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.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	PCS/CS/SB 372 (278904)
INTRODUCER:	Appropriations Committee (Recommended by Appropriations Subcommittee on General Government); Judiciary Committee; and Senator Lee
SUBJECT:	Administrative Procedures
DATE:	February 2, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cibula	Cibula	JU	**Fav/CS**
2.	Davis	DeLoach	AGG	**Recommend: Fav/CS**
3.	Davis	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

PCS/CS/SB 372 revises the Administrative Procedure Act, which governs agency rulemaking and decision making. The most significant changes to the act by the bill:

- Require an agency to commence and complete rulemaking activities generally within 180 days after it holds a public hearing on a petition to initiate rulemaking activities on an unadopted rule and choses to initiate rulemaking.
- Require the dissemination of additional notices of agency rulemaking activities on the Florida Administrative Register and through e-mails by an agency to its licensees and other interested persons.
- Authorize a person to challenge agency action by asserting that a rule or unadopted rule used as a basis for the agency's action is invalid.
- Require agencies to review their rules to identify rules the violation of which would constitute a minor violation and for which a notice of noncompliance will be the first enforcement action.

The bill has an indeterminate fiscal impact.

II. Present Situation:

Rulemaking and the Administrative Procedure Act

The Administrative Procedure Act (APA) in ch. 120, F.S., sets forth uniform procedures that agencies must follow when exercising rulemaking authority. 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.[1] Rulemaking authority is delegated by the Legislature[2] through statute and authorizes an agency to "adopt, develop, establish, or otherwise create"[3] a rule. Agencies do not have discretion whether to engage in rulemaking.[4] To adopt a rule, an agency must have a general grant of authority to implement a specific law through rulemaking.[5] The grant of rulemaking authority itself need not be detailed.[6] The specific 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.[7]

Petition to Initiate Rulemaking Directed to an Unadopted Rule

An agency may initiate rulemaking on its own or upon a petition to initiate rulemaking by a person regulated by the agency or having a substantial interest in an agency rule.[8] A petition to initiate rulemaking must specify the proposed rule and the action requested.[9] If the petition relates to an unadopted rule, the agency must initiate rulemaking within 30 days or hold a public hearing on the petition. The agency, if it does not initiate rulemaking or comply with the petition, must publish a statement of its reasons for not doing so in the Florida Administrative Register within 30 days after the hearing.

If an agency chooses to hold a hearing on the petition, the agency must consider public comments relating to the scope and application of the proposed rule and consider whether the public interest is adequately served by applying the rule on a case-by-case basis instead of a formally adopted rule. If the agency elects to pursue rulemaking after the hearing, it is not subject to any deadlines for commencing or completing the rulemaking process.

Attorney Fees

The Florida Equal Access to Justice Act is intended to diminish the deterrent effect of seeking review of, or defending against governmental actions.[10] Under the act, a small business that prevails in a legal action initiated by a state agency is entitled to attorney fees and costs if the

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[1] Section 120.52(16), F.S.; *Florida Dep't of Financial Services v. Capital Collateral Regional Counsel-Middle Region*, 969 So. 2d 527, 530 (Fla. 1st DCA 2007).
[2] *Southwest Fla. Water Mgmt. Dist. v. Save the Manatee Club, Inc.*, 773 So. 2d 594 (Fla. 1st DCA 2000).
[3] Section 120.52(17), F.S.
[4] Section 120.54(1)(a), F.S.
[5] Sections 120.52(8) and 120.536(1), F.S.
[6] *Southwest Fla. Water Mgmt. Dist. v. Save the Manatee Club, Inc.*, 773 So. 2d 594 at 599.
[7] *Sloban v. Fla. Bd. of Pharmacy*, 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008) (internal citations omitted); *Bd. of Trustees of the Internal Improvement Trust Fund v. Day Cruise Assoc., Inc.*, 794 So. 2d 696, 704 (Fla. 1st DCA 2001).
[8] Section 120.54, F.S.
[9] Section 120.54(7), F.S.
[10] Section 57.111, F.S.

actions of the agency were not substantially justified or special circumstances exist which would make the award unjust. An agency action is reasonably justified if it had a reasonable basis in law and fact at the time it was initiated by a state agency.

