

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7029 PCB RRS 12-01 Nullification and Repeal of Administrative Rules

SPONSOR(S): Rulemaking & Regulation Subcommittee, Rooney, Jr.

TIED BILLS: **IDEN./SIM. BILLS:** SB 1470

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Rulemaking & Regulation Subcommittee	9 Y, 4 N	Miller	Rubottom
1) Rules & Calendar Committee	18 Y, 0 N	Miller	Birtman

SUMMARY ANALYSIS

The bill amends the Administrative Procedure Act (APA)¹ by codifying the legal rule that the repeal of a substantive statute also acts to repeal the administrative rules adopted to implement that statute. The bill also creates a summary process for the Department of State (DOS) to repeal rules that are no longer in full force and effect. This process includes notice to and review by the affected agency as well as notice and opportunity for the public to follow the current hearing process and challenge a proposed summary rule repeal that cannot be effective until the challenge has been resolved.

The bill also provides for the nullification and repeal of 270 existing rules that are no longer needed or for which the specific law implemented has been repealed. These include:

- Certain rules adopted by the five separate water management districts because the districts find these rules are outdated or otherwise unnecessary for effective program function;
- Certain existing rules for which the substantive laws implemented by the rules have been repealed, the agency adopting the rules has been abolished, and the rulemaking authority has been repealed. The rules no longer have any effect, yet are published as part of the FAC. As no agency appears to have authority to repeal these rules, legislative action is required to remove them from the Florida Administrative Code (FAC);² and
- Certain existing rules implementing statutes for which responsibility has been transferred to another agency or the specific statute was repealed but reenacted under a different agency, without a clear transfer of the rules or rulemaking authority to the new agency.

The bill provides an effective date of 60 days after the bill becomes law. This provides a notice period for the change in the rules similar to the minimum 48-day period provided in rule repeal proceedings under the APA.³

An effective date of July 1, 2013, is provided for those rules nullified in the bill but as to which the responsible agency is directed to initiate rulemaking if the rules are necessary to the proper implementation of an existing program. All other provisions are effective 60 days after the bill becomes law.

¹ Ch. 120, F.S.

² The Florida Administrative Code is the official compilation of all rules of this state. Publication and maintenance of the FAC is the responsibility of the Department of State. Section 120.55(1)(a)1., F.S.

³ To repeal a rule, an agency must follow a statutory procedure similar to that for rule adoption. Section 120.54(3)(a), F.S. The notice of intended repeal must be filed a minimum of 28 days before the repeal is filed for adoption with DOS. Section 120.54(3)(a)2., F.S. Once filed with DOS the repeal is not effective for 20 days. Section 120.54(3)(e)6., F.S.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h7029a.RCC

DATE: 1/30/2012

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

1. Rulemaking Authority is a Power Delegated by the Legislature

A rule is an agency statement of general applicability that interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency as well as certain types of forms.⁴ Rulemaking authority is delegated by the Legislature⁵ through statute and authorizes an agency to “adopt, develop, establish, or otherwise create”⁶ a rule. Agencies do not have discretion whether to engage in rulemaking.⁷ To adopt a rule, an agency must have a general grant of authority to implement a specific law by rulemaking.⁸ The grant of rulemaking authority itself need not be detailed.⁹ 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.¹⁰

A rule is binding and operative from its effective date until modified or superseded by subsequent legislation.¹¹ The APA is silent on how to treat rules adopted to implement or interpret specific powers and duties in a substantive law when that law is subsequently repealed. The courts have determined that repeal of the specific law implemented by a rule *de facto* nullifies the rule, since the rule no longer has a substantive basis.¹²

Agencies have been inconsistent in applying this standard. Currently, both the printed and online versions of the FAC include rules adopted by the former Advisory Council on Intergovernmental Relations (ACIR)¹³ and the former Department of Labor and Employment Security (DLES)¹⁴, despite the fact that both agencies, together with their rulemaking authority, have been abolished and the laws implemented have been repealed.¹⁵ However, certain rules of the former Department of Commerce (DOC)¹⁶ continued to be published in the online version of the FAC as recently as November 8, 2011,¹⁷ but are now identified by DOS as “repealed” based only on the statute abolishing DOC and not on any repeal of the specific laws implemented by these rules.^{18 19}

⁴ s. 120.52(16), F.S.; *Florida Department of Financial Services v. Capital Collateral Regional Counsel-Middle Region*, 969 So. 2d 527, 530 (Fla. 1st DCA 2007).

