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# **RULEMAKING & REGULATION SUBCOMMITTEE MEETING**

**Wednesday, December 7, 2011**

**9:00 A.M. – 11:30 A.M.**

**306 House Office Building**

**Meeting Packet**

Dean Cannon  
Speaker

Chris Dorworth  
Chair

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Rulemaking & Regulation Subcommittee

**Start Date and Time:** Wednesday, December 07, 2011 09:00 am  
**End Date and Time:** Wednesday, December 07, 2011 11:30 am  
**Location:** 306 HOB  
**Duration:** 2.50 hrs

**Consideration of the following proposed committee bill(s):**

PCB RRS 12-01 -- Relating to Nullification and Repeal of Administrative Rules

**Workshop on the following:**

PCB RRS 12-02 -- Relating to Administrative Authority

(A copy of the unofficial draft of PCB RRS 12-02 will be distributed to members and available at the Subcommittee office on Friday, December 2.)

**NOTICE FINALIZED on 11/30/2011 15:47 by Thompson.Sonja**



# FLORIDA HOUSE OF REPRESENTATIVES

*Dean Cannon, Speaker*

## **Rules & Calendar Committee Rulemaking & Regulation Subcommittee**

**Chris Dorworth**  
*Chair*

**317 The Capitol**  
*(850) 488-0608*

### **AGENDA**

**Wednesday, December 7, 2011  
9:00 A.M. – 11:30 A.M.  
Room 306 House Office Building**

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**Opening Remarks by Chair Dorworth**

**Roll Call by Sonja Thompson, CAA**

**Consideration of the following proposed committee bill:**

- PCB RRS 12-01—Relating to Nullification and Repeal of Administrative Rules

**Workshop on the following draft proposed committee bill:**

- PCB RRS 12-02—Relating to Administrative Authority

**Closing Remarks**

**Meeting Adjourned**

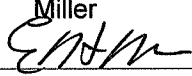



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

SPONSOR(S):

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Rulemaking & Regulation 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.DOCX

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>

<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),

<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**

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A bill to be entitled  
 An act relating to the nullification and repeal of  
 administrative rules; amending s. 120.536, providing  
 for repeal of administrative rules upon the repeal of  
 the specific powers and duties granted by the enabling  
 statute; creating s. 120.555, providing a process for  
 summary repeal of administrative rules that are no  
 longer in full force and effect; nullifying specific  
 administrative rules adopted by the Northwest Florida  
 Water Management District, Suwannee River Water  
 Management District, St. Johns River Water Management  
 District, Southwest Florida Water Management District,  
 South Florida Water Management District, the former  
 Department of Commerce, the former Department of  
 Health and Rehabilitative Services, Health Program  
 Office, the former Advisory Council on  
 Intergovernmental Relations, or the former Department  
 of Labor and Employment Security; directing the  
 Department of Health to initiate necessary rulemaking  
 before the effective date of sections 8 and 10;  
 directing the Department of Education to initiate  
 necessary rulemaking before the effective date of  
 section 13; providing an effective date.

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

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27 Section 1. Subsections (2) and (3) of section 120.536,  
 28 Florida Statutes, are amended, and subsection (4) of section  
 29 120.536 is created to read:

30 120.536 Rulemaking authority; repeal; challenge.—

31 (2) Unless otherwise expressly provided by law, the repeal  
 32 of the specific powers and duties granted by the enabling  
 33 statute repeals all rules adopted to implement or interpret  
 34 those specific powers and duties. As of the effective date of  
 35 the repeal of the specific powers and duties, the Department of  
 36 State shall remove the rule from the Florida Administrative Code  
 37 and update the historical notes to show the rule repealed by  
 38 operation of law.

39 ~~(2)~~(3) The Administrative Procedures Committee or any  
 40 substantially affected person may petition an agency to repeal  
 41 any rule, or portion thereof, because it exceeds the rulemaking  
 42 authority permitted by this section. Not later than 30 days  
 43 after the date of filing the petition if the agency is headed by  
 44 an individual, or not later than 45 days if the agency is headed  
 45 by a collegial body, the agency shall initiate rulemaking  
 46 proceedings to repeal the rule, or portion thereof, or deny the  
 47 petition, giving a written statement of its reasons for the  
 48 denial.

49 ~~(3)~~(4) Nothing in this section shall be construed to  
 50 change the legal status of a rule that has otherwise been  
 51 judicially or administratively determined to be invalid.

52 Section 2. Section 120.555, Florida Statutes, is created  
 53 to read:

54 120.555 .— Summary Removal of Published Rules No Longer in

55 Force and Effect.- When, as part of the continuous revision  
 56 system authorized in s. 120.55(1)(a)1., or otherwise, the  
 57 Department of State is in doubt whether a rule published in the  
 58 official version of the Florida Administrative Code is still in  
 59 full force and effect, the procedure of this section shall be  
 60 employed.

61 (1) The Secretary of State, as head of the Department of  
 62 State and under the authority provided in s. 16.01(3),  
 63 shall submit to the Attorney General a written request for  
 64 an advisory opinion as to whether the rule is still in full  
 65 force and effect. A copy of the request shall be promptly  
 66 delivered to the committee and to the head of the agency  
 67 that adopted the rule, or of its successor, if any, or if  
 68 no agency head can be identified, to the Governor. The  
 69 Department of State shall publish a notice of the request  
 70 together with a copy of the request in the Florida  
 71 Administrative Weekly next available after delivery of the  
 72 request to the Attorney General.

73 (2) No later than 60 days from the date the notice  
 74 required in subsection (1) is published, the Attorney  
 75 General shall provide the Secretary of State with a written  
 76 opinion on whether the rule is still in full force and  
 77 effect and shall deliver a copy of the opinion to the  
 78 committee.

79 (3) The Department of State shall publish a notice of the  
 80 opinion in the Florida Administrative Weekly next available  
 81 after receipt of the opinion from the Attorney General.

82 (4) If the opinion from the Attorney General states the



83 rule is no longer in full force or effect, the notice  
 84 required in subsection (3) shall also give notice of the  
 85 following:  
 86 (a) Based on the opinion received from the Attorney  
 87 General the rule will be repealed summarily under this  
 88 section and removed from the Florida Administrative Code.  
 89 (b) Any objection to the summary repeal under this section  
 90 must be filed as a petition challenging a proposed rule  
 91 under s. 120.56 and must be filed no later than 21 days  
 92 from the date the notice is published in the Florida  
 93 Administrative Weekly.  
 94 (c) For purposes only of challenging a summary repeal  
 95 under this section, any agency with current authority to  
 96 repeal the rule under s. 120.54 shall be named as the  
 97 respondent in the petition and shall be the proper party  
 98 in interest. In such circumstances, the Department of  
 99 State shall not be named as a party in a petition filed  
 100 under paragraph (b) and this paragraph.  
 101 (d) If no agency currently has authority to repeal the  
 102 rule under s. 120.54 the Department of State shall be  
 103 named as the respondent in a petition filed under  
 104 paragraph (b) and this paragraph. The Attorney General  
 105 shall represent the Department of State in all  
 106 proceedings under this paragraph.  
 107 (5) Upon the expiration of 21 days from the date the  
 108 notice of summary repeal is published under subsection (4),  
 109 if no timely objection is filed, or, if a timely objection  
 110 is filed, on the date a decision finding the rule is no

111 | longer in full force and effect becomes final, the  
 112 | Department of State shall update the Florida Administrative  
 113 | Code to remove the rule and shall provide historical notes  
 114 | identifying the manner in which the rule ceased to have  
 115 | full force and effect, including the summary repeal under  
 116 | this section.

117 | Section 3. The following rules of the Northwest Florida  
 118 | Water Management District are nullified and of no further force  
 119 | or effect:

120 | Rule 40A-1.1020, Florida Administrative Code, relating to  
 121 | General Procedures for Permit Applications.

122 | Rule 40A-1.1030, Florida Administrative Code, relating to  
 123 | Contract Bidding Resolution of Protest.

124 | Rule 40A-1.1040, Florida Administrative Code, relating to  
 125 | General Permits.

126 | Rule 40A-1.180, Florida Administrative Code, relating to  
 127 | Procedures for Contracting for Professional Services.

128 | Rule 40A-1.181, Florida Administrative Code, relating to  
 129 | Contracting Bidding-Reservation of Right.

130 | Rule 40A-1.182, Florida Administrative Code, relating to  
 131 | Contracting Bidding-Resolution of Protest.

132 | Rule 40A-2.311, Florida Administrative Code, relating to  
 133 | Competing Applications.

134 | Rule 40A-3.038, Florida Administrative Code, relating to  
 135 | Violations of Licensing Requirements.

136 | Rule 40A-4.061, Florida Administrative Code, relating to  
 137 | Mitigation Banks.

138 | Rule 40A-4.143, Florida Administrative Code, relating to

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139 Abandonment.  
 140 Rule 40A-4.461, Florida Administrative Code, relating to  
 141 Inspection.  
 142 Rule 40A-4.471, Florida Administrative Code, relating to  
 143 Abatement.  
 144 Rule 40A-6.461, Florida Administrative Code, relating to  
 145 Inspections.  
 146 Rule 40A-6.491, Florida Administrative Code, relating to  
 147 Unlawful Use.  
 148 Rule 40A-44.143 Florida Administrative Code, relating to  
 149 Abandonment.  
 150 Section 4. The following rules of the Suwannee River Water  
 151 Management District are nullified and of no further force or  
 152 effect:  
 153 Rule 40B-1.100, Florida Administrative Code, relating to  
 154 Uniform Rules of Procedure and Statement of District  
 155 Organization and Operation.  
 156 Rule 40B-1.510, Florida Administrative Code, relating to  
 157 District Investigations and Probable Cause Determinations.  
 158 Rule 40B-1.702, Florida Administrative Code, relating to  
 159 Permits Required.  
 160 Rule 40B-1.705, Florida Administrative Code, relating to  
 161 Complaints.  
 162 Rule 40B-1.801, Florida Administrative Code, relating to  
 163 General provisions pertaining to procurement.  
 164 Rule 40B-1.802, Florida Administrative Code, relating to  
 165 Definitions.

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166 Rule 40B-1.804, Florida Administrative Code, relating to  
 167 Certification and Competitive Selection for Professional  
 168 Services.

169 Rule 40B-1.805, Florida Administrative Code, relating to  
 170 Competitive Negotiation.

171 Rule 40B-1.808, Florida Administrative Code, relating to  
 172 Applicability.

173 Rule 40B-1.810, Florida Administrative Code, relating to  
 174 Procurement of Commodities or Contractual Services.

175 Rule 40B-1.811, Florida Administrative Code, relating to  
 176 Prequalified Providers.

177 Rule 40B-1.812, Florida Administrative Code, relating to  
 178 Contract Bidding - Reservation of Rights.

179 Rule 40B-1.813, Florida Administrative Code, relating to  
 180 Contract Bidding - Resolution of Protests.

181 Rule 40B-2.025, Florida Administrative Code, relating to  
 182 Processing of Water Use Permit Applications.

183 Rule 40B-2.201, Florida Administrative Code, relating to  
 184 Permit Fees.

185 Rule 40B-2.311, Florida Administrative Code, relating to  
 186 Competing Applications.

187 Rule 40B-2.341, Florida Administrative Code, relating to  
 188 Revocation of Permits.

189 Rule 40B-2.441, Florida Administrative Code, relating to  
 190 Temporary Water Use Permits.

191 Rule 40B-2.781, Florida Administrative Code, relating to  
 192 Enforcement.

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193 Rule 40B-3.011 Florida Administrative Code, relating to  
194 Policy and Purpose.

195 Rule 40B-3.031, Florida Administrative Code, relating to  
196 Implementation.

197 Rule 40B-3.038 Florida Administrative Code, relating to  
198 Violations of Licensing Requirements.

199 Rule 40B-3.039, Florida Administrative Code, relating to  
200 Penalties.

201 Rule 40B-3.0391, Florida Administrative Code, relating to  
202 Enforcement.

203 Rule 40B-3.0511, Florida Administrative Code, relating to  
204 Variances.

205 Rule 40B-3.500, Florida Administrative Code, relating to  
206 Scope of Part II.

207 Rule 40B-3.507, Florida Administrative Code, relating to  
208 Casing and Liner Pipe Standards.

209 Rule 40B-3.525, Florida Administrative Code, relating to  
210 Explosives.

211 Rule 40B-4.1050, Florida Administrative Code, relating to  
212 Permit Fees.

213 Rule 40B-5.0021, Florida Administrative Code, relating to  
214 Definitions.

215 Rule 40B-5.0051, Florida Administrative Code, relating to  
216 Exemptions.

217 Rule 40B-5.0121, Florida Administrative Code, relating to  
218 Notice and Hearing Requirements.

219 Rule 40B-5.0201, Florida Administrative Code, relating to  
220 Permit Processing Fee.

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221 Rule 40B-5.0351, Florida Administrative Code, relating to  
222 Transfer of Permits.

223 Rule 40B-5.0751, Florida Administrative Code, relating to  
224 Enforcement and Penalties.

225 Rule 40B-5.0901, Florida Administrative Code, relating to  
226 Forms and Instructions.

227 Rule 40B-9.045, Florida Administrative Code, relating to  
228 Acquisition Procedures-~~Condemnation~~.

229 Rule 40B-9.065, Florida Administrative Code, relating to  
230 Disclosure of Beneficial Interest.

231 Rule 40B-9.081, Florida Administrative Code, relating to  
232 Disposition of Surplus Real Property.

233 Rule 40B-21.031, Florida Administrative Code, relating to  
234 Elements of the Plan.

235 Rule 40B-21.291, Florida Administrative Code, relating to  
236 Variances.

237 Rule 40B-21.421, Florida Administrative Code, relating to  
238 Compliance.

239 Rule 40B-21.511, Florida Administrative Code, relating to  
240 General provisions pertaining to classification of water users.

241 Section 5. The following rules of the St. Johns River  
242 Water Management District are nullified and of no further force  
243 or effect:

244 Rule 40C-2.441, Florida Administrative Code, relating to  
245 Temporary Permits.

246 Rule 40C-3.038, Florida Administrative Code, relating to  
247 Violations of Contractor Licensing Requirements.

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248 Rule 40C-3.039, Florida Administrative Code, relating to  
249 Penalties.

250 Rule 40C-3.040, Florida Administrative Code, relating to  
251 Scope of Part 1.

252 Rule 40C-3.201, Florida Administrative Code, relating to  
253 Permit Processing Fee.

254 Rule 40C-3.321, Florida Administrative Code, relating to  
255 Duration of Permits.

256 Rule 40C-3.525, Florida Administrative Code, relating to  
257 Explosives.

258 Rule 40C-3.529, Florida Administrative Code, relating to  
259 Flowing Wells.

260 Rule 40C-3.532 Florida Administrative Code, relating to  
261 Violations of Well Construction Standards.

262 Rule 40C-4.011, Florida Administrative Code, relating to  
263 Policy and Purpose.

264 Rule 40C-4.201, Florida Administrative Code, relating to  
265 Permit Processing Fee.

266 Rule 40C-4.351, Florida Administrative Code, relating to  
267 Transfer of Permits.

268 Rule 40C-4.751, Florida Administrative Code, relating to  
269 Enforcement.

270 Rule 40C-9.001, Florida Administrative Code, relating to  
271 Purpose.

272 Rule 40C-9.031, Florida Administrative Code, relating to  
273 Selection of Lands - Five Year Plan Pursuant to Section 373.199,  
274 Florida Statutes.

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275 Rule 40C-9.045, Florida Administrative Code, relating to  
276 Acquisition Procedures - Condemnation

277 Rule 40C-9.065, Florida Administrative Code, relating to  
278 Disclosure of Beneficial Interest.

279 Rule 40C-9.071, Florida Administrative Code, relating to  
280 Use of Trust Funds.

281 Rule 40C-9.081, Florida Administrative Code, relating to  
282 Disposition of Surplus Land.

283 Rule 40C-9.115, Florida Administrative Code, relating to  
284 Land Management Review Team.

285 Rule 40C-9.400, Florida Administrative Code, relating to  
286 Individuals Living on District Lands.

287 Rule 40C-21.031, Florida Administrative Code, relating to  
288 Elements of the Plan.

289 Rule 40C-24.001, Florida Administrative Code, relating to  
290 Policy and Purpose.

291 Rule 40C-24.010, Florida Administrative Code, relating to  
292 Definitions.

293 Rule 40C-24.020, Florida Administrative Code, relating to  
294 Incentive Program.

295 Rule 40C-24.030, Florida Administrative Code, relating to  
296 Incentive Program-Qualifying.

297 Rule 40C-40.011, Florida Administrative Code, relating to  
298 Policy and Purpose.

299 Rule 40C-40.021, Florida Administrative Code, relating to  
300 Definitions.

301 Rule 40C-40.031, Florida Administrative Code, relating to  
302 Implementation.



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303 Rule 40C-40.321, Florida Administrative Code, relating to  
304 Duration of Permit.

