

1 A bill to be entitled

2 An act relating to administrative procedures; amending
3 s. 57.111, F.S.; providing conditions under which a
4 proceeding is not substantially justified for purposes
5 of attorney fees and costs; amending s. 120.54, F.S.;
6 requiring agencies to set a time for workshops for
7 certain unadopted rules; amending s. 120.55, F.S.;
8 providing additional items that must be noticed by an
9 agency in the Florida Administrative Register;
10 requiring agencies to provide such notice to
11 registered recipients under certain circumstances;
12 amending s. 120.56, F.S.; clarifying that petitions
13 for administrative determinations apply to rules and
14 proposed rules; identifying which entities have the
15 burden in hearings in which a rule, proposed rule, or
16 agency statement is at issue; prohibiting an
17 administrative law judge from bifurcating certain
18 petitions; amending s. 120.565, F.S.; authorizing
19 certain parties to state to an agency their
20 understanding of how certain rules apply to specific
21 facts; specifying the timeframe for an agency to
22 provide a declaratory statement; authorizing the award
23 of attorney fees under certain circumstances; amending
24 s. 120.569, F.S.; granting agencies additional time to
25 render final orders under certain circumstances;
26 amending s. 120.57, F.S.; conforming proceedings based

27 on invalid or unadopted rules to proceedings used for
28 challenging existing rules; requiring an agency to
29 issue a notice regarding its reliance on the
30 challenged rule or alleged unadopted rule; authorizing
31 the administrative law judge to make certain findings
32 on the validity of certain alleged unadopted rules;
33 requiring the administrative law judge to issue a
34 separate final order on certain rules and alleged
35 unadopted rules; prohibiting agencies from rejecting
36 specific conclusions of law; limiting situations under
37 which an agency may reject or modify conclusions of
38 law; providing for stay of proceedings not involving
39 disputed issues of fact upon timely filing of a rule
40 challenge; providing that the final order terminates
41 the stay; amending s. 120.573, F.S.; providing
42 additional situations in which a party may request
43 mediation; amending s. 120.595, F.S.; providing
44 criteria for establishing whether a nonprevailing
45 party participated in a proceeding for an improper
46 purpose; revising provisions providing for the award
47 of attorney fees and costs by the appellate court or
48 administrative law judge; providing exceptions;
49 repealing the mechanism for an agency to show its
50 action was justified; requiring notice of a proposed
51 challenge by the petitioner as a condition precedent
52 to filing a challenge and being eligible for the

53 reimbursement of attorney fees and costs; authorizing
 54 the recovery of attorney fees and costs incurred in
 55 litigating right to attorney fees and costs in certain
 56 actions; providing such attorney fees and costs are
 57 not limited in amount; amending s. 120.68, F.S.;
 58 requiring specified agencies to provide notice of
 59 appeal to the Administrative Procedures Committee
 60 under certain circumstances; amending s. 120.695,
 61 F.S.; removing obsolete provisions; requiring agency
 62 review and certification of minor rule violations by a
 63 specified date; requiring the reporting of agency
 64 failure to complete such review and certification;
 65 requiring certification of minor violations for all
 66 rules adopted after a specified date; requiring public
 67 notice; providing for nonapplicability; providing an
 68 effective date.

69
 70 Be It Enacted by the Legislature of the State of Florida:

71
 72 Section 1. Paragraph (e) of subsection (3) of section
 73 57.111, Florida Statutes, is amended to read:

74 57.111 Civil actions and administrative proceedings
 75 initiated by state agencies; attorney ~~attorneys~~ fees and
 76 costs.—

77 (3) As used in this section:

78 (e) A proceeding is "substantially justified" if it had a

79 reasonable basis in law and fact at the time it was initiated by
 80 a state agency. A proceeding is not "substantially justified" if
 81 the law, rule, or order at issue in the current agency action is
 82 the subject upon which the prevailing party previously
 83 petitioned the agency for a declaratory statement under s.
 84 120.565; the current agency action involves identical or
 85 substantially similar facts and circumstances as those raised in
 86 the previous petition; and:

- 87 1. The agency action contradicts the declaratory statement
 88 issued by the agency upon the previous petition; or
- 89 2. The agency denied the previous petition under s.
 90 120.565 before initiating the current agency action against the
 91 substantially affected party.

92 Section 2. Paragraph (c) of subsection (7) of section
 93 120.54, Florida Statutes, is amended to read:

94 120.54 Rulemaking.—

95 (7) PETITION TO INITIATE RULEMAKING.—

96 (c) Within 30 days following the public hearing provided
 97 for ~~in~~ by paragraph (b), if the petition's requested action
 98 requires rulemaking and the agency initiates rulemaking, the
 99 agency shall establish a time certain for rulemaking workshops
 100 and shall discontinue reliance upon the agency statement or
 101 unadopted rule until it adopts rules pursuant to subsection (3).

102 If the agency does not initiate rulemaking or otherwise comply
 103 with the requested action, the agency shall publish in the
 104 Florida Administrative Register a statement of its reasons for

105 not initiating rulemaking or otherwise complying with the
106 requested action~~7~~ and of any changes it will make in the scope
107 or application of the unadopted rule. The agency shall file the
108 statement with the committee. The committee shall forward a copy
109 of the statement to the substantive committee with primary
110 oversight jurisdiction of the agency in each house of the
111 Legislature. The committee or the committee with primary
112 oversight jurisdiction may hold a hearing directed to the
113 statement of the agency. The committee holding the hearing may
114 recommend to the Legislature the introduction of legislation
115 making the rule a statutory standard or limiting or otherwise
116 modifying the authority of the agency.

117 Section 3. Section 120.55, Florida Statutes, is amended to
118 read:

119 120.55 Publication.—

120 (1) The Department of State shall:

121 (a)1. Through a continuous revision and publication
122 system, compile and publish electronically, on an Internet
123 website managed by the department, the "Florida Administrative
124 Code." The Florida Administrative Code shall contain all rules
125 adopted by each agency, citing the grant of rulemaking authority
126 and the specific law implemented pursuant to which each rule was
127 adopted, all history notes as authorized in s. 120.545(7),
128 complete indexes to all rules contained in the code, and any
129 other material required or authorized by law or deemed useful by
130 the department. The electronic code shall display each rule

131 chapter currently in effect in browse mode and allow full text
132 search of the code and each rule chapter. The department may
133 contract with a publishing firm for a printed publication;
134 however, the department shall retain responsibility for the code
135 as provided in this section. The electronic publication shall be
136 the official compilation of the administrative rules of this
137 state. The Department of State shall retain the copyright over
138 the Florida Administrative Code.

