

Bill No. SB 1196

Barcode 522488

CHAMBER ACTION

Senate

House

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The Committee on Governmental Oversight and Productivity  
(Sebesta) recommended the following amendment:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause

and insert:

Section 1. Paragraphs (d) through (m) of subsection  
(2) of section 11.60, Florida Statutes, are redesignated as  
paragraphs (e) through (n), respectively, a new paragraph (d)  
is added to said subsection, and subsection (4) of said  
section is amended, to read:

11.60 Administrative Procedures Committee; creation;  
membership; powers; duties.--

(2) The committee shall:

(d) Consider the comments submitted by interested  
persons in its review of agency rules. The committee shall act  
as an ombudsman to Florida citizens regarding agency rules.

(4) The committee shall ~~undertake and~~ maintain a  
~~systematic and~~ continuous review of statutes that authorize  
agencies to adopt rules and shall make recommendations to the

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1 appropriate standing committees of the Senate and the House of  
 2 Representatives as to the advisability of considering changes  
 3 to the delegated legislative authority to adopt rules in  
 4 specific circumstances. The annual report submitted pursuant  
 5 to paragraph (2)(g)(f) shall include ~~a schedule for the~~  
 6 ~~required systematic review of existing statutes, a summary of~~  
 7 ~~the status of this review, and any recommendations provided to~~  
 8 the standing committees during the preceding year.

9 Section 2. Subsections (5), (8), and (9) of section  
 10 120.542, Florida Statutes, are amended to read:

11 120.542 Variances and waivers.--

12 (5) A person who is subject to regulation by an agency  
 13 rule may file a petition with that agency, ~~with a copy to the~~  
 14 ~~committee~~, requesting a variance or waiver from the agency's  
 15 rule. Upon receipt of the petition, the agency shall provide a  
 16 copy to the committee. In addition to any requirements  
 17 mandated by the uniform rules, each petition shall specify:

18 (a) The rule from which a variance or waiver is  
 19 requested.

20 (b) The type of action requested.

21 (c) The specific facts that would justify a waiver or  
 22 variance for the petitioner.

23 (d) The reason why the variance or the waiver  
 24 requested would serve the purposes of the underlying statute.

25 (8) An agency shall grant or deny a petition for  
 26 variance or waiver within 90 days after receipt of the  
 27 original petition, the last item of timely requested  
 28 additional material, or the petitioner's written request to  
 29 finish processing the petition. A petition not granted or  
 30 denied within 90 days after receipt of a completed petition is  
 31 deemed approved. Upon rendition, a copy of the order granting

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1 or denying the petition shall be filed with the committee and  
2 shall contain a statement of the relevant facts and reasons  
3 supporting the agency's action. The agency shall provide  
4 notice of the disposition of the petition to the Department of  
5 State, which shall publish the notice in the next available  
6 issue of the Florida Administrative Weekly. The notice shall  
7 contain the name of the petitioner, the date the petition was  
8 filed, the rule number and nature of the rule from which the  
9 waiver or variance is sought, a reference to the place and  
10 date of publication of the notice of the petition, the date of  
11 the order denying or approving the variance or waiver, the  
12 general basis for the agency decision, and an explanation of  
13 how a copy of the order can be obtained. The agency's decision  
14 to grant or deny the petition shall be supported by competent  
15 substantial evidence and is subject to ss. 120.569 and 120.57.  
16 Any proceeding pursuant to ss. 120.569 and 120.57 in regard to  
17 a variance or waiver shall be limited to the agency action on  
18 the request for the variance or waiver, except that a  
19 proceeding in regard to a variance or waiver may be  
20 consolidated with any other proceeding authorized by this  
21 chapter.

22 (9) Each agency shall maintain a record of the type  
23 and disposition of each petition, including temporary or  
24 emergency variances and waivers, filed pursuant to this  
25 section. On October 1 of each year, each agency shall file a  
26 report with the Governor, the President of the Senate, ~~and~~ the  
27 Speaker of the House of Representatives, and the committee  
28 listing the number of petitions filed requesting variances to  
29 each agency rule, the number of petitions filed requesting  
30 waivers to each agency rule, and the disposition of all  
31 petitions. Temporary or emergency variances and waivers, and

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1 the reasons for granting or denying temporary or emergency  
2 variances and waivers, shall be identified separately from  
3 other waivers and variances.

4 Section 3. Subsection (10) of section 120.545, Florida  
5 Statutes, is amended to read:

6 120.545 Committee review of agency rules.--

7 (10)(a) If the committee objects to a proposed or  
8 existing rule, or portion thereof, and the agency fails to  
9 initiate administrative action to modify, amend, withdraw, or  
10 repeal the rule consistent with the objection within 60 days  
11 after the objection, or thereafter fails to proceed in good  
12 faith to complete such action, the committee may submit to the  
13 President of the Senate and the Speaker of the House of  
14 Representatives a recommendation that legislation be  
15 introduced to address the objection. The legislation may  
16 include the modification of the proposed rule, the suspension  
17 of the rule, the repeal of the rule or portion thereof, or the  
18 amendment of legislative authority ~~modify or suspend the~~  
19 ~~adoption of the proposed rule, or amend or repeal the rule, or~~  
20 ~~portion thereof.~~

21 (b)1. If the committee votes to recommend the  
22 introduction of legislation ~~to modify or suspend the adoption~~  
23 ~~of a proposed rule, or amend or repeal a rule,~~ the committee  
24 shall, within 5 days after this determination, certify that  
25 fact to the agency whose rule or proposed rule has been  
26 examined. The committee may request that the agency  
27 temporarily suspend the rule or suspend the adoption of the  
28 proposed rule, pending consideration of proposed legislation  
29 during the next regular session of the Legislature.

