

By Senator Rader

29-01116-18

20181410\_\_

1                                   A bill to be entitled  
2       An act relating to administrative procedures; amending  
3       s. 120.52, F.S.; revising and providing definitions;  
4       amending s. 120.536, F.S.; removing the authority of  
5       the Administrative Procedures Committee to petition an  
6       agency regarding a rule or a portion thereof exceeding  
7       the agency's rulemaking authority; amending s. 120.54,  
8       F.S.; applying certain provisions applicable to all  
9       rules other than emergency rules to repromulgated  
10      rules; requiring that a proposed rule and material  
11      proposed to be incorporated by reference be available  
12      to the public; requiring that material proposed to be  
13      incorporated by reference be made available in a  
14      specified manner; requiring an agency to provide  
15      notice of any offered regulatory alternative to the  
16      committee by a certain date; requiring an agency to  
17      file a copy of a petition to initiate rulemaking with  
18      the committee; amending s. 120.541, F.S.; requiring an  
19      agency to provide a copy of any proposal for a lower  
20      cost regulatory alternative to the committee by a  
21      certain date; creating s. 120.5435, F.S.; providing  
22      legislative intent; requiring agency review of rules  
23      and the repromulgation of rules that do not require  
24      substantive changes; requiring an agency to publish a  
25      notice of repromulgation in the Florida Administrative  
26      Register and file a rule for repromulgation with the  
27      Department of State within a specified time period;  
28      requiring an agency to file a notice of repromulgation  
29      with the committee within a specified time period;

29-01116-18

20181410\_\_

30 requiring the committee to certify as to whether an  
31 agency has responded to the committee's comments and  
32 inquiries; requiring withdrawal of a rule proposed for  
33 repromulgation if the rule is not filed within a  
34 specified time period; providing that a repromulgated  
35 rule is not subject to challenge as a proposed rule  
36 and that certain hearing requirements do not apply;  
37 requiring an agency to file a specified number of  
38 certified copies of a proposed repromulgated rule and  
39 any material incorporated by reference if a certain  
40 condition is met; providing that a repromulgated rule  
41 is adopted upon filing with the department and becomes  
42 effective after a specified time period; requiring the  
43 department to update certain information in the  
44 Florida Administrative Code; requiring the department  
45 to adopt rules by a certain date; amending s. 120.55,  
46 F.S.; providing that the department shall require  
47 material incorporated by reference in a rule to be  
48 filed in a certain manner after a specified date;  
49 requiring the department to include the date of a  
50 technical rule change in the Florida Administrative  
51 Code; providing that a technical change does not  
52 affect the effective date of a rule; requiring the  
53 department to adopt specified rules; amending s.  
54 120.569, F.S.; requiring that certain documents filed  
55 with the Division of Administrative Hearings be filed  
56 electronically; relieving certain parties to an  
57 administrative proceeding from a requirement to serve  
58 documents to other parties registered for electronic

29-01116-18

20181410\_\_

59 filing; amending ss. 120.80, 120.81, 420.9072,  
60 420.9075, and 443.091, F.S.; conforming cross-  
61 references; providing an effective date.  
62

63 Be It Enacted by the Legislature of the State of Florida:  
64

65 Section 1. Present subsections (16) through (22) of section  
66 120.52, Florida Statutes, are renumbered as subsections (17)  
67 through (23), respectively, subsection (5) of that section is  
68 amended, and a new subsection (16) is added to that section, to  
69 read:

70 120.52 Definitions.—As used in this act:

71 (5) "Division" means the Division of Administrative  
72 Hearings. ~~Any document filed with the division by a party~~  
73 ~~represented by an attorney shall be filed by electronic means~~  
74 ~~through the division's website. Any document filed with the~~  
75 ~~division by a party not represented by an attorney shall,~~  
76 ~~whenever possible, be filed by electronic means through the~~  
77 ~~division's website.~~

78 (16) "Repromulgate" or "repromulgation" means the  
79 publication and adoption of an existing rule following an  
80 agency's review of the rule for consistency with the powers and  
81 duties granted by its enabling statutes.

82 Section 2. Subsection (3) of section 120.536, Florida  
83 Statutes, is amended to read:

84 120.536 Rulemaking authority; repeal; challenge.—

85 (3) ~~The Administrative Procedures Committee or Any~~  
86 substantially affected person may petition an agency to repeal  
87 any rule, or portion thereof, because it exceeds the rulemaking

29-01116-18

20181410\_\_

88 authority permitted by this section. Not later than 30 days  
89 after the date of filing the petition if the agency is headed by  
90 an individual, or not later than 45 days if the agency is headed  
91 by a collegial body, the agency shall initiate rulemaking  
92 proceedings to repeal the rule, or portion thereof, or deny the  
93 petition, giving a written statement of its reasons for the  
94 denial.

95 Section 3. Paragraph (i) of subsection (1), subsection (3),  
96 and paragraph (a) of subsection (7) of section 120.54, Florida  
97 Statutes, are amended to read:

98 120.54 Rulemaking.—

99 (1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER THAN  
100 EMERGENCY RULES.—

101 (i)1. A rule may incorporate material by reference but only  
102 as the material exists on the date the rule is adopted. For  
103 purposes of the rule, changes in the material are not effective  
104 unless the rule is amended to incorporate the changes.

