

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; amending s. 120.569, F.S.; providing that a
 67 nonapplicant who petitions to challenge an agency's
 68 issuance of a license, permit, or conceptual approval in
 69 certain circumstances has the burden of ultimate
 70 persuasion and the burden of going forward with evidence;
 71 providing an effective date.

72
 73 Be It Enacted by the Legislature of the State of Florida:

74
 75 Section 1. Paragraphs (a), (d), and (e) of subsection (3)
 76 of section 120.54, Florida Statutes, as amended by chapter 2010-
 77 279, Laws of Florida, are amended to read:

78 120.54 Rulemaking.—

79 (3) ADOPTION PROCEDURES.—

80 (a) Notices.—

81 1. Prior to the adoption, amendment, or repeal of any rule
 82 other than an emergency rule, an agency, upon approval of the
 83 agency head, shall give notice of its intended action, setting
 84 forth a short, plain explanation of the purpose and effect of

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

108 2. The notice shall be published in the Florida
109 Administrative Weekly not less than 28 days prior to the
110 intended action. The proposed rule shall be available for
111 inspection and copying by the public at the time of the
112 publication of notice.

113 3. The notice shall be mailed to all persons named in the
 114 proposed rule and to all persons who, at least 14 days prior to
 115 such mailing, have made requests of the agency for advance
 116 notice of its proceedings. The agency shall also give such
 117 notice as is prescribed by rule to those particular classes of
 118 persons to whom the intended action is directed.

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

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

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

141 to the agency between the date of publication of the notice and
142 the end of the final public hearing, or must be in response to a
143 proposed objection by the committee. In addition, when any
144 change is made in a proposed rule, other than a technical
145 change, the adopting agency shall provide a copy of a notice of
146 change by certified mail or actual delivery to any person who
147 requests it in writing no later than 21 days after the notice
148 required in paragraph (a). The agency shall file the notice of
149 change with the committee, along with the reasons for the
150 change, and provide the notice of change to persons requesting
151 it, at least 21 days prior to filing the rule for adoption. The
152 notice of change shall be published in the Florida
153 Administrative Weekly at least 21 days prior to filing the rule
154 for adoption. This subparagraph does not apply to emergency
155 rules adopted pursuant to subsection (4).

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

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

161 a. When the committee objects to the rule;

162 b. When a final order, which is not subject to further
163 appeal, is entered in a rule challenge brought pursuant to s.
164 120.56 after the date of adoption but before the rule becomes
165 effective pursuant to subparagraph (e)6.;

166 c. If the rule requires ratification, when more than 90
167 days have passed since the rule was filed for adoption without
168 the Legislature ratifying the rule, in which case the rule may

169 be withdrawn but may not be modified; or

170 ~~d. response to an objection by the committee or may be~~
 171 ~~modified to extend the effective date by not more than 60 days~~

172 When the committee notifies ~~has notified~~ the agency that an
 173 objection to the rule is being considered, in which case the
 174 rule may be modified to extend the effective date by not more
 175 than 60 days.

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

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

186 (e) Filing for final adoption; effective date.-

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

197 material required by this subparagraph, in the office of the
198 agency head, and such rules shall be open to the public.

199 2. A rule may not be filed for adoption less than 28 days
200 or more than 90 days after the notice required by paragraph (a),
201 until 21 days after the notice of change required by paragraph
202 (d), until 14 days after the final public hearing, until 21 days
203 after a statement of estimated regulatory costs required under
204 s. 120.541 has been provided to all persons who submitted a
205 lower cost regulatory alternative and made available to the
206 public, or until the administrative law judge has rendered a
207 decision under s. 120.56(2), whichever applies. When a required
208 notice of change is published prior to the expiration of the
209 time to file the rule for adoption, the period during which a
210 rule must be filed for adoption is extended to 45 days after the
211 date of publication. If notice of a public hearing is published
212 prior to the expiration of the time to file the rule for
213 adoption, the period during which a rule must be filed for
214 adoption is extended to 45 days after adjournment of the final
215 hearing on the rule, 21 days after receipt of all material
216 authorized to be submitted at the hearing, or 21 days after
217 receipt of the transcript, if one is made, whichever is latest.
218 The term "public hearing" includes any public meeting held by
219 any agency at which the rule is considered. If a petition for an
220 administrative determination under s. 120.56(2) is filed, the
221 period during which a rule must be filed for adoption is
222 extended to 60 days after the administrative law judge files the
223 final order with the clerk or until 60 days after subsequent
224 judicial review is complete.

