

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.; requiring agencies to  
7 set a time for workshops if initiating rulemaking at  
8 the request of the petitioner; amending s. 120.55,  
9 F.S.; providing for publication of notices of rule  
10 development and of rules filed for adoption; providing  
11 additional notice of rule development, proposals, and  
12 adoptions; amending s. 120.56, F.S.; clarifying that  
13 petitions for administrative determinations apply to  
14 rules or proposed rules; providing that a petitioner  
15 challenging a rule, proposed rule, or agency statement  
16 has the burden of going forward after which the agency  
17 has the burden of proving that the rule, proposed  
18 rule, or agency statement is not invalid; prohibiting  
19 an administrative law judge from bifurcating certain  
20 petitions challenging agency action into separate  
21 cases; amending s. 120.565, F.S.; authorizing certain  
22 parties to provide to an agency their understanding of  
23 how certain rules apply to specific facts; requiring  
24 the agency to provide a declaratory statement within  
25 60 days; authorizing the administrative law judge to  
26 award attorney fees under certain circumstances;

Page 1 of 37

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

27 amending s. 120.569, F.S.; granting agencies  
28 additional time to render final orders in certain  
29 circumstances; amending s. 120.57, F.S.; conforming  
30 proceedings that oppose agency action based on an  
31 invalid or unadopted rule to proceedings used for  
32 challenging rules; requiring the agency to issue a  
33 notice stating whether the agency will rely on the  
34 challenged rule or alleged unadopted rule; authorizing  
35 the administrative law judge to make certain findings  
36 on the validity of certain alleged unadopted rules;  
37 authorizing the administrative law judge to issue a  
38 separate final order on certain rules and alleged  
39 unadopted rules; prohibiting agencies from rejecting  
40 specific conclusions of law; providing for stay of  
41 proceedings not involving disputed issues of fact upon  
42 timely filing of a rule challenge; providing that the  
43 final order terminates the stay; amending s. 120.573,  
44 F.S.; authorizing a party to request mediation of a  
45 rule challenge and declaratory statement proceedings;  
46 amending s. 120.595, F.S.; providing for an award of  
47 attorney fees and costs in specified challenges to  
48 agency action; providing criteria that, if met,  
49 establish that a nonprevailing party participated in  
50 an administrative proceeding for an improper purpose;  
51 revising provisions providing for the award of  
52 attorney fees and costs by the appellate court or

53 administrative law judge against the agency or party  
54 in specified administrative challenges; providing  
55 exceptions for the award of attorney fees and costs;  
56 capping the amount of attorney fees that may be  
57 awarded; requiring notice of a proposed challenge by  
58 the petitioner as a condition precedent to filing a  
59 challenge and being eligible for the reimbursement of  
60 attorney fees and costs; authorizing the recovery of  
61 attorney fees and costs incurred in litigating  
62 entitlement to attorney fees and costs in  
63 administrative actions; providing such attorney fees  
64 and costs are not limited in amount; amending s.  
65 120.68, F.S.; requiring specified agencies in appeals  
66 of certain final orders to provide a copy of the  
67 notice of appeal to the Administrative Procedures  
68 Committee; amending s. 120.695, F.S.; removing  
69 obsolete provisions with respect to required agency  
70 review and designation of minor violations; requiring  
71 agency review and certification of minor violation  
72 rules by a specified date; requiring the reporting of  
73 agency failure to complete the review and file  
74 certification of such rules; requiring minor violation  
75 certification for all rules adopted after a specified  
76 date; requiring public notice; providing for  
77 nonapplicability; conforming provisions; providing an  
78 effective date.

79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100  
101  
102  
103  
104

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

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

57.111 Civil actions and administrative proceedings initiated by state agencies; attorney ~~attorneys~~<sup>1</sup> fees and costs.—

(3) As used in this section:

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

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

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

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

120.54 Rulemaking.—

105 (7) PETITION TO INITIATE RULEMAKING.—  
 106 (c) Within 30 days after ~~following~~ the public hearing  
 107 provided for in ~~by~~ paragraph (b), if the petition's requested  
 108 action requires rulemaking and the agency initiates rulemaking,  
 109 the agency shall establish a time certain for the rulemaking  
 110 workshops and shall discontinue reliance upon the agency  
 111 statement or unadopted rule until it adopts appropriate rules  
 112 pursuant to subsection (3). If the agency does not initiate  
 113 rulemaking or otherwise comply with the requested action, the  
 114 agency shall publish in the Florida Administrative Register a  
 115 statement of its reasons for not initiating rulemaking or  
 116 otherwise complying with the requested action, and of any  
 117 changes it will make in the scope or application of the  
 118 unadopted rule. The agency shall file the statement with the  
 119 committee. The committee shall forward a copy of the statement  
 120 to the substantive committee with primary oversight jurisdiction  
 121 of the agency in each house of the Legislature. The committee or  
 122 the committee with primary oversight jurisdiction may hold a  
 123 hearing directed to the statement of the agency. The committee  
 124 holding the hearing may recommend to the Legislature the  
 125 introduction of legislation making the rule a statutory standard  
 126 or limiting or otherwise modifying the authority of the agency.  
 127 Section 3. Section 120.55, Florida Statutes, is amended to  
 128 read:  
 129 120.55 Publication.—  
 130 (1) The Department of State shall:

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

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

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

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

178           5. The department shall allow adopted rules and material  
179 incorporated by reference to be filed in electronic form as  
180 prescribed by department rule. When a rule is filed for adoption  
181 with incorporated material in electronic form, the department's

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

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

194 1. All notices required by s. 120.54(2) and (3)(a) ~~s.~~  
195 ~~120.54(3)(a)~~, showing the text of all rules proposed for  
196 consideration.