105 2. An agency rule that incorporates by specific reference  
106 another rule of that agency automatically incorporates  
107 subsequent amendments to the referenced rule unless a contrary  
108 intent is clearly indicated in the referencing rule. A notice of  
109 amendments to a rule that has been incorporated by specific  
110 reference in other rules of that agency must explain the effect  
111 of those amendments on the referencing rules.

112 3. In rules adopted after December 31, 2010, and rules  
113 repromulgated after December 31, 2018, material may not be  
114 incorporated by reference unless:

115 a. The material has been submitted in the prescribed  
116 electronic format to the Department of State and the full text

29-01116-18

20181410\_\_

117 of the material can be made available for free public access  
118 through an electronic hyperlink from the rule making the  
119 reference in the Florida Administrative Code; or

120 b. The agency has determined that posting the material on  
121 the Internet for purposes of public examination and inspection  
122 would constitute a violation of federal copyright law, in which  
123 case a statement to that effect, along with the address of  
124 locations at the Department of State and the agency at which the  
125 material is available for public inspection and examination,  
126 must be included in the notice required by subparagraph (3)(a)1.

127 4. A rule may not be amended by reference only. Amendments  
128 must set out the amended rule in full in the same manner as  
129 required by the State Constitution for laws.

130 5. Notwithstanding any contrary provision in this section,  
131 when an adopted rule of the Department of Environmental  
132 Protection or a water management district is incorporated by  
133 reference in the other agency's rule to implement a provision of  
134 part IV of chapter 373, subsequent amendments to the rule are  
135 not effective as to the incorporating rule unless the agency  
136 incorporating by reference notifies the committee and the  
137 Department of State of its intent to adopt the subsequent  
138 amendment, publishes notice of such intent in the Florida  
139 Administrative Register, and files with the Department of State  
140 a copy of the amended rule incorporated by reference. Changes in  
141 the rule incorporated by reference are effective as to the other  
142 agency 20 days after the date of the published notice and filing  
143 with the Department of State. The Department of State shall  
144 amend the history note of the incorporating rule to show the  
145 effective date of such change. Any substantially affected person

29-01116-18

20181410\_\_

146 may, within 14 days after the date of publication of the notice  
147 of intent in the Florida Administrative Register, file an  
148 objection to rulemaking with the agency. The objection shall  
149 specify the portions of the rule incorporated by reference to  
150 which the person objects and the reasons for the objection. The  
151 agency shall not have the authority under this subparagraph to  
152 adopt those portions of the rule specified in such objection.  
153 The agency shall publish notice of the objection and of its  
154 action in response in the next available issue of the Florida  
155 Administrative Register.

156 6. The Department of State may adopt by rule requirements  
157 for incorporating materials pursuant to this paragraph.

158 (3) ADOPTION PROCEDURES.—

159 (a) *Notices*.—

160 1. Prior to the adoption, amendment, or repeal of any rule  
161 other than an emergency rule, an agency, upon approval of the  
162 agency head, shall give notice of its intended action, setting  
163 forth a short, plain explanation of the purpose and effect of  
164 the proposed action; the full text of the proposed rule or  
165 amendment and a summary thereof; a reference to the grant of  
166 rulemaking authority pursuant to which the rule is adopted; and  
167 a reference to the section or subsection of the Florida Statutes  
168 or the Laws of Florida being implemented or interpreted. The  
169 notice must include a summary of the agency's statement of the  
170 estimated regulatory costs, if one has been prepared, based on  
171 the factors set forth in s. 120.541(2); a statement that any  
172 person who wishes to provide the agency with information  
173 regarding the statement of estimated regulatory costs, or to  
174 provide a proposal for a lower cost regulatory alternative as

29-01116-18

20181410\_\_

175 provided by s. 120.541(1), must do so in writing within 21 days  
176 after publication of the notice; and a statement as to whether,  
177 based on the statement of the estimated regulatory costs or  
178 other information expressly relied upon and described by the  
179 agency if no statement of regulatory costs is required, the  
180 proposed rule is expected to require legislative ratification  
181 pursuant to s. 120.541(3). The notice must state the procedure  
182 for requesting a public hearing on the proposed rule. Except  
183 when the intended action is the repeal of a rule, the notice  
184 must include a reference both to the date on which and to the  
185 place where the notice of rule development that is required by  
186 subsection (2) appeared.

187 2. The notice shall be published in the Florida  
188 Administrative Register not less than 28 days prior to the  
189 intended action. The proposed rule, including all material  
190 proposed to be incorporated by reference, shall be available for  
191 inspection and copying by the public at the time of the  
192 publication of notice. After December 31, 2018, material  
193 proposed to be incorporated by reference in the notice required  
194 by this paragraph shall be made available in the manner  
195 prescribed by sub-subparagraph (1)(i)3.a. or (1)(i)3.b.

196 3. The notice shall be mailed to all persons named in the  
197 proposed rule and to all persons who, at least 14 days prior to  
198 such mailing, have made requests of the agency for advance  
199 notice of its proceedings. The agency shall also give such  
200 notice as is prescribed by rule to those particular classes of  
201 persons to whom the intended action is directed.