In addition to the special attorney fee provisions in the Equal Access to Justice Act, the APA authorizes the recovery of attorney fees when:

- A non-prevailing party has participated for an improper purpose;
- An agency's actions are not substantially justified;
- An agency relies upon an unadopted rule and is successfully challenged after 30 days' notice of the need to adopt rules; and
- An agency loses an appeal in a proceeding challenging an unadopted rule.[11]

An agency defense to attorney fees available in actions challenging agency statements defined as rules is that the agency did not know and should not have known that the agency statement was an unadopted rule. Additionally, attorney fees in such actions may be awarded only upon a finding that the agency received notice that the agency statement may constitute an unadopted rule at least 30 days before a petition challenging the agency statement is filed, and the agency fails to publish a notice of rulemaking within that 30 day period.[12]

The authorization for attorney fees in the Equal Access to Justice Act supplement other statutes authorizing attorney fees.[13]

Notice of Rules

Under current law, the Department of State (DOS) is required to publish the Florida Administrative Register on the Internet.[14] This document must contain:

- Notices relating to the adoption or repeal of a rule.
- Notices of public meetings, hearing, and workshops.
- Notices of requests for authorization to amend or repeal an existing rule or for the adoption of a new uniform rule.
- Notices of petitions for declaratory statements or administrative determinations.
- Summaries of objections to rules filed by the Administrative Procedures Committee.
- Other material required by law or deemed useful by the department.

Additionally, DOS allows users of its e-rulemaking website to subscribe to receive free e-mail notification of notices submitted by agencies.[15]

Burden of Proof

In general, laws carry a presumption of validity, and those challenging the validity of a law carry the burden of proving invalidity. The APA retains this presumption of validity by requiring those

[11] Section 120.595, F.S,
[12] Section 120.595(4)(b), F.S.
[13] See s. 120.595(6), F.S. (providing that a statute authorizing attorney fees in challenges to agency actions does not affect the availability of attorney fees and costs under other statutes including ss. 57.105, and 57.111, F.S.).
[14] Section 120.55, F.S.
[15] See Florida Department of State, Florida Administrative Code & Florida Administrative Register, *FLRules FAQ* at https://www.flrules.org/Help/newHelp.asp#sub (last visited Nov. 10, 2015).

challenging adopted rules to carry the burden of proving a rule's invalidity.[16] However, in the case of proposed rules, the APA places the burden on the agency to demonstrate the validity of the rule as proposed, once the challenger has raised specific objections to the rule's validity.[17] In addition, a rule may not be filed for adoption until any pending challenge is resolved.[18]

In the case of a statement or policy in force that was not adopted as a rule, a challenger must prove that the statement or policy meets the definition of a rule under the APA. If so, and if the statement or policy has not been validly adopted, the agency must prove that rulemaking is not feasible or practicable.[19]

Rulemaking is presumed feasible unless the agency proves that:

- The agency needs more time to obtain the knowledge and experience to reasonably address a statement by rulemaking.
- Related matters must be sufficiently resolved before the agency can engage in rulemaking.[20]

Additionally, rulemaking is presumed practicable unless the agency proves that:

- Detail or precision in the establishment of principles, criteria, or standards for agency decisions is not reasonable under the circumstances.
- The particular questions addressed are of such a narrow scope that more specific resolution of the matter is impractical outside of an adjudication based on individual circumstances.[21]

Proceedings Involving Rule Challenges

The APA presently applies different procedures in rule challenges when proposed rules, existing rules, and unadopted rules are challenged by petition, compared to a challenge to the validity of an existing rule, or an unadopted rule defensively in a proceeding initiated by agency action. In addition to the attorney fees awardable to small businesses under the Equal Access to Justice Act, the APA provides attorney fee awards when a party petitions for the invalidation of a rule or unadopted rule, but not when the same successful legal case is made in defense of an enforcement action or grant or denial of a permit or license.

The APA does provide that an administrative law judge with the Division of Administrative Hearings (DOAH) may determine that an agency has attempted to rely on an unadopted rule in proceedings initiated by agency action. However, this is qualified by a provision that an agency may overrule the DOAH determination if it's clearly erroneous. If the agency rejects the DOAH determination and is later reversed on appeal, the challenger is awarded attorney fees for the entire proceeding.[22] Additionally, in proceedings initiated by agency action, if a DOAH judge determines that a rule constitutes an invalid exercise of delegated legislative authority the agency has full de novo authority to reject or modify such conclusions of law, provided the final order states with particularity the reasons for rejecting or modifying the determination.[23]

[16] Section 120.56(3), F.S.
[17] Section 120.56(2), F.S.
[18] Section 120.54(3)(e)2., F.S.
[19] Section 120.56(4), F.S.
[20] Section 120.54(1)(a)1., F.S.
[21] Section 120.54(1)(a)2., F.S.
[22] Section 120.57(1)(e)3., F.S.
[23] Section 120.57(1)(k-l), F.S.

