

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

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BILL: SPB 7056

INTRODUCER: Governmental Oversight and Accountability Committee

SUBJECT: Administrative Procedures

DATE: March 25, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	McVaney		<b>GO Submitted as Committee Bill</b>
2.				
3.				

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**I. Summary:**

SPB 7056 amends ss. 120.54 and 120.74, F.S., and replaces the biennial summary reporting requirement with an expanded, annual regulatory plan. It requires each agency to determine whether each new law creating or affecting the agency's authority will require new or amended rules. If so, the agency must initiate rulemaking by a specific time. If not, the agency must state concisely why the law may be implemented without additional rulemaking. The regulatory plan also must state each existing law on which the agency will initiate rulemaking in the current fiscal year. The agency head and general counsel must certify that they have reviewed the plan and that the agency conducts a review of its rulemaking authority. The existing 180-day requirement is revised to coincide with the specific publishing requirements.

The bill compels adherence with the new reporting requirements and action deadlines by suspending the rulemaking authority of a non-compliant agency until that agency completes the required action or the end of the next regular legislative session, whichever is earlier. The bill repeals s. 120.7455, F.S., pertaining to the online survey of regulatory impacts. Additionally, the bill rescinds the suspension of rulemaking authority made under s. 120.745, F.S.

The bill has an effective date of July 1, 2015, except as otherwise provided.

**II. Present Situation:**

**Introduction**

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.<sup>1</sup> The effect of an agency statement determines whether it meets the statutory

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<sup>1</sup> Section 120.52(16), F.S.; *Florida Department of Financial Services v. Capital Collateral Regional Counsel-Middle Region*, 969 So. 2d 527, 530 (Fla. 1<sup>st</sup> DCA 2007).

definition of a rule, regardless of how the agency characterizes the statement.<sup>2</sup> If an agency statement generally requires compliance, creates certain rights while adversely affecting others, or otherwise has the direct and consistent effect of law, it is a rule.<sup>3</sup>

Rulemaking authority is delegated by the Legislature<sup>4</sup> authorizing an agency to “adopt, develop, establish, or otherwise create”<sup>5</sup> a rule. Agencies do not have discretion whether to engage in rulemaking.<sup>6</sup> To adopt a rule an agency must have an express grant of authority to implement a specific law by rulemaking.<sup>7</sup> The grant of rulemaking authority itself need not be detailed.<sup>8</sup> The particular statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.<sup>9</sup> A delegation of authority to an administrative agency by a law that is vague, uncertain, or so broad as to give no notice of what actions would violate the law, may unconstitutionally allow the agency to make the law.<sup>10</sup> Because of this constitutional limitation on delegated rulemaking, the Legislature must provide minimal standards and guidelines in the law creating a program to provide for its proper administration by the assigned executive agency. The Legislature may delegate rulemaking authority to agencies but not the authority to determine what should be the law.<sup>11</sup>

In 1996 the Legislature extensively revised<sup>12</sup> agency rulemaking under the Administrative Procedure Act (APA)<sup>13</sup> to require both an express grant of rulemaking authority and a specific law to be implemented by the rule.

### **Section 120.54(1)(b), F.S.: The “180 Day” Requirement**

An agency may not delay implementation of a statute pending adoption of specific rules unless there is an express provision prohibiting application of the statute before implementing rules are adopted.<sup>14</sup> If a law is enacted that requires agency rules for its proper implementation, “such rules shall be drafted and formally proposed as provided in s. 120.54, F.S., within 180 days after

<sup>2</sup> *Dept. of Administration v. Harvey*, 356 So. 2d 323, 325 (Fla. 1<sup>st</sup> DCA 1977).