202 4. The adopting agency shall file with the committee, at  
203 least 21 days prior to the proposed adoption date, a copy of

29-01116-18

20181410\_\_

204 each rule it proposes to adopt; a copy of any material  
205 incorporated by reference in the rule; a detailed written  
206 statement of the facts and circumstances justifying the proposed  
207 rule; a copy of any statement of estimated regulatory costs that  
208 has been prepared pursuant to s. 120.541; a statement of the  
209 extent to which the proposed rule relates to federal standards  
210 or rules on the same subject; and the notice required by  
211 subparagraph 1.

212 (b) *Special matters to be considered in rule adoption.*—

213 1. Statement of estimated regulatory costs.—Before the  
214 adoption, amendment, or repeal of any rule other than an  
215 emergency rule, an agency is encouraged to prepare a statement  
216 of estimated regulatory costs of the proposed rule, as provided  
217 by s. 120.541. However, an agency must prepare a statement of  
218 estimated regulatory costs of the proposed rule, as provided by  
219 s. 120.541, if:

220 a. The proposed rule will have an adverse impact on small  
221 business; or

222 b. The proposed rule is likely to directly or indirectly  
223 increase regulatory costs in excess of \$200,000 in the aggregate  
224 in this state within 1 year after the implementation of the  
225 rule.

226 2. Small businesses, small counties, and small cities.—

227 a. Each agency, before the adoption, amendment, or repeal  
228 of a rule, shall consider the impact of the rule on small  
229 businesses as defined by s. 288.703 and the impact of the rule  
230 on small counties or small cities as defined by s. 120.52.  
231 Whenever practicable, an agency shall tier its rules to reduce  
232 disproportionate impacts on small businesses, small counties, or



29-01116-18

20181410\_\_

233 small cities to avoid regulating small businesses, small  
234 counties, or small cities that do not contribute significantly  
235 to the problem the rule is designed to address. An agency may  
236 define "small business" to include businesses employing more  
237 than 200 persons, may define "small county" to include those  
238 with populations of more than 75,000, and may define "small  
239 city" to include those with populations of more than 10,000, if  
240 it finds that such a definition is necessary to adapt a rule to  
241 the needs and problems of small businesses, small counties, or  
242 small cities. The agency shall consider each of the following  
243 methods for reducing the impact of the proposed rule on small  
244 businesses, small counties, and small cities, or any combination  
245 of these entities:

246 (I) Establishing less stringent compliance or reporting  
247 requirements in the rule.

248 (II) Establishing less stringent schedules or deadlines in  
249 the rule for compliance or reporting requirements.

250 (III) Consolidating or simplifying the rule's compliance or  
251 reporting requirements.

252 (IV) Establishing performance standards or best management  
253 practices to replace design or operational standards in the  
254 rule.

255 (V) Exempting small businesses, small counties, or small  
256 cities from any or all requirements of the rule.

257 b.(I) If the agency determines that the proposed action  
258 will affect small businesses as defined by the agency as  
259 provided in sub-subparagraph a., the agency shall send written  
260 notice of the rule to the rules ombudsman in the Executive  
261 Office of the Governor at least 28 days before the intended

29-01116-18

20181410\_\_

262 action.

263 (II) Each agency shall adopt those regulatory alternatives  
264 offered by the rules ombudsman in the Executive Office of the  
265 Governor and provided to the agency no later than 21 days after  
266 the rules ombudsman's receipt of the written notice of the rule  
267 which it finds are feasible and consistent with the stated  
268 objectives of the proposed rule and which would reduce the  
269 impact on small businesses. When regulatory alternatives are  
270 offered by the rules ombudsman in the Executive Office of the  
271 Governor, the 90-day period for filing the rule in subparagraph  
272 (e)2. is extended for a period of 21 days. The agency shall  
273 provide notice to the committee of any regulatory alternative  
274 offered to the agency pursuant to this sub-subparagraph at least  
275 21 days before filing the rule for adoption.

276 (III) If an agency does not adopt all alternatives offered  
277 pursuant to this sub-subparagraph, it shall, before rule  
278 adoption or amendment and pursuant to subparagraph (d)1., file a  
279 detailed written statement with the committee explaining the  
280 reasons for failure to adopt such alternatives. Within 3 working  
281 days after the filing of such notice, the agency shall send a  
282 copy of such notice to the rules ombudsman in the Executive  
283 Office of the Governor.

284 (c) *Hearings.*—

285 1. If the intended action concerns any rule other than one  
286 relating exclusively to procedure or practice, the agency shall,  
287 on the request of any affected person received within 21 days  
288 after the date of publication of the notice of intended agency  
289 action, give affected persons an opportunity to present evidence  
290 and argument on all issues under consideration. The agency may

29-01116-18

20181410\_\_

291 schedule a public hearing on the rule and, if requested by any  
292 affected person, shall schedule a public hearing on the rule.  
293 When a public hearing is held, the agency must ensure that staff  
294 are available to explain the agency's proposal and to respond to  
295 questions or comments regarding the rule. If the agency head is  
296 a board or other collegial body created under s. 20.165(4) or s.  
297 20.43(3)(g), and one or more requested public hearings is  
298 scheduled, the board or other collegial body shall conduct at  
299 least one of the public hearings itself and may not delegate  
300 this responsibility without the consent of those persons  
301 requesting the public hearing. Any material pertinent to the  
302 issues under consideration submitted to the agency within 21  
303 days after the date of publication of the notice or submitted to  
304 the agency between the date of publication of the notice and the  
305 end of the final public hearing shall be considered by the  
306 agency and made a part of the record of the rulemaking  
307 proceeding.

