

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 an award under the Florida Equal Access to Justice
6 Act; amending s. 120.54, F.S.; providing procedures
7 for agencies to follow when initiating rulemaking
8 after certain public hearings; limiting reliance upon
9 an unadopted rule in certain circumstances; amending
10 s. 120.55, F.S.; providing for publication of notices
11 of rule development and of rules filed for adoption;
12 providing for additional notice of rule development,
13 proposals, and adoptions in the Florida Administrative
14 Register; requiring certain agencies to provide
15 additional e-mail notifications concerning specified
16 rulemaking and rule development activities; amending
17 s. 120.56, F.S.; specifying the burden of proof
18 necessary for a petitioner to challenge a proposed
19 rule or unadopted agency statement; amending s.
20 120.569, F.S.; granting agencies additional time to
21 render final orders in certain circumstances; amending
22 s. 120.57, F.S.; conforming proceedings that oppose
23 agency action based on an invalid or unadopted rule to
24 proceedings used for challenging rules; requiring the
25 agency to issue a notice stating whether the agency
26 will rely on the challenged rule or alleged unadopted

27 rule; authorizing the administrative law judge to make
28 certain findings on the validity of certain alleged
29 unadopted rules; authorizing the administrative law
30 judge to issue a separate final order on certain rules
31 and alleged unadopted rules; prohibiting agencies from
32 rejecting specific conclusions of law in certain final
33 orders rendered by an administrative law judge;
34 providing for the stay of proceedings not involving
35 disputed issues of fact upon timely filing of a rule
36 challenge; providing that the final order terminates
37 the stay; amending s. 120.595, F.S.; requiring a final
38 order in rule challenges to award all reasonable costs
39 and all reasonable attorney fees to a prevailing party
40 under certain circumstances; revising the criteria
41 used by an administrative law judge to determine
42 whether a party participated in a proceeding for an
43 improper purpose; removing certain exceptions from
44 requirements that attorney fees and costs be rendered
45 against the agency in proceedings in which the
46 petitioner prevails in a rule challenge; requiring
47 service of notice of invalidity to an agency before
48 bringing a rule challenge as a condition precedent to
49 the award of attorney fees and costs; authorizing the
50 recovery of reasonable attorney fees and costs
51 incurred by a prevailing party in litigating
52 entitlement to or quantification of underlying

53 attorney fees and costs; removing certain limitations
 54 on such attorney fees and costs; correcting a cross-
 55 reference; amending s. 120.68, F.S.; providing for
 56 judicial review of orders rendered in challenges to
 57 specified rules or unadopted rules; authorizing
 58 extensions for filing certain appeals or petitions for
 59 review under certain circumstances; amending s.
 60 120.695, F.S.; removing obsolete provisions with
 61 respect to required agency review and designation of
 62 minor violations; requiring agency review and
 63 certification of minor violation rules by a specified
 64 date; requiring the reporting of agency failure to
 65 complete the review and file certification of such
 66 rules; requiring minor violation certification for all
 67 rules adopted after a specified date; requiring public
 68 notice; providing applicability; conforming provisions
 69 to changes made by the act; providing an effective
 70 date.

71
 72 Be It Enacted by the Legislature of the State of Florida:

73
 74 Section 1. Paragraph (e) of subsection (3) of section
 75 57.111, Florida Statutes, is amended to read:

76 57.111 Civil actions and administrative proceedings
 77 initiated by state agencies; attorney ~~attorneys'~~ fees and
 78 costs.—

79 (3) As used in this section:

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

89 1. The agency action contradicts the declaratory statement
 90 issued by the agency upon the previous petition; or

91 2. The agency denied the previous petition under s.
 92 120.565 before initiating the current agency action against the
 93 prevailing small business party.

94 Section 2. Paragraph (c) of subsection (7) of section
 95 120.54, Florida Statutes, is amended, and paragraph (d) is added
 96 to that subsection, to read:

97 120.54 Rulemaking.—

98 (7) PETITION TO INITIATE RULEMAKING.—

99 (c) If the agency does not initiate rulemaking or
 100 otherwise comply with the requested action within 30 days after
 101 ~~following~~ the public hearing provided for in ~~by~~ paragraph (b),
 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 (d) If the agency initiates rulemaking after a public
 118 hearing provided for in paragraph (b), the agency shall publish
 119 a notice of rule development within 30 days after the hearing
 120 and file a notice of proposed rule within 180 days after the
 121 notice of rule development unless, before the 180th day, the
 122 agency publishes in the Florida Administrative Register a
 123 statement explaining its reasons for not having filed the
 124 notice. If rulemaking is initiated under this paragraph, the
 125 agency may not rely on the unadopted rule unless the agency
 126 publishes in the Florida Administrative Register a statement
 127 explaining why rulemaking under paragraph (1)(a) is not feasible
 128 or practicable until conclusion of the rulemaking proceeding.

