

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 941 Administrative Procedures

SPONSOR(S): Government Accountability Committee; Oversight, Transparency & Administration
Subcommittee; Moraitis, Jr.

TIED BILLS: **IDEN./SIM. BILLS:** SB 1410

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee	12 Y, 0 N	Toliver	Harrington
2) Government Accountability Committee	18 Y, 0 N, As CS	Toliver	Williamson

SUMMARY ANALYSIS

The Administrative Procedure Act (APA) sets forth a uniform set of procedures that agencies must follow when exercising delegated rulemaking authority. A rule is an agency statement of general applicability that interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency as well as certain types of forms. To adopt a rule, an agency must have a general grant of authority to implement a specific law. Once a rule is adopted, the rule continues to remain in effect until amended or repealed. Annually, an agency must verify that it regularly reviews all of its rules. Administrative law judges (ALJs) are public officers who preside over disputes arising under the APA and other state laws in which the substantial interests of a person are determined by an agency and which involve a disputed issue of material fact.

The bill requires each agency to review periodically its rules for consistency with the powers and duties granted by the agency's enabling statutes. If, after reviewing a rule, the agency determines that substantive changes to update a rule are not required, the agency must repromulgate the rule to reflect the date of the review. The bill requires each agency, upon approval of the agency head, to submit three certified copies of the repromulgated rule it proposes to adopt with the department and one certified copy of any material incorporated by reference in the rule. The bill requires that all notices of rulemaking, repromulgated rules, or rule modifications that include material incorporated by reference to submit the material in the prescribed electronic format to the department with the full text available for free public access through an electronic hyperlink from the rule making the reference in the Florida Administrative Code.

The bill requires the director of the Division of Administrative Hearings (DOAH) to be a full-time ALJ employed by DOAH, and removes the requirement for the director to be confirmed by the Senate. The bill requires full-time ALJs to be appointed by the Governor and Cabinet from a list of three individuals nominated by a statewide nominating commission. The bill specifies the composition of the commission and the process by which the members of the commission must be appointed. The bill also establishes a process by which the Governor and Cabinet must appoint or reappoint ALJs and specifies the length of ALJs' terms of office. The bill requires DOAH to maintain the 32 ALJ positions, as they exist on June 30, 2018, and allows each ALJ to continue to serve until June 30, 2019. Each ALJ currently serving may be appointed under the reappointment process.

The bill repeals the provisions that exclude attorneys who serve as ALJs from the Career Service exemption, and classifies ALJs as Selected Exempt Service employees.

The bill requires DOAH to serve all documents on all parties of record electronically. Parties to a proceeding at DOAH who file electronically are relieved of any requirement to serve other parties so long as those persons are registered for electronic filing.

The bill may have a negative fiscal impact on state government. See Fiscal Comments.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0941c.GAC

DATE: 2/12/2018

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Rulemaking

The Administrative Procedure Act¹ (APA) sets forth a uniform set of procedures that agencies must follow when exercising delegated rulemaking authority. A rule is an agency statement of general applicability that interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency as well as certain types of forms.² Rulemaking authority is delegated by the Legislature through statute and authorizes agencies to “adopt, develop, establish, or otherwise create”³ rules. Agencies do not have the discretion in and of themselves to engage in rulemaking.⁴ To adopt a rule, an agency must have a general grant of authority to implement a specific law by rulemaking.⁵ The grant of rulemaking authority itself need not be detailed. The specific statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.⁶

An agency begins the formal rulemaking process by filing a notice of rule development of proposed rules in the Florida Administrative Register (FAR) indicating the subject area to be addressed by the rule development and including a short, plain explanation of the purpose and effect of the rule. The notice may include the preliminary text of the proposed rule, but it is not necessary. Such notice is required for all rulemaking, except for rule repeals. Next, an agency must file, upon approval of the agency head, a notice of proposed rulemaking.⁷ The Department of State (department) publishes the notice in the FAR,⁸ which must contain the full text of the proposed rule or amendment and a summary thereof.⁹ If a person requests a hearing within 21 days following the publication of the notice, that agency must hold a hearing.¹⁰ The agency, based upon the comments received at the hearing, can publish a notice of change.¹¹ The agency then files for rule adoption with the department and the rule becomes effective 20 days later, unless a different date is indicated in the rule.¹² The rule is then published in the Florida Administrative Code (FAC).