305 Rule 40C-40.381, Florida Administrative Code, relating to  
306 Limiting Conditions.

307 Rule 40C-40.900, Florida Administrative Code, relating to  
308 Forms and Instructions.

309 Rule 40C-42.071, Florida Administrative Code, relating to  
310 Permit Processing Fee.

311 Rule 40C-42.081, Florida Administrative Code, relating to  
312 General Provisions.

313 Rule 40C-44.081, Florida Administrative Code, relating to  
314 Permit Processing Fee.

315 Section 6. The following rules of the Southwest Florida  
316 Water Management District are nullified and of no further force  
317 or effect:

318 Rule 40D-1.902, Florida Administrative Code, relating to  
319 District Investigations and Probable Cause Determinations.

320 Rule 40D-2.311, Florida Administrative Code, relating to  
321 Competing Applications.

322 Rule 40D-2.511, Florida Administrative Code, relating to  
323 Declaration of Water Shortage.

324 Rule 40D-3.011, Florida Administrative Code, relating to  
325 Policy and Purpose.

326 Rule 40D-3.031, Florida Administrative Code, relating to  
327 Implementation.

328 Rule 40D-3.038, Florida Administrative Code, relating to  
329 Violations of Contractor Licensing Requirements.

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330 Rule 40D-3.201, Florida Administrative Code, relating to  
331 Permit Processing Fee.

332 Rule 40D-3.525, Florida Administrative Code, relating to  
333 Explosives.

334 Rule 40D-3.529, Florida Administrative Code, relating to  
335 Flowing Wells.

336 Rule 40D-4.031, Florida Administrative Code, relating to  
337 Implementation, Effective Date and Applicability.

338 Rule 40D-4.054, Florida Administrative Code, relating to  
339 Alteration of Exempt Projects.

340 Rule 40D-4.201, Florida Administrative Code, relating to  
341 Permit Processing Fee.

342 Rule 40D-4.461, Florida Administrative Code, relating to  
343 Inspection.

344 Rule 40D-40.011, Florida Administrative Code, relating to  
345 Policy and Purpose.

346 Rule 40D-40.031, Florida Administrative Code, relating to  
347 Implementation, Effective Date and Applicability.

348 Rule 40D-400.201, Florida Administrative Code, relating to  
349 Policy and Purpose.

350 Rule 40D-9.101, Florida Administrative Code, relating to  
351 Recreational Land Use Policy.

352 Rule 40D-9.110, Florida Administrative Code, relating to  
353 Scope and Applicability.

354 Rule 40D-9.300, Florida Administrative Code, relating to  
355 Trespass After Notice.

356 Rule 40D-9.310, Florida Administrative Code, relating to  
357 Penalties.

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358 Rule 40D-21.031, Florida Administrative Code, relating to  
 359 Elements of the Plan.

360 Rule 40D-21.441, Florida Administrative Code, relating to  
 361 Public Supply Water Shortage Mitigation Plans

362 Section 7. The following rules of the South Florida Water  
 363 Management District are nullified and of no further force or  
 364 effect:

365 Rule 40E-0.103, Florida Administrative Code, relating to  
 366 Procedures for Processing Permit Applications.

367 Rule 40E-0.105, Florida Administrative Code, relating to  
 368 Consideration of Intended Agency Decision on Permit  
 369 Applications.

370 Rule 40E-1.100, Florida Administrative Code, relating to  
 371 Uniform Rules of Procedure and Statement of District  
 372 Organization and Operation.

373 Rule 40E-1.1065, Florida Administrative Code, relating to  
 374 Misuse of Public Position.

375 Rule 40E-1.125, Florida Administrative Code, relating to  
 376 Public Information and Inspection of Records.

377 Rule 40E-1.200, Florida Administrative Code, relating to  
 378 Procedures for Agendas and Scheduling of Meetings and Workshops.

379 Rule 40E-1.208, Florida Administrative Code, relating to  
 380 Procedure for Abstaining from Voting Conflicts of Interest.

381 Rule 40E-1.300, Florida Administrative Code, relating to  
 382 Rulemaking Procedures.

383 Rule 40E-1.400, Florida Administrative Code, relating to  
 384 Procedures Regarding Declaratory Statements.

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385 Rule 40E-1.500, Florida Administrative Code, relating to  
 386 Procedures for Proceedings Which Determine Substantial Interests  
 387 and Associated Mediation.

388 Rule 40E-1.511, Florida Administrative Code, relating to  
 389 Point of Entry Into Proceedings.

390 Rule 40E-1.520, Florida Administrative Code, relating to  
 391 Procedures Concerning Formal Proceedings.

392 Rule 40E-1.521, Florida Administrative Code, relating to  
 393 Initiation of Formal Proceedings.

394 Rule 40E-1.564, Florida Administrative Code, relating to  
 395 Exceptions of Recommended Order.

396 Rule 40E-1.570, Florida Administrative Code, relating to  
 397 Procedures Concerning Informal Proceedings.

398 Rule 40E-1.601, Florida Administrative Code, relating to  
 399 General provisions pertaining to administrative procedures  
 400 applicable to permitting decisions.

401 Rule 40E-1.608, Florida Administrative Code, relating to  
 402 Denial of Permits.

403 Rule 40E-1.611, Florida Administrative Code, relating to  
 404 Emergency Action.

405 Rule 40E-1.6115, Florida Administrative Code, relating to  
 406 Emergency Authorization.

407 Rule 40E-2.441, Florida Administrative Code, relating to  
 408 Temporary Permits.

409 Rule 40E-3.010, Florida Administrative Code, relating to  
 410 Review of Water Well Permit Applications.

411 Rule 40E-3.0511, Florida Administrative Code, relating to  
 412 Exemptions and Variances for Well Construction Permits.

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413 Rule 40E-4.311, Florida Administrative Code, relating to  
 414 Variances from Specified Review Criteria for Environmental  
 415 Resource Permits.

416 Rule 40E-7.201, Florida Administrative Code, relating to  
 417 Policy and Purpose.

418 Rule 40E-7.205, Florida Administrative Code, relating to  
 419 Competitive Selection for Professional Services.

420 Rule 40E-7.300, Florida Administrative Code, relating to  
 421 Procedures Concerning Bid Protests of Solicitations or Contract  
 422 Awards.

423 Rule 40E-7.401, Florida Administrative Code, relating to  
 424 District Transfer of Funds.

425 Rule 40E-20.141, Florida Administrative Code, relating to  
 426 Request for Additional Information.

427 Rule 40E-20.341, Florida Administrative Code, relating to  
 428 Revocation of General Water Use Permits.

429 Rule 40E-20.391, Florida Administrative Code, relating to  
 430 Publication.

431 Rule 40E-21.031, Florida Administrative Code, relating to  
 432 Elements of the Plan.

433 Rule 40E-21.132, Florida Administrative Code, relating to  
 434 Water Use Restrictions.

435 Rule 40E-21.611, Florida Administrative Code, relating to  
 436 Classification System.

437 Rule 40E-22.082, Florida Administrative Code, relating to  
 438 Minimum Flows.

439 Rule 40E-22.112, Florida Administrative Code, relating to  
 440 Permit Classification.

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441 Rule 40E-22.132, Florida Administrative Code, relating to  
442 Water Shortage Plan.

443 Rule 40E-22.242, Florida Administrative Code, relating to  
444 Minimum Flow.

445 Rule 40E-22.252, Florida Administrative Code, relating to  
446 Permit Classification.

447 Rule 40E-22.272, Florida Administrative Code, relating to  
448 Water Use Restrictions.

449 Rule 40E-23.011, Florida Administrative Code, relating to  
450 Policy and Purpose.

451 Rule 40E-23.021, Florida Administrative Code, relating to  
452 Definitions.

453 Rule 40E-23.023, Florida Administrative Code, relating to  
454 Boundaries.

455 Rule 40E-23.031, Florida Administrative Code, relating to  
456 Implementation.

457 Rule 40E-23.043, Florida Administrative Code, relating to  
458 Application.

459 Rule 40E-23.053, Florida Administrative Code, relating to  
460 Criteria for Designation.

461 Rule 40E-63.201, Florida Administrative Code, relating to  
462 Scope.

463 Rule 40E-63.211, Florida Administrative Code, relating to  
464 Purpose.

465 Rule 40E-63.212, Florida Administrative Code, relating to  
466 Definitions.

467 Rule 40E-63.223, Florida Administrative Code, relating to  
468 Model to Quantify Annual Allocation of Replacement Water.

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469           Rule 40E-63.225, Florida Administrative Code, relating to  
470 Delivery of Average Annual Allocation of Replacement Water.

471           Section 8. The following rules of the former Department of  
472 Commerce are nullified and of no further force or effect:

473           Rule 8K-1.001, Florida Administrative Code, relating to  
474 Purpose.

475           Rule 8K-1.002, Florida Administrative Code, relating to  
476 Authority and Duties.

477           Rule 8K-1.003, Florida Administrative Code, relating to  
478 Members, Officers and Employees.

479           Rule 8K-1.004, Florida Administrative Code, relating to  
480 Meetings of the Board.

481           Rule 8K-1.005, Florida Administrative Code, relating to  
482 Notice of Meeting.

483           Rule 8K-1.006, Florida Administrative Code, relating to  
484 Records; Public Information.

485           Rule 8K-1.007, Florida Administrative Code, relating to  
486 Business Address and Hours.

487           Rule 8K-1.008, Florida Administrative Code, relating to  
488 Seal.

489           Rule 8K-2.001, Florida Administrative Code, relating to  
490 Purpose.

491           Rule 8K-2.002, Florida Administrative Code, relating to  
492 Definitions.

493           Rule 8K-2.003, Florida Administrative Code, relating to  
494 Application Procedure.

495           Rule 8K-2.004, Florida Administrative Code, relating to  
496 Board Investments; Type and Conditions.

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497 Rule 8K-2.005, Florida Administrative Code, relating to  
498 Community Support.

499 Rule 8K-2.006, Florida Administrative Code, relating to  
500 Accountability.

501 Rule 8K-2.007, Florida Administrative Code, relating to  
502 Misuse of Funds; Penalty; Appeal.

503 Rule 8K-2.008, Florida Administrative Code, relating to  
504 Local Impact Projects.

505 Rule 8K-2.009, Florida Administrative Code, relating to  
506 Certified Corporations.

507 Rule 8K-2.010, Florida Administrative Code, relating to  
508 Investment Agreements.

509 Rule 8M-1.001 Florida Administrative Code, relating to  
510 Definitions.

511 Rule 8M-1.002 Florida Administrative Code, relating to  
512 Grant Applications.

513 Rule 8M-1.003 Florida Administrative Code, relating to  
514 Application Review.

515 Rule 8M-1.004 Florida Administrative Code, relating to  
516 Award of Grants.

517 Rule 8M-2.001 Florida Administrative Code, relating to  
518 Definitions.

519 Rule 8M-2.002 Florida Administrative Code, relating to  
520 Grant Applications.

521 Rule 8M-2.003 Florida Administrative Code, relating to  
522 Application Review.

523 Rule 8M-2.004 Florida Administrative Code, relating to  
524 Award of Grants.



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525           Rule 8M-3.001 Florida Administrative Code, relating to  
526 Purpose.

527           Rule 8M-3.002, Florida Administrative Code, relating to  
528 Definitions.

529           Rule 8M-3.003, Florida Administrative Code, relating to  
530 Applications for Consideration.

531           Rule 8M-3.004, Florida Administrative Code, relating to  
532 Criteria for the Determination of Grant Award.

533  
534 Note.—The rulemaking authority for Rules 8K-1.001 through 8K-  
535 1.008 and 8K-2.001 through 8K-2.010 was abolished by Section 3,  
536 Chapter 2002-180, Laws of Florida. No agency appears to have  
537 clear authority to repeal said rules.

538  
539 Rules 8K-1.001 and 8K-1.002 implemented s. 288.707, 288.709, and  
540 288.7091, F.S., which were repealed by Section 487, Chapter  
541 2011-142, Laws of Florida, leaving the rules out of conformity  
542 with the law to be implemented.

543  
544 Rules 8K-1.003, 8K-1.004, 8K-1.005, 8K-1.006, and 8K-1.007  
545 implemented s. 288.707, F.S., which was repealed by Section 487,  
546 Chapter 2011-142, Laws of Florida, leaving the rules out of  
547 conformity with the law to be implemented.

548  
549 Rule 8K-1.008 implemented s. 288.709(2), F.S., which was  
550 repealed by Section 487, Chapter 2011-142, Laws of Florida,  
551 leaving the rule out of conformity with the law to be  
552 implemented.

553  
554 Rules 8K-2.001, 8K-2.006, and 8K-2.007 implemented s. 288.711,  
555 F.S., which was repealed by Section 24, Chapter 2007-157, Laws  
556 of Florida, leaving the rules out of conformity with the law to  
557 be implemented.

558  
559 Rule 8K-2.002 implemented s. 288.707, F.S., which was repealed  
560 by Section 487, Chapter 2011-142, Laws of Florida, and s.  
561 288.711, F.S., which was repealed by Section 24, Chapter 2007-

562 157, Laws of Florida, leaving the rule out of conformity with  
 563 the laws to be implemented.

564  
 565 Rules 8K-2.003, 8K-2.004, 8K-2,009, and 8K-2.010 implemented s.  
 566 288.71 and 288.711, F.S., which were repealed by Section 24,  
 567 Chapter 2007-157, Laws of Florida, and s. 288.7091, F.S., which  
 568 was repealed by Section 487, Chapter 2011-142, Laws of Florida,  
 569 leaving the rules out of conformity with the laws to be  
 570 implemented.

571  
 572 Rules 8K-2.005 and 8K-2.008 implemented s. 288.71 and 288.711,  
 573 F.S., which were repealed by Section 24, Chapter 2007-157, Laws  
 574 of Florida, leaving the rules out of conformity with the laws to  
 575 be implemented.

576  
 577 Note.—The rulemaking authority for Rules 8M-1.001 through 8M-  
 578 1.004 and 8M-2.001 through 8M-2.004 was abolished by Section  
 579 154, Chapter 96-320, Laws of Florida. No agency appears to have  
 580 clear authority to repeal said rules.

581  
 582 Rules 8M-1.001 through 8M-1.004 implemented Chapters 91-157 and  
 583 91-272, Laws of Florida, which were implementing bills for the  
 584 1991 General Appropriations Act. When those laws expired July 1,  
 585 1992, the rules became out of conformity with the laws to be  
 586 implemented.

587  
 588 Rules 8M-2.001 through 8M-2.004 implemented s. 288.806, F.S.,  
 589 which was repealed by Section 154, Chapter 96-320, Laws of  
 590 Florida, leaving the rules out of conformity with the laws to be  
 591 implemented.

592  
 593 Note.— The rulemaking authority for Rules 8M-3.001, 8M-3.002,  
 594 8M-3.003, and 8M-3.004 was abolished by Section 133, Chapter 96-  
 595 320, Laws of Florida. These specific rules implemented s.  
 596 311.11, F.S., which was revised extensively by Section 49,  
 597 Chapter 97-278, Laws of Florida, leaving the rules out of  
 598 conformity with the laws to be implemented. No agency appears to  
 599 have clear authority to repeal said rules.

600

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601 Section 8. (a) The following rules of the former  
 602 Department of Health and Rehabilitative Services, Health Program  
 603 Office, are nullified and of no further force or effect:

604 Rule 10D-116.001, Florida Administrative Code, relating to  
 605 Purpose.

606 Rule 10D-116.002, Florida Administrative Code, relating to  
 607 Definitions.

608 Rule 10D-116.003, Florida Administrative Code, relating to  
 609 Department Responsibilities.

610 Rule 10D-116.004, subsections (1), (2), and (3), Florida  
 611 Administrative Code, relating to Provider Hospital  
 612 Responsibilities.

613 Rule 10D-116.005, Florida Administrative Code, relating to  
 614 Practice Parameters.

615 Rule 10D-116.006, subsections (1), (2), and (3), Florida  
 616 Administrative Code, relating to Functions of Peer Review  
 617 Boards.

618 (b) Prior to the effective date of this section the  
 619 Department of Health shall initiate rulemaking to readopt or  
 620 revise those portions of the rules which are necessary to  
 621 implement the affected statutes.

622 Note. - The rules in this section were adopted by the former  
 623 Department of Health and Rehabilitative Services prior to the  
 624 Type Two Transfer of responsibility for public health matters to  
 625 the Department of Health by Section 6, Chapter 96-403, Laws of  
 626 Florida. Rules 10D-116.001, 10D-116.002, 10D-116.003, 10D-  
 627 116.004, 10D-116.005, 10D-116.006, and 10D-116.007 implemented  
 628 s. 383.336, F.S., amended by Section 77, Chapter 99-8, Laws of  
 629 Florida, to authorize rulemaking by the Department of Health.  
 630 The abolition of responsibility for public health matters in the  
 631 former Department of Health and Rehabilitative Services creates

632 uncertainty about the continued validity of these rules.  
 633 Therefore, the Department of Health should readopt or revise  
 634 those portions of the rules which remain necessary to implement  
 635 the agency's statutory authority.

636  
 637 Rules 10D-116.001, 10D-116.002(4), 10D-116.002(5), 10D-  
 638 116.002(6), 10D-116.003, and 10D-116.004, reiterate or  
 639 paraphrase provisions of s. 383.336, F.S., and do not conform  
 640 with the requirements of ss. 120.536(1), and 120.545(1)(c), F.S.