⁵ *Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So. 2d 594 (Fla. 1st DCA 2000).

⁶ s. 120.52(17), F.S.

⁷ s. 120.54(1)(a), F.S.

⁸ s. 120.52(8) & s. 120.536(1), F.S.

⁹ *Save the Manatee Club, Inc.*, supra at 599.

¹⁰ *Sloban v. Florida Board of Pharmacy*, 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, 794 So. 2d 696, 704 (Fla. 1st DCA 2001).

¹¹ *Florida Department of Revenue v. A. Duda & Sons, Inc.*, 608 So. 2d 881 (Fla. 5th DCA 1992), quoting *Hulmes v. Division of Retirement*, 418 So. 2d 269, 270 (Fla. 1st DCA 1982), rev. den. 426 So. 2d 26 (Fla. 1983).

¹² *Office of Insurance Regulation v. Service Insurance Company*, 50 So. 3d 637 (Fla. 1st DCA 2011); *Hulmes*, supra at 270.

¹³ Title 37, FAC.

¹⁴ Chapter 38I-40, FAC

¹⁵ See discussion in sections A.6.c. and d., below.

¹⁶ Chapters 8K-1, 8K-2, 8M-1, 8M-2, 8M-3, FAC.

¹⁷ <https://www.flrules.org/gateway/ChapterHome.asp?Chapter=8K-1>,

<https://www.flrules.org/gateway/ChapterHome.asp?Chapter=8K-2>, <https://www.flrules.org/gateway/ChapterHome.asp?Chapter=8M-1>,

<https://www.flrules.org/gateway/ChapterHome.asp?Chapter=8M-2>,

<https://www.flrules.org/gateway/ChapterHome.asp?Chapter=8M-3> (all accessed on 11/4/2011); Spreadsheet of “Orphan Rules” with comments from DOS, received from staff of the Joint Administrative Procedures Committee on 11/8/2011 and maintained by the staff of the Rulemaking & Regulation Subcommittee.

¹⁸ <https://www.flrules.org/gateway/ChapterHome.asp?Chapter=8K-1>,

<https://www.flrules.org/gateway/ChapterHome.asp?Chapter=8K-2>, <https://www.flrules.org/gateway/ChapterHome.asp?Chapter=8M-1>,

<https://www.flrules.org/gateway/ChapterHome.asp?Chapter=8M-2>,

<https://www.flrules.org/gateway/ChapterHome.asp?Chapter=8M-3> (all accessed on 11/30/2011).

The resulting uncertainty in determining whether and when a legislative enactment results in the automatic nullification of administrative rules, together with limited guidance in present statutes, exposes the agencies to legal challenges for their interpretation of the effect of statute changes. The current statutes do provide for the preservation and continuation of administrative rules when a program is transferred completely from one agency to another.²⁰ Present statutes do not directly address the impact of abolishing an agency or a grant of rulemaking power without altering the specific powers and duties granted to a subdivision of that agency by a prior enabling statute. The clear purpose of s. 20.06, F.S., is to maintain regulatory continuity when a program is transferred to a different agency, regardless of the abolishment of the prior agency or repeal of its grant of rulemaking authority. Linking the fate of a rule to the substantive statute that is implemented would provide needed clarity as to whether a rule remains in full force and effect.

2. Guidance to the Agencies

The bill clarifies the law by codifying the legal doctrine in *Office of Insurance Regulation v. Service Insurance Company* and *Hulmes v. Division of Retirement*.²¹ Unless the Legislature provides otherwise, the repeal of specific powers and duties granted by substantive law will automatically nullify all rules adopted to implement those specific powers and duties. DOS is directed to update the FAC by showing the repeal of affected rule(s) as of the effective date of the repealing law.

