

# Department of Finance and Administration

## Legislative Impact Statement

**Bill: SB512**

**Bill Subtitle: TO AMEND THE ADMINISTRATIVE PROCEDURE ACT; AND CONCERNING THE ADOPTION OF A NEW RULE BY A STATE AGENCY.**

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### **Basic Change :**

**Sponsor: Sen. Collins-Smith**

SB512 requires each state agency to repeal one of its rules before adopting another proposed rule. This requirement would apply regardless of whether the rule being adopted results from an agency decision that a rule is needed or because an act of the General Assembly directs that a rule be promulgated. Repeal of a current rule is not required if the agency simply amends an existing rule. When deciding what rule to repeal, the agency is not required to repeal a rule that was previously adopted because it was required by the General Assembly or was adopted as an emergency rule.

### **Revenue Impact :**

None.

### **Taxpayer Impact :**

The guidance available to taxpayers regarding how to comply with Acts of the General Assembly will be diminished as agencies eliminate current rules to promulgate rules providing guidance regarding new legislation enacted by the General Assembly or to provide guidance regarding changes in case law as a result of court decisions.

### **Resources Required :**

None.

### **Time Required :**

None.

### **Procedural Changes :**

None.

### **Other Comments :**

None.

### **Legal Analysis :**

The bill will adversely affect the DFA – Revenue Division's ability to provide guidance to taxpayers. DFA – Revenue promulgates rules only for the purpose of implementing state law based on changes enacted by the General Assembly or resulting from court decisions. The Administrative Procedures Act (APA) requires any agency desiring to provide guidance to the public regarding compliance with state law to provide that guidance through the adoption of a rule. Adoption of a rule is accomplished by

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following the steps outlined in the APA, including review by the General Assembly. SB512 adds an additional step to the rulemaking process by requiring the agency to also decide which rule should be repealed. Taxpayers who depend for guidance upon the rule to be repealed may object. This requirement to repeal a rule before a new rule may be adopted places an agency in a difficult position. Agencies are required by law to adopt a rule when providing guidance regarding the implementation of a state law but will also be required under SB512 to repeal that guidance in one area of the law to provide guidance in another area.