641  
 642 Rules 10D-116.002(2) and 10D-116.004(3) interpret the statute  
 643 with references to the former Department of Health and  
 644 Rehabilitative Services or repealed statutes and do not conform  
 645 with the specific law to be implemented.

646  
 647 Section 9. The following rules of the former Department of  
 648 Health and Rehabilitative Services, Health Program Office, are  
 649 nullified and of no further force or effect:

650 Rule 10D-116.004, subsection (4), Florida Administrative  
 651 Code, relating to Provider Hospital Responsibilities, directing  
 652 the making of reports to the Agency for Health Care  
 653 Administration.

654 Rule 10D-116.006, subsection (4), Florida Administrative  
 655 Code, relating to Functions of Peer Review Boards, stating the  
 656 results of a review will not serve as evidence in certain  
 657 proceedings.

658 Rule 10D-116.007, Florida Administrative Code, assigning  
 659 certain responsibilities to Agency for Health Care  
 660 Administration.

661 Note.- Rules 10D-116.004(4), 10D-116.006(4), and 10D-116.007  
 662 exceed the authority delegated in the specific law to be  
 663 implemented.

664 Section 10. (a) The following rules of the former  
 665 Department of Health and Rehabilitative Services, Health Program  
 666 Office, are nullified and of no further force or effect:

667 Rule 10D-124.003, Florida Administrative Code, relating to  
 668 Payment of Scholarship Funds.

669 Rule 10D-124.004, Florida Administrative Code, relating to  
 670 Placement of Nursing Scholars.

671 (b) Prior to the effective date of this section the  
 672 Department of Health shall initiate rulemaking to readopt or  
 673 revise those portions of the rules which are necessary to  
 674 implement the affected statutes.

675 Note.— The rules in this section were adopted by the former  
 676 Department of Health and Rehabilitative Services prior to the  
 677 Type Two Transfer of responsibility for public health matters to  
 678 the Department of Health by Section 6, Chapter 96-403, Laws of  
 679 Florida. The abolition of responsibility for public health  
 680 matters in the former Department of Health and Rehabilitative  
 681 Services raises a question about the continued validity of these  
 682 rules. Rules 10D-124.003 and 10D-124.004 implemented s.  
 683 240.4028, F.S., which was repealed by Section 1058, Chapter  
 684 2002-387, Laws of Florida. Therefore, the Department of Health  
 685 should readopt or revise those portions of the rules which  
 686 remain necessary to implement the agency's statutory authority.

687 Section 11. The following rules of the former Advisory  
 688 Council on Intergovernmental Relations are nullified and of no  
 689 further force or effect:

690 Rule 37-1.001, Florida Administrative Code, relating to  
 691 General Authority.

692 Rule 37-1.002, Florida Administrative Code, relating to  
 693 Composition of the Council.

694 Rule 37-1.003, Florida Administrative Code, relating to  
 695 Council Officers.

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696 Rule 37-1.004, Florida Administrative Code, relating to  
697 General Description of Council Organization and Operations.

698 Rule 37-1.005, Florida Administrative Code, relating to  
699 Council Functions and Duties.

700 Rule 37-1.006, Florida Administrative Code, relating to  
701 Council Recommendations.

702 Rule 37-1.007, Florida Administrative Code, relating to  
703 General Information Concerning Council, Its Record and  
704 Proceedings.

705 Rule 37-2.001, Florida Administrative Code, relating to  
706 Notice of Meeting.

707 Rule 37-2.002, Florida Administrative Code, relating to  
708 Scheduling of Meetings.

709 Rule 37-2.003, Florida Administrative Code, relating to  
710 Meetings, Hearings; Intergovernmental Cooperation.

711 Rule 37-2.004, Florida Administrative Code, relating to  
712 Agenda of Meetings and Workshops.

713 Rule 37-2.005, Florida Administrative Code, relating to  
714 Emergency Meetings.

715 Rule 37-2.006, Florida Administrative Code, relating to  
716 Model Rules Application.

717 Rule 37-3.001, Florida Administrative Code, relating to  
718 Commencement of Proceeding.

719 Rule 37-3.002, Florida Administrative Code, relating to  
720 Notice of Proceeding, and the Proposed Rules.

721 Rule 37-3.003, Florida Administrative Code, relating to  
722 Petitions to Initiate Rule Making Proceedings.

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723 Rule 37-3.004 Florida Administrative Code, relating to  
724 Agency Action on Petitions to Initiate Rule Making Proceedings.

725 Rule 37-3.005, Florida Administrative Code, relating to  
726 Rule Making Proceeding - Hearing.

727 Rule 37-3.006, Florida Administrative Code, relating to  
728 Description of Publication by Reference.

729 Rule 37-3.007, Florida Administrative Code, relating to  
730 Emergency Rule Hearing.

731 Rule 37-3.008, Florida Administrative Code, relating to  
732 Model Rules Application.

733 Rule 37-4.001, Florida Administrative Code, relating to  
734 General provisions pertaining to petition for declaratory  
735 statement.

736 Rule 37-4.002, Florida Administrative Code, relating to  
737 Purpose and Use of Declaratory Statement.

738 Rule 37-4.003, Florida Administrative Code, relating to  
739 Council Disposition.

740 Rule 37-5.001, Florida Administrative Code, relating to  
741 Members Present Shall Vote.

742 Rule 37-5.002, Florida Administrative Code, relating to  
743 Quorum; Majority Action.

744 Rule 37-5.003, Florida Administrative Code, relating to  
745 Voting.

746 Rule 37-5.004, Florida Administrative Code, relating to  
747 Change of Vote.

748 Rule 37-5.005, Florida Administrative Code, relating to  
749 Casting Vote for Another.

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750 Rule 37-5.006, Florida Administrative Code, relating to  
 751 Explanation of Vote.  
 752 Rule 37-5.007, Florida Administrative Code, relating to  
 753 Motions; How Made, Withdrawn.  
 754 Rule 37-5.008, Florida Administrative Code, relating to  
 755 Motions; Precedence.  
 756 Rule 37-5.009, Florida Administrative Code, relating to  
 757 Order of Questions.  
 758 Rule 37-5.010, Florida Administrative Code, relating to  
 759 Motions; Disposition.  
 760 Rule 37-5.011, Florida Administrative Code, relating to  
 761 Reconsideration: Generally.  
 762 Rule 37-5.012, Florida Administrative Code, relating to  
 763 Motion to Lay on Table.  
 764 Rule 37-5.013, Florida Administrative Code, relating to  
 765 Amendments; Manner of Consideration.  
 766 Rule 37-5.014, Florida Administrative Code, relating to  
 767 Amendments; Adoption.  
 768 Rule 37-5.015, Florida Administrative Code, relating to  
 769 Sequence of Amendments to Amendments.  
 770 Rule 37-6.001, Florida Administrative Code, relating to  
 771 Interpretation of Rules.  
 772 Rule 37-6.002, Florida Administrative Code, relating to  
 773 Waiver and Suspension of Rules.  
 774 Rule 37-6.003, Florida Administrative Code, relating to  
 775 General provisions pertaining to construction of rules.  
 776 Note.—The rules in this section, comprising Title 37 of the  
 777 Florida Administrative Code, were adopted by the former Advisory



778 Council on Intergovernmental Relations, which was abolished by  
 779 Section 9, Chapter 96-311, Laws of Florida. The rulemaking  
 780 authority for the above rules was abolished by Section 9,  
 781 Chapter 96-311, Laws of Florida. The above rules variously  
 782 implemented s. 120.53 and 120.54, F.S., which were extensively  
 783 revised by Sections 9 and 10, respectively, Chapter 96-159, Laws  
 784 of Florida, eliminating certain provisions implemented by such  
 785 rules, and s. 163.703, 163.704, 163.705, 163.7055, 163.706,  
 786 163.707, & 163.708, F.S., which were repealed by Section 9,  
 787 Chapter 96-311, Laws of Florida. The substance of these  
 788 statutes was reenacted as s. 11.70, F.S., by Section 1, Chapter  
 789 96-311, Laws of Florida, which was repealed by Section 3,  
 790 Chapter 2011-34, Laws of Florida, leaving the rules out of  
 791 conformity with the law to be implemented. No agency appears to  
 792 have clear authority to repeal said rules.  
 793

794 Section 12. The following rules of the former Department  
 795 of Labor and Employment Security are nullified and of no further  
 796 force or effect:

797 Rule 38I-40.002, Florida Administrative Code, relating to  
 798 Definitions.

799 Rule 38I-40.003, Florida Administrative Code, relating to  
 800 Identification of State-Owned Buildings and the Building  
 801 Asbestos Contract Person for Each Building.

802 Rule 38I-40.004, Florida Administrative Code, relating to  
 803 Review and Approval of Building Asbestos Surveys Completed Prior  
 804 to January 1, 1989.

805 Rule 38I-40.005, Florida Administrative Code, relating to  
 806 Review and Approval of Current Operation and Maintenance Plans  
 807 Implemented Prior to January 1, 1989.

808 Rule 38I-40.006, Florida Administrative Code, relating to  
 809 Collection of Information Concerning Completed Asbestos  
 810 Abatement Work.

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811 Rule 38I-40.007, Florida Administrative Code, relating to  
812 Standardization of Asbestos Management Activities.

813 Rule 38I-40.008, Florida Administrative Code, relating to  
814 Completion of Asbestos Surveys.

815 Rule 38I-40.009, Florida Administrative Code, relating to  
816 Preparation and Implementation of Asbestos Operation and  
817 Maintenance Plans.

818 Rule 38I-40.010, Florida Administrative Code, relating to  
819 Agency Responsibilities for Management of Asbestos.

820 Rule 38I-40.011, Florida Administrative Code, relating to  
821 Building Asbestos Contact Person.

822 Rule 38I-40.012, Florida Administrative Code, relating to  
823 Asbestos Oversight Program Team.

824 Rule 38I-40.013, Florida Administrative Code, relating to  
825 Regional Asbestos Program Managers.

826 Rule 38I-40.014, Florida Administrative Code, relating to  
827 Training Requirements.

828 Rule 38I-40.015, Florida Administrative Code, relating to  
829 Safety and Health Requirements.

830 Rule 38I-40.016, Florida Administrative Code, relating to  
831 Standard Technical Specifications and Guides.

832 Note.— The rulemaking authority for the above rules was  
833 abolished by Section 35, Chapter 2011-213, Laws of Florida. No  
834 agency appears to have clear authority to repeal said rules.

835  
836 Rules 38I-40.002 and 38I-40.003 implemented s. 255.554, F.S.,  
837 which was repealed by Section 10, Chapter 99-5, Laws of Florida,  
838 and s. 255.552 and 255.553, F.S., which were repealed by Section  
839 35, Chapter 2011-213, Laws of Florida, leaving the rules out of  
840 conformity with the laws to be implemented.

841

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842 Rule 38I-40.004 implemented s. 255.554, F.S., which was repealed  
 843 by Section 10, Chapter 99-5, Laws of Florida, and s. 255.552,  
 844 255.553, and 255.556, F.S., which were repealed by Section 35,  
 845 Chapter 2011-213, Laws of Florida, leaving the rule out of  
 846 conformity with the laws to be implemented.

847  
 848 Rules 38I-40.005, 38I-40.008, and 38I-40.009 implemented s.  
 849 255.552 and 255.557, F.S., which were repealed by Section 35,  
 850 Chapter 2011-213, Laws of Florida, leaving the rules out of  
 851 conformity with the laws to be implemented.

852  
 853 Rule 38I-40.006 implemented 255.552, F.S., which was repealed by  
 854 Section 35, Chapter 2011-213, Laws of Florida, leaving the rule  
 855 out of conformity with the law to be implemented.

856  
 857 Rules 38I-40.007 and 38I-40.010 implemented 255.552, 255.553,  
 858 255.555, 255.556, and 255.557, F.S., which were repealed by  
 859 Section 35, Chapter 2011-213, Laws of Florida, leaving the rules  
 860 out of conformity with the laws to be implemented.

861  
 862 Rule 38I-40.011 implemented s. 255.554, F.S., which was repealed  
 863 by Section 10, Chapter 99-5, Laws of Florida, and s. 255.552,  
 864 255.553, 255.555, and 255.557, F.S., which were repealed by  
 865 Section 35, Chapter 2011-213, Laws of Florida, leaving the rule  
 866 out of conformity with the laws to be implemented.

867  
 868 Rule 38I-40.012 implemented 255.565, F.S., which was repealed by  
 869 Section 15, Chapter 2001-89, Laws of Florida, leaving the rule  
 870 out of conformity with the law to be implemented.

871  
 872 Rule 38I-40.013 implemented s. 255.554, F.S., which was repealed  
 873 by Section 10, Chapter 99-5, Laws of Florida, and s. 255.552,  
 874 255.553, 255.557, 255.561, and 255.562, F.S., which were  
 875 repealed by Section 35, Chapter 2011-213, Laws of Florida,  
 876 leaving the rule out of conformity with the laws to be  
 877 implemented.

878  
 879 Rule 38I-40.014 implemented 255.565, F.S., which was repealed by  
 880 Section 15, Chapter 2001-89, Laws of Florida, and 255.552, F.S.,  
 881 which was repealed by Section 35, Chapter 2011-213, Laws of  
 882 Florida, leaving the rule out of conformity with the laws to be

883 implemented.

884  
885 Rule 38I-40.015 implemented 255.561, F.S., which was repealed by  
886 Section 35, Chapter 2011-213, Laws of Florida, leaving the rule  
887 out of conformity with the law to be implemented.

888  
889 Rule 38I-40.016 implemented 255.552, 255.553. 255.557, 255.558,  
890 255.559, 255.56, 255.561, and 255.562, F.S., which were repealed  
891 by Section 35, Chapter 2011-213, Laws of Florida, leaving the  
892 rule out of conformity with the laws to be implemented.

893  
894 Section 13. (a) The following rules of the former  
895 Department of Labor and Employment Security are nullified and of  
896 no further force or effect:

897 Rule 38J-1.001, Florida Administrative Code, relating to  
898 Recovery From Third Parties.

899 Rule 38J-1.002, Florida Administrative Code, relating to  
900 Definitions.

901 Rule 38J-1.003, Florida Administrative Code, relating to  
902 Right to Make Informed Choice.

903 Rule 38J-1.004, Florida Administrative Code, relating to  
904 Division Services - General.

905 Rule 38J-1.005, Florida Administrative Code, relating to  
906 Additional Requirements for Providing Certain Services.

907 Rule 38J-1.006, Florida Administrative Code, relating to  
908 Division Decisions and Appeal Procedures.

909 Rule 38J-1.007, Florida Administrative Code, relating to  
910 Case Closure due to individual's actions.

911 Rule 38J-1.008, Florida Administrative Code, relating to  
912 Destruction of Records.

913 Rule 38J-1.009, Florida Administrative Code, relating to  
 914 Forms and Documents.

915 (b) Prior to the effective date of this section the  
 916 Department of Education shall initiate rulemaking to readopt or  
 917 revise those portions of the rules which are necessary to  
 918 implement the affected statutes.

919 Note.—The rules in this section were adopted by the former  
 920 Department of Labor and Employment Security, which was abolished  
 921 by Section 69, Chapter 2002-194, Laws of Florida. The Division  
 922 of Vocational Rehabilitation was placed under the Department of  
 923 Education by Section 1, Chapter 2002-22, Laws of Florida,  
 924 without a clear accompanying transfer of these rules, leaving  
 925 the rules out of conformity with the law to be implemented.  
 926 While no agency appears to have clear authority to repeal said  
 927 rules, the laws implemented remain under the jurisdiction of the  
 928 Department of Education. Therefore, the Department of Education  
 929 should readopt or revise those portions of the rules which  
 930 remain necessary to implement the agency's statutory authority.  
 931

932 Section 14. Upon this act becoming law, its enactment and  
 933 effective dates shall be noted in the Florida Administrative  
 934 Code or the Florida Administrative Weekly or both, as  
 935 appropriate with an appropriate notice that the rules listed in  
 936 s. 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13 have been repealed by  
 937 law. The administrative rules nullified by this act shall be  
 938 treated as repealed for purposes of all future editions of the  
 939 Florida Administrative Code. The provisions of s. 3, 4, 5, 6, 7,  
 940 8, 9, 10, 11, 12, and 13 serve no other purpose and shall not be  
 941 codified in the Florida Statutes. This act does not alter  
 942 rulemaking authority delegated or withdrawn by prior law.

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943           Section 15. This act shall take effect 60 days after  
944 becoming a law, except the provisions of sections 8, 10, and 13  
945 shall not take effect before July 1, 2013.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

Committee/Subcommittee hearing PCB: Rulemaking & Regulation Subcommittee

Representative Rooney offered the following:

**Amendment**

Remove everything after the enacting clause and insert:  
Section 1. Subsections (2) and (3) of section 120.536, Florida Statutes, are amended, and subsection (4) of section 120.536 is created to read:

120.536 Rulemaking authority; repeal; challenge.—

(2) Unless otherwise expressly provided by law, the repeal of the specific powers and duties granted by the enabling statute repeals all rules adopted to implement or interpret those specific powers and duties. As of the effective date of the repeal of the specific powers and duties, the Department of State shall remove the rule from the Florida Administrative Code and update the historical notes to show the rule repealed by operation of law.



