

1 A bill to be entitled
2 An act relating to administrative procedure; amending s.
3 120.74, F.S.; providing for agency reporting of certain
4 annual regulatory plans; providing for certain omissions
5 and suspensions of reports; creating s. 120.745, F.S.;
6 providing for legislative review of agency rules in effect
7 on or before November 16, 2010; providing definitions;
8 requiring that each agency complete an enhanced biennial
9 review of its existing rules; requiring a report of the
10 enhanced biennial review; providing specifications for the
11 report; providing for objections and the agency's
12 response; requiring the performance of a compliance
13 economic review and report under certain circumstances;
14 providing specifications for the review; providing
15 specifications for publishing the final report of the
16 agency's review; requiring that an agency publish notices,
17 determinations, and reports in a specified format;
18 requiring the Department of State to publish certain
19 notices in the Florida Administrative Weekly; providing
20 specifications; providing for future review and repeal;
21 creating s. 120.7455, F.S.; providing that the Legislature
22 may establish and maintain an Internet-based public survey
23 of regulatory impacts; providing input details; providing
24 that legislative leaders may certify in writing to certain
25 individuals the establishment and identity of any such
26 Internet-based survey; providing immunities from
27 enforcement action or prosecution involving information
28 solicited through the survey; providing protections from

HB 7239

2011

29 retaliatory enforcement actions; clarifying that the legal
 30 status of a rule that has been determined to be invalid is
 31 not changed by the act; providing an effective date.

32

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

34

35 Section 1. Subsections (3) and (4) are added to section
 36 120.74, Florida Statutes, to read:

37 120.74 Agency review, revision, and report.—

38 (3) Beginning in 2012, and no later than July 1 of each
 39 year, each agency shall file with the President of the Senate,
 40 the Speaker of the House of Representatives, and the committee a
 41 regulatory plan identifying and describing each rule the agency
 42 proposes to adopt for the 12-month period beginning on the July
 43 1 reporting date and ending on the subsequent June 30, excluding
 44 emergency rules.

45 (4) For the year 2011, the certification required in
 46 subsection (2) may omit any information included in the reports
 47 provided under s. 120.745. Reporting under subsections (1) and
 48 (2) shall be suspended for the year 2013, but required reporting
 49 under those subsections shall resume in 2015 and biennially
 50 thereafter.

51 Section 2. Section 120.745, Florida Statutes, is created
 52 to read:

53 120.745 Legislative review of agency rules in effect on or
 54 before November 16, 2010.—

55 (1) DEFINITIONS.—The following definitions apply
 56 exclusively to this section:

HB 7239

2011

57 (a) "Agency" has the same meaning and application as
58 provided in s. 120.52(1), but for the purposes of this section
59 excludes each officer and governmental entity in the state with
60 jurisdiction in one county or less than one county, to the
61 extent the officer or governmental entity is expressly made
62 subject to chapter 120 by special law.

63 (b) "Compliance economic review" means a good faith
64 economic analysis that includes and presents the following
65 information pertaining to a particular rule:

66 1. A justification for the rule summarizing the benefits
67 of the rule; and

68 2. A statement of estimated regulatory costs as described
69 in s. 120.541(2), provided that:

70 a. The period for which impacts described in s.
71 120.541(2) (a) are estimated shall be 5 years from January 1,
72 2010, or a later effective date of the rule; and

73 b. For the analysis required in s. 120.541(2) (a)3., the
74 estimated regulatory costs over the 5-year period shall be used
75 instead of the likely increase in regulatory costs after
76 implementation.

77 (c) "Data collection rules" means those rules requiring
78 the submission of data to the agency from external sources,
79 including, but not limited to, local governments, service
80 providers, clients, licensees, regulated entities, other
81 constituents, and market participants.

82 (d) "Revenue rules" means those rules fixing amounts or
83 providing for the collection of money.

84 (2) ENHANCED BIENNIAL REVIEW.—By December 1, 2011, each

85 agency shall complete an enhanced biennial review of the
 86 agency's existing rules to include:

87 (a) The review and report required by s. 120.74 and an
 88 explanation of how the agency has accomplished the requirements
 89 of s. 120.74(1). This paragraph extends the October 1 deadline
 90 provided in s. 120.74(2) for the year 2011.

91 (b) A statement as to whether the rule is a revenue rule,
 92 identifying the fund or account into which collections are
 93 deposited, and for each revenue rule, whether the rule
 94 authorizes, imposes, or implements:

95 1. Registration, license, or inspection fees.

