

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Rulemaking Oversight &
 2 Repeal Subcommittee
 3 Representative Adkins offered the following:

Amendment (with title amendment)

6 Remove everything after the enacting clause and insert:

7 Section 1. Paragraph (e) of subsection (3) of section
 8 57.111, Florida Statutes, is amended to read:

9 57.111 Civil actions and administrative proceedings
 10 initiated by state agencies; attorney ~~attorneys'~~ fees and
 11 costs.-

12 (3) As used in this section:

13 (e) A proceeding is "substantially justified" if it had a
 14 reasonable basis in law and fact at the time it was initiated by
 15 a state agency. A proceeding is not substantially justified if
 16 the specified law, rule, or order at issue in the current agency
 17 action is the subject upon which the substantially affected

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18 party previously petitioned the agency for a declaratory
19 statement under s. 120.565; the current agency action involves
20 identical or substantially similar facts and circumstances as
21 those raised in the previous petition; and:

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

24 2. The agency denied the previous petition under s.
25 120.565 before initiating the current agency action against the
26 substantially affected party.

27 Section 2. Paragraph (c) of subsection (7) of section
28 120.54, Florida Statutes, is amended and a new paragraph (d) is
29 created to read:

30 120.54 Rulemaking.—

31 (7) PETITION TO INITIATE RULEMAKING.—

32 (c) Within 30 days after ~~following~~ the public hearing
33 provided for in ~~by~~ paragraph (b), if the agency does not
34 initiate rulemaking or otherwise comply with the requested
35 action, the agency shall publish in the Florida Administrative
36 Register a statement of its reasons for not initiating
37 rulemaking or otherwise complying with the requested action, and
38 of any changes it will make in the scope or application of the
39 unadopted rule. The agency shall file the statement with the
40 committee. The committee shall forward a copy of the statement
41 to the substantive committee with primary oversight jurisdiction
42 of the agency in each house of the Legislature. The committee or
43 the committee with primary oversight jurisdiction may hold a

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44 hearing directed to the statement of the agency. The committee
45 holding the hearing may recommend to the Legislature the
46 introduction of legislation making the rule a statutory standard
47 or limiting or otherwise modifying the authority of the agency.

48 (d) If the agency does initiate rulemaking following a
49 public hearing under paragraph (b), the agency shall publish its
50 notice of rule development within 30 days after the hearing and
51 file its notice of proposed rule within 180 days after the
52 notice of rule development unless by such deadline the agency
53 publishes in the Florida Administrative Register a statement
54 explaining its reasons why a proposed rule has not been filed.
55 If rulemaking is initiated under this paragraph, the agency may
56 not rely on the unadopted rule unless the agency publishes in
57 the Florida Administrative Register a statement explaining why
58 rulemaking has not been feasible or practicable under s.
59 120.54(1)(a).

60
61 Section 3. Section 120.55, Florida Statutes, is amended to
62 read:

63 120.55 Publication.—

64 (1) The Department of State shall:

65 (a)1. Through a continuous revision and publication
66 system, compile and publish electronically, on an Internet
67 website managed by the department, the "Florida Administrative
68 Code." The Florida Administrative Code shall contain all rules
69 adopted by each agency, citing the grant of rulemaking authority

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70 and the specific law implemented pursuant to which each rule was
71 adopted, all history notes as authorized in s. 120.545(7),
72 complete indexes to all rules contained in the code, and any
73 other material required or authorized by law or deemed useful by
74 the department. The electronic code shall display each rule
75 chapter currently in effect in browse mode and allow full text
76 search of the code and each rule chapter. The department may
77 contract with a publishing firm for a printed publication;
78 however, the department shall retain responsibility for the code
79 as provided in this section. The electronic publication shall be
80 the official compilation of the administrative rules of this
81 state. The Department of State shall retain the copyright over
82 the Florida Administrative Code.

83 2. Rules general in form but applicable to only one school
84 district, community college district, or county, or a part
85 thereof, or state university rules relating to internal
86 personnel or business and finance shall not be published in the
87 Florida Administrative Code. Exclusion from publication in the
88 Florida Administrative Code shall not affect the validity or
89 effectiveness of such rules.

90 3. At the beginning of the section of the code dealing
91 with an agency that files copies of its rules with the
92 department, the department shall publish the address and
93 telephone number of the executive offices of each agency, the
94 manner by which the agency indexes its rules, a listing of all

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95 rules of that agency excluded from publication in the code, and
96 a statement as to where those rules may be inspected.

97 4. Forms shall not be published in the Florida
98 Administrative Code; but any form which an agency uses in its
99 dealings with the public, along with any accompanying
100 instructions, shall be filed with the committee before it is
101 used. Any form or instruction which meets the definition of
102 "rule" provided in s. 120.52 shall be incorporated by reference
103 into the appropriate rule. The reference shall specifically
104 state that the form is being incorporated by reference and shall
105 include the number, title, and effective date of the form and an
106 explanation of how the form may be obtained. Each form created
107 by an agency which is incorporated by reference in a rule notice
108 of which is given under s. 120.54(3)(a) after December 31, 2007,
109 must clearly display the number, title, and effective date of
110 the form and the number of the rule in which the form is
111 incorporated.