Comments from staff of the Joint Administrative Procedures Committee (JAPC)²² resulted in language amending section 1 of the bill. The original version considered only those rules that implement one substantive statute, but a significant number of rules are drafted to implement different provisions from a number of statutes. The amended version of section 1 incorporated in the bill and approved by the Rulemaking & Regulation Subcommittee provides more comprehensive guidance on the impact to a rule of a statutory repeal:

- (a) The repeal of one or more provisions of law nullifies any rule that only implements the repealed provision(s) and no surviving provision(s) of law.
- (b) If a rule implements more than one provision of law, the repeal of one or more of those provisions (but not all) will nullify only those parts of the rule implementing the repealed provisions. The agency responsible for the rule must publish a notice of rule development²³ within 180 days²⁴ after the repealing law takes effect. If such notice is not published timely, the operation of each rule implementing the repealed provision of law is suspended until the notice is published.
- (c) Other than the foregoing impacts, if the repeal of a statute creates uncertainty as to whether a rule is still enforceable, DOS is directed to follow the procedure created under s. 2 of the bill, creating new s. 120.555, F.S. This new section presumes a rule is of uncertain enforceability if the Division of Administrative Hearings notifies DOS that the rule has been invalidated in an administrative proceeding or JAPC gives notice both to DOS and the affected agency that the repeal of a particular law created doubt as to whether the rule remains in force.

¹⁹ DOC was abolished by Ch. 96-320, s. 3, Laws of Florida. See section A.5. of this Analysis for a discussion of the affected programs and the rules nullified by the bill.

²⁰ Section 20.06(2), F.S., providing for Type Two program transfers.

²¹ See notes 11, 12, supra.

²² Kenneth J. Plante, Coordinator, "PCB 1: Rule Repeals and changes to Ch. 120" (Memorandum dated 12/2/2011, in possession of staff of the Rulemaking & Regulation Subcommittee).

²³ Section 120.54(2)(a), F.S. Rule development typically is not required to repeal a rule but the new provision in the bill makes such notice mandatory when the repeal of a statute nullifies part of an existing rule.

²⁴ This time frame is patterned after the existing requirement for mandatory rulemaking. When legislative action requires adoption of rules for its implementation, the agency must initiate such rulemaking no later than 180 days from the effective date of the act. S. 120.54(1)(b), F.S. The additional provision in the bill supplements but does not replace the existing requirement. The purpose is for the affected agency to identify publicly those parts of the rule impacted by the statutory repeal, including whether the repeal nullifies any part of the identified rule.

3. Procedure for Summary Repeal of Rules

The bill creates new section 120.555, providing a procedure for DOS to follow when it has reason to question whether a rule is still in force or effect. DOS is required to conduct a continuous revision system as part of maintaining and publishing the FAC.²⁵ As discussed above, there exists some uncertainty on how DOS is to consider rules still published in the FAC but for which the promulgating agency was abolished, the rulemaking authority was repealed, or the laws implemented by the rules were repealed. In some cases DOS struck the rules from the FAC solely because the adopting agency was abolished.²⁶ Other rules remain in the FAC despite repeal of all specific laws that were implemented.²⁷ Section 2 of the bill allows for resolution of such uncertainty.

The bill requires DOS to submit a written request to the agency with authority to amend or repeal the rule (or the Governor if no such agency can be identified) for a statement as to whether the rule is still in full force and effect. Notice of the request shall be published in the Florida Administrative Weekly (FAW). Within 90 days the agency or the Governor shall respond to DOS and state whether the rule is still in full force and effect; failure to respond shall be deemed an acknowledgement that the rule is subject to summary repeal. Notice of the response shall also be published in the FAW. If the response states the rule is no longer in full force and effect, or if the agency or Governor fails to respond and is deemed to acknowledge the rule is no longer in full force and effect, the published notice shall also state the rule will be removed from the FAC. Anyone objecting to this summary repeal will have the standard 21 days to file a challenge.²⁸ The objection will be filed as a standard petition challenging a rule, providing the objecting party with the hearing and appeal rights granted in the APA.²⁹ A petition objecting to the summary repeal must be filed against the agency with authority to repeal the rule and not DOS. If no agency has rulemaking authority to repeal the rule, the objecting party must name DOS as the respondent to the petition. The Attorney General must represent DOS in all resulting proceedings.

Once the 21-day period from publishing the notice of the response from the agency or the Governor has run, or upon the finality of a decision overruling the objection(s) to summary repeal, DOS shall remove the rule from the FAC and update the historical notes to show the manner in which the rule was repealed.

The purpose of the rulemaking is to provide public notice of the generally applicable policies implementing or interpreting specific laws.³⁰ Publication of all rules in the FAC is designed to provide a central resource for the public to consult for the rules adopted by any agency having a regional or statewide jurisdiction.³¹ Creating a process for review and summary repeal of rules that are no longer in full force and effect will facilitate the maintenance of an accurate and current FAC.