96 2. Transportation service tolls for road, bridge, rail,
 97 air, waterway, or port access.

98 3. Fees for a specific service or purpose not included in
 99 subparagraph 1. or subparagraph 2.

100 4. Fines, penalties, costs, or attorney fees.

101 5. Any tax.

102 6. Any other amounts collected that are not covered under
 103 subparagraphs 1.-5.

104 (c) Whether the rule is a data collection rule and, if so,
 105 include the following information for each data collection rule:

106 1. The statute or statutes authorizing the collection of
 107 such data.

108 2. The purposes for which the agency uses the data and any
 109 purpose for which the data is used by others.

110 3. The policies supporting the reporting and retention of
 111 the data.

112 4. Whether and to what extent the data is exempt from

HB 7239

2011

113 public inspection under chapter 119.

114 (d) Whether the agency plans to repeal the rule and, if
115 so, the estimated timetable for repeal.

116 (e) Whether the agency plans to amend the rule and the
117 estimated timetable for amendment.

118 (f) A division and identification of certain rules for
119 further review, divided at the agency's discretion into two
120 approximately equal groups, identified as Group 1 and Group 2,
121 to include all rules that:

122 1. The agency does not plan to amend or repeal on or
123 before December 31, 2012;

124 2. Were effective on or before November 16, 2010; and

125 3. Probably will have, for the 5-year period of time
126 beginning January 1, 2010, any of the economic impacts described
127 in s. 120.541(2)(a).

128 (3) PUBLICATION OF REPORT.—

129 (a) Upon completion of the enhanced biennial review
130 pursuant to subsection (2), each agency shall publish, in the
131 manner provided in subsection (7), a report of the entire
132 enhanced biennial review, including the results of the review, a
133 complete list of all rules the agency has placed in Group 1 and
134 Group 2, and the name, physical address, fax number, and e-mail
135 address for the person the agency has designated to receive all
136 inquiries, public comments, and objections pertaining to the
137 report.

138 (b) The report of results shall incorporate a table
139 consistent with the following example:

140

HB 7239

2011

Agency	F.A.C. Rule Number		OFFAR Exempt ¹	REVENUE RULE/Fund or Account ⁴							Data Collection Rule ²	Repeal ³	Amend ³	Effective after 11/16/2010	Effective on or before 11/16/2010
	Title	Number	Licensure fee	Transport. Tolls	Other Fees	Fines	Tax	Other Revenue						Probable 120.541 (2) (a) impact Group 1 or 2	Not probable impact
141															
142															
143															
144															
145	Possible answers		Exempt or blank	Y (G.R.) or N	Y or N	Y or N	Y or N	Y or N	Y or N	Y or N	Y or N	Y or N	Y or N	1 or 2 or blank	N
146															
147															
148	<u>Footnotes:</u>														
149	<u>1 - If Exempt, use "Exempt" for the following columns: Repeal,</u>														
150	<u>Amend, and Effective after 11/16/2010.</u>														
151	<u>2 - Provide notes indicating the statutory authority for data</u>														
152	<u>collection, the purpose for which the agency uses data, the</u>														
153	<u>purposes used by others, and policies reporting data collection</u>														
154	<u>and retention.</u>														
155	<u>3 - Provide estimated timetable for repeal or amendment.</u>														
156	<u>4 - For Revenue Rule, include fund or account name in which</u>														
157	<u>collections are deposited. "G.R." may be used for General</u>														
158	<u>Revenue.</u>														
159	<u>(4) OBJECTION TO ENHANCED BIENNIAL REVIEW AND REPORT.—</u>														
160	<u>Public input on reports required in subsection (3) may be</u>														
161	<u>provided by stating an objection to the information required in</u>														
162	<u>paragraphs (2) (b), (c), and (f) and identifying the rule or</u>														

163 rules to which the objection relates, and shall be submitted in
 164 writing or electronically to the person designated in the
 165 report.

166 (a) An objection under this subsection to information
 167 provided in response to subparagraph (2)(f)3. must include
 168 allegations of fact upon which the objection is based.
 169 Allegations of fact related to other objections may be included.

170 (b) Objections may be submitted by any interested person
 171 no later than June 1, 2012.

172 (c) The agency shall determine whether to sustain an
 173 objection based upon the information provided with the
 174 objection, treating allegations of fact as if they are true, and
 175 whether any further review of information available to the
 176 agency is necessary to correct its report.

177 (d) No later than 20 days after the date an objection is
 178 submitted, the agency shall publish its determination of the
 179 objection in the manner provided in subsection (7).

