

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB RORS 14-01 Administrative Procedures
SPONSOR(S): Rulemaking Oversight & Repeal Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Rulemaking Oversight & Repeal Subcommittee	12 Y, 0 N	Miller	Rubottom

SUMMARY ANALYSIS

Agencies are required to review their existing rules to identify and correct deficiencies, improve efficiencies, reduce paperwork and costs, clarify and simplify text, and revise or delete rules that become obsolete, unnecessary, or are redundant of statute. Each agency head is required biennially to file a report with the Speaker of the House, President of the Senate, and the Legislature's Joint Administrative Procedures Committee (JAPC) summarizing the results of this review and revision, suggesting certain legislative changes, and "specifically address(ing) the economic impact of the rules on small business." While agencies comply with this reporting requirement, most reports are merely *pro forma* restatements of the statute and provide little substantive information that facilitates effective oversight of their use of rulemaking authority.

In 2011 the Legislature suspended biennial reporting for that year and required all agencies to review and report on the economic effect of all then-existing rules. Those reports are due to be completed by the end of 2013. In the same act the Legislature required each agency to file a separate annual "regulatory plan" outlining all rulemaking the agency intended to implement in the next fiscal year (except emergency rulemaking). The act also provided some limited protection to encourage members of the public to respond to an online survey about the effect of state agency rules.

When a newly-enacted law requires adoption of new or amended administrative rules for proper implementation, current statute requires the agency charged with enforcing that law to formally propose such rules within 180 days of the effective date of the law. While agencies generally comply with this deadline, there are numerous examples of agencies failing to act within 180 days or interpreting the new law as not requiring rulemaking for proper implementation. In some instances this delay or inaction persists for several years.

The PCB replaces the biennial summary reporting requirement with an expanded, annual regulatory plan. Each agency will be required to determine whether each new law creating or affecting the agency's authority will require new or amended rules. If so, the agency must initiate rule development and publish proposed rules by specific deadlines. If not, the agency must state concisely why the law may be implemented without additional rulemaking. The regulatory plan must also state each existing law on which the agency will initiate rulemaking in the current fiscal year. The plan must be certified by the agency head and general counsel and published on the agency's internet website, with a copy of the certification filed with JAPC. The existing 180 day requirement is revised to coincide with the specific time requirements in the amended reporting statute.

The PCB compels adherence with the new reporting requirements and action deadlines by suspending the rulemaking authority of a non-compliant agency until that agency completes the required act or the end of the next regular legislative session, whichever is earlier.

The PCB repeals the retrospective economic review of existing rules as being complete with the publication of the final reports in December 2013. Also repealed is the section pertaining to the online survey.

The PCB has an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Introduction

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.¹ The effect of an agency statement determines whether it meets the statutory definition of a rule, regardless of how the agency characterizes the statement.² If an agency statement generally requires compliance, creates certain rights while adversely affecting others, or otherwise has the direct and consistent effect of law, it is a rule.³

Rulemaking authority is delegated by the Legislature⁴ by law authorizing an agency to “adopt, develop, establish, or otherwise create”⁵ a rule. Agencies do not have discretion whether to engage in rulemaking.⁶ To adopt a rule an agency must have an express grant of authority to implement a specific law by rulemaking.⁷ The grant of rulemaking authority itself need not be detailed.⁸ The particular 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.⁹ A delegation of authority to an administrative agency by a law that is vague, uncertain, or so broad as to give no notice of what actions would violate the law, may unconstitutionally allow the agency to make the law.¹⁰ Because of this constitutional limitation on delegated rulemaking, the Legislature must provide minimal standards and guidelines in the law creating a program to provide for its proper administration by the assigned executive agency. The Legislature may delegate rulemaking authority to agencies but not the authority to determine what should be the law.¹¹

In 1996 the Legislature extensively revised¹² agency rulemaking under the Administrative Procedure Act (APA)¹³ to require both an express grant of rulemaking authority and a specific law to be implemented by the rule.

