

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB RRS 12-01 Nullification and Repeal of Administrative Rules

**SPONSOR(S):**

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

| REFERENCE  | ACTION | ANALYST | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF |
|--|--------|---------|--|
| Orig. Comm.: Rulemaking & Regulation<br>Subcommittee |        | Miller  | Rubottom                                 |

### SUMMARY ANALYSIS

The bill amends the Administrative Procedure Act (“APA”)<sup>1</sup> by codifying the legal rule that the repeal of a substantive statute also acts to repeal the administrative rules adopted to implement that statute. The bill also creates a summary process for the Department of State (“DOS”) to repeal rules which are no longer in full force and effect; this process includes legal review by the Attorney General and notice and an opportunity for anyone to follow the current hearing process to challenge a proposed summary rule repeal which cannot be effective until the challenge has been resolved.

The bill also provides for the nullification and repeal of 270 existing rules which are no longer needed or for which the specific law implemented has been repealed. These include:

- Certain rules adopted by the five separate water management districts because the districts find these rules are outdated or otherwise unnecessary for effective program function.
- Certain existing rules for which the substantive laws implemented by the rules have been repealed, the agency adopting the rules has been abolished, and the rulemaking authority has been repealed. The rules no longer have any effect yet are published as part of the FAC. As no agency appears to have authority to repeal these rules legislative action is required to remove them from the Florida Administrative Code (“FAC”).<sup>2</sup>
- Certain existing rules implementing statutes for which responsibility has been transferred to another agency or the specific statute was repealed but reenacted under a different agency, without a clear transfer of the rules or rulemaking authority to the new agency. The bill provides an effective date of 60 days after the bill becomes law. This provides a notice period for the change in the rules similar to the minimum 48 day period provided in rule repeal proceedings under the APA.<sup>3</sup>

An effective date of July 1, 2013, is provided for those rules nullified in the bill but as to which the responsible agency is directed to initiate rulemaking if the rules are necessary to the proper implementation of an existing program. All other provisions are effective 60 days after the bill becomes law.

<sup>1</sup> Ch. 120, F.S.

<sup>2</sup> The Florida Administrative Code is the official compilation of all rules of this state. Publication and maintenance of the FAC is the responsibility of the Department of State. Section 120.55(1)(a)1., F.S.

<sup>3</sup> To repeal a rule an agency must follow a statutory procedure similar to that for rule adoption. Section 120.54(3)(a), F.S. The notice of intended repeal must be filed a minimum of 28 days before the repeal is filed for adoption with DOS. Section 120.54(3)(a)2., F.S. Once filed with DOS the repeal is not effective for 20 days. Section 120.54(3)(e)6., F.S.

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

**STORAGE NAME:** pcb01.RRS

**DATE:** 12/1/2011

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### 1. Rulemaking Authority is a Power Delegated by the Legislature

A rule is an agency statement of general applicability which interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency as well as certain types of forms.<sup>4</sup> Rulemaking authority is delegated by the Legislature<sup>5</sup> through statute and authorizes an agency to “adopt, develop, establish, or otherwise create”<sup>6</sup> a rule. Agencies do not have discretion whether to engage in rulemaking.<sup>7</sup> To adopt a rule an agency must have a general grant of authority to implement a specific law by rulemaking.<sup>8</sup> The grant of rulemaking authority itself need not be detailed.<sup>9</sup> The specific statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.<sup>10</sup>

A rule is binding and operative from its effective date until modified or superseded by subsequent legislation.<sup>11</sup> The APA is silent on how to treat rules adopted to implement or interpret specific powers and duties in a substantive law when that law is subsequently repealed. The courts have determined that repeal of the specific law implemented by a rule *de facto* repeals the rule, since the rule no longer has a substantive basis.<sup>12</sup>