In proceedings initiated by a party challenging a rule or unadopted rule, the DOAH judge enters a final order that cannot be overturned by the agency. The only appeal is to the District Court of Appeal.

Final Orders

An agency has 90 days to render a final order in any proceeding, after the hearing if the agency conducts the hearing, or after the recommended order is submitted to the agency if DOAH conducts the hearing (excepting the rule challenge proceedings described above in which the DOAH judge enters the final order).

Judicial Review

A notice of appeal of an appealable order under the APA must be filed within 30 days after the rendering of the order.[24] An order, however, is rendered when filed with the agency clerk. On occasion, a party might not receive notice of the order in time to meet the 30 day appeal deadline. Under the current statute, a party may not seek judicial review of the validity of a rule by appealing its adoption, but the statute authorizes an appeal from a final order in a rule challenge.[25]

Minor Violations

The APA directs agencies to issue a "notice of noncompliance" as the first response when the agency encounters a first minor violation of a rule.[26] The law provides that a violation is a minor violation if it "does not result in economic or physical harm to a person or adversely affect the public health, safety, or welfare or create a significant threat of such harm." Agencies are authorized to designate those rules for which a violation would be a minor violation. An agency's designation of rules under the provision is excluded from challenge under the APA but may be subject to review and revision by the Governor or Governor and Cabinet.[27] An agency under the direction of a cabinet officer has the discretion not to use the "notice of noncompliance" once each licensee is provided a copy of all rules upon issuance of a license, and annually thereafter.

Rules Ombudsman

Section 288.7015, F.S., requires the Governor to appoint a rules ombudsman in the Executive Office of the Governor, for considering the impact of agency rules on the state's citizens and businesses. The rules ombudsman must carry out the duties related to rule adoption procedures with respect to small businesses; review state agency rules that adversely or disproportionately impact businesses, particularly those relating to small and minority businesses; and make

[24] Section 120.68(2)(a), F.S.
[25] Section 120.68(9), F.S.
[26] Section 120.695, F.S. The statute contains the following legislative intent: "It is the intent of the Legislature that an agency charged with enforcing rules shall issue a notice of noncompliance as its first response to a minor violation of a rule in any instance in which it is reasonable to assume that the violator was unaware of the rule or unclear as to how to comply with it."
[27] Section 120.695(2)(c), (d), F.S. The statute provides for final review and revision of these agency designations to be at the discretion of elected constitutional officers.

recommendations on any existing or proposed rules to alleviate unnecessary or disproportionate adverse effects to business. Each state agency must cooperate fully with the rules ombudsman in identifying such rules, and take the necessary steps to waive, modify, or otherwise minimize such adverse effects of any such rules.

III. Effect of Proposed Changes:

Deadlines for Rulemaking Following Public Hearing on an Unadopted Rule (Section 1)

Under existing law, s. 120.54, F.S., there are no statutory deadlines for an agency to commence or complete rulemaking after a public hearing on a petition to initiate rulemaking which was directed to an unadopted rule. The bill requires an agency to commence the rulemaking process by publishing a notice of rule development within 30 days after the hearing and generally requires agencies to publish a notice of proposed rule within 180 days after the hearing.

Additionally, the bill prohibits an agency from relying on the unadopted rule during the rulemaking process following the public hearing unless the agency publishes in the Florida Administrative Register an explanation of why rulemaking is not feasible or practicable until the conclusion of the rulemaking proceeding. Under existing s. 120.54(1)(a), F.S., an agency's failure to engage in rulemaking is excusable if the agency proves that rulemaking is not feasible or practicable.[28]

Dissemination of Notices Rulemaking Activities (Section 2)

The bill adds the following to the list of items that must be published by the Department of State in the Florida Administrative Register:

- Notices of rule development and rule development workshops.
- Notices of negotiated rulemaking.
- A list of all rules filed for adoption within the previous seven days.
- A list of rules filed for legislative ratification.