Small Business Impact in Rulemaking

Each agency, before the adoption, amendment, or repeal of a rule, is required to consider the impact of the rule on small businesses.¹³ If the agency determines that the proposed action will affect small businesses, the agency must send written notice to the rules ombudsman in the Executive Office of the Governor at least 28 days before the intended action.¹⁴ The agency must adopt the regulatory

¹ Chapter 120, F.S.

² Section 120.52(16), F.S.

³ Section 120.52(17), F.S.

⁴ Section 120.54(1)(a), F.S.

⁵ Sections 120.52(8) and 120.536(1), F.S.

⁶ *Sloban v. Florida Board of Pharmacy*, 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, 794 So. 2d 696, 704 (Fla. 1st DCA 2001).

⁷ Section 120.54(3)(a)1., F.S.

⁸ Section 120.55(1)(b), F.S.

⁹ Section 120.54(3)(a)1., F.S.

¹⁰ Section 120.54(3)(c), F.S.

¹¹ Section 120.54(3)(d)1., F.S.

¹² Section 120.54(3)(e)6., F.S.

¹³ Section 120.54(3)(b)2., F.S.

¹⁴ Section 120.54(3)(b)2.b.(I), F.S.

alternatives offered by the rules ombudsman if it finds the alternatives are feasible and consistent with the stated objectives of the proposed rule and which would reduce the impact on small businesses.¹⁵ If the agency does not adopt the alternatives offered, it must, before rule adoption or amendment, file a detailed written statement with the Joint Administrative Procedures Committee explaining the reasons for failure to adopt such alternatives.¹⁶

Incorporation by Reference

The APA allows an agency to incorporate material external to the text of the rule by reference.¹⁷ The material to be incorporated must exist on the date the rule is adopted.¹⁸ If after the rule has been adopted the agency wishes to alter the material incorporated by reference, the rule itself must be amended for the change to be effective.¹⁹ However, an agency rule that incorporates another rule by reference automatically incorporates subsequent amendments to the referenced rule.²⁰ A rule cannot be amended by reference only.²¹ An agency may not incorporate a rule by reference unless:

- The material has been submitted in the prescribed electronic format to the department and the full text of the material can be made available for free public access through an electronic hyperlink from the rule making the reference in the FAC; or
- The agency has determined that posting the material publicly on the Internet would constitute a violation of federal copyright law, in which case a statement stating such, along with the address of locations at the department and the agency at which the material is available for public inspection and examination, must be included in the notice.²²

The department has adopted a rule governing the requirements for materials incorporated by reference.²³ The rule requires each agency incorporating material by reference in an administrative rule to certify that the materials incorporated have been filed with the department electronically or, if the agency claims the posting of the material would constitute a violation of federal copyright law, the location where the public may view the material.²⁴

Joint Administrative Procedures Committee (JAPC)

JAPC is a standing committee of the Legislature established by joint rule and created to maintain a continuous review of administrative rules, the statutory authority upon which those rules are based, and the administrative rulemaking process.²⁵ Specifically, JAPC is required to examine each proposed rule and its accompanying material to determine whether:

- The rule is an invalid exercise of delegated legislative authority;
- The statutory authority for the rule has been repealed;
- The rule reiterates or paraphrases statutory material;
- The rule is in proper form;
- The notice given prior to adoption was sufficient;
- The rule is consistent with expressed legislative intent;
- The rule is necessary to accomplish the apparent or expressed objectives of the specific provision of law that the rule implements;
- The rule is a reasonable implementation of the law as it affects the convenience of the general public or persons particularly affected by the rule;
- The rule could be made less complex or more easily comprehensible to the general public;

¹⁵ Section 120.54(3)(b)2.b.(II), F.S.

¹⁶ Section 120.54(3)(b)2.b.(III), F.S.

¹⁷ Section 120.54(1)(i), F.S.; *see also* Fla. Admin. Code R. 1-1.013.

¹⁸ Section 120.54(1)(i)1., F.S.

¹⁹ *Id.*

²⁰ Section 120.54(1)(i)2., F.S.

²¹ Section 120.54(1)(i)4., F.S.

²² Section 120.54(1)(i)3., F.S.

²³ Fla. Admin. Code R. 1-1.013.

²⁴ Fla. Admin. Code R. 1-1.013(5)(d).

²⁵ Fla. Leg. J. Rule 4.6; *see also* s. 120.545, F.S.