Agencies have been inconsistent in applying this standard. Currently, both the printed and online versions of the FAC include rules adopted by the former Advisory Council on Intergovernmental Relations (“ACIR”)<sup>13</sup> and the former Department of Labor and Employment Security (“DLES”)<sup>14</sup> despite the fact that both agencies, together with their rulemaking authority, have been abolished, and the laws implemented have been repealed.<sup>15</sup> However, certain rules of the former Department of Commerce (“DOC”)<sup>16</sup> continued to be published in the online version of the FAC as recently as November 8, 2011,<sup>17</sup> but are now identified by DOS as “repealed” based only on the statute abolishing DOC and not on any repeal of the specific laws implemented by these rules.<sup>18 19</sup>

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<sup>4</sup> s. 120.52(16), F.S.; *Florida Department of Financial Services v. Capital Collateral Regional Counsel-Middle Region*, 969 So. 2d 527, 530 (Fla. 1<sup>st</sup> DCA 2007).

<sup>5</sup> *Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So. 2d 594 (Fla. 1<sup>st</sup> DCA 2000).

<sup>6</sup> s. 120.52(17), F.S.

<sup>7</sup> s. 120.54(1)(a), F.S.

<sup>8</sup> s. 120.52(8) & s. 120.536(1), F.S.

<sup>9</sup> *Save the Manatee Club, Inc.*, supra at 599.

<sup>10</sup> *Sloban v. Florida Board of Pharmacy*, 982 So. 2d 26, 29-30 (Fla. 1<sup>st</sup> DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, 794 So. 2d 696, 704 (Fla. 1<sup>st</sup> DCA 2001).

<sup>11</sup> *Florida Department of Revenue v. A. Duda & Sons, Inc.*, 608 So. 2d 881 (Fla. 5<sup>th</sup> DCA 1992), quoting *Hulmes v. Division of Retirement*, 418 So. 2d 269, 270 (Fla. 1<sup>st</sup> DCA 1982), rev. den. 426 So. 2d 26 (Fla. 1983).

<sup>12</sup> *Office of Insurance Regulation v. Service Insurance Company*, 50 So. 3d 637 (Fla. 1<sup>st</sup> DCA 2011); *Hulmes*, supra at 270.

<sup>13</sup> Title 37, FAC.

<sup>14</sup> Chapter 38I-40, FAC

<sup>15</sup> See discussion in sections A.6.c. and d., below..

<sup>16</sup> Chapters 8K-1, 8K-2, 8M-1, 8M-2, 8M-3, FAC.

<sup>17</sup> <https://www.flrules.org/gateway/ChapterHome.asp?Chapter=8K-1>,

<https://www.flrules.org/gateway/ChapterHome.asp?Chapter=8K-2>, <https://www.flrules.org/gateway/ChapterHome.asp?Chapter=8M-1>,

<https://www.flrules.org/gateway/ChapterHome.asp?Chapter=8M-2>,

<https://www.flrules.org/gateway/ChapterHome.asp?Chapter=8M-3> (all accessed on 11/4/2011); Spreadsheet of “Orphan Rules” with comments from DOS, received from staff of the Joint Administrative Procedures Committee on 11/8/2011 and maintained by the staff of the Rulemaking & Regulation Subcommittee.

<sup>18</sup> <https://www.flrules.org/gateway/ChapterHome.asp?Chapter=8K-1>,

<https://www.flrules.org/gateway/ChapterHome.asp?Chapter=8K-2>, <https://www.flrules.org/gateway/ChapterHome.asp?Chapter=8M-1>,

<https://www.flrules.org/gateway/ChapterHome.asp?Chapter=8M-2>,

<https://www.flrules.org/gateway/ChapterHome.asp?Chapter=8M-3> (all accessed on 11/30/2011).

The resulting uncertainty in determining whether and when a legislative enactment results in the automatic repeal of administrative rules, together with limited guidance in present statutes, exposes the agencies to challenges for their interpretation of the effect of statute. The current statutes do provide for the preservation and continuation of administrative rules when a program is transferred completely from one agency to another.<sup>20</sup> Present statutes do not directly address the impact of abolishing an agency or a grant of rulemaking power without altering the specific powers and duties granted to a subdivision of that agency by a prior enabling statute. The clear purpose of s. 20.06, F.S., is to maintain regulatory continuity when a program is transferred to a different agency, regardless of the abolishment of the prior agency or repeal of its grant of rulemaking authority. Linking the fate of a rule to the substantive statute that is interpreted or implemented would provide needed clarity as to whether a rule remains in full force and effect.