The bill also requires agencies that provide an e-mail notification service to licensees and other registered recipients of notices to use that service to provide notice of the following rulemaking activities:

- Rule development and rule development workshops.
- Negotiated rulemaking.
- The intent to adopt, amend, or repeal a rule.
- Public hearings on a propose rule.
- Changes to a proposed rule.
- The withdrawal of a proposed rule.

The notices above must also include links to a website containing the proposed or final rule.

[28] The extent to which an agency's explanation or failure to provide an explanation may impact agency enforcement actions or challenges to an unadopted rule is not clear.

The bill further provides (lines 222-224) that the failure to comply with the requirements to publish notice of rulemaking activities may not be raised in a proceeding to challenge a rule. This statement effectively means that the violation of the publication requirements is not a legally sufficient ground for the invalidation of a rule.[29]

Rule Challenges (Section 3)

The bill revises several subsections of s. 120.56, F.S., which set forth the pleading requirements for a petition challenging a proposed, adopted, or unadopted rule. The changes made by the bill appear to be a rewording without any substantive changes, but the changes could be interpreted as a reduction in the pleading requirements for a person challenging a rule.[30]

General Procedures

Existing s. 120.56(1), F.S., which sets forth the general procedures for rule challenges, requires a person who challenges an agency rule or proposed rule as an invalid exercise of delegated legislative authority to file a petition stating:

> *…with particularity* the provisions alleged to be invalid with *sufficient explanation* of the facts or grounds for the alleged invalidity and facts sufficient to show that the person challenging a rule is substantially affected by it, or that the person challenging a proposed rule would be substantially affected by it.

The bill revises s. 120.56(1), F.S., to refer to the "particular" provisions alleged to be invalid and a "statement," instead of a sufficient explanation, of the facts or grounds for the alleged invalidity. However, the bill still requires a petitioner to be substantially affected by a rule or proposed rule.

Special Provisions for Proposed Rules

Existing s. 120.56(2), F.S., which sets forth special provisions for challenges to proposed rules, requires the petition challenging a proposed rule to "*state with particularity* the objections to the proposed rule and the reasons that the proposed rule is an invalid exercise of delegated legislative authority." The statute further states that the "petitioner has the burden of going forward." Case law interpreted these provisions as imposing a burden on a party challenging a proposed rule to establish the factual basis for its objections to the rule.[31]

The bill replaces the particularity requirement in s. 120.56(2), F.S., with the general provisions in subsection (1) which require a petition challenging a proposed rule to include a statement of the

[29] *Compare* s. 120.56(1)(c), F.S., which states in part, "The failure of an agency to follow the applicable rulemaking procedures set forth in this chapter shall be presumed to be material."

[30] One argument that the deletion of the word "particularity" as it relates to the pleading requirements in a rule challenge, is a substantive change, not a rewording, is that the bill does not eliminate similar particularity requirements imposed on agencies in ss. 120.545, 120.569, 120.57, and 120.60, F.S.

[31] *St. Johns River Water Management Dist. v. Consolidated-Tamoka Land Co.* 717 So. 2d 72, 76-77 (Fla 1st DCA 1998) (superseded by statute on other grounds). Once the petitioner's burden is met, 'the agency has the ultimate burden of persuasion to show that the proposed rule is a valid exercise of delegated legislative authority." *Id.*

facts or grounds for the alleged invalidity. Instead of a burden of going forward with the evidence supporting its objections, the bill provides that the petitioner has a burden "to prove by a preponderance of the evidence that it would be substantially affected by the proposed rule."

Challenges to Unadopted Rules

Existing s. 120.56(4), F.S., sets forth special provisions for challenges to unadopted rules. The subsection, requires a petition to "*state with particularity* facts sufficient to show that the statement constitutes" an unadopted rule. The bill deletes the words "with particularity" but still requires the petition to state sufficient facts.