225 3. At the time a rule is filed, the agency shall certify
 226 that the time limitations prescribed by this paragraph have been
 227 complied with, that all statutory rulemaking requirements have
 228 been met, and that there is no administrative determination
 229 pending on the rule.

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

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

247 6. The proposed rule shall be adopted on being filed with
 248 the Department of State and become effective 20 days after being
 249 filed, on a later date specified in the notice required by
 250 subparagraph (a)1., ~~or~~ on a date required by statute, or upon
 251 ratification by the Legislature pursuant to s. 120.541(3). Rules
 252 not required to be filed with the Department of State shall

253 become effective when adopted by the agency head, ~~or~~ on a later
 254 date specified by rule or statute, or upon ratification by the
 255 Legislature pursuant to s. 120.541(3). If the committee notifies
 256 an agency that an objection to a rule is being considered, the
 257 agency may postpone the adoption of the rule to accommodate
 258 review of the rule by the committee. When an agency postpones
 259 adoption of a rule to accommodate review by the committee, the
 260 90-day period for filing the rule is tolled until the committee
 261 notifies the agency that it has completed its review of the
 262 rule.

263
 264 For the purposes of this paragraph, the term "administrative
 265 determination" does not include subsequent judicial review.

266 Section 2. Paragraph (d) of subsection (1) and subsection
 267 (4) of section 120.541, Florida Statutes, as amended by chapter
 268 2010-279, Laws of Florida, are amended to read:

269 120.541 Statement of estimated regulatory costs.—

270 (1)

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

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

280 Section 3. Paragraph (a) of subsection (2) of section

281 120.56, Florida Statutes, as amended by chapter 2010-279, Laws
282 of Florida, is amended to read:

283 120.56 Challenges to rules.—

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

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

309 rule.

310 Section 4. Subsections (3) and (4) are added to section
311 120.74, Florida Statutes, to read:

312 120.74 Agency review, revision, and report.—

313 (3) Beginning in 2012, and no later than July 1 of each
314 year, each agency shall file with the President of the Senate,
315 the Speaker of the House of Representatives, and the committee a
316 regulatory plan identifying and describing each rule the agency
317 proposes to adopt for the 12-month period beginning on the July
318 1 reporting date and ending on the subsequent June 30, excluding
319 emergency rules.

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

326 Section 5. Section 120.745, Florida Statutes, is created
327 to read:

328 120.745 Legislative review of agency rules in effect on or
329 before November 16, 2010.—

330 (1) DEFINITIONS.—The following definitions apply
331 exclusively to this section:

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

336 (b) "Compliance economic review" means a good faith

337 economic analysis that includes and presents the following
338 information pertaining to a particular rule:

339 1. A justification for the rule summarizing the benefits
340 of the rule; and

341 2. A statement of estimated regulatory costs as described
342 in s. 120.541(2); however:

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

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

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

361 (c) "Data collection rules" means those rules requiring
362 the submission of data to the agency from external sources,
363 including, but not limited to, local governments, service
364 providers, clients, licensees, regulated entities, other

365 constituents, and market participants.

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

368 (e) "Rule" has the same general meaning and application as
369 provided in s. 120.52(16), but for purposes of this section may
370 include only those rules for which publication in the Florida
371 Administrative Code is required pursuant to s. 120.55(1). As
372 used in this section, the term "rule" means each entire
373 statement and all subparts published under a complete title,
374 chapter, and decimal rule number in the Florida Administrative
375 Code in compliance with Florida Administrative Code Rule 1B-
376 30.001.