## 2. Guidance to the Agencies

The PCB clarifies the law by codifying the legal doctrine in *Office of Insurance Regulation v. Service Insurance Company* and *Hulmes v. Division of Retirement*.<sup>21</sup> Unless the Legislature provides otherwise, the repeal of specific powers and duties granted by substantive law will automatically repeal all rules adopted to implement those specific powers and duties. DOS is directed to update the FAC by showing the repeal of affected rule(s) as of the effective date of the repealing law.

## 3. Procedure for Summary Repeal of Rules

The PCB creates a new procedure for DOS to follow when it has reason to question whether a rule is still in force or effect. DOS is required to conduct a continuous revision system as part of maintaining and publishing the FAC.<sup>22</sup> As discussed above, there exists some uncertainty on how the DOS is to deal with rules still published in the FAC but for which the promulgating agency was abolished, the rulemaking authority was repealed, or the laws implemented by the rules were repealed. In some cases DOS struck the rules from the FAC solely because the adopting agency was abolished.<sup>23</sup> Other rules remain in the FAC despite repeal of all specific laws that were implemented.<sup>24</sup> Section 2 of the PCB allows for resolution of such uncertainty.

The PCB authorizes DOS, through the Secretary of State, to seek an advisory opinion from the Attorney General when doubt arises as to whether a published rule is still in full force and effect. Notice of the request shall be published in the Florida Administrative Weekly ("FAW"). Within 60 days the Attorney General shall provide the Secretary with a written opinion on the status of the rule; notice of the opinion shall also be published in the FAW. If the opinion is that the rule is no longer in full force and effect, the published notice shall also state the rule will be removed from the FAC. Anyone objecting to this summary repeal will have the standard 21 days to file a challenge.<sup>25</sup> The objection will be filed as a standard petition challenging a rule, providing the objecting party with the hearing and appeal rights granted in the APA.<sup>26</sup> A petition objecting to the summary repeal must be filed against the agency with authority to repeal the rule and not DOS. If no agency has rulemaking authority to repeal the rule, the objecting party must name DOS as the respondent to the petition and the Attorney General must represent DOS in all resulting proceedings.

Once the 21 day period from publishing the notice of the Attorney General's opinion has run, or upon the finality of a decision overruling the objection(s) to summary repeal, DOS shall remove the rule from the FAC and update the historical notes to show the manner in which the rule was repealed.

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<sup>19</sup> DOC was abolished by Ch. 96-320, s. 3, Laws of Florida. See section A.5. of this Analysis for a discussion of the affected programs and the rules nullified by the PCB.

<sup>20</sup> Section 20.06(2), F.S., providing for Type Two program transfers.

<sup>21</sup> See notes 11, 12, *supra*.

<sup>22</sup> Section 120.55(1)(a)1., F.S.

<sup>23</sup> See note 19, *supra*.

<sup>24</sup> See note 16, *supra*.

<sup>25</sup> Section 120.56(2)(a), F.S.

<sup>26</sup> Sections 120.56, 120.569, 120.57, 120.68, F.S.

The purpose of the rulemaking is to provide public notice of the generally-applicable policies implementing or interpreting specific laws.<sup>27</sup> Publication of all rules in the FAC is designed to provide a central resource for the public to consult for the rules adopted by any agency having a regional or statewide jurisdiction.<sup>28</sup> Creating a process for review and summary repeal of rules which are no longer in full force and effect will facilitate the maintenance of an accurate and current FAC.