<sup>3</sup> *McDonald v. Dep’t of Banking & Fin.*, 346 So.2d 569, 581 (Fla. 1<sup>st</sup> DCA 1977), articulated this principle subsequently cited in numerous cases. See, *State of Florida, Dept. of Administration v. Stevens*, 344 So. 2d 290 (Fla. 1<sup>st</sup> DCA 1977); *Dept. of Administration v. Harvey*, 356 So. 2d 323 (Fla. 1<sup>st</sup> DCA 1977); *Balsam v. Department of Health and Rehabilitative Services*, 452 So.2d 976, 977–978 (Fla. 1<sup>st</sup> DCA 1984); *Department of Transp. v. Blackhawk Quarry Co.*, 528 So.2d 447, 450 (Fla. 5<sup>th</sup> DCA 1988), rev. den. 536 So.2d 243 (Fla.1988); *Dept. of Natural Resources v. Wingfield*, 581 So. 2d 193, 196 (Fla. 1<sup>st</sup> DCA 1991); *Dept. of Revenue v. Vanjaria Enterprises, Inc.*, 675 So. 2d 252, 255 (Fla. 5<sup>th</sup> DCA 1996); *Volusia County School Board v. Volusia Homes Builders Association, Inc.*, 946 So. 2d 1084 (Fla. 5<sup>th</sup> DCA 2007); *Florida Dept. of Financial Services v. Capital Collateral Regional Counsel*, 969 So. 2d 527 (Fla. 1<sup>st</sup> DCA 2007); *Coventry First, LLC v. State of Florida, Office of Insurance Regulation*, 38 So. 3d 200 (Fla. 1<sup>st</sup> DCA 2010).

<sup>4</sup> *Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So. 2d 594 (Fla. 1<sup>st</sup> DCA 2000).

<sup>5</sup> Section 120.52(17), F.S.

<sup>6</sup> Section 120.54(1)(a), F.S.

<sup>7</sup> Sections 120.52(8) & 120.536(1), F.S.

<sup>8</sup> *Save the Manatee Club, Inc.*, supra at 599.

<sup>9</sup> *Sloban v. Florida Board of Pharmacy*, 982 So. 2d 26, 29-30 (Fla. 1<sup>st</sup> DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, 794 So. 2d 696, 704 (Fla. 1<sup>st</sup> DCA 2001).

<sup>10</sup> *Conner v. Joe Hatton, Inc.*, 216 So.2d 209 (Fla.1968).

<sup>11</sup> *Sarasota County. v. Barg*, 302 So.2d 737 (Fla. 1974).

<sup>12</sup> Ch. 96-159, LOF.

<sup>13</sup> Chapter 120, F.S.

<sup>14</sup> Section 120.54(1)(c), F.S.

the effective date of the act, unless the act provides otherwise.”<sup>15</sup> This “180 day requirement” predates the 1996 revisions.<sup>16</sup>

The statute does not require complete adoption of rules within 180 days. An agency may comply with the statute merely by publishing a notice of proposed rule.<sup>17</sup> Proposed rules can be repeatedly, substantially revised based on public input and they may also be withdrawn. Consequently, the 180 day requirement does not ensure prompt rulemaking.

### ***Joint Administrative Procedures Committee Monitoring and Agency Compliance***

Joint Administrative Procedures Committee (JAPC) monitors agency compliance with the 180 day requirement in furtherance of its rulemaking oversight duties.<sup>18</sup> JAPC staff review legislation enacted each session to identify new or changed laws that appear to require the adoption of new rules or the amendment or repeal of existing rules for proper implementation. Where the law appears to mandate new rulemaking (for example, using terms such as “shall adopt rules,” or provides that the agency “shall establish” some standard or “must” make some policy), or restates an existing “mandate” for rulemaking, JAPC sends a letter reminding the agency of the 180 day requirement. If the text of proposed rules is not published, at least as part of a notice of rule development, within the 180 days, JAPC will follow with an inquiry as to when the agency will initiate public rulemaking on that issue.

Agencies generally comply with the 180-day requirement as a matter of maintaining an effective working relationship between the executive and legislative offices even though JAPC has no power to compel compliance. In recent years, JAPC has identified several agencies that had not proposed rules within 180 days of the enactment of laws appearing to mandate new rulemaking. At its meeting of February 18, 2013, JAPC heard presentations from 13 different agencies on whether rulemaking actually was necessary to implement particular laws and, if so, explanations for the lack of progress. Some members of the committee asked whether these agencies treated the statute as a “suggestion” instead of a mandatory rulemaking requirement. Again, on February 2, 2015, JAPC received a report from its staff reflecting continuing related problems.