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19       ~~(2)~~(3) The Administrative Procedures Committee or any  
20 substantially affected person may petition an agency to repeal  
21 any rule, or portion thereof, because it exceeds the rulemaking  
22 authority permitted by this section. Not later than 30 days  
23 after the date of filing the petition if the agency is headed by  
24 an individual, or not later than 45 days if the agency is headed  
25 by a collegial body, the agency shall initiate rulemaking  
26 proceedings to repeal the rule, or portion thereof, or deny the  
27 petition, giving a written statement of its reasons for the  
28 denial.

29       ~~(3)~~(4) Nothing in this section shall be construed to  
30 change the legal status of a rule that has otherwise been  
31 judicially or administratively determined to be invalid.

32       Section 2. Section 120.555, Florida Statutes, is created  
33 to read:

34       120.555 .- Summary Removal of Published Rules No Longer in  
35 Force and Effect.- When, as part of the continuous revision  
36 system authorized in s. 120.55(1)(a)1., or otherwise, the  
37 Department of State is in doubt whether a rule published in the  
38 official version of the Florida Administrative Code is still in  
39 full force and effect, the procedure of this section shall be  
40 employed.

41       (1) The Secretary of State, as head of the Department of  
42 State and under the authority provided in s. 16.01(3),  
43 shall submit to the Attorney General a written request for  
44 an advisory opinion as to whether the rule is still in full  
45 force and effect. A copy of the request shall be promptly  
46 delivered to the committee and to the head of the agency

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47 that adopted the rule, or of its successor, if any, or if  
48 no agency head can be identified, to the Governor. The  
49 Department of State shall publish a notice of the request  
50 together with a copy of the request in the Florida  
51 Administrative Weekly next available after delivery of the  
52 request to the Attorney General.

53 (2) No later than 60 days from the date the notice  
54 required in subsection (1) is published, the Attorney  
55 General shall provide the Secretary of State with a written  
56 opinion on whether the rule is still in full force and  
57 effect and shall deliver a copy of the opinion to the  
58 committee.

59 (3) The Department of State shall publish a notice of the  
60 opinion in the Florida Administrative Weekly next available  
61 after receipt of the opinion from the Attorney General.

62 (4) If the opinion from the Attorney General states the  
63 rule is no longer in full force or effect, the notice  
64 required in subsection (3) shall also give notice of the  
65 following:

66 (a) Based on the opinion received from the Attorney  
67 General the rule will be repealed summarily under this  
68 section and removed from the Florida Administrative Code.

69 (b) Any objection to the summary repeal under this section  
70 must be filed as a petition challenging a proposed rule  
71 under s. 120.56 and must be filed no later than 21 days  
72 from the date the notice is published in the Florida  
73 Administrative Weekly.

74 (c) For purposes only of challenging a summary repeal

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75 under this section, any agency with current authority to  
76 repeal the rule under s. 120.54 shall be named as the  
77 respondent in the petition and shall be the proper party  
78 in interest. In such circumstances, the Department of  
79 State shall not be named as a party in a petition filed  
80 under paragraph (b) and this paragraph.

81 (d) If no agency currently has authority to repeal the  
82 rule under s. 120.54 the Department of State shall be  
83 named as the respondent in a petition filed under  
84 paragraph (b) and this paragraph. The Attorney General  
85 shall represent the Department of State in all  
86 proceedings under this paragraph.

87 (5) Upon the expiration of 21 days from the date the  
88 notice of summary repeal is published under subsection (4),  
89 if no timely objection is filed, or, if a timely objection  
90 is filed, on the date a decision finding the rule is no  
91 longer in full force and effect becomes final, the  
92 Department of State shall update the Florida Administrative  
93 Code to remove the rule and shall provide historical notes  
94 identifying the manner in which the rule ceased to have  
95 full force and effect, including the summary repeal under  
96 this section.

97 Section 3. The following rules of the Northwest Florida  
98 Water Management District are nullified and of no further force  
99 or effect:

100 Rule 40A-1.1020, Florida Administrative Code, relating to  
101 General Procedures for Permit Applications.

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Amendment No. 1

102 Rule 40A-1.1030, Florida Administrative Code, relating to  
103 Contract Bidding Resolution of Protest.

104 Rule 40A-1.1040, Florida Administrative Code, relating to  
105 General Permits.

106 Rule 40A-1.180, Florida Administrative Code, relating to  
107 Procedures for Contracting for Professional Services.

108 Rule 40A-1.181, Florida Administrative Code, relating to  
109 Contracting Bidding-Reservation of Right.

110 Rule 40A-1.182, Florida Administrative Code, relating to  
111 Contracting Bidding-Resolution of Protest.

112 Rule 40A-2.311, Florida Administrative Code, relating to  
113 Competing Applications.

114 Rule 40A-3.038, Florida Administrative Code, relating to  
115 Violations of Licensing Requirements.

116 Rule 40A-4.061, Florida Administrative Code, relating to  
117 Mitigation Banks.

118 Rule 40A-4.143, Florida Administrative Code, relating to  
119 Abandonment.

120 Rule 40A-4.461, Florida Administrative Code, relating to  
121 Inspection.

122 Rule 40A-4.471, Florida Administrative Code, relating to  
123 Abatement.

124 Rule 40A-6.461, Florida Administrative Code, relating to  
125 Inspections.

126 Rule 40A-6.491, Florida Administrative Code, relating to  
127 Unlawful Use.

128 Rule 40A-44.143 Florida Administrative Code, relating to  
129 Abandonment.

PCB RRS 12-01 Strike 1



Amendment No. 1

130 Section 4. The following rules of the Suwannee River Water  
131 Management District are nullified and of no further force or  
132 effect:

133 Rule 40B-1.100, Florida Administrative Code, relating to  
134 Uniform Rules of Procedure and Statement of District  
135 Organization and Operation.

136 Rule 40B-1.510, Florida Administrative Code, relating to  
137 District Investigations and Probable Cause Determinations.

138 Rule 40B-1.702, Florida Administrative Code, relating to  
139 Permits Required.

140 Rule 40B-1.705, Florida Administrative Code, relating to  
141 Complaints.

142 Rule 40B-1.801, Florida Administrative Code, relating to  
143 General provisions pertaining to procurement.

144 Rule 40B-1.802, Florida Administrative Code, relating to  
145 Definitions.

146 Rule 40B-1.804, Florida Administrative Code, relating to  
147 Certification and Competitive Selection for Professional  
148 Services.

149 Rule 40B-1.805, Florida Administrative Code, relating to  
150 Competitive Negotiation.

151 Rule 40B-1.808, Florida Administrative Code, relating to  
152 Applicability.

153 Rule 40B-1.810, Florida Administrative Code, relating to  
154 Procurement of Commodities or Contractual Services.

155 Rule 40B-1.811, Florida Administrative Code, relating to  
156 Prequalified Providers.



Amendment No. 1

157 Rule 40B-1.812, Florida Administrative Code, relating to  
158 Contract Bidding - Reservation of Rights.

159 Rule 40B-1.813, Florida Administrative Code, relating to  
160 Contract Bidding - Resolution of Protests.

161 Rule 40B-2.025, Florida Administrative Code, relating to  
162 Processing of Water Use Permit Applications.

163 Rule 40B-2.201, Florida Administrative Code, relating to  
164 Permit Fees.

165 Rule 40B-2.311, Florida Administrative Code, relating to  
166 Competing Applications.

167 Rule 40B-2.341, Florida Administrative Code, relating to  
168 Revocation of Permits.

169 Rule 40B-2.441, Florida Administrative Code, relating to  
170 Temporary Water Use Permits.

171 Rule 40B-2.781, Florida Administrative Code, relating to  
172 Enforcement.

173 Rule 40B-3.011 Florida Administrative Code, relating to  
174 Policy and Purpose.

175 Rule 40B-3.031, Florida Administrative Code, relating to  
176 Implementation.

177 Rule 40B-3.038 Florida Administrative Code, relating to  
178 Violations of Licensing Requirements.

179 Rule 40B-3.039, Florida Administrative Code, relating to  
180 Penalties.

181 Rule 40B-3.0391, Florida Administrative Code, relating to  
182 Enforcement.

183 Rule 40B-3.0511, Florida Administrative Code, relating to  
184 Variances.

PCB RRS 12-01 Strike 1



Amendment No. 1

185 Rule 40B-3.500, Florida Administrative Code, relating to  
186 Scope of Part II.

187 Rule 40B-3.507, Florida Administrative Code, relating to  
188 Casing and Liner Pipe Standards.

189 Rule 40B-3.525, Florida Administrative Code, relating to  
190 Explosives.

191 Rule 40B-4.1050, Florida Administrative Code, relating to  
192 Permit Fees.

193 Rule 40B-5.0021, Florida Administrative Code, relating to  
194 Definitions.

195 Rule 40B-5.0051, Florida Administrative Code, relating to  
196 Exemptions.

197 Rule 40B-5.0121, Florida Administrative Code, relating to  
198 Notice and Hearing Requirements.

199 Rule 40B-5.0201, Florida Administrative Code, relating to  
200 Permit Processing Fee.

201 Rule 40B-5.0351, Florida Administrative Code, relating to  
202 Transfer of Permits.

203 Rule 40B-5.0751, Florida Administrative Code, relating to  
204 Enforcement and Penalties.

205 Rule 40B-5.0901, Florida Administrative Code, relating to  
206 Forms and Instructions.

207 Rule 40B-9.045, Florida Administrative Code, relating to  
208 Acquisition Procedures-Condernation.

209 Rule 40B-9.065, Florida Administrative Code, relating to  
210 Disclosure of Beneficial Interest.

211 Rule 40B-9.081, Florida Administrative Code, relating to  
212 Disposition of Surplus Real Property.

PCB RRS 12-01 Strike 1



Amendment No. 1

213 Rule 40B-21.031, Florida Administrative Code, relating to  
214 Elements of the Plan.

215 Rule 40B-21.291, Florida Administrative Code, relating to  
216 Variances.

217 Rule 40B-21.421, Florida Administrative Code, relating to  
218 Compliance.

219 Rule 40B-21.511, Florida Administrative Code, relating to  
220 General provisions pertaining to classification of water users.

221 Section 5. The following rules of the St. Johns River  
222 Water Management District are nullified and of no further force  
223 or effect:

224 Rule 40C-2.441, Florida Administrative Code, relating to  
225 Temporary Permits.

226 Rule 40C-3.038, Florida Administrative Code, relating to  
227 Violations of Contractor Licensing Requirements.

228 Rule 40C-3.039, Florida Administrative Code, relating to  
229 Penalties.

230 Rule 40C-3.040, Florida Administrative Code, relating to  
231 Scope of Part 1.

232 Rule 40C-3.201, Florida Administrative Code, relating to  
233 Permit Processing Fee.

234 Rule 40C-3.321, Florida Administrative Code, relating to  
235 Duration of Permits.

236 Rule 40C-3.525, Florida Administrative Code, relating to  
237 Explosives.

238 Rule 40C-3.529, Florida Administrative Code, relating to  
239 Flowing Wells.

PCB RRS 12-01 Strike 1



Amendment No. 1

240 Rule 40C-3.532 Florida Administrative Code, relating to  
241 Violations of Well Construction Standards.

242 Rule 40C-4.011, Florida Administrative Code, relating to  
243 Policy and Purpose.

244 Rule 40C-4.201, Florida Administrative Code, relating to  
245 Permit Processing Fee.

246 Rule 40C-4.351, Florida Administrative Code, relating to  
247 Transfer of Permits.

248 Rule 40C-4.751, Florida Administrative Code, relating to  
249 Enforcement.

250 Rule 40C-9.001, Florida Administrative Code, relating to  
251 Purpose.

252 Rule 40C-9.031, Florida Administrative Code, relating to  
253 Selection of Lands - Five Year Plan Pursuant to Section 373.199,  
254 Florida Statutes.

255 Rule 40C-9.045, Florida Administrative Code, relating to  
256 Acquisition Procedures - Condemnation

257 Rule 40C-9.065, Florida Administrative Code, relating to  
258 Disclosure of Beneficial Interest.

259 Rule 40C-9.071, Florida Administrative Code, relating to  
260 Use of Trust Funds.

261 Rule 40C-9.081, Florida Administrative Code, relating to  
262 Disposition of Surplus Land.

263 Rule 40C-9.115, Florida Administrative Code, relating to  
264 Land Management Review Team.

265 Rule 40C-9.400, Florida Administrative Code, relating to  
266 Individuals Living on District Lands.

PCB RRS 12-01 Strike 1





Amendment No. 1

267 Rule 40C-21.031, Florida Administrative Code, relating to  
268 Elements of the Plan.

269 Rule 40C-24.001, Florida Administrative Code, relating to  
270 Policy and Purpose.

271 Rule 40C-24.010, Florida Administrative Code, relating to  
272 Definitions.

273 Rule 40C-24.020, Florida Administrative Code, relating to  
274 Incentive Program.

275 Rule 40C-24.030, Florida Administrative Code, relating to  
276 Incentive Program-Qualifying.

277 Rule 40C-40.011, Florida Administrative Code, relating to  
278 Policy and Purpose.

279 Rule 40C-40.021, Florida Administrative Code, relating to  
280 Definitions.

281 Rule 40C-40.031, Florida Administrative Code, relating to  
282 Implementation.

283 Rule 40C-40.321, Florida Administrative Code, relating to  
284 Duration of Permit.

285 Rule 40C-40.381, Florida Administrative Code, relating to  
286 Limiting Conditions.

287 Rule 40C-40.900, Florida Administrative Code, relating to  
288 Forms and Instructions.

289 Rule 40C-42.071, Florida Administrative Code, relating to  
290 Permit Processing Fee.

291 Rule 40C-42.081, Florida Administrative Code, relating to  
292 General Provisions.

293 Rule 40C-44.081, Florida Administrative Code, relating to  
294 Permit Processing Fee.

PCB RRS 12-01 Strike 1



Amendment No. 1

295 Section 6. The following rules of the Southwest Florida  
296 Water Management District are nullified and of no further force  
297 or effect:

298 Rule 40D-1.902, Florida Administrative Code, relating to  
299 District Investigations and Probable Cause Determinations.

300 Rule 40D-2.311, Florida Administrative Code, relating to  
301 Competing Applications.

302 Rule 40D-2.511, Florida Administrative Code, relating to  
303 Declaration of Water Shortage.

304 Rule 40D-3.011, Florida Administrative Code, relating to  
305 Policy and Purpose.

306 Rule 40D-3.031, Florida Administrative Code, relating to  
307 Implementation.

308 Rule 40D-3.038, Florida Administrative Code, relating to  
309 Violations of Contractor Licensing Requirements.

310 Rule 40D-3.201, Florida Administrative Code, relating to  
311 Permit Processing Fee.

312 Rule 40D-3.525, Florida Administrative Code, relating to  
313 Explosives.

314 Rule 40D-3.529, Florida Administrative Code, relating to  
315 Flowing Wells.

316 Rule 40D-4.031, Florida Administrative Code, relating to  
317 Implementation, Effective Date and Applicability.

318 Rule 40D-4.054, Florida Administrative Code, relating to  
319 Alteration of Exempt Projects.

320 Rule 40D-4.201, Florida Administrative Code, relating to  
321 Permit Processing Fee.

PCB RRS 12-01 Strike 1



Amendment No. 1

322 Rule 40D-4.461, Florida Administrative Code, relating to  
323 Inspection.

324 Rule 40D-40.011, Florida Administrative Code, relating to  
325 Policy and Purpose.

326 Rule 40D-40.031, Florida Administrative Code, relating to  
327 Implementation, Effective Date and Applicability.

328 Rule 40D-400.201, Florida Administrative Code, relating to  
329 Policy and Purpose.

330 Rule 40D-9.101, Florida Administrative Code, relating to  
331 Recreational Land Use Policy.

332 Rule 40D-9.110, Florida Administrative Code, relating to  
333 Scope and Applicability.

334 Rule 40D-9.300, Florida Administrative Code, relating to  
335 Trespass After Notice.

336 Rule 40D-9.310, Florida Administrative Code, relating to  
337 Penalties.

338 Rule 40D-21.031, Florida Administrative Code, relating to  
339 Elements of the Plan.

340 Rule 40D-21.441, Florida Administrative Code, relating to  
341 Public Supply Water Shortage Mitigation Plans

342 Section 7. The following rules of the South Florida Water  
343 Management District are nullified and of no further force or  
344 effect:

345 Rule 40E-0.103, Florida Administrative Code, relating to  
346 Procedures for Processing Permit Applications.

347 Rule 40E-0.105, Florida Administrative Code, relating to  
348 Consideration of Intended Agency Decision on Permit  
349 Applications.

PCB RRS 12-01 Strike 1



Amendment No. 1

350 Rule 40E-1.100, Florida Administrative Code, relating to  
351 Uniform Rules of Procedure and Statement of District  
352 Organization and Operation.