139 2. Rules general in form but applicable to only one school
140 district, community college district, or county, or a part
141 thereof, or state university rules relating to internal
142 personnel or business and finance shall not be published in the
143 Florida Administrative Code. Exclusion from publication in the
144 Florida Administrative Code shall not affect the validity or
145 effectiveness of such rules.

146 3. At the beginning of the section of the code dealing
147 with an agency that files copies of its rules with the
148 department, the department shall publish the address and
149 telephone number of the executive offices of each agency, the
150 manner by which the agency indexes its rules, a listing of all
151 rules of that agency excluded from publication in the code, and
152 a statement as to where those rules may be inspected.

153 4. Forms shall not be published in the Florida
154 Administrative Code; but any form which an agency uses in its
155 dealings with the public, along with any accompanying
156 instructions, shall be filed with the committee before it is

157 used. Any form or instruction which meets the definition of
158 "rule" provided in s. 120.52 shall be incorporated by reference
159 into the appropriate rule. The reference shall specifically
160 state that the form is being incorporated by reference and shall
161 include the number, title, and effective date of the form and an
162 explanation of how the form may be obtained. Each form created
163 by an agency which is incorporated by reference in a rule notice
164 of which is given under s. 120.54(3)(a) after December 31, 2007,
165 must clearly display the number, title, and effective date of
166 the form and the number of the rule in which the form is
167 incorporated.

168 5. The department shall allow adopted rules and material
169 incorporated by reference to be filed in electronic form as
170 prescribed by department rule. When a rule is filed for adoption
171 with incorporated material in electronic form, the department's
172 publication of the Florida Administrative Code on its Internet
173 website must contain a hyperlink from the incorporating
174 reference in the rule directly to that material. The department
175 may not allow hyperlinks from rules in the Florida
176 Administrative Code to any material other than that filed with
177 and maintained by the department, but may allow hyperlinks to
178 incorporated material maintained by the department from the
179 adopting agency's website or other sites.

180 (b) Electronically publish on an Internet website managed
181 by the department a continuous revision and publication entitled
182 the "Florida Administrative Register," which shall serve as the

183 official publication and must contain:

184 1. All notices required by s. 120.54(2) and (3)(a)
185 ~~120.54(3)(a)~~, showing the text of all rules proposed for
186 consideration.

187 2. All notices of public meetings, hearings, and workshops
188 conducted in accordance with s. 120.525, including a statement
189 of the manner in which a copy of the agenda may be obtained.

190 3. A notice of each request for authorization to amend or
191 repeal an existing uniform rule or for the adoption of new
192 uniform rules.

193 4. Notice of petitions for declaratory statements or
194 administrative determinations.

195 5. A summary of each objection to any rule filed by the
196 Administrative Procedures Committee.

197 6. A listing of rules filed for adoption in the previous 7
198 days.

199 7. A listing of all rules filed for adoption pending
200 legislative ratification under s. 120.541(3). Each rule on the
201 list shall be taken off the list once it is ratified or
202 withdrawn.

203 ~~8.6.~~ Any other material required or authorized by law or
204 deemed useful by the department.

205
206 The department may contract with a publishing firm for a printed
207 publication of the Florida Administrative Register and make
208 copies available on an annual subscription basis.

209 (c) Prescribe by rule the style and form required for
 210 rules, notices, and other materials submitted for filing.

211 (d) Charge each agency using the Florida Administrative
 212 Register a space rate to cover the costs related to the Florida
 213 Administrative Register and the Florida Administrative Code.

214 (e) Maintain a permanent record of all notices published
 215 in the Florida Administrative Register.

216 (2) The Florida Administrative Register Internet website
 217 must allow users to:

218 (a) Search for notices by type, publication date, rule
 219 number, word, subject, and agency.

220 (b) Search a database that makes available all notices
 221 published on the website for a period of at least 5 years.

222 (c) Subscribe to an automated e-mail notification of
 223 selected notices to be sent out before or concurrently with
 224 publication of the electronic Florida Administrative Register.
 225 Such notification must include in the text of the e-mail a
 226 summary of the content of each notice.

227 (d) View agency forms and other materials submitted to the
 228 department in electronic form and incorporated by reference in
 229 proposed rules.

230 (e) Comment on proposed rules.

231 (3) Publication of material required by paragraph (1) (b)
 232 on the Florida Administrative Register Internet website does not
 233 preclude publication of such material on an agency's website or
 234 by other means.

235 (4) Each agency shall provide copies of its rules upon
 236 request, with citations to the grant of rulemaking authority and
 237 the specific law implemented for each rule.

238 (5) Each agency that provides an e-mail notification
 239 service to inform registered recipients of notices shall use
 240 that service to notify recipients of each notice required under
 241 s. 120.54(2) and (3) (a) and provide Internet links to the
 242 appropriate rule page on the Secretary of State's website or
 243 Internet links to an agency website that contains the proposed
 244 rule or final rule.

245 (6)~~(5)~~ Any publication of a proposed rule promulgated by
 246 an agency, whether published in the Florida Administrative
 247 Register or elsewhere, shall include, along with the rule, the
 248 name of the person or persons originating such rule, the name of
 249 the agency head who approved the rule, and the date upon which
 250 the rule was approved.

251 (7)~~(6)~~ Access to the Florida Administrative Register
 252 Internet website and its contents, including the e-mail
 253 notification service, shall be free for the public.

254 (8)~~(7)~~(a) All fees and moneys collected by the Department
 255 of State under this chapter shall be deposited in the Records
 256 Management Trust Fund for the purpose of paying for costs
 257 incurred by the department in carrying out this chapter.

258 (b) The unencumbered balance in the Records Management
 259 Trust Fund for fees collected pursuant to this chapter may not
 260 exceed \$300,000 at the beginning of each fiscal year, and any

261 excess shall be transferred to the General Revenue Fund.