129 Section 3. Section 120.55, Florida Statutes, is amended to
 130 read:

131 120.55 Publication.—

132 (1) The Department of State shall:

133 (a)1. Through a continuous revision and publication
134 system, compile and publish electronically, on an Internet
135 website managed by the department, the "Florida Administrative
136 Code." The Florida Administrative Code shall contain all rules
137 adopted by each agency, citing the grant of rulemaking authority
138 and the specific law implemented pursuant to which each rule was
139 adopted, all history notes as authorized in s. 120.545(7),
140 complete indexes to all rules contained in the code, and any
141 other material required or authorized by law or deemed useful by
142 the department. The electronic code shall display each rule
143 chapter currently in effect in browse mode and allow full text
144 search of the code and each rule chapter. The department may
145 contract with a publishing firm for a printed publication;
146 however, the department shall retain responsibility for the code
147 as provided in this section. The electronic publication shall be
148 the official compilation of the administrative rules of this
149 state. The Department of State shall retain the copyright over
150 the Florida Administrative Code.

151 2. Rules general in form but applicable to only one school
152 district, community college district, or county, or a part
153 thereof, or state university rules relating to internal
154 personnel or business and finance shall not be published in the
155 Florida Administrative Code. Exclusion from publication in the
156 Florida Administrative Code shall not affect the validity or

157 effectiveness of such rules.

158 3. At the beginning of the section of the code dealing
159 with an agency that files copies of its rules with the
160 department, the department shall publish the address and
161 telephone number of the executive offices of each agency, the
162 manner by which the agency indexes its rules, a listing of all
163 rules of that agency excluded from publication in the code, and
164 a statement as to where those rules may be inspected.

165 4. Forms shall not be published in the Florida
166 Administrative Code; but any form which an agency uses in its
167 dealings with the public, along with any accompanying
168 instructions, shall be filed with the committee before it is
169 used. Any form or instruction which meets the definition of
170 "rule" provided in s. 120.52 shall be incorporated by reference
171 into the appropriate rule. The reference shall specifically
172 state that the form is being incorporated by reference and shall
173 include the number, title, and effective date of the form and an
174 explanation of how the form may be obtained. Each form created
175 by an agency which is incorporated by reference in a rule notice
176 of which is given under s. 120.54(3)(a) after December 31, 2007,
177 must clearly display the number, title, and effective date of
178 the form and the number of the rule in which the form is
179 incorporated.

180 5. The department shall allow adopted rules and material
181 incorporated by reference to be filed in electronic form as
182 prescribed by department rule. When a rule is filed for adoption

183 with incorporated material in electronic form, the department's
184 publication of the Florida Administrative Code on its Internet
185 website must contain a hyperlink from the incorporating
186 reference in the rule directly to that material. The department
187 may not allow hyperlinks from rules in the Florida
188 Administrative Code to any material other than that filed with
189 and maintained by the department, but may allow hyperlinks to
190 incorporated material maintained by the department from the
191 adopting agency's website or other sites.

192 (b) Electronically publish on an Internet website managed
193 by the department a continuous revision and publication entitled
194 the "Florida Administrative Register," which shall serve as the
195 official publication and must contain:

196 1. All notices required by s. 120.54(2) and (3)(a)
197 ~~120.54(3)(a)~~, showing the text of all rules proposed for
198 consideration.

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

202 3. A notice of each request for authorization to amend or
203 repeal an existing uniform rule or for the adoption of new
204 uniform rules.

205 4. Notice of petitions for declaratory statements or
206 administrative determinations.

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

209 6. A list of rules filed for adoption in the previous 7
 210 days.

211 7. A list of all rules filed for adoption pending
 212 legislative ratification under s. 120.541(3). A rule shall be
 213 taken off the list once notice of ratification or withdrawal of
 214 such rule is received.

215 ~~8.6.~~ Any other material required or authorized by law or
 216 deemed useful by the department.

217
 218 The department may contract with a publishing firm for a printed
 219 publication of the Florida Administrative Register and make
 220 copies available on an annual subscription basis.

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

223 (d) Charge each agency using the Florida Administrative
 224 Register a space rate to cover the costs related to the Florida
 225 Administrative Register and the Florida Administrative Code.

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

228 (2) The Florida Administrative Register Internet website
 229 must allow users to:

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

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

234 (c) Subscribe to an automated e-mail notification of

235 selected notices to be sent out before or concurrently with
236 publication of the electronic Florida Administrative Register.
237 Such notification must include in the text of the e-mail a
238 summary of the content of each notice.

239 (d) View agency forms and other materials submitted to the
240 department in electronic form and incorporated by reference in
241 proposed rules.

242 (e) Comment on proposed rules.

243 (3) Publication of material required by paragraph (1)(b)
244 on the Florida Administrative Register Internet website does not
245 preclude publication of such material on an agency's website or
246 by other means.

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

250 (5) Each agency that provides an e-mail notification
251 service to inform licensees or other registered recipients of
252 notices shall use that service to notify recipients of each
253 notice required under s. 120.54(2) and (3) and provide Internet
254 links to the appropriate rule page on the Secretary of State's
255 website or Internet links to an agency website that contains the
256 proposed rule or final rule.

257 ~~(6)-(5)~~ Any publication of a proposed rule promulgated by
258 an agency, whether published in the Florida Administrative
259 Register or elsewhere, shall include, along with the rule, the
260 name of the person or persons originating such rule, the name of

261 the agency head who approved the rule, and the date upon which
 262 the rule was approved.

263 (7)~~(6)~~ Access to the Florida Administrative Register
 264 Internet website and its contents, including the e-mail
 265 notification service, shall be free for the public.

266 (8)~~(7)~~(a) All fees and moneys collected by the Department
 267 of State under this chapter shall be deposited in the Records
 268 Management Trust Fund for the purpose of paying for costs
 269 incurred by the department in carrying out this chapter.

