

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB RCC 11-05 Joint Rules

SPONSOR(S): Rules & Calendar Committee

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Rules & Calendar Committee		Hassell	Birtman

SUMMARY ANALYSIS

PCB RCC 11-05 is a concurrent resolution proposing the establishment of the Joint Rules of the Florida Legislature for the 2010-2012 term.

The proposed concurrent resolution:

- Deletes obsolete provisions and makes minor revisions to Joint Rule One, regarding lobbyist registration and reporting.
- Revises Joint Rule Two governing the general appropriations act process.
 - Allows electronic copies, in lieu of paper copies, of the General Appropriations Act.
 - Imposes a 24-hour review period on implementing and conforming bills that are published after the onset of the 72-hour general appropriations act review.
- Revises Joint Rules Three and Four, relating to joint legislative offices and standing joint committees
 - Establishes the following Joint Legislative Offices:
 - Office of Economic and Demographic Research (EDR)
 - Office of Legislative Information Technology Services (OLITS)
 - Office of Legislative Services (OLS)
 - Office of Program Policy Analysis and Government Accountability (OPPAGA)
 - Establishes the following standing joint committees
 - Administrative Procedures Committee
 - Committee on Public Counsel Oversight
 - Legislative Auditing Committee
 - Provides for special powers and duties of the standing joint committees.
 - Establishes consistent procedural rules governing joint committees.
- Retains the substance of Joint Rule Five, regarding the Auditor General.
- Retains the substance of Joint Rule Seven, regarding the Joint Legislative Budget Commission.

Portions of this PCB are part of a reform package that is to be considered with PCB RCC 11-06 which removes statutory language purporting to create or direct joint legislative committees and joint legislative offices.

Please see PCB RCC 11-06 and the corresponding bill analysis for a detailed analysis on the statutory changes.

This concurrent resolution shall be effective upon adoption by the Senate and House of Representatives.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

PCB RCC 11-05 is a concurrent resolution proposing the establishment of the Joint Rules of the Florida Legislature for the 2010-2012 term. The concurrent resolution includes the following joint rules:

Joint Rule One – Lobbyist Registration and Compensation Reporting

The PCB makes minor revisions to Joint Rule One as it existed in the 2009-2010 biennium, regarding lobbyist registration and reporting.

Joint Rule 1.8, clarifies that a person may request, from the General Counsel of the Office of Legislative Services, an informal opinion as to the application of this Joint Rule One to a specific situation involving that person's conduct. Advisory opinions are only available to people concerned about their own conduct, to aid in compliance with the rule.

Joint Rule 1.5(7)(a) and (b), clarify that even if a fine is waived, suspension is not lifted and a lobbyist may not be reinstated until all late reports have been filed or waived.

The Joint Rules delete obsolete provisions in Joint Rule One regarding reporting prior to the original enactment date of April 1, 2007.

Joint Rule 1.9 provides that the provisions of Joint Rule One are imposed retroactively to the first day of the present legislative biennium except that provisions new to this revision are effective on the date of adoption or as otherwise expressly provided.

The Joint Rules provide that the responsibilities of the division and of the Lobbyist Registration Office under Joint Rule One may be assigned to another entity by agreement of the President of the Senate and the Speaker of the House for a contract period not to extend beyond December 1 following the Organization Session of the next biennium, provided that the powers and duties of the President, the Speaker, the General Counsel of the Office of Legislative Services and any legislative committee referenced in Joint Rule One may not be delegated.

Joint Rule Two – General Appropriations Review Period

Article III, sections 8¹, 12, 19(b)² and 19(d), of the Florida Constitution make reference to general appropriations bills. Specifically, the following sections refer to the appropriations bills:

- Section 12. Appropriations Bills.-- Laws making appropriations for salaries of public officers and other current expenses of the state shall contain provisions on no other subject.
- Section 19(d) SEVENTY-TWO HOUR PUBLIC REVIEW PERIOD --All general appropriation bills shall be furnished to each member of the legislature, each member of the cabinet, the governor, and the chief justice of the supreme court at least seventy-two hours before final passage by either house of the legislature of the bill in the form that will be presented to the governor.

