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A bill to be entitled

An act relating to administrative procedure; amending s. 120.74, F.S.; providing for agency reporting of annual regulatory plans; creating s. 120.745, F.S., providing for legislative review of agency rules; providing definitions; requiring each dagency to review rules in effect on or before November 16, 2010; providing for publication of notices; specifying information to be provided by agencies; authorizing the Office of Fiscal Accountability and Regulatory Reform to designate rules exempt from particular review; providing for public input and objections; directing the manner of addressing objections; providing for economic review of certain rules over two years; creating s. 120.7455, F.S., authorizing a legislative survey of regulatory impacts; providing immunities for those providing information to the Legislature; providing protections from retaliatory enforcement actions; providing that the validity of a rule is not affected, providing for repeal of section 2 of the act as of July 2, 2014; providing an effective date.

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

Section 1. Subsections (3) and (4) are added to section 120.74, Florida Statutes, to read:

120.74 Agency review, revision, and report.—

(3) No later than July 1 of each year, each agency shall

29 file with the President of the Senate, the Speaker of the House,
 30 and the committee a regulatory plan identifying and describing
 31 each rule the agency proposes to adopt for the 12 month period
 32 beginning on the July 1 reporting date and ending on the
 33 subsequent June 30, excluding emergency rules.

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

40
 41 Section 2. Section 120.745, Florida Statutes, is created
 42 to read:

43 120.745 .- Legislative review of agency rules in effect on
 44 or before November 16, 2010.

45 (1) DEFINITIONS. The following definitions shall apply
 46 exclusively to this act:

47 (a) "Agency" shall have the same meaning and application as
 48 provided in s. 120.52(1), F.S., but for purposes of this section
 49 shall exclude each officer and governmental entity in the state
 50 having jurisdiction in one county or less than one county, to
 51 the extent they are expressly made subject to Ch. 120, F.S., by
 52 special law.

53 (b) "Compliance economic review" shall mean a good faith
 54 economic analysis which includes and presents the following
 55 information pertaining to a particular rule:

56 1. All information specified in s. 120.54(3)(b)2.a.;

- 57 2. All information specified in s. 120.541(2);
- 58 3. The impact on a person's entry into a lawful profession
- 59 or occupation;
- 60 4. The impact on the availability to the public of lawful
- 61 professional or occupational services;
- 62 5. The impact on the creation or retention of lawful
- 63 employment positions;
- 64 6. Whether the rule restricts individuals in seeking lawful
- 65 employment;
- 66 7. The imposition of any additional costs on lawful
- 67 businesses not described in the analyses under sub-paragraphs 1
- 68 or 2; and
- 69 8. A justification for the rule summarizing the benefits of
- 70 the rule.
- 71 (c) "Data Collection Rules" shall mean those rules
- 72 requiring the submission of data to the agency from external
- 73 sources, including but not limited to local governments, service
- 74 providers, clients, licensees, other constituents and market
- 75 participants.
- 76 (d) "Revenue Rules" shall mean those rules fixing amounts
- 77 or providing for the collection of money.
- 78 (2) As provided in this section, each agency shall review
- 79 all rules of that agency in effect on or before November 16,
- 80 2010, and which remain in effect on the effective date of this
- 81 act, to determine whether the economic impact of each rule
- 82 exceeds any of the criteria established in s. 120.541(2)(a).
- 83 (3) PUBLICATION OF NOTICES, DETERMINATIONS AND REPORTS.
- 84 Agencies shall publish notices, determinations and reports

85 required under subsections (4), (5), or (6) of this section
 86 exclusively in the following manner:

87 (a) The agency shall publish each notice, determination and
 88 complete report on its Internet website.

89 1. Reports required under subsection (4), including any
 90 corrections to reports as a result of a determination under
 91 subsection (5), shall be accessible through one or more Internet
 92 links using the following URL format:

93 [Agency's home page internet
 94 address]/2011 Rule review/[Florida Administrative Code
 95 (F.A.C.) title and subtitle (if applicable) designation for
 96 the rules included].

97 (Example: http://www.dos.state.fl.us/Rule_review/1S).

98 2. The lists of Group 1 Rules and Group 2 Rules, required
 99 under subsection (4), shall be accessible through an Internet
 100 link in the following URL format:

101 [Agency's home page internet
 102 address]/2011 Rule review/Economic Review/Schedule.