262 Section 4. Subsections (1), (3), and (4) of section
263 120.56, Florida Statutes, are amended to read:

264 120.56 Challenges to rules.—

265 (1) GENERAL PROCEDURES ~~FOR CHALLENGING THE VALIDITY OF A~~
266 ~~RULE OR A PROPOSED RULE.~~—

267 (a) Any person substantially affected by a rule or a
268 proposed rule may seek an administrative determination of the
269 invalidity of the rule on the ground that the rule is an invalid
270 exercise of delegated legislative authority.

271 (b) The petition seeking an administrative determination
272 of the invalidity of a rule or proposed rule must state the
273 facts and ~~with particularity~~ the provisions alleged to be
274 invalid with sufficient explanation of the ~~facts or~~ grounds for
275 the alleged invalidity and facts sufficient to show that the
276 petitioner ~~person~~ challenging a rule is substantially affected
277 by it, or that the petitioner ~~person~~ challenging a proposed rule
278 would be substantially affected by it.

279 (c) The petition shall be filed by electronic means with
280 the division which shall, immediately upon filing, forward by
281 electronic means copies to the agency whose rule is challenged,
282 the Department of State, and the committee. Within 10 days after
283 receiving the petition, the division director shall, if the
284 petition complies with ~~the requirements of~~ paragraph (b), assign
285 an administrative law judge who shall conduct a hearing within
286 30 days thereafter, unless the petition is withdrawn or a

287 | continuance is granted by agreement of the parties or for good
288 | cause shown. Evidence of good cause includes, but is not limited
289 | to, written notice of an agency's decision to modify or withdraw
290 | the proposed rule or a written notice from the chair of the
291 | committee stating that the committee will consider an objection
292 | to the rule at its next scheduled meeting. The failure of an
293 | agency to follow the applicable rulemaking procedures or
294 | requirements set forth in this chapter shall be presumed to be
295 | material; however, the agency may rebut this presumption by
296 | showing that the substantial interests of the petitioner and the
297 | fairness of the proceedings have not been impaired.

298 | (d) Within 30 days after the hearing, the administrative
299 | law judge shall render a decision and state the reasons therefor
300 | in writing. The division shall forthwith transmit by electronic
301 | means copies of the administrative law judge's decision to the
302 | agency, the Department of State, and the committee.

303 | (e) Hearings held under this section shall be de novo in
304 | nature. The standard of proof shall be the preponderance of the
305 | evidence. The petitioner has the burden of going forward with
306 | the evidence. The agency has the burden of proving by a
307 | preponderance of the evidence that the rule, proposed rule, or
308 | agency statement is not an invalid exercise of delegated
309 | legislative authority. Hearings shall be conducted in the same
310 | manner as provided by ss. 120.569 and 120.57, except that the
311 | administrative law judge's order shall be final agency action.
312 | The petitioner and the agency whose rule is challenged shall be

313 adverse parties. Other substantially affected persons may join
314 the proceedings as intervenors on appropriate terms which shall
315 not unduly delay the proceedings. Failure to proceed under this
316 section does ~~shall~~ not constitute failure to exhaust
317 administrative remedies.

318 (3) CHALLENGING EXISTING RULES; SPECIAL PROVISIONS.—

319 (a) A substantially affected person may seek an
320 administrative determination of the invalidity of an existing
321 rule at any time during the existence of the rule. The
322 petitioner has the a burden of going forward with the evidence
323 as set forth in paragraph (1) (b), and the agency has the burden
324 of proving by a preponderance of the evidence that the existing
325 rule is not an invalid exercise of delegated legislative
326 authority as to the objections raised.

327 (b) The administrative law judge may declare all or part
328 of a rule invalid. The rule or part thereof declared invalid
329 shall become void when the time for filing an appeal expires.
330 The agency whose rule has been declared invalid in whole or part
331 shall give notice of the decision in the Florida Administrative
332 Register in the first available issue after the rule has become
333 void.

334 (c) If an existing agency rule is declared invalid, the
335 agency may no longer rely on the rule for final agency action,
336 including any final action on cases pending under s. 120.57.

337 (4) CHALLENGING AGENCY STATEMENTS DEFINED AS RULES;
338 SPECIAL PROVISIONS.—

339 (a) Any person substantially affected by an agency
340 statement may seek an administrative determination that the
341 statement violates s. 120.54(1)(a). The petition shall include
342 the text of the statement or a description of the statement and
343 shall state ~~with particularity~~ facts sufficient to show that the
344 statement constitutes a rule under s. 120.52 and that the agency
345 has not adopted the statement by the rulemaking procedure
346 provided by s. 120.54.

347 (b) The administrative law judge may extend the hearing
348 date beyond 30 days after assignment of the case for good cause.
349 Upon notification to the administrative law judge provided
350 before the final hearing that the agency has published a notice
351 of rulemaking under s. 120.54(3), such notice shall
352 automatically operate as a stay of proceedings pending adoption
353 of the statement as a rule. The administrative law judge may
354 vacate the stay for good cause shown. A stay of proceedings
355 pending rulemaking shall remain in effect so long as the agency
356 is proceeding expeditiously and in good faith to adopt the
357 statement as a rule. If a hearing is held and the petitioner
358 proves the allegations of the petition, the agency shall have
359 the burden of proving that rulemaking is not feasible or not
360 practicable under s. 120.54(1)(a).

361 (c) The administrative law judge may determine whether all
362 or part of a statement violates s. 120.54(1)(a). The decision of
363 the administrative law judge shall constitute a final order. The
364 division shall transmit a copy of the final order to the

365 Department of State and the committee. The Department of State
 366 shall publish notice of the final order in the first available
 367 issue of the Florida Administrative Register.

368 (d) If an administrative law judge enters a final order
 369 that all or part of an agency statement violates s.
 370 120.54(1) (a), the agency must immediately discontinue all
 371 reliance upon the statement or any substantially similar
 372 statement as a basis for agency action.

373 (e) If proposed rules addressing the challenged statement
 374 are determined to be an invalid exercise of delegated
 375 legislative authority as defined in s. 120.52(8) (b)-(f), the
 376 agency must immediately discontinue reliance on the statement
 377 and any substantially similar statement until rules addressing
 378 the subject are properly adopted, and the administrative law
 379 judge shall enter a final order to that effect.