Section 120.54(1)(b), F.S.: The “180 Day” Requirement

An agency may not delay implementation of a statute pending adoption of specific rules unless there is an express provision prohibiting application of the statute before implementing rules are adopted.¹⁴ If a law is enacted that requires agency rules for its proper implementation, “such rules shall be drafted and

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

² *Dept. of Administration v. Harvey*, 356 So. 2d 323, 325 (Fla. 1st DCA 1977)

³ *McDonald v. Dep’t of Banking & Fin.*, 346 So.2d 569, 581 (Fla. 1st DCA 1977), articulated this principle subsequently cited in numerous cases. See, *State of Florida, Dept. of Administration v. Stevens*, 344 So. 2d 290 (Fla. 1st DCA 1977); *Dept. of Administration v. Harvey*, 356 So. 2d 323 (Fla. 1st DCA 1977); *Balsam v. Department of Health and Rehabilitative Services*, 452 So.2d 976, 977–978 (Fla. 1st DCA 1984); *Department of Transp. v. Blackhawk Quarry Co.*, 528 So.2d 447, 450 (Fla. 5th DCA 1988), rev. den. 536 So.2d 243 (Fla.1988); *Dept. of Natural Resources v. Wingfield*, 581 So. 2d 193, 196 (Fla. 1st DCA 1991); *Dept. of Revenue v. Vanjaria Enterprises, Inc.*, 675 So. 2d 252, 255 (Fla. 5th DCA 1996); *Volusia County School Board v. Volusia Homes Builders Association, Inc.*, 946 So. 2d 1084 (Fla. 5th DCA 2007); *Florida Dept. of Financial Services v. Capital Collateral Regional Counsel*, 969 So. 2d 527 (Fla. 1st DCA 2007); *Coventry First, LLC v. State of Florida, Office of Insurance Regulation*, 38 So. 3d 200 (Fla. 1st DCA 2010).

⁴ *Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So. 2d 594 (Fla. 1st DCA 2000).

⁵ Section 120.52(17), F.S.

⁶ Section 120.54(1)(a), F.S.

⁷ Sections 120.52(8) & 120.536(1), F.S.

⁸ *Save the Manatee Club, Inc.*, supra at 599.

⁹ *Sloban v. Florida Board of Pharmacy*, 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, 794 So. 2d 696, 704 (Fla. 1st DCA 2001).

¹⁰ *Conner v. Joe Hatton, Inc.*, 216 So.2d 209 (Fla.1968).

¹¹ *Sarasota County. v. Barg*, 302 So.2d 737 (Fla. 1974).

¹² Ch. 96-159, LOF.

¹³ Chapter 120, F.S.

¹⁴ Section 120.54(1)(c), F.S.

formally proposed as provided in (s. 120.54, F.S.) within 180 days after the effective date of the act, unless the act provides otherwise.”¹⁵ This “180 day requirement” predates the 1996 revisions.¹⁶

The statute does not require complete adoption of rules within 180 days. An agency may comply with the statute merely by publishing a notice of proposed rule.¹⁷ Proposed rules can be repeatedly, substantially revised based on public input and they may also be withdrawn. Consequently, the 180 day requirement does not ensure prompt rulemaking.

1. JAPC Monitoring and Agency Compliance

JAPC monitors agency compliance with the 180 day requirement in furtherance of its rulemaking oversight duties.¹⁸ JAPC staff review legislation enacted each session to identify new or changed laws that appear to require the adoption of new rules or the amendment or repeal of existing rules for proper implementation. Where the law appears to mandate new rulemaking (for example, using terms such as “shall adopt rules,” or provides that the agency “shall establish” some standard or “must” make some policy), or restates an existing “mandate” for rulemaking, JAPC sends a letter reminding the agency of the 180 day requirement. If the text of proposed rules is not published, at least as part of a notice of rule development, within the 180 days, JAPC will follow with an inquiry as to when the agency will initiate public rulemaking on that issue.