- The rule's Statement of Estimated Regulatory Cost (SERC) complies with the requirements of the APA and whether the rule does not impose regulatory costs on the regulated person, county, or city that could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives; or
- The rule will require additional appropriations.²⁶

Statement of Estimated Regulatory Cost (SERC)

A SERC is an agency estimate of the potential impact of a proposed rule on the public, particularly the potential costs to the public of complying with the rule as well as to the agency and other governmental entities to implement the rule.²⁷ Agencies are encouraged to prepare a SERC before adopting, amending, or repealing any rule.²⁸ However, a SERC is required if the proposed rule will have a negative impact on small businesses or increase regulatory costs by more than \$200,000 in the aggregate within one year after implementation of the rule.²⁹

If the agency revises a rule before adoption and the revision increases the regulatory costs of the rule, the agency must revise the SERC to reflect that alteration.³⁰ At least 21 days before filing a rule for adoption, an agency that is required to revise a SERC must provide the statement to the person who submitted the lower cost regulatory alternative and to JAPC and must provide notice on the agency's website that it is available to the public.³¹

Annual Regulatory Review

Annually, each agency must prepare a regulatory plan that includes a list of each law enacted during the previous 12 months, which creates or modifies the duties or authority of the agency and state whether the agency must adopt rules to implement the newly adopted laws.³² The plan must also include a list of each additional law not otherwise listed that the agency expects to implement by rulemaking before the following July 1, except emergency rules. The plan must include a certification by the agency head or, if the agency head is a collegial body, the presiding officer, and the individual acting as principal legal advisor to the agency verifying the persons have reviewed the plan, verifying that the agency regularly reviews all of its rules, and identifying the period during which all rules have most recently been reviewed to determine if the rules remain consistent with the agency's rulemaking authority and the laws implemented.³³ By October 1 of each year, the plan must be published on the agency's website or on another state website established for publication of administrative law records with a hyperlink to the plan. The agency must also deliver a copy of the certification to JAPC and publish a notice in FAR identifying the date of publication of the agency's regulatory plan.³⁴

Administrative Law Judges

Administrative law judges (ALJs) are public officers³⁵ who preside over disputes arising under the APA³⁶ and other state laws in which the substantial interests of a person are determined by an

²⁶ Section 120.545(1), F.S.

²⁷ Section 120.541(2), F.S.

²⁸ Section 120.54(3)(b)1., F.S.

²⁹ Section 120.54(3)(b)1., F.S.

³⁰ Section 120.541(1)(c), F.S.

³¹ Section 120.541(1)(d), F.S.

³² Section 120.74(1), F.S.

³³ Section 120.74(1)(d), F.S.

³⁴ Section 120.74(2), F.S.

³⁵ Florida law distinguishes between an employee and a public officer. *Miami-Dade Cnty. v. State Dept. of Labor and Employment Security, Div. of Unemployment Compensation*, 749 So.2d 574, 577 (Fla. 2000); see also *State ex. rel. Clyatt v. Hocker*, 22 So. 721 (Fla. 1897). The term "office" implies a delegation of a portion of the sovereign power to, and possession of it by, the person filling the office, while an "employment" does not comprehend a delegation of any part of sovereign authority. *State ex. rel. Holloway v. Sheats*, 83 So. 508, 509 (1919).

³⁶ Chapter 120, F.S.

agency³⁷ and which involve a disputed issue of material fact.³⁸ When a state agency proposes to take some action that is adverse to a person, the affected person is normally entitled to request an administrative hearing to determine the matter.³⁹

Each ALJ is employed by the Division of Administrative Hearings (DOAH) and must have been a member of The Florida Bar in good standing for the preceding five years.⁴⁰ DOAH is administratively housed under the Department of Management Services (DMS); however, DOAH is not subject to the control, supervision, or direction of DMS. The head of DOAH is a director who also serves as chief ALJ. The director is appointed by the Administration Commission⁴¹ and confirmed by the Senate. The director and any deputy chief ALJ must possess the same minimum qualifications as the ALJs employed by DOAH.⁴²

Currently, when a vacancy occurs for an ALJ, a posting is made on PeopleFirst, the human resources website for the State of Florida. Applications are screened by DOAH through an internal committee process. Internal committee members are appointed by the chief judge, and the chief judge heads the committee.

