

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	HB 541 (SB 1084)	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Brandes and others (Garcia)	118 Y's	0 N's
COMPANION BILLS:	SB 1084	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

HB 541 passed the House on February 16, 2012, and subsequently passed the Senate on March 2, 2012.

The bill revises the rulemaking reporting requirement for proposed rules affecting small businesses. It requires agencies to submit written notice of the proposed rule to the rules ombudsman in the Executive Office of the Governor instead of the Department of Economic Opportunity.

The bill also revises provisions with respect to the Florida Administrative Code and the Florida Administrative Weekly.

The bill provides that the online version of the Florida Administrative Code is the official version for the state. The Department of State is no longer required to publish a printed version of the Florida Administrative Code.

In addition, the bill changes the name of the Florida Administrative Weekly to the Florida Administrative Register. The online version of the Florida Administrative Register is the official version. The Department of State may no longer provide free print copies of the Florida Administrative Register to federal and state government entities. A printed copy of the Florida Administrative Register may be made available on an annual subscription basis.

The bill provides that the Department of State is no longer responsible for reviewing agency and entity submissions to the Florida Administrative Register for formatting, grammatical, or typographical errors. Each agency and entity is responsible for proofreading documents and assumes full responsibility for the accuracy of documents submitted.

Finally, the bill directs the Division of Statutory Revision to prepare a reviser's bill for the 2013 Regular Session to substitute the term Florida Administrative Register for the term Florida Administrative Weekly throughout the Florida Statutes.

The bill will likely reduce the workload on the Department of State, but the fiscal impact is indeterminate.

The bill was approved by the Governor on April 6, 2012, ch. 2012-63, Laws of Florida. The effective date of the bill is October 1, 2012.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

Administrative Procedure Act

A rule is an agency statement of general applicability which interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency as well as certain types of forms.¹ Rulemaking authority is delegated by the Legislature through statute and authorizes an agency to adopt, develop, establish, or otherwise create a rule.²

If an agency determines that a proposed rule will affect small businesses, it must send written notice to the Small Business Regulatory Advisory Council and the Department of Economic Opportunity.³ Agencies must adopt regulatory alternatives offered by the small business ombudsman which are feasible and consistent with the stated objective of the proposed rule and which would reduce the impact on small business.⁴

Florida Administrative Code

The *Florida Administrative Code* (FAC) is the official compilation of administrative rules for the State of Florida. The Department of State (DOS or department) oversees the publishing of the FAC and the monthly supplements. The online, unofficial version of the FAC is updated weekly on the department's rulemaking website.

DOS is required to publish the FAC, which contains all rules adopted by agencies, together with references to rulemaking authority and history notes.⁵ The FAC must be supplemented at least monthly.⁶ DOS currently contracts with LexisNexis for the printing of the FAC.⁷ Current law provides that the printed version of the FAC is the official version.⁸ Additionally, printed copies of the FAC are sold by LexisNexis. The majority of revenues from the sale of the FAC are retained by the company as compensation for printing the code. DOS receives a small amount in royalties.⁹

Florida Administrative Weekly

Under current law, DOS is required to publish notices and various other materials filed by the state's administrative agencies in the *Florida Administrative Weekly* (FAW).^{10,11} The FAW must contain:

- Notice of adoption of, and an index to, all rules filed during the preceding week;
- All notices required by s. 120.54(3)(a), F.S., concerning agency rulemaking, showing the text of all rules proposed for consideration or a reference to the location in the FAW where the text of the proposed rules is published;
- All notices of public meetings, hearings, and workshops, including a statement of the manner in which a copy of the agenda may be obtained;

¹ Section 120.52(16), F.S.

² Section 120.52(17), F.S.

³ Section 120.54(3)(b)2.b.I., F.S.

⁴ Section 120.54(3)(b)2.b.II., F.S.

⁵ Section 120.55(1)(a)1., F.S.

⁶ *Id.*

⁷ Information provided by telephone on December 9, 2011, by Mr. Pierce Schuessler, Legislative Affairs Director, Department of State.

⁸ Section 120.55(1)(a)1., F.S.

⁹ Information provided by budget office on January 20, 2012, and by Mr. Pierce Schuessler, Legislative Affairs Director, Department of State.

¹⁰ Section 120.55(1)(b), F.S.

¹¹ According to DOS, approximately 300 entities in the state publish notices in the Florida Administrative Weekly. These entities include state agencies, other units of state and local government, and nongovernmental entities.