30 2. Within 30 days after receipt of the certification,  
31 if the agency is headed by an individual, or within 45 days

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1 after receipt of the certification, if the agency is headed by  
2 a collegial body, the agency shall either:

3 a. Temporarily suspend the rule or suspend the  
4 adoption of the proposed rule; or

5 b. Notify the committee in writing that it refuses to  
6 temporarily suspend the rule or suspend the adoption of the  
7 proposed rule.

8 3. If the agency elects to temporarily suspend the  
9 rule or suspend the adoption of the proposed rule, it shall  
10 give notice of the suspension in the Florida Administrative  
11 Weekly. The rule or the rule adoption process shall be  
12 suspended upon publication of the notice. An agency shall not  
13 base any agency action on a suspended rule or suspended  
14 proposed rule, or portion thereof, prior to expiration of the  
15 suspension. A suspended rule or suspended proposed rule, or  
16 portion thereof, continues to be subject to administrative  
17 determination and judicial review as provided by law.

18 4. Failure of an agency to respond to committee  
19 certification within the time prescribed by subparagraph 2.  
20 constitutes a refusal to suspend the rule or to suspend the  
21 adoption of the proposed rule.

22 (c) The committee shall prepare bills ~~to modify or~~  
23 ~~suspend the adoption of the proposed rule or amend or repeal~~  
24 ~~the rule, or portion thereof,~~ in accordance with the rules of  
25 the Senate and the House of Representatives for pre-filing and  
26 introduction in the next regular session of the Legislature.  
27 The proposed bill shall be presented to the President of the  
28 Senate and the Speaker of the House of Representatives with  
29 the committee recommendation.

30 (d) If a bill to suspend the adoption of a proposed  
31 rule is enacted into law, the proposed rule is suspended until

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1 specific delegated legislative authority for the proposed rule  
 2 has been enacted. If a bill to suspend the adoption of a  
 3 proposed rule fails to become law, any temporary agency  
 4 suspension of the rule shall expire. If a bill to modify a  
 5 proposed rule or amend a rule is enacted into law, the  
 6 suspension shall expire upon publication of notice of  
 7 modification or amendment in the Florida Administrative  
 8 Weekly. If a bill to repeal a rule is enacted into law, the  
 9 suspension shall remain in effect until notification of repeal  
 10 of the rule is published in the Florida Administrative Weekly.

11 (e) The Department of State shall publish in the next  
 12 available issue of the Florida Administrative Weekly the final  
 13 legislative action taken. If a bill to modify or suspend the  
 14 adoption of the proposed rule or amend or repeal the rule, or  
 15 portion thereof, is enacted into law, the Department of State  
 16 shall conform the rule or portion of the rule to the  
 17 provisions of the law in the Florida Administrative Code and  
 18 publish a reference to the law as a history note to the rule.

19 Section 4. The Joint Administrative Procedures  
 20 Committee shall undertake a study of the authority and  
 21 legislative oversight function of the committee under section  
 22 11.60 and chapter 120, Florida Statutes. A report including  
 23 any recommendations for legislation shall be submitted to the  
 24 President of the Senate and the Speaker of the House of  
 25 Representatives by January 1, 2006.

26 Section 5. This act shall take effect July 1, 2005.  
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29 ===== T I T L E A M E N D M E N T =====

30 And the title is amended as follows:

31 Delete everything before the enacting clause

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1 and insert:

2                                   A bill to be entitled  
3           An act relating to administrative procedures;  
4           amending s. 11.60, F.S.; providing an  
5           additional duty of the Administrative  
6           Procedures Committee; revising the contents of  
7           a report by the committee to the Legislature;  
8           amending s. 120.542, F.S.; revising procedure  
9           with respect to the provision of copies of a  
10          petition requesting a variance or waiver from  
11          an agency rule and an order granting or denying  
12          the petition; including the committee as a  
13          recipient of a specified report; amending s.  
14          120.545, F.S.; revising provisions with respect  
15          to committee recommendations upon objection by  
16          the committee to a proposed or existing rule,  
17          or portion thereof, and failure by the subject  
18          agency to initiate administrative action or to  
19          proceed to complete such action; revising  
20          provisions with respect to preparation of bills  
21          by the committee for introduction in the  
22          Legislature; requiring the committee to  
23          undertake a study of its authority and  
24          legislative oversight function; requiring a  
25          report; providing an effective date.

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