270 (b) The unencumbered balance in the Records Management
 271 Trust Fund for fees collected pursuant to this chapter may not
 272 exceed \$300,000 at the beginning of each fiscal year, and any
 273 excess shall be transferred to the General Revenue Fund.

274 Section 4. Subsection (1), paragraph (a) of subsection
 275 (2), and subsection (4) of section 120.56, Florida Statutes, are
 276 amended to read:

277 120.56 Challenges to rules.—

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

280 (a) Any person substantially affected by a rule or a
 281 proposed rule may seek an administrative determination of the
 282 invalidity of the rule on the ground that the rule is an invalid
 283 exercise of delegated legislative authority.

284 (b) The petition challenging the validity of a proposed or
 285 adopted rule under this section ~~seeking an administrative~~
 286 ~~determination~~ must state: with particularity

287 1. The particular provisions alleged to be invalid and a
288 statement with sufficient explanation of the facts or grounds
289 for the alleged invalidity. and

290 2. Facts sufficient to show that the petitioner person
291 ~~challenging a rule~~ is substantially affected by the challenged
292 adopted rule it, or that ~~the person challenging a proposed rule~~
293 would be substantially affected by the proposed rule it.

294 (c) The petition shall be filed by electronic means with
295 the division which shall, immediately upon filing, forward by
296 electronic means copies to the agency whose rule is challenged,
297 the Department of State, and the committee. Within 10 days after
298 receiving the petition, the division director shall, if the
299 petition complies with ~~the requirements of~~ paragraph (b), assign
300 an administrative law judge who shall conduct a hearing within
301 30 days thereafter, unless the petition is withdrawn or a
302 continuance is granted by agreement of the parties or for good
303 cause shown. Evidence of good cause includes, but is not limited
304 to, written notice of an agency's decision to modify or withdraw
305 the proposed rule or a written notice from the chair of the
306 committee stating that the committee will consider an objection
307 to the rule at its next scheduled meeting. The failure of an
308 agency to follow the applicable rulemaking procedures or
309 requirements set forth in this chapter shall be presumed to be
310 material; however, the agency may rebut this presumption by
311 showing that the substantial interests of the petitioner and the
312 fairness of the proceedings have not been impaired.

313 (d) Within 30 days after the hearing, the administrative
 314 law judge shall render a decision and state the reasons therefor
 315 in writing. The division shall forthwith transmit by electronic
 316 means copies of the administrative law judge's decision to the
 317 agency, the Department of State, and the committee.

318 (e) Hearings held under this section shall be de novo in
 319 nature. The standard of proof shall be the preponderance of the
 320 evidence. Hearings shall be conducted in the same manner as
 321 provided by ss. 120.569 and 120.57, except that the
 322 administrative law judge's order shall be final agency action.
 323 The petitioner and the agency whose rule is challenged shall be
 324 adverse parties. Other substantially affected persons may join
 325 the proceedings as intervenors on appropriate terms which shall
 326 not unduly delay the proceedings. Failure to proceed under this
 327 section does ~~shall~~ not constitute failure to exhaust
 328 administrative remedies.

329 (2) CHALLENGING PROPOSED RULES; SPECIAL PROVISIONS.—

330 (a) A substantially affected person may seek an
 331 administrative determination of the invalidity of a proposed
 332 rule by filing a petition seeking such a determination with the
 333 division within 21 days after the date of publication of the
 334 notice required by s. 120.54(3)(a); within 10 days after the
 335 final public hearing is held on the proposed rule as provided by
 336 s. 120.54(3)(e)2.; within 20 days after the statement of
 337 estimated regulatory costs or revised statement of estimated
 338 regulatory costs, if applicable, has been prepared and made

339 available as provided in s. 120.541(1)(d); or within 20 days
340 after the date of publication of the notice required by s.
341 120.54(3)(d). The petition must state with particularity the
342 objections to the proposed rule and the reasons that the
343 proposed rule is an invalid exercise of delegated legislative
344 authority. The petitioner has the burden of going forward with
345 evidence sufficient to support the petition. The agency then has
346 the burden to prove by a preponderance of the evidence that the
347 proposed rule is not an invalid exercise of delegated
348 legislative authority as to the objections raised. ~~A person who~~
349 ~~is substantially affected by a change in the proposed rule may~~
350 ~~seek a determination of the validity of such change.~~ A person
351 who is not substantially affected by the proposed rule as
352 initially noticed, but who is substantially affected by the rule
353 as a result of a change, may challenge any provision of the
354 resulting proposed rule and ~~is not limited to challenging the~~
355 ~~change to the proposed rule.~~

356 (4) CHALLENGING AGENCY STATEMENTS DEFINED AS UNADOPTED
357 RULES; SPECIAL PROVISIONS.—

358 (a) Any person substantially affected by an agency
359 statement that is an unadopted rule may seek an administrative
360 determination that the statement violates s. 120.54(1)(a). The
361 petition shall include the text of the statement or a
362 description of the statement and shall state ~~with particularity~~
363 facts sufficient to show that the statement constitutes an
364 unadopted a rule under s. 120.52 and that the agency has not

365 ~~adopted the statement by the rulemaking procedure provided by s.~~
366 ~~120.54.~~

367 (b) The administrative law judge may extend the hearing
368 date beyond 30 days after assignment of the case for good cause.
369 Upon notification to the administrative law judge provided
370 before the final hearing that the agency has published a notice
371 of rulemaking under s. 120.54(3), such notice shall
372 automatically operate as a stay of proceedings pending adoption
373 of the statement as a rule. The administrative law judge may
374 vacate the stay for good cause shown. A stay of proceedings
375 pending rulemaking shall remain in effect so long as the agency
376 is proceeding expeditiously and in good faith to adopt the
377 statement as a rule.