112 5. The department shall allow adopted rules and material
113 incorporated by reference to be filed in electronic form as
114 prescribed by department rule. When a rule is filed for adoption
115 with incorporated material in electronic form, the department's
116 publication of the Florida Administrative Code on its Internet
117 website must contain a hyperlink from the incorporating
118 reference in the rule directly to that material. The department
119 may not allow hyperlinks from rules in the Florida
120 Administrative Code to any material other than that filed with

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121 and maintained by the department, but may allow hyperlinks to
122 incorporated material maintained by the department from the
123 adopting agency's website or other sites.

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

128 1. All notices required by s. 120.54(2) and (3)(a) ~~s.~~
129 ~~120.54(3)(a)~~, showing the text of all rules proposed for
130 consideration.

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

134 3. A notice of each request for authorization to amend or
135 repeal an existing uniform rule or for the adoption of new
136 uniform rules.

137 4. Notice of petitions for declaratory statements or
138 administrative determinations.

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

141 6. A listing of rules filed for adoption in the previous 7
142 days.

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

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146 ~~8.6.~~ Any other material required or authorized by law or
147 deemed useful by the department.

148
149 The department may contract with a publishing firm for a printed
150 publication of the Florida Administrative Register and make
151 copies available on an annual subscription basis.

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

154 (d) Charge each agency using the Florida Administrative
155 Register a space rate to cover the costs related to the Florida
156 Administrative Register and the Florida Administrative Code.

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

159 (2) The Florida Administrative Register Internet website
160 must allow users to:

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

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

165 (c) Subscribe to an automated e-mail notification of
166 selected notices to be sent out before or concurrently with
167 publication of the electronic Florida Administrative Register.
168 Such notification must include in the text of the e-mail a
169 summary of the content of each notice.

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170 (d) View agency forms and other materials submitted to the
171 department in electronic form and incorporated by reference in
172 proposed rules.

173 (e) Comment on proposed rules.

174 (3) Publication of material required by paragraph (1) (b)
175 on the Florida Administrative Register Internet website does not
176 preclude publication of such material on an agency's website or
177 by other means.

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

181 (5) Each agency that provides an e-mail alert service to
182 inform licensees or other registered recipients of important
183 notices shall use such service to notify recipients of each
184 notice required under s. 120.54(2) and (3) (a), including a
185 notice of rule development, notice of proposed rules, and notice
186 of filing rules for adoption, and provide Internet links to the
187 appropriate rule page on the Secretary of State's website or
188 Internet links to an agency website that contains the proposed
189 rule or final rule.

190 (6)~~(5)~~ Any publication of a proposed rule promulgated by
191 an agency, whether published in the Florida Administrative
192 Register or elsewhere, shall include, along with the rule, the
193 name of the person or persons originating such rule, the name of
194 the agency head who approved the rule, and the date upon which
195 the rule was approved.

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196 ~~(7)~~~~(6)~~ Access to the Florida Administrative Register
197 Internet website and its contents, including the e-mail
198 notification service, shall be free for the public.

199 ~~(8)~~~~(7)~~(a) All fees and moneys collected by the Department
200 of State under this chapter shall be deposited in the Records
201 Management Trust Fund for the purpose of paying for costs
202 incurred by the department in carrying out this chapter.

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

207 Section 4. Paragraph (b) of subsection (1), paragraph (a)
208 of subsection (2), and subsection (4) of section 120.56, Florida
209 Statutes, are amended to read:

210 120.56 Challenges to rules.—

211 (1) GENERAL PROCEDURES FOR CHALLENGING THE VALIDITY OF A
212 RULE OR A PROPOSED RULE.—

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

216 1. The particular provisions alleged to be invalid and a
217 statement ~~with sufficient explanation~~ of the facts or grounds
218 for the alleged invalidity; and

219 2. Facts sufficient to show that the petitioner person
220 ~~challenging a rule~~ is substantially affected by the challenged

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221 ~~adopted rule it, or that the person challenging a proposed rule~~
222 would be substantially affected by the proposed rule it.

223 (2) CHALLENGING PROPOSED RULES; SPECIAL PROVISIONS.-

224 (a) A substantially affected person may seek an
225 administrative determination of the invalidity of a proposed
226 rule by filing a petition seeking such a determination with the
227 division within 21 days after the date of publication of the
228 notice required by s. 120.54(3)(a); within 10 days after the
229 final public hearing is held on the proposed rule as provided by
230 s. 120.54(3)(e)2.; within 20 days after the statement of
231 estimated regulatory costs or revised statement of estimated
232 regulatory costs, if applicable, has been prepared and made
233 available as provided in s. 120.541(1)(d); or within 20 days
234 after the date of publication of the notice required by s.
235 120.54(3)(d). The petition must state with particularity the
236 objections to the proposed rule and the reasons that the
237 proposed rule is an invalid exercise of delegated legislative
238 authority. The petitioner has the burden of going forward with
239 evidence sufficient to support the petition. The agency then has
240 the burden to prove by a preponderance of the evidence that the
241 proposed rule is not an invalid exercise of delegated
242 legislative authority as to the objections raised. ~~A person who~~
243 ~~is substantially affected by a change in the proposed rule may~~
244 ~~seek a determination of the validity of such change.~~ A person
245 who is not substantially affected by the proposed rule as
246 initially noticed, but who is substantially affected by the rule

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247 as a result of a change, may challenge any provision of the
248 resulting rule ~~and is not limited to challenging the change to~~
249 ~~the proposed rule.~~

