

By the Committee on Governmental Oversight and Productivity;
and Senator Posey

585-2294-05

1 A bill to be entitled

2 An act relating to administrative procedures;

3 amending s. 11.60, F.S.; providing an

4 additional duty of the Administrative

5 Procedures Committee; revising the contents of

6 a report by the committee to the Legislature;

7 amending s. 120.542, F.S.; revising procedure

8 with respect to the provision of copies of a

9 petition requesting a variance or waiver from

10 an agency rule and an order granting or denying

11 the petition; including the committee as a

12 recipient of a specified report; amending s.

13 120.545, F.S.; revising provisions with respect

14 to committee recommendations upon objection by

15 the committee to a proposed or existing rule,

16 or portion thereof, and failure by the subject

17 agency to initiate administrative action or to

18 proceed to complete such action; revising

19 provisions with respect to preparation of bills

20 by the committee for introduction in the

21 Legislature; requiring the committee to

22 undertake a study of its authority and

23 legislative oversight function; requiring a

24 report; providing an effective date.

25

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

27

28 Section 1. Paragraphs (d) through (m) of subsection

29 (2) of section 11.60, Florida Statutes, are redesignated as

30 paragraphs (e) through (n), respectively, a new paragraph (d)

31

1 is added to said subsection, and subsection (4) of said
2 section is amended, to read:

3 11.60 Administrative Procedures Committee; creation;
4 membership; powers; duties.--

5 (2) The committee shall:

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

9 (4) The committee shall ~~undertake and~~ maintain a
10 ~~systematic and~~ continuous review of statutes that authorize
11 agencies to adopt rules and shall make recommendations to the
12 appropriate standing committees of the Senate and the House of
13 Representatives as to the advisability of considering changes
14 to the delegated legislative authority to adopt rules in
15 specific circumstances. The annual report submitted pursuant
16 to paragraph (2)(g)(f) shall include ~~a schedule for the~~
17 ~~required systematic review of existing statutes, a summary of~~
18 ~~the status of this review, and~~ any recommendations provided to
19 the standing committees during the preceding year.

20 Section 2. Subsections (5), (8), and (9) of section
21 120.542, Florida Statutes, are amended to read:

22 120.542 Variances and waivers.--

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

29 (a) The rule from which a variance or waiver is
30 requested.

31 (b) The type of action requested.

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

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

5 (8) An agency shall grant or deny a petition for
6 variance or waiver within 90 days after receipt of the
7 original petition, the last item of timely requested
8 additional material, or the petitioner's written request to
9 finish processing the petition. A petition not granted or
10 denied within 90 days after receipt of a completed petition is
11 deemed approved. Upon rendition, a copy of the order granting
12 or denying the petition shall be filed with the committee and
13 shall contain a statement of the relevant facts and reasons
14 supporting the agency's action. The agency shall provide
15 notice of the disposition of the petition to the Department of
16 State, which shall publish the notice in the next available
17 issue of the Florida Administrative Weekly. The notice shall
18 contain the name of the petitioner, the date the petition was
19 filed, the rule number and nature of the rule from which the
20 waiver or variance is sought, a reference to the place and
21 date of publication of the notice of the petition, the date of
22 the order denying or approving the variance or waiver, the
23 general basis for the agency decision, and an explanation of
24 how a copy of the order can be obtained. The agency's decision
25 to grant or deny the petition shall be supported by competent
26 substantial evidence and is subject to ss. 120.569 and 120.57.
27 Any proceeding pursuant to ss. 120.569 and 120.57 in regard to
28 a variance or waiver shall be limited to the agency action on
29 the request for the variance or waiver, except that a
30 proceeding in regard to a variance or waiver may be
31

1 consolidated with any other proceeding authorized by this
2 chapter.

3 (9) Each agency shall maintain a record of the type
4 and disposition of each petition, including temporary or
5 emergency variances and waivers, filed pursuant to this
6 section. On October 1 of each year, each agency shall file a
7 report with the Governor, the President of the Senate, ~~and~~ the
8 Speaker of the House of Representatives, and the committee
9 listing the number of petitions filed requesting variances to
10 each agency rule, the number of petitions filed requesting
11 waivers to each agency rule, and the disposition of all
12 petitions. Temporary or emergency variances and waivers, and
13 the reasons for granting or denying temporary or emergency
14 variances and waivers, shall be identified separately from
15 other waivers and variances.