378 (c) The petitioner has the burden of going forward with
379 evidence sufficient to support the petition. The agency then has
380 the burden to prove by a preponderance of the evidence that the
381 statement does not meet the definition of an unadopted rule, the
382 statement was adopted as a rule in compliance with s. 120.54, or
383 ~~If a hearing is held and the petitioner proves the allegations~~
384 ~~of the petition, the agency shall have the burden of proving~~
385 that rulemaking is not feasible or not practicable under s.
386 120.54(1)(a).

387 (d)~~(e)~~ The administrative law judge may determine whether
388 all or part of a statement violates s. 120.54(1)(a). The
389 decision of the administrative law judge shall constitute a
390 final order. The division shall transmit a copy of the final

391 order to the Department of State and the committee. The
392 Department of State shall publish notice of the final order in
393 the first available issue of the Florida Administrative
394 Register.

395 (e)~~(d)~~ If an administrative law judge enters a final order
396 that all or part of an unadopted rule ~~agency statement~~ violates
397 s. 120.54(1)(a), the agency must immediately discontinue all
398 reliance upon the unadopted rule ~~statement~~ or any substantially
399 similar statement as a basis for agency action.

400 (f)~~(e)~~ If proposed rules addressing the challenged
401 unadopted rule ~~statement~~ are determined to be an invalid
402 exercise of delegated legislative authority as defined in s.
403 120.52(8)(b)-(f), the agency must immediately discontinue
404 reliance upon ~~on~~ the unadopted rule ~~statement~~ and any
405 substantially similar statement until rules addressing the
406 subject are properly adopted, and the administrative law judge
407 shall enter a final order to that effect.

408 (g)~~(f)~~ All proceedings to determine a violation of s.
409 120.54(1)(a) shall be brought pursuant to this subsection. A
410 proceeding pursuant to this subsection may be consolidated with
411 a proceeding under subsection (3) or under any other section of
412 this chapter. This paragraph does not prevent a party whose
413 substantial interests have been determined by an agency action
414 from bringing a proceeding pursuant to s. 120.57(1)(e).

415 Section 5. Paragraph (1) of subsection (2) of section
416 120.569, Florida Statutes, is amended to read:

417 120.569 Decisions which affect substantial interests.—

418 (2)

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

424 1. After the hearing is concluded, if conducted by the
 425 agency;

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

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

435 Section 6. Paragraphs (e) and (h) of subsection (1) and
 436 subsection (2) of section 120.57, Florida Statutes, are amended
 437 to read:

438 120.57 Additional procedures for particular cases.—

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

441 (e)1. An agency or an administrative law judge may not
 442 base agency action that determines the substantial interests of

443 a party on an unadopted rule or a rule that is an invalid
444 exercise of delegated legislative authority. ~~The administrative~~
445 ~~law judge shall determine whether an agency statement~~
446 ~~constitutes an unadopted rule.~~ This subparagraph does not
447 preclude application of valid adopted rules and applicable
448 provisions of law to the facts.

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

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

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

460 c. Section 120.56(4)(c) applies to a challenge alleging an
461 unadopted rule.

462 d. The agency has 15 days after the date of receipt of a
463 challenge under this subparagraph to serve the challenging party
464 with a notice stating whether the agency will continue to rely
465 upon the rule or the alleged unadopted rule as a basis for the
466 action determining the party's substantive interests. Failure to
467 timely serve the notice constitutes a binding stipulation that
468 the agency shall not rely upon the rule or unadopted rule

469 further in the proceeding. The agency shall include a copy of
470 this notice upon referral of the matter to the division under s.
471 120.569(2)(a).

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

475 3.2. Notwithstanding subparagraph 1., if an agency
476 demonstrates that the statute being implemented directs it to
477 adopt rules, that the agency has not had time to adopt those
478 rules because the requirement was so recently enacted, and that
479 the agency has initiated rulemaking and is proceeding
480 expeditiously and in good faith to adopt the required rules,
481 then the agency's action may be based upon those unadopted rules
482 if, subject to de novo review by the administrative law judge
483 determines that rulemaking is neither feasible nor practicable
484 and the unadopted rules would not constitute an invalid exercise
485 of delegated legislative authority if adopted as rules. An
486 unadopted rule ~~The agency action~~ shall not be presumed valid ~~or~~
487 ~~invalid~~. The agency must demonstrate that the unadopted rule:

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

492 b. Does not enlarge, modify, or contravene the specific
493 provisions of law implemented;

494 c. Is not vague, establishes adequate standards for agency

495 decisions, or does not vest unbridled discretion in the agency;

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

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

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

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

514 ~~5.3.~~ The recommended and final orders in any proceeding
515 shall be governed by ~~the provisions of~~ paragraphs (k) and (l),
516 except that the administrative law judge's determination
517 ~~regarding an unadopted rule~~ under subparagraph 4. 1. ~~or~~
518 ~~subparagraph 2.~~ shall be included as a conclusion of law that
519 the agency may not reject ~~not be rejected by the agency unless~~
520 ~~the agency first determines from a review of the complete~~

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

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

545 (2) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS NOT
546 INVOLVING DISPUTED ISSUES OF MATERIAL FACT.—In any case to which

547 subsection (1) does not apply:

548 (a) The agency shall:

549 1. Give reasonable notice to affected persons of the
550 action of the agency, whether proposed or already taken, or of
551 its decision to refuse action, together with a summary of the
552 factual, legal, and policy grounds therefor.