4. Nullification of Water Management District Rules

The bill directly nullifies a total of 165 rules of the five Water Management Districts. These rule repeals appear in Sections 3 through 7. A review by the Governor's Office of Fiscal Accountability and Regulatory Reform (OFARR) and each of the Water Management Districts concluded these rules were not needed for continued effective operation the Districts' programs. Most of these fall into the following general categories with two specific exceptions:

- a. The rule is duplicative of statute or rule.
- b. The rule is not required to implement the policy of the statute.

²⁵ Section 120.55(1)(a)1., F.S.

²⁶ See note 16, supra.

²⁷ See note 13, supra.

²⁸ Section 120.56(2)(a), F.S.

²⁹ Sections 120.56, 120.569, 120.57, 120.68, F.S.

³⁰ Sections 120.52(16), 120.54(1)(a), F.S.

³¹ Section 120.55(1)(a)1., F.S.

- c. The rule references another rule or statute.
- d. The rule references a repealed statute.
- e. The rule is outdated or unnecessary to implement the statute.
- f. The statutory mandate for the rule was repealed.
- g. The rule duplicates information available in the District's Procedures Manual.
- h. The authority exercised in the rule was transferred to DEP.
- i. Rule 40D-4.054: Alteration of Exempt Projects - Rule to be combined with 40D-4.041, F.A.C., that sets forth what activity requires a permit.
- j. Rule 40D-21.441: Public Supply Water Shortage Mitigation Plans - Burdensome requirements for submittal of request for alternative water shortage plan.

5. **Nullification of "Orphan Rules"**

A review of the FAC disclosed 105 rules for which the adopting agency was abolished, the grant of rulemaking authority repealed, or the specific law implemented was repealed. Although repeal of the law implemented has been interpreted as repealing the rules adopted to implement that law,³² DOS does not have express authority to determine whether a rule is still in full force and effect. Unless expressly repealed by act of the Legislature or as a result of repeal of the substantive law on which it depends, a rule may be repealed only by proper administrative action.³³ If a rule continues in force and effect because the law implemented remains unchanged, even if moved under the jurisdiction of another agency, only an entity with the grant of rulemaking authority to implement that law is able to take action to repeal the rule. If the rule remains in force but no rulemaking authority exists, the Legislature would have to create a new grant of rulemaking authority or repeal the rules by direct action. Sections 8 through 15 of the bill constitute an exercise of the latter approach.

a. **Former Department of Commerce**

The former Department of Commerce was abolished in 1996,³⁴ and several of its programs were moved to the Office of Tourism, Trade, and Economic Development (OTTED).³⁵ The rules in Chapters 8K-1 and 8K-2, FAC, pertained to one such program. After relocation to OTTED, the rulemaking authority for this program was repealed,³⁶ but the various laws implemented by the rules remained unaffected.³⁷ Two of the laws implemented were repealed in 2007³⁸ and the remainder in 2011.³⁹ The effect of this latter repeal was delayed until December 31, 2011,⁴⁰ with the apparent effect of continuing two of the rules until that date.⁴¹

The rules in Chapter 8M-1, FAC, implemented provisions of the implementing bills for the 1991-1992 General Appropriations Act and apparently expired with the conclusion of that fiscal year. The rules in Chapter 8M-2, FAC, implemented a statute that was repealed in 1996.⁴² The rules in Chapter 8M-3, FAC, pertained to a program that was also transferred to OTTED along with the law implemented but with the rulemaking authority repealed.⁴³ The specific law implemented was later revised extensively, but that revision may not have completely repealed the substance of the law implemented by the rule.⁴⁴

³² *Office of Insurance Regulation v. Service Insurance Company* and *Hulmes v. Division of Retirement*, supra.

³³ Section 120.54(3)(a)1., F.S.

³⁴ Ch. 96-320, s. 3, Laws of Florida.

³⁵ Ch. 96-320, s. 61, 133, Laws of Florida.

³⁶ Ch. 2002-180, s. 3, Laws of Florida.

³⁷ Former sections 288.707, 288.709, 288.7091, 288.71, 288.711, F.S.

³⁸ Former sections 288.71 and 288.711 were repealed by Ch. 2007-157, s. 24, Laws of Florida.

³⁹ Ch. 2011-142, s. 487, Laws of Florida.

⁴⁰ Ch. 2011-142, s. 7, Laws of Florida.

⁴¹ Rules 8K-1.001 and 8K-1.002, FAC.