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

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

203 4. Notice of petitions for declaratory statements or  
204 administrative determinations.

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



207        6. A listing of rules filed for adoption in the previous 7  
 208 days.

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

212        ~~8.6.~~ Any other material required or authorized by law or  
 213 deemed useful by the department.

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

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

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

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

225        (2) The Florida Administrative Register Internet website  
 226 must allow users to:

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

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

231        (c) Subscribe to an automated e-mail notification of  
 232 selected notices to be sent out before or concurrently with

233 publication of the electronic Florida Administrative Register.  
234 Such notification must include in the text of the e-mail a  
235 summary of the content of each notice.

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

239 (e) Comment on proposed rules.

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

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

247 (5) Each agency that provides an e-mail alert service to  
248 inform licensees or other registered recipients of important  
249 notices shall use such service to notify recipients of each  
250 notice required under s. 120.54(2) and (3) (a), including a  
251 notice of rule development, notice of proposed rules, and notice  
252 of filing rules for adoption, and provide Internet links to the  
253 appropriate rule page on the Secretary of State's website or  
254 Internet links to an agency website that contains the proposed  
255 rule or final rule.

256 (6)~~(5)~~ Any publication of a proposed rule promulgated by  
257 an agency, whether published in the Florida Administrative  
258 Register or elsewhere, shall include, along with the rule, the

259 name of the person or persons originating such rule, the name of  
 260 the agency head who approved the rule, and the date upon which  
 261 the rule was approved.

262 (7)~~(6)~~ Access to the Florida Administrative Register  
 263 Internet website and its contents, including the e-mail  
 264 notification service, shall be free for the public.

265 (8)~~(7)~~(a) All fees and moneys collected by the Department  
 266 of State under this chapter shall be deposited in the Records  
 267 Management Trust Fund for the purpose of paying for costs  
 268 incurred by the department in carrying out this chapter.

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

273 Section 4. Subsections (1), (3), and (4) of section  
 274 120.56, Florida Statutes, are amended to read:

275 120.56 Challenges to rules.—

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

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

282 (b) The petition seeking an administrative determination  
 283 of the rule or proposed rule must state the facts and with  
 284 particularity the provisions alleged to be invalid with

285 sufficient explanation of the facts or grounds for the alleged  
286 invalidity and facts sufficient to show that the petitioner  
287 ~~person~~ challenging the ~~a~~ rule is substantially affected by it,  
288 or that the person challenging a proposed rule would be  
289 substantially affected by the proposed rule ~~it~~.

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

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

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

314 (e) Hearings held under this section shall be de novo in  
 315 nature. The standard of proof shall be the preponderance of the  
 316 evidence. The petitioner has the burden of going forward with  
 317 the evidence. The agency has the burden of proving by a  
 318 preponderance of the evidence that the rule, proposed rule, or  
 319 agency statement is not an invalid exercise of delegated  
 320 legislative authority. Hearings shall be conducted in the same  
 321 manner as provided by ss. 120.569 and 120.57, except that the  
 322 administrative law judge's order shall be final agency action.  
 323 The petitioner and the agency whose rule is challenged shall be  
 324 adverse parties. Other substantially affected persons may join  
 325 the proceedings as intervenors on appropriate terms which shall  
 326 not unduly delay the proceedings. Failure to proceed under this  
 327 section shall not constitute failure to exhaust administrative  
 328 remedies.

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

330 (a) A substantially affected person may seek an  
 331 administrative determination of the invalidity of an existing  
 332 rule at any time during the existence of the rule. The  
 333 petitioner has the ~~a~~ burden of going forward with the evidence  
 334 as set forth in paragraph (1)(b)., and the agency has the burden  
 335 of proving by a preponderance of the evidence that the existing  
 336 rule is not an invalid exercise of delegated legislative

337 authority as to the objections raised.

338 (b) The administrative law judge may declare all or part  
339 of a rule invalid. The rule or part thereof declared invalid  
340 shall become void when the time for filing an appeal expires.  
341 The agency whose rule has been declared invalid in whole or part  
342 shall give notice of the decision in the Florida Administrative  
343 Register in the first available issue after the rule has become  
344 void.