250 (4) CHALLENGING AGENCY STATEMENTS DEFINED AS UNADOPTED
251 RULES; SPECIAL PROVISIONS.—

252 (a) Any person substantially affected by an agency
253 statement that is an unadopted rule may seek an administrative
254 determination that the statement violates s. 120.54(1)(a). The
255 petition shall include the text of the statement or a
256 description of the statement and shall state ~~with particularity~~
257 facts sufficient to show that the statement constitutes an a
258 unadopted rule ~~under s. 120.52 and that the agency has not~~
259 ~~adopted the statement by the rulemaking procedure provided by s.~~
260 ~~120.54.~~

261 (b) The administrative law judge may extend the hearing
262 date beyond 30 days after assignment of the case for good cause.
263 Upon notification to the administrative law judge provided
264 before the final hearing that the agency has published a notice
265 of rulemaking under s. 120.54(3), such notice shall
266 automatically operate as a stay of proceedings pending adoption
267 of the statement as a rule. The administrative law judge may
268 vacate the stay for good cause shown. A stay of proceedings
269 pending rulemaking shall remain in effect so long as the agency
270 is proceeding expeditiously and in good faith to adopt the
271 statement as a rule. ~~If a hearing is held and the petitioner~~

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272 ~~proves the allegations of the petition, the agency shall have~~
273 ~~the burden of proving~~

274 (c) The petitioner has the burden of going forward with
275 evidence sufficient to support the petition. The agency then has
276 the burden to prove by a preponderance of the evidence that the
277 statement does not meet the definition of an unadopted rule, the
278 statement was adopted as a rule in compliance with s. 120.54, or
279 that rulemaking is not feasible or not practicable under s.
280 120.54(1) (a) .

281 ~~(d)-(e)~~ The administrative law judge may determine whether
282 all or part of a statement violates s. 120.54(1) (a). The
283 decision of the administrative law judge shall constitute a
284 final order. The division shall transmit a copy of the final
285 order to the Department of State and the committee. The
286 Department of State shall publish notice of the final order in
287 the first available issue of the Florida Administrative
288 Register.

289 ~~(e)-(d)~~ If an administrative law judge enters a final order
290 that all or part of an unadopted rule ~~agency statement~~ violates
291 s. 120.54(1) (a), the agency must immediately discontinue all
292 reliance upon the unadopted rule ~~statement~~ or any substantially
293 similar statement as a basis for agency action.

294 ~~(f)-(e)~~ If proposed rules addressing the challenged
295 unadopted rule ~~statement~~ are determined to be an invalid
296 exercise of delegated legislative authority as defined in s.
297 120.52(8) (b)-(f), the agency must immediately discontinue

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298 reliance on the unadopted rule ~~statement~~ and any substantially
299 similar statement until rules addressing the subject are
300 properly adopted, and the administrative law judge shall enter a
301 final order to that effect.

302 (g) ~~(f)~~ All proceedings to determine a violation of s.
303 120.54(1) (a) shall be brought pursuant to this subsection. A
304 proceeding pursuant to this subsection may be consolidated with
305 a proceeding under subsection (3) or under any other section of
306 this chapter. This paragraph does not prevent a party whose
307 substantial interests have been determined by an agency action
308 from bringing a proceeding pursuant to s. 120.57(1) (e).

309 Section 5. Paragraph (1) of subsection (2) of section
310 120.569, Florida Statutes, is amended to read:

311 120.569 Decisions which affect substantial interests.—
312 (2)

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

318 1. After the hearing is concluded, if conducted by the
319 agency;

320 2. After a recommended order is submitted to the agency
321 and mailed to all parties, if the hearing is conducted by an
322 administrative law judge, except that, at the election of the
323 agency, the time for rendering the final order may be extended

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324 up to 10 days after entry of a mandate on any appeal from a
325 final order under s. 120.57(1)(e)4.; or

326 3. After the agency has received the written and oral
327 material it has authorized to be submitted, if there has been no
328 hearing.

329 Section 6. Paragraphs (e) and (h) of subsection (1) and
330 subsection (2) of section 120.57, Florida Statutes, are amended
331 to read:

332 120.57 Additional procedures for particular cases.—

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

335 (e)1. An agency or an administrative law judge may not
336 base agency action that determines the substantial interests of
337 a party on an unadopted rule or a rule that is an invalid
338 exercise of delegated legislative authority. ~~The administrative~~
339 ~~law judge shall determine whether an agency statement~~
340 ~~constitutes an unadopted rule.~~ This subparagraph does not
341 preclude application of valid adopted rules and applicable
342 provisions of law to the facts.

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

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

351 b. Section 120.56(3)(a) applies to a challenge alleging
352 that a rule is an invalid exercise of delegated legislative
353 authority.

354 c. Section 120.56(4)(c) applies to a challenge alleging an
355 unadopted rule.

356 d. The agency has 15 days from the date of receipt of a
357 challenge under this subparagraph to serve the challenging party
358 with a notice whether the agency will continue to rely upon the
359 rule or the alleged unadopted rule as a basis for the action
360 determining the party's substantive interests. Failure to timely
361 serve the notice constitutes a binding stipulation that the
362 agency shall not rely upon the rule or unadopted rule further in
363 the proceeding. The agency shall include a copy of this notice
364 with the referral of the matter to the division under s.
365 120.569(2)(a).