Agencies generally comply with the 180 day requirement as a matter of maintaining an effective working relationship between the executive and legislative offices even though JAPC has no power to compel compliance. For the period 2007 – 2011, JAPC identified several agencies that had not proposed rules within 180 days of the enactment of laws appearing to mandate new rulemaking. At its meeting of February 18, 2013, JAPC heard presentations from 13 different agencies on whether rulemaking actually was necessary to implement particular laws and, if so, explanations for the lack of progress. Some members of the committee asked whether these agencies treated the statute as a “suggestion” instead of a mandatory rulemaking requirement.

2. “Directive” vs. “Mandate”

Courts generally interpret words in statute such as “shall” or “must” as mandating a particular action where the alternative to the action is a possible deprivation of some right. However, use of such otherwise-mandatory terms where there is no effective consequence for the failure to act renders them *directory*, not compulsory.¹⁹ A person regulated by an agency or having a substantial interest in an agency rule may petition that agency to adopt, amend, or repeal a rule,²⁰ including where the agency does not act within the 180 day requirement. The APA provides no other process to enforce the 180 day requirement, nor the authority for any specific entity to compel compliance.

3. Effect of Proposed Change

The bill retains the requirement for agencies to identify and proceed with rulemaking necessitated by changes in newly-enacted law but revises the deadline and method for compliance by incorporating the requirements of revised s. 120.74, F.S.

Section 120.74, F.S.: Biennial Reporting

¹⁵ Section 120.54(1)(b), F.S.

¹⁶ The 180 requirement was enacted as Ch. 85-104, s. 7, LOF.

¹⁷ Section 120.54(3)(a), F.S. This is the common interpretation of the 180 day requirement. An alternative interpretation would be that a notice of rule development published under s. 120.54(2), F.S., including a *preliminary* draft of proposed rules, may be sufficient to comply.

¹⁸ Joint Rule 4.6.

¹⁹ *S.R. v. State*, 346 So.2d 1018, 1019 (Fla.1977); *Reid v. Southern Development Co.*, 42 So. 206, 208, 52 Fla. 595, 603 (1906); *Ellsworth v. State*, 89 So.3d 1076, 1079 (Fla. 2d DCA 2012); *Kinder v. State*, 779 So. 2d 512, 514 (Fla. 2d DCA 2000).

²⁰ Section 120.54(7), F.S. If the agency denies the petition the requesting party may seek judicial review of that decision. Sections 120.52(2) and 120.68, F.S.

1. 1996 Reporting Requirement

As part of the comprehensive revision of rulemaking in 1996, agencies were required to review all rules adopted before October 1, 1996, identify those exceeding the rulemaking authority permitted under the revised APA, and report the results to JAPC. JAPC would prepare and submit a combined report of all agency reviews to the President of the Senate and Speaker of the House for legislative consideration.²¹

Another 1996 law added a requirement for ongoing rulemaking review, revision and reporting.²² Under that law as presently amended, each agency reviews its rules every 2 years and amends or repeals rules as necessary to comply with specific requirements.²³ The agency head must report the results and other required information to the President, Speaker, JAPC, and “each appropriate standing committee of the Legislature” biennially on Oct. 1.²⁴

2. Limited Utility of s. 120.74 Reports

Agencies as defined in the APA,²⁵ including school districts, comply with the requirements of s. 120.74, F.S., typically by filing summary reports that simply verify the agency performed the required reviews, list rules identified in the review for amendment or repeal, and finding no undue economic impact on small businesses (a required subject of the report). For example, one 2009 report from a school district identified the following changes to the student code of conduct:

The Code of Student Conduct is reviewed and revised annually and serves as the School Board’s policies and procedures for governing student behavior on school grounds, at school activities, and while being transported to and from school. The majority of the recommended changes for 2008-09 are minor revisions in punctuation, spelling, language, or order of paragraphs.²⁶