345 (4) CHALLENGING AGENCY STATEMENTS DEFINED AS RULES;  
346 SPECIAL PROVISIONS.—

347 (a) Any person substantially affected by an agency  
348 statement may seek an administrative determination that the  
349 statement violates s. 120.54(1)(a). The petition shall include  
350 the text of the statement or a description of the statement and  
351 shall state ~~with particularity~~ facts sufficient to show that the  
352 statement constitutes a rule under s. 120.52 and that the agency  
353 has not adopted the statement by the rulemaking procedure  
354 provided by s. 120.54.

355 (b) The administrative law judge may extend the hearing  
356 date beyond 30 days after assignment of the case for good cause.  
357 Upon notification to the administrative law judge provided  
358 before the final hearing that the agency has published a notice  
359 of rulemaking under s. 120.54(3), such notice shall  
360 automatically operate as a stay of proceedings pending adoption  
361 of the statement as a rule. The administrative law judge may  
362 vacate the stay for good cause shown. A stay of proceedings

363 pending rulemaking shall remain in effect so long as the agency  
364 is proceeding expeditiously and in good faith to adopt the  
365 statement as a rule. If a hearing is held and the petitioner  
366 proves the allegations of the petition, the agency shall have  
367 the burden of proving that rulemaking is not feasible or not  
368 practicable under s. 120.54(1)(a).

369 (c) The administrative law judge may determine whether all  
370 or part of a statement violates s. 120.54(1)(a). The decision of  
371 the administrative law judge shall constitute a final order. The  
372 division shall transmit a copy of the final order to the  
373 Department of State and the committee. The Department of State  
374 shall publish notice of the final order in the first available  
375 issue of the Florida Administrative Register.

376 (d) If an administrative law judge enters a final order  
377 that all or part of an agency statement violates s.  
378 120.54(1)(a), the agency must immediately discontinue all  
379 reliance upon the statement or any substantially similar  
380 statement as a basis for agency action.

381 (e) If proposed rules addressing the challenged statement  
382 are determined to be an invalid exercise of delegated  
383 legislative authority as defined in s. 120.52(8)(b)-(f), the  
384 agency must immediately discontinue reliance upon ~~on~~ the  
385 statement and any substantially similar statement until rules  
386 addressing the subject are properly adopted, and the  
387 administrative law judge shall enter a final order to that  
388 effect.

389 (f) If a petitioner files a petition challenging agency  
 390 action and a part of that petition alleges the presence of or  
 391 reliance upon agency statements or unadopted rules, the  
 392 administrative law judge may not bifurcate the petition into two  
 393 cases, but shall consider the challenge to the proposed agency  
 394 action and the allegation that such agency action was based upon  
 395 the presence of or reliance upon agency statements or unadopted  
 396 rules.

397 (g)~~(f)~~ All proceedings to determine a violation of s.  
 398 120.54(1)(a) shall be brought pursuant to this subsection. A  
 399 proceeding pursuant to this subsection may be consolidated with  
 400 a proceeding under subsection (3) or under any other section of  
 401 this chapter. This paragraph does not prevent a party whose  
 402 substantial interests have been determined by an agency action  
 403 from bringing a proceeding pursuant to s. 120.57(1)(e).

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

407 120.565 Declaratory statement by agencies.—

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

412 (4) The petitioner or substantially affected party may  
 413 submit to the agency clerk a statement that describes or asserts  
 414 the petitioner's understanding of how the agency rule, policy,



415 or procedure applies to a set of facts and circumstances. The  
416 agency has 60 days to review the petitioner's statement and to  
417 either accept the statement or offer changes and other  
418 clarifications so as to establish the plain meaning of how the  
419 agency rule, policy, or procedure applies to the set of facts  
420 and circumstances described in the petitioner's statement.

421 (5) If the agency denies a request for a declaratory  
422 statement and the petitioner appeals the denial, and if the  
423 administrative law judge finds that the agency improperly denied  
424 the request, the administrative law judge shall award to the  
425 petitioner reasonable attorney fees.

426 Section 6. Paragraph (1) of subsection (2) of section  
427 120.569, Florida Statutes, is amended to read:

428 120.569 Decisions which affect substantial interests.—

429 (2)

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

435 1. After the hearing is concluded, if conducted by the  
436 agency;

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

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

443 3. After the agency has received the written and oral  
 444 material it has authorized to be submitted, if there has been no  
 445 hearing.

446 Section 7. Paragraphs (e) and (h) of subsection (1) and  
 447 subsection (2) of section 120.57, Florida Statutes, are amended  
 448 to read:

449 120.57 Additional procedures for particular cases.—

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

452 (e)1. An agency or an administrative law judge may not  
 453 base agency action that determines the substantial interests of  
 454 a party on an unadopted rule or a rule that is an invalid  
 455 exercise of delegated legislative authority. ~~The administrative~~  
 456 ~~law judge shall determine whether an agency statement~~  
 457 ~~constitutes an unadopted rule.~~ This subparagraph does not  
 458 preclude application of valid adopted rules and applicable  
 459 provisions of law to the facts.

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

466 a. The challenge shall be pled as a defense using the

467 procedures set forth in s. 120.56(1)(b).

468 b. Section 120.56(3)(a) applies to a challenge alleging  
469 that a rule is an invalid exercise of delegated legislative  
470 authority.