366 e. This subparagraph does not preclude the consolidation
367 of any proceeding under s. 120.56 with any proceeding under this
368 paragraph.

369 3.2. Notwithstanding subparagraph 1., if an agency
370 demonstrates that the statute being implemented directs it to
371 adopt rules, that the agency has not had time to adopt those
372 rules because the requirement was so recently enacted, and that
373 the agency has initiated rulemaking and is proceeding
374 expeditiously and in good faith to adopt the required rules,

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375 then the agency's action may be based upon those unadopted rules
376 ~~if, subject to de novo review by~~ the administrative law judge
377 determines that rulemaking is neither feasible nor practicable
378 and the unadopted rules would not constitute an invalid exercise
379 of delegated legislative authority if adopted as rules. An
380 unadopted rule ~~The agency action~~ shall not be presumed valid ~~or~~
381 ~~invalid~~. The agency must demonstrate that the unadopted rule:
382 a. Is within the powers, functions, and duties delegated
383 by the Legislature or, if the agency is operating pursuant to
384 authority vested in the agency by ~~derived from~~ the State
385 Constitution, is within that authority;
386 b. Does not enlarge, modify, or contravene the specific
387 provisions of law implemented;
388 c. Is not vague, establishes adequate standards for agency
389 decisions, or does not vest unbridled discretion in the agency;
390 d. Is not arbitrary or capricious. A rule is arbitrary if
391 it is not supported by logic or the necessary facts; a rule is
392 capricious if it is adopted without thought or reason or is
393 irrational;
394 e. Is not being applied to the substantially affected
395 party without due notice; and
396 f. Does not impose excessive regulatory costs on the
397 regulated person, county, or city.
398 4. If the agency timely serves notice of continued
399 reliance upon a challenged rule or an alleged unadopted rule
400 under sub-subparagraph 2.d., the administrative law judge shall

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401 determine whether the challenged rule is an invalid exercise of
402 delegated legislative authority or whether the challenged agency
403 statement constitutes an unadopted rule and if that unadopted
404 rule meets the requirements of subparagraph 3. The determination
405 shall be rendered as a separate final order no earlier than the
406 date on which the administrative law judge serves the
407 recommended order.

408 ~~5.3.~~ The recommended and final orders in any proceeding
409 shall be governed by the provisions of paragraphs (k) and (l),
410 except that the administrative law judge's determination
411 ~~regarding an unadopted rule under subparagraph 4. 1. or~~
412 ~~subparagraph 2.~~ shall be included as a conclusion of law that
413 the agency may not reject ~~not be rejected by the agency unless~~
414 ~~the agency first determines from a review of the complete~~
415 ~~record, and states with particularity in the order, that such~~
416 ~~determination is clearly erroneous or does not comply with~~
417 ~~essential requirements of law. In any proceeding for review~~
418 ~~under s. 120.68, if the court finds that the agency's rejection~~
419 ~~of the determination regarding the unadopted rule does not~~
420 ~~comport with the provisions of this subparagraph, the agency~~
421 ~~action shall be set aside and the court shall award to the~~
422 ~~prevailing party the reasonable costs and a reasonable~~
423 ~~attorney's fee for the initial proceeding and the proceeding for~~
424 ~~review.~~

425 (h) Any party to a proceeding in which an administrative
426 law judge of the Division of Administrative Hearings has final

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427 order authority may move for a summary final order when there is
428 no genuine issue as to any material fact. A summary final order
429 shall be rendered if the administrative law judge determines
430 from the pleadings, depositions, answers to interrogatories, and
431 admissions on file, together with affidavits, if any, that no
432 genuine issue as to any material fact exists and that the moving
433 party is entitled as a matter of law to the entry of a final
434 order. A summary final order shall consist of findings of fact,
435 if any, conclusions of law, a disposition or penalty, if
436 applicable, and any other information required by law to be
437 contained in the final order. This paragraph does not apply to
438 proceedings authorized by paragraph (e).

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

442 (a) The agency shall:

443 1. Give reasonable notice to affected persons of the
444 action of the agency, whether proposed or already taken, or of
445 its decision to refuse action, together with a summary of the
446 factual, legal, and policy grounds therefor.

447 2. Give parties or their counsel the option, at a
448 convenient time and place, to present to the agency or hearing
449 officer written or oral evidence in opposition to the action of
450 the agency or to its refusal to act, or a written statement
451 challenging the grounds upon which the agency has chosen to
452 justify its action or inaction.

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

455 (b) An agency may not base agency action that determines
456 the substantial interests of a party on an unadopted rule or a
457 rule that is an invalid exercise of delegated legislative
458 authority. No later than the date provided by the agency under
459 subparagraph (a)2. for presenting material in opposition to the
460 agency's proposed action or refusal to act, the party may file a
461 petition under s. 120.56 challenging the rule, portion of rule,
462 or unadopted rule upon which the agency bases its proposed
463 action or refusal to act. The filing of a challenge under s.
464 120.56 pursuant to this paragraph shall stay all proceedings on
465 the agency's proposed action or refusal to act until entry of
466 the final order by the administrative law judge, which shall
467 provide additional notice that the stay of the pending agency
468 action is terminated and any further stay pending appeal of the
469 final order must be sought from the appellate court.

