

1 A bill to be entitled
2 An act relating to rulemaking; amending s. 120.54, F.S.;
3 requiring that an agency include in its notice of intended
4 rulemaking a statement as to whether the proposed rule
5 will require legislative ratification; providing for
6 withdrawal of an adopted rule that is not ratified by the
7 Legislature; clarifying that certain proposed rules are
8 effective only when ratified by the Legislature; amending
9 s. 120.541, F.S.; reducing the time before an agency files
10 a rule for adoption within which the agency must notify
11 the person who submitted a lower cost alternative and the
12 Administrative Procedures Committee; excluding rules
13 adopting federal standards and emergency rulemaking from
14 certain provisions; amending s. 120.56, F.S.; reducing the
15 time in which a substantially affected person may seek an
16 administrative determination of the invalidity of a rule
17 after the statement or revised statement of estimated
18 regulatory costs is available; amending s. 120.74, F.S.;
19 providing for agency reporting of certain annual
20 regulatory plans; providing for certain omissions and
21 suspensions of reports; creating s. 120.745, F.S.;
22 providing for legislative review of agency rules in effect
23 on or before November 16, 2010; providing definitions;
24 requiring that each agency complete an enhanced biennial
25 review of its existing rules; requiring a report of the
26 enhanced biennial review; providing specifications for the
27 report; providing for objections and the agency's
28 response; requiring the performance of a compliance

29 | economic review and report under certain circumstances;
30 | providing specifications for the review; providing
31 | specifications for publishing the final report of the
32 | agency's review; requiring that an agency publish notices,
33 | determinations, and reports in a specified format;
34 | requiring the Department of State to publish certain
35 | notices in the Florida Administrative Weekly; providing
36 | specifications; providing for future review and repeal;
37 | providing for suspension of rulemaking authority for
38 | failure to comply with the certification requirements of
39 | the section; providing for an exemption from certain
40 | requirements; creating s. 120.7455, F.S.; providing that
41 | the Legislature may establish and maintain an Internet-
42 | based public survey of regulatory impacts; providing input
43 | details; providing that legislative leaders may certify in
44 | writing to certain individuals the establishment and
45 | identity of any such Internet-based survey; providing
46 | immunities from enforcement action or prosecution
47 | involving information solicited through the survey;
48 | providing protections from retaliatory enforcement
49 | actions; clarifying that the legal status of a rule that
50 | has been determined to be invalid is not changed by the
51 | amendment or creation of specified provisions by the act;
52 | amending s. 120.80, F.S.; exempting the adoption of
53 | certain amendments and the triennial updates to the
54 | Florida Building Code from required legislative
55 | ratification; exempting the adoption of certain amendments
56 | and the triennial updates to the Florida Fire Prevention

57 Code from required legislative ratification; exempting the
 58 adoption of rules adjusting rates of certain
 59 transportation and expressway tolls from the preparation
 60 of a statement of estimated regulatory costs and from
 61 submission for legislative ratification; amending s.
 62 120.81, F.S.; excluding the adoption of rules under
 63 chapter 2011-1, Laws of Florida, the Student Success Act,
 64 from the preparation of a statement of estimated
 65 regulatory costs and from submission for legislative
 66 ratification; providing an effective date.

67

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

69

70 Section 1. Paragraphs (a), (d), and (e) of subsection (3)
 71 of section 120.54, Florida Statutes, as amended by chapter 2010-
 72 279, Laws of Florida, are amended to read:

73 120.54 Rulemaking.—

74 (3) ADOPTION PROCEDURES.—

75 (a) Notices.—

76 1. Prior to the adoption, amendment, or repeal of any rule
 77 other than an emergency rule, an agency, upon approval of the
 78 agency head, shall give notice of its intended action, setting
 79 forth a short, plain explanation of the purpose and effect of
 80 the proposed action; the full text of the proposed rule or
 81 amendment and a summary thereof; a reference to the grant of
 82 rulemaking authority pursuant to which the rule is adopted; and
 83 a reference to the section or subsection of the Florida Statutes
 84 or the Laws of Florida being implemented or interpreted. The

85 notice must include a summary of the agency's statement of the
86 estimated regulatory costs, if one has been prepared, based on
87 the factors set forth in s. 120.541(2); ~~and~~ and a statement that
88 any person who wishes to provide the agency with information
89 regarding the statement of estimated regulatory costs, or to
90 provide a proposal for a lower cost regulatory alternative as
91 provided by s. 120.541(1), must do so in writing within 21 days
92 after publication of the notice; and a statement as to whether,
93 based on the statement of the estimated regulatory costs or
94 other information expressly relied upon and described by the
95 agency if no statement of regulatory costs is required, the
96 proposed rule is expected to require legislative ratification
97 pursuant to s. 120.541(3). The notice must state the procedure
98 for requesting a public hearing on the proposed rule. Except
99 when the intended action is the repeal of a rule, the notice
100 must include a reference both to the date on which and to the
101 place where the notice of rule development that is required by
102 subsection (2) appeared.

103 2. The notice shall be published in the Florida
104 Administrative Weekly not less than 28 days prior to the
105 intended action. The proposed rule shall be available for
106 inspection and copying by the public at the time of the
107 publication of notice.