471 c. Section 120.56(4)(c) applies to a challenge alleging an  
472 unadopted rule.

473 d. The agency has 15 days from the date of receipt of a  
474 challenge under this subparagraph to serve the challenging party  
475 with a notice whether the agency will continue to rely upon the  
476 rule or the alleged unadopted rule as a basis for the action  
477 determining the party's substantive interests. Failure to timely  
478 serve the notice constitutes a binding stipulation that the  
479 agency shall not rely upon the rule or unadopted rule further in  
480 the proceeding. The agency shall include a copy of this notice  
481 with the referral of the matter to the division under s.  
482 120.569(2)(a).

483 e. This subparagraph does not preclude the consolidation  
484 of any proceeding under s. 120.56 with any proceeding under this  
485 paragraph.

486 ~~3.2.~~ Notwithstanding subparagraph 1., if an agency  
487 demonstrates that the statute being implemented directs it to  
488 adopt rules, that the agency has not had time to adopt those  
489 rules because the requirement was so recently enacted, and that  
490 the agency has initiated rulemaking and is proceeding  
491 expeditiously and in good faith to adopt the required rules,  
492 then the agency's action may be based upon those unadopted rules

493 ~~if, subject to de novo review by~~ the administrative law judge  
 494 determines that rulemaking is neither feasible nor practicable  
 495 and the unadopted rules would not constitute an invalid exercise  
 496 of delegated legislative authority if adopted as rules. An  
 497 unadopted rule ~~The agency action~~ shall not be presumed valid ~~or~~  
 498 ~~invalid~~. The agency must demonstrate that the unadopted rule:  
 499       a. Is within the powers, functions, and duties delegated  
 500 by the Legislature or, if the agency is operating pursuant to  
 501 authority vested in the agency by ~~derived from~~ the State  
 502 Constitution, is within that authority;  
 503       b. Does not enlarge, modify, or contravene the specific  
 504 provisions of law implemented;  
 505       c. Is not vague, establishes adequate standards for agency  
 506 decisions, or does not vest unbridled discretion in the agency;  
 507       d. Is not arbitrary or capricious. A rule is arbitrary if  
 508 it is not supported by logic or the necessary facts; a rule is  
 509 capricious if it is adopted without thought or reason or is  
 510 irrational;  
 511       e. Is not being applied to the substantially affected  
 512 party without due notice; and  
 513       f. Does not impose excessive regulatory costs on the  
 514 regulated person, county, or city.  
 515       4. If the agency timely serves notice of continued  
 516 reliance upon a challenged rule or an alleged unadopted rule  
 517 under sub-subparagraph 2.d., the administrative law judge shall  
 518 determine whether the challenged rule is an invalid exercise of

519 delegated legislative authority or whether the challenged agency  
520 statement constitutes an unadopted rule and if that unadopted  
521 rule meets the requirements of subparagraph 3. The determination  
522 shall be rendered as a separate final order no earlier than the  
523 date on which the administrative law judge serves the  
524 recommended order.

525 ~~5.3.~~ The recommended and final orders in any proceeding  
526 shall be governed by the provisions of paragraphs (k) and (l),  
527 except that the administrative law judge's determination  
528 ~~regarding an unadopted rule~~ under subparagraph 4. 1. ~~or~~  
529 ~~subparagraph 2.~~ shall be included as a conclusion of law that  
530 the agency may not reject ~~not be rejected by the agency unless~~  
531 ~~the agency first determines from a review of the complete~~  
532 ~~record, and states with particularity in the order, that such~~  
533 ~~determination is clearly erroneous or does not comply with~~  
534 ~~essential requirements of law. In any proceeding for review~~  
535 ~~under s. 120.68, if the court finds that the agency's rejection~~  
536 ~~of the determination regarding the unadopted rule does not~~  
537 ~~comport with the provisions of this subparagraph, the agency~~  
538 ~~action shall be set aside and the court shall award to the~~  
539 ~~prevailing party the reasonable costs and a reasonable~~  
540 ~~attorney's fee for the initial proceeding and the proceeding for~~  
541 ~~review.~~

542 (h) Any party to a proceeding in which an administrative  
543 law judge of the Division of Administrative Hearings has final  
544 order authority may move for a summary final order when there is

545 no genuine issue as to any material fact. A summary final order  
546 shall be rendered if the administrative law judge determines  
547 from the pleadings, depositions, answers to interrogatories, and  
548 admissions on file, together with affidavits, if any, that no  
549 genuine issue as to any material fact exists and that the moving  
550 party is entitled as a matter of law to the entry of a final  
551 order. A summary final order shall consist of findings of fact,  
552 if any, conclusions of law, a disposition or penalty, if  
553 applicable, and any other information required by law to be  
554 contained in the final order. This paragraph does not apply to  
555 proceedings authorized by paragraph (e).

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

559 (a) The agency shall:

560 1. Give reasonable notice to affected persons of the  
561 action of the agency, whether proposed or already taken, or of  
562 its decision to refuse action, together with a summary of the  
563 factual, legal, and policy grounds therefor.