Agency Decisions Based on an Unadopted Rule or Invalid Rule (Section 4)

Hearings Involving Disputed Facts

The bill expressly authorizes a person to challenge an agency action proposing to determine his or her substantial interests by asserting that the agency's action is based on an invalid rule or an unadopted rule. This challenge is subject to the procedures governing rule challenges. The bill also allows an administrative law judge to consolidate a rule challenge with a proceeding to determine a person's substantial interests.[32]

The consolidation of a rule challenge with a substantial interest proceeding will likely shorten the time period that would have been available for discovery activities.[33] Existing s. 120.56(1)(c), F.S., requires an administrative law judge to conduct a hearing on a rule challenge within 40 days after the filing of a petition challenging a rule, unless a continuance is granted for good cause shown. However, hearings on a petition to challenge an agency action to determine a person's substantial interests are not subject to a statutory deadline.[34]

The bill in its revisions to the law governing hearings involving disputed issues of fact also provides that a petition may pursue a separate rule challenge even if an adequate remedy exists in the hearing to determine the petitioner's substantial interests.[35]

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[32] Consolidation of proceedings is currently allowed under Rule 28-106.108 of the Florida Administrative Code which states:

> If there are separate matters which involve similar issues of law or fact, or identical parties, the matters may be consolidated if it appears that consolidation would promote the just, speedy, and inexpensive resolution of the proceedings, and would not unduly prejudice the rights of a party.

[33] The consolidation of proceedings may also shorten time periods for the issuance of a final order. The final order in a rule challenge must be issued within 30 days after the hearing. Section 120.56(1)(d), F.S. The final order in a hearing under s. 120.57(1), F.S., that doesn't contain a rule challenge component is not due for at least 90 days after the hearing. Section 120.569(2)(l), F.S.

[34] Section 120.569(2)(o), F.S., describes the timeframes for a typical hearing under s. 120.57(1), F.S., as follows:

> On the request of any party, the administrative law judge shall enter an initial scheduling order to facilitate the just, speedy, and inexpensive determination of the proceeding. The initial scheduling order shall establish a discovery period, including a deadline by which all discovery shall be completed, and the date by which the parties shall identify expert witnesses and their opinions. The initial scheduling order also may require the parties to meet and file a joint report by a date certain.

[35] The bill, however, does not clearly indicate whether a person could assert both a rule challenge during a substantial interest hearing and during a separate rule challenge proceeding. The Legislature may wish to consider whether only one rule challenge proceeding should be authorized.

Hearings Not Involving Disputed Facts

Existing s. 120.57(2), F.S., provides additional procedures for hearings not involving disputed issues of material fact. The bill adds to that subsection a statement prohibiting an agency from basing its decisions on an unadopted rule or a rule that is an invalid exercise of delegated legislative authority. The prohibition, however, appears to be a restatement of the limits on an agency's authority as opposed to a new, substantive requirement.

Unlike the bill's changes to s. 120.57(1), F.S., the changes to s. 120.57(2), F.S., do not expressly authorize a person to challenge a rule or unadopted rule used as the basis of an agency's action.[36] Additionally, nothing in the bill appears to allow an administrative law judge to consolidate a rule challenge with a hearing before an agency hearing officer which does not involve disputed facts. As such, a person likely must file a separate rule challenge petition with the Division of Administrative Hearings to assert the invalidity of a rule or unadopted rule that an agency is using as a basis for an agency decision in a proceeding not involving disputed facts.

Judicial Review (Section 5)

Existing s. 120.68, F.S., sets forth a person's rights to seek judicial review of final agency action and other preliminary, procedural, or intermediate orders of an agency or administrative law judge. The revisions by section 5 of the bill authorize a person to seek judicial review of orders resolving a challenge to a rule during a substantial interest hearing involving a disputed issue of material fact and a similar order issued during a hearing not involving a disputed issue of material fact.

Section 4 of the bill expressly authorizes a person to assert a rule challenge during a substantial interest hearing involving a disputed issue of material fact, which is a hearing under s. 120.57(1), F.S., and provides procedures for raising and adjudicating those challenges. However, the bill does not provide similar procedures for a rule challenge raised during a hearing not involving a disputed issue of material fact under s. 120.57(2), F.S. As a result, how a rule challenge will be raised and resolved during a hearing under s. 120.57(2), F.S., is not clear. The lack of procedures for raising and resolving a rule challenge during a hearing under s. 120.57(2), F.S., implies that section 5 gives appellate courts jurisdiction over a rule challenge raised for the first time during the appeal of an order from a hearing conducted under s. 120.57(2), F.S.

