



MEMORANDUM

AGENDA ITEM III. H

DATE: MAY 7, 2012
TO: COUNCIL MEMBERS
FROM: STAFF
SUBJECT: ENHANCED RULE REVIEW

Background

Subsections 120.74(1) and 120.745(2), Florida Statutes (Fla. Stat.), require each agency to conduct a biennial review of its existing rules. Regional Planning Councils created under §186.504, Fla. Stat., are defined as an agency by §120.52, Fla. Stat. Attached are the two reports as well as their draft transmittal letter.

The review has identified four rules (Chapter 29J-2.001, General, Florida Administrative Code; Chapter 29J-2.002, Meetings, Hearings and Workshops; Chapter 29J-2.003, Developments of Regional Impact; and Chapter 29J-2.004, Intergovernmental Coordination and Review Procedures) that staff recommends be repealed since they are obsolete and unnecessary. The Council would retain two rules (Chapter 29J-2.009, *Strategic Regional Policy Plan for South Florida*, and 29J-3, Regional Dispute Resolution Process). Council staff also recommends the Regional Policy Plan be amended in 2013 to reflect the Evaluation and Appraisal Report conducted last year.

Recommendation

Approve the Enhanced Rule Review Report and post on the Council website for public comment prior to submission to President of the Senate, the Speaker of the House of Representatives, and the committee, with a copy to each appropriate standing committee of the Legislature. Also approve staff to begin the process to repeal the four rules.

South
Florida
Regional
Planning
Council



May 7, 2012

The Honorable Mike Haridopolos, President
Florida Senate

The Honorable Dean Cannon, Speaker
Florida House of Representatives

The Honorable Ellyn Setor Bogdanoff, Chair
Joint Administrative Procedures Committee

The Honorable Lake Ray, Vice-Chair
Joint Legislative Procedures Committee

Dear Honorable Legislators,

Attached please find two reports required to satisfy the provisions of Subsections 120.74(1) and 120.745(2), Florida Statutes. I hereby certify, on behalf of the South Florida Regional Planning Council (Council), the completion of the reports for all rules of the Council, including each separate part or subsection. The reports were reviewed and approved by the Council at its regular meeting on May 7, 2012.

If you have any questions or need additional information please do not hesitate to contact James F. Murley, Executive Director, at jmurley@sfrpc.com or 954.985.4416.

Sincerely,

Heather Carruthers
Chair

cc: Kenneth J. Plante, Coordinator, Joint Administrative Procedures Committee
Don Rothbottom, Staff Director/Deputy General Counsel, House Rulemaking and Regulation Subcommittee

3440 Hollywood Boulevard, Suite 140, Hollywood, Florida 33021
Broward (954) 985-4416, State (800) 985-4416
FAX (954) 985-4417, email: sfadmin@sfrpc.com, website: www.sfrpc.com

Report Pursuant to Subsection 120.74(1), Florida Statutes

(1) Each agency shall review and revise its rules as often as necessary to ensure that its rules are correct and comply with statutory requirements. Additionally, each agency shall perform a formal review of its rules every 2 years. In the review, each agency must:

(a) Identify and correct deficiencies in its rules;

Review of the rules of the South Florida Regional Planning Council (SFRPC) revealed that Chapter 29J-2.009, FAC, Strategic Regional Policy Plan, needs to be updated and amended, subsequent to the required Evaluation Report, completed by the SFRPC last year. The SFRPC anticipates initiating rulemaking in calendar year 2013.

(b) Clarify and simplify its rules;

Review did not identify any rules that required any necessary clarifications or simplifications.

(c) Delete obsolete or unnecessary rules;

Review did identify obsolete and unnecessary rules as follows:

- Chapter 29J-2.001, General – obsolete/unnecessary.
- Chapter 29J-2.002, Meetings, Hearings and Workshops – obsolete/unnecessary.
- Chapter 29J-2.003, Developments of Regional Impact – obsolete/unnecessary.
- Chapter 29J-2.004, Intergovernmental Coordination and Review Procedures – obsolete/unnecessary.

These rules will be repealed during calendar year 2012.

(d) Delete rules that are redundant of statutes;

Some of the rules identified in (c) above are duplicative of Florida Statutes. All rules identified in (c) above will be repealed in calendar year 2012.

(e) Seek to improve efficiency, reduce paperwork, or decrease costs to government and the private sector;

The SFRPC will, in amending Chapter 29J-2.009, seek to comply with this requirement.

(f) Contact agencies that have concurrent or overlapping jurisdiction to determine whether their rules can be coordinated to promote efficiency, reduce paperwork, or decrease costs to government and the private sector; and

No agencies have concurrent or overlapping jurisdiction.

(g) Determine whether the rules should be continued without change or should be amended or repealed to reduce the impact on small business while meeting the stated objectives of the proposed rule.

No rules were deemed in need of amendment due to impacts on small business.