#### 4. **Nullification of Water Management District Rules**

The PCB directly nullifies a total of 165 rules of the five Water Management Districts. These rule repeals appear in Sections 3 through 7. A review by the Governor's Office of Fiscal Accountability and Regulatory Reform ("OFARR") and each of the Water Management Districts concluded these rules were not needed for continued effective operation the Districts' programs. Most of these fall into the following general categories with two specific exceptions:

- a. The rule is duplicative of statute or rule.
- b. The rule is not required to implement the policy of the statute.
- c. The rule references another rule or statute.
- d. The rule references a repealed statute.
- e. The rule is outdated or unnecessary to implement the statute.
- f. The statutory mandate for the rule was repealed.
- g. The rule duplicates information available in the District's Procedures Manual.
- h. The authority exercised in the rule was transferred to DEP.
- i. Rule 40D-4.054: Alteration of Exempt Projects - Rule to be combined with 40D-4.041, F.A.C., which sets forth what activity requires a permit.
- j. Rule 40D-21.441: Public Supply Water Shortage Mitigation Plans - Burdensome requirements for submittal of request for alternative water shortage plan.

#### 5. **Nullification of "Orphan Rules"**

As noted above, a review of the FAC disclosed a number of rules for which the adopting agency was abolished, the grant of rulemaking authority repealed, or the specific law implemented was repealed. Although repeal of the law implemented has been interpreted as repealing the rules adopted to implement that law,<sup>29</sup> DOS does not have express authority to determine whether a rule is still in full force and effect. Unless expressly repealed by act of the Legislature or as a result of repeal of the substantive law on which it depends, a rule may be repealed only by proper administrative action.<sup>30</sup> Where a rule continues in force and effect because the law implemented remains unchanged, even if moved under the jurisdiction of another agency, only an entity with the grant of rulemaking authority to implement that law is able to take action to repeal the rule. Where the rule remains in force but no rulemaking authority exists, the Legislature would have to create a new grant of rulemaking authority or repeal the rules by direct action. Sections 8 through 15 of the PCB constitute an exercise of the latter approach.

##### a. **Former Department of Commerce**

The former Department of Commerce was abolished in 1996<sup>31</sup> and several of its programs were moved to the Office of Tourism, Trade, and Economic Development ("OTTED").<sup>32</sup> The rules in Chapters 8K-1 and 8K-2, FAC, pertained to one such program. After relocation to OTTED, the rulemaking authority for this program was repealed<sup>33</sup> but the various laws implemented by the rules remained unaffected.<sup>34</sup>

<sup>27</sup> Sections 120.52(16), 120.54(1)(a), F.S.

<sup>28</sup> Section 120.55(1)(a)1., F.S.

<sup>29</sup> *Office of Insurance Regulation v. Service Insurance Company* and *Hulmes v. Division of Retirement*, supra.

<sup>30</sup> Section 120.54(3)(a)1., F.S.

<sup>31</sup> Ch. 96-320, s. 3, Laws of Florida.

<sup>32</sup> Ch. 96-320, s. 61, 133, Laws of Florida.

<sup>33</sup> Ch. 2002-180, s. 3, Laws of Florida.

<sup>34</sup> Former sections 288.707, 288.709, 288.7091, 288.71, 288.711, F.S.

Two of the laws implemented were repealed in 2007<sup>35</sup> and the remainder in 2011.<sup>36</sup> The effect of this latter repeal was delayed until December 31, 2011,<sup>37</sup> with the apparent effect of continuing two of the rules until that date.<sup>38</sup>

The rules in Chapter 8M-1, FAC, implemented provisions of the implementing bills for the 1991-1992 General Appropriations Act an apparently expired with the conclusion of that fiscal year. The rules in Chapter 8M-2, FAC, implemented a statute which was repealed in 1996.<sup>39</sup> The rules in Chapter 8M-3, FAC, pertained to a program which was also transferred to OTTED along with the law implemented but with the rulemaking authority repealed.<sup>40</sup> The specific law implemented later was revised extensively but that revision may not have completely repealed the substance of the law implemented by the rule.<sup>41</sup>

No entity currently has rulemaking authority to repeal these rules. DOS now shows these rules as repealed due to the abolition of DOC in 1996.<sup>42</sup> Section 8 of the PCB confirms the determination of DOS and the effect of the repeal of the substantive laws.