The 2013 report for the same school district states the following as “what & why the policy changed” for the student code of conduct:

The Code of Student Conduct is reviewed and revised annually and serves as the School Board’s policies and procedures for governing student behavior on school grounds, at school activities, and while being transported to and from school.²⁷

A different school district submitted substantially the same reports for 2009 and 2013, commenting only on that district’s review and management of forms. That district’s reports included no information on whether any rules were identified as requiring revision or repeal due to changes in law.²⁸

Reports by state agencies have reflected inconsistent application of the requirement for the report to “specify any changes made to (the agency’s) rules as a result of the review...”²⁹ One agency’s 2009 report identified each rule requiring repeal or amendment and new rules required by program changes,

²¹ Ch. 96-159, s. 9(2), LOF.

²² Ch. 96-399, s. 46, LOF, codified as s. 120.74, F.S. In both 2006 and 2008, the Legislature added substantive provisions to this section. Ch.’s 2006-82, s. 9, and 2008-179, s. 8, LOF.

²³ Identify and correct deficiencies; clarification and simplification; delete rules that are obsolete, unnecessary, or merely repeat statutory language; improve efficiency, reduce paperwork, decrease costs to private sector and government; coordinate rules with agencies having concurrent or overlapping jurisdiction. Section 120.74(1), F.S. (Supp. 1996).

²⁴ Section 120.74(2), F.S.

²⁵ Section 120.52(1), F.S.

²⁶ School Board of Manatee County, “Section 120.74 Report” (Sept. 29, 2009), received by JAPC on Nov. 3, 2009. On file with Subcommittee staff.

²⁷ School Board of Manatee County, “Section 120.74 Report” (Sept. 24, 2013), received by the House on Oct. 3, 2013. On file with Subcommittee staff.

²⁸ School Board of Santa Rosa County, 2009 Report received by JAPC on Sept. 30, 2009, and 2013 Report received by the House on Aug. 26, 2013, both on file with Subcommittee Staff.

²⁹ Section 120.74(2), F.S.

including a brief explanation of the reason for the amendment or adoption.³⁰ A different agency simply identified obsolete rules for repeal (without stating why these were obsolete) and listed a rule for amendment to update documents incorporated by reference (without identifying the documents so referenced.)³¹ Some agencies provided lengthy lists of rules identified for amendment or repeal with little explanation other than repeating the terms of the review statute as to the reason for such proposed action.³²

3. *Regulatory Plans*

In 2011 the statute was amended to require each agency to file an annual regulatory plan in addition to the biennial reports.³³ The regulatory plan identifies those rules the agency intends to adopt, amend, or repeal during the next fiscal year. Effective in 2012, these reports have not proven any more substantive than the biennial reports described above.

4. *Effect of Proposed Change*

The bill replaces the biennial reporting with an expanded form of the annual regulatory plan. Each agency will be required to identify those laws respecting which rulemaking is planned. In addition, the agency must identify each law affecting the agency's substantive authority or responsibilities enacted during the most recent regular legislative session, and whether rulemaking is necessary to implement such newly-enacted provisions. If so, the statute sets specific deadlines for the agency to publish the notice of rule development and creates a new requirement for publishing the notice of proposed rule³⁴ by a date certain. If the agency states rulemaking is not necessary to implement the new enactment, the report must contain a short analysis supporting that conclusion. Agencies also are required to identify all rules adopted, amended or repealed in the prior fiscal year and state which such changes were listed in a prior year's plan. The report also must verify that the agency continuously reviews and revises its rules to maintain conformity with applicable law. The reports will be verified by both the agency head and the agency's primary lawyer. Copies of the certification will be delivered to JAPC and included with the agency's annual budget documents filed with the House and Senate. Agencies are responsible for publishing their regulatory plans on their websites and a notice of publication, together with a hyperlink to the regulatory plan, in the Florida Administrative Register.