Career Service System

Chapter 110, F.S., establishes the state's personnel management system. The system must provide means to recruit, select, train, develop, and maintain an effective and responsible workforce and must include policies and procedures for employee hiring and advancement, training and career development, position classification, salary administration, benefits, discipline, discharge, employee performance evaluations, affirmative action, and other related activities.⁴³

DMS is charged with establishing and maintaining a classification and compensation program addressing Career Service, Selected Exempt Service, and Senior Management Service positions.⁴⁴ The classification of a position determines the types of benefits assigned to the position and the compensation and collective bargaining status of the position. A position must be classified as Career Service unless it is specifically exempted by statute.⁴⁵

³⁷ The term "agency" means the following officers or governmental entities if acting pursuant to powers other than those derived from the Constitution:

(a) The Governor; each state officer and state department, and each departmental unit described in s. 20.04, F.S.; the Board of Governors of the State University System; the Commission on Ethics; the Fish and Wildlife Conservation Commission; a regional water supply authority; a regional planning agency; a multicounty special district, but only if a majority of its governing board is comprised of nonelected persons; educational units; and each entity described in chs. 163, 373, 380, and 582, F.S., and s. 186.504, F.S.

(b) Each officer and governmental entity in the state having statewide jurisdiction or jurisdiction in more than one county.

(c) Each officer and governmental entity in the state having jurisdiction in one county or less than one county, to the extent they are expressly made subject to ch. 120, F.S., by general or special law or existing judicial decisions.

This definition does not include a municipality or legal entity created solely by a municipality; a legal entity or agency created in whole or in part pursuant to part II of ch. 361, F.S.; a metropolitan planning organization created pursuant to s. 339.175, F.S.; a separate legal or administrative entity created pursuant to s. 339.175, F.S., of which a metropolitan planning organization is a member; an expressway authority pursuant to ch. 348, F.S., or any transportation authority or commission under ch. 343, F.S., or ch. 349, F.S.; or a legal or administrative entity created by an interlocal agreement pursuant to s. 163.01(7), F.S., unless any party to such agreement is otherwise an agency pursuant to this definition. Section 120.52(1), F.S.

³⁸ Section 120.65(4), F.S.

³⁹ DOAH, *Representing Yourself Before the Division of Administrative Hearings*, <https://www.doah.state.fl.us/ALJ/RepYourself.pdf> (last visited February 9, 2018).

⁴⁰ Section 120.65(4), F.S.

⁴¹ The Administration Commission is part of the Executive Office of the Governor and is comprised of the Governor and Cabinet. Section 14.202, F.S.

⁴² Section 120.65(1), F.S.

⁴³ Section 110.105(1), F.S.

⁴⁴ Section 110.2035(1), F.S.

⁴⁵ Section 110.205(1), F.S.

A Career Service employee who has satisfactorily completed at least a one-year probationary period may only be suspended or dismissed for cause. Cause includes poor performance, negligence, inefficiency or inability to perform assigned duties, insubordination, violation of the provisions of law or agency rules, conduct unbecoming a public employee, misconduct, habitual drug abuse, or conviction of any crime.⁴⁶ Career Service employees that have completed the probationary period are also entitled to a grievance process⁴⁷ and have the right to appeal a suspension, reduction in pay, demotion, involuntary transfer of more than 50 miles by highway, or dismissal.⁴⁸

Selected Exempt Service is a separate system of personnel administration for positions that are exempt from the Career Service System.⁴⁹ Employees in the Selected Exempt Service serve at the pleasure of the agency head and are subject to suspension, dismissal, reduction in pay, demotion, transfer, or other personnel action at the discretion of the agency head.⁵⁰ The Selected Exempt Service provides greater pay and benefits overall than are provided for Career Service employees, but less pay and benefits overall than are provided for the Senior Management Service.⁵¹

Current law exempts from the Career Service System all positions that require as a prerequisite to employment the receipt of a Bachelor of Laws or Juris Doctor degree from a law school accredited by the American Bar Association and thereafter membership in The Florida Bar. However, attorneys who serve as ALJs within DOAH are specifically excluded from this exemption; therefore, they are classified as Career Service employees.⁵²

Electronic Filing

Current law provides that a party represented by an attorney in a proceeding before DOAH is required to file all documents electronically through DOAH's website.⁵³ However, if a party is not represented by an attorney, he or she must file documents through DOAH's website "whenever possible."⁵⁴

Effect of the Bill

The bill requires each agency to review periodically its rules for consistency with the powers and duties granted by the agency's enabling statutes. If, after reviewing a rule, the agency determines that substantive changes to update a rule are not required, the agency must repromulgate the rule to reflect the date of the review. The bill defines "repromulgate" to mean the publication and adoption of an existing rule following an agency's review of the rule for consistency with the power and duties granted by its enabling statute. The agency, before repromulgation of the rule and upon the approval of its agency head, must:

- Publish a notice of repromulgation in the FAR, which is not required to include the text of the rule;
- File the rule with the department. The rule may not be filed for repromulgation less than 28 days before or more than 90 days after the publication of the notice. If the agency fails to meet this time limit, it must withdraw the rule for repromulgation and give notice of the withdrawal in the next available issue of the FAR.