108 3. The notice shall be mailed to all persons named in the
109 proposed rule and to all persons who, at least 14 days prior to
110 such mailing, have made requests of the agency for advance
111 notice of its proceedings. The agency shall also give such
112 notice as is prescribed by rule to those particular classes of

113 persons to whom the intended action is directed.

114 4. The adopting agency shall file with the committee, at
115 least 21 days prior to the proposed adoption date, a copy of
116 each rule it proposes to adopt; a copy of any material
117 incorporated by reference in the rule; a detailed written
118 statement of the facts and circumstances justifying the proposed
119 rule; a copy of any statement of estimated regulatory costs that
120 has been prepared pursuant to s. 120.541; a statement of the
121 extent to which the proposed rule relates to federal standards
122 or rules on the same subject; and the notice required by
123 subparagraph 1.

124 (d) Modification or withdrawal of proposed rules.—

125 1. After the final public hearing on the proposed rule, or
126 after the time for requesting a hearing has expired, if the rule
127 has not been changed from the rule as previously filed with the
128 committee, or contains only technical changes, the adopting
129 agency shall file a notice to that effect with the committee at
130 least 7 days prior to filing the rule for adoption. Any change,
131 other than a technical change that does not affect the substance
132 of the rule, must be supported by the record of public hearings
133 held on the rule, must be in response to written material
134 submitted to the agency within 21 days after the date of
135 publication of the notice of intended agency action or submitted
136 to the agency between the date of publication of the notice and
137 the end of the final public hearing, or must be in response to a
138 proposed objection by the committee. In addition, when any
139 change is made in a proposed rule, other than a technical
140 change, the adopting agency shall provide a copy of a notice of

141 change by certified mail or actual delivery to any person who
142 requests it in writing no later than 21 days after the notice
143 required in paragraph (a). The agency shall file the notice of
144 change with the committee, along with the reasons for the
145 change, and provide the notice of change to persons requesting
146 it, at least 21 days prior to filing the rule for adoption. The
147 notice of change shall be published in the Florida
148 Administrative Weekly at least 21 days prior to filing the rule
149 for adoption. This subparagraph does not apply to emergency
150 rules adopted pursuant to subsection (4).

151 2. After the notice required by paragraph (a) and prior to
152 adoption, the agency may withdraw the rule in whole or in part.

153 3. After adoption and before the rule becomes effective
154 ~~date~~, a rule may be modified or withdrawn only in the following
155 circumstances:

156 a. When the committee objects to the rule;

157 b. When a final order, which is not subject to further
158 appeal, is entered in a rule challenge brought pursuant to s.
159 120.56 after the date of adoption but before the rule becomes
160 effective pursuant to subparagraph (e)6.;

161 c. If the rule requires ratification, when more than 90
162 days have passed since the rule was filed for adoption without
163 the Legislature ratifying the rule, in which case the rule may
164 be withdrawn but may not be modified; or

165 ~~d. response to an objection by the committee or may be~~
166 ~~modified to extend the effective date by not more than 60 days~~
167 When the committee notifies ~~has notified~~ the agency that an
168 objection to the rule is being considered, in which case the

169 rule may be modified to extend the effective date by not more
170 than 60 days.

171 4. The agency shall give notice of its decision to
172 withdraw or modify a rule in the first available issue of the
173 publication in which the original notice of rulemaking was
174 published, shall notify those persons described in subparagraph
175 (a)3. in accordance with the requirements of that subparagraph,
176 and shall notify the Department of State if the rule is required
177 to be filed with the Department of State.

178 5. After a rule has become effective, it may be repealed
179 or amended only through the rulemaking procedures specified in
180 this chapter.

181 (e) Filing for final adoption; effective date.—

182 1. If the adopting agency is required to publish its rules
183 in the Florida Administrative Code, the agency, upon approval of
184 the agency head, shall file with the Department of State three
185 certified copies of the rule it proposes to adopt; one copy of
186 any material incorporated by reference in the rule, certified by
187 the agency; a summary of the rule; a summary of any hearings
188 held on the rule; and a detailed written statement of the facts
189 and circumstances justifying the rule. Agencies not required to
190 publish their rules in the Florida Administrative Code shall
191 file one certified copy of the proposed rule, and the other
192 material required by this subparagraph, in the office of the
193 agency head, and such rules shall be open to the public.

194 2. A rule may not be filed for adoption less than 28 days
195 or more than 90 days after the notice required by paragraph (a),
196 until 21 days after the notice of change required by paragraph

197 (d), until 14 days after the final public hearing, until 21 days
198 after a statement of estimated regulatory costs required under
199 s. 120.541 has been provided to all persons who submitted a
200 lower cost regulatory alternative and made available to the
201 public, or until the administrative law judge has rendered a
202 decision under s. 120.56(2), whichever applies. When a required
203 notice of change is published prior to the expiration of the
204 time to file the rule for adoption, the period during which a
205 rule must be filed for adoption is extended to 45 days after the
206 date of publication. If notice of a public hearing is published
207 prior to the expiration of the time to file the rule for
208 adoption, the period during which a rule must be filed for
209 adoption is extended to 45 days after adjournment of the final
210 hearing on the rule, 21 days after receipt of all material
211 authorized to be submitted at the hearing, or 21 days after
212 receipt of the transcript, if one is made, whichever is latest.
213 The term "public hearing" includes any public meeting held by
214 any agency at which the rule is considered. If a petition for an
215 administrative determination under s. 120.56(2) is filed, the
216 period during which a rule must be filed for adoption is
217 extended to 60 days after the administrative law judge files the
218 final order with the clerk or until 60 days after subsequent
219 judicial review is complete.