308 2. Rulemaking proceedings shall be governed solely by the  
309 provisions of this section unless a person timely asserts that  
310 the person's substantial interests will be affected in the  
311 proceeding and affirmatively demonstrates to the agency that the  
312 proceeding does not provide adequate opportunity to protect  
313 those interests. If the agency determines that the rulemaking  
314 proceeding is not adequate to protect the person's interests, it  
315 shall suspend the rulemaking proceeding and convene a separate  
316 proceeding under the provisions of ss. 120.569 and 120.57.  
317 Similarly situated persons may be requested to join and  
318 participate in the separate proceeding. Upon conclusion of the  
319 separate proceeding, the rulemaking proceeding shall be resumed.

29-01116-18

20181410\_\_

320 (d) *Modification or withdrawal of proposed rules.*—

321 1. After the final public hearing on the proposed rule, or  
322 after the time for requesting a hearing has expired, if the rule  
323 has not been changed from the rule as previously filed with the  
324 committee, or contains only technical changes, the adopting  
325 agency shall file a notice to that effect with the committee at  
326 least 7 days prior to filing the rule for adoption. Any change,  
327 other than a technical change that does not affect the substance  
328 of the rule, must be supported by the record of public hearings  
329 held on the rule, must be in response to written material  
330 submitted to the agency within 21 days after the date of  
331 publication of the notice of intended agency action or submitted  
332 to the agency between the date of publication of the notice and  
333 the end of the final public hearing, or must be in response to a  
334 proposed objection by the committee. In addition, when any  
335 change is made in the a proposed rule text or any material  
336 incorporated by reference, other than a technical change, the  
337 adopting agency shall provide a copy of a notice of change by  
338 certified mail or actual delivery to any person who requests it  
339 in writing no later than 21 days after the notice required in  
340 paragraph (a). The agency shall file the notice of change with  
341 the committee, along with the reasons for the change, and  
342 provide the notice of change to persons requesting it, at least  
343 21 days prior to filing the rule for adoption. The notice of  
344 change shall be published in the Florida Administrative Register  
345 at least 21 days prior to filing the rule for adoption. This  
346 subparagraph does not apply to emergency rules adopted pursuant  
347 to subsection (4). After December 31, 2018, material proposed to  
348 be incorporated by reference in the notice required by this

29-01116-18

20181410\_\_

349 subparagraph shall be made available in the manner prescribed by  
350 sub-subparagraph (1)(i)3.a. or (1)(i)3.b.

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

353 3. After adoption and before the rule becomes effective, a  
354 rule may be modified or withdrawn only in the following  
355 circumstances:

356 a. When the committee objects to the rule;

357 b. When a final order, which is not subject to further  
358 appeal, is entered in a rule challenge brought pursuant to s.  
359 120.56 after the date of adoption but before the rule becomes  
360 effective pursuant to subparagraph (e)6.;

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

365 d. When the committee notifies the agency that an objection  
366 to the rule is being considered, in which case the rule may be  
367 modified to extend the effective date by not more than 60 days.

368 4. The agency shall give notice of its decision to withdraw  
369 or modify a rule in the first available issue of the publication  
370 in which the original notice of rulemaking was published, shall  
371 notify those persons described in subparagraph (a)3. in  
372 accordance with the requirements of that subparagraph, and shall  
373 notify the Department of State if the rule is required to be  
374 filed with the Department of State.

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

29-01116-18

20181410\_\_

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

379 1. If the adopting agency is required to publish its rules  
380 in the Florida Administrative Code, the agency, upon approval of  
381 the agency head, shall file with the Department of State three  
382 certified copies of the rule it proposes to adopt; one copy of  
383 any material incorporated by reference in the rule, certified by  
384 the agency; a summary of the rule; a summary of any hearings  
385 held on the rule; and a detailed written statement of the facts  
386 and circumstances justifying the rule. Agencies not required to  
387 publish their rules in the Florida Administrative Code shall  
388 file one certified copy of the proposed rule, and the other  
389 material required by this subparagraph, in the office of the  
390 agency head, and such rules shall be open to the public.