103 (Example:
 104 http://www.dos.state.fl.us/Rule_review/Economic Review/Sche
 105 dule)

106 3. Determinations under subsection (5) shall be accessible
 107 through an Internet link in the following URL format:

108 [Agency's home page internet
 109 address]/2011 Rule review/Objection Determination/[F.A.C.
 110 Rule number].

111 (Example:
 112 http://www.dos.state.fl.us/Rule_review/Objection Determinat

113 ion/1S-1.001).

114 4. Completed compliance economic reviews shall be

115 accessible through an Internet link in the following URL format:

116 [Agency's home page internet

117 address]/2011 Rule review/Economic Review/[F.A.C.Rule

118 number].

119 (Example:

120 http://www.dos.state.fl.us/Rule review/Economic Review/1S-

121 1.001)

122 (b)

123 1. Each notice shall be accessible through an Internet link

124 using the following URL format:

125 [Agency's home page internet

126 address]/2011 Rule review/Notices.

127 (Example: <http://www.dos.state.fl.us/Rule review/Notices>).

128 2. A copy of each notice shall be promptly delivered to the

129 Department of State for publication in the next available issue

130 of the Florida Administrative Weekly.

131 3. Each notice shall identify the publication for which

132 notice is being given, and include:

133 1. The name of the agency;

134 2. The name, physical address, telefacsimile number, and

135 electronic mailing address for the person designated to receive

136 all inquiries, public comments, and objections pertaining to the

137 w publication identified in the notice;

138 3. The particular URL address for the Internet web page

139 through which the publication is accessible; and

140 4. The date the notice and publication is first published

141 on the agency's Internet website.

142 _____

143 _____

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

147 (4) INITIAL REVIEW AND REPORTING. By December 1, 2011, each
 148 agency shall complete the following:

149 (a) Notwithstanding s. 120.74(2), each agency's biennial
 150 report under s. 120.74 for the year 2011, shall be filed by
 151 December 1, 2011.

152 (b) In addition to the certification required by s.
 153 120.74(2), each agency shall report the following information
 154 respecting each rule of the agency in effect as of the reporting
 155 date:

156 1. Whether the rule is a Revenue Rule, identifying the fund
 157 or account into which collections are deposited; and for each
 158 Revenue Rule, whether the rule authorizes, imposes or
 159 implements:

160 a. Registration, license, or inspection fees;

161 b. Transportation service tolls, whether for road, bridge,
 162 rail, air, waterway, port;

163 c. Fees for a specific service or purpose not included in
 164 a. or b.;

165 d. Fines, penalties, costs, or attorneys fees;

166 e. Any tax;

167 f. Any other amounts collected which are not in the
 168 foregoing categories.

169 2. Whether the rule is a Data Collection Rule and include
 170 the following information for each Data Collection Rule:

171 a. The statute(s) authorizing the collection of such data;

172 b. The purposes for which the agency uses the data and any
 173 purpose for which the data is used by others;

174 c. The policies supporting reporting and retention of the
 175 data;

176 d. Whether and to what extent the data is exempt from
 177 public inspection under ch. 119.

178 3. Whether the agency plans to repeal the rule and the
 179 estimated timetable for repeal, subject to subsection (8).

180 4. Whether the agency plans to amend the rule and the
 181 estimated timetable for amendment.

182
 183 If the agency does not plan to amend or repeal the Rule on or
 184 before December 31, 2012, the following additional information
 185 shall be provided:

186 5. Whether the rule became effective after November 16,
 187 2010, and if so, whether the rule was required to be ratified by
 188 the Legislature pursuant to s. 120.541(3).

189 6. Whether the rule was effective on or before November 16,
 190 2010, and if so, whether the rule probably will have, for the
 191 five year period of time beginning January 1, 2011, any of the
 192 economic impacts described in s. 120.541(2) (a).

193 7. Whether the rule is designated as Group 1 or Group 2
 194 based on the following:

195 Rules effective on or before November 16, 2010, identified
 196 under subparagraph (4) (b) 6. as probably having one of the

197 economic impacts listed in s. 120.541(2)(a), shall be
 198 divided by the agency into two approximately equal groups
 199 designated as Group 1 and Group 2.