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

381 (a) Conduct of the review and submission of the report
382 required by s. 120.74 and an explanation of how the agency has
383 accomplished the requirements of s. 120.74(1). This paragraph
384 extends the October 1 deadline provided in s. 120.74(2) for the
385 year 2011.

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

389 (c) Review of each rule to determine whether the rule is a
390 revenue rule, to identify the statute or statutes authorizing
391 the collection of any revenue, to identify the fund or account
392 into which revenue collections are deposited, and, for each

393 revenue rule, to determine whether the rule authorizes, imposes,
 394 or implements:

- 395 1. Registration, license, or inspection fees.
- 396 2. Transportation service tolls for road, bridge, rail,
 397 air, waterway, or port access.
- 398 3. Fees for a specific service or purpose not included in
 399 subparagraph 1. or subparagraph 2.
- 400 4. Fines, penalties, costs, or attorney fees.
- 401 5. Any tax.
- 402 6. Any other amounts collected that are not covered under
 403 subparagraphs 1.-5.

404 (d) Review of each rule to determine whether the rule is a
 405 data collection rule, providing the following information for
 406 each rule determined to be a data collection rule:

- 407 1. The statute or statutes authorizing the collection of
 408 such data.
- 409 2. The purposes for which the agency uses the data and any
 410 purpose for which the data is used by others.
- 411 3. The policies supporting the reporting and retention of
 412 the data.
- 413 4. Whether and to what extent the data is exempt from
 414 public inspection under chapter 119.

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

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

420 (g) Identification of each rule for which the agency will

421 be required to prepare a compliance economic review, to include
422 each entire rule that:

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

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

426 3. Probably will have any of the economic impacts
427 described in s. 120.541(2)(a), for 5 years beginning on July 1,
428 2011, excluding in such estimation any part or subpart
429 identified for amendment under paragraph (e).

430 (h) Listing of all rules identified for compliance
431 economic review in paragraph (g), divided into two approximately
432 equal groups, identified as "Group 1" and "Group 2." Such
433 division shall be made at the agency's discretion.

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

442 (3) PUBLICATION OF REPORT.—No later than December 1, 2011,
443 each agency shall publish, in the manner provided in subsection
444 (7), a report of the entire enhanced biennial review pursuant to
445 subsection (2), including the results of the review; a complete
446 list of all rules the agency has placed in Group 1 or Group 2;
447 the name, physical address, fax number, and e-mail address for
448 the person the agency has designated to receive all inquiries,

449 public comments, and objections pertaining to the report; and
450 the certification of the agency head pursuant to paragraph
451 (2) (i). The report of results shall summarize certain
452 information required in subsection (2) in a table consisting of
453 the following columns:

454 (a) Column 1: Agency name.

455 (b) Column 2: F.A.C. rule number, with subcolumns
456 including:

457 1. Column 2a: F.A.C. title and any subtitle or chapter
458 designation; and

459 2. Column 2b: F.A.C. number, excluding title and subtitle
460 or chapter designation.

461 (c) Column 3: OFARR reviewed rule under Executive Order
462 2011-01. Entries should be "Y" or "N."

463 (d) Column 4: Revenue rule/fund or account with subcolumns
464 including:

465 1. Column 4a: Licensure fees.

466 2. Column 4b: Transportation tolls.

467 3. Column 4c: Other fees.

468 4. Column 4d: Fines.

469 5. Column 4e: Tax.

470 6. Column 4f: Other revenue.

471
472 Entries should be "N" or the identification of the fund or
473 account where receipts are deposited and provide notes
474 indicating the statutory authority for revenue collection.

475 (e) Column 5: Data collection rule. Entries should be "Y"
476 or "N." If "Y," provide notes supplying the information required

477 in paragraph (2) (d).

478 (f) Column 6: Repeal. Entries should be "Y" or "N" for the
479 entire rule. If "Y," provide notes estimating the timetable for
480 repeal.