As agencies meet the statutory deadlines for rule development and publishing notices of proposed rules they must certify that compliance with JAPC. Unless an agency states a different time in the required notice of rule development, the proposed rules must be published by January 1 following the October 1 deadline for the regulatory plan. Agencies have the option to set an alternate deadline up to the following April 1. Finally, if an agency is unable to publish the notice of proposed rule by April 1 the agency may extend the deadline for up to 180 additional days by publishing a notice of extension in the Florida Administrative Register, stating a revised deadline, the reason for the extension, and referencing the published notice of rule development.

Agencies will be required to supplement their regulatory plans if a law enacted during a special session affects their duties or authority.

To ensure compliance with the law, the rulemaking authority of any agency failing to report as, and by when, required by the statute is suspended until the agency complies, or until the end of the subsequent regular legislative session. During the suspension the agency would be allowed to complete rulemaking actions required by the revised statute, including publishing notices of rule

³⁰ Dept. of Children and Families, "Biennial rule review report required by section 120.74, Florida Statutes" (Oct. 1, 2009), received by JAPC on Oct. 7, 2009.

³¹ Dept. of Agriculture and Consumer Services, "August 20, 2009 Memorandum regarding §120.74, Florida Statutes, Rule Review" (Oct. 1, 2009), received by JAPC on Oct. 1, 2009.

³² Dept. of Business & Professional Regulation, "Section 120.74, Florida Statutes Biennial Report to the Legislature" (Oct. 1, 2009), received by JAPC on Oct. 5, 2009; Dept. of Environmental Protection, 2009 Report received by JAPC on Oct. 2, 2009.

³³ Ch. 2011-225, s. 4, LOF. The bill also suspended reporting in 2011 and 2013 under s. 120.74(1) and (2) to avoid duplication with the economic reviews and reports under s. 120.745, F.S.

³⁴ Section 120.54(3)(a), F.S.

development and notices of proposed rules. The suspension would toll the time for filing any already-pending rules for adoption; time would resume running when the agency met the statutory requirements to remove the suspension. An agency's ability to adopt emergency rules or rules necessary to comply with federal law would not be suspended.

Educational entities such as school districts are exempted entirely from the section's requirements.

Section 120.745, F.S.

1. Retrospective Economic Review of Rules

In November 2010 the Legislature enacted HB 1565 (2010)³⁵ overriding a gubernatorial veto. The law created a new limitation on agency rulemaking: any rule adopted after the date of the act, whether a new or amended rule, that may likely have a significant economic impact, could not go into effect unless first ratified by the Legislature.³⁶ The law requires an agency to prepare a full Statement of Estimated Regulatory Costs (SERC) if the proposed rule either will have an adverse impact on small businesses or if the rule is likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate in the first year after the rule is implemented.³⁷ Additionally, the SERC must include an economic analysis addressing whether the rule is likely to have one of three specific impacts, directly or indirectly, in excess of \$1 million in the aggregate within 5 years of going into effect.³⁸

The requirements of Ch. 2010-279, Laws of Florida, applied only to rules which had not become effective as of November 17, 2010, or were proposed for adoption after that date. Existing rules were not subject to the ratification requirement. In 2011 the Legislature passed CS/CS/CS/HB 993 & HB 7239, including a provision requiring a retrospective economic analysis of those existing rules.³⁹ All agencies required to publish their rules in the Florida Administrative Code (F.A.C.)⁴⁰ were required to review their rules, identify those potentially having one of the impacts described in s. 120.541(2)(a), F.S., over a five year period, complete a full comprehensive economic review of such rules, and publicly publish the results and certify their compliance with the statute to JAPC. In 2011, all agencies were to publish the results of their initial reviews and identification of existing rules likely to have the significant economic impacts.⁴¹ At the agency's discretion, the full Compliance Economic Reviews for one portion of these rules (Group 1) were to be published by December 1, 2012; the remaining reviews (Group 2) were to be published by December 1, 2013.⁴²

Concurrently with the development of HB 993/HB 7239, the Governor directed a review of all existing agency rules through the newly-created Office of Fiscal Accountability and Regulatory Reform (OFARR).⁴³ Because most agencies participated in this review, and many of the elements were similar to the retrospective economic reviews contemplated by the Legislature, the bill exempted those agencies participating in the Governor's review from most of the new law's requirements. These

³⁵ Ch. 2010-279, LOF.