#### **b. Former Department of Health and Rehabilitative Services**

In 1996, responsibility for all public health matters was moved from the Department of Health and Rehabilitative Services (“HRS”) to the Department of Health (“DOH”).<sup>43</sup> This was a Type Two transfer<sup>44</sup> which included the rules previously adopted by HRS to implement the relevant statutes. The rules adopted by HRS in Chapter 10D-116, FAC, implemented s. 383.336, F.S., establishing practice parameters pertaining to the incidence of cesarean births in provider hospitals where the procedure was paid for with state or federal funds.<sup>45</sup> This section was not formally transferred to DOH until 1999.<sup>46</sup> Most rules of DOH are indexed in the FAC under Title 64, FAC, but the seven rules under former HRS Chapter 10D-116, FAC, have not been amended or readopted since their effective date in 1992.<sup>47</sup>

Whether or not the statutory program is still in effect, the public law naming DOH as the rulemaking authority was separated from the Type Two transfer of public health responsibility by three years and the amendment appeared in a technical bill to conform the statutes to the reorganization of HRS. Another question arises concerning the two rules in Chapter 10D-124, FAC, pertaining to the nursing scholarship loan program. The statute implemented by these rules was repealed<sup>48</sup> in 2002. While a new program was created<sup>49</sup> and DOH adopted rules to administer that program,<sup>50</sup> DOH has not acted to incorporate the rules in Chapter 10D-124 into the present program. Because DOH has not exercised jurisdiction over the rules in either chapter, a question exists as to whether DOH has rulemaking authority to amend or repeal these rules.

Sections 9 and 11 nullify these rules of the former HRS but provides a safe harbor by delaying the effective date of that nullification until July 1, 2013, for certain of the rules. If the rulemaking authority of DOH extends to these rules, DOH is directed to initiate rulemaking to readopt or amend those rules prior to the 2013 effective date if the rules are deemed necessary for existing programs. This delayed effective date applies to Rules 10D-116.001, 10D-116.002, 10D-116.003, 10D-116.004(1), (2), and (3),

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<sup>35</sup> Former sections 288.71 and 288.711 were repealed by Ch. 2007-157, s. 24, Laws of Florida.

<sup>36</sup> Ch. 2011-142, s. 487, Laws of Florida.

<sup>37</sup> Ch. 2011-142, s. 7, Laws of Florida

<sup>38</sup> Rules 8K-1.001 and 8K-1.002, FAC.

<sup>39</sup> Former s. 288.806, F.S., repealed by Ch. 96-320, s. 154, Laws of Florida.

<sup>40</sup> The transfer and repeal of the rulemaking grant were by Ch. 96-320, s. 133, Laws of Florida.

<sup>41</sup> Ch. 97-278, s. 49, Laws of Florida.

<sup>42</sup> See note 19, supra.

<sup>43</sup> Ch. 96-403, s. 6, Laws of Florida.

<sup>44</sup> The operative language existing in statute at the time has since be renumbered as Section 20.06(2), F.S.

<sup>45</sup> Section 383.336, F.S. (1995).

<sup>46</sup> Ch. 99-8, s. 77, Laws of Florida.

<sup>47</sup> <https://www.flrules.org/gateway/ChapterHome.asp?Chapter=10D-116> (accessed on 11/30/2011).

<sup>48</sup> Ch. 2002-387, s. 1058, Laws of Florida.

<sup>49</sup> Section 1009.67, F.S., created by Ch. 2002-387, s. 450, Laws of Florida.

<sup>50</sup> Ch. 64E-24, FAC.

10D-116.005, 10D-116.006(1), (2), (3), 10D-124.003, and 10D-124.004. Some of these rules contain old references to HRS or simply restate statute and should be repealed. (The Rules are listed in two distinct sections to facilitate the provision of different explanatory Notes.)