### ***“Directive” vs. “Mandate”***

Courts generally interpret words in statute such as “shall” or “must” as mandating a particular action where the alternative to the action is a possible deprivation of some right. However, use of such otherwise-mandatory terms where there is no effective consequence for the failure to act renders them *directory*, not compulsory.<sup>19</sup> A person regulated by an agency or having a substantial interest in an agency rule may petition that agency to adopt, amend, or repeal a rule,<sup>20</sup>

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<sup>15</sup> Section 120.54(1)(b), F.S.

<sup>16</sup> The 180 requirement was enacted as Ch. 85-104, s. 7, LOF.

<sup>17</sup> Section 120.54(3)(a), F.S. This is the common interpretation of the 180 day requirement. An alternative interpretation would be that a notice of rule development published under s. 120.54(2), F.S., including a *preliminary* draft of proposed rules, may be sufficient to comply.

<sup>18</sup> Joint Rule 4.6.

<sup>19</sup> *S.R. v. State*, 346 So.2d 1018, 1019 (Fla.1977); *Reid v. Southern Development Co.*, 42 So. 206, 208, 52 Fla. 595, 603 (1906); *Ellsworth v. State*, 89 So.3d 1076, 1079 (Fla. 2d DCA 2012); *Kinder v. State*, 779 So. 2d 512, 514 (Fla. 2d DCA 2000).

<sup>20</sup> Section 120.54(7), F.S. If the agency denies the petition the requesting party may seek judicial review of that decision. Sections 120.52(2) and 120.68, F.S.

including where the agency does not act within the 180-day requirement. The APA provides no other process to enforce the 180-day requirement, no legal sanction for failure to comply, nor the authority for any specific entity to compel compliance.

## **Section 120.74, F.S.: Biennial Reporting**

### ***1996 Reporting Requirement***

As part of the comprehensive revision of rulemaking in 1996, agencies were required to review all rules adopted before October 1, 1996, identify those exceeding the rulemaking authority permitted under the revised APA, and report the results to JAPC. JAPC would prepare and submit a combined report of all agency reviews to the President of the Senate and Speaker of the House for legislative consideration.<sup>21</sup>

Another 1996 law added a requirement for ongoing rulemaking review, revision and reporting.<sup>22</sup> Under that law as presently amended, each agency must review its rules every two years and amend or repeal rules as necessary to comply with specific requirements.<sup>23</sup> The agency head must report the results and other required information to the President, Speaker, JAPC, and “each appropriate standing committee of the Legislature” biennially on Oct. 1.<sup>24</sup>

### ***Limited Utility of s. 120.74 Reports***

Agencies as defined in the APA,<sup>25</sup> including school districts, comply with the requirements of s. 120.74, F.S., typically by filing summary reports that simply verify the agency performed the required reviews, list rules identified in the review for amendment or repeal, and finding no undue economic impact on small businesses (a required subject of the report). For example, one 2009 report from a school district identified the following changes to the student code of conduct:

The Code of Student Conduct is reviewed and revised annually and serves as the School Board’s policies and procedures for governing student behavior on school grounds, at school activities, and while being transported to and from school. The majority of the recommended changes for 2008-09 are minor revisions in punctuation, spelling, language, or order of paragraphs.<sup>26</sup>

The 2013 report for the same school district states the following as “what & why the policy changed” for the student code of conduct:

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<sup>21</sup> Ch. 96-159, s. 9(2), LOF.

<sup>22</sup> Ch. 96-399, s. 46, LOF, codified as s. 120.74, F.S. In both 2006 and 2008, the Legislature added substantive provisions to this section. Ch.'s 2006-82, s. 9, and 2008-179, s. 8, LOF.

<sup>23</sup> Identify and correct deficiencies; clarification and simplification; delete rules that are obsolete, unnecessary, or merely repeat statutory language; improve efficiency, reduce paperwork, decrease costs to private sector and government; coordinate rules with agencies having concurrent or overlapping jurisdiction. Section 120.74(1), F.S. (Supp. 1996).

<sup>24</sup> Section 120.74(2), F.S.

<sup>25</sup> Section 120.52(1), F.S.

<sup>26</sup> School Board of Manatee County, “Section 120.74 Report” (Sept. 29, 2009), received by JAPC on Nov. 3, 2009. On file with Subcommittee staff.