564 2. Give parties or their counsel the option, at a  
565 convenient time and place, to present to the agency or hearing  
566 officer written or oral evidence in opposition to the action of  
567 the agency or to its refusal to act, or a written statement  
568 challenging the grounds upon which the agency has chosen to  
569 justify its action or inaction.

570 3. If the objections of the parties are overruled, provide

571 a written explanation within 7 days.

572 (b) An agency may not base agency action that determines  
573 the substantial interests of a party on an unadopted rule or a  
574 rule that is an invalid exercise of delegated legislative  
575 authority. No later than the date provided by the agency under  
576 subparagraph (a)2. for presenting material in opposition to the  
577 agency's proposed action or refusal to act, the party may file a  
578 petition under s. 120.56 challenging the rule, portion of rule,  
579 or unadopted rule upon which the agency bases its proposed  
580 action or refusal to act. The filing of a challenge under s.  
581 120.56 pursuant to this paragraph shall stay all proceedings on  
582 the agency's proposed action or refusal to act until entry of  
583 the final order by the administrative law judge, which shall  
584 provide additional notice that the stay of the pending agency  
585 action is terminated and any further stay pending appeal of the  
586 final order must be sought from the appellate court.

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

- 588 1. The notice and summary of grounds.
- 589 2. Evidence received.
- 590 3. All written statements submitted.
- 591 4. Any decision overruling objections.
- 592 5. All matters placed on the record after an ex parte  
593 communication.
- 594 6. The official transcript.
- 595 7. Any decision, opinion, order, or report by the  
596 presiding officer.

597 Section 8. Section 120.573, Florida Statutes, is amended  
598 to read:

599 120.573 Mediation of disputes.—

600 (1) Each announcement of an agency action that affects  
601 substantial interests shall advise whether mediation of the  
602 administrative dispute for the type of agency action announced  
603 is available and that choosing mediation does not affect the  
604 right to an administrative hearing. If the agency and all  
605 parties to the administrative action agree to mediation, in  
606 writing, within 10 days after the time period stated in the  
607 announcement for election of an administrative remedy under ss.  
608 120.569 and 120.57, the time limitations imposed by ss. 120.569  
609 and 120.57 shall be tolled to allow the agency and parties to  
610 mediate the administrative dispute. The mediation shall be  
611 concluded within 60 days after ~~of~~ such agreement unless  
612 otherwise agreed by the parties. The mediation agreement shall  
613 include provisions for mediator selection, the allocation of  
614 costs and fees associated with mediation, and the mediating  
615 parties' understanding regarding the confidentiality of  
616 discussions and documents introduced during mediation. If  
617 mediation results in settlement of the administrative dispute,  
618 the agency shall enter a final order incorporating the agreement  
619 of the parties. If mediation terminates without settlement of  
620 the dispute, the agency shall notify the parties in writing that  
621 the administrative hearing processes under ss. 120.569 and  
622 120.57 are resumed.



HB 1355

2014

623        (2) Any party to a proceeding conducted pursuant to a  
624 petition seeking an administrative determination of the  
625 invalidity of an existing rule, proposed rule, or unadopted  
626 agency statement under s. 120.56 or a proceeding conducted  
627 pursuant to a petition seeking a declaratory statement under s.  
628 120.565 may request mediation of the dispute under this section.

629        Section 9. Section 120.595, Florida Statutes, is amended  
630 to read:

631        120.595 Attorney ~~Attorney's~~ fees.—

632        (1) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION  
633 120.57(1).—

634        (a) The provisions of this subsection are supplemental to,  
635 and do not abrogate, other provisions allowing the award of fees  
636 or costs in administrative proceedings.

637        (b) The final order in a proceeding pursuant to s.  
638 120.57(1) shall award reasonable costs and a reasonable attorney  
639 fees ~~attorney's fee~~ to the prevailing party if the  
640 administrative law judge determines ~~only where~~ the nonprevailing  
641 adverse party ~~has been determined by the administrative law~~  
642 ~~judge to have~~ participated in the proceeding for an improper  
643 purpose.

644        1.(e) Other than as provided in paragraph (d), in  
645 proceedings pursuant to s. 120.57(1), and upon motion, the  
646 administrative law judge shall determine whether any party  
647 participated in the proceeding for an improper purpose as  
648 defined by this subsection. ~~In making such determination, the~~

649 ~~administrative law judge shall consider whether~~ The  
 650 nonprevailing adverse party shall be presumed to have  
 651 participated in the pending proceeding for an improper purpose  
 652 if:

653 a. Such party was an adverse party ~~has participated in~~  
 654 three ~~two~~ or more other such proceedings involving the same  
 655 prevailing party and the same subject; ~~project as an adverse~~  
 656 ~~party and in~~

657 b. In those ~~which such two or more~~ proceedings the  
 658 nonprevailing adverse party did not establish either the factual  
 659 or legal merits of its position; ~~and shall consider~~

660 c. Whether The factual or legal position asserted in the  
 661 pending ~~instant~~ proceeding would have been cognizable in the  
 662 previous proceedings; and. ~~In such event, it shall be rebuttably~~  
 663 ~~presumed that the nonprevailing adverse party participated in~~  
 664 ~~the pending proceeding for an improper purpose~~

665 d. The nonprevailing adverse party has not rebutted the  
 666 presumption of participating in the pending proceeding for an  
 667 improper purpose.