⁴² Former s. 288.806, F.S., repealed by Ch. 96-320, s. 154, Laws of Florida.

⁴³ The transfer and repeal of the rulemaking grant were by Ch. 96-320, s. 133, Laws of Florida.

⁴⁴ Ch. 97-278, s. 49, Laws of Florida.

No entity currently has rulemaking authority to repeal these rules. DOS now shows these rules as repealed due to the abolition of DOC in 1996.⁴⁵ Section 8 of the bill confirms the determination of DOS and the effect of the repeal of the substantive laws.

b. Former Department of Health and Rehabilitative Services

In 1996, responsibility for all public health matters was moved from the Department of Health and Rehabilitative Services (HRS) to the Department of Health (DOH).⁴⁶ This was a Type Two transfer⁴⁷, which included a transfer of the rules previously adopted by HRS to implement the relevant statutes. The rules adopted by HRS in Chapter 10D-116, FAC, implemented s. 383.336, F.S., establishing practice parameters pertaining to the incidence of cesarean births in provider hospitals where the procedure was paid for with state or federal funds.⁴⁸ This section was not formally transferred to DOH until 1999.⁴⁹ Most rules of DOH are indexed in the FAC under Title 64, FAC, but the seven rules under former HRS Chapter 10D-116, FAC, have not been amended or readopted since their effective date in 1992.⁵⁰

Whether or not the statutory program is still in effect, the public law naming DOH as the rulemaking authority was separated from the Type Two transfer of public health responsibility by three years, and the amendment appeared in a technical bill to conform the statutes to the reorganization of HRS. Another question arises concerning the two rules in Chapter 10D-124, FAC, pertaining to the nursing scholarship loan program. The statute implemented by these rules was repealed⁵¹ in 2002. While a new program was created,⁵² and DOH adopted rules to administer that program,⁵³ DOH has not acted to incorporate the rules in Chapter 10D-124 into the present program. Because DOH has not exercised jurisdiction over the rules in either chapter, a question exists as to whether DOH has rulemaking authority to amend or repeal these rules.

Sections 9 and 11 nullify these rules of the former HRS but provide a safe harbor by delaying the effective date of that nullification until July 1, 2013, for certain of the rules. If the rulemaking authority of DOH extends to these rules, DOH is directed to initiate rulemaking to readopt or amend those rules prior to the 2013 effective date if the rules are deemed necessary for existing programs. This delayed effective date applies to Rules 10D-116.001, 10D-116.002, 10D-116.003, 10D-116.004(1), (2), and (3), 10D-116.005, 10D-116.006(1), (2), (3), 10D-124.003, and 10D-124.004. Some of these rules contain old references to HRS or simply restate statute and should be repealed. (The Rules are listed in two distinct sections to facilitate the provision of different explanatory notes.)

Section 10 nullifies Rules 10D-116.004(4), 10D-116.006(4), and 10D-116.007 because these rules exceed the authority delegated in statute.⁵⁴

c. Former Advisory Council on Intergovernmental Relations (ACIR)

Title 37 of the FAC is comprised of 42 rules adopted by the ACIR in 1978. Many of the rules were adopted based on the authority of earlier versions of the APA⁵⁵ as well as the separate grant of

⁴⁵ See note 18, supra.

⁴⁶ Ch. 96-403, s. 6, Laws of Florida.

⁴⁷ The operative language existing in statute at the time has since been renumbered as Section 20.06(2), F.S.

⁴⁸ Section 383.336, F.S. (1995).

⁴⁹ Ch. 99-8, s. 77, Laws of Florida.

⁵⁰ <https://www.flrules.org/gateway/ChapterHome.asp?Chapter=10D-116> (accessed on 11/30/2011).

⁵¹ Ch. 2002-387, s. 1058, Laws of Florida.

⁵² Section 1009.67, F.S., created by Ch. 2002-387, s. 450, Laws of Florida.

⁵³ Ch. 64E-24, FAC.