200 (c) The Office of Fiscal Accountability and Regulatory
 201 Reform (OFARR) may designate any rule for which information
 202 required in this subsection was previously provided to OFARR as
 203 exempt from full review under the provisions of this subsection.
 204 Each agency shall include in its report any rule so designated,
 205 identifying it as exempt. For each rule so designated, if the
 206 agency plans to retain the rule without amendment the agency
 207 shall report:

208 1. The information required in subparagraphs (4)(b)1. and
 209 2., and

210 2. The information required in subparagraphs (4)(b)6. and
 211 7., but only with respect to each rule that OFARR determines to:

- 212 a. Adversely affect the availability of business services;
- 213 b. Adversely affect job creation or retention;
- 214 c. Place unreasonable restrictions on access to employment;
- 215 or
- 216 d. Impose a significant regulatory related cost.

217 (d) The report required in this subsection shall be
 218 published incorporating a table consistent with the following
 219 example:

Agency	F.A.C. Rule Number		OFFAR Exempt ¹	REVENUE RULE/Fund or Account ⁴						Data Collecti on Rule ²	Repeal ³	Amend ³	Effectiv e after 11/16/2010	Effective on or before 11/16/2010	
	Titl e	Number		Licensur e fee	Transpor t. Tolls	Other Fees	Fines	Tax	Other Revenue					Probable 120.541(2)(a) impact Group 1 or 2	Not probable impact
Possible answers			Exempt or blank	Y (G.R.) or N	Y or N	Y or N	Y or N	Y or N	Y or N	Y or N	Y or N	Y or N	Y or N	1 or 2 or blank	N

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Footnotes:

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1- If Exempt, use "Exempt" for the following columns: Repeal, Amend, and Effective after

222

11/16/2010.

223

2- Provide notes indicating the statutory authority for data collection, purpose for which agency

224

uses data, purposes used by others, policies reporting data collection and retention.

225

3-Provide estimated timetable for repeal or amendment.

226

4-For Revenue Rules, include fund or account name in which collections are deposited. G.R. may be

227

used for General Revenue

228

229

(e) In addition to the report required by this subsection

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(4), each agency shall publish a notice disclosing its list of

231

its Group 1 Rules and Group 2 Rules by rule number and title in

232

the manner provided in subsection (3).

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(5) OBJECTION TO INITIAL REVIEW AND REPORT. Public input on

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reports required in subsection (4) may be provided by stating an

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objection to the information in the report, identifying the rule

236

or rules to which the objection relates, submitted in writing or

237

electronically to the person designated in the report.

238

(a) An objection under this subsection to information

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provided in response to subparagraph (4) (a) 6. must include

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allegations of fact upon which the objection is based.

241

Allegations of fact related to other objections may be included.

242

(b) An objection to the information provided in the report

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must be made by persons as follows:

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1. The following may submit objections no later than 60

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days from the date of publication of a report required in

246

subsection (4):

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a. The Small Business Regulatory Advisory Council;

248

b. A local government, a school district, or any other

249 political subdivision;

250 c. A lobbyist or principal as defined by s. 11.045(1),
 251 F.S., or s. 112.3215, F.S.; or

252 d. A person, or agent of such person, required to submit a
 253 Florida Income Tax return for any year after calendar year 2005.

254 2. Any person not included in subparagraph (5) (b)1. may
 255 submit objections no later than June 1, 2012.

256 (c) The agency shall determine whether or not to sustain an
 257 objection based upon the information provided with the
 258 objection, treating allegations of fact as if they are true, and
 259 any further review of information available to the agency to
 260 correct its report.

261 1. An objection by a person included in subparagraph
 262 (5) (b)2., objecting to the failure to designate a rule as Group
 263 1 or Group 2 pursuant to subparagraph (4) (a)7., shall be
 264 determined based upon the standard that there is a reasonable
 265 likelihood that the rule will have an economic impact described
 266 in s. 120.541(2) (a).

267 2. No objection may be sustained to information provided
 268 under subparagraphs (4) (b)3., 4. or 7.

269 (d) No later than 20 days from the date an objection is
 270 submitted the agency shall publish its determination of the
 271 objection in the manner provided in subsection (3).

272 1. The agency's determination with respect to an objection
 273 is final and not subject to further proceedings, hearing, or
 274 judicial review.

275 2. If the agency sustains an objection, it shall correct
 276 its report within 10 days of such determination and shall

277 publish notice of the correction in the manner provided in
 278 subsection (3). The corrected report shall indicate that
 279 corrections have been made and identify corrected portions.

280 3. If the agency overrules the objection of a person
 281 included in subparagraph (5)(b)2., no later than 10 days from
 282 the date of publishing the determination the agency shall file
 283 with the committee a report consisting of the determination, the
 284 rule, the objection and all supporting documentation, and a
 285 written explanation of the agency's determination.