Section 10 nullifies Rules 10D-116.004(4), 10D-116.006(4), and 10D-116.007 because these rules exceed the authority delegated in statute.<sup>51</sup>

c. **Former Advisory Council on Intergovernmental Relations**

Title 37 of the FAC is comprised of 42 rules adopted by the ACIR in 1978. Many of the rules were adopted based on the authority of earlier versions of the APA<sup>52</sup> as well as the separate grant of rulemaking power to the ACIR.<sup>53</sup> In 1996, the rulemaking authority for ACIR was partially eliminated by revisions to the APA and its separate rulemaking authority, together with the agency itself, were abolished.<sup>54</sup> While the specific laws implemented by the ACIR rules were repealed at the same time,<sup>55</sup> the substance of those statutes apparently was reenacted with the creation of the Legislative Committee on Intergovernmental Relations.<sup>56</sup> This substantive statute was repealed in 2011.<sup>57</sup> The FAC still shows all rules in Title 37 as in force.<sup>58</sup>

Section 12 nullifies these rules to clarify the repeal of the laws implemented also terminated these rules.

d. **Former Department of Labor and Employment Security**

The PCB nullifies two different sets of rules adopted by the former Department of Labor and Employment Security (“DLES”), which was abolished in 2002.<sup>59</sup> The first set of rules implemented an asbestos management program pertaining to state occupied buildings.<sup>60</sup> Those rules are listed in Section 13. The second set pertained to vocational rehabilitation.<sup>61</sup> Those rules are listed in Section 14.

The specific laws implemented as part of the asbestos management program were repealed in 1999,<sup>62</sup> 2001,<sup>63</sup> and 2011.<sup>64</sup> The rulemaking authority for the rules was abolished only in 2011.<sup>65</sup> Because the rules are still listed in the FAC as in effect,<sup>66</sup> the PCB nullifies them to conform with the repeal of the laws implemented.

The rules listed in Section 14, pertaining to vocational rehabilitation were adopted by DLES prior to its abolishment. The Division of Vocational Rehabilitation subsequently was placed under the Department

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<sup>51</sup> Rule 10D-116.004(4) requires the provider hospital to make reports to the Agency for Health Care Administration (“AHCA”). Rule 10D-116.006(4) requires affected persons be advised the results of a review of a cesarean birth are not usable as evidence of a standard of care. Rule 10D-116.007 directs the AHCA to perform certain responsibilities. Section 383.336, F.S., does not authorize any of these rule provisions.

<sup>52</sup> Prior to its substantial amendment in 1996, s. 120.53, F.S., could have been interpreted as providing separate rulemaking authority for all agencies to adopt procedural requirements of the APA. This language was completely removed by Ch. 96-159, s. 9, Laws of Florida.

<sup>53</sup> Former section 163.706(4), F.S.

<sup>54</sup> Ch. 96-311, s. 9, Laws of Florida.

<sup>55</sup> Ch. 96-311, s. 9, Laws of Florida.

<sup>56</sup> Ch. 96-311, s. 1, Laws of Florida, created s. 11.70, F.S.

<sup>57</sup> Ch. 2011-34, s. 3 Laws of Florida.

<sup>58</sup> <https://www.flrules.org/gateway/Division.asp?toType=r&DivID=408> (accessed on 11/30/2011).

<sup>59</sup> Ch. 2002-194, s. 69, Laws of Florida.

<sup>60</sup> Ch. 38I-40, FAC.

<sup>61</sup> Ch. 38J-1, FAC.

<sup>62</sup> Ch. 99-5, s. 10, Laws of Florida, repealing former s. 255.554, F.S.

<sup>63</sup> Ch. 2001-89, s. 15, Laws of Florida, repealing s. 255.565, F.S.

<sup>64</sup> Ch. 2011-213, s. 35, Laws of Florida, repealing s. 255.552, 255.553, 255.555, 255.556, 255.557, 255.558, 255.559, 255.56, 255.561, and 255.562, F.S.

<sup>65</sup> Ch. 2011-213, s. 35, Laws of Florida, repealing s. 255.563, F.S.

<sup>66</sup> <https://www.flrules.org/gateway/ChapterHome.asp?Chapter=38I-40> (accessed on 11/30/2011).

of Education (“DOE”)<sup>67</sup> by substituting DOE for DLES in the Division’s substantive statute. This designation did not expressly transfer the rules for the program to DOE and the Department has not acted to readopt or amend the rules as part of the agency’s rulemaking. Because DOE has authority over the substantive statutes to which the rules relate, the PCB provides a safe harbor by delaying the effect of the nullification to July 1, 2013, and directs DOE to implement rulemaking to properly retain such of these rules as are necessary for the program.

