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THE FLORIDA LEGISLATURE
**JOINT ADMINISTRATIVE
PROCEDURES COMMITTEE**



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F. SCOTT BOYD
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MEMORANDUM

TO: Agency Heads and General Counsels

FROM: Scott Boyd, Executive Director & General Counsel *F. Scott Boyd*

DATE: November 17, 2010

SUBJECT: CS/CS/HB 1565 (2010-279, L.O.F.) – Legislative Ratification of Rules

The Florida Legislature, during the special session of November 16, 2010, voted to override the Governor's veto of HB 1565. The bill substantially amends the rulemaking procedures of ss. 120.54 and 120.541, F.S., with respect to agencies' preparation of a statement of estimated regulatory costs for proposed rules and requires legislative ratification of certain rules. By joint resolution, the Legislature voted to make HB 1565 effective on November 17, 2010.

The new legislation provides that if a proposed rule will have an adverse impact on small business, or if the proposed rule is likely to directly or indirectly increase regulatory costs in excess of \$200,000 within one year after implementation of the rule, the agency shall prepare a statement of estimated regulatory costs. *See* 120.54(3)(b)1.; 120.541(1)(b).

A statement of estimated regulatory costs shall include an economic analysis showing whether the rule directly or indirectly is likely to have an adverse impact on economic growth, private-sector job creation or employment, or private-sector investment in excess of \$1 million within five years after implementation; have an adverse impact on business competitiveness in excess of \$1 million within five years after implementation; or increase regulatory costs in excess of \$1 million within five years after implementation. *See* 120.541(2)(a).

Section 120.541(3) provides that if the adverse impact or regulatory costs of a rule exceed any of the criteria established in s. 120.541(2)(a), the rule shall not take effect until it has been ratified by the Legislature in the next regular legislative session.

Proposed agency rules that have not been filed for adoption, and proposed rules that have been filed for adoption but are not yet effective, as well as proposed rules noticed on or after the effective date of 2010-279, L.O.F., appear to be subject to the new legislation. *See Florida Public Service Commission v. Florida Waterworks Association*, 731 So. 2d 836 (Fla. 1st DCA

1999); Life Care Centers of America, Inc. v. Sawgrass Care Center, Inc., 683 So. 2d 609 (Fla. 1st DCA 1996).

Please review your agency's proposed rules as described above and advise the Committee and the Department of State whether or not the rules require legislative ratification pursuant to s. 120.541(3). Also, please be aware that a proposed rule may now require the preparation of a statement of estimated regulatory costs to meet the requirements of ss. 120.54(3)(b)1. and 120.541(1)(b). The statement must be provided to the Committee at least 21 days before filing the rule for adoption. *See* 120.54(3)(a)4. An existing statement of estimated regulatory costs that is revised to meet the requirements of ss. 120.54(3)(b)1. and 120.541(1)(b) must be provided to the Committee at least 45 days before filing the rule for adoption. *See* 120.541(1)(d).

For your convenience, we have attached a copy of chapter 120 prepared by the Committee staff that includes the new provisions of 2010-279, L.O.F. Please note that this document is not the official version of the Florida Statutes prepared by the Division of Statutory Revision and may contain inadvertent errors.

Please do not hesitate to contact our office if you have questions regarding the requirements of 2010-279, L.O.F.