The Code of Student Conduct is reviewed and revised annually and serves as the School Board's policies and procedures for governing student behavior on school grounds, at school activities, and while being transported to and from school.<sup>27</sup>

A different school district submitted substantially the same reports for 2009 and 2013, commenting only on that district's review and management of forms. That district's reports included no information on whether any rules were identified as requiring revision or repeal due to changes in law.<sup>28</sup>

Reports by state agencies have reflected inconsistent application of the requirement for the report to "specify any changes made to (the agency's) rules as a result of the review..."<sup>29</sup> One agency's 2009 report identified each rule requiring repeal or amendment and new rules required by program changes, including a brief explanation of the reason for the amendment or adoption.<sup>30</sup> A different agency simply identified obsolete rules for repeal (without stating why these were obsolete) and listed a rule for amendment to update documents incorporated by reference (without identifying the documents so referenced).<sup>31</sup> Some agencies provided lengthy lists of rules identified for amendment or repeal with little explanation other than repeating the terms of the review statute as to the reason for such proposed action.<sup>32</sup>

Educational units are exempt from the biennial reporting requirements.<sup>33</sup>

### ***Regulatory Plans***

In 2011 the reporting requirements were amended to require each agency to file an annual regulatory plan in addition to the biennial reports.<sup>34</sup> The regulatory plan identifies those rules the agency intends to adopt, amend, or repeal during the next fiscal year. These reports have not proven any more substantive than the biennial reports described above.

### **Section 120.745, F.S. - Retrospective Economic Review of Rules**

In November 2010, the Legislature enacted a new limitation on agency rulemaking: any rule adopted after the date of the act, whether a new or amended rule, that may likely have a significant economic impact, could not go into effect unless first ratified by the Legislature.<sup>35</sup>

<sup>27</sup> School Board of Manatee County, "Section 120.74 Report" (Sept. 24, 2013), received by the House on Oct. 3, 2013. On file with Subcommittee staff.

<sup>28</sup> School Board of Santa Rosa County, 2009 Report received by JAPC on Sept. 30, 2009, and 2013 Report received by the House on Aug. 26, 2013, both on file with Subcommittee Staff.

<sup>29</sup> Section 120.74(2), F.S.

<sup>30</sup> Dept. of Children and Families, "Biennial rule review report required by section 120.74, Florida Statutes" (Oct. 1, 2009), received by JAPC on Oct. 7, 2009.

<sup>31</sup> Dept. of Agriculture and Consumer Services, "August 20, 2009 Memorandum regarding § 120.74, Florida Statutes, Rule Review" (Oct. 1, 2009), received by JAPC on Oct. 1, 2009.

<sup>32</sup> Dept. of Business & Professional Regulation, "Section 120.74, Florida Statutes Biennial Report to the Legislature" (Oct. 1, 2009), received by JAPC on Oct. 5, 2009; Dept. of Environmental Protection, 2009 Report received by JAPC on Oct. 2, 2009.

<sup>33</sup> Section 2, ch. 2014-39, LOF, codified as s. 120.745(5), F.S.

<sup>34</sup> Ch. 2011-225, s. 4, LOF. The bill also suspended reporting in 2011 and 2013 under s. 120.74(1) and (2) to avoid duplication with the economic reviews and reports under s. 120.745, F.S.

<sup>35</sup> Section 120.541(3), F.S.

The law requires an agency to prepare a full Statement of Estimated Regulatory Costs (SERC) if the proposed rule either will have an adverse impact on small businesses or if the rule is likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate in the first year after the rule is implemented.<sup>36</sup> Additionally, the SERC must include an economic analysis addressing whether the rule is likely to have one of three specific impacts, directly or indirectly, in excess of \$1 million in the aggregate within five years of going into effect.<sup>37</sup>

The requirements applied only to rules which had not become effective as of November 17, 2010, or were proposed for adoption after that date. Existing rules were not subject to the ratification requirement. In 2011, the Legislature enacted s. 120.745, F.S., to require a retrospective economic analysis of those existing rules. All agencies required to publish their rules in the Florida Administrative Code (F.A.C.)<sup>38</sup> were required to review their rules, identify those potentially having one of the impacts described in s. 120.541(2)(a), F.S., over a five year period, complete a full comprehensive economic review of such rules, and publicly publish the results and certify their compliance with the statute to JAPC. In 2011, all agencies were to publish the results of their initial reviews and identification of existing rules likely to have the significant economic impacts.<sup>39</sup> At the agency's discretion, the full Compliance Economic Reviews for one portion of these rules (Group 1) were to be published by December 1, 2012; the remaining reviews (Group 2) were to be published by December 1, 2013.<sup>40</sup>