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

18 120.545 Committee review of agency rules.--

19 (10)(a) If the committee objects to a proposed or
20 existing rule, or portion thereof, and the agency fails to
21 initiate administrative action to modify, amend, withdraw, or
22 repeal the rule consistent with the objection within 60 days
23 after the objection, or thereafter fails to proceed in good
24 faith to complete such action, the committee may submit to the
25 President of the Senate and the Speaker of the House of
26 Representatives a recommendation that legislation be
27 introduced to address the objection. The legislation may
28 include the modification of the proposed rule, the suspension
29 of the rule, the repeal of the rule or portion thereof, or the
30 amendment of legislative authority ~~modify or suspend the~~
31

1 ~~adoption of the proposed rule, or amend or repeal the rule, or~~
2 ~~portion thereof.~~

3 (b)1. If the committee votes to recommend the
4 introduction of legislation ~~to modify or suspend the adoption~~
5 ~~of a proposed rule, or amend or repeal a rule,~~ the committee
6 shall, within 5 days after this determination, certify that
7 fact to the agency whose rule or proposed rule has been
8 examined. The committee may request that the agency
9 temporarily suspend the rule or suspend the adoption of the
10 proposed rule, pending consideration of proposed legislation
11 during the next regular session of the Legislature.

12 2. Within 30 days after receipt of the certification,
13 if the agency is headed by an individual, or within 45 days
14 after receipt of the certification, if the agency is headed by
15 a collegial body, the agency shall either:

16 a. Temporarily suspend the rule or suspend the
17 adoption of the proposed rule; or

18 b. Notify the committee in writing that it refuses to
19 temporarily suspend the rule or suspend the adoption of the
20 proposed rule.

21 3. If the agency elects to temporarily suspend the
22 rule or suspend the adoption of the proposed rule, it shall
23 give notice of the suspension in the Florida Administrative
24 Weekly. The rule or the rule adoption process shall be
25 suspended upon publication of the notice. An agency shall not
26 base any agency action on a suspended rule or suspended
27 proposed rule, or portion thereof, prior to expiration of the
28 suspension. A suspended rule or suspended proposed rule, or
29 portion thereof, continues to be subject to administrative
30 determination and judicial review as provided by law.

31

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

5 (c) The committee shall prepare bills ~~to modify or~~
6 ~~suspend the adoption of the proposed rule or amend or repeal~~
7 ~~the rule, or portion thereof,~~ in accordance with the rules of
8 the Senate and the House of Representatives for prefiling and
9 introduction in the next regular session of the Legislature.
10 The proposed bill shall be presented to the President of the
11 Senate and the Speaker of the House of Representatives with
12 the committee recommendation.

13 (d) If a bill to suspend the adoption of a proposed
14 rule is enacted into law, the proposed rule is suspended until
15 specific delegated legislative authority for the proposed rule
16 has been enacted. If a bill to suspend the adoption of a
17 proposed rule fails to become law, any temporary agency
18 suspension of the rule shall expire. If a bill to modify a
19 proposed rule or amend a rule is enacted into law, the
20 suspension shall expire upon publication of notice of
21 modification or amendment in the Florida Administrative
22 Weekly. If a bill to repeal a rule is enacted into law, the
23 suspension shall remain in effect until notification of repeal
24 of the rule is published in the Florida Administrative Weekly.

25 (e) The Department of State shall publish in the next
26 available issue of the Florida Administrative Weekly the final
27 legislative action taken. If a bill to modify or suspend the
28 adoption of the proposed rule or amend or repeal the rule, or
29 portion thereof, is enacted into law, the Department of State
30 shall conform the rule or portion of the rule to the
31

1 provisions of the law in the Florida Administrative Code and
2 publish a reference to the law as a history note to the rule.

3 Section 4. The Joint Administrative Procedures
4 Committee shall undertake a study of the authority and
5 legislative oversight function of the committee under section
6 11.60 and chapter 120, Florida Statutes. A report including
7 any recommendations for legislation shall be submitted to the
8 President of the Senate and the Speaker of the House of
9 Representatives by January 1, 2006.

10 Section 5. This act shall take effect July 1, 2005.

11
12 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
13 COMMITTEE SUBSTITUTE FOR
14 Senate Bill 1196

15 Requires the Joint Administrative Procedures Committee (JAPC)
16 to consider comments submitted by interested persons in its
17 review of agency rules and to act as ombudsman to Florida
18 citizens regarding agency rules.

19 Requires the JAPC to maintain a continuous review of statutes
20 that authorize agencies to adopt rules, and removes the
21 requirement that the JAPC submit a schedule of its systematic
22 review of the statutes.

23 Requires the agency, rather than the petitioner, to provide a
24 copy of the petition for variance or waiver of a rule to the
25 JAPC upon receipt by the agency.

26 Requires the agency to provide a copy of the order granting or
27 denying the petition upon rendition of the order.

28 Requires agencies to file their annual report, listing the
29 number and type of petitions for variance and waiver and the
30 disposition of all petitions, with the JAPC in addition to the
31 Governor, President of the Senate, and Speaker of the House.

Provides that the JAPC may recommend that legislation be
introduced to address its objection to an agency rule when the
agency has failed to modify, amend, withdraw, or repeal the
rule consistent with the objection.

Requires the JAPC to undertake a study of its authority and
legislative oversight function, and to report any
recommendations for legislation to the President of the Senate
and the Speaker of the House by January 1, 2006.