220 3. At the time a rule is filed, the agency shall certify
221 that the time limitations prescribed by this paragraph have been
222 complied with, that all statutory rulemaking requirements have
223 been met, and that there is no administrative determination
224 pending on the rule.

225 4. At the time a rule is filed, the committee shall
226 certify whether the agency has responded in writing to all
227 material and timely written comments or written inquiries made
228 on behalf of the committee. The department shall reject any rule
229 that is not filed within the prescribed time limits; that does
230 not comply with all statutory rulemaking requirements and rules
231 of the department; upon which an agency has not responded in
232 writing to all material and timely written inquiries or written
233 comments; upon which an administrative determination is pending;
234 or which does not include a statement of estimated regulatory
235 costs, if required.

236 5. If a rule has not been adopted within the time limits
237 imposed by this paragraph or has not been adopted in compliance
238 with all statutory rulemaking requirements, the agency proposing
239 the rule shall withdraw the rule and give notice of its action
240 in the next available issue of the Florida Administrative
241 Weekly.

242 6. The proposed rule shall be adopted on being filed with
243 the Department of State and become effective 20 days after being
244 filed, on a later date specified in the notice required by
245 subparagraph (a)1., ~~or~~ on a date required by statute, or upon
246 ratification by the Legislature pursuant to s. 120.541(3). Rules
247 not required to be filed with the Department of State shall
248 become effective when adopted by the agency head, ~~or~~ on a later
249 date specified by rule or statute, or upon ratification by the
250 Legislature pursuant to s. 120.541(3). If the committee notifies
251 an agency that an objection to a rule is being considered, the
252 agency may postpone the adoption of the rule to accommodate

253 review of the rule by the committee. When an agency postpones
 254 adoption of a rule to accommodate review by the committee, the
 255 90-day period for filing the rule is tolled until the committee
 256 notifies the agency that it has completed its review of the
 257 rule.

258
 259 For the purposes of this paragraph, the term "administrative
 260 determination" does not include subsequent judicial review.

261 Section 2. Paragraph (d) of subsection (1) and subsection
 262 (4) of section 120.541, Florida Statutes, as amended by chapter
 263 2010-279, Laws of Florida, are amended to read:

264 120.541 Statement of estimated regulatory costs.—

265 (1)

266 (d) At least 21 ~~45~~ days before filing the rule for
 267 adoption, an agency that is required to revise a statement of
 268 estimated regulatory costs shall provide the statement to the
 269 person who submitted the lower cost regulatory alternative and
 270 to the committee and shall provide notice on the agency's
 271 website that it is available to the public.

272 (4) This section ~~Paragraph (2) (a)~~ does not apply to the
 273 adoption of emergency rules pursuant to s. 120.54(4) or the
 274 adoption of federal standards pursuant to s. 120.54(6).

275 Section 3. Paragraph (a) of subsection (2) of section
 276 120.56, Florida Statutes, as amended by chapter 2010-279, Laws
 277 of Florida, is amended to read:

278 120.56 Challenges to rules.—

279 (2) CHALLENGING PROPOSED RULES; SPECIAL PROVISIONS.—

280 (a) A substantially affected person may seek an

281 administrative determination of the invalidity of a proposed
282 rule by filing a petition seeking such a determination with the
283 division within 21 days after the date of publication of the
284 notice required by s. 120.54(3)(a); within 10 days after the
285 final public hearing is held on the proposed rule as provided by
286 s. 120.54(3)(e)2.; within 20 ~~44~~ days after the statement of
287 estimated regulatory costs or revised statement of estimated
288 regulatory costs, if applicable, has been prepared and made
289 available as provided in s. 120.541(1)(d); or within 20 days
290 after the date of publication of the notice required by s.
291 120.54(3)(d). The petition must state with particularity the
292 objections to the proposed rule and the reasons that the
293 proposed rule is an invalid exercise of delegated legislative
294 authority. The petitioner has the burden of going forward. The
295 agency then has the burden to prove by a preponderance of the
296 evidence that the proposed rule is not an invalid exercise of
297 delegated legislative authority as to the objections raised. A
298 person who is substantially affected by a change in the proposed
299 rule may seek a determination of the validity of such change. A
300 person who is not substantially affected by the proposed rule as
301 initially noticed, but who is substantially affected by the rule
302 as a result of a change, may challenge any provision of the rule
303 and is not limited to challenging the change to the proposed
304 rule.