The Joint Rules allow a copy of the bill, a copy of the bill with amendments adopted by the nonoriginating house, or the conference committee report be furnished to members of the House and Senate via an electronic copy, in lieu of paper copies. Such copy is deemed to be made available when

¹ Article III, section 8 of the Florida Constitution relates to the executive approval and veto of bills.

² Article III, section 19(b) of the Florida Constitution relates to the appropriation bills format.

it is accessible via the Internet or other information network consisting of systems ordinarily serving the members of the House and Senate. Additionally, other constitutional officers may officially request that an electronic copy be furnished in lieu of a printed copy.

The Joint Rules impose a 24-hour review period on implementing³ and conforming⁴ bills that are published after the onset of the 72-hour general appropriations act review. The Joint Rules provide that the legislature determines that for purposes of Joint Rule Two and the Florida Constitution⁵, that after the enactment of a general appropriations bill for a particular fiscal year, subsequent appropriations that make net reductions or that make supplemental appropriations are not considered to be a general appropriations bill for purposes of the 72-hour review period, unless the bill provides for salaries of public officers and other current expenses of the state for a subsequent fiscal year. This rule clarifies previous uncertainty as to whether or not a general appropriations bill, made after the enactment of a general appropriations bill for a particular fiscal year, is subject to the 72-hour review period.

It also provides that with respect to each bill that may be affected, a member may not raise a point of order under Joint Rule Two after a vote is taken on the bill. Noncompliance with any requirement of Joint Rule Two may be waived by two-thirds vote of those members present and voting in each house.

Joint Rule Three – Joint Offices and Polices and Joint Rule Four – Standing Joint Committees

The Legislature recognizes that the current Legislature can't be bound by a former legislature's organization and structure and that the power of a future legislature cannot be limited by the acts of a present or prior legislature.⁶ To that extent, the Joint Rules reorganize the joint committees and joint legislative offices allowing for direct administrative oversight by the presiding officers.

The Joint Rules create and direct standing joint committees and permanent legislative offices and move various statutory directives into rule. *Please see PCB RCC 11-06 and the corresponding bill analysis for a detailed analysis.*

The Joint Rules standardize the administration and staffing of joint legislative offices and standardize the administration, staffing and member appointments of joint committees. Additionally, the Joint Rules defer to Joint Policies established by presiding officers for details of budgeting and spending procedures and other matters of administration

The Joint Rules clarify that the polices adopted by the President of the Senate and the Speaker of the House of Representatives are binding on all employees of joint legislative offices and joint committees, and that all employees of joint legislative offices and joint committees are under the exclusive control of the Legislature.

Joint Rule 3.1 – Joint Legislative Offices

The Joint Rules establish the following Joint Legislative Offices:

- Office of Economic and Demographic Research (EDR)
- Office of Legislative Information Technology Services (OLITS)
- Office of Legislative Services (OLS)
- Office of Program Policy Analysis and Government Accountability (OPPAGA)

³ Consistent with House Rule 12.5(2), an "implementing bill" is a bill, effective for one fiscal year, implementing an appropriations bill.

⁴ Consistent with House Rule 12.5(3), a "conforming bill" means a bill that amends the Florida Statutes to conform to a general appropriations bill.

⁵ Section 19(d) of Article III, Fla. Const.

⁶ The Legislature has an absolute right to repeal or modify any statute, as long as its actions do not transgress constitutional requirements. Thus, the power of a future legislature cannot be limited by the acts of a present or prior legislature. *Nue v. Miami Herald Publishing Co.*, 462 So. 2d 821 (Fla. 1985); *Internal Improvement Fund v. St. Johns River Co.*, 16 Fla. 531 (Fla. 1878); *Gonzales v. Sullivan*, 16 Fla. 791 (Fla. 1878).