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

- 471 1. The notice and summary of grounds.
- 472 2. Evidence received.
- 473 3. All written statements submitted.
- 474 4. Any decision overruling objections.
- 475 5. All matters placed on the record after an ex parte
476 communication.
- 477 6. The official transcript.

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478 7. Any decision, opinion, order, or report by the
479 presiding officer.

480 Section 7. Section 120.595, Florida Statutes, is amended
481 to read:

482 120.595 Attorney ~~Attorney's~~ fees and costs.—

483 (1) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION
484 120.57(1).—

485 (a) ~~The provisions of~~ This subsection is ~~are~~ supplemental
486 to, and does ~~de~~ not abrogate, other provisions allowing the
487 award of fees or costs in administrative proceedings.

488 (b) The final order in a proceeding conducted pursuant to
489 s. 120.57(1) shall award all reasonable costs and all a
490 reasonable attorney fees ~~attorney's fee~~ to the prevailing party
491 only if where the administrative law judge determines that the
492 nonprevailing adverse party has been determined by the
493 administrative law judge to have participated in the proceeding
494 for an improper purpose.

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

499 1. The nonprevailing adverse party participated in another
500 such proceeding involving the same prevailing party and project
501 as an adverse party in which the nonprevailing adverse party did
502 not establish either the factual or legal merits of its
503 position.

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504 2. The factual or legal position asserted in the current
505 proceeding would have been cognizable in the previous proceeding
506 ~~and upon motion, the administrative law judge shall determine~~
507 ~~whether any party participated in the proceeding for an improper~~
508 ~~purpose as defined by this subsection. In making such~~
509 ~~determination, the administrative law judge shall consider~~
510 ~~whether the nonprevailing adverse party has participated in two~~
511 ~~or more other such proceedings involving the same prevailing~~
512 ~~party and the same project as an adverse party and in which such~~
513 ~~two or more proceedings the nonprevailing adverse party did not~~
514 ~~establish either the factual or legal merits of its position,~~
515 ~~and shall consider whether the factual or legal position~~
516 ~~asserted in the instant proceeding would have been cognizable in~~
517 ~~the previous proceedings. In such event, it shall be rebuttably~~
518 ~~presumed that the nonprevailing adverse party participated in~~
519 ~~the pending proceeding for an improper purpose.~~

520 (d) In a any proceeding in which the administrative law
521 judge determines that a party participated in the proceeding for
522 an improper purpose, the recommended order shall ~~se~~ designate
523 that party and ~~shall~~ determine the award of costs and attorney
524 attorney's fees.

525 (e) For purposes ~~the purpose~~ of this subsection, the term:
526 1. "Improper purpose" means participation in a proceeding
527 pursuant to s. 120.57(1) primarily to harass or to cause
528 unnecessary delay or for frivolous purpose or to needlessly

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529 increase the cost of litigation, licensing, or securing the
530 approval of an activity.

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

533 3. "Nonprevailing adverse party" means a party that has
534 failed to have substantially changed the outcome of the proposed
535 or final agency action which is the subject of a proceeding. If
536 ~~In the event that~~ a proceeding results in any substantial
537 modification or condition intended to resolve the matters raised
538 in a party's petition, it shall be determined that the party
539 having raised the issue addressed is not a nonprevailing adverse
540 party. The recommended order shall state whether the change is
541 substantial for purposes of this subsection. ~~In no event shall~~
542 The term "nonprevailing party" or "prevailing party" may not be
543 deemed to include a ~~any~~ party that has intervened in a
544 previously existing proceeding to support the position of an
545 agency.

546 (f) For challenges brought under s. 120.57(1)(e), when the
547 agency relies on a challenged rule or an alleged unadopted rule
548 pursuant to s. 120.57(1)(e)2.d., if the appellate court or the
549 administrative law judge declares the rule or portion of the
550 rule to be invalid or that the agency statement is an unadopted
551 rule which does not meet the requirements of s. 120.57(1)(e)4.,
552 a judgment or order shall be rendered against the agency for
553 reasonable costs and reasonable attorney fees, unless the agency
554 demonstrates that special circumstances exist which would make

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555 the award unjust. An award of attorney fees as provided by this
556 paragraph may not exceed \$50,000.

557 (2) CHALLENGES TO PROPOSED AGENCY RULES PURSUANT TO
558 SECTION 120.56(2).—If the appellate court or administrative law
559 judge declares a proposed rule or portion of a proposed rule
560 invalid pursuant to s. 120.56(2), a judgment or order shall be
561 rendered against the agency for reasonable costs and reasonable
562 attorney ~~attorney's~~ fees, unless the agency demonstrates that
563 ~~its actions were substantially justified or special~~
564 ~~circumstances exist which would make the award unjust. An~~
565 ~~agency's actions are "substantially justified" if there was a~~
566 ~~reasonable basis in law and fact at the time the actions were~~
567 ~~taken by the agency. If the agency prevails in the proceedings,~~
568 ~~the appellate court or administrative law judge shall award~~
569 ~~reasonable costs and reasonable~~ attorney ~~attorney's~~ fees against
570 a party if the appellate court or administrative law judge
571 determines that a party participated in the proceedings for an
572 ~~improper purpose as defined by paragraph (1)(c) (1)(c). An No~~
573 award of attorney ~~attorney's~~ fees as provided by this subsection
574 may not ~~shall~~ exceed \$50,000.