481 (g) Column 7: Amend. Entries should be "Y" or "N," based
482 on the response required in paragraph (2) (f), and provide notes
483 identifying each specific subpart that will be amended and
484 estimating the timetable for amendment.

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

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

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

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

505 Allegations of fact related to other objections may be included.

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

508 (c) The agency shall determine whether to sustain an
509 objection based upon the information provided with the objection
510 and whether any further review of information available to the
511 agency is necessary to correct its report.

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

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

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

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

532 (5) COMPLIANCE ECONOMIC REVIEW OF RULES AND REQUIRED

533 REPORT.—Each agency shall perform a compliance economic review
534 and report for all rules, including separate reviews of
535 subparts, listed under Group 1 "Group 1 rules" or Group 2 "Group
536 2 rules" pursuant to subparagraph (2)(g)3. Group 1 rules shall
537 be reviewed and reported on in 2012, and Group 2 rules shall be
538 reviewed and reported on in 2013.

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

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

542 2. File the written certification of the agency head with
543 the committee verifying the completion of each compliance
544 economic review required for the respective year. The
545 certification shall be dated and published as an addendum to the
546 report required in subsection (3). The duty to certify
547 completion of the required compliance economic reviews is the
548 responsibility solely of the agency head as defined in s.
549 120.52(3) and may not be delegated to any other person. If the
550 defined agency head is a collegial body, the written
551 certification must be prepared by the chair or equivalent
552 presiding officer of that body.

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

557 4. Publish notice of the publications required in
558 subparagraphs 2. and 3. in the manner provided in subsection
559 (7).

560 5. Submit each compliance economic review to the Small

561 Business Regulatory Advisory Council for its review.

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

565 1. Does not unnecessarily restrict entry into a profession
566 or occupation;

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

569 3. Does not unreasonably affect job creation or job
570 retention;

571 4. Does not place unreasonable restrictions on individuals
572 attempting to find employment;

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

574 6. Is justifiable when the overall cost-effectiveness and
575 economic impact of the regulation, including indirect costs to
576 consumers, is considered.

577 (c) No later than August 1, the Small Business Regulatory
578 Advisory Council may submit lower cost regulatory alternatives
579 to any rule to the agency that adopted the rule. No later than
580 June 15, other interested parties may submit lower cost
581 regulatory alternatives to any rule.

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

586 1. The text of the rule.

587 2. The compliance economic review for the rule.

588 3. All lower regulatory cost alternatives received by the

589 agency.

590 4. The agency's written explanation for rejecting
591 submitted lower regulatory cost alternatives.

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

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

604 (e) Notice of publication of the final report and
605 certification shall be published in the manner provided in
606 subsection (7).

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

613 (6) LEGISLATIVE CONSIDERATION.—With respect to a rule
614 identified for retention without amendment in the report
615 required in subsection (5), the Legislature may consider
616 specific legislation nullifying the rule or altering the

617 statutory authority for the rule.

618 (7) MANNER OF PUBLICATION OF NOTICES, DETERMINATIONS, AND
619 REPORTS.—Agencies shall publish notices, determinations, and
620 reports required under this section exclusively in the following
621 manner:

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

629 1. Reports required under subsection (3), including any
630 reports amended as a result of a determination under subsection
631 (4):

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

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

638 [Address of agency's Internet website]/2011 Rule review/
639 Economic Review/Schedule.

640 (Example: http://www.dos.state.fl.us/2011 Rule review/
641 Economic Review/Schedule)

642 3. Determinations under subsection (4):

643 [Address of agency's Internet website]/2011 Rule review/
644 Objection Determination/[F.A.C. Rule number].

645 (Example: http://www.dos.state.fl.us/2011 Rule review/
 646 Objection Determination/1S-1.001).

647 4. Completed compliance economic reviews reported under
 648 subsection (5):

649 [Address of agency's Internet website]/2011 Rule review/
 650 Economic Review/[F.A.C.Rule number].