The Governor directed a review of all existing agency rules through the newly-created Office of Fiscal Accountability and Regulatory Reform (OFARR).<sup>41</sup> Because most agencies participated in this review, and many of the elements were similar to the retrospective economic reviews contemplated by the Legislature, the law exempted those agencies participating in the Governor's review from most of the new law's requirements. These "exempt" agencies were required to publish their initial determination of those rules requiring full Compliance Economic Reviews in 2011<sup>42</sup> and all final reviews by December 31, 2013.<sup>43</sup>

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<sup>36</sup> Sections 120.54(3)(b)1. & 120.541(1)(b), F.S.

<sup>37</sup> Section 120.541(2)(a), F.S. The three impacts are whether the rule will have 1) an adverse impact on economic growth, private sector job creation or employment, or private sector employment; 2) an adverse impact on business competitiveness, including competition with interstate firms, productivity, or innovation; or 3) an increase in regulatory costs, including transactional costs as defined by s. 120.541(2)(d), F.S.

<sup>38</sup> A provision in the act designed specifically to *de facto* exclude educational units (defined in s. 120.52(6), F.S.) which do not publish their rules in the F.A.C. pursuant to s. 120.55(1)(a)2., F.S. Certain other publication requirements also do not apply to educational units; s. 120.81(1), F.S.

<sup>39</sup> Section 120.745(2), F.S. The statute required each agency to publish the number of its rules implementing or affecting state revenues (revenue rules), requiring submission of information or data by third parties (data collection rules), rules to be repealed, rules to be amended to reduce economic impacts, and those rules that would be reported in Groups 1 or 2.

<sup>40</sup> Section 120.745(5), F.S.

<sup>41</sup> Executive Order 11-01, subsequently revised by EO 11-72 and replaced by EO 11-211.

<sup>42</sup> As required by the statute, exempt agencies published the number of identified revenue rules (2,078), data collection rules (3,529), rules to be repealed (1,852), rules to be amended to reduce economic impacts (1,441), and rules requiring Compliance Economic Reviews (3,056). At <https://www.myfloridalicense.com/rulereview/Rule-Review-Reports.html> (accessed Oct. 22, 2013).

<sup>43</sup> Section 120.745(9), F.S.

All agencies complied with the required retrospective review and publication of reports. Of those agencies not participating in the OFARR review process, only five<sup>44</sup> identified rules requiring Compliance Economic Reviews.<sup>45</sup> Of the 161 Compliance Economic Reviews published by these five agencies in 2012, only 72 reviews showed the subject rule as having a specific impact exceeding \$1 million over the five year period from July 1, 2011 to July 1, 2016.

### **Section 120.7455, F.S. - Your Voice Survey**

As part of the increased oversight of agency rulemaking enacted in 2011, the Legislature sought public participation and input about the effect of agency rules through use of an online survey. Those wanting to comment on any rule could log in to the survey form,<sup>46</sup> respond to a series of questions intended to identify the particular rule and the context of the comment, and provide as much information as the participant thought necessary. Access to the online form was directed primarily through the website of the Florida House of Representatives and was known as the “Your Voice Survey.”

To encourage public participation and obtain as wide a variety of comments as possible during the period July 1, 2011 – July 1, 2014, section 120.7455, F.S.,<sup>47</sup> was enacted to provide certain limited protections from enforcement actions based on any response to the survey. One reporting or providing information solicited by the Legislature in conformity with s. 120.7455, F.S., was immune from any enforcement action or prosecution based on the fact of such reporting (or non-reporting) or using information provided in response to the survey.<sup>48</sup> If a person subject to a penalty in excess of the minimum provided by law or rule proved the enforcement action was in retaliation for providing or withholding any information in response to the survey, the penalty would be limited to the minimum provided for each separate violation.<sup>49</sup>

The survey was initiated in October 2011 and received 2,723 responses through October 22, 2013. No response appeared to place the participant in jeopardy of prosecution or administrative enforcement. The survey responses were of limited value. Many voiced support or disapproval for issues outside the scope of the survey, such as federal laws, regulations or policies, unrelated state statutes, or local ordinances. Fewer than 200 directly addressed a particular agency rule and of those no more than 40 provided information about the economic or policy impacts of the rule. Because the limited protection in the statute proved to be unnecessary, no apparent purpose is served by continuing the statute.