The agency must file a notice of repromulgation with JAPC at least 14 days before filing the rule with the department. JAPC must certify at the time of filing whether the agency has responded to all of JAPC's material or written inquiries. The bill specifies that a repromulgated rule is not subject to the hearing requirements of the APA nor is it subject to challenge.

⁴⁶ Section 110.227(1), F.S.

⁴⁷ Section 110.227(4), F.S.

⁴⁸ Section 110.227(5) and (6), F.S.

⁴⁹ Section 110.602, F.S.

⁵⁰ Section 110.604, F.S.

⁵¹ See s. 110.603, F.S.

⁵² Section 110.205(2)(r), F.S.

⁵³ Section 120.52(5), F.S.

⁵⁴ *Id.*

The bill requires each agency, upon approval of the agency head, to submit three certified copies of the repromulgated rule it proposes to adopt with the department and one certified copy of any material incorporated by reference in the rule. The repromulgated rule is adopted upon its being filing with the department and becomes effective 20 days later. The department then must update the history note of the rule in the FAC to reflect the effective date. The bill requires the department to adopt rules to implement the bill's repromulgation provisions by December 31, 2018.

After December 31, 2018, the bill requires an agency, in all notices of rulemaking, repromulgated rules, or rule modifications that include material incorporated by reference, to submit the incorporated material in the prescribed electronic format to the department with the full text available for free public access through an electronic hyperlink from the rule making the reference in the FAC. Alternatively, if an agency determines that posting the material incorporated by reference on the Internet would constitute a violation of federal copyright law, the agency must include in the notice a statement to that effect, along with the address of locations at the department and the agency at which the material is available for public inspection and examination.

The bill requires an agency to provide a copy of any proposal for a lower cost regulatory alternative to JAPC at least 21 days before filing the rule for adoption.

The bill requires the director of DOAH to be a full-time ALJ employed by DOAH. The bill also removes the requirement for the director to be confirmed by the Senate.

In addition, the bill requires full-time ALJs to be appointed by the Governor and Cabinet⁵⁵ and prohibits an ALJ from engaging in the private practice of law during his or her term of office. The Governor and Cabinet must appoint an ALJ from a list of three individuals nominated by a statewide nominating commission.

The commission must be composed of the following members:

- Three members appointed by the Governor, at least one of whom must be a minority person as defined in s. 288.703, F.S.;
- Two members appointed by the Attorney General;
- Two members appointed by the Chief Financial Officer; and
- Two members appointed by the Commissioner of Agriculture.

Beginning July 1, 2018, the Governor and each member of the Cabinet must appoint one member to serve a two-year term and appoint the remaining members to serve four-year terms. Thereafter, each member must be appointed for a four-year term. If a vacancy occurs on the commission, it must be filled by the original appointing authority for the unexpired balance of the term.

The bill requires the meetings and determinations of the commission as to the ALJs to be open to the public.

The bill requires each ALJ to be appointed for a four-year term,⁵⁶ but authorizes the Governor and Cabinet to remove an ALJ during his or her term of office for cause.

Prior to the expiration of an ALJ's term of office, the commission must review the judge's conduct and determine whether the ALJ's performance is satisfactory. In determining whether an ALJ's performance is satisfactory, the commission must consider the extent to which the ALJ has met the requirements of

⁵⁵ The Florida Constitution requires that the administration of each department in the executive branch, unless otherwise provided in the constitution, be placed by law under the direct supervision of the governor, the lieutenant governor, the governor and cabinet, a cabinet. Art. IV, s. 6, FLA. CONST. In addition, the Governor, unless otherwise specified in the constitution, must fill all vacancies in appointive office. Art. IV, s. 1, FLA. CONST.

⁵⁶ The Florida Constitution requires that no term of office be created that exceeds four years. Art. III, s. 13, FLA. CONST.

the APA. The commission must report its findings to the Governor and Cabinet at least six months before the ALJ's term expires. The Governor and Cabinet must review the commission's report and may reappoint the ALJ for an additional four-year term. If the Governor and Cabinet do not reappoint the ALJ, the Governor and Cabinet must inform the commission. The ALJ must remain in office until the Governor and Cabinet appoints a successor. If a vacancy occurs during an ALJ's unexpired term, if the commission does not find the ALJ's performance satisfactory, or if the Governor and Cabinet do not reappoint the ALJ, the Governor and Cabinet must appoint a successor judge for a four-year term in accordance with the process described above.