⁵⁴ Rule 10D-116.004(4) requires the provider hospital to make reports to the Agency for Health Care Administration (AHCA). Rule 10D-116.006(4) requires affected persons be advised the results of a review of a cesarean birth are not usable as evidence of a standard of care. Rule 10D-116.007 directs the AHCA to perform certain responsibilities. Section 383.336, F.S., does not authorize any of these rule provisions.

rulemaking power to the ACIR.⁵⁶ In 1996, the rulemaking authority for ACIR was partially eliminated by revisions to the APA, and its separate rulemaking authority, together with the agency itself, were abolished.⁵⁷ While the specific laws implemented by the ACIR rules were repealed at the same time,⁵⁸ the substance of those statutes apparently was reenacted with the creation of the Legislative Committee on Intergovernmental Relations.⁵⁹ This substantive statute was repealed in 2011.⁶⁰ The FAC still shows all rules in Title 37 as in force.⁶¹

Section 12 nullifies these rules to clarify the repeal of the laws implemented also terminated these rules.

d. **Former Department of Labor and Employment Security**

The bill nullifies two different sets of rules adopted by the former Department of Labor and Employment Security (DLES), which was abolished in 2002.⁶² The first set of rules implemented an asbestos management program pertaining to state occupied buildings.⁶³ Those rules are listed in Section 13. The second set pertained to vocational rehabilitation.⁶⁴ Those rules are listed in Section 14.

The specific laws implemented as part of the asbestos management program were repealed in 1999,⁶⁵ 2001,⁶⁶ and 2011.⁶⁷ The rulemaking authority for the rules was abolished only in 2011.⁶⁸ Because the rules are still listed in the FAC as in effect,⁶⁹ the bill nullifies them to conform to the repeal of the laws implemented.

The rules listed in Section 14 pertaining to vocational rehabilitation were adopted by DLES prior to its abolishment. The Division of Vocational Rehabilitation subsequently was placed under the Department of Education (DOE)⁷⁰ by substituting DOE for DLES in the Division's substantive statute. This designation did not expressly transfer the rules for the program to DOE, and the Department has not acted to readopt or amend the rules as part of the agency's rulemaking. Because DOE has authority over the substantive statutes to which the rules relate, the bill provides a safe harbor by delaying the effect of the nullification to July 1, 2013, and directs DOE to implement rulemaking to properly retain such of these rules as are necessary for the program.

B. SECTION DIRECTORY:

Section 1: Creates a new subsection (2) in s. 120.536(1), F.S., enacting as statute the doctrine that repeal of the specific law implemented or interpreted by a rule acts to repeal that rule. New paragraph (2)(a) states a rule is nullified if the only provisions of law it implemented subsequently are repealed. New paragraph (2)(b) states the repeal of one or more provisions of law implemented by a rule (but not all statutes implemented by the rule) requires an agency to publish a notice of rule development, within

⁵⁵ Prior to its substantial amendment in 1996, s. 120.53, F.S., could have been interpreted as providing separate rulemaking authority for all agencies to adopt procedural requirements of the APA. This language was completely removed by Ch. 96-159, s. 9, Laws of Florida.

⁵⁶ Former section 163.706(4), F.S.

⁵⁷ Ch. 96-311, s. 9, Laws of Florida.

⁵⁸ Ch. 96-311, s. 9, Laws of Florida.

⁵⁹ Ch. 96-311, s. 1, Laws of Florida, created s. 11.70, F.S.

⁶⁰ Ch. 2011-34, s. 3 Laws of Florida.

⁶¹ <https://www.flrules.org/gateway/Division.asp?toType=r&DivID=408> (accessed on 11/30/2011).

⁶² Ch. 2002-194, s. 69, Laws of Florida.

⁶³ Ch. 38I-40, FAC.

⁶⁴ Ch. 38J-1, FAC.

⁶⁵ Ch. 99-5, s. 10, Laws of Florida, repealing former s. 255.554, F.S.

⁶⁶ Ch. 2001-89, s. 15, Laws of Florida, repealing s. 255.565, F.S.

⁶⁷ Ch. 2011-213, s. 35, Laws of Florida, repealing s. 255.552, 255.553, 255.555, 255.556, 255.557, 255.558, 255.559, 255.56, 255.561, and 255.562, F.S.

⁶⁸ Ch. 2011-213, s. 35, Laws of Florida, repealing s. 255.563, F.S.

⁶⁹ <https://www.flrules.org/gateway/ChapterHome.asp?Chapter=38I-40> (accessed on 11/30/2011).

⁷⁰ Ch. 2002-22, s. 1, Laws of Florida.

180 days of the effective date of the act, stating which parts of the rule are nullified by the new act. New paragraph (2)(c) covers all other instances when the repeal of a statute creates uncertainty about the continued enforceability of a rule. DOS is directed to remove such rules from the FAC as of the effective date of the law repealing the specific law implemented.