651 (Example: http://www.dos.state.fl.us/2011 Rule review/
 652 Economic Review/1S-1.001).

653 5. Final reports under paragraph (5) (d), with the
 654 appropriate year:

655 [Address of agency's Internet website]/2011 Rule review/
 656 Economic Review/[YYYY Final Report].

657 (Example: http://www.dos.state.fl.us/2011 Rule review/
 658 Economic Review/2012 Final Report).

659 (b)1. Each notice shall be published using the following
 660 URL format:

661 [Address of agency's Internet website]/
 662 2011 Rule review/Notices.

663 (Example:
 664 http://www.dos.state.fl.us/2011 Rule review/Notices).

665 2. Once each week a copy of all notices published in the
 666 previous week on the Internet under this paragraph shall be
 667 delivered to the Department of State, for publication in the
 668 next available issue of the Florida Administrative Weekly, and a
 669 copy shall be delivered by electronic mail to the committee.

670 3. Each notice shall identify the publication for which
 671 notice is being given and include:

672 a. The name of the agency.

673 b. The name, physical address, fax number, and e-mail
 674 address for the person designated to receive all inquiries,
 675 public comments, and objections pertaining to the publication
 676 identified in the notice.

677 c. The particular Internet address through which the
 678 publication may be accessed.

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

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

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

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

695 (b) A suspension under this subsection does not authorize
 696 an agency to promulgate any statement defined as a rule under s.
 697 120.52(16).

698 (c) A suspension under this subsection shall toll the time
 699 requirements under s. 120.54 for any rulemaking proceeding the
 700 agency initiated before the date of suspension, which time

701 requirements shall resume on the date the agency files the
702 written certification with the committee and publishes notice of
703 the required certification in the manner provided in subsection
704 (7).

705 (d) Failure to timely file a written certification
706 required under paragraph (2)(i) tolls the time for public
707 response, which period shall not begin until the date the agency
708 files the written certification with the committee and publishes
709 notice of the required certification in the manner provided in
710 subsection (7). The period for public response shall be extended
711 by the number of days equivalent to the period of suspension
712 under this subsection.

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

720 (9) EXEMPTION FROM ENHANCED BIENNIAL REVIEW AND COMPLIANCE
721 ECONOMIC REVIEW.—

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

729 from the biennial review required in s. 120.74(2) for the year
 730 2011.

731 (b) For each rule reviewed under this subsection, OFARR
 732 may identify whether the rule imposes a significant regulatory
 733 cost or economic impact and shall schedule and obtain or direct
 734 a reasonable economic estimate of such cost and impact for each
 735 rule so identified. A report on each such estimate shall be
 736 published on the Internet by December 31, 2013. On or before
 737 October 1, 2013, the agency head shall certify in writing to the
 738 committee that the agency has completed each economic estimate
 739 required under this paragraph and thereupon the agency is exempt
 740 from the biennial review required in s. 120.74(2) for the year
 741 2013.

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

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

748 Section 6. Section 120.7455, Florida Statutes, is created
 749 to read:

750 120.7455 Legislative survey of regulatory impacts.—

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

757 (a) The registered business name or other name of each
 758 reporting person.

759 (b) The number and identity of agencies licensing,
 760 inspecting, registering, permitting, or otherwise regulating
 761 lawful activities of the reporting person.

762 (c) The types, numbers, and nature of licenses, permits,
 763 and registrations required for various lawful activities of the
 764 reporting person.

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

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

772 (2) The President of the Senate and the Speaker of the
 773 House of Representatives may certify in writing to the chair of
 774 the committee and to the Attorney General the establishment and
 775 identity of any Internet-based public survey established under
 776 this section.

777 (3) Any person reporting or otherwise providing
 778 information solicited by the Legislature in conformity with this
 779 section is immune from any enforcement action or prosecution
 780 that:

781 (a) Is instituted on account of, or in reliance upon, the
 782 fact of reporting or nonreporting of information in response to
 783 the Legislature's solicitation of information pursuant to this
 784 section; or

785 (b) Uses information provided in response to the
 786 Legislature's solicitation of information pursuant to this
 787 section.