286 (6) ECONOMIC REVIEW OF RULES AND REQUIRED REPORT. Each
 287 agency shall review and report with respect to all Group 1 and
 288 Group 2 rules, the applicable year being 2012 for Group 1 Rules
 289 and 2013 for Group 2 rules.

290 (a) No later than May 1, each agency shall complete the
 291 following:

292 1. For each rule the agency shall prepare a compliance
 293 economic review.

294 2. The agency shall publish notice of completing the
 295 compliance economic review for each rule in the manner provided
 296 in subsection (3).

297 3. The agency shall publish a copy of the compliance
 298 economic review, directions on how and when interested parties
 299 may submit lower cost regulatory alternatives to the agency, and
 300 the date the notice is published, in the manner provided in
 301 subsection (3).

302 4. The agency shall submit each compliance economic review
 303 to the Small Business Regulatory Advisory Council for their
 304 review.

305 (b) The Small Business Regulatory Advisory Council may
 306 submit lower cost regulatory alternatives to any rule no later
 307 than August 1, to the agency that adopted the rule. All other
 308 submittals of lower cost regulatory alternatives to any rule
 309 shall be filed with the applicable agency no later than June 1.

310 (c) No later than December 1, each agency shall file with
 311 the President of the Senate, the Speaker of the House, and the
 312 committee a final report of the agency's review. For each rule
 313 the report shall include:

- 314 1. The text of the rule;
- 315 2. The compliance economic review for the rule;
- 316 3. All lower regulatory cost alternatives received by the
 317 agency;
- 318 4. The agency's written explanation for rejecting submitted
 319 lower regulatory cost alternatives;
- 320 5. The agency's justification to repeal, amend, or retain
 321 without amendment the rule.

322 (d) Notice of the report shall be published the manner
 323 provided in subsection (3).

324 (e) No later than December 1, each agency shall begin
 325 proceedings under s. 120.54, F.S., to amend or repeal those
 326 rules so designated in the report. Proceedings to repeal rules
 327 so designated in the report are subject to subsection (8).

328 (7) With respect to Group 1 Rules or Group 2 Rules
 329 identified for retention without amendment, the Legislature may
 330 consider specific legislation nullifying any such rule, or
 331 altering the statutory authority any such rule.

332 (8) SUMMARY PROCESS FOR REPEALING LISTED RULES. The

333 requirements for the preparation, consideration, or use of a
 334 statement of estimated regulatory costs under s. 120.54, F.S.,
 335 and the provisions of s. 120.541, F.S., shall not apply in
 336 proceedings to repeal rules in accordance with subparagraph
 337 (4) (b)3. or paragraph (6) (e) of this section. Each rule listed
 338 for repeal in a report filed under subsections (4) or (6) shall
 339 stand repealed as of July 1 of the year following the filing of
 340 the report unless a repeal of the rule is effective prior to
 341 that date.

342 Section 3. Section 120.7455, Florida Statutes, is created
 343 to read:

344 120.7455 .-Legislative survey of regulatory impacts.

345 (1) From the effective date of this act, until July 2,
 346 2014, the Legislature may establish and maintain an internet-
 347 based public survey of regulatory impact soliciting information
 348 from Floridians and other persons regarding the kind and degree
 349 of regulation affecting private activities in the state. Such
 350 input may include, but need not be limited to:

351 (a) The registered business name or other name of each
 352 reporting person;

353 (b) The number and identity of agencies licensing,
 354 registering or permitting lawful activities of the reporting
 355 person;

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

359 (d) The identity of local, state and federal agencies, and
 360 other entities acting under color of law, regulating the lawful

361 activities of the reporting person or otherwise exercising power
 362 to enforce laws applicable to such activities; and,

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

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

370 (3) Any person reporting or otherwise providing information
 371 solicited by the Legislature in conformity with this section
 372 shall be immune from any enforcement action or prosecution that
 373 is

374 (a) Instituted or relies upon the fact of reporting or
 375 non-reporting of information, or

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

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

PCB RRS 11-02a

ORIGINAL

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389 Section 4. Nothing in this act shall be construed to
390 change the legal status of a rule that has otherwise been
391 judicially or administratively determined to be invalid.

392 Section 5. Section 2 of this act shall stand repealed as
393 of July 2, 2014, unless amended or extended by subsequent act of
394 the Legislature.

395 Section 6. This act shall take effect July 1, 2011.