Report Pursuant to Subsection 120.745(2), Florida Statutes

(2) ENHANCED BIENNIAL REVIEW.—By December 1, 2011, each agency shall complete an enhanced biennial review of the agency's existing rules, which shall include, but is not limited to:

(a) Conduct of the review and submission of the report required by s. 120.74 and an explanation of how the agency has accomplished the requirements of s. 120.74(1). This paragraph extends the October 1 deadline provided in s. 120.74(2) for the year 2011.

The South Florida Regional Planning Council (SFRPC) staff undertook an extensive evaluation of our limited number of rules. As a result we are proposing to reduce our number of rules from six (6) to two (2).

(b) Review of each rule to determine whether the rule has been reviewed by Office of Fiscal Accountability and Regulatory Reform (OFARR) pursuant to the Governor's Executive Order 2011-01.

Executive Order 2011-01, as superseded by Executive Order 11-74, is applicable to agencies under the control of the Governor. The SFRPC does not fit into this category, and, therefore, this requirement is not applicable.

(c) Review of each rule to determine whether the rule is a revenue rule, to identify the statute or statutes authorizing the collection of any revenue, to identify the fund or account into which revenue collections are deposited, and, for each revenue rule, to determine whether the rule authorizes, imposes, or implements:

- 1 Registration, license, or inspection fees.
- 2 Transportation service tolls for road, bridge, rail, air, waterway, or port access.
- 3 Fees for a specific service or purpose not included in subparagraph 1. or subparagraph 2.
- 4 Fines, penalties, costs, or attorney fees.
- 5 Any tax.
- 6 Any other amounts collected that are not covered under subparagraphs 1.-5.

Review of the SFRPC's rules indicated that Chapter 29J-2.003, FAC, could be considered to be a "revenue rule". As noted in our companion report pursuant to Subsection 120.74(1), Chapter 29J-2.003, FAC, is an obsolete rule not in use and is slated for repeal during calendar year 2013.

Chapter 29J-3, FAC, Regional Dispute Resolution Process, could be considered a "revenue rule". The purpose of this rule is to establish a voluntary regional dispute resolution process (RDRP) to reconcile differences on planning, growth management and other issues among local governments, regional agencies and private interests. The rule authorizes the SFRPC to be compensated for situation assessments, facilitation of additional settlement meetings, mediation, technical assistance and other staff services at a rate based on reasonable actual costs plus any additional out-of-pocket expenses. The rule also allows outside professional neutrals to be compensated at their standard rate or as negotiated by the parties. Chapter 29J-3, FAC, is authorized by §186.509, Fla. Stat., which states: "[e]ach regional planning council shall establish by rule a dispute resolution process to reconcile differences on planning and growth management issues between local governments, regional agencies, and private interests."

The SFRPC uses project accounting in order to track actual costs. A separate project would be created for each RDRP case.

(d) Review of each rule to determine whether the rule is a data collection rule, providing the following information for each rule determined to be a data collection rule:

- 1 The statute or statutes authorizing the collection of such data.**
- 2 The purposes for which the agency uses the data and any purpose for which the data is used by others.**
- 3 The policies supporting the reporting and retention of the data.**
- 4 Whether and to what extent the data is exempt from public inspection under chapter 119.**

Review of SFRPC's rules revealed there are no "data collection" rules.

(e) Identification of each entire rule the agency plans to repeal and, if so, the estimated timetable for repeal.

As stated previously, the SFRPC plans to repeal the following rules during calendar year 2012: Chapters 29J-2.001; 29J-2.002; 29J-2.003; and 29J-2.004, FAC.

(f) Identification of each entire rule or subpart of a rule the agency plans to amend to substantially reduce the economic impact and the estimated timetable for amendment.

We plan to amend Chapter 29J-2.009, FAC, during calendar year 2013.

(g) Identification of each rule for which the agency will be required to prepare a compliance economic review, to include each entire rule that:

- 1 The agency does not plan to repeal on or before December 31, 2012;**
- 2 Was effective on or before November 16, 2010; and 3 .Probably will have any of the economic impacts described in s. 120.541(2)(a), for 5 years beginning on July 1, 2011, excluding in such estimation any part or subpart identified for amendment under ²paragraph (e).**

The SFRPC will not be required to prepare a "compliance economic review for any of its remaining rules.

(h) Listing of all rules identified for compliance economic review in paragraph (g), divided into two approximately equal groups, identified as "Group 1" and "Group 2." Such division shall be made at the agency's discretion.

(i) Written certification of the agency head to the committee verifying the completion of the report for all rules of the agency, including each separate part or subsection. The duty to certify completion of the report is the responsibility solely of the agency head as defined in s. 120.52(3) and may not be delegated to any other person. If the defined agency head is a collegial body, the written certification must be prepared by the chair or equivalent presiding officer of that body.

Not Applicable.

See cover/certification letter from the SFRPC Chair.