³⁶ Section 120.541(3), F.S.

³⁷ Sections 120.54(3)(b)1. & 120.541(1)(b), F.S.

³⁸ Section 120.541(2)(a), F.S. The three impacts are whether the rule will have 1) an adverse impact on economic growth, private sector job creation or employment, or private sector employment; 2) an adverse impact on business competitiveness, including competition with interstate firms, productivity, or innovation; or 3) an increase in regulatory costs, including transactional costs as defined by s. 120.541(2)(d), F.S.

³⁹ Ch. 2011-225, s. 5, LOF, codified as s. 120.745, F.S.

⁴⁰ A provision in the act designed specifically to *de facto* exclude educational units (defined in s. 120.52(6), F.S.) which do not publish their rules in the F.A.C. pursuant to s. 120.55(1)(a)2., F.S. Certain other publication requirements also do not apply to educational units; s. 120.81(1), F.S.

⁴¹ Section 120.745(2), F.S. The statute required each agency to publish the number of its rules implementing or affecting state revenues (revenue rules), requiring submission of information or data by third parties (data collection rules), rules to be repealed, rules to be amended to reduce economic impacts, and those rules that would be reported in Groups 1 or 2.

⁴² Section 120.745(5), F.S.

⁴³ Executive Order 11-01, subsequently revised by EO 11-72 and replaced by EO 11-211.

“exempt” agencies were required to publish their initial determination of those rules requiring full Compliance Economic Reviews in 2011⁴⁴ and all final reviews by December 31, 2013.⁴⁵

All agencies complied with the required retrospective review and publication of reports. Of those agencies not participating in the OFARR review process, only five⁴⁶ identified rules requiring Compliance Economic Reviews.⁴⁷ Of the 161 Compliance Economic Reviews published by these five agencies in 2012, only 72 reviews showed the subject rule as having a specific impact exceeding \$1 million over the 5 year period from July 1, 2011 to July 1, 2016.

2. *Effect of Proposed Change*

With the publication of required Compliance Economic Reviews in December 2013 the retrospective economic review of all agency rules in effect on November 17, 2013 will be complete. The bill accordingly repeals s. 120.745, F.S.

Section 120.7455, F.S.

1. *Your Voice Survey*

As part of the increased oversight of agency rulemaking enacted in 2011, the Legislature sought public participation and input about the effect of agency rules through use of an online survey. Those wanting to comment on any rule could log in to the survey form,⁴⁸ respond to a series of questions intended to identify the particular rule and the context of the comment, and provide as much information as the participant thought necessary. Access to the online form was directed primarily through the website of the Florida House of Representatives and was known as the “Your Voice Survey.”

To encourage public participation and obtain as wide a variety of comments as possible during the period July 1, 2011 – July 1, 2014, section 120.7455, F.S.,⁴⁹ was enacted to provide certain limited protections from enforcement actions based on any response to the survey. One reporting or providing information solicited by the Legislature in conformity with s. 120.7455 was immune from any enforcement action or prosecution based on the fact of such reporting (or non-reporting) or using information provided in response to the survey.⁵⁰ If a person subject to a penalty in excess of the minimum provided by law or rule proved the enforcement action was in retaliation for providing or withholding any information in response to the survey, the penalty would be limited to the minimum provided for each separate violation.⁵¹

The survey was initiated in October 2011 and received 2,723 responses through October 22, 2013. No response appeared to place the participant in jeopardy of prosecution or administrative enforcement. The survey responses were of limited value. Many voiced support or disapproval for issues outside the scope of the survey, such as federal laws, regulations or policies, unrelated state statutes, or local ordinances. Fewer than 200 directly addressed a particular agency rule and of those no more than 40 provided information about the economic or policy impacts of the rule. Because the limited protection in the statute proved to be unnecessary, no apparent purpose is served by continuing the statute.