Minor Rule Violations (Section 6)

Existing s. 120.695, F.S., required most agencies to review their rules and designate those for which a violation would be a minor violation and for which a notice of noncompliance must be the first enforcement action taken. This review was required to have been completed by December 1, 1995, for some agencies and by January 1, 1996, for other agencies. The bill requires agencies to perform a similar review by June 30, 2017, and within 3 months after a request by the rules ombudsman in the Executive Office of the Governor. Similarly, for each rule

[36] Although s. 120.57(2), F.S., as amended by the bill, does not expressly authorize a rule challenge in a proceeding not involving a disputed issue of material fact, section 5 of the bill suggests that the bill may have been intended to allow those challenges. Section 5 allows a person to seek judicial review of an order issued under s. 120.57(2)(b), F.S., resulting from a rule challenge. If the Legislature intends to allow rule challenges under s. 120.57(2)(b), F.S., it may wish to set forth additional procedures governing those challenges.

filed for adoption, an agency head must certify whether a violation of the rule constitutes a minor rule violation.

Each agency must publish a list of all rules the violation of which is a minor violation on their websites and incorporate them in their disciplinary guidelines adopted as a rule. Agencies must also ensure that their investigative and enforcement personnel are knowledgeable about minor rule violations.

Technical Changes (Section 7)

Section 7 makes a technical change conforming a cross-reference to other changes made by the bill.

Effective Date (Section 8)

The bill takes effect July 1, 2016.

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:

PCS/CS/SB 372, if interpreted as lowering the pleading requirements for a rule challenge petition, may facilitate challenges to agency rules by persons regulated or substantially affected by agency actions. However, the bill may simplify the resolution of disputes by expressly authorizing the consolidation of rule challenges and substantial interest hearings under s. 120.57(1), F.S.

C. Government Sector Impact:

The bill has an indeterminate fiscal impact. The bill may require some additional workload on state agencies and a minimal increase in expenditures related to state

agencies filing more frequently in the Florida Administrative Register, email notifications, and publications on the agency's website. However, the impact is likely insignificant and can be absorbed within existing resources.

In addition, this bill, if interpreted as lowering the pleading requirements for a rule challenge petition, may facilitate challenges to agency rules by persons regulated or substantially affected by agency actions, which would have an indeterminate fiscal impact resulting from additional litigation and costs.

VI. Technical Deficiencies:

There are several potentially ambiguous provisions in this bill, all of which are noted in the Effect of Proposed Changes section of this bill analysis.

VII. Related Issues:

After the 2015 Session, Governor Scott vetoed HB 435 (2015), relating to administrative procedures. The Governor explained the basis of his objections as follows:

> This bill alters the long-standing deference granted to agencies by shifting final action authority to an administrative law judge. This change has the potential to result in prolonged litigation impeding an agency's ability to perform core functions like sanctioning bad actors and protecting public health and safety. These changes create a situation that could paralyze agency rulemaking, delay enforcement actions, and create a backlog of court cases at an increased cost to the taxpayer.[37]

Although the bill has some commonality with HB 435 (2015), it does not contain the provisions that would have shifted final action authority from an agency to an administrative law judge.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 120.54, 120.55, 120.56, 120.57, 120.68, 120.695, and 120.595.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS/CS by Appropriations Subcommittee on General Government on January 13, 2016:
Makes two technical changes. The bill prohibits an agency from relying on an unadopted rule during the rulemaking process following the public hearing unless the agency publishes in the Florida Administrative Register an explanation of why rulemaking was not feasible or practicable before the hearing. The first technical amendment requires a

[37] Veto of Fla. CS for CS for CS for HB 435 (2015) (letter from Gov. Rick Scott to Sec'y of State Kenneth W. Detzner, June 16, 2015) *available at* http://www.flgov.com/wp-content/uploads/2015/06/Transmittal-Letter-6.16.15-HB-435.pdf.

published explanation of why rulemaking is not feasible or practicable until the conclusion of the rulemaking hearing. The second technical amendment corrects a cross reference in the bill.

CS by Judiciary on November 17, 2015:
The changes to s. 120.57(2), F.S., made by the committee substitute, may lower the pleading requirements for a challenge to a proposed agency rule. Under the amendment, a petitioner must prove by the preponderance of the evidence that the petitioner would be substantially affected by the proposed rule. In contrast, the underlying bill provided that the petitioner had the burden of going forward with evidence sufficient to support the rule challenge petition, which appeared to relate to the petitioner's factual basis for its objections to the proposed rule.

B. Amendments:

None.