353 Rule 40E-1.1065, Florida Administrative Code, relating to  
354 Misuse of Public Position.

355 Rule 40E-1.125, Florida Administrative Code, relating to  
356 Public Information and Inspection of Records.

357 Rule 40E-1.200, Florida Administrative Code, relating to  
358 Procedures for Agendas and Scheduling of Meetings and Workshops.

359 Rule 40E-1.208, Florida Administrative Code, relating to  
360 Procedure for Abstaining from Voting Conflicts of Interest.

361 Rule 40E-1.300, Florida Administrative Code, relating to  
362 Rulemaking Procedures.

363 Rule 40E-1.400, Florida Administrative Code, relating to  
364 Procedures Regarding Declaratory Statements.

365 Rule 40E-1.500, Florida Administrative Code, relating to  
366 Procedures for Proceedings Which Determine Substantial Interests  
367 and Associated Mediation.

368 Rule 40E-1.511, Florida Administrative Code, relating to  
369 Point of Entry Into Proceedings.

370 Rule 40E-1.520, Florida Administrative Code, relating to  
371 Procedures Concerning Formal Proceedings.

372 Rule 40E-1.521, Florida Administrative Code, relating to  
373 Initiation of Formal Proceedings.

374 Rule 40E-1.564, Florida Administrative Code, relating to  
375 Exceptions of Recommended Order.

376 Rule 40E-1.570, Florida Administrative Code, relating to  
377 Procedures Concerning Informal Proceedings.

PCB RRS 12-01 Strike 1



Amendment No. 1

378 Rule 40E-1.601, Florida Administrative Code, relating to  
379 General provisions pertaining to administrative procedures  
380 applicable to permitting decisions.

381 Rule 40E-1.608, Florida Administrative Code, relating to  
382 Denial of Permits.

383 Rule 40E-1.611, Florida Administrative Code, relating to  
384 Emergency Action.

385 Rule 40E-1.6115, Florida Administrative Code, relating to  
386 Emergency Authorization.

387 Rule 40E-2.441, Florida Administrative Code, relating to  
388 Temporary Permits.

389 Rule 40E-3.010, Florida Administrative Code, relating to  
390 Review of Water Well Permit Applications.

391 Rule 40E-3.0511, Florida Administrative Code, relating to  
392 Exemptions and Variances for Well Construction Permits.

393 Rule 40E-4.311, Florida Administrative Code, relating to  
394 Variances from Specified Review Criteria for Environmental  
395 Resource Permits.

396 Rule 40E-7.201, Florida Administrative Code, relating to  
397 Policy and Purpose.

398 Rule 40E-7.205, Florida Administrative Code, relating to  
399 Competitive Selection for Professional Services.

400 Rule 40E-7.300, Florida Administrative Code, relating to  
401 Procedures Concerning Bid Protests of Solicitations or Contract  
402 Awards.

403 Rule 40E-7.401, Florida Administrative Code, relating to  
404 District Transfer of Funds.

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Amendment No. 1

405 Rule 40E-20.141, Florida Administrative Code, relating to  
406 Request for Additional Information.

407 Rule 40E-20.341, Florida Administrative Code, relating to  
408 Revocation of General Water Use Permits.

409 Rule 40E-20.391, Florida Administrative Code, relating to  
410 Publication.

411 Rule 40E-21.031, Florida Administrative Code, relating to  
412 Elements of the Plan.

413 Rule 40E-21.132, Florida Administrative Code, relating to  
414 Water Use Restrictions.

415 Rule 40E-21.611, Florida Administrative Code, relating to  
416 Classification System.

417 Rule 40E-22.082, Florida Administrative Code, relating to  
418 Minimum Flows.

419 Rule 40E-22.112, Florida Administrative Code, relating to  
420 Permit Classification.

421 Rule 40E-22.132, Florida Administrative Code, relating to  
422 Water Shortage Plan.

423 Rule 40E-22.242, Florida Administrative Code, relating to  
424 Minimum Flow.

425 Rule 40E-22.252, Florida Administrative Code, relating to  
426 Permit Classification.

427 Rule 40E-22.272, Florida Administrative Code, relating to  
428 Water Use Restrictions.

429 Rule 40E-23.011, Florida Administrative Code, relating to  
430 Policy and Purpose.

431 Rule 40E-23.021, Florida Administrative Code, relating to  
432 Definitions.

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Amendment No. 1

433 Rule 40E-23.023, Florida Administrative Code, relating to  
434 Boundaries.

435 Rule 40E-23.031, Florida Administrative Code, relating to  
436 Implementation.

437 Rule 40E-23.043, Florida Administrative Code, relating to  
438 Application.

439 Rule 40E-23.053, Florida Administrative Code, relating to  
440 Criteria for Designation.

441 Rule 40E-63.201, Florida Administrative Code, relating to  
442 Scope.

443 Rule 40E-63.211, Florida Administrative Code, relating to  
444 Purpose.

445 Rule 40E-63.212, Florida Administrative Code, relating  
446 to Definitions.

447 Rule 40E-63.223, Florida Administrative Code, relating to  
448 Model to Quantify Annual Allocation of Replacement Water.

449 Rule 40E-63.225, Florida Administrative Code, relating to  
450 Delivery of Average Annual Allocation of Replacement Water.

451 Section 8. The following rules of the former Department of  
452 Commerce are nullified and of no further force or effect:

453 Rule 8K-1.001, Florida Administrative Code, relating to  
454 Purpose.

455 Rule 8K-1.002, Florida Administrative Code, relating to  
456 Authority and Duties.

457 Rule 8K-1.003, Florida Administrative Code, relating to  
458 Members, Officers and Employees.

459 Rule 8K-1.004, Florida Administrative Code, relating to  
460 Meetings of the Board.

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Amendment No. 1

461 Rule 8K-1.005, Florida Administrative Code, relating to  
462 Notice of Meeting.

463 Rule 8K-1.006, Florida Administrative Code, relating to  
464 Records; Public Information.

465 Rule 8K-1.007, Florida Administrative Code, relating to  
466 Business Address and Hours.

467 Rule 8K-1.008, Florida Administrative Code, relating to  
468 Seal.

469 Rule 8K-2.001, Florida Administrative Code, relating to  
470 Purpose.

471 Rule 8K-2.002, Florida Administrative Code, relating to  
472 Definitions.

473 Rule 8K-2.003, Florida Administrative Code, relating to  
474 Application Procedure.

475 Rule 8K-2.004, Florida Administrative Code, relating to  
476 Board Investments; Type and Conditions.

477 Rule 8K-2.005, Florida Administrative Code, relating to  
478 Community Support.

479 Rule 8K-2.006, Florida Administrative Code, relating to  
480 Accountability.

481 Rule 8K-2.007, Florida Administrative Code, relating to  
482 Misuse of Funds; Penalty; Appeal.

483 Rule 8K-2.008, Florida Administrative Code, relating to  
484 Local Impact Projects.

485 Rule 8K-2.009, Florida Administrative Code, relating to  
486 Certified Corporations.

487 Rule 8K-2.010, Florida Administrative Code, relating to  
488 Investment Agreements.

PCB RRS 12-01 Strike 1





Amendment No. 1

489 Rule 8M-1.001 Florida Administrative Code, relating to  
490 Definitions.

491 Rule 8M-1.002 Florida Administrative Code, relating to  
492 Grant Applications.

493 Rule 8M-1.003 Florida Administrative Code, relating to  
494 Application Review.

495 Rule 8M-1.004 Florida Administrative Code, relating to  
496 Award of Grants.

497 Rule 8M-2.001 Florida Administrative Code, relating to  
498 Definitions.

499 Rule 8M-2.002 Florida Administrative Code, relating to  
500 Grant Applications.

501 Rule 8M-2.003 Florida Administrative Code, relating to  
502 Application Review.

503 Rule 8M-2.004 Florida Administrative Code, relating to  
504 Award of Grants.

505 Rule 8M-3.001 Florida Administrative Code, relating to  
506 Purpose.

507 Rule 8M-3.002, Florida Administrative Code, relating to  
508 Definitions.

509 Rule 8M-3.003, Florida Administrative Code, relating to  
510 Applications for Consideration.

511 Rule 8M-3.004, Florida Administrative Code, relating to  
512 Criteria for the Determination of Grant Award.

513

514 Note.—The rulemaking authority for Rules 8K-1.001 through  
515 8K-1.008 and 8K-2.001 through 8K-2.010 was abolished by  
516 Section 3, Chapter 2002-180, Laws of Florida. No agency  
517 appears to have clear authority to repeal said rules.

PCB RRS 12-01 Strike 1



## Amendment No. 1

518  
519 Rules 8K-1.001 and 8K-1.002 implemented s. 288.707,  
520 288.709, and 288.7091, F.S., which were repealed by Section  
521 487, Chapter 2011-142, Laws of Florida, leaving the rules  
522 out of conformity with the law to be implemented.  
523

524 Rules 8K-1.003, 8K-1.004, 8K-1.005, 8K-1.006, and 8K-1.007  
525 implemented s. 288.707, F.S., which was repealed by Section  
526 487, Chapter 2011-142, Laws of Florida, leaving the rules  
527 out of conformity with the law to be implemented.  
528

529 Rule 8K-1.008 implemented s. 288.709(2), F.S., which was  
530 repealed by Section 487, Chapter 2011-142, Laws of Florida,  
531 leaving the rule out of conformity with the law to be  
532 implemented.  
533

534 Rules 8K-2.001, 8K-2.006, and 8K-2.007 implemented s.  
535 288.711, F.S., which was repealed by Section 24, Chapter  
536 2007-157, Laws of Florida, leaving the rules out of  
537 conformity with the law to be implemented.  
538

539 Rule 8K-2.002 implemented s. 288.707, F.S., which was  
540 repealed by Section 487, Chapter 2011-142, Laws of Florida,  
541 and s. 288.711, F.S., which was repealed by Section 24,  
542 Chapter 2007-157, Laws of Florida, leaving the rule out of  
543 conformity with the laws to be implemented.  
544

545 Rules 8K-2.003, 8K-2.004, 8K-2,009, and 8K-2.010  
546 implemented s. 288.71 and 288.711, F.S., which were  
547 repealed by Section 24, Chapter 2007-157, Laws of Florida,  
548 and s. 288.7091, F.S., which was repealed by Section 487,  
549 Chapter 2011-142, Laws of Florida, leaving the rules out of  
550 conformity with the laws to be implemented.  
551

552 Rules 8K-2.005 and 8K-2.008 implemented s. 288.71 and  
553 288.711, F.S., which were repealed by Section 24, Chapter  
554 2007-157, Laws of Florida, leaving the rules out of  
555 conformity with the laws to be implemented.  
556

557 Note.—The rulemaking authority for Rules 8M-1.001 through  
558 8M-1.004 and 8M-2.001 through 8M-2.004 was abolished by



## Amendment No. 1

559 Section 154, Chapter 96-320, Laws of Florida. No agency  
560 appears to have clear authority to repeal said rules.  
561

562 Rules 8M-1.001 through 8M-1.004 implemented Chapters 91-157  
563 and 91-272, Laws of Florida, which were implementing bills  
564 for the 1991 General Appropriations Act. When those laws  
565 expired July 1, 1992, the rules became out of conformity  
566 with the laws to be implemented.  
567

568 Rules 8M-2.001 through 8M-2.004 implemented s. 288.806,  
569 F.S., which was repealed by Section 154, Chapter 96-320,  
570 Laws of Florida, leaving the rules out of conformity with  
571 the laws to be implemented.  
572

573 Note.— The rulemaking authority for Rules 8M-3.001, 8M-  
574 3.002, 8M-3.003, and 8M-3.004 was abolished by Section 133,  
575 Chapter 96-320, Laws of Florida. These specific rules  
576 implemented s. 311.11, F.S., which was revised extensively  
577 by Section 49, Chapter 97-278, Laws of Florida, leaving the  
578 rules out of conformity with the laws to be implemented. No  
579 agency appears to have clear authority to repeal said  
580 rules.

581 Section 9. (a) The following rules of the former  
582 Department of Health and Rehabilitative Services, Health Program  
583 Office, are nullified and of no further force or effect:

584 Rule 10D-116.001, Florida Administrative Code, relating to  
585 Purpose.

586 Rule 10D-116.002, Florida Administrative Code, relating to  
587 Definitions.

588 Rule 10D-116.003, Florida Administrative Code, relating to  
589 Department Responsibilities.

590 Rule 10D-116.004, subsections (1), (2), and (3), Florida  
591 Administrative Code, relating to Provider Hospital  
592 Responsibilities.



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593 Rule 10D-116.005, Florida Administrative Code, relating to  
594 Practice Parameters.

595 Rule 10D-116.006, subsections (1), (2), and (3), Florida  
596 Administrative Code, relating to Functions of Peer Review  
597 Boards.

598 (b) Prior to the effective date of this section the  
599 Department of Health shall initiate rulemaking to readopt or  
600 revise those portions of the rules which are necessary to  
601 implement the affected statutes.

602 Note. - The rules in this section were adopted by the  
603 former Department of Health and Rehabilitative Services  
604 prior to the Type Two Transfer of responsibility for public  
605 health matters to the Department of Health by Section 6,  
606 Chapter 96-403, Laws of Florida. Rules 10D-116.001, 10D-  
607 116.002, 10D-116.003, 10D-116.004, 10D-116.005, 10D-  
608 116.006, and 10D-116.007 implemented s. 383.336, F.S.,  
609 amended by Section 77, Chapter 99-8, Laws of Florida, to  
610 authorize rulemaking by the Department of Health. The  
611 abolition of responsibility for public health matters in  
612 the former Department of Health and Rehabilitative Services  
613 creates uncertainty about the continued validity of these  
614 rules. Therefore, the Department of Health should readopt  
615 or revise those portions of the rules which remain  
616 necessary to implement the agency's statutory authority.

617  
618 Rules 10D-116.001, 10D-116.002(4), 10D-116.002(5), 10D-  
619 116.002(6), 10D-116.003, and 10D-116.004, reiterate or  
620 paraphrase provisions of s. 383.336, F.S., and do not  
621 conform with the requirements of ss. 120.536(1), and  
622 120.545(1)(c), F.S.

623  
624 Rules 10D-116.002(2) and 10D-116.004(3) interpret the  
625 statute with references to the former Department of Health  
626 and Rehabilitative Services or repealed statutes and do not  
627 conform with the specific law to be implemented.

PCB RRS 12-01 Strike 1



Amendment No. 1

628 Section 10. The following rules of the former Department  
629 of Health and Rehabilitative Services, Health Program Office,  
630 are nullified and of no further force or effect:

631 Rule 10D-116.004, subsection (4), Florida Administrative  
632 Code, relating to Provider Hospital Responsibilities, directing  
633 the making of reports to the Agency for Health Care  
634 Administration.

635 Rule 10D-116.006, subsection (4), Florida Administrative  
636 Code, relating to Functions of Peer Review Boards, stating the  
637 results of a review will not serve as evidence in certain  
638 proceedings.

639 Rule 10D-116.007, Florida Administrative Code, assigning  
640 certain responsibilities to Agency for Health Care  
641 Administration.

642 Note.- Rules 10D-116.004(4), 10D-116.006(4), and 10D-  
643 116.007 exceed the authority delegated in the specific law  
644 to be implemented.

645 Section 11. (a) The following rules of the former  
646 Department of Health and Rehabilitative Services, Health Program  
647 Office, are nullified and of no further force or effect:

648 Rule 10D-124.003, Florida Administrative Code, relating to  
649 Payment of Scholarship Funds.

650 Rule 10D-124.004, Florida Administrative Code, relating to  
651 Placement of Nursing Scholars.

652 (b) Prior to the effective date of this section the  
653 Department of Health shall initiate rulemaking to readopt or  
654 revise those portions of the rules which are necessary to  
655 implement the affected statutes.

PCB RRS 12-01 Strike 1



## Amendment No. 1

656 Note.- The rules in this section were adopted by the former  
657 Department of Health and Rehabilitative Services prior to  
658 the Type Two Transfer of responsibility for public health  
659 matters to the Department of Health by Section 6, Chapter  
660 96-403, Laws of Florida. The abolition of responsibility  
661 for public health matters in the former Department of  
662 Health and Rehabilitative Services raises a question about  
663 the continued validity of these rules. Rules 10D-124.003  
664 and 10D-124.004 implemented s. 240.4028, F.S., which was  
665 repealed by Section 1058, Chapter 2002-387, Laws of  
666 Florida. Therefore, the Department of Health should readopt  
667 or revise those portions of the rules which remain  
668 necessary to implement the agency's statutory authority.  
669 Section 12. The following rules of the former Advisory

670 Council on Intergovernmental Relations are nullified and of no  
671 further force or effect:

672 Rule 37-1.001, Florida Administrative Code, relating to  
673 General Authority.

674 Rule 37-1.002, Florida Administrative Code, relating to  
675 Composition of the Council.

676 Rule 37-1.003, Florida Administrative Code, relating to  
677 Council Officers.

678 Rule 37-1.004, Florida Administrative Code, relating to  
679 General Description of Council Organization and Operations.

680 Rule 37-1.005, Florida Administrative Code, relating to  
681 Council Functions and Duties.

682 Rule 37-1.006, Florida Administrative Code, relating to  
683 Council Recommendations.

684 Rule 37-1.007, Florida Administrative Code, relating to  
685 General Information Concerning Council, Its Record and  
686 Proceedings.

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Amendment No. 1

687 Rule 37-2.001, Florida Administrative Code, relating to  
688 Notice of Meeting.

689 Rule 37-2.002, Florida Administrative Code, relating to  
690 Scheduling of Meetings.

691 Rule 37-2.003, Florida Administrative Code, relating to  
692 Meetings, Hearings; Intergovernmental Cooperation.

693 Rule 37-2.004, Florida Administrative Code, relating to  
694 Agenda of Meetings and Workshops.

695 Rule 37-2.005, Florida Administrative Code, relating to  
696 Emergency Meetings.

697 Rule 37-2.006, Florida Administrative Code, relating to  
698 Model Rules Application.

699 Rule 37-3.001, Florida Administrative Code, relating to  
700 Commencement of Proceeding.

701 Rule 37-3.002, Florida Administrative Code, relating to  
702 Notice of Proceeding, and the Proposed Rules.

703 Rule 37-3.003, Florida Administrative Code, relating to  
704 Petitions to Initiate Rule Making Proceedings.

705 Rule 37-3.004 Florida Administrative Code, relating to  
706 Agency Action on Petitions to Initiate Rule Making Proceedings.

707 Rule 37-3.005, Florida Administrative Code, relating to  
708 Rule Making Proceeding - Hearing.

709 Rule 37-3.006, Florida Administrative Code, relating to  
710 Description of Publication by Reference.

711 Rule 37-3.007, Florida Administrative Code, relating to  
712 Emergency Rule Hearing.

713 Rule 37-3.008, Florida Administrative Code, relating to  
714 Model Rules Application.

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715 Rule 37-4.001, Florida Administrative Code, relating to  
716 General provisions pertaining to petition for declaratory  
717 statement.

718 Rule 37-4.002, Florida Administrative Code, relating to  
719 Purpose and Use of Declaratory Statement.

720 Rule 37-4.003, Florida Administrative Code, relating to  
721 Council Disposition.

722 Rule 37-5.001, Florida Administrative Code, relating to  
723 Members Present Shall Vote.

724 Rule 37-5.002, Florida Administrative Code, relating to  
725 Quorum; Majority Action.

726 Rule 37-5.003, Florida Administrative Code, relating to  
727 Voting.

728 Rule 37-5.004, Florida Administrative Code, relating to  
729 Change of Vote.

730 Rule 37-5.005, Florida Administrative Code, relating to  
731 Casting Vote for Another.

732 Rule 37-5.006, Florida Administrative Code, relating to  
733 Explanation of Vote.

734 Rule 37-5.007, Florida Administrative Code, relating to  
735 Motions; How Made, Withdrawn.

736 Rule 37-5.008, Florida Administrative Code, relating to  
737 Motions; Precedence.

738 Rule 37-5.009, Florida Administrative Code, relating to  
739 Order of Questions.

740 Rule 37-5.010, Florida Administrative Code, relating to  
741 Motions; Disposition.

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742 Rule 37-5.011, Florida Administrative Code, relating to  
743 Reconsideration: Generally.

744 Rule 37-5.012, Florida Administrative Code, relating to  
745 Motion to Lay on Table.

746 Rule 37-5.013, Florida Administrative Code, relating to  
747 Amendments; Manner of Consideration.

748 Rule 37-5.014, Florida Administrative Code, relating to  
749 Amendments; Adoption.

750 Rule 37-5.015, Florida Administrative Code, relating to  
751 Sequence of Amendments to Amendments.

752 Rule 37-6.001, Florida Administrative Code, relating to  
753 Interpretation of Rules.

754 Rule 37-6.002, Florida Administrative Code, relating to  
755 Waiver and Suspension of Rules.

756 Rule 37-6.003, Florida Administrative Code, relating to  
757 General provisions pertaining to construction of rules.

758 Note.—The rules in this section, comprising Title 37 of the  
759 Florida Administrative Code, were adopted by the former  
760 Advisory Council on Intergovernmental Relations, which was  
761 abolished by Section 9, Chapter 96-311, Laws of Florida.  
762 The rulemaking authority for the above rules was abolished  
763 by Section 9, Chapter 96-311, Laws of Florida. The above  
764 rules variously implemented s. 120.53 and 120.54, F.S.,  
765 which were extensively revised by Sections 9 and 10,  
766 respectively, Chapter 96-159, Laws of Florida, eliminating  
767 certain provisions implemented by such rules, and s.  
768 163.703, 163.704, 163.705, 163.7055, 163.706, 163.707, &  
769 163.708, F.S., which were repealed by Section 9, Chapter  
770 96-311, Laws of Florida. The substance of these statutes  
771 was reenacted as s. 11.70, F.S., by Section 1, Chapter 96-  
772 311, Laws of Florida, which was repealed by Section 3,  
773 Chapter 2011-34, Laws of Florida, leaving the rules out of

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774 conformity with the law to be implemented. No agency  
775 appears to have clear authority to repeal said rules.  
776 Section 13. The following rules of the former Department  
777 of Labor and Employment Security are nullified and of no further  
778 force or effect:

779 Rule 38I-40.002, Florida Administrative Code, relating to  
780 Definitions.

781 Rule 38I-40.003, Florida Administrative Code, relating to  
782 Identification of State-Owned Buildings and the Building  
783 Asbestos Contract Person for Each Building.

784 Rule 38I-40.004, Florida Administrative Code, relating to  
785 Review and Approval of Building Asbestos Surveys Completed Prior  
786 to January 1, 1989.

787 Rule 38I-40.005, Florida Administrative Code, relating to  
788 Review and Approval of Current Operation and Maintenance Plans  
789 Implemented Prior to January 1, 1989.

790 Rule 38I-40.006, Florida Administrative Code, relating to  
791 Collection of Information Concerning Completed Asbestos  
792 Abatement Work.

793 Rule 38I-40.007, Florida Administrative Code, relating to  
794 Standardization of Asbestos Management Activities.

795 Rule 38I-40.008, Florida Administrative Code, relating to  
796 Completion of Asbestos Surveys.

797 Rule 38I-40.009, Florida Administrative Code, relating to  
798 Preparation and Implementation of Asbestos Operation and  
799 Maintenance Plans.

800 Rule 38I-40.010, Florida Administrative Code, relating to  
801 Agency Responsibilities for Management of Asbestos.

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802 Rule 38I-40.011, Florida Administrative Code, relating to  
803 Building Asbestos Contact Person.

804 Rule 38I-40.012, Florida Administrative Code, relating to  
805 Asbestos Oversight Program Team.

806 Rule 38I-40.013, Florida Administrative Code, relating to  
807 Regional Asbestos Program Managers.

808 Rule 38I-40.014, Florida Administrative Code, relating to  
809 Training Requirements.

810 Rule 38I-40.015, Florida Administrative Code, relating to  
811 Safety and Health Requirements.

812 Rule 38I-40.016, Florida Administrative Code, relating to  
813 Standard Technical Specifications and Guides.

814 Note.- The rulemaking authority for the above rules was  
815 abolished by Section 35, Chapter 2011-213, Laws of Florida.  
816 No agency appears to have clear authority to repeal said  
817 rules.

818  
819 Rules 38I-40.002 and 38I-40.003 implemented s. 255.554,  
820 F.S., which was repealed by Section 10, Chapter 99-5, Laws  
821 of Florida, and s. 255.552 and 255.553, F.S., which were  
822 repealed by Section 35, Chapter 2011-213, Laws of Florida,  
823 leaving the rules out of conformity with the laws to be  
824 implemented.

825  
826 Rule 38I-40.004 implemented s. 255.554, F.S., which was  
827 repealed by Section 10, Chapter 99-5, Laws of Florida, and  
828 s. 255.552, 255.553, and 255.556, F.S., which were repealed  
829 by Section 35, Chapter 2011-213, Laws of Florida, leaving  
830 the rule out of conformity with the laws to be implemented.

831  
832 Rules 38I-40.005, 38I-40.008, and 38I-40.009 implemented s.  
833 255.552 and 255.557, F.S., which were repealed by Section  
834 35, Chapter 2011-213, Laws of Florida, leaving the rules  
835 out of conformity with the laws to be implemented.  
836

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837 Rule 38I-40.006 implemented 255.552, F.S., which was  
838 repealed by Section 35, Chapter 2011-213, Laws of Florida,  
839 leaving the rule out of conformity with the law to be  
840 implemented.

841  
842 Rules 38I-40.007 and 38I-40.010 implemented 255.552,  
843 255.553, 255.555, 255.556, and 255.557, F.S., which were  
844 repealed by Section 35, Chapter 2011-213, Laws of Florida,  
845 leaving the rules out of conformity with the laws to be  
846 implemented.

847  
848 Rule 38I-40.011 implemented s. 255.554, F.S., which was  
849 repealed by Section 10, Chapter 99-5, Laws of Florida, and  
850 s. 255.552, 255.553, 255.555, and 255.557, F.S., which were  
851 repealed by Section 35, Chapter 2011-213, Laws of Florida,  
852 leaving the rule out of conformity with the laws to be  
853 implemented.

854  
855 Rule 38I-40.012 implemented 255.565, F.S., which was  
856 repealed by Section 15, Chapter 2001-89, Laws of Florida,  
857 leaving the rule out of conformity with the law to be  
858 implemented.

859  
860 Rule 38I-40.013 implemented s. 255.554, F.S., which was  
861 repealed by Section 10, Chapter 99-5, Laws of Florida, and  
862 s. 255.552, 255.553, 255.557, 255.561, and 255.562, F.S.,  
863 which were repealed by Section 35, Chapter 2011-213, Laws  
864 of Florida, leaving the rule out of conformity with the  
865 laws to be implemented.

866  
867 Rule 38I-40.014 implemented 255.565, F.S., which was  
868 repealed by Section 15, Chapter 2001-89, Laws of Florida,  
869 and 255.552, F.S., which was repealed by Section 35,  
870 Chapter 2011-213, Laws of Florida, leaving the rule out of  
871 conformity with the laws to be implemented.

872  
873 Rule 38I-40.015 implemented 255.561, F.S., which was  
874 repealed by Section 35, Chapter 2011-213, Laws of Florida,  
875 leaving the rule out of conformity with the law to be  
876 implemented.

877



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878 Rule 38I-40.016 implemented 255.552, 255.553, 255.557,  
879 255.558, 255.559, 255.56, 255.561, and 255.562, F.S., which  
880 were repealed by Section 35, Chapter 2011-213, Laws of  
881 Florida, leaving the rule out of conformity with the laws  
882 to be implemented.

883 Section 14. (a) The following rules of the former  
884 Department of Labor and Employment Security are nullified and of  
885 no further force or effect:

886 Rule 38J-1.001, Florida Administrative Code, relating to  
887 Recovery From Third Parties.

888 Rule 38J-1.002, Florida Administrative Code, relating to  
889 Definitions.

890 Rule 38J-1.003, Florida Administrative Code, relating to  
891 Right to Make Informed Choice.

892 Rule 38J-1.004, Florida Administrative Code, relating to  
893 Division Services - General.

894 Rule 38J-1.005, Florida Administrative Code, relating to  
895 Additional Requirements for Providing Certain Services.

896 Rule 38J-1.006, Florida Administrative Code, relating to  
897 Division Decisions and Appeal Procedures.

898 Rule 38J-1.007, Florida Administrative Code, relating to  
899 Case Closure due to individual's actions.

900 Rule 38J-1.008, Florida Administrative Code, relating to  
901 Destruction of Records.

902 Rule 38J-1.009, Florida Administrative Code, relating to  
903 Forms and Documents.

904 (b) Prior to the effective date of this section the  
905 Department of Education shall initiate rulemaking to readopt or



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906 revise those portions of the rules which are necessary to  
907 implement the affected statutes.

908 Note.—The rules in this section were adopted by the former  
909 Department of Labor and Employment Security, which was  
910 abolished by Section 69, Chapter 2002-194, Laws of Florida.  
911 The Division of Vocational Rehabilitation was placed under  
912 the Department of Education by Section 1, Chapter 2002-22,  
913 Laws of Florida, without a clear accompanying transfer of  
914 these rules, leaving the rules out of conformity with the  
915 law to be implemented. While no agency appears to have  
916 clear authority to repeal said rules, the laws implemented  
917 remain under the jurisdiction of the Department of  
918 Education. Therefore, the Department of Education should  
919 readopt or revise those portions of the rules which remain  
920 necessary to implement the agency's statutory authority.  
921 Section 15. Upon this act becoming law, its enactment and  
922 effective dates shall be noted in the Florida Administrative  
923 Code or the Florida Administrative Weekly or both, as  
924 appropriate with an appropriate notice that the rules listed in  
925 s. 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 have been repealed  
926 by law. The administrative rules nullified by this act shall be  
927 treated as repealed for purposes of all future editions of the  
928 Florida Administrative Code upon the applicable effective dates.  
929 The provisions of s. 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14  
930 serve no other purpose and shall not be codified in the Florida  
931 Statutes. This act does not alter rulemaking authority delegated  
932 or withdrawn by prior law.

933 Section 16. This act shall take effect 60 days after  
934 becoming a law, except the provisions of sections 9, 11, and 14  
935 shall not take effect before July 1, 2013.

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COMMITTEE/SUBCOMMITTEE AMENDMENT

PCB Name: PCB RRS 12-01 (2012)

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED                                   \_\_\_ (Y/N)  
ADOPTED AS AMENDED                   \_\_\_ (Y/N)  
ADOPTED W/O OBJECTION               \_\_\_ (Y/N)  
FAILED TO ADOPT                       \_\_\_ (Y/N)  
WITHDRAWN                               \_\_\_ (Y/N)  
OTHER                                     \_\_\_\_\_

1 Committee/Subcommittee hearing PCB: Rulemaking & Regulation  
2 Subcommittee

3 Representative Rooney offered the following:

4  
5           **Amendment to Amendment 1 (PCB RRS 12-01 Strike 1) by**  
6 **Representative Rooney**

7           Remove lines 11-96 of the amendment and insert:

8           (2) Unless otherwise expressly provided by law:

9           (a) The repeal of one or more provisions of law implemented  
10 by a rule that on its face implements only such provision(s) and  
11 no surviving provision of law nullifies such rule. Whenever  
12 notice of the nullification of a rule under this subsection is  
13 received from the committee or otherwise, the Department of  
14 State shall remove the rule from the Florida Administrative Code  
15 as of the effective date of the law effecting such nullification  
16 and update the historical notes to show the rule nullified and  
17 repealed by operation of law.

18           (b) The repeal of one or more provisions of law implemented  
19 by a rule that on its face implements such provision(s) and one

COMMITTEE/SUBCOMMITTEE AMENDMENT

PCB Name: PCB RRS 12-01 (2012)

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20 or more other surviving provisions of law nullifies any such  
21 rule or portion of a rule to the extent that it implements the  
22 repealed law. The agency having authority to repeal or amend the  
23 rule shall, within 180 days after the effective date of the  
24 repealing law, publish a notice of rule development identifying  
25 all portions of rules affected by the repealing law and if no  
26 notice is timely published the operation of each rule  
27 implementing a repealed provision of law shall be suspended  
28 until such notice is published.

29 (c) The repeal of one or more provisions of law that, other  
30 than as provided in (a) or (b), causes a rule or portion thereof  
31 to be of uncertain enforceability shall require the Department  
32 of State to treat the rule as provided by s. 120.555.

33  
34 A rule shall be considered to be of uncertain enforceability  
35 under paragraph (c) if the Division of Administrative Hearings  
36 notifies the Department of State that a rule or provision of  
37 rule has been invalidated in a DOAH proceeding based upon a  
38 repeal of law, or the committee gives written notification to  
39 the Department of State and the agency having power to amend or  
40 repeal such rule that a law has been repealed creating doubt  
41 about whether the rule is still in full force and effect.

42 ~~(2)~~(3) The Administrative Procedures Committee or any  
43 substantially affected person may petition an agency to repeal  
44 any rule, or portion thereof, because it exceeds the rulemaking  
45 authority permitted by this section. Not later than 30 days  
46 after the date of filing the petition if the agency is headed by  
47 an individual, or not later than 45 days if the agency is headed



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48 | by a collegial body, the agency shall initiate rulemaking  
49 | proceedings to repeal the rule, or portion thereof, or deny the  
50 | petition, giving a written statement of its reasons for the  
51 | denial.

52 | ~~(3)~~(4) Nothing in this section shall be construed to  
53 | change the legal status of a rule that has otherwise been  
54 | judicially or administratively determined to be invalid.

55 | Section 2. Section 120.555, Florida Statutes, is created  
56 | to read:

57 | 120.555.- Summary Removal of Published Rules No Longer in  
58 | Force and Effect.- When, as part of the continuous revision  
59 | system authorized in s. 120.55(1)(a)1., or otherwise, the  
60 | Department of State is in doubt whether a rule published in the  
61 | official version of the Florida Administrative Code is still in  
62 | full force and effect, the procedure of this section shall be  
63 | employed.

64 | (1) The Department of State shall submit to the head of the  
65 | agency with authority to repeal or amend the rule, if any, or if  
66 | no such agency can be identified, to the Governor, a written  
67 | request for a statement as to whether the rule is still in full  
68 | force and effect. A copy of the request shall be promptly  
69 | delivered to the committee and to the Attorney General. The  
70 | Department of State shall publish a notice of the request  
71 | together with a copy of the request in the Florida  
72 | Administrative Weekly next available after delivery of the  
73 | request to the head of the agency or the Governor.

74 | (2) No later than 90 days from the date the notice required  
75 | in subsection (1) is published, the agency, or the Governor,

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76 notified pursuant to subsection (1) shall file a written  
77 response with the Department of State stating whether the rule  
78 is in full force and effect and under the jurisdiction of an  
79 agency with full authority to amend or repeal the rule. Failure  
80 to respond timely under this subsection constitutes an  
81 acknowledgement by the agency or the Governor that the rule is  
82 no longer in full force and effect and is subject to summary  
83 repeal under this section.

84 (3) The Department of State shall publish a notice of the  
85 agency or Governor's timely response or the acknowledgement  
86 determined under subsection (2) in the Florida Administrative  
87 Weekly next available after receipt of the response or the  
88 expiration of the response period, whichever occurs first.

89 (4) If the response states the rule is no longer in full  
90 force or effect, or if no response is filed timely with the  
91 Department of State, the notice required in subsection (3) shall  
92 also give notice of the following:

93 (a) Based on the written agency or Governor's response or  
94 the acknowledgement determined under subsection (2), the rule  
95 will be repealed summarily under this section and removed from  
96 the Florida Administrative Code.

97 (b) Any objection to the summary repeal under this section  
98 must be filed as a petition challenging a proposed rule under s.  
99 120.56 and must be filed no later than 21 days from the date the  
100 notice is published in the Florida Administrative Weekly.

101 (c) For purposes only of challenging a summary repeal under  
102 this section, the agency with current authority to repeal the  
103 rule under s. 120.54 shall be named as the respondent in the

COMMITTEE/SUBCOMMITTEE AMENDMENT

PCB Name: PCB RRS 12-01 (2012)

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104 petition and shall be the proper party in interest. In such  
105 circumstances, the Department of State shall not be named as a  
106 party in a petition filed under paragraph (b) and this  
107 paragraph.

108 (d) If no agency currently has authority to repeal the rule  
109 under s. 120.54 the Department of State shall be named as the  
110 respondent in a petition filed under paragraph (b) and this  
111 paragraph. The Attorney General shall represent the Department  
112 of State in all proceedings under this paragraph.

113 (5) Upon the expiration of 21 days from the date the notice  
114 of summary repeal is published under subsection (4), if no  
115 timely objection is filed, or, if a timely objection is filed,  
116 on the date a decision finding the rule is no longer in full  
117 force and effect becomes final, the Department of State shall  
118 update the Florida Administrative Code to remove the rule and  
119 shall provide historical notes identifying the manner in which  
120 the rule ceased to have full force and effect, including the  
121 summary repeal under this section.

122



1 A bill to be entitled  
 2 An act relating to administrative authority; making  
 3 findings; providing legislative intent; amending s.  
 4 20.02, F.S., clarifying the authority of the governor;  
 5 amending s. 20.03, F.S., clarifying supervisory powers  
 6 of appointing authority; amending s. 20.05, F.S.,  
 7 incorporating constitutional allocation of executive  
 8 authority; creating s. 120.515, F.S., declaring policy  
 9 regarding executive authority; amending s. 120.52,  
 10 F.S., clarifying supervisory powers of appointing  
 11 authority; amending s. 11.242, F.S., requiring  
 12 revisers bills on rulemaking authority; repealing s.  
 13 14.34(3), F.S., relating to Governor's Medal of Merit;  
 14 amending s. 15.16, F.S., repealing rulemaking  
 15 authority; repealing s. 15.18(7), F.S., relating to  
 16 International and cultural relations; amending s.  
 17 16.60, F.S., repealing rulemaking authority; repealing  
 18 s. 17.0416(2), F.S., relating to Authority to provide  
 19 services on a fee basis; repealing s. 17.59(3), F.S.,  
 20 relating to Safekeeping services; repealing s. 25.371,  
 21 F.S., relating to Effect of rules; repealing s.  
 22 28.43(1) and (2), F.S., relating to Adoption of rules  
 23 relating to ss. 28.35, 28.36, and 28.37; repealing s.  
 24 35.07, F.S., relating to Power to make rules and  
 25 regulations; amending s. 39.0137, F.S., repealing  
 26 rulemaking authority; repealing s. 39.824(1), F.S.,  
 27 relating to Procedures and jurisdiction; amending s.  
 28 63.167, F.S., repealing rulemaking authority;

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29 |       repealing s. 88.9051, F.S., relating to Authority to  
 30 |       adopt rules; amending s. 97.026, F.S., repealing  
 31 |       rulemaking authority; amending s. 97.0555, F.S.,  
 32 |       repealing rulemaking authority; amending s. 97.061,  
 33 |       F.S., repealing rulemaking authority; repealing s.  
 34 |       101.56062(3), F.S., relating to Standards for  
 35 |       accessible voting systems; amending s. 103.101, F.S.,  
 36 |       repealing rulemaking authority; amending s. 106.165,  
 37 |       F.S., repealing rulemaking authority; repealing s.  
 38 |       110.1099(5), F.S., relating to Education and training  
 39 |       opportunities for state employees; repealing s.  
 40 |       110.1228(7), F.S., relating to Participation by small  
 41 |       counties, small municipalities, and district school  
 42 |       boards located in small counties; amending s.  
 43 |       110.12301, F.S., repealing rulemaking authority;  
 44 |       repealing s. 112.1915(4), F.S., relating to Teachers  
 45 |       and school administrators; death benefits; amending s.  
 46 |       118.12, F.S., repealing rulemaking authority;  
 47 |       repealing s. 121.085(1), F.S., relating to Creditable  
 48 |       service; providing an effective date.

49 |  
 50 | Be It Enacted by the Legislature of the State of Florida:  
 51 |

52 |       Section 1. The Legislature finds:  
 53 |       For the preservation of liberty and the protection of  
 54 |       individual rights, the People of Florida adopted a republican  
 55 |       form of government delegating and limiting sovereign power to be  
 56 |       exercised by their representatives in three separate, but equal,

57 | branches: the Legislative, the Executive, and the Judicial.

58

59 |       By Article IV of the State Constitution the People vested  
60 | supreme executive power in the Governor and apportioned specific  
61 | substantive powers among the other elected officers designated  
62 | in that Article, including the Lieutenant Governor, the Attorney  
63 | General, the Chief Financial Officer, and the Commissioner of  
64 | Agriculture.

65

66 |       As noted by Alexander Hamilton: "Energy in the executive is  
67 | a leading character in the definition of good government... A  
68 | feeble executive implies a feeble execution of the government.  
69 | A feeble execution is but another phrase for a bad execution:  
70 | And a government ill executed, whatever it may be in theory,  
71 | must be in practice a bad government."

72

73 |       Since the framing of Florida's first Constitution in 1838,  
74 | the People have adhered to the principles expressed by Mr.  
75 | Hamilton in the vesting of supreme executive power directly in  
76 | the Governor but choosing to vest other specific executive  
77 | powers directly in other denominated officials or entities.

78

79 |       In uninterrupted consistency with their longstanding  
80 | vesting of the supreme executive power in the Governor, the  
81 | People in 1968 adopted Article IV, section 6 of the State  
82 | Constitution, generally directing and limiting the Legislature  
83 | to allot the functions of the Executive Branch among not more  
84 | than twenty-five departments and to place the administration of

85 | each department under the direct supervision of the governor,  
 86 | the lieutenant governor, the governor and cabinet, a cabinet  
 87 | member, or an officer or board appointed by and serving at the  
 88 | pleasure of the governor.

89 |  
 90 |       Each officer of state government is obligated to construe  
 91 | the language of the Constitution consistent with its express and  
 92 | clearly implied intent, must give words their ordinary and  
 93 | customary meaning unless the context indicates otherwise, must  
 94 | construe all parts together to give them their full effect, and  
 95 | must not construe the terms of the Constitution to yield an  
 96 | absurd result.

97 |  
 98 |       Under the authority of Article IV, section 6, of the State  
 99 | Constitution, the Legislature adopted and the Governor signed  
 100 | into law Chapter 69-106, Laws of Florida, which restructured the  
 101 | Executive Branch into not more than twenty-five departments and  
 102 | designated their direct administration.

103 |  
 104 |       At the time of adopting Chapter 69-106, Laws of Florida,  
 105 | the Legislature was informed by the debate in the Forty-First  
 106 | Legislature (under the Constitution of 1885) about the text for  
 107 | Article IV, section 6, for the proposed Constitution, that the  
 108 | Forty-First Legislature expressly considered and expressly  
 109 | rejected alternative proposals which would have required general  
 110 | law to provide supervisory authority to elected constitutional  
 111 | officers over the policies of executive departments, and that in  
 112 | submitting the 1968 Constitution to the People their Legislature



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113 intended the proposal to ensure that the administration and  
 114 policies of each Executive Branch department would be under the  
 115 final authority and control either of the Governor or one or  
 116 more elected constitutional officers.

117  
 118       Construing together Article IV, sections 1(a) and 6 of the  
 119 State Constitution, the Legislature at all times understood  
 120 these sections create a general legal presumption against the  
 121 creation of a class of unelected, subordinate officers  
 122 exercising executive power independent of the direction and  
 123 supervision of the Governor or one or more specified elected  
 124 constitutional officers.

125  
 126       Article IV, section 6 of the State Constitution has not  
 127 been amended since its ratification by the People on November 5,  
 128 1968.

129  
 130       An officer appointed by and serving at the pleasure of the  
 131 Governor to administer a department exercises a portion of the  
 132 sovereign power assigned under the State Constitution to the  
 133 Executive Branch. Such appointees remain subject to the  
 134 direction and supervision of one or more elected constitutional  
 135 officers who have the ultimate accountability to the People for  
 136 the faithful discharge of such responsibility.

137  
 138       Regarding the Governor's accountability for the supervision  
 139 and direction of those appointed officers serving at the  
 140 pleasure of the Governor, the Legislature is informed by the

141 following analysis:

142

143 As opined by Justice Polston: "(T)he Governor has the  
 144 constitutional authority to act as this State's chief  
 145 administrative officer as well as the constitutional duty  
 146 to faithfully execute this State's laws and to manage and  
 147 hold agencies under his charge accountable to State laws,  
 148 including the APA. (The Supreme) Court has explained that  
 149 '[t]he Governor is given broad authority to fulfill his  
 150 duty in taking "care that the laws be faithfully  
 151 executed."'"

152

153 As opined by Chief Justice Canady: "(I)f 'supreme  
 154 executive power' means anything, it must mean that the  
 155 Governor can supervise and direct the policy-making  
 156 choices—within the range of choices permitted by law—of  
 157 the subordinate executive branch officers who serve at  
 158 his pleasure."

159

160 The Legislature has not insulated discretionary executive  
 161 policy decisions from the constitutional structure of  
 162 accountability to elected officials established in Article IV.

163

164 Pertaining to the exercise of delegated rulemaking  
 165 authority, the Legislature is informed by the following:

166

167 The exercise of delegated quasi-legislative power within  
 168 the parameters of Florida's Administrative Procedure Act

169 and related statutes involves certain discretionary  
 170 policy choices by executive branch officers. In  
 171 authorizing the exercise of this power the Legislature  
 172 has imposed no restriction on the authority of the  
 173 Governor or any other constitutional officer or collegial  
 174 body to supervise and direct such policy choices made by  
 175 subordinate executive branch officials in rulemaking.

176  
 177 Florida law provides no specific process for carrying out  
 178 the Governor's executive duties with respect to holding  
 179 his executive agencies accountable in their rulemaking  
 180 functions.

181  
 182 As correctly opined by Chief Justice Canady: "Given the  
 183 constitutional structure establishing the power and  
 184 responsibilities of the Governor, it is unjustified to  
 185 conclude ... that by assigning rulemaking power to agency  
 186 heads, the Legislature implicitly divested the Governor  
 187 of the supervisory power with respect to executive  
 188 officials who serve at his pleasure."

189  
 190 A Governor's actions are presumed to be in accord with  
 191 the duties of that office.

192  
 193 A statutory definition of "agency head" is neither intended  
 194 nor effective to change the fundamental general principles of  
 195 Article IV of the State Constitution: 1) that executive branch  
 196 power may only be exercised under the direct or indirect

197 supervision of one or more elected constitutional officers; and  
 198 2) that the supervision of any executive agency not expressly  
 199 allocated to one or more particular constitutional officers  
 200 remains under the governor's supreme executive power.

201  
 202 The Administrative Procedure Act is a uniform procedural  
 203 statute ensuring full public access and participation in any  
 204 exercise of delegated legislative authority by Executive Branch  
 205 entities.

206  
 207 The delegation of rulemaking authority by substantive  
 208 statute and establishment of uniform procedures under the  
 209 Administrative Procedure Act were intended and made by the  
 210 Legislature to conform and comply with the separation of power  
 211 required under Article II, section 3 of the State Constitution,  
 212 with no general intrusion into the role and authority of the  
 213 elected Executive Branch officers as established in Article IV  
 214 of the State Constitution.

215  
 216 Continual review and assessment of existing and proposed  
 217 regulations is reasonably necessary to ensure that the laws of  
 218 the State are faithfully executed without unduly burdening the  
 219 State's economy and imposing needless costs and requirements on  
 220 citizens, businesses, and local governments.

221  
 222 Fiscal accountability by all agencies is reasonably  
 223 necessary to ensure integrity in State government.

224

225 While agency heads and personnel bring expertise to a  
 226 particular subject matter, they are not directly accountable to  
 227 the electorate and do not necessarily have an incentive to take  
 228 a systemic approach to regulatory problems, to budget  
 229 constraints, or to the overall regulatory burden imposed by the  
 230 State on citizens and businesses.

231  
 232 The elected Constitutional officers have a democratic  
 233 mandate, are directly answerable to the people, and have the  
 234 duty and power to assess the overall legality, efficiency, and  
 235 operation of government within their constitutional and  
 236 statutory jurisdictions.

237  
 238 Review and oversight of agency rulemaking is encompassed by  
 239 the Governor's powers and duties under the Constitution of the  
 240 State of Florida to "take care that the laws be faithfully  
 241 executed" and to serve as "the chief administrative officer of  
 242 the state responsible for the planning and budgeting for the  
 243 state."

244  
 245 The Constitution of the State of Florida and the Florida  
 246 Statutes establish that many agencies of State government are  
 247 administered by an officer "appointed by and serving at the  
 248 pleasure of the governor," and in order to determine whether an  
 249 officer shall continue to serve at the Governor's pleasure, it  
 250 is necessary for the Governor to set expectations and standards  
 251 for that officer, and to measure agency performance against  
 252 those expectations and standards.

253

254 Executive Orders 11-01 and 11-72 established the Office of  
 255 Fiscal Accountability and Regulatory Reform (OFARR) to ensure  
 256 that agency rules (proposed and existing) are efficient, are not  
 257 overly burdensome, and faithfully adhere to statutes as enacted  
 258 by the Legislature.

259

260 Upon establishment of OFARR, all agencies under the  
 261 direction of the Governor were required to obtain OFARR review  
 262 and approval before developing new rules or amending or  
 263 repealing existing rules.

264

265 OFARR's review process has facilitated the Governor's  
 266 exercise of the power and duty to serve as the chief executive  
 267 and administrative officer of the State.

268

269 OFARR's review process has facilitated the Governor's  
 270 planning and budgeting for the State.

271

272 OFARR has reviewed thousands of rules and regulations and  
 273 helped agencies identify over one thousand unnecessary and  
 274 unauthorized rules and regulations for repeal.

275

276 Since January 4, 2011, OFARR has reviewed hundreds of  
 277 proposed agency rulemaking actions.

278

279 OFARR's review process has thus far been successful in  
 280 helping to ensure efficient and effective performance by State

281 government.

282

283           The Supreme Court of Florida, in the case of *Whiley v.*  
 284 *Scott*, No. SC11-592, issued an unsigned opinion joined by five  
 285 Justices, which held that Executive Orders 11-01 and 11-72  
 286 "impermissibly suspended agency rulemaking to the extent that  
 287 [they] included a requirement that [OFARR] must first permit an  
 288 agency to engage in the rulemaking which has been delegated by  
 289 the Florida Legislature."

290

291           The majority opinion in *Whiley*:

292

293           Failed to address and apply the plain meaning of the  
 294 first and sixth sections of Article IV of the  
 295 Constitution of the State of Florida, and thereby may  
 296 be read to restrain the power of the Governor under  
 297 general law with respect to the supervision of agency  
 298 heads;

299

300           Failed to address the implications of the Court's  
 301 precedent in *Jones v. Chiles*, 638 So. 2d 48 (Fla.  
 302 1994), which recognized the proper scope of executive  
 303 power under the Constitution of the State of Florida;

304

305           Failed to address the precedent set by dozens of  
 306 executive orders issued by prior governors of Florida;

307

308           Failed to address the Court's holding that "[t]he

309 principles underlying the governmental separation of  
 310 powers antedate our Florida Constitution and were  
 311 collectively adopted by the union of states in our  
 312 federal constitution," *Chiles v. Children A, B, C, D,*  
 313 *E, & F*, 589 So. 2d 260, 263 (Fla. 1991), and in light  
 314 of that precedent, failed to consider that Executive  
 315 Orders 11-01 and 11-72 cannot be meaningfully  
 316 distinguished from similar executive orders issued by  
 317 the last four presidents of the United States and the  
 318 governors of a least twenty-nine other states; and  
 319

320 Unreasonably relied on a 1983 Opinion of the Attorney  
 321 General Opinion, which the Attorney General  
 322 distinguished and limited to its facts in an *amicus*  
 323 brief in *Whiley*.  
 324

325 The dissenting opinions of two justices in the *Whiley* case  
 326 state the correct interpretation of the Constitution of the  
 327 State of Florida and present persuasive reasoning and arguments  
 328 in support of that interpretation.  
 329

330 The Supreme Court withheld the Writ sought by *Whiley*.  
 331

332 Notwithstanding the above the majority opinion in *Whiley* is  
 333 to be afforded the deference due an advisory opinion of the  
 334 Supreme Court of the State of Florida because no writ or other  
 335 final order was entered.  
 336



337 Section 2. Executive Orders 11-72 and 11-211 are affirmed  
 338 to be consistent with state law and the public policy of the  
 339 state.

340 Section 3. It is the intent of the Legislature that  
 341 modifications contained in sections 4, 5, and 6, which apply to  
 342 the organizational structure of the executive branch, and  
 343 sections 7 and 8, which apply to administrative procedure, are  
 344 to clarify that the placement of an executive department under  
 345 the direct administration of an officer or board appointed by  
 346 and serving at the pleasure of the Governor does not implicitly  
 347 limit or restrict the Governor's authority and responsibility to  
 348 direct and supervise the actions, policies, and process of such  
 349 officer or board and are intended to reject the interpretation  
 350 that unelected agency heads have statutory authority independent  
 351 from the direction and supervision of the Governor, except as  
 352 may be clearly, expressly and specifically provided by general  
 353 law.

354 Section 4. Subsections (3), (4), (5), (6), and (7) of  
 355 section 20.02, Florida Statutes, are amended to read:

356 20.02 Declaration of policy.—

357 (3) Unless otherwise expressly provided in this chapter,  
 358 the administration of any executive branch department or entity  
 359 placed under the direct supervision of an officer or board  
 360 appointed by and serving at the pleasure of the governor shall  
 361 remain at all times under the executive authority of the  
 362 governor, in accordance with Article IV, sections 1(a) and 6, of  
 363 the State Constitution, and subject to the oversight, direction  
 364 and supervision of the Governor.

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365       (4) Structural reorganization must be a continuing process  
 366 through careful executive and legislative appraisal of the  
 367 placement of proposed new programs and the coordination of  
 368 existing programs in response to public needs.

369 ~~(4)~~(5) The responsibility within the executive branch of  
 370 government for the implementation of programs and policies must  
 371 be clearly fixed and ascertainable.

372 ~~(5)~~(6) Departments must be organized along functional or  
 373 program lines.

374 ~~(6)~~(7) The management and coordination of state services  
 375 must be improved and overlapping activities eliminated.

376 ~~(7)~~(8) When a reorganization of state government abolishes  
 377 positions, the individuals affected, when otherwise qualified,  
 378 must be given priority consideration for any new positions  
 379 created by reorganization or for other vacant positions in state  
 380 government.

381 Section 5. Subsections (4) and (5) of section 20.03,  
 382 Florida Statutes, are amended, and subsection (13) is created to  
 383 read:

384 20.03 Definitions.—To provide uniform nomenclature  
 385 throughout the structure of the executive branch, the following  
 386 definitions apply:

387 (4) "Head of the department" means the individual to whom,  
 388 or the board to which, in-charge direct administration of the  
 389 department is allotted by statute. Where direct administration  
 390 of a department is allotted to an officer appointed by and  
 391 serving at the pleasure of the Governor, the direction and  
 392 control of that officer remains subject to the Governor's

393 supervision and direction under Article IV, s. 1 of the State  
 394 Constitution.

395 (5) "Secretary" means an individual who is appointed by  
 396 the Governor to head a department and who is not otherwise named  
 397 in the State Constitution~~constitution~~.

398 (13) "To serve at the pleasure" means the appointee serves  
 399 in the office until removed by the appointing authority. In  
 400 accord with Article IV, s. 1 and 6 of the State Constitution, an  
 401 appointee serving at the pleasure of the appointing authority  
 402 remains subject to the direction and supervision of the  
 403 appointing authority and does not exercise any independent  
 404 executive power, except as is clearly, expressly and  
 405 specifically provided by law. Unless otherwise expressly  
 406 provided by law, the exercise of statutory authority by such  
 407 appointee does not require approval of the appointing authority  
 408 unless expressly required by the directive of the appointing  
 409 authority.

410 Section 6. Paragraph (a) of subsection (1) of section  
 411 20.05, Florida Statutes, is amended to read:

412 20.05 Heads of departments; powers and duties.—

413 (1) Each head of a department, subject to the allotment of  
 414 executive power under Article IV of the State Constitution, and  
 415 except as otherwise provided by law, must:

416 (a) Plan, direct, coordinate, and execute the powers,  
 417 duties, and functions vested in that department or vested in a  
 418 division, bureau, or section of that department; powers and  
 419 duties assigned or transferred to a division, bureau, or section  
 420 of the department must not be construed to limit this authority

421 and this responsibility;

422 Section 7. Section 120.515, Florida Statutes, is created  
423 to read:

424 120.515 - Declaration of Policy. - This chapter provides  
425 uniform procedures for the exercise of delegated rulemaking and  
426 decision-making authority by executive agencies. Nothing in  
427 this act limits or impinges upon the assignment of executive  
428 power under Article IV of the State Constitution or the legal  
429 authority of an appointing authority to direct and supervise  
430 those appointees serving at the pleasure of the appointing  
431 authority.

432 Section 8. Subsection (3) of section 120.52, Florida  
433 Statutes, is amended to read:

434 120.52 Definitions.—As used in this act:

435 (3) "Agency head" means the person or collegial body in a  
436 department or other governmental unit statutorily responsible  
437 for final agency action. While an agency head appointed by and  
438 serving at the pleasure of an appointing authority remains  
439 subject to the direction and supervision of the appointing  
440 authority, actions taken by the agency head as authorized by  
441 statute are official acts.

442 Section 9. Paragraphs (j), and (k) of subsection (5) of  
443 section 11.242, Florida Statutes, are amended to read:

444 11.242 Powers, duties, and functions as to statutory  
445 revision.—The powers, duties, and functions of the Office of  
446 Legislative Services in the operation and maintenance of a  
447 statutory revision program shall be as follows:

448 (5) In carrying on the work of statutory revision and in

449 preparing the Florida Statutes for publication:

450 (j) All statutes and laws, or parts thereof, which grant  
 451 duplicative, redundant or unused rulemaking authority, shall be  
 452 omitted through the process of reviser's bills duly enacted by  
 453 the Legislature. Rulemaking authority shall be deemed unused if  
 454 the provision has been in effect for more than five years and no  
 455 rule has been promulgated in reliance thereon.

456 (k) All statutes and laws general in form but of such  
 457 local or limited application as to make their inclusion in the  
 458 Florida Statutes or any revision or supplement thereof  
 459 impracticable, undesirable, or unnecessary shall be omitted  
 460 therefrom, without effecting a repeal thereof.

461 ~~(k)~~ (l) All things relating to form, position, order, or  
 462 arrangement of the revision, not inconsistent with the Florida  
 463 Statutes system, which may be found desirable or necessary for  
 464 the improvement, betterment, or perfection of same, may be done.

465 Section 10. Subsection (3) of section 14.34, Florida  
 466 Statutes, is repealed.

467 Section 11. Subsection (7) of section 15.16, Florida  
 468 Statutes, is amended to read:

469 15.16 Reproduction of records; admissibility in evidence;  
 470 electronic receipt and transmission of records; certification;  
 471 acknowledgment.—

472 (7) The Secretary of State may issue apostilles conforming  
 473 to the requirements of the international treaty known as the  
 474 Hague Convention of 1961 and may charge a fee for the issuance  
 475 of apostilles not to exceed \$10 per apostille. The Secretary of  
 476 State has the sole authority in this state to establish, in

477 accordance with the laws of the United States, the requirements  
 478 and procedures for the issuance of apostilles. ~~The Department of~~  
 479 ~~State may adopt rules to implement this subsection.~~

480       Section 12. Subsection (7) of section 15.18, Florida  
 481 Statutes, is repealed.

482       Section 13. Paragraph (a) of subsection (3) of section  
 483 16.60, Florida Statutes, is amended to read:

484       16.60 Public records mediation program within the Office  
 485 of the Attorney General; creation; duties.-

486       (3) The Office of the Attorney General shall:

487       (a) Employ one or more mediators to mediate disputes  
 488 involving access to public records. A person may not be employed  
 489 by the department as a mediator unless that person is a member  
 490 in good standing of The Florida Bar. ~~The Office of the Attorney~~  
 491 ~~General may adopt rules of procedure to govern its mediation~~  
 492 ~~proceedings.~~

493       Section 14. Subsection (2) of section 17.0416, Florida  
 494 Statutes, is repealed.

495       Section 15. Subsection (3) of section 17.59, Florida  
 496 Statutes, is repealed.

497       Section 16. Section 25.371, Florida Statutes, is repealed.

498       Section 17. Section 28.43, Florida Statutes, is repealed.

499       Section 18. Section 35.07, Florida Statutes, is repealed.

500       Section 19. Subsection (2) of section 39.0137, Florida  
 501 Statutes, is amended to read:

502       39.0137 Federal law; rulemaking authority.-

503       (2) ~~The department shall adopt rules no later than July 1,~~  
 504 ~~2007, to ensure that the provisions of these federal laws are~~

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505 ~~enforced in this state.~~ The department is encouraged to enter  
 506 into agreements with recognized American Indian tribes in order  
 507 to facilitate the implementation of the Indian Child Welfare  
 508 Act.

509 Section 20. Subsection (1) of section 39.824, Florida  
 510 Statutes, is repealed.

511 Section 21. Subsection (3) of section 63.167, Florida  
 512 Statutes, is amended to read:

513 63.167 State adoption information center.—

514 (3) The department shall ensure equitable distribution of  
 515 referrals to licensed child-placing agencies, ~~and may promulgate~~  
 516 ~~rules as necessary for the establishment and operation of the~~  
 517 ~~state adoption information center.~~

518 Section 22. Section 88.9051, Florida Statutes, is  
 519 repealed.

520 Section 23. Section 97.026, Florida Statutes, is amended  
 521 to read:

522 97.026 Forms to be available in alternative formats and  
 523 via the Internet.—It is the intent of the Legislature that all  
 524 forms required to be used in chapters 97-106 shall be made  
 525 available upon request, in alternative formats. Such forms shall  
 526 include absentee ballots as alternative formats for such ballots  
 527 become available and the Division of Elections is able to  
 528 certify systems that provide them. ~~The department may, pursuant~~  
 529 ~~to ss. 120.536(1) and 120.54, adopt rules to administer this~~  
 530 ~~section.~~ Whenever possible, such forms, with the exception of  
 531 absentee ballots, shall be made available by the Department of  
 532 State via the Internet. Sections that contain such forms

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533 include, but are not limited to, ss. 97.051, 97.052, 97.053,  
 534 97.057, 97.058, 97.0583, 97.071, 97.073, 97.1031, 98.075,  
 535 99.021, 100.361, 100.371, 101.045, 101.171, 101.20, 101.6103,  
 536 101.62, 101.64, 101.65, 101.657, 105.031, 106.023, and 106.087.

537 Section 24. Section 97.0555, Florida Statutes, is amended  
 538 to read:

539 97.0555 Late registration.—An individual or accompanying  
 540 family member who has been discharged or separated from the  
 541 uniformed services or the Merchant Marine, or from employment  
 542 outside the territorial limits of the United States, after the  
 543 book-closing date for an election pursuant to s. 97.055 and who  
 544 is otherwise qualified may register to vote in such election  
 545 until 5 p.m. on the Friday before that election in the office of  
 546 the supervisor of elections. Such persons must produce  
 547 sufficient documentation showing evidence of qualifying for late  
 548 registration pursuant to this section. ~~The Department of State~~  
 549 ~~shall adopt rules specifying documentation that is sufficient to~~  
 550 ~~determine eligibility.~~

551 Section 25. Subsection (1) of section 97.061, Florida  
 552 Statutes, is amended to read:

553 97.061 Special registration for electors requiring  
 554 assistance.—

555 (1) Any person who is eligible to register and who is  
 556 unable to read or write or who, because of some disability,  
 557 needs assistance in voting shall upon that person's request be  
 558 registered under the procedure prescribed by this section and  
 559 shall be entitled to receive assistance at the polls under the  
 560 conditions prescribed by this section. ~~The department may adopt~~



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561 ~~rules to administer this section.~~

562 Section 26. Subsection (3) of section 101.56062, Florida  
 563 Statutes, is repealed.

564 Section 27. Subsection (5) of section 103.101, Florida  
 565 Statutes, is amended to read:

566 103.101 Presidential preference primary.—

567 (5) The state executive committee of each party, by rule  
 568 adopted at least 60 days prior to the presidential preference  
 569 primary election, shall determine the number, and establish  
 570 procedures to be followed in the selection, of delegates and  
 571 delegate alternates from among each candidate's supporters. A  
 572 copy of any rule adopted by the executive committee shall be  
 573 filed with the Department of State within 7 days after its  
 574 adoption and shall become a public record. The Department of  
 575 State shall review the procedures and shall notify the state  
 576 executive committee of each political party of any ballot  
 577 limitations. ~~The Department of State may promulgate rules for~~  
 578 ~~the orderly conduct of the presidential preference primary~~  
 579 ~~ballot.~~

580 Section 28. Section 106.165, Florida Statutes, is amended  
 581 to read:

582 106.165 Use of closed captioning and descriptive narrative  
 583 in all television broadcasts.—Each candidate, political party,  
 584 affiliated party committee, and political committee must use  
 585 closed captioning and descriptive narrative in all television  
 586 broadcasts regulated by the Federal Communications Commission  
 587 that are on behalf of, or sponsored by, a candidate, political  
 588 party, affiliated party committee, or political committee or

589 must file a written statement with the qualifying officer  
 590 setting forth the reasons for not doing so. Failure to file this  
 591 statement with the appropriate qualifying officer constitutes a  
 592 violation of the Florida Election Code and is under the  
 593 jurisdiction of the Florida Elections Commission. ~~The Department~~  
 594 ~~of State may adopt rules in accordance with s. 120.54 which are~~  
 595 ~~necessary to administer this section.~~

596 Section 29. Subsection (5) of section 110.1099, Florida  
 597 Statutes, is repealed.

598 Section 30. Subsection (7) of section 110.1228, Florida  
 599 Statutes, is repealed.

600 Section 31. Subsection (2) of section 110.12301, Florida  
 601 Statutes, is amended to read:

602 110.12301 Competitive procurement of postpayment claims  
 603 review services.—

604 The Division of State Group Insurance is directed to  
 605 competitively procure:

606 (2) A contingency-based contract for dependent eligibility  
 607 verification services for the state group insurance program;  
 608 however, compensation under the contract may not exceed  
 609 historical claim costs for the prior 12 months for the dependent  
 610 populations disenrolled as a result of the vendor's services.

611 The division may establish a 3-month grace period and hold  
 612 subscribers harmless for past claims of ineligible dependents.

613 The Department of Management Services shall submit budget  
 614 amendments pursuant to chapter 216 in order to obtain budget  
 615 authority necessary to expend funds from the State Employees'  
 616 Group Health Self-Insurance Trust Fund for payments to the

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617 vendor as provided in the contract. ~~The Department of Management~~  
 618 ~~Services shall adopt rules providing a process for verifying~~  
 619 ~~dependent eligibility.~~

620 Section 32. Subsection (4) of section 112.1915, Florida  
 621 Statutes, is repealed.

622 Section 33. Section 118.12, Florida Statutes, is amended  
 623 to read:

624 118.12 Certification of civil-law notary's authority;  
 625 apostilles.—If certification of a civil-law notary's authority  
 626 is necessary for a particular document or transaction, it must  
 627 be obtained from the Secretary of State. Upon the receipt of a  
 628 written request from a civil-law notary and the fee prescribed  
 629 by the Secretary of State, the Secretary of State shall issue a  
 630 certification of the civil-law notary's authority, in a form  
 631 prescribed by the Secretary of State, which shall include a  
 632 statement explaining the legal qualifications and authority of a  
 633 civil-law notary in this state. The fee prescribed for the  
 634 issuance of the certification under this section or an apostille  
 635 under s. 15.16 may not exceed \$10 per document. ~~The Department~~  
 636 ~~of State may adopt rules to implement this section.~~

637 Section 34. Subsection (1) of section 121.085, Florida  
 638 Statutes, is repealed.

639 Section 35. This act shall take effect July 1, 2012.