

CHAMBER ACTION

1 The Governmental Operations Committee recommends the following:

2  
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5  
6 A bill to be entitled

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

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24 oversight function; requiring a report; providing an  
25 effective date.

26

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

28

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

34 11.60 Administrative Procedures Committee; creation;  
35 membership; powers; duties.--

36 (2) The committee shall:

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

40 (4) The committee shall ~~undertake and~~ maintain a  
41 ~~systematic and~~ continuous review of statutes that authorize  
42 agencies to adopt rules and shall make recommendations to the  
43 appropriate standing committees of the Senate and the House of  
44 Representatives as to the advisability of considering changes to  
45 the delegated legislative authority to adopt rules in specific  
46 circumstances. The annual report submitted pursuant to paragraph  
47 ~~(2)(g)(f)~~ shall include a ~~schedule for the required systematic~~  
48 ~~review of existing statutes, a summary of the status of this~~  
49 ~~review, and~~ any recommendations provided to the standing  
50 committees during the preceding year.

51 Section 2. Subsections (5), (8), and (9) of section  
52 120.542, Florida Statutes, are amended to read:

53 120.542 Variances and waivers.--

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

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

61 (b) The type of action requested.

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

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

66 (8) An agency shall grant or deny a petition for variance  
67 or waiver within 90 days after receipt of the original petition,  
68 the last item of timely requested additional material, or the  
69 petitioner's written request to finish processing the petition.  
70 A petition not granted or denied within 90 days after receipt of  
71 a completed petition is deemed approved. Upon rendition, a copy  
72 of the order granting or denying the petition shall be filed  
73 with the committee and shall contain a statement of the relevant  
74 facts and reasons supporting the agency's action. The agency  
75 shall provide notice of the disposition of the petition to the  
76 Department of State, which shall publish the notice in the next  
77 available issue of the Florida Administrative Weekly. The notice  
78 shall contain the name of the petitioner, the date the petition

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79 | was filed, the rule number and nature of the rule from which the  
 80 | waiver or variance is sought, a reference to the place and date  
 81 | of publication of the notice of the petition, the date of the  
 82 | order denying or approving the variance or waiver, the general  
 83 | basis for the agency decision, and an explanation of how a copy  
 84 | of the order can be obtained. The agency's decision to grant or  
 85 | deny the petition shall be supported by competent substantial  
 86 | evidence and is subject to ss. 120.569 and 120.57. Any  
 87 | proceeding pursuant to ss. 120.569 and 120.57 in regard to a  
 88 | variance or waiver shall be limited to the agency action on the  
 89 | request for the variance or waiver, except that a proceeding in  
 90 | regard to a variance or waiver may be consolidated with any  
 91 | other proceeding authorized by this chapter.

92 |       (9) Each agency shall maintain a record of the type and  
 93 | disposition of each petition, including temporary or emergency  
 94 | variances and waivers, filed pursuant to this section. On  
 95 | October 1 of each year, each agency shall file a report with the  
 96 | Governor, the President of the Senate, ~~and~~ the Speaker of the  
 97 | House of Representatives, and the committee listing the number  
 98 | of petitions filed requesting variances to each agency rule, the  
 99 | number of petitions filed requesting waivers to each agency  
 100 | rule, and the disposition of all petitions. Temporary or  
 101 | emergency variances and waivers, and the reasons for granting or  
 102 | denying temporary or emergency variances and waivers, shall be  
 103 | identified separately from other waivers and variances.