305 Section 4. Subsections (3) and (4) are added to section
306 120.74, Florida Statutes, to read:

307 120.74 Agency review, revision, and report.—

308 (3) Beginning in 2012, and no later than July 1 of each

309 year, each agency shall file with the President of the Senate,
310 the Speaker of the House of Representatives, and the committee a
311 regulatory plan identifying and describing each rule the agency
312 proposes to adopt for the 12-month period beginning on the July
313 1 reporting date and ending on the subsequent June 30, excluding
314 emergency rules.

315 (4) For the year 2011, the certification required in
316 subsection (2) may omit any information included in the reports
317 provided under s. 120.745. Reporting under subsections (1) and
318 (2) shall be suspended for the year 2013, but required reporting
319 under those subsections shall resume in 2015 and biennially
320 thereafter.

321 Section 5. Section 120.745, Florida Statutes, is created
322 to read:

323 120.745 Legislative review of agency rules in effect on or
324 before November 16, 2010.-

325 (1) DEFINITIONS.-The following definitions apply
326 exclusively to this section:

327 (a) "Agency" has the same meaning and application as
328 provided in s. 120.52(1), but for the purposes of this section
329 excludes each officer and governmental entity in the state with
330 jurisdiction in one county or less than one county.

331 (b) "Compliance economic review" means a good faith
332 economic analysis that includes and presents the following
333 information pertaining to a particular rule:

334 1. A justification for the rule summarizing the benefits
335 of the rule; and

336 2. A statement of estimated regulatory costs as described

337 in s. 120.541(2); however:

338 a. The applicable period for the economic analysis shall
339 be 5 years beginning on July 1, 2011;

340 b. For the analysis required in s. 120.541(2)(a)3., the
341 estimated regulatory costs over the 5-year period shall be used
342 instead of the likely increase in regulatory costs after
343 implementation; and

344 c. An explanation of the methodology used to conduct the
345 analysis must be provided. A technical methodology need not be
346 used to develop the statement of estimated regulatory costs, if
347 the agency uses routine regulatory communications or its
348 Internet website to reasonably survey regulated entities,
349 political subdivisions, and local governments and makes good
350 faith estimates of regulatory costs in conformity with
351 recommendations from the Office of Fiscal Accountability and
352 Regulatory Reform ("OFARR"), or from one or more legislative
353 offices if requested by the agency and such request is approved
354 by the President of the Senate and the Speaker of the House of
355 Representatives.

356 (c) "Data collection rules" means those rules requiring
357 the submission of data to the agency from external sources,
358 including, but not limited to, local governments, service
359 providers, clients, licensees, regulated entities, other
360 constituents, and market participants.

361 (d) "Revenue rules" means those rules fixing amounts or
362 providing for the collection of money.

363 (e) "Rule" has the same general meaning and application as
364 provided in s. 120.52(16), but for purposes of this section may

365 include only those rules for which publication in the Florida
366 Administrative Code is required pursuant to s. 120.55(1). As
367 used in this section, the term "rule" means each entire
368 statement and all subparts published under a complete title,
369 chapter, and decimal rule number in the Florida Administrative
370 Code in compliance with Florida Administrative Code Rule 1B-
371 30.001.

372 (2) ENHANCED BIENNIAL REVIEW.—By December 1, 2011, each
373 agency shall complete an enhanced biennial review of the
374 agency's existing rules, which shall include, but is not limited
375 to:

376 (a) Conduct of the review and submission of the report
377 required by s. 120.74 and an explanation of how the agency has
378 accomplished the requirements of s. 120.74(1). This paragraph
379 extends the October 1 deadline provided in s. 120.74(2) for the
380 year 2011.

381 (b) Review of each rule to determine whether the rule has
382 been reviewed by OFARR pursuant to the Governor's Executive
383 Order 2011-01.

384 (c) Review of each rule to determine whether the rule is a
385 revenue rule, to identify the statute or statutes authorizing
386 the collection of any revenue, to identify the fund or account
387 into which revenue collections are deposited, and, for each
388 revenue rule, to determine whether the rule authorizes, imposes,
389 or implements:

- 390 1. Registration, license, or inspection fees.
391 2. Transportation service tolls for road, bridge, rail,
392 air, waterway, or port access.

393 3. Fees for a specific service or purpose not included in
 394 subparagraph 1. or subparagraph 2.

395 4. Fines, penalties, costs, or attorney fees.

396 5. Any tax.

397 6. Any other amounts collected that are not covered under
 398 subparagraphs 1.-5.

399 (d) Review of each rule to determine whether the rule is a
 400 data collection rule, providing the following information for
 401 each rule determined to be a data collection rule:

402 1. The statute or statutes authorizing the collection of
 403 such data.

404 2. The purposes for which the agency uses the data and any
 405 purpose for which the data is used by others.

406 3. The policies supporting the reporting and retention of
 407 the data.

408 4. Whether and to what extent the data is exempt from
 409 public inspection under chapter 119.

410 (e) Identification of each entire rule the agency plans to
 411 repeal and, if so, the estimated timetable for repeal.

412 (f) Identification of each entire rule or subpart of a
 413 rule the agency plans to amend to substantially reduce the
 414 economic impact and the estimated timetable for amendment.