The Joint Rules provide that each office is to be directed by a coordinator selected to serve at the pleasure of the presiding officers. Upon initial adoption of the Joint Rules, the coordinator position is deemed vacant until an appointment is made.

The Joint Rules reduce specific directives to OPPAGA as appropriate to increase both administrative and policy flexibility and maintain the legal capacity of OPPAGA. To that extent, the Joint Rules require OPPAGA to perform independent examinations, program reviews, and other projects as provided by general law, as provided by concurrent resolution, as directed by Joint Legislative Auditing Committee, or as directed by the presiding officers of both houses, and must provide recommendations, training, or other services to assist the Legislature. OPPAGA is required to submit a list of recommended statutory and fiscal changes to the presiding officer by December 1 each year. These recommendations must be presented as substantive law and policy issues and budget issues.

Joint Rule 4.1 – Standing Joint Committees

The Joint Rules also specifically establish the following standing joint committees and provide that no other joint committee shall exist except as agreed to by the presiding officers or by concurrent resolution approved by the Senate and the House of Representatives:

- Administrative Procedures Committee
- Committee on Public Counsel Oversight
- Legislative Auditing Committee

The Joint Rules require that each house appoint at least five members and no more than seven members to each standing joint committee. The appointments to such committees are made or altered or vacancies are filled in accordance with the rules of each house. Chair and Vice-Chair appointments are alternated yearly, beginning from the Organization Session until noon on December 1 of the calendar year following the general election.

Joint Rule 4.2 – Procedures in Committee and Joint Rule 4.3 – Powers of Joint Committees

The Joint Rules establish procedural rules governing joint committees other than conference committees. It standardizes rules for quorum, notice, voting, and powers. The rules include, but are not limited to, the following:

- Quorum – A quorum is present when a majority of the appointees of each house are present.
 - No business of any kind may be conducted in the absence of a quorum.
- Notice - Joint Committees are not allowed to meet outside of the date, time, and location authorized by the presiding officers, and meet at the call of the chair.
 - Must notice meetings no later than 4:30 p.m. on the 7th day before the meeting.
 - The chair may cancel a noticed meeting with the approval of at least one presiding officer.
- Rules – Presiding officers shall interpret, apply, and enforce rules governing joint committees by agreement when the rule at issue is a joint rule.
- Powers of joint committees:
 - Authorized to exercise subpoena powers vested by law in standing committees of the Legislature. The subpoenas must be approved and signed by each of the presiding officers and attested by the Secretary of the Senate and the Clerk of the House.
 - Authorized to adopt rules of procedure that do not conflict with the Florida Constitution or any law or joint rule, subject to joint approval of the President and the Speaker.
 - Prohibited from creating subcommittees or workgroups, unless specifically authorized by both of the presiding officers.

Joint Rule 4.5 – Special Powers and Duties of the Legislative Auditing Committee

The Joint Rules reduce specific directives to the Legislative Auditing Committee, as appropriate to increase both administrative and policy flexibility and maintain the legal capacity of the Committee. Specifically, the Joint Rules authorize the Committee to:

- Direct the Auditor General or OPPAGA to conduct an audit, review, or examination of any entity or record described in statute.⁷
- Make appropriate disposition of requests or referrals and report to the requesting party the disposition of such request.
 - The Committee may receive requests for audits and reviews from legislators and any audit request, petition for audit, or other matter for investigation directed or referred to it pursuant to general law.
- May review the performance of the Auditor General and report findings to the Senate and the House of Representatives.