380 (f) If a petitioner files a petition challenging agency
 381 action and a part of that petition alleges the presence of or
 382 reliance upon agency statements or unadopted rules, the
 383 administrative law judge may not bifurcate the petition into two
 384 cases but shall consider the challenge to the proposed agency
 385 action and the allegation that such agency action was based upon
 386 the presence of or reliance upon agency statements or unadopted
 387 rules.

388 (g)~~(f)~~ All proceedings to determine a violation of s.
 389 120.54(1) (a) shall be brought pursuant to this subsection. A
 390 proceeding pursuant to this subsection may be consolidated with

391 a proceeding under subsection (3) or under any other section of
392 this chapter. This paragraph does not prevent a party whose
393 substantial interests have been determined by an agency action
394 from bringing a proceeding pursuant to s. 120.57(1)(e).

395 Section 5. Subsection (2) of section 120.565, Florida
396 Statutes, is amended, and subsections (4) and (5) are added to
397 that section, to read:

398 120.565 Declaratory statement by agencies.—

399 (2) The petition seeking a declaratory statement shall
400 state ~~with particularity~~ the petitioner's set of circumstances
401 and shall specify the statutory provision, rule, or order that
402 the petitioner believes may apply to the set of circumstances.

403 (4) The petitioner may submit to the agency clerk a
404 statement that describes or asserts the petitioner's
405 understanding of how the statutory provision, rule, or order
406 applies to the set of circumstances. The agency has 60 days to
407 review the petitioner's statement and to either accept the
408 statement or offer changes and other clarifications to establish
409 the plain meaning of how the statutory provision, rule, or order
410 applies to the set of circumstances described in the
411 petitioner's statement.

412 (5) If the agency denies a request for a declaratory
413 statement and the petitioner appeals the denial and it is
414 determined that the agency improperly denied the request, the
415 petitioner is entitled to an award of reasonable attorney fees
416 and costs.

417 Section 6. Paragraph (1) of subsection (2) of section
418 120.569, Florida Statutes, is amended to read:

419 120.569 Decisions which affect substantial interests.—
420 (2)

421 (1) Unless the time period is waived or extended with the
422 consent of all parties, the final order in a proceeding which
423 affects substantial interests must be in writing and include
424 findings of fact, if any, and conclusions of law separately
425 stated, and it must be rendered within 90 days:

426 1. After the hearing is concluded, if conducted by the
427 agency;

428 2. After a recommended order is submitted to the agency
429 and mailed to all parties, if the hearing is conducted by an
430 administrative law judge, except that, at the election of the
431 agency, the time for rendering the final order may be extended
432 up to 10 days after the entry of a mandate on any appeal from a
433 final order under s. 120.57(1)(e)4.; or

434 3. After the agency has received the written and oral
435 material it has authorized to be submitted, if there has been no
436 hearing.

437 Section 7. Paragraphs (e), (h), and (l) of subsection (1)
438 and subsection (2) of section 120.57, Florida Statutes, are
439 amended to read:

440 120.57 Additional procedures for particular cases.—

441 (1) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS INVOLVING
442 DISPUTED ISSUES OF MATERIAL FACT.—

443 (e)1. An agency or an administrative law judge may not
444 base agency action that determines the substantial interests of
445 a party on an unadopted rule or a rule that is an invalid
446 exercise of delegated legislative authority. ~~The administrative~~
447 ~~law judge shall determine whether an agency statement~~
448 ~~constitutes an unadopted rule~~. This subparagraph does not
449 preclude application of valid adopted rules and applicable
450 provisions of law to the facts.

451 2. In a matter initiated as a result of agency action
452 proposing to determine the substantial interests of a party, a
453 party's timely petition for hearing may challenge the proposed
454 agency action based on a rule that is an invalid exercise of
455 delegated legislative authority or based on an alleged unadopted
456 rule. For challenges brought under this subparagraph:

457 a. The challenge shall be pled as a defense using the
458 procedures set forth in s. 120.56(1)(b).

459 b. Section 120.56(3)(a) applies to a challenge alleging
460 that a rule is an invalid exercise of delegated legislative
461 authority.

462 c. Section 120.56(4)(c) applies to a challenge alleging an
463 unadopted rule.

464 d. The agency has 15 days from the date of receipt of a
465 challenge under this subparagraph to serve the challenging party
466 with a notice as to whether the agency will continue to rely
467 upon the rule or the alleged unadopted rule as a basis for the
468 action determining the party's substantive interests. Failure to

469 serve or to timely serve the notice constitutes a binding
470 determination that the agency shall not rely upon the rule or
471 unadopted rule further in the proceeding. The agency shall
472 include a copy of the notice, if one was served, when it refers
473 the matter to the division under s. 120.569(2) (a).

474 e. This subparagraph does not preclude the consolidation
475 of any proceeding under s. 120.56 with any proceeding under this
476 paragraph.

477 3.2. Notwithstanding subparagraph 1., if an agency
478 demonstrates that the statute being implemented directs it to
479 adopt rules, that the agency has not had time to adopt those
480 rules because the requirement was so recently enacted, and that
481 the agency has initiated rulemaking and is proceeding
482 expeditiously and in good faith to adopt the required rules,
483 then the agency's action may be based upon those unadopted rules
484 if, subject to de novo review by the administrative law judge
485 determines that the unadopted rules would not constitute an
486 invalid exercise of delegated legislative authority if adopted
487 as rules. An unadopted rule ~~The agency action~~ shall not be
488 presumed valid ~~or invalid~~. The agency must demonstrate that the
489 unadopted rule:

490 a. Is within the powers, functions, and duties delegated
491 by the Legislature or, if the agency is operating pursuant to
492 authority vested in the agency by ~~derived from~~ the State
493 Constitution, is within that authority;

494 b. Does not enlarge, modify, or contravene the specific

495 provisions of law implemented;

496 c. Is not vague, establishes adequate standards for agency
497 decisions, or does not vest unbridled discretion in the agency;

498 d. Is not arbitrary or capricious. A rule is arbitrary if
499 it is not supported by logic or the necessary facts; a rule is
500 capricious if it is adopted without thought or reason or is
501 irrational;

502 e. Is not being applied to the substantially affected
503 party without due notice; and

504 f. Does not impose excessive regulatory costs on the
505 regulated person, county, or city.