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 120.54, F.S., to eliminate the current 180 day time period granted to agencies to draft and formally propose rules necessary to implement legislation. The new time

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<sup>44</sup> Dept. of Agriculture and Consumer Services, Dept. of Citrus, Dept. of Financial Services, Office of Financial Regulation, and Public Service Commission.

<sup>45</sup> As required by the statute, “non-exempt” agencies published the number of identified revenue rules (508), data collection rules (1,169), rules to be repealed (482), rules to be amended to reduce economic impacts (189), and rules requiring Compliance Economic Reviews to be reported in Group 1 (161) and Group 2 (182).

<sup>46</sup> At <http://www.surveymonkey.com/s/FloridaRegReformSurvey> (accessed Oct. 22, 2013).

<sup>47</sup> Ch. 2011-225, s. 6, LOF.

<sup>48</sup> Section 120.7455(3), F.S.

<sup>49</sup> Section 120.7455(4), F.S.

frames for agencies to begin rulemaking will be no later than November 1 for the notice of rule development and April 1 for the notice of proposed rule.

**Section 2** amends s. 120.74, F.S., to replace the current biennial reports with an annual regulatory plan, establish deadlines for specific actions in the rulemaking process and suspend agency rulemaking if an agency fails to comply with certain requirements.

### ***Regulatory Plan***

The bill requires each agency to submit a regulatory plan by October 1 of each year. The regulatory plan must include:

- A listing of each law enacted or amended during the previous 12 months that modifies the duties and authority of the agency. For each law listed, the agency must determine whether:
  - The agency must adopt rules to implement the law;
  - If rulemaking is necessary to implement the law;
    - Whether a notice of rule development has been published and, if so, the citation to such notice in the Florida Administrative Register.
    - The date by which the agency expects to publish the notice of proposed rule under s. 120.54(3)(a).and
  - If rulemaking is not necessary, the reasons that the law may be implemented without rulemaking.
- A listing of any other laws the agency expects to implement by rulemaking before the following July 1. For each law listed, the agency must state the purpose of the rulemaking.

If the Governor or Attorney General provides a letter to JAPC stating that a law affects all or most agencies, the agency may exclude the law from its regulatory plan.

The regulatory plan must also include information relating to any law identified in a previous year's regulatory plan as requiring rulemaking for implementation for which no notice of proposed rule has been published. The plan must include a certification by the agency head and general counsel that those individuals have reviewed the plan and that the agency regularly reviews all of its agency rules to determine whether the rules remain consistent with the agency's rulemaking authority and legal authority.

If the agency has subsequently determined that rulemaking is not necessary to implement the law, the agency may identify such law, reference the citation to the applicable notice of rule development in the Florida Administrative Register, and provide a concise written explanation of the reason why the law may be implemented without rulemaking.

### ***Publication and Delivery to JAPC***

The bill requires the agency to publish by October 1 of each year the annual regulatory plan on the agency website or other state website established for such publication. The agency must electronically provide a copy of the certification signed by the agency head and general counsel to JAPC and include the certification in the agency's legislative budget request. The agency must publish a notice in the Florida Administrative Register of the date of publication of the regulatory plan, including a hyperlink or website address for the regulatory plan.



For a board established under s. 20.165(4), F.S., and any other board or commission receiving administrative support from the Department of Business and Professional Regulation (DBPR), may coordinate with DBPR, and a board established under s. 20.43(3)(g), F.S., may coordinate with the Department of Health (DOH), for inclusion of the board's or commission's plan and notice of publication in the coordinating department's plan and notice and for the delivery of the required regulatory plan to JAPC.

The bill also requires that regulatory plans published in accordance with the provisions of this bill and regulatory plans published before July 1, 2014, must be made available to the public online for ten years. This will assist elected officials and the general public in reviewing agency implementation of laws through rulemaking.

#### ***DBPR AND DOH Review of Board Plans***

By October 15 of each year, DBPR shall file with JAPC a certification that DBPR has reviewed each board's and commission's regulatory plan for each board established under s. 20.165(4), F.S., and any other board or commission receiving administrative support from DBPR. A certification may relate to more than one board or commission.