391 2. A rule may not be filed for adoption less than 28 days  
392 or more than 90 days after the notice required by paragraph (a),  
393 until 21 days after the notice of change required by paragraph  
394 (d), until 14 days after the final public hearing, until 21 days  
395 after a statement of estimated regulatory costs required under  
396 s. 120.541 has been provided to all persons who submitted a  
397 lower cost regulatory alternative and made available to the  
398 public, or until the administrative law judge has rendered a  
399 decision under s. 120.56(2), whichever applies. When a required  
400 notice of change is published prior to the expiration of the  
401 time to file the rule for adoption, the period during which a  
402 rule must be filed for adoption is extended to 45 days after the  
403 date of publication. If notice of a public hearing is published  
404 prior to the expiration of the time to file the rule for  
405 adoption, the period during which a rule must be filed for  
406 adoption is extended to 45 days after adjournment of the final

29-01116-18

20181410\_\_

407 hearing on the rule, 21 days after receipt of all material  
408 authorized to be submitted at the hearing, or 21 days after  
409 receipt of the transcript, if one is made, whichever is latest.  
410 The term "public hearing" includes any public meeting held by  
411 any agency at which the rule is considered. If a petition for an  
412 administrative determination under s. 120.56(2) is filed, the  
413 period during which a rule must be filed for adoption is  
414 extended to 60 days after the administrative law judge files the  
415 final order with the clerk or until 60 days after subsequent  
416 judicial review is complete.

417 3. At the time a rule is filed, the agency shall certify  
418 that the time limitations prescribed by this paragraph have been  
419 complied with, that all statutory rulemaking requirements have  
420 been met, and that there is no administrative determination  
421 pending on the rule.

422 4. At the time a rule is filed, the committee shall certify  
423 whether the agency has responded in writing to all material and  
424 timely written comments or written inquiries made on behalf of  
425 the committee. The department shall reject any rule that is not  
426 filed within the prescribed time limits; that does not comply  
427 with all statutory rulemaking requirements and rules of the  
428 department; upon which an agency has not responded in writing to  
429 all material and timely written inquiries or written comments;  
430 upon which an administrative determination is pending; or which  
431 does not include a statement of estimated regulatory costs, if  
432 required.

433 5. If a rule has not been adopted within the time limits  
434 imposed by this paragraph or has not been adopted in compliance  
435 with all statutory rulemaking requirements, the agency proposing

29-01116-18

20181410\_\_

436 the rule shall withdraw the rule and give notice of its action  
437 in the next available issue of the Florida Administrative  
438 Register.

439 6. The proposed rule shall be adopted on being filed with  
440 the Department of State and become effective 20 days after being  
441 filed, on a later date specified in the notice required by  
442 subparagraph (a)1., on a date required by statute, or upon  
443 ratification by the Legislature pursuant to s. 120.541(3). Rules  
444 not required to be filed with the Department of State shall  
445 become effective when adopted by the agency head, on a later  
446 date specified by rule or statute, or upon ratification by the  
447 Legislature pursuant to s. 120.541(3). If the committee notifies  
448 an agency that an objection to a rule is being considered, the  
449 agency may postpone the adoption of the rule to accommodate  
450 review of the rule by the committee. When an agency postpones  
451 adoption of a rule to accommodate review by the committee, the  
452 90-day period for filing the rule is tolled until the committee  
453 notifies the agency that it has completed its review of the  
454 rule.

455  
456 For the purposes of this paragraph, the term "administrative  
457 determination" does not include subsequent judicial review.

458 (7) PETITION TO INITIATE RULEMAKING.—

459 (a) Any person regulated by an agency or having substantial  
460 interest in an agency rule may petition an agency to adopt,  
461 amend, or repeal a rule or to provide the minimum public  
462 information required by this chapter. The petition shall specify  
463 the proposed rule and action requested. The agency shall file a  
464 copy of the petition with the committee. Not later than 30



29-01116-18

20181410\_\_

465 calendar days following the date of filing a petition, the  
466 agency shall initiate rulemaking proceedings under this chapter,  
467 otherwise comply with the requested action, or deny the petition  
468 with a written statement of its reasons for the denial.

469 Section 4. Paragraph (a) of subsection (1) of section  
470 120.541, Florida Statutes, is amended to read:

471 120.541 Statement of estimated regulatory costs.—

472 (1) (a) Within 21 days after publication of the notice  
473 required under s. 120.54(3)(a), a substantially affected person  
474 may submit to an agency a good faith written proposal for a  
475 lower cost regulatory alternative to a proposed rule which  
476 substantially accomplishes the objectives of the law being  
477 implemented. The agency shall provide a copy of any proposal for  
478 a lower cost regulatory alternative to the committee at least 21  
479 days before filing the rule for adoption. The proposal may  
480 include the alternative of not adopting any rule if the proposal  
481 explains how the lower costs and objectives of the law will be  
482 achieved by not adopting any rule. If such a proposal is  
483 submitted, the 90-day period for filing the rule is extended 21  
484 days. Upon the submission of the lower cost regulatory  
485 alternative, the agency shall prepare a statement of estimated  
486 regulatory costs as provided in subsection (2), or shall revise  
487 its prior statement of estimated regulatory costs, and either  
488 adopt the alternative or provide a statement of the reasons for  
489 rejecting the alternative in favor of the proposed rule.

490 Section 5. Section 120.5435, Florida Statutes, is created  
491 to read:

492 120.5435 Repromulgation of rules.—

493 (1) It is the intent of the Legislature that each agency

29-01116-18

20181410\_\_

494 shall periodically review its rules for consistency with the  
495 powers and duties granted by its enabling statutes. If an agency  
496 determines after review that substantive changes to update a  
497 rule are not required, such agency shall repromulgate the rule  
498 to reflect the date of the review.