506 4. If the agency timely serves notice of continued
507 reliance upon a challenged rule or an alleged unadopted rule
508 under sub-subparagraph 2.d., the administrative law judge shall
509 determine whether the challenged rule is an invalid exercise of
510 delegated legislative authority or whether the challenged agency
511 statement constitutes an unadopted rule and if that unadopted
512 rule meets the requirements of subparagraph 3. The determination
513 shall be rendered as a separate final order no earlier than the
514 date on which the administrative law judge serves the
515 recommended order.

516 ~~5.3.~~ The recommended and final orders in any proceeding
517 shall be governed by ~~the provisions of~~ paragraphs (k) and (l),
518 except that the administrative law judge's determination
519 ~~regarding an unadopted rule~~ under subparagraph 4. 1. ~~or~~
520 ~~subparagraph 2.~~ shall be included as a conclusion of law that

521 ~~the agency may not reject~~ ~~not be rejected by the agency unless~~
522 ~~the agency first determines from a review of the complete~~
523 ~~record, and states with particularity in the order, that such~~
524 ~~determination is clearly erroneous or does not comply with~~
525 ~~essential requirements of law. In any proceeding for review~~
526 ~~under s. 120.68, if the court finds that the agency's rejection~~
527 ~~of the determination regarding the unadopted rule does not~~
528 ~~comport with the provisions of this subparagraph, the agency~~
529 ~~action shall be set aside and the court shall award to the~~
530 ~~prevailing party the reasonable costs and a reasonable~~
531 ~~attorney's fee for the initial proceeding and the proceeding for~~
532 ~~review.~~

533 (h) Any party to a proceeding in which an administrative
534 law judge ~~of the Division of Administrative Hearings~~ has final
535 order authority may move for a summary final order when there is
536 no genuine issue as to any material fact. A summary final order
537 shall be rendered if the administrative law judge determines
538 from the pleadings, depositions, answers to interrogatories, and
539 admissions on file, together with affidavits, if any, that no
540 genuine issue as to any material fact exists and that the moving
541 party is entitled as a matter of law to the entry of a final
542 order. A summary final order shall consist of findings of fact,
543 if any, conclusions of law, a disposition or penalty, if
544 applicable, and any other information required by law to be
545 contained in the final order. This paragraph does not apply to
546 proceedings set forth in paragraph (e).

547 (1) The agency may adopt the recommended order as the
548 final order of the agency. The agency in its final order may
549 only reject or modify the conclusions of law over which it has
550 substantive jurisdiction and interpretation of administrative
551 rules over which it has substantive jurisdiction if the agency
552 determines that the conclusions of law are clearly erroneous.
553 When rejecting or modifying such conclusion of law or
554 interpretation of administrative rule, the agency must state
555 with particularity its reasons for rejecting or modifying such
556 conclusion of law or interpretation of administrative rule and
557 must make a finding that its substituted conclusion of law or
558 interpretation of administrative rule is as reasonable as, or
559 more reasonable than, that which was rejected or modified.
560 Rejection or modification of conclusions of law may not form the
561 basis for rejection or modification of findings of fact. The
562 agency may not reject or modify the findings of fact unless the
563 agency first determines from a review of the entire record, and
564 states with particularity in the order, that the findings of
565 fact were not based upon competent substantial evidence or that
566 the proceedings on which the findings were based did not comply
567 with essential requirements of law. The agency may accept the
568 recommended penalty in a recommended order, but may not reduce
569 or increase it without a review of the complete record and
570 without stating with particularity its reasons therefor in the
571 order, by citing to the record in justifying the action.

572 (2) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS NOT

573 INVOLVING DISPUTED ISSUES OF MATERIAL FACT.—In any case to which
 574 subsection (1) does not apply:

575 (a) The agency shall:

576 1. Give reasonable notice to affected persons of the
 577 action of the agency, whether proposed or already taken, or of
 578 its decision to refuse action, together with a summary of the
 579 factual, legal, and policy grounds therefor.

580 2. Give parties or their counsel the option, at a
 581 convenient time and place, to present to the agency or
 582 administrative law judge ~~hearing officer~~ written or oral
 583 evidence in opposition to the action of the agency or to its
 584 refusal to act, or a written statement challenging the grounds
 585 upon which the agency has chosen to justify its action or
 586 inaction.

587 3. If the objections of the parties are overruled, provide
 588 a written explanation within 7 days.

589 (b) An agency may not base agency action that determines
 590 the substantial interests of a party on an unadopted rule or a
 591 rule that is an invalid exercise of delegated legislative
 592 authority. No later than the date provided by the agency under
 593 subparagraph (a)2., the party may file a petition under s.
 594 120.56 challenging the rule, portion of rule, or unadopted rule
 595 upon which the agency bases its proposed action or refusal to
 596 act. The filing of a challenge under s. 120.56 pursuant to this
 597 paragraph shall stay all proceedings on the agency's proposed
 598 action or refusal to act until entry of the final order by the

599 administrative law judge. The final order shall provide notice
 600 that the stay of the pending agency action is terminated and any
 601 further stay pending appeal of the final order must be sought
 602 from the appellate court.

603 (c) ~~(b)~~ The record shall only consist of:

- 604 1. The notice and summary of grounds.
- 605 2. Evidence received.
- 606 3. All written statements submitted.
- 607 4. Any decision overruling objections.
- 608 5. All matters placed on the record after an ex parte
 609 communication.
- 610 6. The official transcript.
- 611 7. Any decision, opinion, order, or report by the
 612 presiding officer.

613 Section 8. Section 120.573, Florida Statutes, is amended
 614 to read:

615 120.573 Mediation of disputes.—

616 (1) Each announcement of an agency action that affects
 617 substantial interests shall advise whether mediation of the
 618 administrative dispute for the type of agency action announced
 619 is available and that choosing mediation does not affect the
 620 right to an administrative hearing. If the agency and all
 621 parties to the administrative action agree to mediation, in
 622 writing, within 10 days after the time period stated in the
 623 announcement for election of an administrative remedy under ss.
 624 120.569 and 120.57, the time limitations imposed by ss. 120.569

625 and 120.57 shall be tolled to allow the agency and parties to
 626 mediate the administrative dispute. The mediation shall be
 627 concluded within 60 days after ~~of~~ such agreement unless
 628 otherwise agreed by the parties. The mediation agreement shall
 629 include provisions for mediator selection, the allocation of
 630 costs and fees associated with mediation, and the mediating
 631 parties' understanding regarding the confidentiality of
 632 discussions and documents introduced during mediation. If
 633 mediation results in settlement of the administrative dispute,
 634 the agency shall enter a final order incorporating the agreement
 635 of the parties. If mediation terminates without settlement of
 636 the dispute, the agency shall notify the parties in writing that
 637 the administrative hearing processes under ss. 120.569 and
 638 120.57 are resumed.