575 (3) CHALLENGES TO EXISTING AGENCY RULES PURSUANT TO
576 SECTION 120.56(3) AND (5).—If the appellate court or
577 administrative law judge declares a rule or portion of a rule
578 invalid pursuant to s. 120.56(3) or (5), a judgment or order
579 shall be rendered against the agency for reasonable costs and
580 reasonable attorney ~~attorney's~~ fees, unless the agency

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581 demonstrates that ~~its actions were substantially justified or~~
582 special circumstances exist which would make the award unjust.
583 ~~An agency's actions are "substantially justified" if there was a~~
584 ~~reasonable basis in law and fact at the time the actions were~~
585 ~~taken by the agency. If the agency prevails in the proceedings,~~
586 ~~the appellate court or administrative law judge shall award~~
587 ~~reasonable costs and reasonable attorney attorney's fees against~~
588 ~~a party if the appellate court or administrative law judge~~
589 ~~determines that a party participated in the proceedings for an~~
590 ~~improper purpose as defined by paragraph (1)(c) (1)(c). An No~~
591 ~~award of attorney attorney's fees as provided by this subsection~~
592 ~~may not shall~~ exceed \$50,000.

593 (4) CHALLENGES TO UNADOPTED RULES ~~AGENCY ACTION~~ PURSUANT
594 TO SECTION 120.56(4).—

595 (a) If the appellate court or administrative law judge
596 determines that all or part of an unadopted rule ~~agency~~
597 ~~statement~~ violates s. 120.54(1)(a), or that the agency must
598 immediately discontinue reliance upon ~~on~~ the unadopted rule
599 ~~statement~~ and any substantially similar statement pursuant to s.
600 120.56(4)(e), a judgment or order shall be entered against the
601 agency for reasonable costs and reasonable attorney ~~attorney's~~
602 fees, unless the agency demonstrates that the statement is
603 required by the Federal Government to implement or retain a
604 delegated or approved program or to meet a condition to receipt
605 of federal funds.

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606 (b) Upon notification to the administrative law judge
607 provided before the final hearing that the agency has published
608 a notice of rulemaking under s. 120.54(3) (a), such notice shall
609 automatically operate as a stay of proceedings pending
610 rulemaking. The administrative law judge may vacate the stay for
611 good cause shown. A stay of proceedings under this paragraph
612 remains in effect so long as the agency is proceeding
613 expeditiously and in good faith to adopt the statement as a
614 rule. The administrative law judge shall award reasonable costs
615 and reasonable attorney ~~attorney's~~ fees incurred ~~accrued~~ by the
616 petitioner before ~~prior to~~ the date the notice was published,
617 ~~unless the agency proves to the administrative law judge that it~~
618 ~~did not know and should not have known that the statement was an~~
619 ~~unadopted rule. Attorneys' fees and costs under this paragraph~~
620 ~~and paragraph (a) shall be awarded only upon a finding that the~~
621 ~~agency received notice that the statement may constitute an~~
622 ~~unadopted rule at least 30 days before a petition under s.~~
623 ~~120.56(4) was filed and that the agency failed to publish the~~
624 ~~required notice of rulemaking pursuant to s. 120.54(3) that~~
625 ~~addresses the statement within that 30-day period. Notice to the~~
626 ~~agency may be satisfied by its receipt of a copy of the s.~~
627 ~~120.56(4) petition, a notice or other paper containing~~
628 ~~substantially the same information, or a petition filed pursuant~~
629 ~~to s. 120.54(7).~~ An award of attorney ~~attorney's~~ fees as
630 provided by this paragraph may not exceed \$50,000.

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631 (c) Notwithstanding the provisions of chapter 284, an
632 award shall be paid from the budget entity of the secretary,
633 executive director, or equivalent administrative officer of the
634 agency, and the agency is ~~shall~~ not be entitled to payment of an
635 award or reimbursement for payment of an award under any
636 provision of law.

637 ~~—— (d) If the agency prevails in the proceedings, the~~
638 ~~appellate court or administrative law judge shall award~~
639 ~~reasonable costs and attorney attorney's fees against a party if~~
640 ~~the appellate court or administrative law judge determines that~~
641 ~~the party participated in the proceedings for an improper~~
642 ~~purpose as defined in paragraph (1) (c) (1) (c) or that the party~~
643 ~~or the party's attorney knew or should have known that a claim~~
644 ~~was not supported by the material facts necessary to establish~~
645 ~~the claim or would not be supported by the application of then-~~
646 ~~existing law to those material facts.~~

647 (5) APPEALS.—When there is an appeal, the court in its
648 discretion may award reasonable attorney ~~attorney's~~ fees and
649 reasonable costs to the prevailing party if the court finds that
650 the appeal was frivolous, meritless, or an abuse of the
651 appellate process, or that the agency action which precipitated
652 the appeal was a gross abuse of the agency's discretion. Upon
653 review of agency action that precipitates an appeal, if the
654 court finds that the agency improperly rejected or modified
655 findings of fact in a recommended order, the court shall award
656 reasonable attorney ~~attorney's~~ fees and reasonable costs to a

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657 prevailing appellant for the administrative proceeding and the
658 appellate proceeding.