By October 15 of each year, DOH shall file with JAPC a certification that DOH has reviewed each board's regulatory plan for each board established under s. 20.43(3)(g), F.S. A certification may relate to more than one board.

#### ***New Deadline for Rule Development***

The bill establishes a new deadline for rule development. Rather than 180 days after the effective date of the legislation, the agency must publish a notice of rule development by November 1 after enactment or by the date the agency identified in the regulatory plan. The agency must then publish a notice of proposed rule by the following April 1. The agency may extend this deadline until the following October 1 if the agency publishes a notice of extension in the Florida Administrative Register (FAR). The deadline for the notice of proposed rule can be further extended by the agency in the subsequent regulatory plan.

The bill permits an agency to correct a published regulatory plan at any time for the purpose of extending or concluding the affecting rulemaking proceeding, and such plan is deemed corrected as of the Oct. 1 due date. The agency is required to publish a notice of the date of correction for the affected rulemaking proceeding in the FAR.

#### ***Certification***

Each time an agency files a notice of rule development, a notice for a deadline extension, a regulatory plan correction, or completion of an act that terminates suspension of rulemaking authority, the agency must file a certification with JAPC noting the action taken. The certification may apply to more than one notice or contemporaneous act. The date or dates of compliance must be noted in each certificate.

### ***Supplementing the Regulatory Plan***

After publication of the regulatory plan, the agency shall supplement the plan within 30 days after a bill becomes a law if the law is enacted before the next regular session of the Legislature and the law substantively modifies the agency's specifically delegated legal duties, unless the law affects all or most state agencies as identified by letter to JAPC from the Governor or the Attorney General.

The supplement must include the information required for agency's annual regulatory plan and shall be published on its website or FAR's website, but no certification or delivery to JAPC is required. The agency shall publish in the FAR notice of publication of the supplement, and include a hyperlink on its website or web address for direct access to the published supplement. For each law reported in the supplement, if rulemaking is necessary to implement the law, the agency shall publish a notice of rule development by the later of Nov. 1 or 60 days after the bill becomes a law, and a notice of proposed rule shall be published by the later of April 1 or 120 days after the bill becomes a law. The proposed rule deadline may be extended to the following October 1 by filing a notice of proposed rule. If such proposed rule has not been filed by October 1, a law included in a supplement shall also be included in the agency's next annual regulatory plan.

### ***Failure to Comply***

If an agency fails to publish and provide its completed regulatory plan by October 1, or publish a notice of proposed rule by April 1, the agency's entire rulemaking authority shall be suspended automatically as of the due date of the required action. Such suspension will continue until the date the agency completes the required action or until the end of the next regular session of the legislature, whichever occurs first. This suspension does not apply to the adoption of emergency rules or rulemaking necessary to comply with federal law.

During the period of suspension:

- The agency has no authority to file rules for adoption under s. 120.54, F.S., but may conduct public hearings that were noticed before the period of suspension.
- The agency is not authorized to adopt or apply a statement defined as a rule under s. 120.52(16), F.S. unless the statement was filed for adoption under s. 120.54(3), F.S., before the suspension.
- The time requirements are tolled under s. 120.54, F.S., for filing a rule for adoption in a rulemaking proceeding initiated by the agency before the date of suspension. The time requirements will resume on the date the suspension ends.

### ***Educational Units***

This section does not apply to educational units, including school districts.

**Section 3** repeals s. 120.7455, F.S., relating to an Internet-based public survey of regulatory impacts.

**Section 4** rescinds suspension of rulemaking authority under s. 120.745, F.S., effective upon this bill becoming law. This section does not affect any restriction, suspension, or prohibition of rulemaking authority under any other provision of law.

**Section 5** provides an effective date of July 1, 2015, except as otherwise provided in the bill and except for this section which shall take effect upon this act becoming law.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

The bill requires agencies to publish additional information in the FAR which has an associated cost. Such additional publication requirements will have an indeterminate, but minimal fiscal impact on agencies.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 120.54 and 120.74 of the Florida Statutes.

This bill repeals section 120.7455 of the Florida Statutes.

The bill rescinds the suspension of rulemaking authority under section 120.745 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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