Section 2: Creates new section 120.555 and the procedure for DOS to review and institute summary repeal of rules that are no longer in full force and effect. Requires a response from the agency with authority over the rule, or the Governor if there is no such agency, stating whether the rule is still in full force and effect. Provides public notice of the proposed repeal. Any objection to the summary repeal is required to be brought as a challenge to proposed rulemaking under the APA.

Section 3: Nullifies certain rules of the Northwest Florida Water Management District.

Section 4: Nullifies certain rules of the Suwannee River Water Management District.

Section 5: Nullifies certain rules of the St. Johns Water Management District.

Section 6: Nullifies certain rules of the Southwest Florida Water Management District.

Section 7: Nullifies certain rules of the South Florida Water Management District.

Section 8: Nullifies rules of the former Department of Commerce. Provides explanatory notes.

Section 9 Nullifies certain rules of the former Department of Health and Rehabilitative Services pertaining to implementation of a review program for cesarean births paid for with state or federal funds. Directs the Department of Health to initiate rulemaking to retain any of the rules. Provides an effective date for this section of July 1, 2013, to allow sufficient time for agency rulemaking. Provides explanatory notes.

Section 10 Nullifies other rules of the former Department of Health and Rehabilitative Services pertaining to implementation of a review program for cesarean births paid for with state or federal funds, which rules exceed the scope of authority in the law to be implemented by the rules. Provides explanatory notes.

Section 11 Nullifies certain rules of the former Department of Health and Rehabilitative Services pertaining to nursing scholarship loans. Directs the Department of Health to initiate rulemaking to retain any of the rules. Provides an effective date for this section of July 1, 2013, to allow sufficient time for agency rulemaking. Provides explanatory notes.

Section 12 Nullifies rules of the former Advisory Council on Intergovernmental Relations. Provides explanatory notes.

Section 13 Nullifies rules of the former Department of Labor and Employment Security pertaining to an asbestos management program. Provides explanatory notes.

Section 14 Nullifies rules of the former Department of Labor and Employment Security pertaining to vocational rehabilitation. Directs the Department of Education to initiate rulemaking to retain any of the rules. Provides an effective date for this section of July 1, 2013, to allow sufficient time for agency rulemaking. Provides explanatory notes.

Section 15 Requires the rules nullified in the bill shall be treated as repealed and so noted in the Florida Administrative Code and the Florida Administrative Weekly. Provides the sections nullifying rules shall not be codified in the Florida Statutes.

Section 16 Provides an effective date of 60 days after the bill becomes law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: No impact anticipated.
2. Expenditures: No impact anticipated.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None
2. Expenditures: None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

No direct impact anticipated.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: No
2. Other: Rulemaking authority is a legislative power delegated to executive agencies under strict separation of powers principles. The Legislature retains full authority under the constitution to nullify or alter any public policy or the legal effect of any rule adopted under such delegation.

B. RULE-MAKING AUTHORITY:

The bill clarifies the repeal of law implemented by rule or a part of a rule acts to nullify that rule, or affected part, as well. The summary repeal procedure in Section 2 will provide authority for the Department of State to act to remove rules, such as those for the Advisory Council on Intergovernmental Relations that no longer have an agency with rulemaking authority to be accountable for their management and repeal.

The bill impacts the rulemaking authority of the Water Management Districts by nullifying a significant number of unnecessary rules without requiring the Districts to engage in rule repeal proceedings.

C. DRAFTING ISSUES OR OTHER COMMENTS:

NOTE: bill RSS 12-01 was published November 30, 2011, with a section numbering error in that it included two sections numbered 8. A strike-all amendment correcting this mistake was offered and approved at the Subcommittee meeting of December 7. The Subcommittee also considered and approved Amendment 2, an amendment to the strike-all amendment that substantially revised sections 1 & 2 of the bill. This analysis is drawn to the approved strike-all as amended.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Amendment 1, a strike-all amendment to the original version of PCB RRS 12-01, was approved by the R&RS on Dec. 7, 2011. The strike-all corrected section numbering defects in the noticed version of the bill.

Amendment 2, an amendment to the strike-all amendment, was approved by the R&RS on Dec. 7, 2011. The amendment revised sections 1 and 2 in response to suggestions received from JAPC and the Office of Attorney General after publication of the bill. This Analysis is drawn to the amended version filed as HB 7029.