Joint Rule 4.6 – Special Powers and Duties of the Administrative Procedures Act

The Joint Rules direct the Administrative Procedures Committee to:

- Maintain a continuous review of the statutory authority on which each administrative rule is based, and notify the appropriate agency when the authority is eliminated or significantly changed.
- Maintain a continuous review of administrative rules. Identify rules or provisions of any rule that reiterate or paraphrase statute or for which statutory authority has been repealed and notify the appropriate agency and request that the agency repeal such rule or provision.
- Review administrative rules and advise agencies of the findings.
- Exercise the duties prescribed in law⁸ relating to adoption and promulgation of rules.
- Generally review agency action relating to the Administrative Procedures Act.
- Report to the Senate and the House of Representatives the recommended need for legislation or other appropriate action. The Joint Rules specify when the report is due and what must be included in the report.
- Maintain regular contact with legislative standing committees that have jurisdiction over the subject areas addressed in agency proposed rules regarding legislative authority for the proposed rules and for agency action.
- Maintain a continuous review of the administrative rulemaking process.
- Establish measurement criteria to evaluate agency compliance with the delegation of legislative authority and implementing rules.
- Maintain a continuous review of statutes that authorize agencies to adopt rules and make recommendations as to the advisability of considering changes to the delegated legislative authority to adopt rules in specific circumstances.

The Joint Rules also provide that, subject to approval of both presiding officers, the Committee has standing to seek judicial review of the validity or invalidity of any administrative rule to which the committee has voted an objection and that has not been withdrawn, modified, repealed, or amended to meet the objection. The Joint Rules make it clear that the Committee may not act without approval of the President of the Senate and the Speaker of the House of Representatives. Furthermore, the Joint Rules provide that judicial review may not be initiated until the Governor and the head of the agency have been notified of the Committee's proposed action and have been given reasonable opportunity to meet with the Committee. The Joint Rules authorize the Committee to expend public funds from its appropriation for the purpose of seeking judicial review.

⁷ Section 11.45(2), F.S., outlines the specific audits the Auditor General must conduct. Section 11.45(3), F.S., provides the Auditor General with the authority for audits and other engagements.

⁸ See Chapter 120, F.S.

Joint Rule 4.7 – Special Powers and Duties of the Committee on Public Counsel Oversight

The Joint Rules require the Committee on Public Counsel Oversight to appoint a Public Counsel. It authorizes the Committee to file a complaint with the Commission on Ethics alleging a violation of chapter 350, the Florida Public Service Commission, by a current or former public service commissioner, an employee of the Public Service Commission, or a member of the Public Service Commission Nominating Council.

The Joint Rules clarify that unlike other joint committees⁹, the Committee does not have permanent staff. Instead, legislative staff will be selected by the President of the Senate and the Speaker of the House as needed.

Joint Rule Five – Auditor General and Joint Rule Six – Joint Legislative Budget Commission

The Joint Rules maintain unchanged the substance of Joint Rules Five and Six as they existed in the 2008-2010 biennium, regarding the Auditor General and Joint Legislative Budget Commission (JLBC).¹⁰

B. SECTION DIRECTORY:

PCB RCC 11-06 removes statutory language purporting to create or direct joint legislative committees and joint legislative offices and PCB RCC 11-05 incorporates various statutory provisions in the Joint Rules. The following tracing table is provided to show which statutory provisions have been amended, repealed, or superseded by joint rule.

Office of Program Policy Analysis and Governmental Accountability

Statute	Subject	Result
11.51 (1)	Creates the Office; requires independent examinations, program reviews, and other projects	Superseded by J.R. 3.1, which established OPPAGA as a joint legislative office
11.51 (2)	Provides that the Office is independent of the Auditor General for purposes of general policies	Superseded by J.R. 3.1 and 3.2
11.51 (3)	Requires the Office to maintain a schedule of examinations of state programs	Superseded by J.R. 3.1 and 3.2
11.511(1)	Requires the Legislative Auditing Committee to appoint a director, subject to confirmation and reappointment	Superseded by J.R. 3.1
11.511(2)(a)	Requires the director to take the Constitutional oath of office	Repealed
11.511(2)(b)	Provides that the appointee perform the functions until confirmed by each house	Superseded by J.R. 3.1
11.511(3)	Provides for restrictions on officers and full-time employees relating to political activity and employment	Superseded by J.R. 3.1 and 3.2
11.511(4)-(5)	Requires the performance of examinations; authorizes the director to adopt and enforce rules to carry out duties	Superseded by J.R. 3.1 and 3.2
11.511(6)	Permits director to postpone scheduled examinations.	Superseded by J.R. 3.1 and 3.2
11.513	OPPAGA program evaluation and justification review	Obsolete, permitted if necessary by J.R. 3.1

⁹ See Joint Rule 4.4(2).