415 (g) Identification of each rule for which the agency will
 416 be required to prepare a compliance economic review, to include
 417 each entire rule that:

418 1. The agency does not plan to repeal on or before
 419 December 31, 2012;

420 2. Was effective on or before November 16, 2010; and

421 3. Probably will have any of the economic impacts
422 described in s. 120.541(2) (a), for 5 years beginning on July 1,
423 2011, excluding in such estimation any part or subpart
424 identified for amendment under paragraph (e).

425 (h) Listing of all rules identified for compliance
426 economic review in paragraph (f), divided into two approximately
427 equal groups, identified as "Group 1" and "Group 2." Such
428 division shall be made at the agency's discretion.

429 (i) Written certification of the agency head to the
430 committee verifying the completion of the report for all rules
431 of the agency, including each separate part or subsection. The
432 duty to certify completion of the report is the responsibility
433 solely of the agency head as defined in s. 120.52(3) and may not
434 be delegated to any other person. If the defined agency head is
435 a collegial body, the written certification must be prepared by
436 the chair or equivalent presiding officer of that body.

437 (3) PUBLICATION OF REPORT.—No later than December 1, 2011,
438 each agency shall publish, in the manner provided in subsection
439 (7), a report of the entire enhanced biennial review pursuant to
440 subsection (2), including the results of the review; a complete
441 list of all rules the agency has placed in Group 1 or Group 2;
442 the name, physical address, fax number, and e-mail address for
443 the person the agency has designated to receive all inquiries,
444 public comments, and objections pertaining to the report; and
445 the certification of the agency head pursuant to paragraph
446 (2) (i). The report of results shall summarize certain
447 information required in subsection (2) in a table consisting of
448 the following columns:

- 449 (a) Column 1: Agency name.
- 450 (b) Column 2: F.A.C. rule number, with subcolumns
- 451 including:
- 452 1. Column 2a: F.A.C. title and any subtitle or chapter
- 453 designation; and
- 454 2. Column 2b: F.A.C. number, excluding title and subtitle
- 455 or chapter designation.
- 456 (c) Column 3: OFARR reviewed rule under Executive Order
- 457 2011-01. Entries should be "Y" or "N."
- 458 (d) Column 4: Revenue rule/fund or account with subcolumns
- 459 including:
- 460 1. Column 4a: Licensure fees.
- 461 2. Column 4b: Transportation tolls.
- 462 3. Column 4c: Other fees.
- 463 4. Column 4d: Fines.
- 464 5. Column 4e: Tax.
- 465 6. Column 4f: Other revenue.
- 466
- 467 Entries should be "N" or the identification of the fund or
- 468 account where receipts are deposited and provide notes
- 469 indicating the statutory authority for revenue collection.
- 470 (e) Column 5: Data collection rule. Entries should be "Y"
- 471 or "N." If "Y," provide notes supplying the information required
- 472 in paragraph (2) (d).
- 473 (f) Column 6: Repeal. Entries should be "Y" or "N" for the
- 474 entire rule. If "Y," provide notes estimating the timetable for
- 475 repeal.
- 476 (g) Column 7: Amend. Entries should be "Y" or "N," based

477 on the response required in paragraph (2)(f), and provide notes
478 identifying each specific subpart that will be amended and
479 estimating the timetable for amendment.

480 (h) Column 8: Effective on or before 11/16/2010. Entries
481 should be "Y" or "N."

482 (i) Column 9: Section 120.541(2)(a) impacts. Entries
483 should be "NA" if Column 8 is "N" or, if Column 6 is "Y," "NP"
484 for not probable, based on the response required in subparagraph
485 (2)(f)3., or "1" or "2," reflecting the group number assigned by
486 the division required in paragraph (2)(h).

487 (4) PUBLIC COMMENT ON ENHANCED BIENNIAL REVIEW AND REPORT;
488 OBJECTIONS.—Public input on reports required in subsection (3)
489 may be provided by stating an objection to the information
490 required in paragraphs (2)(b), (c), (d), and (g) and identifying
491 the entire rule or any subpart to which the objection relates,
492 and shall be submitted in writing or electronically to the
493 person designated in the report.

494 (a) An objection under this subsection to a report that an
495 entire rule or any subpart probably will not have, for 5 years
496 beginning on July 1, 2011, any of the economic impacts described
497 in s. 120.541(2)(a), must include allegations of fact upon which
498 the objection is based, stating the precise information upon
499 which a contrary evaluation of probable impact may be made.
500 Allegations of fact related to other objections may be included.

501 (b) Objections may be submitted by any interested person
502 no later than June 1, 2012.

503 (c) The agency shall determine whether to sustain an
504 objection based upon the information provided with the objection

505 and whether any further review of information available to the
506 agency is necessary to correct its report.

507 (d) No later than 20 days after the date an objection is
508 submitted, the agency shall publish its determination of the
509 objection in the manner provided in subsection (7).

510 (e) The agency's determination with respect to an
511 objection is final but not a final agency action subject to
512 further proceedings, hearing, or judicial review.

513 (f) If the agency sustains an objection, it shall amend
514 its report within 10 days after the determination. The amended
515 report shall indicate that a change has been made, the date of
516 the last change, and identify the amended portions. The agency
517 shall publish notice of the amendment in the manner provided in
518 subsection (7).