499 (2) Before repromulgation of the rule, an agency shall,  
500 upon approval by the agency head:

501 (a) Publish a notice of repromulgation in the Florida  
502 Administrative Register. A notice of repromulgation is not  
503 required to include the text of the rule being repromulgated.

504 (b) File the rule for repromulgation with the Department of  
505 State. A rule may not be filed for repromulgation less than 28  
506 days before or more than 90 days after the publication of the  
507 notice required by paragraph (a).

508 (3) The agency shall file a notice of repromulgation with  
509 the committee at least 14 days before filing the rule for  
510 repromulgation. At the time the rule is filed for  
511 repromulgation, the committee shall certify whether the agency  
512 has responded in writing to all material and timely written  
513 comments or written inquiries made on behalf of the committee.

514 (4) If the rule is not filed for repromulgation within the  
515 time limit imposed by paragraph (2) (b), the agency must withdraw  
516 the rule for repromulgation and give notice of the withdrawal in  
517 the next available issue of the Florida Administrative Register.

518 (5) A repromulgated rule is not subject to challenge as a  
519 proposed rule pursuant to s. 120.56(2).

520 (6) The hearing requirements of s. 120.54 do not apply to  
521 repromulgation of a rule.

522 (7) (a) The agency, upon approval of the agency head or his

29-01116-18

20181410\_\_

523 or her designee, shall file with the Department of State three  
524 certified copies of the repromulgated rule it proposes to adopt  
525 and one certified copy of any material incorporated by reference  
526 in the rule.

527 (b) The repromulgated rule shall be adopted upon filing  
528 with the Department of State and becomes effective 20 days after  
529 being filed.

530 (c) The Department of State shall update the history note  
531 of the rule in the Florida Administrative Code to reflect the  
532 effective date of the repromulgated rule.

533 (8) The Department of State shall adopt rules to implement  
534 this section by December 31, 2018.

535 Section 6. Paragraphs (a) and (c) of subsection (1) of  
536 section 120.55, Florida Statutes, are amended to read:

537 120.55 Publication.—

538 (1) The Department of State shall:

539 (a)1. Through a continuous revision and publication system,  
540 compile and publish electronically, on a website managed by the  
541 department, the "Florida Administrative Code." The Florida  
542 Administrative Code shall contain all rules adopted by each  
543 agency, citing the grant of rulemaking authority and the  
544 specific law implemented pursuant to which each rule was  
545 adopted, all history notes as authorized in s. 120.545(7),  
546 complete indexes to all rules contained in the code, and any  
547 other material required or authorized by law or deemed useful by  
548 the department. The electronic code shall display each rule  
549 chapter currently in effect in browse mode and allow full text  
550 search of the code and each rule chapter. The department may  
551 contract with a publishing firm for a printed publication;

29-01116-18

20181410\_\_

552 however, the department shall retain responsibility for the code  
553 as provided in this section. The electronic publication shall be  
554 the official compilation of the administrative rules of this  
555 state. The Department of State shall retain the copyright over  
556 the Florida Administrative Code.

557 2. Rules general in form but applicable to only one school  
558 district, community college district, or county, or a part  
559 thereof, or state university rules relating to internal  
560 personnel or business and finance shall not be published in the  
561 Florida Administrative Code. Exclusion from publication in the  
562 Florida Administrative Code shall not affect the validity or  
563 effectiveness of such rules.

564 3. At the beginning of the section of the code dealing with  
565 an agency that files copies of its rules with the department,  
566 the department shall publish the address and telephone number of  
567 the executive offices of each agency, the manner by which the  
568 agency indexes its rules, a listing of all rules of that agency  
569 excluded from publication in the code, and a statement as to  
570 where those rules may be inspected.

571 4. Forms shall not be published in the Florida  
572 Administrative Code; but any form which an agency uses in its  
573 dealings with the public, along with any accompanying  
574 instructions, shall be filed with the committee before it is  
575 used. Any form or instruction which meets the definition of  
576 "rule" provided in s. 120.52 shall be incorporated by reference  
577 into the appropriate rule. The reference shall specifically  
578 state that the form is being incorporated by reference and shall  
579 include the number, title, and effective date of the form and an  
580 explanation of how the form may be obtained. Each form created

29-01116-18

20181410\_\_

581 by an agency which is incorporated by reference in a rule notice  
582 of which is given under s. 120.54(3)(a) after December 31, 2007,  
583 must clearly display the number, title, and effective date of  
584 the form and the number of the rule in which the form is  
585 incorporated.

586 5. After December 31, 2018, the department shall require  
587 all material incorporated by reference in any part of an adopted  
588 rule and in any part of a repromulgated rule ~~allow adopted rules~~  
589 ~~and material incorporated by reference~~ to be filed in the manner  
590 prescribed by s. 120.54(1)(i)3.a. or s. 120.54(1)(i)3.b.  
591 ~~electronic form as prescribed by department rule.~~ When a rule is  
592 filed for adoption or repromulgation with incorporated material  
593 in electronic form, the department's publication of the Florida  
594 Administrative Code on its website must contain a hyperlink from  
595 the incorporating reference in the rule directly to that  
596 material. The department may not allow hyperlinks from rules in  
597 the Florida Administrative Code to any material other than that  
598 filed with and maintained by the department, but may allow  
599 hyperlinks to incorporated material maintained by the department  
600 from the adopting agency's website or other sites.