639 (2) A party in a proceeding conducted pursuant to a
 640 petition seeking an administrative determination of the
 641 invalidity of an existing rule, proposed rule, or agency
 642 statement under s. 120.56 or a proceeding conducted pursuant to
 643 a petition seeking a declaratory statement under s. 120.565 may
 644 request mediation of the dispute under this section.

645 Section 9. Section 120.595, Florida Statutes, is amended
 646 to read:

647 120.595 Attorney ~~Attorney's~~ fees.—

648 (1) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION
 649 120.57(1).—

650 (a) The provisions of this subsection are supplemental to,

651 and do not abrogate, other provisions allowing the award of fees
 652 or costs in administrative proceedings.

653 (b) The final order in a proceeding pursuant to s.
 654 120.57(1) shall award reasonable costs and ~~a reasonable~~ attorney
 655 fees ~~attorney's fee~~ to the prevailing party if the
 656 administrative law judge determines ~~only where~~ the nonprevailing
 657 adverse party ~~has been determined by the administrative law~~
 658 ~~judge to have~~ participated in the proceeding for an improper
 659 purpose.

660 1.(e) Other than as provided in paragraph (d), in
 661 proceedings pursuant to s. 120.57(1), and upon motion, the
 662 administrative law judge shall determine whether any party
 663 participated in the proceeding for an improper purpose as
 664 defined by this subsection. ~~In making such determination, the~~
 665 ~~administrative law judge shall consider whether~~ The
 666 nonprevailing adverse party shall be presumed to have
 667 participated in the pending proceeding for an improper purpose
 668 if:

669 a. Such party was an adverse party ~~has participated in~~
 670 three ~~two~~ or more ~~other such~~ proceedings involving the same
 671 prevailing party and the same subject;

672 b. In those ~~project as an adverse party and in which such~~
 673 ~~two or more~~ proceedings the nonprevailing adverse party did not
 674 establish either the factual or legal merits of its position; it
 675 ~~and shall consider whether~~

676 c. The factual or legal position asserted in the pending

677 ~~instant~~ proceeding would have been cognizable in the previous
678 proceedings; and

679 d. The nonprevailing adverse party has not rebutted the
680 presumption of participating. ~~In such event, it shall be~~
681 ~~rebuttably presumed that the nonprevailing adverse party~~
682 ~~participated~~ in the pending proceeding for an improper purpose.

683 2.(d) If ~~In any proceeding in which the administrative law~~
684 ~~judge determines that a party is determined to have~~ participated
685 in the proceeding for an improper purpose, the recommended order
686 shall include such findings of fact and conclusions of law to
687 establish the conclusion ~~so designate~~ and shall determine the
688 award of costs and attorney ~~attorney's~~ fees.

689 (c)(e) For the purpose of this subsection:

690 1. "Improper purpose" means participation in a proceeding
691 pursuant to s. 120.57(1) primarily to harass or to cause
692 unnecessary delay or for frivolous purpose or to needlessly
693 increase the cost of litigation, licensing, or securing the
694 approval of an activity.

695 2. "Costs" has the same meaning as the costs allowed in
696 civil actions in this state as provided in chapter 57.

697 3. "Nonprevailing adverse party" means a party that has
698 failed to have substantially changed the outcome of the proposed
699 or final agency action which is the subject of a proceeding. In
700 the event that a proceeding results in any substantial
701 modification or condition intended to resolve the matters raised
702 in a party's petition, it shall be determined that the party

703 having raised the issue addressed is not a nonprevailing adverse
704 party. The recommended order shall state whether the change is
705 substantial for purposes of this subsection. In no event shall
706 the term "nonprevailing party" or "prevailing party" be deemed
707 to include any party that has intervened in a previously
708 existing proceeding to support the position of an agency.

709 (d) For challenges brought under s. 120.57(1)(e), when the
710 agency relies on a challenged rule or an alleged unadopted rule
711 pursuant to s. 120.57(1)(e)2.d., if the appellate court or the
712 administrative law judge declares the rule or portion of the
713 rule to be invalid or that the agency statement is an unadopted
714 rule that does not meet the requirements of s. 120.57(1)(e)4., a
715 judgment or order shall be rendered against the agency for
716 reasonable costs and reasonable attorney fees. An award of
717 attorney fees as provided by this paragraph may not exceed
718 \$50,000.

719 (2) CHALLENGES TO PROPOSED AGENCY RULES PURSUANT TO
720 SECTION 120.56(2).—If the appellate court or administrative law
721 judge declares a proposed rule or portion of a proposed rule
722 invalid pursuant to s. 120.56(2), a judgment or order shall be
723 rendered against the agency for reasonable costs and reasonable
724 attorney ~~attorney's~~ fees, unless the agency demonstrates that
725 ~~its actions were substantially justified or special~~
726 circumstances exist which would make the award unjust. ~~An~~
727 ~~agency's actions are "substantially justified" if there was a~~
728 ~~reasonable basis in law and fact at the time the actions were~~

729 ~~taken by the agency.~~ If the agency prevails in the proceedings,
730 the appellate court or administrative law judge shall award
731 reasonable costs and reasonable attorney ~~attorney's~~ fees against
732 a party if the appellate court or administrative law judge
733 determines that a party participated in the proceedings for an
734 improper purpose as defined by paragraph (1)(c) ~~(1)(e)~~. An ~~No~~
735 award of attorney ~~attorney's~~ fees as provided by this subsection
736 may not ~~shall~~ exceed \$50,000.