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

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

675 1. "Improper purpose" means participation in a proceeding  
 676 pursuant to s. 120.57(1) primarily to harass or to cause  
 677 unnecessary delay or for frivolous purpose or to needlessly  
 678 increase the cost of litigation, licensing, or securing the  
 679 approval of an activity.

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

682 3. "Nonprevailing adverse party" means a party that has  
 683 failed to have substantially changed the outcome of the proposed  
 684 or final agency action which is the subject of a proceeding. In  
 685 the event that a proceeding results in any substantial  
 686 modification or condition intended to resolve the matters raised  
 687 in a party's petition, it shall be determined that the party  
 688 having raised the issue addressed is not a nonprevailing adverse  
 689 party. The recommended order shall state whether the change is  
 690 substantial for purposes of this subsection. In no event shall  
 691 the term "nonprevailing party" or "prevailing party" be deemed  
 692 to include any party that has intervened in a previously  
 693 existing proceeding to support the position of an agency.

694 (d) For challenges brought under s. 120.57(1)(e), when the  
 695 agency relies on a challenged rule or an alleged unadopted rule  
 696 pursuant to s. 120.57(1)(e)2.d., if the appellate court or the  
 697 administrative law judge declares the rule or portion of the  
 698 rule to be invalid or that the agency statement is an unadopted  
 699 rule which does not meet the requirements of s. 120.57(1)(e)4.,  
 700 a judgment or order shall be rendered against the agency for

701 reasonable costs and reasonable attorney fees. An award of  
702 attorney fees as provided by this paragraph may not exceed  
703 \$50,000.

704 (2) CHALLENGES TO PROPOSED AGENCY RULES PURSUANT TO  
705 SECTION 120.56(2).—If the appellate court or administrative law  
706 judge declares a proposed rule or portion of a proposed rule  
707 invalid pursuant to s. 120.56(2), a judgment or order shall be  
708 rendered against the agency for reasonable costs and reasonable  
709 attorney ~~attorney's~~ fees, unless the agency demonstrates that  
710 ~~its actions were substantially justified or~~ special  
711 circumstances exist which would make the award unjust. ~~An~~  
712 ~~agency's actions are "substantially justified" if there was a~~  
713 ~~reasonable basis in law and fact at the time the actions were~~  
714 ~~taken by the agency.~~ If the agency prevails in the proceedings,  
715 the appellate court or administrative law judge shall award  
716 reasonable costs and reasonable attorney ~~attorney's~~ fees against  
717 a party if the appellate court or administrative law judge  
718 determines that a party participated in the proceedings for an  
719 improper purpose as defined by paragraph (1)(c) ~~(1)(e)~~. ~~An~~ ~~Ne~~  
720 award of attorney ~~attorney's~~ fees as provided by this subsection  
721 may not ~~shall~~ exceed \$50,000.

722 (3) CHALLENGES TO EXISTING AGENCY RULES PURSUANT TO  
723 SECTION 120.56(3) AND (5).—If the appellate court or  
724 administrative law judge declares a rule or portion of a rule  
725 invalid pursuant to s. 120.56(3) or (5), a judgment or order  
726 shall be rendered against the agency for reasonable costs and

727 reasonable attorney ~~attorney's~~ fees, unless the agency  
 728 demonstrates that ~~its actions were substantially justified or~~  
 729 special circumstances exist which would make the award unjust.  
 730 ~~An agency's actions are "substantially justified" if there was a~~  
 731 ~~reasonable basis in law and fact at the time the actions were~~  
 732 ~~taken by the agency.~~ If the agency prevails in the proceedings,  
 733 the appellate court or administrative law judge shall award  
 734 reasonable costs and reasonable attorney ~~attorney's~~ fees against  
 735 a party if the appellate court or administrative law judge  
 736 determines that a party participated in the proceedings for an  
 737 improper purpose as defined by paragraph (1)(c) ~~(1)(e)~~. An ~~No~~  
 738 award of attorney ~~attorney's~~ fees as provided by this subsection  
 739 may not ~~shall~~ exceed \$50,000.

740 (4) CHALLENGES TO UNADOPTED RULES ~~AGENCY ACTION~~ PURSUANT  
 741 TO SECTION 120.56(4).-

742 (a) If the appellate court or administrative law judge  
 743 determines that all or part of an unadopted rule ~~agency~~  
 744 ~~statement~~ violates s. 120.54(1)(a), or that the agency must  
 745 immediately discontinue reliance upon ~~on~~ the unadopted rule  
 746 ~~statement~~ and any substantially similar statement pursuant to s.  
 747 120.56(4)(e), a judgment or order shall be entered against the  
 748 agency for reasonable costs and reasonable attorney ~~attorney's~~  
 749 fees, unless the agency demonstrates that the statement is  
 750 required by the Federal Government to implement or retain a  
 751 delegated or approved program or to meet a condition to receipt  
 752 of federal funds.