- A notice of each request for authorization to amend or repeal an existing uniform rule or for the adoption of new uniform rules;
- Notice of petitions for declaratory statements or administrative determinations;
- A summary of each objection to any rule filed by the Administrative Procedures Committee during the preceding week; and
- Any other material required or authorized by law or deemed useful by the department.¹²

Responsibility for the grammatical editing of the FAW is statutorily assigned to DOS.¹³ Additionally, DOS is required to adopt rules prescribing the style and form required for rules submitted for filing and establishing the form for rule certification.¹⁴

DOS contracts with LexisNexis for publication of the FAW in a printed format.¹⁵ The FAW is published on Fridays and distributed for free to administrative agencies, courts, libraries, law schools, and legislative offices.^{16,17} According to DOS, the FAW has approximately 191 paid subscribers, who pay an annual subscription fee of \$307 per year.¹⁸ Subscription fees charged to FAW subscribers are retained by the publisher as compensation for printing the FAW.¹⁹ In addition to producing the paper version of the FAW, DOS posts copies of the FAW in Adobe Acrobat Portable Document Format (PDF) at www.flrules.org, which may be accessed by the public for free.²⁰

Current law requires all fees and moneys collected by DOS under the Administrative Procedure Act (APA)²¹ to be deposited in the Records Management Trust Fund for the purpose of paying for the publication of the FAC and FAW, and for associated costs incurred by the department in administering the APA's requirements.²² Revenue collected includes the space rate, known as the line charge, at \$1.24 per line.²³

Effect of Proposed Changes

The bill revises the rulemaking reporting requirement for proposed rules affecting small businesses. It requires agencies to provide written notice of the proposed rule to the rules ombudsman in the Executive Office of the Governor instead of the Department of Economic Opportunity.

¹² Section 120.55(1)(b), F.S.

¹³ Section 120.55(1)(e), F.S.

¹⁴ Section 120.55(1)(d), F.S.

¹⁵ Information provided by telephone on December 9, 2011, by Mr. Pierce Schuessler, Legislative Affairs Director, Department of State.

¹⁶ Section 120.55(7)(a)1., F.S., requires the department to furnish the FAW, without charge and upon request, as follows:

- One subscription to each federal and state court having jurisdiction over the residents of the state, the Legislative Library, each state university library, the State Library, each depository library designated pursuant to s. 257.05, F.S., and each standing committee of the Senate and House of Representatives and each state legislator;
- Two subscriptions to each state department;
- Three subscriptions to the library of the Supreme Court of Florida, the library of each state district court of appeal, the division, the library of the Attorney General, each law school library in Florida, the Secretary of the Senate, and the Clerk of the House of Representatives; and
- Ten subscriptions to the committee.

¹⁷ As of April 15, 2011, there are 145 subscriptions that are comped for federal, state, and local government entities. Information provided by electronic mail on December 16, 2011, by Mr. Pierce Schuessler, Legislative Affairs Director, Department of State. (On file with the Government Operations Subcommittee.)

¹⁸ Information provided by telephone on December 16, 2011, by Mr. Pierce Schuessler, Legislative Affairs Director, Department of State.

¹⁹ Information provided by budget office on January 20, 2012, and by Mr. Pierce Schuessler, Legislative Affairs Director, Department of State.

²⁰ Section 120.55(2), F.S.

²¹ See chapter 120, F.S.

²² Section 120.55(8)(a), F.S.

²³ Information provided by telephone on December 16, 2011, by Mr. Pierce Schuessler, Legislative Affairs Director, Department of State.

The bill also revises provisions with respect to the *Florida Administrative Code* and the *Florida Administrative Weekly*.

The bill amends s. 120.55, F.S., to provide that the online version of the FAC is the official version for the state. In addition, DOS is no longer required to publish a print version of the FAC. DOS may contract for the publication of a print version of the FAC, but the print version is not the official publication.

The bill also requires that adopted rules and material incorporated by reference be filed in an electronic format.

The bill amends s. 120.55, F.S., to change the name of that the *Florida Administrative Weekly* to the *Florida Administrative Register*. The bill provides that the online version of the *Florida Administrative Register* (FAR) is the official version, and is available at www.flrules.org. DOS must continually revise the online version of the FAR, rather than on a weekly basis. The bill removes the requirement that the internet website for FAR must contain notices of adoption of, and an index to, all rules filed during the preceding week. It also removes the requirement that the internet website include a cumulative list of all rules that have been filed but not filed for adoption.

DOS may contract with a publishing firm to provide a print version of the FAR, but the print version is not the official publication. DOS may no longer provide free print copies of the FAR to federal and state government entities. A printed copy of the FAR may be made available on an annual subscription basis.

In addition, the bill provides that DOS is not responsible for reviewing agency and other entity submissions to the FAR for formatting and numbering requirements, grammatical errors, and typographical errors. Each agency and entity is responsible for proofreading documents before submitting them electronically in a word processing format. The submitting agency or entity assumes full responsibility for the document's accuracy when submitted.

Finally, the bill directs the Division of Statutory Revision to prepare a reviser's bill for the 2013 Regular Session to substitute the term *Florida Administrative Register* for the term *Florida Administrative Weekly* throughout the Florida Statutes.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.
2. Expenditures: Indeterminate. The bill will likely reduce the workload for staff of the DOS.

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 will reduce the workload related to current weekly reporting for DOS and entities using the FAC and FAW. The Department of State indicates creating a continuous or “live” publication system (FAR) will reduce the timeline needed to advertise public meetings and workshops while maintaining the current statutory timelines for effective public notice.