519 (g) On or before July 1, 2012, the agency shall deliver a
520 written certification of the agency head or designee to the
521 committee verifying the completion of determinations of all
522 objections under this subsection and of any report amendments
523 required under paragraph (f). The certification shall be
524 published as an addendum to the report required in subsection
525 (3). Notice of the certification shall be published in the
526 manner provided in subsection (7).

527 (5) COMPLIANCE ECONOMIC REVIEW OF RULES AND REQUIRED
528 REPORT.—Each agency shall perform a compliance economic review
529 and report for all rules, including separate reviews of
530 subparts, listed under Group 1 "Group 1 rules" or Group 2 "Group
531 2 rules" pursuant to subparagraph (2)(g)3. Group 1 rules shall
532 be reviewed and reported on in 2012, and Group 2 rules shall be

533 reviewed and reported on in 2013.

534 (a) No later than May 1, each agency shall:

535 1. Complete a compliance economic review for each entire
536 rule or subpart in the appropriate group.

537 2. File the written certification of the agency head with
538 the committee verifying the completion of each compliance
539 economic review required for the respective year. The
540 certification shall be dated and published as an addendum to the
541 report required in subsection (3). The duty to certify
542 completion of the required compliance economic reviews is the
543 responsibility solely of the agency head as defined in s.
544 120.52(3) and may not be delegated to any other person. If the
545 defined agency head is a collegial body, the written
546 certification must be prepared by the chair or equivalent
547 presiding officer of that body.

548 3. Publish a copy of the compliance economic review,
549 directions on how and when interested parties may submit lower
550 cost regulatory alternatives to the agency, and the date the
551 notice is published in the manner provided in subsection (7).

552 4. Publish notice of the publications required in
553 subparagraphs 2. and 3. in the manner provided in subsection
554 (7).

555 5. Submit each compliance economic review to the Small
556 Business Regulatory Advisory Council for its review.

557 (b) Any agency rule, including subparts, reviewed pursuant
558 to Executive Order 2011-01 are exempt from the compliance
559 economic review if the review found that the rule:

560 1. Does not unnecessarily restrict entry into a profession

561 or occupation;

562 2. Does not adversely affect the availability of
563 professional or occupational services to the public;

564 3. Does not unreasonably affect job creation or job
565 retention;

566 4. Does not place unreasonable restrictions on individuals
567 attempting to find employment;

568 5. Does not impose burdensome costs on businesses; or

569 6. Is justifiable when the overall cost-effectiveness and
570 economic impact of the regulation, including indirect costs to
571 consumers, is considered.

572 (c) No later than August 1, the Small Business Regulatory
573 Advisory Council may submit lower cost regulatory alternatives
574 to any rule to the agency that adopted the rule. No later than
575 June 15, other interested parties may submit lower cost
576 regulatory alternatives to any rule.

577 (d) No later than December 1, each agency shall publish a
578 final report of the agency's review under this subsection in the
579 manner provided in subsection (7). For each rule the report
580 shall include:

581 1. The text of the rule.

582 2. The compliance economic review for the rule.

583 3. All lower regulatory cost alternatives received by the
584 agency.

585 4. The agency's written explanation for rejecting
586 submitted lower regulatory cost alternatives.

587 5. The agency's justification to repeal or amend the rule
588 or to retain the rule without amendment.

589 6. The written certification of the agency head to the
590 committee verifying the completion of the reviews and reporting
591 required under this subsection for that year. The certification
592 shall be dated and published as an addendum to the report
593 required in subsection (3). The duty to certify completion of
594 the report is the responsibility solely of the agency head as
595 defined in s. 120.52(3) and may not be delegated to any other
596 person. If the defined agency head is a collegial body, the
597 written certification must be prepared by the chair or
598 equivalent presiding officer of that body.

599 (e) Notice of publication of the final report and
600 certification shall be published in the manner provided in
601 subsection (7).

602 (f) By December 1, each agency shall begin proceedings
603 under s. 120.54(3) to amend or repeal those rules so designated
604 in the report under this subsection. Proceedings to repeal rules
605 are exempt from the requirements for the preparation,
606 consideration, or use of a statement of estimated regulatory
607 costs under s. 120.54 and the provisions of s. 120.541.

608 (6) LEGISLATIVE CONSIDERATION.—With respect to a rule
609 identified for retention without amendment in the report
610 required in subsection (5), the Legislature may consider
611 specific legislation nullifying the rule or altering the
612 statutory authority for the rule.

613 (7) MANNER OF PUBLICATION OF NOTICES, DETERMINATIONS, AND
614 REPORTS.—Agencies shall publish notices, determinations, and
615 reports required under this section exclusively in the following
616 manner:

617 (a) The agency shall publish each notice, determination,
618 and complete report on its Internet website. If the agency does
619 not have an Internet website, the information shall be published
620 on the committee's Internet website using
621 www.japc.state.fl.us/[agency name]/ in place of the address of
622 the agency's Internet website. The following URL formats shall
623 be used:

624 1. Reports required under subsection (3), including any
625 reports amended as a result of a determination under subsection
626 (4):

627 [Address of agency's Internet website]/2011 Rule review/
628 [Florida Administrative Code (F.A.C.) title and subtitle
629 (if applicable) designation for the rules included].
630 (Example: http://www.dos.state.fl.us/2011 Rule review/1S).