737 (3) CHALLENGES TO EXISTING AGENCY RULES PURSUANT TO
738 SECTION 120.56(3) AND (5).—If the appellate court or
739 administrative law judge declares a rule or portion of a rule
740 invalid pursuant to s. 120.56(3) or (5), a judgment or order
741 shall be rendered against the agency for reasonable costs and
742 reasonable attorney ~~attorney's~~ fees, unless the agency
743 demonstrates that ~~its actions were substantially justified or~~
744 special circumstances exist which would make the award unjust.
745 ~~An agency's actions are "substantially justified" if there was a~~
746 ~~reasonable basis in law and fact at the time the actions were~~
747 ~~taken by the agency.~~ If the agency prevails in the proceedings,
748 the appellate court or administrative law judge shall award
749 reasonable costs and reasonable attorney ~~attorney's~~ fees against
750 a party if the appellate court or administrative law judge
751 determines that a party participated in the proceedings for an
752 improper purpose as defined by paragraph (1)(c) ~~(1)(e)~~. An ~~No~~
753 award of attorney ~~attorney's~~ fees as provided by this subsection
754 may not ~~shall~~ exceed \$50,000.

755 (4) CHALLENGES TO UNADOPTED RULES ~~AGENCY ACTION~~ PURSUANT
 756 TO SECTION 120.56(4).-

757 (a) If the appellate court or administrative law judge
 758 determines that all or part of an unadopted rule ~~agency~~
 759 ~~statement~~ violates s. 120.54(1)(a), or that the agency must
 760 immediately discontinue reliance upon ~~on~~ the unadopted rule
 761 ~~statement~~ and any substantially similar statement pursuant to s.
 762 120.56(4)(e), a judgment or order shall be entered against the
 763 agency for reasonable costs and reasonable attorney ~~attorney's~~
 764 fees, unless the agency demonstrates that the statement is
 765 required by the Federal Government to implement or retain a
 766 delegated or approved program or to meet a condition to receipt
 767 of federal funds.

768 (b) Upon notification to the administrative law judge
 769 provided before the final hearing that the agency has published
 770 a notice of rulemaking under s. 120.54(3)(a), such notice shall
 771 automatically operate as a stay of proceedings pending
 772 rulemaking. The administrative law judge may vacate the stay for
 773 good cause shown. A stay of proceedings under this paragraph
 774 remains in effect so long as the agency is proceeding
 775 expeditiously and in good faith to adopt the statement as a
 776 rule. The administrative law judge shall award reasonable costs
 777 and reasonable attorney ~~attorney's~~ fees incurred ~~accrued~~ by the
 778 petitioner before ~~prior to~~ the date the notice was published,
 779 ~~unless the agency proves to the administrative law judge that it~~
 780 ~~did not know and should not have known that the statement was an~~

781 ~~unadopted rule. Attorneys' fees and costs under this paragraph~~
 782 ~~and paragraph (a) shall be awarded only upon a finding that the~~
 783 ~~agency received notice that the statement may constitute an~~
 784 ~~unadopted rule at least 30 days before a petition under s.~~
 785 ~~120.56(4) was filed and that the agency failed to publish the~~
 786 ~~required notice of rulemaking pursuant to s. 120.54(3) that~~
 787 ~~addresses the statement within that 30-day period. Notice to the~~
 788 ~~agency may be satisfied by its receipt of a copy of the s.~~
 789 ~~120.56(4) petition, a notice or other paper containing~~
 790 ~~substantially the same information, or a petition filed pursuant~~
 791 ~~to s. 120.54(7). An award of attorney attorney's fees as~~
 792 ~~provided by this paragraph may not exceed \$50,000.~~

793 (c) Notwithstanding ~~the provisions of~~ chapter 284, an
 794 award shall be paid from the budget entity of the secretary,
 795 executive director, or equivalent administrative officer of the
 796 agency, and the agency is ~~shall~~ not be entitled to payment of an
 797 award or reimbursement for payment of an award under any
 798 provision of law.

799 (d) If the agency prevails in the proceedings, the
 800 appellate court or administrative law judge shall award
 801 reasonable costs and attorney attorney's fees against a party if
 802 the appellate court or administrative law judge determines that
 803 the party participated in the proceedings for an improper
 804 purpose as defined in paragraph (1)(c) ~~(1)(e)~~ or that the party
 805 or the party's attorney knew or should have known that a claim
 806 was not supported by the material facts necessary to establish

807 the claim or would not be supported by the application of then-
808 existing law to those material facts.

809 (5) APPEALS.—When there is an appeal, the court in its
810 discretion may award reasonable attorney ~~attorney's~~ fees and
811 reasonable costs to the prevailing party if the court finds that
812 the appeal was frivolous, meritless, or an abuse of the
813 appellate process, or that the agency action that ~~which~~
814 precipitated the appeal was a gross abuse of the agency's
815 discretion. Upon review of agency action that precipitates an
816 appeal, if the court finds that the agency improperly rejected
817 or modified findings of fact in a recommended order, the court
818 shall award reasonable attorney ~~attorney's~~ fees and reasonable
819 costs to a prevailing appellant for the administrative
820 proceeding and the appellate proceeding.

821 (6) NOTICE OF INVALIDITY.—A party failing to serve a
822 notice of proposed challenge under this subsection is not
823 entitled to an award of reasonable attorney fees and reasonable
824 costs under this section.

825 (a) Before filing a petition challenging the validity of a
826 proposed rule under s. 120.56(2), an adopted rule under s.
827 120.56(3), or an agency statement defined as an unadopted rule
828 under s. 120.56(4), a substantially affected person shall serve
829 the agency head with notice of the proposed challenge. The
830 notice shall identify the proposed or adopted rule or the
831 unadopted rule that the person proposes to challenge and a brief
832 explanation of the basis for that challenge. The notice must be

833 received by the agency head at least 5 days before the filing of
 834 a petition under s. 120.56(2) and at least 30 days before the
 835 filing of a petition under s. 120.56(3) or s. 120.56(4).

836 (b) This subsection does not apply to defenses raised and
 837 challenges authorized by s. 120.57(1) (e) or s. 120.57(2) (b).

838 (7) DETERMINATION OF RECOVERABLE FEES AND COSTS.—For
 839 purposes of this chapter, s. 57.105(5), and s. 57.111, in
 840 addition to an award of reasonable attorney fees and reasonable
 841 costs, the prevailing party shall also recover reasonable
 842 attorney fees and reasonable costs incurred in litigating
 843 entitlement to, and the determination or quantification of,
 844 reasonable attorney fees and reasonable costs for the underlying
 845 matter. Reasonable attorney fees and reasonable costs awarded
 846 for litigating entitlement to, and the determination or
 847 quantification of, reasonable attorney fees and reasonable costs
 848 for the underlying matter are not subject to the limitations on
 849 amounts provided in this chapter or s. 57.111.