553 2. Give parties or their counsel the option, at a
554 convenient time and place, to present to the agency or hearing
555 officer written or oral evidence in opposition to the action of
556 the agency or to its refusal to act, or a written statement
557 challenging the grounds upon which the agency has chosen to
558 justify its action or inaction.

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

561 (b) An agency may not base agency action that determines
562 the substantial interests of a party on an unadopted rule or a
563 rule that is an invalid exercise of delegated legislative
564 authority. No later than the date provided by the agency under
565 subparagraph (a)2. for presenting material in opposition to the
566 agency's proposed action or refusal to act, the party may file a
567 petition under s. 120.56 challenging the rule, portion of rule,
568 or unadopted rule upon which the agency bases its proposed
569 action or refusal to act. The filing of a challenge under s.
570 120.56 pursuant to this paragraph shall stay all proceedings on
571 the agency's proposed action or refusal to act until entry of
572 the final order by the administrative law judge. The final order

573 shall provide additional notice that the stay of the pending
 574 agency action is terminated and that any further stay pending
 575 appeal of the final order must be sought from the appellate
 576 court.

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

- 578 1. The notice and summary of grounds.
- 579 2. Evidence received.
- 580 3. All written statements submitted.
- 581 4. Any decision overruling objections.
- 582 5. All matters placed on the record after an ex parte
- 583 communication.
- 584 6. The official transcript.
- 585 7. Any decision, opinion, order, or report by the
- 586 presiding officer.

587 Section 7. Section 120.595, Florida Statutes, is amended
 588 to read:

589 120.595 Attorney ~~Attorney's~~ fees and costs.—

590 (1) CHALLENGES ~~TO AGENCY ACTION~~ PURSUANT TO SECTION 120.56
 591 OR SECTION 120.57(1).—

592 (a) This ~~The provisions of this~~ subsection is ~~are~~
 593 supplemental to, and does ~~de~~ not abrogate, other provisions
 594 allowing the award of fees or costs in administrative
 595 proceedings.

596 (b) The final order in a proceeding conducted pursuant to
 597 s. 120.56 or s. 120.57(1) shall award all reasonable costs and
 598 all a reasonable attorney fees ~~attorney's fee~~ to the prevailing

599 party only if the administrative law judge determines that ~~only~~
600 ~~where the nonprevailing adverse party has been determined by the~~
601 ~~administrative law judge to have~~ participated in the proceeding
602 for an improper purpose.

603 (c) In proceedings conducted pursuant to s. 120.57(1), it
604 shall be rebuttably presumed that a nonprevailing adverse party
605 participated in the current proceeding for an improper purpose
606 if the administrative law judge determines that:

607 1. The nonprevailing adverse party participated as an
608 adverse party in two or more other such proceedings involving
609 the same prevailing party and project and in which the
610 nonprevailing adverse party did not establish either the factual
611 or legal merits of its position.

612 2. The factual or legal position asserted in the current
613 proceeding would have been cognizable in the previous proceeding
614 ~~and upon motion, the administrative law judge shall determine~~
615 ~~whether any party participated in the proceeding for an improper~~
616 ~~purpose as defined by this subsection. In making such~~
617 ~~determination, the administrative law judge shall consider~~
618 ~~whether the nonprevailing adverse party has participated in two~~
619 ~~or more other such proceedings involving the same prevailing~~
620 ~~party and the same project as an adverse party and in which such~~
621 ~~two or more proceedings the nonprevailing adverse party did not~~
622 ~~establish either the factual or legal merits of its position,~~
623 ~~and shall consider whether the factual or legal position~~
624 ~~asserted in the instant proceeding would have been cognizable in~~

625 ~~the previous proceedings. In such event, it shall be rebuttably~~
626 ~~presumed that the nonprevailing adverse party participated in~~
627 ~~the pending proceeding for an improper purpose.~~

628 (d) In a ~~any~~ proceeding in which the administrative law
629 judge determines that a party participated in the proceeding for
630 an improper purpose, the recommended order shall ~~so~~ designate
631 that party and shall determine the award of costs and attorney
632 attorney's fees.

633 (e) For purposes ~~the purpose~~ of this subsection, the term:

634 1. "Improper purpose" means participation in a proceeding
635 pursuant to s. 120.57(1) primarily to harass or to cause
636 unnecessary delay or for frivolous purpose or to needlessly
637 increase the cost of litigation, licensing, or securing the
638 approval of an activity.

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

641 3. "Nonprevailing adverse party" means a party that has
642 failed to have substantially changed the outcome of the proposed
643 or final agency action which is the subject of a proceeding. If
644 ~~In the event that~~ a proceeding results in any substantial
645 modification or condition intended to resolve the matters raised
646 in a party's petition, it shall be determined that the party
647 having raised the issue addressed is not a nonprevailing adverse
648 party. The recommended order shall state whether the change is
649 substantial for purposes of this subsection. ~~In no event shall~~
650 The term "nonprevailing party" or "prevailing party" does not be

651 ~~deemed to~~ include a ~~any~~ party that has intervened in a
652 previously existing proceeding to support the position of an
653 agency.