**B. SECTION DIRECTORY:**

**Section 1:** Creates a new subsection (2) in s. 120.536(1), F.S., enacting as statute the doctrine that repeal of the specific law implemented or interpreted by a rule acts to repeal that rule. DOS is directed to remove such rules from the FAC as of the effective date of the law repealing the specific law implemented.

**Section 2:** Creates the procedure for DOS to review and institute summary repeal of rules which are no longer in full force and effect. Provides public notice of the proposed repeal. Any objection to the summary repeal is required to be brought as a challenge to proposed rulemaking under the APA.

**Section 3:** Nullifies certain rules of the Northwest Florida Water Management District.

**Section 4:** Nullifies certain rules of the Suwannee River Water Management District.

**Section 5:** Nullifies certain rules of the St. Johns Water Management District.

**Section 6:** Nullifies certain rules of the Southwest Florida Water Management District.

**Section 7:** Nullifies certain rules of the South Florida Water Management District.

**Section 8:** Nullifies rules of the former Department of Commerce. Provides explanatory notes.

**Section 9** Nullifies certain rules of the former Department of Health and Rehabilitative Services pertaining to implementation of a review program for cesarean births paid for with state or federal funds. Directs the Department of Health to initiate rulemaking to retain any of the rules. Provides explanatory notes.

**Section 10** Nullifies other rules of the former Department of Health and Rehabilitative Services pertaining to implementation of a review program for cesarean births paid for with state or federal funds, which rules exceed the scope of authority in the law to be implemented by the rules. Provides explanatory notes.

**Section 11** Nullifies certain rules of the former Department of Health and Rehabilitative Services pertaining to nursing scholarship loans. Directs the Department of Health to initiate rulemaking to retain any of the rules. Provides explanatory notes.

**Section 12** Nullifies rules of the former Advisory Council on Intergovernmental Relations. Provides explanatory notes.

**Section 13** Nullifies rules of the former Department of Labor and Employment Security pertaining to an asbestos management program. Provides explanatory notes.

**Section 14** Nullifies rules of the former Department of Labor and Employment Security pertaining to vocational rehabilitation. Directs the Department of Education to initiate rulemaking to retain any of the rules. Provides explanatory notes.

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<sup>67</sup> Ch. 2002-22, s. 1, Laws of Florida.

**Section 15** Requires the rules nullified in the PCB shall be treated as repealed and so noted in the Florida Administrative Code and the Florida Administrative Weekly. Provides the sections nullifying rules shall not be codified in the Florida Statutes.

**Section 16** Provides an effective date of 60 days after the bill becomes law. Provides the sections nullifying rules and requiring DOH or DOE to initiate rulemaking shall not become effective until July 1, 2013.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: No impact anticipated.
2. Expenditures: No impact anticipated.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None
2. Expenditures: None

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

No direct impact anticipated.

### D. FISCAL COMMENTS:

None

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: No

2. Other: Rulemaking authority is a legislative power delegated to executive agencies under strict separation of powers principles. The Legislature retains full authority under the constitution to nullify or alter any public policy or the legal effect of any rule adopted under such delegation.

### B. RULE-MAKING AUTHORITY:

The PCB clarifies the repeal of law implemented by rule acts to repeal the rule as well. The summary repeal procedure in Section 2 will provide authority for the Department of State to act to remove rules, such as those for the Advisory Council on Intergovernmental Relations, that no longer have an agency with rulemaking authority to be accountable for their management and repeal.

The PCB impacts the rulemaking authority of the Water Management Districts by nullifying a significant number of unnecessary rules without requiring the Districts to engage in rule repeal proceedings.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

NOTE: PCB RSS 12-01 was published November 30, 2011, with a section numbering error in that it included two sections numbered 8. A strike-all amendment correcting this mistake is expected to be



offered if the Subcommittee takes up the bill on December 7. This analysis is drawn to the corrected section numbers and a copy of the strike-all is attached to the initial version of this analysis for clarity.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**