850 (8) ~~(6)~~ OTHER SECTIONS NOT AFFECTED.—Other provisions,
 851 including ss. 57.105 and 57.111, authorize the award of attorney
 852 attorney's fees and costs in administrative proceedings. ~~Nothing~~
 853 in This section does not ~~shall~~ affect the availability of
 854 attorney ~~attorney's~~ fees and costs as provided in those
 855 sections.

856 Section 10. Paragraph (a) of subsection (2) and subsection
 857 (9) of section 120.68, Florida Statutes, are amended to read:

858 120.68 Judicial review.—

859 (2) (a) Judicial review shall be sought in the appellate
 860 district where the agency maintains its headquarters or where a
 861 party resides or as otherwise provided by law. All proceedings
 862 shall be instituted by filing a notice of appeal or petition for
 863 review in accordance with the Florida Rules of Appellate
 864 Procedure within 30 days after the rendition of the order being
 865 appealed. If the appeal is of an order rendered in a proceeding
 866 initiated under s. 120.56 or a final order under s.
 867 120.57(1)(e)4., the agency whose rule is being challenged shall
 868 transmit a copy of the notice of appeal to the committee.

869 (9) A ~~No~~ petition challenging an agency rule as an invalid
 870 exercise of delegated legislative authority shall not be
 871 instituted pursuant to this section, except to review an order
 872 entered pursuant to a proceeding under s. 120.56, s.
 873 120.57(1)(e)5., or s. 120.57(2)(b) or an agency's findings of
 874 immediate danger, necessity, and procedural fairness
 875 prerequisite to the adoption of an emergency rule pursuant to s.
 876 120.54(4), unless the sole issue presented by the petition is
 877 the constitutionality of a rule and there are no disputed issues
 878 of fact.

879 Section 11. Section 120.695, Florida Statutes, is amended
 880 to read:

881 120.695 Notice of noncompliance; designation of minor
 882 violation of rules.—

883 (1) It is the policy of the state that the purpose of
 884 regulation is to protect the public by attaining compliance with

885 the policies established by the Legislature. Fines and other
886 penalties may be provided in order to assure compliance;
887 however, the collection of fines and the imposition of penalties
888 are intended to be secondary to the primary goal of attaining
889 compliance with an agency's rules. It is the intent of the
890 Legislature that an agency charged with enforcing rules shall
891 issue a notice of noncompliance as its first response to a minor
892 violation of a rule in any instance in which it is reasonable to
893 assume that the violator was unaware of the rule or unclear as
894 to how to comply with it.

895 (2) (a) Each agency shall issue a notice of noncompliance
896 as a first response to a minor violation of a rule. A "notice of
897 noncompliance" is a notification by the agency charged with
898 enforcing the rule issued to the person or business subject to
899 the rule. A notice of noncompliance may not be accompanied with
900 a fine or other disciplinary penalty. It must identify the
901 specific rule that is being violated, provide information on how
902 to comply with the rule, and specify a reasonable time for the
903 violator to comply with the rule. A rule is agency action that
904 regulates a business, occupation, or profession, or regulates a
905 person operating a business, occupation, or profession, and
906 that, if not complied with, may result in a disciplinary
907 penalty.

908 (b) Each agency shall review all of its rules and
909 designate those for which a violation would be a minor violation
910 and for which a notice of noncompliance must be the first

911 enforcement action taken against a person or business subject to
912 regulation. A violation of a rule is a minor violation if it
913 does not result in economic or physical harm to a person or
914 adversely affect the public health, safety, or welfare or create
915 a significant threat of such harm. ~~If an agency under the~~
916 ~~direction of a cabinet officer mails to each licensee a notice~~
917 ~~of the designated rules at the time of licensure and at least~~
918 ~~annually thereafter, the provisions of paragraph (a) may be~~
919 ~~exercised at the discretion of the agency. Such notice shall~~
920 ~~include a subject-matter index of the rules and information on~~
921 ~~how the rules may be obtained.~~

922 (c)1. No later than June 30, 2015, and after such date
923 within 3 months after any request of the rules ombudsman in the
924 Executive Office of the Governor, The agency's review and
925 designation must be completed by December 1, 1995; each agency
926 shall review under the direction of the Governor shall make a
927 report to the Governor, and each agency under the joint
928 direction of the Governor and Cabinet shall report to the
929 Governor and Cabinet by January 1, 1996, on which of its rules
930 and certify to the President of the Senate, the Speaker of the
931 House of Representatives, the Administrative Procedures
932 Committee, and the rules ombudsman those rules that have been
933 designated as rules the violation of which would be a minor
934 violation under paragraph (b), consistent with the legislative
935 intent stated in subsection (1). The rules ombudsman shall
936 promptly report to the Governor, the President of the Senate,

937 the Speaker of the House of Representatives, and the
 938 Administrative Procedures Committee each failure of an agency to
 939 timely complete the review and file the certification as
 940 required by this section.

941 2. Beginning July 1, 2015, each agency shall:

942 a. Publish all rules that the agency has designated as
 943 rules the violation of which would be a minor violation, either
 944 as a complete list on the agency's Internet web page or by
 945 incorporation of the designations in the agency's disciplinary
 946 guidelines adopted as a rule.

947 b. Ensure that all investigative and enforcement personnel
 948 are knowledgeable about the agency's designations under this
 949 section.

950 3. For each rule filed for adoption, the agency head shall
 951 certify whether any part of the rule is designated as a rule the
 952 violation of which would be a minor violation and shall update
 953 the listing required by sub-subparagraph 2.a.

954 (d) The Governor or the Governor and Cabinet, as
 955 appropriate ~~pursuant to paragraph (c)~~, may evaluate the review
 956 and designation effects of each agency subject to the direction
 957 and supervision of such authority and may direct ~~apply~~ a
 958 different designation than that applied by such ~~the~~ agency.

959 (e) Notwithstanding s. 120.52(1)(a), this section does not
 960 apply to:

961 1. The Department of Corrections;

962 2. Educational units;

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963 3. The regulation of law enforcement personnel; or

964 4. The regulation of teachers.

965 (f) Designation pursuant to this section is not subject to
966 challenge under this chapter.

967 Section 12. This act shall take effect July 1, 2015.