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

663 (a) Before filing a petition challenging the validity of a
664 proposed rule under s. 120.56(2), an adopted rule under s.
665 120.56(3), or an agency statement defined as an unadopted rule
666 under s. 120.56(4), a substantially affected person shall serve
667 the agency head with notice of the proposed challenge. The
668 notice shall identify the proposed or adopted rule or the
669 unadopted rule that the person proposes to challenge and a brief
670 explanation of the basis for that challenge. The notice must be
671 received by the agency head at least 5 days before the filing of
672 a petition under s. 120.56(2), and at least 30 days before the
673 filing of a petition under s. 120.56(3) or s. 120.56(4).

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

676 (7) DETERMINATION OF RECOVERABLE FEES AND COSTS.—For
677 purposes of this chapter, s. 57.105(5), and s. 57.111, in
678 addition to an award of reasonable attorney fees and costs, the
679 prevailing party, if the prevailing party is not a state agency,
680 shall also recover reasonable attorney fees and costs incurred
681 in litigating entitlement to, and the determination or
682 quantification of, reasonable attorney fees and costs for the

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683 underlying matter. Reasonable attorney fees and costs awarded
684 for litigating entitlement to, and the determination or
685 quantification of, reasonable attorney fees and costs for the
686 underlying matter are not subject to the limitations on amounts
687 provided in this chapter or s. 57.111.

688 (8)~~(6)~~ OTHER SECTIONS NOT AFFECTED.—Other provisions,
689 including ss. 57.105 and 57.111, authorize the award of attorney
690 ~~attorney's~~ fees and costs in administrative proceedings. Nothing
691 in this section shall affect the availability of attorney
692 ~~attorney's~~ fees and costs as provided in those sections.

693 Section 8. Subsections (1), (2), and (9) of section
694 120.68, Florida Statutes, are amended to read:

695 120.68 Judicial review.—

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

698 (b) A preliminary, procedural, or intermediate order of
699 the agency or of an administrative law judge of the Division of
700 Administrative Hearings, or a final order under s.
701 120.57(1)(e)4., is immediately reviewable if review of the final
702 agency decision would not provide an adequate remedy.

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

706 (b) All proceedings shall be instituted by filing a notice
707 of appeal or petition for review in accordance with the Florida
708 Rules of Appellate Procedure within 30 days after the date that

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709 ~~rendition of~~ the order being appealed was filed with the agency
710 clerk. Such time is hereby extended for any party 10 days from
711 receipt by such party of the notice of the order, if such notice
712 is received after the 25th day from the filing of the order. If
713 the appeal is of an order rendered in a proceeding initiated
714 under s. 120.56, or a final order under s. 120.57(1)(e)4., the
715 agency whose rule is being challenged shall transmit a copy of
716 the notice of appeal to the committee.

717 (c) (b) When proceedings under this chapter are
718 consolidated for final hearing and the parties to the
719 consolidated proceeding seek review of final or interlocutory
720 orders in more than one district court of appeal, the courts of
721 appeal are authorized to transfer and consolidate the review
722 proceedings. The court may transfer such appellate proceedings
723 on its own motion, upon motion of a party to one of the
724 appellate proceedings, or by stipulation of the parties to the
725 appellate proceedings. In determining whether to transfer a
726 proceeding, the court may consider such factors as the
727 interrelationship of the parties and the proceedings, the
728 desirability of avoiding inconsistent results in related
729 matters, judicial economy, and the burden on the parties of
730 reproducing the record for use in multiple appellate courts.

731 (9) No petition challenging an agency rule as an invalid
732 exercise of delegated legislative authority shall be instituted
733 pursuant to this section, except to review an order entered
734 pursuant to a proceeding under s. 120.56, under s.

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735 120.57(1)(e)5., or under s. 120.57(2)(b), or an agency's
736 findings of immediate danger, necessity, and procedural fairness
737 prerequisite to the adoption of an emergency rule pursuant to s.
738 120.54(4), unless the sole issue presented by the petition is
739 the constitutionality of a rule and there are no disputed issues
740 of fact.

741 Section 9. Section 120.695, Florida Statutes, is amended
742 to read:

743 120.695 Notice of noncompliance; designation of minor
744 violation rules.-

745 (1) It is the policy of the state that the purpose of
746 regulation is to protect the public by attaining compliance with
747 the policies established by the Legislature. Fines and other
748 penalties may be provided in order to assure compliance;
749 however, the collection of fines and the imposition of penalties
750 are intended to be secondary to the primary goal of attaining
751 compliance with an agency's rules. It is the intent of the
752 Legislature that an agency charged with enforcing rules shall
753 issue a notice of noncompliance as its first response to a minor
754 violation of a rule in any instance in which it is reasonable to
755 assume that the violator was unaware of the rule or unclear as
756 to how to comply with it.

757 (2) (a) Each agency shall issue a notice of noncompliance
758 as a first response to a minor violation of a rule. A "notice of
759 noncompliance" is a notification by the agency charged with
760 enforcing the rule issued to the person or business subject to

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761 the rule. A notice of noncompliance may not be accompanied with
762 a fine or other disciplinary penalty. It must identify the
763 specific rule that is being violated, provide information on how
764 to comply with the rule, and specify a reasonable time for the
765 violator to comply with the rule. A rule is agency action that
766 regulates a business, occupation, or profession, or regulates a
767 person operating a business, occupation, or profession, and
768 that, if not complied with, may result in a disciplinary
769 penalty.