753 (b) Upon notification to the administrative law judge  
 754 provided before the final hearing that the agency has published  
 755 a notice of rulemaking under s. 120.54(3)(a), such notice shall  
 756 automatically operate as a stay of proceedings pending  
 757 rulemaking. The administrative law judge may vacate the stay for  
 758 good cause shown. A stay of proceedings under this paragraph  
 759 remains in effect so long as the agency is proceeding  
 760 expeditiously and in good faith to adopt the statement as a  
 761 rule. The administrative law judge shall award reasonable costs  
 762 and reasonable attorney ~~attorney's~~ fees incurred ~~accrued~~ by the  
 763 petitioner before ~~prior to~~ the date the notice was published,  
 764 ~~unless the agency proves to the administrative law judge that it~~  
 765 ~~did not know and should not have known that the statement was an~~  
 766 ~~unadopted rule. Attorneys' fees and costs under this paragraph~~  
 767 ~~and paragraph (a) shall be awarded only upon a finding that the~~  
 768 ~~agency received notice that the statement may constitute an~~  
 769 ~~unadopted rule at least 30 days before a petition under s.~~  
 770 ~~120.56(4) was filed and that the agency failed to publish the~~  
 771 ~~required notice of rulemaking pursuant to s. 120.54(3) that~~  
 772 ~~addresses the statement within that 30-day period. Notice to the~~  
 773 ~~agency may be satisfied by its receipt of a copy of the s.~~  
 774 ~~120.56(4) petition, a notice or other paper containing~~  
 775 ~~substantially the same information, or a petition filed pursuant~~  
 776 ~~to s. 120.54(7). An award of attorney ~~attorney's~~ fees as~~  
 777 provided by this paragraph may not exceed \$50,000.

778 (c) Notwithstanding the provisions of chapter 284, an

779 award shall be paid from the budget entity of the secretary,  
780 executive director, or equivalent administrative officer of the  
781 agency, and the agency is ~~shall~~ not be entitled to payment of an  
782 award or reimbursement for payment of an award under any  
783 provision of law.

784 (d) If the agency prevails in the proceedings, the  
785 appellate court or administrative law judge shall award  
786 reasonable costs and attorney ~~attorney's~~ fees against a party if  
787 the appellate court or administrative law judge determines that  
788 the party participated in the proceedings for an improper  
789 purpose as defined in paragraph (1)(c) ~~(1)(e)~~ or that the party  
790 or the party's attorney knew or should have known that a claim  
791 was not supported by the material facts necessary to establish  
792 the claim or would not be supported by the application of then-  
793 existing law to those material facts.

794 (5) APPEALS.—When there is an appeal, the court in its  
795 discretion may award reasonable attorney ~~attorney's~~ fees and  
796 reasonable costs to the prevailing party if the court finds that  
797 the appeal was frivolous, meritless, or an abuse of the  
798 appellate process, or that the agency action which precipitated  
799 the appeal was a gross abuse of the agency's discretion. Upon  
800 review of agency action that precipitates an appeal, if the  
801 court finds that the agency improperly rejected or modified  
802 findings of fact in a recommended order, the court shall award  
803 reasonable attorney ~~attorney's~~ fees and reasonable costs to a  
804 prevailing appellant for the administrative proceeding and the

805 appellate proceeding.

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

810 (a) Before filing a petition challenging the validity of a  
811 proposed rule under s. 120.56(2), an adopted rule under s.  
812 120.56(3), or an agency statement defined as an unadopted rule  
813 under s. 120.56(4), a substantially affected person shall serve  
814 the agency head with notice of the proposed challenge. The  
815 notice shall identify the proposed or adopted rule or the  
816 unadopted rule that the person proposes to challenge and a brief  
817 explanation of the basis for that challenge. The notice must be  
818 received by the agency head at least 5 days before the filing of  
819 a petition under s. 120.56(2), and at least 30 days before the  
820 filing of a petition under s. 120.56(3) or s. 120.56(4).

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

823 (7) DETERMINATION OF RECOVERABLE FEES AND COSTS.—For  
824 purposes of this chapter, s. 57.105(5), and s. 57.111, in  
825 addition to an award of reasonable attorney fees and reasonable  
826 costs, the prevailing party shall also recover reasonable  
827 attorney fees and reasonable costs incurred in litigating  
828 entitlement to, and the determination or quantification of,  
829 reasonable attorney fees and reasonable costs for the underlying  
830 matter. Reasonable attorney fees and reasonable costs awarded



831 for litigating entitlement to, and the determination or  
832 quantification of, reasonable attorney fees and reasonable costs  
833 for the underlying matter are not subject to the limitations on  
834 amounts provided in this chapter or s. 57.111.

835 (8)~~(6)~~ OTHER SECTIONS NOT AFFECTED.—Other provisions,  
836 including ss. 57.105 and 57.111, authorize the award of attorney  
837 ~~attorney's~~ fees and costs in administrative proceedings. Nothing  
838 in this section shall affect the availability of attorney  
839 ~~attorney's~~ fees and costs as provided in those sections.