788 (4) Any alleged violator against whom an enforcement
 789 action is brought may object to any proposed penalty in excess
 790 of the minimum provided by law or rule on the basis that the
 791 action is in retaliation for the violator providing or
 792 withholding any information in response to the Legislature's
 793 solicitation of information pursuant to this section. If the
 794 presiding judge determines that the enforcement action was
 795 motivated in whole or in part by retaliation, any penalty
 796 imposed is limited to the minimum penalties provided by law for
 797 each separate violation adjudicated.

798 Section 7. The amendment of section 120.74, Florida
 799 Statutes, and the creation of sections 120.745 and 120.7455,
 800 Florida Statutes, by this act do not change the legal status of
 801 a rule that has otherwise been judicially or administratively
 802 determined to be invalid.

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

806 120.80 Exceptions and special requirements; agencies.—

807 (16) FLORIDA BUILDING COMMISSION.—

808 (a) Notwithstanding the provisions of s. 120.542, the
 809 Florida Building Commission may not accept a petition for waiver
 810 or variance and may not grant any waiver or variance from the
 811 requirements of the Florida Building Code.

812 (b) The Florida Building Commission shall adopt within the

813 Florida Building Code criteria and procedures for alternative
 814 means of compliance with the code or local amendments thereto,
 815 for enforcement by local governments, local enforcement
 816 districts, or other entities authorized by law to enforce the
 817 Florida Building Code. Appeals from the denial of the use of
 818 alternative means shall be heard by the local board, if one
 819 exists, and may be appealed to the Florida Building Commission.

820 (c) Notwithstanding ss. 120.565, 120.569, and 120.57, the
 821 Florida Building Commission and hearing officer panels appointed
 822 by the commission in accordance with s. 553.775(3)(c)1. may
 823 conduct proceedings to review decisions of local building code
 824 officials in accordance with s. 553.775(3)(c).

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

828 (17) STATE FIRE MARSHAL.—Section 120.541(3) does not apply
 829 to the adoption of amendments and the triennial update to the
 830 Florida Fire Prevention Code expressly authorized by s.
 831 633.0215.

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

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

837 120.81 Exceptions and special requirements; general
 838 areas.—

839 (1) EDUCATIONAL UNITS.—

840 (1) Sections 120.54(3)(b) and 120.541 do not apply to the

841 adoption of rules pursuant to s. 1012.22, s. 1012.27, s.
842 1012.34, s. 1012.335, or s. 1012.795.

843 Section 10. Paragraph (p) is added to subsection (2) of
844 section 120.569, Florida Statutes, to read:

845 120.569 Decisions which affect substantial interests.—

846 (2)

847 (p) For any proceeding arising under chapter 373, chapter
848 378, or chapter 403, if a nonapplicant petitions as a third
849 party to challenge an agency's issuance of a license, permit, or
850 conceptual approval, the order of presentation in the proceeding
851 is for the permit applicant to present a prima facie case
852 demonstrating entitlement to the license, permit, or conceptual
853 approval, followed by the agency. This demonstration may be made
854 by entering into evidence the application and relevant material
855 submitted to the agency in support of the application, and the
856 agency's staff report or notice of intent to approve the permit,
857 license, or conceptual approval. Subsequent to the presentation
858 of the applicant's prima facie case and any direct evidence
859 submitted by the agency, the petitioner initiating the action
860 challenging the issuance of the license, permit, or conceptual
861 approval has the burden of ultimate persuasion and has the
862 burden of going forward to prove the case in opposition to the
863 license, permit, or conceptual approval through the presentation
864 of competent and substantial evidence. The permit applicant and
865 agency may on rebuttal present any evidence relevant to
866 demonstrating that the application meets the conditions for
867 issuance. Notwithstanding subsection (1), this paragraph applies
868 to proceedings under s. 120.574.

869 | Section 11. This act shall take effect upon becoming a
870 | law.