⁴⁴ As required by the statute, exempt agencies published the number of identified revenue rules (2,078), data collection rules (3,529), rules to be repealed (1,852), rules to be amended to reduce economic impacts (1,441), and rules requiring Compliance Economic Reviews (3,056). At <https://www.myfloridalicense.com/rulereview/Rule-Review-Reports.html> (accessed 10/22/2013).

⁴⁵ Section 120.745(9), F.S.

⁴⁶ Dept. of Agriculture and Consumer Services, Dept. of Citrus, Dept. of Financial Services, Office of Financial Regulation, and Public Service Commission.

⁴⁷ As required by the statute, “non-exempt” agencies published the number of identified revenue rules (508), data collection rules (1,169), rules to be repealed (482), rules to be amended to reduce economic impacts (189), and rules requiring Compliance Economic Reviews to be reported in Group 1 (161) and Group 2 (182).

⁴⁸ At <http://www.surveymonkey.com/s/FloridaRegReformSurvey> (accessed 10/22/2013).

⁴⁹ Ch. 2011-225, s. 6, LOF.

⁵⁰ Section 120.7455(3), F.S.

⁵¹ Section 120.7455(4), F.S.

2. *Effect of Proposed Change*

The bill repeals section 120.7455, F.S.

B. SECTION DIRECTORY:

Section 1: Amends s. 120.54(1)(b), F.S., by revising the deadlines and method for agencies to comply with rulemaking required to implement new law, requiring the publication of notices of rule development and actual notices of proposed rule by dates certain, and creating a remedial consequence for noncompliance.

Section 2: Amends s. 120.74, F.S., by replacing the current biennial reports with an annual regulatory plan, requiring agencies to identify whether rulemaking is necessary to implement new or revised statutory authority, establishing deadlines for rule development and proposed rules necessary to implement new laws, and suspending rulemaking authority where agencies fail to comply with the statute. Excludes emergency rulemaking and rulemaking necessary for federal compliance from this suspension. Exempts educational units from the review and reporting requirements of the statute.

Section 3: Repeals ss. 120.745 and 120.7455, F.S. Rescinds any suspension of rulemaking authority under ss. 120.745 or 120.7455, F.S., only. This section is not to be codified in the Florida Statutes.

Section 4: Provides an effective date of July 1, 2014.

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:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take any action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The bill requires no additional rulemaking by any agency. The main analysis discusses particular changes to the accountability of agencies exercising rulemaking authority and to rulemaking to implement new laws.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

At its meeting of November 5, 2013, the Rulemaking Oversight & Repeal Subcommittee adopted four amendments to the draft PCB and approved PCB RORS 14-01 as amended.

- Amendment 1a revised notice and compliance requirements in section 2 of the bill. Agencies will be required to certify with JAPC their compliance with reporting, filing, and publication requirements. Paragraph (8)(d) was added to exclude emergency rulemaking and rulemaking necessary to comply with federal law from any suspension under this subsection.
- Amendment 2 revised publication requirements, clarifying the agency is responsible for publishing certain notices in the Florida Administrative Register together with a hyperlink providing direct access to the regulatory plan or supplement.
- Amendment 3 added a reference to the statute mandating the filing of annual budget requests by each agency.
- Amendment 4 provided agencies the ability to extend the time for publishing a notice of proposed rule required as a result of this statutory review for up to 180 days.

The final engrossment of the PCB and amendments resulted in changes to some of the internal subsections of the text, a necessary reference to s. 216.351, and renumbering some of the bill sections. This analysis is drawn to the PCB as engrossed.