770 (b) Each agency shall review all of its rules and
771 designate those for which a violation would be a minor violation
772 and for which a notice of noncompliance must be the first
773 enforcement action taken against a person or business subject to
774 regulation. A violation of a rule is a minor violation if it
775 does not result in economic or physical harm to a person or
776 adversely affect the public health, safety, or welfare or create
777 a significant threat of such harm. ~~If an agency under the~~
778 ~~direction of a cabinet officer mails to each licensee a notice~~
779 ~~of the designated rules at the time of licensure and at least~~
780 ~~annually thereafter, the provisions of paragraph (a) may be~~
781 ~~exercised at the discretion of the agency. Such notice shall~~
782 ~~include a subject-matter index of the rules and information on~~
783 ~~how the rules may be obtained.~~

784 (c) ~~The agency's review and designation must be completed~~
785 ~~by December 1, 1995;~~

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786 1. No later than June 30, 2015, and after such date within
787 3 months after any request of the rules ombudsman in the
788 Executive Office of the Governor, each agency shall review under
789 the direction of the Governor shall make a report to the
790 Governor, and each agency under the joint direction of the
791 Governor and Cabinet shall report to the Governor and Cabinet by
792 January 1, 1996, on which of its rules and certify to the
793 President of the Senate, the Speaker of the House of
794 Representatives, the Administrative Procedures Committee, and
795 the rules ombudsman those rules that have been designated as
796 rules the violation of which would be a minor violation under
797 paragraph (b), consistent with the legislative intent stated in
798 subsection (1). For each agency failing to timely complete the
799 review and file the certification as required by this section,
800 the rules ombudsman shall promptly report such failure to the
801 Governor, the President of the Senate, the Speaker of the House
802 of Representatives, and the Administrative Procedures Committee.

803 2. Beginning on July 1, 2015, each agency shall:

804 a. Publish all rules of that agency has designated as
805 rules the violation of which would be a minor violation, either
806 as a complete list on the agency's Internet web page or by
807 incorporation of the designations in the agency's disciplinary
808 guidelines adopted as a rule.

809 b. Ensure that all investigative and enforcement personnel
810 are knowledgeable of the agency's designations under this
811 section.

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

816 (d) The Governor or the Governor and Cabinet, as
817 appropriate ~~pursuant to paragraph (c)~~, may evaluate the review
818 and designation effects of each agency subject to the direction
819 and supervision of such authority and may direct ~~apply~~ a
820 different designation than that applied by such ~~the~~ agency.

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

- 823 1. The Department of Corrections;
824 2. Educational units;
825 3. The regulation of law enforcement personnel; or
826 4. The regulation of teachers.

827 (f) Designation pursuant to this section is not subject to
828 challenge under this chapter.

829 Section 10. This act shall take effect July 1, 2014.

830

831

832

T I T L E A M E N D M E N T

833 Remove lines 7-68 and insert:

834 publish its notice of rule development within 30 days if
835 initiating rulemaking at the request of the petitioner;
836 requiring agency to publish its notice of propose rule within
837

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838 180 days of the notice of rule development; limiting reliance
839 upon unadopted rule in certain circumstances; amending s.
840 120.55, F.S.; providing for publication of notices of rule
841 development and of rules filed for adoption; providing
842 additional notice of rule development, proposals, and adoptions;
843 amending s. 120.56, F.S.; providing that the petitioner
844 challenging a proposed rule or unadopted agency statement has
845 the burden of going forward with evidence sufficient to support
846 the petition; amending s. 120.569, F.S.; granting agencies
847 additional time to render final orders in certain circumstances;
848 amending s. 120.57, F.S.; conforming proceedings that oppose
849 agency action based on an invalid or unadopted rule to
850 proceedings used for challenging rules; requiring the agency to
851 issue a notice stating whether the agency will rely on the
852 challenged rule or alleged unadopted rule; authorizing the
853 administrative law judge to make certain findings on the
854 validity of certain alleged unadopted rules; authorizing the
855 administrative law judge to issue a separate final order on
856 certain rules and alleged unadopted rules; prohibiting agencies
857 from rejecting specific conclusions of law; providing for stay
858 of proceedings not involving disputed issues of fact upon timely
859 filing of a rule challenge; providing that the final order
860 terminates the stay; amending s. 120.595, F.S.; requiring that a
861 final order in specified administrative proceedings award all
862 reasonable costs and attorney fees to a prevailing party under
863 certain circumstances; revising the criteria used by an

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864 administrative law judge to determine whether a party
865 participated in a proceeding for an improper purpose; removing
866 certain exceptions from requirements that attorney fees and
867 costs be rendered against the agency in proceedings in which the
868 petitioner prevails in a rule challenge; requiring service of
869 notice of invalidity to an agency before bringing a rule
870 challenge as a condition precedent to award of attorney fees and
871 costs; authorizing the recovery of reasonable attorney fees and
872 costs incurred by a prevailing party in litigating entitlement
873 to or quantification of underlying attorney fees and costs;
874 removing certain limitations on such attorney fees and costs;
875 removing redundancies; amending s. 120.68, F.S.; providing for
876 appellate review of orders rendered in challenges to specified
877 rules or unadopted rules; amending s. 120.695, F.S.; removing
878