

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

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

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

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

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

73 120.54 Rulemaking.—

74 (3) ADOPTION PROCEDURES.—

75 (a) Notices.—

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

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

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

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

113 persons to whom the intended action is directed.

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

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

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

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

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

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

156 a. When the committee objects to the rule;

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

264 120.541 Statement of estimated regulatory costs.—

265 (1)

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

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

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

278 120.56 Challenges to rules.—

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

280 (a) A substantially affected person may seek an

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

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

307 120.74 Agency review, revision, and report.—

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

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

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

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

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

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

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

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

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

336 2. A statement of estimated regulatory costs as described

337 in s. 120.541(2); however:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

396 5. Any tax.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

533 reviewed and reported on in 2013.

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

535 1. Complete a compliance economic review for each entire

536 rule or subpart in the appropriate group.

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

538 the committee verifying the completion of each compliance

539 economic review required for the respective year. The

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

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

542 completion of the required compliance economic reviews is the

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

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

545 defined agency head is a collegial body, the written

546 certification must be prepared by the chair or equivalent

547 presiding officer of that body.

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

549 directions on how and when interested parties may submit lower

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

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

552 4. Publish notice of the publications required in

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

554 (7).

555 5. Submit each compliance economic review to the Small

556 Business Regulatory Advisory Council for its review.

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

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

559 economic review if the review found that the rule:

560 1. Does not unnecessarily restrict entry into a profession

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

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

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

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

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

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

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

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

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

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

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

637 3. Determinations under subsection (4):  
 638 [Address of agency's Internet website]/2011 Rule review/  
 639 Objection Determination/[F.A.C. Rule number].

640 (Example: http://www.dos.state.fl.us/2011 Rule review/  
 641 Objection Determination/1S-1.001).

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

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

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

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

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

652 (Example: http://www.dos.state.fl.us/2011 Rule review/  
 653 Economic Review/2012 Final Report).

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

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

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

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

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

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

672 c. The particular Internet address through which the



673 publication may be accessed.

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

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

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

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

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

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

700 (d) Failure to timely file a written certification

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

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

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

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

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

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

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

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

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

745 120.7455 Legislative survey of regulatory impacts.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

801 120.80 Exceptions and special requirements; agencies.—

802 (16) FLORIDA BUILDING COMMISSION.—

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

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

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

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

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

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

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

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

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

834 (1) EDUCATIONAL UNITS.—

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

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