601 6. The Department of State shall include the date of any  
602 technical changes to a rule in the history note of the rule in  
603 the Florida Administrative Code. A technical change does not  
604 affect the effective date of the rule.

605 (c) Prescribe by rule the style and form required for  
606 rules, notices, and other materials submitted for filing,  
607 including a rule requiring documents created by an agency which  
608 are proposed to be incorporated by reference in notices  
609 published pursuant to s. 120.54(3)(a) and (d) to be coded in the

29-01116-18

20181410\_\_

610 same manner as notices published pursuant to s. 120.54(3)(a)1.

611 Section 7. Subsection (1) of section 120.569, Florida  
612 Statutes, is amended to read:

613 120.569 Decisions which affect substantial interests.—

614 (1) (a) The provisions of this section apply in all  
615 proceedings in which the substantial interests of a party are  
616 determined by an agency, unless the parties are proceeding under  
617 s. 120.573 or s. 120.574. Unless waived by all parties, s.  
618 120.57(1) applies whenever the proceeding involves a disputed  
619 issue of material fact. Unless otherwise agreed, s. 120.57(2)  
620 applies in all other cases. If a disputed issue of material fact  
621 arises during a proceeding under s. 120.57(2), then, unless  
622 waived by all parties, the proceeding under s. 120.57(2) shall  
623 be terminated and a proceeding under s. 120.57(1) shall be  
624 conducted. Parties shall be notified of any order, including a  
625 final order. Unless waived, a copy of the order shall be  
626 delivered or mailed to each party or the party's attorney of  
627 record at the address of record. Each notice shall inform the  
628 recipient of any administrative hearing or judicial review that  
629 is available under this section, s. 120.57, or s. 120.68; shall  
630 indicate the procedure which must be followed to obtain the  
631 hearing or judicial review; and shall state the time limits  
632 which apply.

633 (b) In all proceedings pursuant to this chapter conducted  
634 before the division, any document filed with the division by a  
635 party represented by an attorney shall be filed electronically  
636 through the division's website. Any document filed with the  
637 division by a party not represented by an attorney shall,  
638 whenever possible, be filed electronically through the

29-01116-18

20181410\_\_

639 division's website. The division shall serve all such documents  
640 on all parties of record electronically through the division's  
641 website. The parties are relieved of any requirement to serve  
642 other parties who are registered for electronic filing when they  
643 file documents electronically with the division.

644 Section 8. Subsection (11) of section 120.80, Florida  
645 Statutes, is amended to read:

646 120.80 Exceptions and special requirements; agencies.—

647 (11) NATIONAL GUARD.—Notwithstanding s. 120.52(17) ~~s.~~  
648 ~~120.52(16)~~, the enlistment, organization, administration,  
649 equipment, maintenance, training, and discipline of the militia,  
650 National Guard, organized militia, and unorganized militia, as  
651 provided by s. 2, Art. X of the State Constitution, are not  
652 rules as defined by this chapter.

653 Section 9. Paragraph (c) of subsection (1) of section  
654 120.81, Florida Statutes, is amended to read:

655 120.81 Exceptions and special requirements; general areas.—

656 (1) EDUCATIONAL UNITS.—

657 (c) Notwithstanding s. 120.52(17) ~~s. 120.52(16)~~, any tests,  
658 test scoring criteria, or testing procedures relating to student  
659 assessment which are developed or administered by the Department  
660 of Education pursuant to s. 1003.4282, s. 1008.22, or s.  
661 1008.25, or any other statewide educational tests required by  
662 law, are not rules.

663 Section 10. Paragraph (a) of subsection (1) of section  
664 420.9072, Florida Statutes, is amended to read:

665 420.9072 State Housing Initiatives Partnership Program.—The  
666 State Housing Initiatives Partnership Program is created for the  
667 purpose of providing funds to counties and eligible

29-01116-18

20181410\_\_

668 municipalities as an incentive for the creation of local housing  
669 partnerships, to expand production of and preserve affordable  
670 housing, to further the housing element of the local government  
671 comprehensive plan specific to affordable housing, and to  
672 increase housing-related employment.

673 (1) (a) In addition to the legislative findings set forth in  
674 s. 420.6015, the Legislature finds that affordable housing is  
675 most effectively provided by combining available public and  
676 private resources to conserve and improve existing housing and  
677 provide new housing for very-low-income households, low-income  
678 households, and moderate-income households. The Legislature  
679 intends to encourage partnerships in order to secure the  
680 benefits of cooperation by the public and private sectors and to  
681 reduce the cost of housing for the target group by effectively  
682 combining all available resources and cost-saving measures. The  
683 Legislature further intends that local governments achieve this  
684 combination of resources by encouraging active partnerships  
685 between government, lenders, builders and developers, real  
686 estate professionals, advocates for low-income persons, and  
687 community groups to produce affordable housing and provide  
688 related services. Extending the partnership concept to encompass  
689 cooperative efforts among small counties as defined in s.  
690 120.52(20) ~~s. 120.52(19)~~, and among counties and municipalities  
691 is specifically encouraged. Local governments are also intended  
692 to establish an affordable housing advisory committee to  
693 recommend monetary and nonmonetary incentives for affordable  
694 housing as provided in s. 420.9076.

