impact on revenues in both FY 2011-2012 and FY 2012-2013 is indeterminate but insignificant. The bill authorizes no new revenue sources and existing revenues would not be increased by these clarifications of administrative procedure.

2. Expenditures:

The analysis in section II.A.2 is applicable to those local governments subject to Chapter 120 rulemaking. The impact on expenditures is indeterminate but insignificant.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

No additional fiscal comments.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

The bill changes the time for a party to challenge a proposed rule after the agency provides a SERC (from 44 to 20 days). This may impact businesses outside the state intending to bring such

⁸² s. 120.52(1), F.S.

challenges but treats all objecting parties the same regardless of where located. There are no other constitutional issues pertaining to the bill.

B. RULE-MAKING AUTHORITY:

No rulemaking authority is provided because none is needed. The bill revises and clarifies existing rulemaking procedures for all agencies under the APA.

C. DRAFTING ISSUES OR OTHER COMMENTS:

No other comments.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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

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

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

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

Amendment 5: Created the summary rule repeal process to be used by statewide elected officials within the first 6 months of an elected term. Provided for notice, opportunity for public objection to proposed repeals, and judicial review. Avoiding any question about delegation of executive authority, the amendment prevents any statewide elected official from delegating this authority.

Amendment 6: Changes the effective date of the bill to when it is signed into law.