180 1. The agency's determination with respect to an objection
 181 is final but not a final agency action subject to further
 182 proceedings, hearing, or judicial review.

183 2. If the agency sustains an objection, it shall amend its
 184 report within 10 days after the determination and shall publish
 185 notice of the amendment in the manner provided in subsection
 186 (7). The amended report shall indicate that a change has been
 187 made, the date of the last change, and identify the amended
 188 portions.

189 (5) COMPLIANCE ECONOMIC REVIEW OF RULES AND REQUIRED
 190 REPORT.—Each agency shall perform a compliance economic review

HB 7239

2011

191 and report for all Group 1 and Group 2 rules. Group 1 rules
192 shall be reviewed and reported on in 2012 and Group 2 rules
193 shall be reviewed and reported on in 2013.

194 (a) No later than May 1, each agency shall:

195 1. Complete a compliance economic review for each rule.

196 2. Publish notice of the completed compliance economic
197 review for each rule in the manner provided in subsection (7).

198 3. Publish a copy of the compliance economic review,
199 directions on how and when interested parties may submit lower
200 cost regulatory alternatives to the agency, and the date the
201 notice is published in the manner provided in subsection (7).

202 4. The agency shall submit each compliance economic review
203 to the Small Business Regulatory Advisory Council for its
204 review.

205 (b) Any agency rules reviewed pursuant to Executive Order
206 11-01 are exempt from the compliance economic review if the
207 review found that the rules do not:

208 1. Adversely affect the availability of business services;

209 2. Adversely affect job creation or retention;

210 3. Place unreasonable restrictions on access to
211 employment; or

212 4. Impose a significant regulatory-related cost.

213 (c) The Small Business Regulatory Advisory Council may
214 submit lower cost regulatory alternatives to any rule to the
215 agency that adopted the rule no later than August 1. Other lower
216 cost regulatory alternatives to any rule may be submitted to the
217 applicable agency no later than June 15.

218 (d) No later than December 1, each agency shall publish a

HB 7239

2011

219 final report of the agency's review under this subsection in the
 220 manner provided in subsection (7). For each rule the report
 221 shall include:

- 222 1. The text of the rule.
- 223 2. The compliance economic review for the rule.
- 224 3. All lower regulatory cost alternatives received by the
 225 agency.
- 226 4. The agency's written explanation for rejecting
 227 submitted lower regulatory cost alternatives.
- 228 5. The agency's justification to repeal, amend, or retain
 229 the rule without amendment.

230 (e) Notice of the report shall be published the manner
 231 provided in subsection (7).

232 (f) By December 1, each agency shall begin proceedings
 233 under s. 120.54 to amend or repeal those rules so designated in
 234 the report under this subsection. Proceedings to repeal rules
 235 are exempt from the requirements for the preparation,
 236 consideration, or use of a statement of estimated regulatory
 237 costs under s. 120.54 and the provisions of s. 120.541.

238 (6) LEGISLATIVE CONSIDERATION.—With respect to a rule
 239 identified for retention without amendment in the report
 240 required in subsection (5), the Legislature may consider
 241 specific legislation nullifying the rule or altering the
 242 statutory authority for the rule.

243 (7) MANNER OF PUBLICATION OF NOTICES, DETERMINATIONS, AND
 244 REPORTS.—Agencies shall publish notices, determinations, and
 245 reports required under this section exclusively in the following
 246 manner:

247 (a) The agency shall publish each notice, determination,
 248 and complete report on its Internet website. If the agency does
 249 not have an Internet website, the information shall be published
 250 on the committee's Internet website using
 251 www.japc.state.fl.us/[agency name]/ in place of the address of
 252 the agency's Internet website. The following URL formats shall
 253 be used:

254 1. Reports required under subsection (3), including any
 255 reports amended as a result of a determination under subsection
 256 (4):

257 [Address of agency's Internet website]/2011 Rule review/
 258 [Florida Administrative Code (F.A.C.) title and subtitle
 259 (if applicable) designation for the rules included].
 260 (Example: http://www.dos.state.fl.us/2011 Rule review/1S).

261 2. The lists of Group 1 rules and Group 2 rules, required
 262 under subsection (3):

263 [Address of agency's Internet website]/2011 Rule review/
 264 Economic Review/Schedule.
 265 (Example: http://www.dos.state.fl.us/2011 Rule review/
 266 Economic Review/Schedule)

267 3. Determinations under subsection (4):
 268 [Address of agency's Internet website]/2011 Rule review/
 269 Objection Determination/[F.A.C. Rule number].