¹⁰ Section 19(j) of Article III of the Florida Constitution creates the Joint Legislative Budget Commission and provides that the Commission “shall be governed by the joint rules of the senate and the house of representatives, which shall remain in effect until repealed or amended by concurrent resolution.”

Administrative Procedures Committee

Statute	Subject	Result
11.60(1)	Creates the Committee and sets forth the composition and membership	Superseded by J.R. 4.1
11.60(2)	Provides for the duties of the Committee	Provisions moved to J.R. 4.6 except as provided below.
11.60(2)(i)-(j)	Appoints an executive director and general counsel by majority vote of the members on the Committee. Provides the committee has general administrative responsibility for the operations of its staff	Superseded by J.R. 4.4.
11.60(3)	Provides that expenses are paid from the appropriation for legislative expense	Superseded by J.R. 4.4.
11.60(4)	Requires the committee to maintain a review of the statutes that authorize agencies to adopt rules and to make recommendations to the legislature relating to the delegated legislative authority to adopt rules	Provision moved to J.R. 4.6(11); Requirement incorporated in J.R. 4.6(6)

Committee on Public Counsel Oversight

Statute	Subject	Result
350.012(1)	Creates the Committee and sets forth the composition and membership	Superseded by J.R. 4.1
350.012(2)	Requires the Committee to appoint a Public Counsel	Provision moved to J.R. 4.7(1)
350.012(3)	Authorizes the Committee to file a complaint with the Commission on Ethics on certain persons	Provision moved to J.R. 4.7(2)
350.012(4)	Provides that the Committee does not have permanent staff and presiding officers will select staff when and as needed	Provision moved to J.R. 4.7(3)

Office of Legislative Services

Statute	Subject	Result
11.147(1)	Creates the Office to provide support services jointly to both houses.	Provision revised to reflect that OLS established by J.R. 3.1(1) rather than statute
11.147(2)	Provides that the presiding officers may select a coordinator for the Office	Appointment of OLS coordinator controlled by J.R.3.1(2) rather than statute

Legislative Auditing Committee

Statute	Subject	Result
11.40(1)	Creates a standing joint committee and sets forth the composition and membership	Superseded by J.R. 4.1
11.40(2)	Places committee under joint rules	Superseded by J.R. 4.1
11.40(3)	Authorizes the committee to direct the Auditor General or the OPPAGA to conduct an audit, review, or examination	Provision moved to J.R. 4.5(1)
11.40(4)(b)	LAC to oversee and maintain web page	Obsolete. Legislative oversight of such services under administrative supervision of presiding officers under Joint Rule 3.2 and 4.4

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

As a result of creating a more efficient process via the electronic distribution of the General Appropriations Act, a positive fiscal impact is likely to be realized but is indeterminate at this time.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. PCB RCC 11-05 does not appear to require counties or municipalities to spend funds or take any action requiring the expenditure of funds; reduce the authority that municipalities or counties have to raise revenue in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

Article III, sections 8, 12, 19(b) and 19(d), of the Florida Constitution make reference to general appropriations bills. Specifically, the following sections refer to the appropriations bills:

- Section 12. Appropriations Bills.-- Laws making appropriations for salaries of public officers and other current expenses of the state shall contain provisions on no other subject.
- Section 19(d) SEVENTY-TWO HOUR PUBLIC REVIEW PERIOD --All general appropriation bills shall be furnished to each member of the legislature, each member of the cabinet, the governor, and the chief justice of the supreme court at least seventy-two hours before final passage by either house of the legislature of the bill in the form that will be presented to the governor.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES