

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 following public hearings; limiting reliance upon an
9 unadopted rule in certain circumstances; amending s.
10 120.55, F.S.; providing for publication of notices of
11 rule development and of rules filed for adoption;
12 providing additional notice of rule development,
13 proposals, and adoptions; amending s. 120.56, F.S.;
14 providing that a petitioner challenging a proposed
15 rule or unadopted agency statement has the burden of
16 going forward with evidence sufficient to support the
17 petition; amending s. 120.569, F.S.; granting agencies
18 additional time to render final orders in certain
19 circumstances; amending s. 120.57, F.S.; conforming
20 proceedings that oppose agency action based on an
21 invalid or unadopted rule to proceedings used for
22 challenging rules; requiring the agency to issue a
23 notice stating whether the agency will rely on the
24 challenged rule or alleged unadopted rule; authorizing
25 the administrative law judge to make certain findings
26 on the validity of certain alleged unadopted rules;

27 | authorizing the administrative law judge to issue a
28 | separate final order on certain rules and alleged
29 | unadopted rules; prohibiting agencies from rejecting
30 | specific conclusions of law; providing for stay of
31 | proceedings not involving disputed issues of fact upon
32 | timely filing of a rule challenge; providing that the
33 | final order terminates the stay; amending s. 120.595,
34 | F.S.; requiring a final order in specified
35 | administrative proceedings to award all reasonable
36 | costs and all reasonable attorney fees to a prevailing
37 | party under certain circumstances; revising the
38 | criteria used by an administrative law judge to
39 | determine whether a party participated in a proceeding
40 | for an improper purpose; removing certain exceptions
41 | from requirements that attorney fees and costs be
42 | rendered against the agency in proceedings in which
43 | the petitioner prevails in a rule challenge; requiring
44 | service of notice of invalidity to an agency before
45 | bringing a rule challenge as a condition precedent to
46 | the award of attorney fees and costs; authorizing the
47 | recovery of reasonable attorney fees and costs
48 | incurred by a prevailing party in litigating
49 | entitlement to or quantification of underlying
50 | attorney fees and costs; removing certain limitations
51 | on such attorney fees and costs; correcting a cross-
52 | reference; amending s. 120.68, F.S.; providing for

53 | appellate review of orders rendered in challenges to
 54 | specified rules or unadopted rules; authorizing
 55 | extensions for filing certain appeals or petitions for
 56 | review under certain circumstances; amending s.
 57 | 120.695, F.S.; removing obsolete provisions with
 58 | respect to required agency review and designation of
 59 | minor violations; requiring agency review and
 60 | certification of minor violation rules by a specified
 61 | date; requiring the reporting of agency failure to
 62 | complete the review and file certification of such
 63 | rules; requiring minor violation certification for all
 64 | rules adopted after a specified date; requiring public
 65 | notice; providing nonapplicability; conforming
 66 | provisions; providing an effective date.

67 |

68 | Be It Enacted by the Legislature of the State of Florida:

69 |

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

72 | 57.111 Civil actions and administrative proceedings
 73 | initiated by state agencies; attorney ~~attorneys'~~ fees and
 74 | costs.—

75 | (3) As used in this section:

76 | (e) A proceeding is "substantially justified" if it had a
 77 | reasonable basis in law and fact at the time it was initiated by
 78 | a state agency. A proceeding is not substantially justified if

79 the specified law, rule, or order at issue in the current agency
 80 action is the subject upon which the prevailing small business
 81 party previously petitioned the agency for a declaratory
 82 statement under s. 120.565; the current agency action involves
 83 identical or substantially similar facts and circumstances as
 84 those raised in the previous petition; and:

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

87 2. The agency denied the previous petition under s.
 88 120.565 before initiating the current agency action against the
 89 prevailing small business party.

90 Section 2. Paragraph (c) of subsection (7) of section
 91 120.54, Florida Statutes, is amended, and paragraph (d) is added
 92 to that subsection, to read:

93 120.54 Rulemaking.—

94 (7) PETITION TO INITIATE RULEMAKING.—

95 (c) If the agency does not initiate rulemaking or
 96 otherwise comply with the requested action within 30 days after
 97 ~~following~~ the public hearing provided for in ~~by~~ paragraph (b),
 98 ~~if the agency does not initiate rulemaking or otherwise comply~~
 99 ~~with the requested action,~~ the agency shall publish in the
 100 Florida Administrative Register a statement of its reasons for
 101 not initiating rulemaking or otherwise complying with the
 102 requested action, and of any changes it will make in the scope
 103 or application of the unadopted rule. The agency shall file the
 104 statement with the committee. The committee shall forward a copy

105 of the statement to the substantive committee with primary
 106 oversight jurisdiction of the agency in each house of the
 107 Legislature. The committee or the committee with primary
 108 oversight jurisdiction may hold a hearing directed to the
 109 statement of the agency. The committee holding the hearing may
 110 recommend to the Legislature the introduction of legislation
 111 making the rule a statutory standard or limiting or otherwise
 112 modifying the authority of the agency.

113 (d) If the agency initiates rulemaking following a public
 114 hearing under paragraph (b), the agency shall publish its notice
 115 of rule development within 30 days after the hearing and file
 116 its notice of proposed rule within 180 days after the notice of
 117 rule development unless, before the 180th day, the agency
 118 publishes in the Florida Administrative Register a statement
 119 explaining its reasons why a proposed rule has not been filed.
 120 If rulemaking is initiated under this paragraph, the agency may
 121 not rely on the unadopted rule unless the agency publishes in
 122 the Florida Administrative Register a statement explaining why
 123 rulemaking under paragraph (1)(a) is not feasible or practicable
 124 until conclusion of the rulemaking proceeding.

125 Section 3. Section 120.55, Florida Statutes, is amended to
 126 read:

127 120.55 Publication.—

128 (1) The Department of State shall:

129 (a)1. Through a continuous revision and publication
 130 system, compile and publish electronically, on an Internet

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

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

154 3. At the beginning of the section of the code dealing
 155 with an agency that files copies of its rules with the
 156 department, the department shall publish the address and

157 | telephone number of the executive offices of each agency, the
 158 | manner by which the agency indexes its rules, a listing of all
 159 | rules of that agency excluded from publication in the code, and
 160 | a statement as to where those rules may be inspected.

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

176 | 5. The department shall allow adopted rules and material
 177 | incorporated by reference to be filed in electronic form as
 178 | prescribed by department rule. When a rule is filed for adoption
 179 | with incorporated material in electronic form, the department's
 180 | publication of the Florida Administrative Code on its Internet
 181 | website must contain a hyperlink from the incorporating
 182 | reference in the rule directly to that material. The department

183 may not allow hyperlinks from rules in the Florida
 184 Administrative Code to any material other than that filed with
 185 and maintained by the department, but may allow hyperlinks to
 186 incorporated material maintained by the department from the
 187 adopting agency's website or other sites.

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

192 1. All notices required by s. 120.54(2) and (3)(a) ~~s.~~
 193 ~~120.54(3)(a)~~, showing the text of all rules proposed for
 194 consideration.

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

198 3. A notice of each request for authorization to amend or
 199 repeal an existing uniform rule or for the adoption of new
 200 uniform rules.

201 4. Notice of petitions for declaratory statements or
 202 administrative determinations.

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

205 6. A listing of rules filed for adoption in the previous 7
 206 days.

207 7. A listing of all rules filed for adoption pending
 208 legislative ratification under s. 120.541(3) until notice of
 209 ratification or withdrawal of such rule is received.

210 ~~8.6.~~ Any other material required or authorized by law or
 211 deemed useful by the department.

212

213 The department may contract with a publishing firm for a printed
 214 publication of the Florida Administrative Register and make
 215 copies available on an annual subscription basis.

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

218 (d) Charge each agency using the Florida Administrative
 219 Register a space rate to cover the costs related to the Florida
 220 Administrative Register and the Florida Administrative Code.

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

223 (2) The Florida Administrative Register Internet website
 224 must allow users to:

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

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

229 (c) Subscribe to an automated e-mail notification of
 230 selected notices to be sent out before or concurrently with
 231 publication of the electronic Florida Administrative Register.

232 Such notification must include in the text of the e-mail a
 233 summary of the content of each notice.

234 (d) View agency forms and other materials submitted to the
 235 department in electronic form and incorporated by reference in
 236 proposed rules.

237 (e) Comment on proposed rules.

238 (3) Publication of material required by paragraph (1) (b)
 239 on the Florida Administrative Register Internet website does not
 240 preclude publication of such material on an agency's website or
 241 by other means.

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

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

252 ~~(6)~~(5) Any publication of a proposed rule promulgated by
 253 an agency, whether published in the Florida Administrative
 254 Register or elsewhere, shall include, along with the rule, the
 255 name of the person or persons originating such rule, the name of
 256 the agency head who approved the rule, and the date upon which
 257 the rule was approved.

258 (7)~~(6)~~ Access to the Florida Administrative Register
 259 Internet website and its contents, including the e-mail
 260 notification service, shall be free for the public.

261 (8)~~(7)~~(a) All fees and moneys collected by the Department
 262 of State under this chapter shall be deposited in the Records
 263 Management Trust Fund for the purpose of paying for costs
 264 incurred by the department in carrying out this chapter.

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

269 Section 4. Subsection (1), paragraph (a) of subsection
 270 (2), and subsection (4) of section 120.56, Florida Statutes, are
 271 amended to read:

272 120.56 Challenges to rules.—

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

275 (a) Any person substantially affected by a rule or a
 276 proposed rule may seek an administrative determination of the
 277 invalidity of the rule on the ground that the rule is an invalid
 278 exercise of delegated legislative authority.

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

282 1. The particular provisions alleged to be invalid and a
 283 statement ~~with sufficient explanation~~ of the facts or grounds

284 for the alleged invalidity. ~~and~~

285 2. Facts sufficient to show that the petitioner ~~person~~
 286 ~~challenging a rule~~ is substantially affected by the challenged
 287 adopted rule or it, ~~or that the person challenging a proposed~~
 288 ~~rule~~ would be substantially affected by the proposed rule ~~it.~~

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

308 (d) Within 30 days after the hearing, the administrative
 309 law judge shall render a decision and state the reasons therefor

310 in writing. The division shall forthwith transmit by electronic
 311 means copies of the administrative law judge's decision to the
 312 agency, the Department of State, and the committee.

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

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

325 (a) A substantially affected person may seek an
 326 administrative determination of the invalidity of a proposed
 327 rule by filing a petition seeking such a determination with the
 328 division within 21 days after the date of publication of the
 329 notice required by s. 120.54(3)(a); within 10 days after the
 330 final public hearing is held on the proposed rule as provided by
 331 s. 120.54(3)(e)2.; within 20 days after the statement of
 332 estimated regulatory costs or revised statement of estimated
 333 regulatory costs, if applicable, has been prepared and made
 334 available as provided in s. 120.541(1)(d); or within 20 days
 335 after the date of publication of the notice required by s.

336 120.54(3)(d). The petition must state with particularity the
 337 objections to the proposed rule and the reasons that the
 338 proposed rule is an invalid exercise of delegated legislative
 339 authority. The petitioner has the burden of going forward with
 340 evidence sufficient to support the petition. The agency then has
 341 the burden to prove by a preponderance of the evidence that the
 342 proposed rule is not an invalid exercise of delegated
 343 legislative authority as to the objections raised. ~~A person who~~
 344 ~~is substantially affected by a change in the proposed rule may~~
 345 ~~seek a determination of the validity of such change.~~ A person
 346 who is not substantially affected by the proposed rule as
 347 initially noticed, but who is substantially affected by the rule
 348 as a result of a change, may challenge any provision of the
 349 resulting proposed rule and ~~is not limited to challenging the~~
 350 ~~change to the proposed rule.~~

351 (4) CHALLENGING AGENCY STATEMENTS DEFINED AS UNADOPTED
 352 RULES; SPECIAL PROVISIONS.—

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

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

375 (c) The petitioner has the burden of going forward with
 376 evidence sufficient to support the petition. The agency then has
 377 the burden to prove by a preponderance of the evidence that the
 378 statement does not meet the definition of an unadopted rule, the
 379 statement was adopted as a rule in compliance with s. 120.54, or
 380 that rulemaking is not feasible or not practicable under s.
 381 120.54(1) (a) .

382 (d)~~(e)~~ The administrative law judge may determine whether
 383 all or part of a statement violates s. 120.54(1) (a). The
 384 decision of the administrative law judge shall constitute a
 385 final order. The division shall transmit a copy of the final
 386 order to the Department of State and the committee. The
 387 Department of State shall publish notice of the final order in

388 the first available issue of the Florida Administrative
 389 Register.

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

395 (f)~~(e)~~ If proposed rules addressing the challenged
 396 unadopted rule ~~statement~~ are determined to be an invalid
 397 exercise of delegated legislative authority as defined in s.
 398 120.52(8) (b)-(f), the agency must immediately discontinue
 399 reliance upon ~~on~~ the unadopted rule ~~statement~~ and any
 400 substantially similar statement until rules addressing the
 401 subject are properly adopted, and the administrative law judge
 402 shall enter a final order to that effect.

403 (g)~~(f)~~ All proceedings to determine a violation of s.
 404 120.54(1) (a) shall be brought pursuant to this subsection. A
 405 proceeding pursuant to this subsection may be consolidated with
 406 a proceeding under subsection (3) or under any other section of
 407 this chapter. This paragraph does not prevent a party whose
 408 substantial interests have been determined by an agency action
 409 from bringing a proceeding pursuant to s. 120.57(1) (e).

410 Section 5. Paragraph (1) of subsection (2) of section
 411 120.569, Florida Statutes, is amended to read:

412 120.569 Decisions which affect substantial interests.—
 413 (2)

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

419 1. After the hearing is concluded, if conducted by the
 420 agency;

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

427 3. After the agency has received the written and oral
 428 material it has authorized to be submitted, if there has been no
 429 hearing.

430 Section 6. Paragraphs (e) and (h) of subsection (1) and
 431 subsection (2) of section 120.57, Florida Statutes, are amended
 432 to read:

433 120.57 Additional procedures for particular cases.—

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

436 (e)1. An agency or an administrative law judge may not
 437 base agency action that determines the substantial interests of
 438 a party on an unadopted rule or a rule that is an invalid
 439 exercise of delegated legislative authority. ~~The administrative~~

440 ~~law judge shall determine whether an agency statement~~
441 ~~constitutes an unadopted rule.~~ This subparagraph does not
442 preclude application of valid adopted rules and applicable
443 provisions of law to the facts.

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

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

452 b. Section 120.56(3)(a) applies to a challenge alleging
453 that a rule is an invalid exercise of delegated legislative
454 authority.

455 c. Section 120.56(4)(c) applies to a challenge alleging an
456 unadopted rule.

457 d. The agency has 15 days from the date of receipt of a
458 challenge under this subparagraph to serve the challenging party
459 with a notice whether the agency will continue to rely upon the
460 rule or the alleged unadopted rule as a basis for the action
461 determining the party's substantive interests. Failure to timely
462 serve the notice constitutes a binding stipulation that the
463 agency shall not rely upon the rule or unadopted rule further in
464 the proceeding. The agency shall include a copy of this notice
465 with the referral of the matter to the division under s.

466 120.569(2)(a).

467 e. This subparagraph does not preclude the consolidation
 468 of any proceeding under s. 120.56 with any proceeding under this
 469 paragraph.

470 3.2. Notwithstanding subparagraph 1., if an agency
 471 demonstrates that the statute being implemented directs it to
 472 adopt rules, that the agency has not had time to adopt those
 473 rules because the requirement was so recently enacted, and that
 474 the agency has initiated rulemaking and is proceeding
 475 expeditiously and in good faith to adopt the required rules,
 476 then the agency's action may be based upon those unadopted rules
 477 if, subject to de novo review by the administrative law judge
 478 determines that rulemaking is neither feasible nor practicable
 479 and the unadopted rules would not constitute an invalid exercise
 480 of delegated legislative authority if adopted as rules. An

481 unadopted rule ~~The agency action~~ shall not be presumed valid ~~or~~
 482 ~~invalid~~. The agency must demonstrate that the unadopted rule:

483 a. Is within the powers, functions, and duties delegated
 484 by the Legislature or, if the agency is operating pursuant to
 485 authority vested in the agency by ~~derived from~~ the State
 486 Constitution, is within that authority;

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

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

491 d. Is not arbitrary or capricious. A rule is arbitrary if

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492 it is not supported by logic or the necessary facts; a rule is
493 capricious if it is adopted without thought or reason or is
494 irrational;

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

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

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

509 ~~5.3.~~ The recommended and final orders in any proceeding
510 shall be governed by the provisions of paragraphs (k) and (l),
511 except that the administrative law judge's determination
512 ~~regarding an unadopted rule under subparagraph 4. 1. or~~
513 ~~subparagraph 2.~~ shall be included as a conclusion of law that
514 the agency may not reject ~~not be rejected by the agency unless~~
515 ~~the agency first determines from a review of the complete~~
516 ~~record, and states with particularity in the order, that such~~
517 ~~determination is clearly erroneous or does not comply with~~

518 ~~essential requirements of law. In any proceeding for review~~
 519 ~~under s. 120.68, if the court finds that the agency's rejection~~
 520 ~~of the determination regarding the unadopted rule does not~~
 521 ~~comport with the provisions of this subparagraph, the agency~~
 522 ~~action shall be set aside and the court shall award to the~~
 523 ~~prevailing party the reasonable costs and a reasonable~~
 524 ~~attorney's fee for the initial proceeding and the proceeding for~~
 525 ~~review.~~

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

540 (2) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS NOT
 541 INVOLVING DISPUTED ISSUES OF MATERIAL FACT.—In any case to which
 542 subsection (1) does not apply:

543 (a) The agency shall:

544 1. Give reasonable notice to affected persons of the
 545 action of the agency, whether proposed or already taken, or of
 546 its decision to refuse action, together with a summary of the
 547 factual, legal, and policy grounds therefor.

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

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

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

570 final order must be sought from the appellate court.

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

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

581 Section 7. Section 120.595, Florida Statutes, is amended
582 to read:

583 120.595 Attorney ~~Attorney's~~ fees and costs.—

584 (1) CHALLENGES PURSUANT TO SECTION 120.56 OR ~~TO AGENCY~~
585 ~~ACTION PURSUANT TO SECTION 120.57(1).~~—

586 (a) This ~~The provisions of this~~ subsection is ~~are~~
587 supplemental to, and does ~~de~~ not abrogate, other provisions
588 allowing the award of fees or costs in administrative
589 proceedings.

590 (b) The final order in a proceeding conducted pursuant to
591 s. 120.56 or s. 120.57(1) shall award all reasonable costs and
592 all a reasonable attorney fees ~~attorney's fee~~ to the prevailing
593 party only if the administrative law judge determines ~~only where~~
594 that the nonprevailing adverse party ~~has been determined by the~~
595 ~~administrative law judge to have participated in the proceeding~~

596 for an improper purpose.

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

601 1. The nonprevailing adverse party participated in two or
 602 more other such proceedings involving the same prevailing party
 603 and project as an adverse party and in which the nonprevailing
 604 adverse party did not establish either the factual or legal
 605 merits of its position.

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

622 (d) In a ~~any~~ proceeding in which the administrative law
 623 judge determines that a party participated in the proceeding for
 624 an improper purpose, the recommended order shall ~~se~~ designate
 625 that party and shall determine the award of costs and attorney
 626 ~~attorney's~~ fees.

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

628 1. "Improper purpose" means participation in a proceeding
 629 pursuant to s. 120.57(1) primarily to harass or to cause
 630 unnecessary delay or for frivolous purpose or to needlessly
 631 increase the cost of litigation, licensing, or securing the
 632 approval of an activity.

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

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

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

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

674 ~~purpose as defined by paragraph (1)(c). No award of attorney~~
 675 ~~attorney's~~ fees as provided by this subsection may not ~~shall~~
 676 exceed \$50,000.

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

695 (4) CHALLENGES TO UNADOPTED RULES ~~AGENCY ACTION~~ PURSUANT
 696 TO SECTION 120.56(4).—

697 (a) If the appellate court or administrative law judge
 698 determines that all or part of an unadopted rule ~~agency~~
 699 ~~statement~~ violates s. 120.54(1)(a), or that the agency must

700 immediately discontinue reliance upon ~~on~~ the unadopted rule
 701 ~~statement~~ and any substantially similar statement pursuant to s.
 702 120.56(4)(f) ~~120.56(4)(e)~~, a judgment or order shall be entered
 703 against the agency for reasonable costs and reasonable attorney
 704 ~~attorney's~~ fees, unless the agency demonstrates that the
 705 statement is required by the Federal Government to implement or
 706 retain a delegated or approved program or to meet a condition to
 707 receipt of federal funds.

708 (b) Upon notification to the administrative law judge
 709 provided before the final hearing that the agency has published
 710 a notice of rulemaking under s. 120.54(3)(a), such notice shall
 711 automatically operate as a stay of proceedings pending
 712 rulemaking. The administrative law judge may vacate the stay for
 713 good cause shown. A stay of proceedings under this paragraph
 714 remains in effect so long as the agency is proceeding
 715 expeditiously and in good faith to adopt the statement as a
 716 rule. The administrative law judge shall award reasonable costs
 717 and reasonable attorney ~~attorney's~~ fees incurred ~~accrued~~ by the
 718 petitioner before ~~prior to~~ the date the notice was published,
 719 ~~unless the agency proves to the administrative law judge that it~~
 720 ~~did not know and should not have known that the statement was an~~
 721 ~~unadopted rule. Attorneys' fees and costs under this paragraph~~
 722 ~~and paragraph (a) shall be awarded only upon a finding that the~~
 723 ~~agency received notice that the statement may constitute an~~
 724 ~~unadopted rule at least 30 days before a petition under s.~~
 725 ~~120.56(4) was filed and that the agency failed to publish the~~

726 ~~required notice of rulemaking pursuant to s. 120.54(3) that~~
727 ~~addresses the statement within that 30-day period. Notice to the~~
728 ~~agency may be satisfied by its receipt of a copy of the s.~~
729 ~~120.56(4) petition, a notice or other paper containing~~
730 ~~substantially the same information, or a petition filed pursuant~~
731 ~~to s. 120.54(7). An award of attorney attorney's fees as~~
732 ~~provided by this paragraph may not exceed \$50,000.~~

733 (c) Notwithstanding the provisions of chapter 284, an
734 award shall be paid from the budget entity of the secretary,
735 executive director, or equivalent administrative officer of the
736 agency, and the agency is ~~shall~~ not be entitled to payment of an
737 award or reimbursement for payment of an award under any
738 provision of law.

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

749 (5) APPEALS.—When there is an appeal, the court in its
750 discretion may award reasonable attorney attorney's fees and
751 reasonable costs to the prevailing party if the court finds that

752 the appeal was frivolous, meritless, or an abuse of the
753 appellate process, or that the agency action which precipitated
754 the appeal was a gross abuse of the agency's discretion. Upon
755 review of agency action that precipitates an appeal, if the
756 court finds that the agency improperly rejected or modified
757 findings of fact in a recommended order, the court shall award
758 reasonable attorney ~~attorney's~~ fees and reasonable costs to a
759 prevailing appellant for the administrative proceeding and the
760 appellate proceeding.

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

765 (a) Before filing a petition challenging the validity of a
766 proposed rule under s. 120.56(2), an adopted rule under s.
767 120.56(3), or an agency statement defined as an unadopted rule
768 under s. 120.56(4), a substantially affected person shall serve
769 the agency head with notice of the proposed challenge. The
770 notice shall identify the proposed or adopted rule or the
771 unadopted rule that the person proposes to challenge and a brief
772 explanation of the basis for that challenge. The notice must be
773 received by the agency head at least 5 days before the filing of
774 a petition under s. 120.56(2), and at least 30 days before the
775 filing of a petition under s. 120.56(3) or s. 120.56(4).

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

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

790 (8) ~~(6)~~ OTHER SECTIONS NOT AFFECTED.—Other provisions,
 791 including ss. 57.105 and 57.111, authorize the award of attorney
 792 attorney's fees and costs in administrative proceedings. Nothing
 793 in this section shall affect the availability of attorney
 794 attorney's fees and costs as provided in those sections.

795 Section 8. Subsections (1), (2), and (9) of section
 796 120.68, Florida Statutes, are amended to read:

797 120.68 Judicial review.—

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

800 (b) A preliminary, procedural, or intermediate order of
 801 the agency or of an administrative law judge of the Division of
 802 Administrative Hearings, or a final order under s.
 803 120.57(1)(e)4., is immediately reviewable if review of the final

804 agency decision would not provide an adequate remedy.

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

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

821 (c) ~~(b)~~ When proceedings under this chapter are
 822 consolidated for final hearing and the parties to the
 823 consolidated proceeding seek review of final or interlocutory
 824 orders in more than one district court of appeal, the courts of
 825 appeal are authorized to transfer and consolidate the review
 826 proceedings. The court may transfer such appellate proceedings
 827 on its own motion, upon motion of a party to one of the
 828 appellate proceedings, or by stipulation of the parties to the
 829 appellate proceedings. In determining whether to transfer a

830 proceeding, the court may consider such factors as the
 831 interrelationship of the parties and the proceedings, the
 832 desirability of avoiding inconsistent results in related
 833 matters, judicial economy, and the burden on the parties of
 834 reproducing the record for use in multiple appellate courts.

835 (9) No petition challenging an agency rule as an invalid
 836 exercise of delegated legislative authority shall be instituted
 837 pursuant to this section, except to review an order entered
 838 pursuant to a proceeding under s. 120.56, under s.
 839 120.57(1)(e)5., or under s. 120.57(2)(b), or an agency's
 840 findings of immediate danger, necessity, and procedural fairness
 841 prerequisite to the adoption of an emergency rule pursuant to s.
 842 120.54(4), unless the sole issue presented by the petition is
 843 the constitutionality of a rule and there are no disputed issues
 844 of fact.

845 Section 9. Section 120.695, Florida Statutes, is amended
 846 to read:

847 120.695 Notice of noncompliance; designation of minor
 848 violation rules.—

849 (1) It is the policy of the state that the purpose of
 850 regulation is to protect the public by attaining compliance with
 851 the policies established by the Legislature. Fines and other
 852 penalties may be provided in order to assure compliance;
 853 however, the collection of fines and the imposition of penalties
 854 are intended to be secondary to the primary goal of attaining
 855 compliance with an agency's rules. It is the intent of the

856 Legislature that an agency charged with enforcing rules shall
857 issue a notice of noncompliance as its first response to a minor
858 violation of a rule in any instance in which it is reasonable to
859 assume that the violator was unaware of the rule or unclear as
860 to how to comply with it.

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

874 (b) Each agency shall review all of its rules and
875 designate those for which a violation would be a minor violation
876 and for which a notice of noncompliance must be the first
877 enforcement action taken against a person or business subject to
878 regulation. A violation of a rule is a minor violation if it
879 does not result in economic or physical harm to a person or
880 adversely affect the public health, safety, or welfare or create
881 a significant threat of such harm. ~~If an agency under the~~

882 ~~direction of a cabinet officer mails to each licensee a notice~~
883 ~~of the designated rules at the time of licensure and at least~~
884 ~~annually thereafter, the provisions of paragraph (a) may be~~
885 ~~exercised at the discretion of the agency. Such notice shall~~
886 ~~include a subject-matter index of the rules and information on~~
887 ~~how the rules may be obtained.~~

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

906 2. Beginning on July 1, 2016, each agency shall:

907 a. Publish all rules that the agency has designated as
 908 rules the violation of which would be a minor violation, either
 909 as a complete list on the agency's Internet website or by
 910 incorporation of the designations in the agency's disciplinary
 911 guidelines adopted as a rule.

912 b. Ensure that all investigative and enforcement personnel
 913 are knowledgeable of the agency's designations under this
 914 section.

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

919 (d) The Governor or the Governor and Cabinet, as
 920 appropriate ~~pursuant to paragraph (e)~~, may evaluate the review
 921 and designation effects of each agency subject to the direction
 922 and supervision of such authority and may direct ~~apply~~ a
 923 different designation than that applied by such ~~the~~ agency.

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

- 926 1. The Department of Corrections;
- 927 2. Educational units;
- 928 3. The regulation of law enforcement personnel; or
- 929 4. The regulation of teachers.

930 (f) Designation pursuant to this section is not subject to
 931 challenge under this chapter.

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