631 2. The lists of Group 1 rules and Group 2 rules, required
632 under subsection (3):

633 [Address of agency's Internet website]/2011 Rule review/
634 Economic Review/Schedule.
635 (Example: http://www.dos.state.fl.us/2011 Rule review/
636 Economic Review/Schedule)

637 3. Determinations under subsection (4):
638 [Address of agency's Internet website]/2011 Rule review/
639 Objection Determination/[F.A.C. Rule number].
640 (Example: http://www.dos.state.fl.us/2011 Rule review/
641 Objection Determination/1S-1.001).

642 4. Completed compliance economic reviews reported under
643 subsection (5):

644 [Address of agency's Internet website]/2011 Rule review/

645 Economic Review/[F.A.C.Rule number].
646 (Example: http://www.dos.state.fl.us/2011 Rule review/
647 Economic Review/1S-1.001).
648 5. Final reports under paragraph (5)(d), with the
649 appropriate year:
650 [Address of agency's Internet website]/2011 Rule review/
651 Economic Review/[YYYY Final Report].
652 (Example: http://www.dos.state.fl.us/2011 Rule review/
653 Economic Review/2012 Final Report).
654 (b)1. Each notice shall be published using the following
655 URL format:
656 [Address of agency's Internet website]/
657 2011 Rule review/Notices.
658 (Example:
659 http://www.dos.state.fl.us/2011 Rule review/Notices).
660 2. Once each week a copy of all notices published in the
661 previous week on the Internet under this paragraph shall be
662 delivered to the Department of State, for publication in the
663 next available issue of the Florida Administrative Weekly, and a
664 copy shall be delivered by electronic mail to the committee.
665 3. Each notice shall identify the publication for which
666 notice is being given and include:
667 a. The name of the agency.
668 b. The name, physical address, fax number, and e-mail
669 address for the person designated to receive all inquiries,
670 public comments, and objections pertaining to the publication
671 identified in the notice.
672 c. The particular Internet address through which the

673 publication may be accessed.

674 d. The date the notice and publication is first published
675 on the agency's Internet website.

676 (c) Publication pursuant to this section is deemed to be
677 complete as of the date the notice, determination, or report is
678 posted on the agency's Internet website.

679 (8) FAILURE TO FILE CERTIFICATION OF COMPLETION.-If an
680 agency fails to timely file any written certification required
681 in paragraph (2) (i), paragraph (4) (g), subparagraph (5) (a)2., or
682 subparagraph (5) (d)6., the entire rulemaking authority delegated
683 to the agency by the Legislature under any statute or law shall
684 be suspended automatically as of the due date of the required
685 certification and shall remain suspended until the date that the
686 agency files the required certification with the committee.

687 (a) During the period of any suspension under this
688 subsection, the agency has no authority to engage in rulemaking
689 under s. 120.54.

690 (b) A suspension under this subsection does not authorize
691 an agency to promulgate any statement defined as a rule under s.
692 120.52(16).

693 (c) A suspension under this subsection shall toll the time
694 requirements under s. 120.54 for any rulemaking proceeding the
695 agency initiated before the date of suspension, which time
696 requirements shall resume on the date the agency files the
697 written certification with the committee and publishes notice of
698 the required certification in the manner provided in subsection
699 (7).

700 (d) Failure to timely file a written certification

701 required under paragraph (2)(i) tolls the time for public
702 response, which period shall not begin until the date the agency
703 files the written certification with the committee and publishes
704 notice of the required certification in the manner provided in
705 subsection (7). The period for public response shall be extended
706 by the number of days equivalent to the period of suspension
707 under this subsection.

708 (e) Failure to timely file a written certification
709 required under subparagraph (5)(a)2. shall toll the deadline for
710 submission of lower cost regulatory alternatives for any rule or
711 subpart for which a compliance economic review has not been
712 timely published. The period of tolling shall be the number of
713 days after May 1 until the date of the certification as
714 published.

715 (9) EXEMPTION FROM ENHANCED BIENNIAL REVIEW AND COMPLIANCE
716 ECONOMIC REVIEW.—

717 (a) An agency is exempt from subsections (1)-(8) if it has
718 cooperated or cooperates with OFARR in a review of the agency's
719 rules in a manner consistent with Executive Order 2011-01, or
720 any alternative review directed by OFARR; if the agency or OFARR
721 identifies each data collection rule and each revenue rule; and
722 if the information developed thereby becomes publicly available
723 on the Internet by December 1, 2011. Each such agency is exempt
724 from the biennial review required in s. 120.74(2) for the year
725 2011.

726 (b) For each rule reviewed under this subsection, OFARR
727 may identify whether the rule imposes a significant regulatory
728 cost or economic impact and shall schedule and obtain or direct

729 a reasonable economic estimate of such cost and impact for each
 730 rule so identified. A report on each such estimate shall be
 731 published on the Internet by December 31, 2013. On or before
 732 October 1, 2013, the agency head shall certify in writing to the
 733 committee that the agency has completed each economic estimate
 734 required under this paragraph and thereupon the agency is exempt
 735 from the biennial review required in s. 120.74(2) for the year
 736 2013.