695 Section 11. Subsection (7) of section 420.9075, Florida  
696 Statutes, is amended to read:



29-01116-18

20181410\_\_

697 420.9075 Local housing assistance plans; partnerships.—  
 698 (7) The moneys deposited in the local housing assistance  
 699 trust fund shall be used to administer and implement the local  
 700 housing assistance plan. The cost of administering the plan may  
 701 not exceed 5 percent of the local housing distribution moneys  
 702 and program income deposited into the trust fund. A county or an  
 703 eligible municipality may not exceed the 5-percent limitation on  
 704 administrative costs, unless its governing body finds, by  
 705 resolution, that 5 percent of the local housing distribution  
 706 plus 5 percent of program income is insufficient to adequately  
 707 pay the necessary costs of administering the local housing  
 708 assistance plan. The cost of administering the program may not  
 709 exceed 10 percent of the local housing distribution plus 5  
 710 percent of program income deposited into the trust fund, except  
 711 that small counties, as defined in s. 120.52(20) ~~s. 120.52(19)~~,  
 712 and eligible municipalities receiving a local housing  
 713 distribution of up to \$350,000 may use up to 10 percent of  
 714 program income for administrative costs.

715 Section 12. Paragraph (d) of subsection (1) of section  
 716 443.091, Florida Statutes, is amended to read:

717 443.091 Benefit eligibility conditions.—

718 (1) An unemployed individual is eligible to receive  
 719 benefits for any week only if the Department of Economic  
 720 Opportunity finds that:

721 (d) She or he is able to work and is available for work. In  
 722 order to assess eligibility for a claimed week of unemployment,  
 723 the department shall develop criteria to determine a claimant's  
 724 ability to work and availability for work. A claimant must be  
 725 actively seeking work in order to be considered available for

29-01116-18

20181410\_\_

726 work. This means engaging in systematic and sustained efforts to  
727 find work, including contacting at least five prospective  
728 employers for each week of unemployment claimed. The department  
729 may require the claimant to provide proof of such efforts to the  
730 one-stop career center as part of reemployment services. A  
731 claimant's proof of work search efforts may not include the same  
732 prospective employer at the same location in 3 consecutive  
733 weeks, unless the employer has indicated since the time of the  
734 initial contact that the employer is hiring. The department  
735 shall conduct random reviews of work search information provided  
736 by claimants. As an alternative to contacting at least five  
737 prospective employers for any week of unemployment claimed, a  
738 claimant may, for that same week, report in person to a one-stop  
739 career center to meet with a representative of the center and  
740 access reemployment services of the center. The center shall  
741 keep a record of the services or information provided to the  
742 claimant and shall provide the records to the department upon  
743 request by the department. However:

744 1. Notwithstanding any other provision of this paragraph or  
745 paragraphs (b) and (e), an otherwise eligible individual may not  
746 be denied benefits for any week because she or he is in training  
747 with the approval of the department, or by reason of s.  
748 443.101(2) relating to failure to apply for, or refusal to  
749 accept, suitable work. Training may be approved by the  
750 department in accordance with criteria prescribed by rule. A  
751 claimant's eligibility during approved training is contingent  
752 upon satisfying eligibility conditions prescribed by rule.

753 2. Notwithstanding any other provision of this chapter, an  
754 otherwise eligible individual who is in training approved under

29-01116-18

20181410\_\_

755 s. 236(a)(1) of the Trade Act of 1974, as amended, may not be  
756 determined ineligible or disqualified for benefits due to  
757 enrollment in such training or because of leaving work that is  
758 not suitable employment to enter such training. As used in this  
759 subparagraph, the term "suitable employment" means work of a  
760 substantially equal or higher skill level than the worker's past  
761 adversely affected employment, as defined for purposes of the  
762 Trade Act of 1974, as amended, the wages for which are at least  
763 80 percent of the worker's average weekly wage as determined for  
764 purposes of the Trade Act of 1974, as amended.

765 3. Notwithstanding any other provision of this section, an  
766 otherwise eligible individual may not be denied benefits for any  
767 week because she or he is before any state or federal court  
768 pursuant to a lawfully issued summons to appear for jury duty.

769 4. Union members who customarily obtain employment through  
770 a union hiring hall may satisfy the work search requirements of  
771 this paragraph by reporting daily to their union hall.

772 5. The work search requirements of this paragraph do not  
773 apply to persons who are unemployed as a result of a temporary  
774 layoff or who are claiming benefits under an approved short-time  
775 compensation plan as provided in s. 443.1116.

776 6. In small counties as defined in s. 120.52(20) ~~s.~~  
777 ~~120.52(19)~~, a claimant engaging in systematic and sustained  
778 efforts to find work must contact at least three prospective  
779 employers for each week of unemployment claimed.

780 7. The work search requirements of this paragraph do not  
781 apply to persons required to participate in reemployment  
782 services under paragraph (e).

783 Section 13. This act shall take effect July 1, 2018.