270 (Example: http://www.dos.state.fl.us/2011 Rule review/
 271 Objection Determination/1S-1.001).

272 4. Completed compliance economic reviews reported under
 273 subsection (5):

274 [Address of agency's Internet website]/2011 Rule review/

275 Economic Review/[F.A.C.Rule number].
 276 (Example: http://www.dos.state.fl.us/2011 Rule review/
 277 Economic Review/1S-1.001).

278 5. Final reports under paragraph (5)(d), with the
 279 appropriate year:

280 [Address of agency's Internet website]/2011 Rule review/
 281 Economic Review/[YYYY Final Report].

282 (Example: http://www.dos.state.fl.us/2011 Rule review/
 283 Economic Review/2012 Final Report).

284 (b)1. Each notice shall be published using the following
 285 URL format:

286 [Address of agency's Internet website]/
 287 2011 Rule review/Notices.

288 (Example:
 289 http://www.dos.state.fl.us/2011 Rule review/Notices).

290 2. Once each week a copy of all notices published in the
 291 previous week on the Internet under this paragraph shall be
 292 delivered to the Department of State for publication in the next
 293 available issue of the Florida Administrative Weekly. A copy
 294 shall also be delivered by electronic mail to the committee.

295 3. Each notice shall identify the publication for which
 296 notice is being given and include:

297 a. The name of the agency.

298 b. The name, physical address, fax number, and e-mail
 299 address for the person designated to receive all inquiries,
 300 public comments, and objections pertaining to the publication
 301 identified in the notice.

302 c. The particular Internet address through which the

303 publication may be accessed.

304 d. The date the notice and publication is first published
 305 on the agency's Internet website.

306 (c) Publication pursuant to this section is deemed to be
 307 complete as of the date the notice, determination, or report is
 308 posted on the agency's Internet website.

309 (8) REPEAL.—This section is repealed July 1, 2014, unless
 310 subsequently amended or reenacted by the Legislature.

311 Section 3. Section 120.7455, Florida Statutes, is created
 312 to read:

313 120.7455 Legislative survey of regulatory impacts.—

314 (1) From July 1, 2011, until July 1, 2014, the Legislature
 315 may establish and maintain an Internet-based public survey of
 316 regulatory impact soliciting information from Floridians and
 317 other persons regarding the kind and degree of regulation
 318 affecting private activities in the state. The input may
 319 include, but need not be limited to:

320 (a) The registered business name or other name of each
 321 reporting person.

322 (b) The number and identity of agencies licensing,
 323 registering, or permitting lawful activities of the reporting
 324 person.

325 (c) The types, numbers, and nature of licenses, permits,
 326 and registrations required for various lawful activities of the
 327 reporting person.

328 (d) The identity of local, state, and federal agencies,
 329 and other entities acting under color of law, that regulate the
 330 lawful activities of the reporting person or otherwise exercise

HB 7239

2011

331 power to enforce laws applicable to such activities.

332 (e) The identification and nature of each ordinance, law,
333 or administrative rule or regulation deemed unreasonably
334 burdensome by the reporting person.

335 (2) The President of the Senate and the Speaker of the
336 House of Representatives may certify in writing to the chair of
337 the committee and to the Attorney General the establishment and
338 identity of any Internet-based public survey established under
339 this section.

340 (3) Any person reporting or otherwise providing
341 information solicited by the Legislature in conformity with this
342 section is immune from any enforcement action or prosecution
343 that:

344 (a) Is instituted on account of, or in reliance upon, the
345 fact of reporting or nonreporting of information in response to
346 the Legislature's solicitation of information pursuant to this
347 section; or

348 (b) Uses information provided in response to the
349 Legislature's solicitation of information pursuant to this
350 section.

351 (4) Any alleged violator against whom an enforcement
352 action is brought may object to any proposed penalty in excess
353 of the minimum provided by law or rule on the basis that the
354 action is in retaliation for providing or withholding
355 information in response to the Legislature's solicitation of
356 information pursuant to this section. If the presiding judge
357 determines that the enforcement action was motivated in whole or
358 in part by retaliation, any penalty imposed is limited to the

HB 7239

2011

359 minimum penalties provided by law for each separate violation
360 adjudicated.

361 Section 4. This act does not change the legal status of a
362 rule that has otherwise been judicially or administratively
363 determined to be invalid.

364 Section 5. This act shall take effect July 1, 2011.