The Governor and Cabinet must appoint each ALJ by June 30, 2019, for a term beginning on July 1, 2019. For the term beginning on July 1, 2019, ALJs must be appointed in the following manner:

- Eight ALJs appointed to a one-year term;
- Eight ALJs appointed to a two-year term;
- Eight ALJs appointed to a three-year term; and
- Nine ALJs appointed to a four-year term.

Thereafter, each term of office must be four years.

The bill requires DOAH to maintain the 32 ALJ positions, as they exist on June 30, 2018, and allows each ALJ to continue to serve until June 30, 2019. Each ALJ currently serving may be appointed under the reappointment process.

The bill repeals the provisions that exclude attorneys who serve as ALJs from the Career Service exemption for other attorney positions, and classifies ALJs as Selected Exempt Service employees. The bill requires DOAH to serve all documents on all parties of record electronically. Parties to a proceeding at DOAH who file electronically are relieved of any requirement to serve other parties so long as those persons are registered for electronic filing.

Lastly, the bill makes changes to cross-references to correspond to changes made by the bill.

B. SECTION DIRECTORY:

Section 1 amends s. 110.205, F.S., related to Career Service and exemptions therefrom.

Section 2 amends s. 120.52, F.S., relating to definitions in the APA.

Section 3 amends s. 120.54, F.S., relating to rulemaking procedures.

Section 4 amends s. 120.541, F.S., relating to SERCs.

Section 5 creates s. 120.5435, F.S., relating to the repromulgation of rules.

Section 6 amends s. 120.55, F.S., relating to publication requirements in the APA.

Section 7 amends s. 120.569, F.S., relating to agency decisions affecting substantial interests.

Section 8 amends s. 120.65, F.S., relating to ALJs.

Section 9 amends s. 120.80, F.S., relating to exceptions for certain agencies from APA requirements.

Section 10 amends s. 120.81, F.S., relating to exceptions for certain general areas from APA requirements.

Section 11 amends s. 420.9072, F.S., relating to the state housing initiative program.

Section 12 amends s. 420.9075, F.S., relating to local housing assistance plans.

Section 13 amends s. 443.091, F.S., relating to unemployment benefit eligibility conditions.

Section 14 provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill requires each agency to review and repromulgate its rules periodically, which may require agencies to expend funds to institute this new process. While the review process the bill creates is neither intensive nor time-consuming, it would still require agencies to dedicate staff to reviewing existing rules and engaging in rulemaking to repromulgate the rules. It is unclear whether this new activity could be absorbed into each agency's current budget.

The bill will have an insignificant fiscal impact to expenditures of DOAH. Provisions of the bill reclassify ALJs as Selected Exempt Service employees, creating minor changes to currently received benefits.

The bill creates a statewide nominating commission to review and report on ALJs, but is silent as to who will provide for the cost of any of the commission's expenses. However, administrative expenses for the newly created statewide nominating commission, for review and compilation of reports, will likely be insignificant.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill creates new rulemaking authority for the department. It requires the department to adopt rules relating to the repromulgation of administrative rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 23, 2018, the Oversight, Transparency & Administration Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment removed a section of the bill that prohibited JAPC from being able to petition an agency to repeal a rule. The amendment also made technical changes.

On February 8, 2018, the Government Accountability Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment made various changes to the employment of ALJs. The amendment:

- Required the director of DOAH to be a full-time ALJ employed by DOAH;
- Removed the requirement that the director of DOAH be confirmed by the Senate;
- Created a statewide nominating commission to recommend ALJs for appointment;
- Required ALJs to be appointed by the Governor and Cabinet from a list of three individuals nominated by the statewide nominating commission;
- Established a process by which the Governor and Cabinet must appoint or reappoint ALJs;
- Specified the length of an ALJs terms of office to be four years;
- Authorized the Governor and Cabinet to remove an ALJ for cause;
- Required DOAH to maintain the 33 ALJ position as they currently exist;
- Allowed each current ALJ to be reappointed under the reappointment process; and
- Reclassified ALJs from Career Service employees to Selected Exempt Service employees.

The analysis is drafted to the committee substitute as passed by the Government Accountability Committee.