104 |       Section 3. Subsection (10) of section 120.545, Florida  
 105 | Statutes, is amended to read:

106 |             120.545 Committee review of agency rules.--

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107 (10)(a) If the committee objects to a proposed or existing  
 108 rule, or portion thereof, and the agency fails to initiate  
 109 administrative action to modify, amend, withdraw, or repeal the  
 110 rule consistent with the objection within 60 days after the  
 111 objection, or thereafter fails to proceed in good faith to  
 112 complete such action, the committee may submit to the President  
 113 of the Senate and the Speaker of the House of Representatives a  
 114 recommendation that legislation be introduced to address the  
 115 objection. Such legislation may include the modification of the  
 116 proposed rule, the suspension of the rule, the repeal of the  
 117 rule or portion thereof, or the amendment of legislative  
 118 authority ~~modify or suspend the adoption of the proposed rule,~~  
 119 ~~or amend or repeal the rule, or portion thereof.~~

120 (b)1. If the committee votes to recommend the introduction  
 121 of legislation ~~to modify or suspend the adoption of a proposed~~  
 122 ~~rule, or amend or repeal a rule,~~ the committee shall, within 5  
 123 days after this determination, certify that fact to the agency  
 124 whose rule or proposed rule has been examined. The committee may  
 125 request that the agency temporarily suspend the rule or suspend  
 126 the adoption of the proposed rule, pending consideration of  
 127 proposed legislation during the next regular session of the  
 128 Legislature.

129 2. Within 30 days after receipt of the certification, if  
 130 the agency is headed by an individual, or within 45 days after  
 131 receipt of the certification, if the agency is headed by a  
 132 collegial body, the agency shall either:

133 a. Temporarily suspend the rule or suspend the adoption of  
 134 the proposed rule; or

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135           b. Notify the committee in writing that it refuses to  
136 temporarily suspend the rule or suspend the adoption of the  
137 proposed rule.

138           3. If the agency elects to temporarily suspend the rule or  
139 suspend the adoption of the proposed rule, it shall give notice  
140 of the suspension in the Florida Administrative Weekly. The rule  
141 or the rule adoption process shall be suspended upon publication  
142 of the notice. An agency shall not base any agency action on a  
143 suspended rule or suspended proposed rule, or portion thereof,  
144 prior to expiration of the suspension. A suspended rule or  
145 suspended proposed rule, or portion thereof, continues to be  
146 subject to administrative determination and judicial review as  
147 provided by law.

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

152           (c) The committee shall prepare bills ~~to modify or suspend~~  
153 ~~the adoption of the proposed rule or amend or repeal the rule,~~  
154 ~~or portion thereof,~~ in accordance with the rules of the Senate  
155 and the House of Representatives for prefiling and introduction  
156 in the next regular session of the Legislature. The proposed  
157 bill shall be presented to the President of the Senate and the  
158 Speaker of the House of Representatives with the committee  
159 recommendation.

160           (d) If a bill to suspend the adoption of a proposed rule  
161 is enacted into law, the proposed rule is suspended until  
162 specific delegated legislative authority for the proposed rule

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163 has been enacted. If a bill to suspend the adoption of a  
 164 proposed rule fails to become law, any temporary agency  
 165 suspension of the rule shall expire. If a bill to modify a  
 166 proposed rule or amend a rule is enacted into law, the  
 167 suspension shall expire upon publication of notice of  
 168 modification or amendment in the Florida Administrative Weekly.  
 169 If a bill to repeal a rule is enacted into law, the suspension  
 170 shall remain in effect until notification of repeal of the rule  
 171 is published in the Florida Administrative Weekly.

172 (e) The Department of State shall publish in the next  
 173 available issue of the Florida Administrative Weekly the final  
 174 legislative action taken. If a bill to modify or suspend the  
 175 adoption of the proposed rule or amend or repeal the rule, or  
 176 portion thereof, is enacted into law, the Department of State  
 177 shall conform the rule or portion of the rule to the provisions  
 178 of the law in the Florida Administrative Code and publish a  
 179 reference to the law as a history note to the rule.

180 Section 4. The Joint Administrative Procedures Committee  
 181 shall undertake a study of the authority and legislative  
 182 oversight function of the committee pursuant to s. 11.60 and  
 183 chapter 120, Florida Statutes. A report including any  
 184 recommendations for legislation shall be submitted to the  
 185 President of the Senate and the Speaker of the House of  
 186 Representatives by January 1, 2006.

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