737 (c) The exemption under this paragraph does not apply
 738 unless the agency head certifies in writing to the committee, on
 739 or before October 1, 2011, that the agency has chosen such
 740 exemption and has cooperated with OFARR in undertaking the
 741 review required in paragraph (a).

742 (10) REPEAL.—This section is repealed July 1, 2014.

743 Section 6. Section 120.7455, Florida Statutes, is created
 744 to read:

745 120.7455 Legislative survey of regulatory impacts.—

746 (1) From July 1, 2011, until July 1, 2014, the Legislature
 747 may establish and maintain an Internet-based public survey of
 748 regulatory impact soliciting information from the public
 749 regarding the kind and degree of regulation affecting private
 750 activities in the state. The input may include, but need not be
 751 limited to:

752 (a) The registered business name or other name of each
 753 reporting person.

754 (b) The number and identity of agencies licensing,
 755 inspecting, registering, permitting, or otherwise regulating
 756 lawful activities of the reporting person.

757 (c) The types, numbers, and nature of licenses, permits,
758 and registrations required for various lawful activities of the
759 reporting person.

760 (d) The identity of local, state, and federal agencies,
761 and other entities acting under color of law which regulate the
762 lawful activities of the reporting person or otherwise exercise
763 power to enforce laws applicable to such activities.

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

767 (2) The President of the Senate and the Speaker of the
768 House of Representatives may certify in writing to the chair of
769 the committee and to the Attorney General the establishment and
770 identity of any Internet-based public survey established under
771 this section.

772 (3) Any person reporting or otherwise providing
773 information solicited by the Legislature in conformity with this
774 section is immune from any enforcement action or prosecution
775 that:

776 (a) Is instituted on account of, or in reliance upon, the
777 fact of reporting or nonreporting of information in response to
778 the Legislature's solicitation of information pursuant to this
779 section; or

780 (b) Uses information provided in response to the
781 Legislature's solicitation of information pursuant to this
782 section.

783 (4) Any alleged violator against whom an enforcement
784 action is brought may object to any proposed penalty in excess

785 of the minimum provided by law or rule on the basis that the
 786 action is in retaliation for the violator providing or
 787 withholding any information in response to the Legislature's
 788 solicitation of information pursuant to this section. If the
 789 presiding judge determines that the enforcement action was
 790 motivated in whole or in part by retaliation, any penalty
 791 imposed is limited to the minimum penalties provided by law for
 792 each separate violation adjudicated.

793 Section 7. The amendment of section 120.74, Florida
 794 Statutes, and the creation of sections 120.745 and 120.7455,
 795 Florida Statutes, by this act does not change the legal status
 796 of a rule that has otherwise been judicially or administratively
 797 determined to be invalid.

798 Section 8. Subsection (16) of section 120.80, Florida
 799 Statutes, is amended, and subsections (17) and (18) are added to
 800 that section, to read:

801 120.80 Exceptions and special requirements; agencies.—

802 (16) FLORIDA BUILDING COMMISSION.—

803 (a) Notwithstanding the provisions of s. 120.542, the
 804 Florida Building Commission may not accept a petition for waiver
 805 or variance and may not grant any waiver or variance from the
 806 requirements of the Florida Building Code.

807 (b) The Florida Building Commission shall adopt within the
 808 Florida Building Code criteria and procedures for alternative
 809 means of compliance with the code or local amendments thereto,
 810 for enforcement by local governments, local enforcement
 811 districts, or other entities authorized by law to enforce the
 812 Florida Building Code. Appeals from the denial of the use of

813 alternative means shall be heard by the local board, if one
 814 exists, and may be appealed to the Florida Building Commission.

815 (c) Notwithstanding ss. 120.565, 120.569, and 120.57, the
 816 Florida Building Commission and hearing officer panels appointed
 817 by the commission in accordance with s. 553.775(3)(c)1. may
 818 conduct proceedings to review decisions of local building code
 819 officials in accordance with s. 553.775(3)(c).

820 (d) Section 120.541(3) does not apply to the adoption of
 821 amendments and the triennial update to the Florida Building Code
 822 expressly authorized by s. 553.73.

823 (17) STATE FIRE MARSHAL.—Section 120.541(3) does not apply
 824 to the adoption of amendments and the triennial update to the
 825 Florida Fire Prevention Code expressly authorized by s.
 826 633.0215.

827 (18) DEPARTMENT OF TRANSPORTATION.—Sections 120.54(3)(b)
 828 and 120.541 do not apply to the adjustment of tolls pursuant to
 829 s. 338.165(3).

830 Section 9. Paragraph (1) is added to subsection (1) of
 831 section 120.81, Florida Statutes, to read:

832 120.81 Exceptions and special requirements; general
 833 areas.—

834 (1) EDUCATIONAL UNITS.—

835 (1) Sections 120.54(3)(b) and 120.541 do not apply to the
 836 adoption of rules pursuant to s. 1012.22, s. 1012.27, s.
 837 1012.34, s. 1012.335, or s. 1012.795.

838 Section 10. This act shall take effect upon becoming a
 839 law.