654 (f) For challenges brought under s. 120.57(1)(e), when the
655 agency relies on a challenged rule or an alleged unadopted rule
656 pursuant to s. 120.57(1)(e)2.d., if the appellate court or the
657 administrative law judge declares the rule or portion of the
658 rule to be invalid or that the agency statement is an unadopted
659 rule that does not meet the requirements of s. 120.57(1)(e)4., a
660 judgment or order shall be rendered against the agency for
661 reasonable costs and reasonable attorney fees unless the agency
662 demonstrates that special circumstances exist that make the
663 award unjust. An award of attorney fees as provided by this
664 paragraph may not exceed \$50,000.

665 (2) CHALLENGES TO PROPOSED AGENCY RULES PURSUANT TO
666 SECTION 120.56(2).—If the appellate court or administrative law
667 judge declares a proposed rule or portion of a proposed rule
668 invalid pursuant to s. 120.56(2), a judgment or order shall be
669 rendered against the agency for reasonable costs and reasonable
670 attorney ~~attorney's~~ fees, unless the agency demonstrates that
671 ~~its actions were substantially justified or special~~
672 circumstances exist ~~that~~ ~~which would~~ make the award unjust. An
673 ~~agency's actions are "substantially justified" if there was a~~
674 ~~reasonable basis in law and fact at the time the actions were~~
675 ~~taken by the agency. If the agency prevails in the proceedings,~~
676 ~~the appellate court or administrative law judge shall award~~

677 ~~reasonable costs and reasonable attorney's fees against a party~~
678 ~~if the appellate court or administrative law judge determines~~
679 ~~that a party participated in the proceedings for an improper~~
680 ~~purpose as defined by paragraph (1)(c). No award of attorney~~
681 ~~attorney's fees as provided by this subsection may not shall~~
682 exceed \$50,000.

683 (3) CHALLENGES TO EXISTING AGENCY RULES PURSUANT TO
684 SECTION 120.56(3) AND (5).—If the appellate court or
685 administrative law judge declares a rule or portion of a rule
686 invalid pursuant to s. 120.56(3) or (5), a judgment or order
687 shall be rendered against the agency for reasonable costs and
688 reasonable attorney ~~attorney's~~ fees, unless the agency
689 demonstrates that ~~its actions were substantially justified or~~
690 ~~special circumstances exist~~ that ~~which would~~ make the award
691 unjust. An ~~agency's actions are "substantially justified" if~~
692 ~~there was a reasonable basis in law and fact at the time the~~
693 ~~actions were taken by the agency. If the agency prevails in the~~
694 ~~proceedings, the appellate court or administrative law judge~~
695 ~~shall award reasonable costs and reasonable attorney's fees~~
696 ~~against a party if the appellate court or administrative law~~
697 ~~judge determines that a party participated in the proceedings~~
698 ~~for an improper purpose as defined by paragraph (1)(c). No~~
699 award of attorney ~~attorney's~~ fees as provided by this subsection
700 may not ~~shall~~ exceed \$50,000.

701 (4) CHALLENGES TO UNADOPTED RULES ~~AGENCY ACTION~~ PURSUANT
702 TO SECTION 120.56(4).—

703 (a) If the appellate court or administrative law judge
 704 determines that all or part of an unadopted rule ~~agency~~
 705 ~~statement~~ violates s. 120.54(1)(a), or that the agency must
 706 immediately discontinue reliance upon ~~on~~ the unadopted rule
 707 ~~statement~~ and any substantially similar statement pursuant to s.
 708 120.56(4)(f) ~~120.56(4)(e)~~, a judgment or order shall be entered
 709 against the agency for reasonable costs and reasonable attorney
 710 ~~attorney's~~ fees, unless the agency demonstrates that the
 711 statement is required by the Federal Government to implement or
 712 retain a delegated or approved program or to meet a condition to
 713 receipt of federal funds.

714 (b) Upon notification to the administrative law judge
 715 provided before the final hearing that the agency has published
 716 a notice of rulemaking under s. 120.54(3)(a), such notice shall
 717 automatically operate as a stay of proceedings pending
 718 rulemaking. The administrative law judge may vacate the stay for
 719 good cause shown. A stay of proceedings under this paragraph
 720 remains in effect so long as the agency is proceeding
 721 expeditiously and in good faith to adopt the statement as a
 722 rule. The administrative law judge shall award reasonable costs
 723 and reasonable attorney ~~attorney's~~ fees incurred ~~accrued~~ by the
 724 petitioner before ~~prior to~~ the date the notice was published,
 725 ~~unless the agency proves to the administrative law judge that it~~
 726 ~~did not know and should not have known that the statement was an~~
 727 ~~unadopted rule. Attorneys' fees and costs under this paragraph~~
 728 ~~and paragraph (a) shall be awarded only upon a finding that the~~

729 ~~agency received notice that the statement may constitute an~~
730 ~~unadopted rule at least 30 days before a petition under s.~~
731 ~~120.56(4) was filed and that the agency failed to publish the~~
732 ~~required notice of rulemaking pursuant to s. 120.54(3) that~~
733 ~~addresses the statement within that 30-day period. Notice to the~~
734 ~~agency may be satisfied by its receipt of a copy of the s.~~
735 ~~120.56(4) petition, a notice or other paper containing~~
736 ~~substantially the same information, or a petition filed pursuant~~
737 ~~to s. 120.54(7). An award of attorney attorney's fees as~~
738 ~~provided by this paragraph may not exceed \$50,000.~~

739 (c) Notwithstanding ~~the provisions of~~ chapter 284, an
740 award shall be paid from the budget entity of the secretary,
741 executive director, or equivalent administrative officer of the
742 agency, and the agency is ~~shall~~ not be entitled to payment of an
743 award or reimbursement for payment of an award under any
744 provision of law.

745 ~~(d) If the agency prevails in the proceedings, the~~
746 ~~appellate court or administrative law judge shall award~~
747 ~~reasonable costs and attorney's fees against a party if the~~
748 ~~appellate court or administrative law judge determines that the~~
749 ~~party participated in the proceedings for an improper purpose as~~
750 ~~defined in paragraph (1)(c) or that the party or the party's~~
751 ~~attorney knew or should have known that a claim was not~~
752 ~~supported by the material facts necessary to establish the claim~~
753 ~~or would not be supported by the application of then-existing~~
754 ~~law to those material facts.~~

755 (5) APPEALS.—When there is an appeal, the court in its
756 discretion may award reasonable attorney ~~attorney's~~ fees and
757 reasonable costs to the prevailing party if the court finds that
758 the appeal was frivolous, meritless, or an abuse of the
759 appellate process, or that the agency action which precipitated
760 the appeal was a gross abuse of the agency's discretion. Upon
761 review of agency action that precipitates an appeal, if the
762 court finds that the agency improperly rejected or modified
763 findings of fact in a recommended order, the court shall award
764 reasonable attorney ~~attorney's~~ fees and reasonable costs to a
765 prevailing appellant for the administrative proceeding and the
766 appellate proceeding.

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

771 (a) Before filing a petition challenging the validity of a
772 proposed rule under s. 120.56(2), an adopted rule under s.
773 120.56(3), or an agency statement defined as an unadopted rule
774 under s. 120.56(4), a substantially affected person shall serve
775 the agency head with notice of the proposed challenge. The
776 notice shall identify the proposed or adopted rule or the
777 unadopted rule that the person proposes to challenge and a brief
778 explanation of the basis for that challenge. The notice must be
779 received by the agency head at least 5 days before the filing of
780 a petition under s. 120.56(2) and at least 30 days before the

781 filing of a petition under s. 120.56(3) or s. 120.56(4).

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

784 (7) DETERMINATION OF RECOVERABLE FEES AND COSTS.—For
 785 purposes of this chapter, s. 57.105(5), and s. 57.111, in
 786 addition to an award of reasonable attorney fees and costs, the
 787 prevailing party, if the prevailing party is not a state agency,
 788 shall also recover reasonable attorney fees and costs incurred
 789 in litigating entitlement to, and the determination or
 790 quantification of, reasonable attorney fees and costs for the
 791 underlying matter. Reasonable attorney fees and costs awarded
 792 for litigating entitlement to, and the determination or
 793 quantification of, reasonable attorney fees and costs for the
 794 underlying matter are not subject to the limitations on amounts
 795 provided in this chapter or s. 57.111.

796 (8) ~~(6)~~ OTHER SECTIONS NOT AFFECTED.—Other provisions,
 797 including ss. 57.105 and 57.111, authorize the award of attorney
 798 ~~attorney's~~ fees and costs in administrative proceedings. ~~Nothing~~
 799 ~~in~~ This section does not ~~shall~~ affect the availability of
 800 attorney ~~attorney's~~ fees and costs as provided in those
 801 sections.

802 Section 8. Subsections (1), (2), and (9) of section
 803 120.68, Florida Statutes, are amended to read:

804 120.68 Judicial review.—

805 (1) (a) A party who is adversely affected by final agency
 806 action is entitled to judicial review.

807 (b) A preliminary, procedural, or intermediate order of
 808 the agency or of an administrative law judge of the Division of
 809 Administrative Hearings, or a final order under s.
 810 120.57(1)(e)4., is immediately reviewable if review of the final
 811 agency decision would not provide an adequate remedy.

812 (2)(a) Judicial review shall be sought in the appellate
 813 district where the agency maintains its headquarters or where a
 814 party resides or as otherwise provided by law.

815 (b) All proceedings shall be instituted by filing a notice
 816 of appeal or petition for review in accordance with the Florida
 817 Rules of Appellate Procedure within 30 days after the date that
 818 ~~rendition of~~ the order being appealed is filed with the agency
 819 clerk. If a party receives notice of the filing of the order
 820 later than the 25th day after the filing of the order with the
 821 agency clerk, the time by which the party must file a notice of
 822 appeal or petition for review is extended for 10 days after the
 823 date that the party received the notice of the filing of the
 824 order. If the appeal is of an order rendered in a proceeding
 825 initiated under s. 120.56 or a final order under s.
 826 120.57(1)(e)4., the agency whose rule is being challenged shall
 827 transmit a copy of the notice of appeal to the committee.

828 (c) ~~(b)~~ When proceedings under this chapter are
 829 consolidated for final hearing and the parties to the
 830 consolidated proceeding seek review of final or interlocutory
 831 orders in more than one district court of appeal, the courts of
 832 appeal are authorized to transfer and consolidate the review

833 proceedings. The court may transfer such appellate proceedings
834 on its own motion, upon motion of a party to one of the
835 appellate proceedings, or by stipulation of the parties to the
836 appellate proceedings. In determining whether to transfer a
837 proceeding, the court may consider such factors as the
838 interrelationship of the parties and the proceedings, the
839 desirability of avoiding inconsistent results in related
840 matters, judicial economy, and the burden on the parties of
841 reproducing the record for use in multiple appellate courts.

842 (9) A ~~No~~ petition challenging an agency rule as an invalid
843 exercise of delegated legislative authority shall not be
844 instituted pursuant to this section, except to review an order
845 entered pursuant to a proceeding under s. 120.56, s.
846 120.57(1)(e)5., or s. 120.57(2)(b) or an agency's findings of
847 immediate danger, necessity, and procedural fairness
848 prerequisite to the adoption of an emergency rule pursuant to s.
849 120.54(4), unless the sole issue presented by the petition is
850 the constitutionality of a rule and there are no disputed issues
851 of fact.

852 Section 9. Section 120.695, Florida Statutes, is amended
853 to read:

854 120.695 Notice of noncompliance; designation of minor
855 violation of rules.—

856 (1) It is the policy of the state that the purpose of
857 regulation is to protect the public by attaining compliance with
858 the policies established by the Legislature. Fines and other

859 penalties may be provided in order to assure compliance;
860 however, the collection of fines and the imposition of penalties
861 are intended to be secondary to the primary goal of attaining
862 compliance with an agency's rules. It is the intent of the
863 Legislature that an agency charged with enforcing rules shall
864 issue a notice of noncompliance as its first response to a minor
865 violation of a rule in any instance in which it is reasonable to
866 assume that the violator was unaware of the rule or unclear as
867 to how to comply with it.

868 (2) (a) Each agency shall issue a notice of noncompliance
869 as a first response to a minor violation of a rule. A "notice of
870 noncompliance" is a notification by the agency charged with
871 enforcing the rule issued to the person or business subject to
872 the rule. A notice of noncompliance may not be accompanied with
873 a fine or other disciplinary penalty. It must identify the
874 specific rule that is being violated, provide information on how
875 to comply with the rule, and specify a reasonable time for the
876 violator to comply with the rule. A rule is agency action that
877 regulates a business, occupation, or profession, or regulates a
878 person operating a business, occupation, or profession, and
879 that, if not complied with, may result in a disciplinary
880 penalty.

881 (b) Each agency shall review all of its rules and
882 designate those for which a violation would be a minor violation
883 and for which a notice of noncompliance must be the first
884 enforcement action taken against a person or business subject to

885 regulation. A violation of a rule is a minor violation if it
886 does not result in economic or physical harm to a person or
887 adversely affect the public health, safety, or welfare or create
888 a significant threat of such harm. ~~If an agency under the~~
889 ~~direction of a cabinet officer mails to each licensee a notice~~
890 ~~of the designated rules at the time of licensure and at least~~
891 ~~annually thereafter, the provisions of paragraph (a) may be~~
892 ~~exercised at the discretion of the agency. Such notice shall~~
893 ~~include a subject-matter index of the rules and information on~~
894 ~~how the rules may be obtained.~~

895 (c)1. No later than June 30, 2016, and after such date
896 within 3 months after any request of the rules ombudsman in the
897 Executive Office of the Governor, The agency's review and
898 designation must be completed by December 1, 1995; each agency
899 shall review under the direction of the Governor shall make a
900 report to the Governor, and each agency under the joint
901 direction of the Governor and Cabinet shall report to the
902 Governor and Cabinet by January 1, 1996, on which of its rules
903 and certify to the President of the Senate, the Speaker of the
904 House of Representatives, the committee, and the rules ombudsman
905 those rules that have been designated as rules the violation of
906 which would be a minor violation under paragraph (b), consistent
907 with the legislative intent stated in subsection (1). The rules
908 ombudsman shall promptly report to the Governor, the President
909 of the Senate, the Speaker of the House of Representatives, and

910 the committee the failure of any agency to timely complete the
 911 review and file the certification as required by this section.

912 2. Beginning July 1, 2016, each agency shall:

913 a. Publish all rules that the agency has designated as
 914 rules the violation of which would be a minor violation, either
 915 as a complete list on the agency's website or by incorporation
 916 of the designations in the agency's disciplinary guidelines
 917 adopted as a rule.

918 b. Ensure that all investigative and enforcement personnel
 919 are knowledgeable about the agency's designations under this
 920 section.

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

925 (d) The Governor or the Governor and Cabinet, as
 926 appropriate ~~pursuant to paragraph (c)~~, may evaluate the review
 927 and designation effects of each agency subject to the direction
 928 and supervision of such authority and may direct ~~apply~~ a
 929 different designation than that applied by such ~~the~~ agency.

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

- 932 1. The Department of Corrections;
- 933 2. Educational units;
- 934 3. The regulation of law enforcement personnel; or
- 935 4. The regulation of teachers.

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936 (f) Designation pursuant to this section is not subject to
937 challenge under this chapter.

938 Section 10. This act shall take effect July 1, 2015.