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

842 120.68 Judicial review.—

843 (2) (a) Judicial review shall be sought in the appellate  
844 district where the agency maintains its headquarters or where a  
845 party resides or as otherwise provided by law. All proceedings  
846 shall be instituted by filing a notice of appeal or petition for  
847 review in accordance with the Florida Rules of Appellate  
848 Procedure within 30 days after the rendition of the order being  
849 appealed. If the appeal is of an order rendered in a proceeding  
850 initiated under s. 120.56, or a final order under s.  
851 120.57(1)(e)4., the agency whose rule is being challenged shall  
852 transmit a copy of the notice of appeal to the committee.

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

857 120.57(1)(e)5., or under s. 120.57(2)(b), or an agency's  
858 findings of immediate danger, necessity, and procedural fairness  
859 prerequisite to the adoption of an emergency rule pursuant to s.  
860 120.54(4), unless the sole issue presented by the petition is  
861 the constitutionality of a rule and there are no disputed issues  
862 of fact.

863 Section 11. Section 120.695, Florida Statutes, is amended  
864 to read:

865 120.695 Notice of noncompliance; designation of minor  
866 violation rules.—

867 (1) It is the policy of the state that the purpose of  
868 regulation is to protect the public by attaining compliance with  
869 the policies established by the Legislature. Fines and other  
870 penalties may be provided in order to assure compliance;  
871 however, the collection of fines and the imposition of penalties  
872 are intended to be secondary to the primary goal of attaining  
873 compliance with an agency's rules. It is the intent of the  
874 Legislature that an agency charged with enforcing rules shall  
875 issue a notice of noncompliance as its first response to a minor  
876 violation of a rule in any instance in which it is reasonable to  
877 assume that the violator was unaware of the rule or unclear as  
878 to how to comply with it.

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

883 the rule. A notice of noncompliance may not be accompanied with  
884 a fine or other disciplinary penalty. It must identify the  
885 specific rule that is being violated, provide information on how  
886 to comply with the rule, and specify a reasonable time for the  
887 violator to comply with the rule. A rule is agency action that  
888 regulates a business, occupation, or profession, or regulates a  
889 person operating a business, occupation, or profession, and  
890 that, if not complied with, may result in a disciplinary  
891 penalty.

892 (b) Each agency shall review all of its rules and  
893 designate those for which a violation would be a minor violation  
894 and for which a notice of noncompliance must be the first  
895 enforcement action taken against a person or business subject to  
896 regulation. A violation of a rule is a minor violation if it  
897 does not result in economic or physical harm to a person or  
898 adversely affect the public health, safety, or welfare or create  
899 a significant threat of such harm. ~~If an agency under the~~  
900 ~~direction of a cabinet officer mails to each licensee a notice~~  
901 ~~of the designated rules at the time of licensure and at least~~  
902 ~~annually thereafter, the provisions of paragraph (a) may be~~  
903 ~~exercised at the discretion of the agency. Such notice shall~~  
904 ~~include a subject-matter index of the rules and information on~~  
905 ~~how the rules may be obtained.~~

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

908        1. No later than June 30, 2015, and after such date within  
 909        3 months after any request of the rules ombudsman in the  
 910        Executive Office of the Governor, each agency shall review ~~under~~  
 911        ~~the direction of the Governor shall make a report to the~~  
 912        ~~Governor, and each agency under the joint direction of the~~  
 913        ~~Governor and Cabinet shall report to the Governor and Cabinet by~~  
 914        ~~January 1, 1996, on which of its rules~~ and certify to the  
 915        President of the Senate, the Speaker of the House of  
 916        Representatives, the Administrative Procedures Committee, and  
 917        the rules ombudsman those rules that have been designated as  
 918        rules the violation of which would be a minor violation under  
 919        paragraph (b), consistent with the legislative intent stated in  
 920        subsection (1). For each agency failing to timely complete the  
 921        review and file the certification as required by this section,  
 922        the rules ombudsman shall promptly report such failure to the  
 923        Governor, the President of the Senate, the Speaker of the House  
 924        of Representatives, and the Administrative Procedures Committee.

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

926        a. Publish all rules of that agency has designated as  
 927        rules the violation of which would be a minor violation, either  
 928        as a complete list on the agency's Internet web page or by  
 929        incorporation of the designations in the agency's disciplinary  
 930        guidelines adopted as a rule.

931        b. Ensure that all investigative and enforcement personnel  
 932        are knowledgeable of the agency's designations under this  
 933        section.

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

938 (d) The Governor or the Governor and Cabinet, as  
 939 appropriate ~~pursuant to paragraph (c)~~, may evaluate the review  
 940 and designation effects of each agency subject to the direction  
 941 and supervision of such authority and may direct ~~apply~~ a  
 942 different designation than that applied by such ~~the~~ agency.

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

- 945 1. The Department of Corrections;
- 946 2. Educational units;
- 947 3. The regulation of law enforcement personnel; or
- 948 4. The regulation of teachers.

949 (f) Designation pursuant to this section is not subject to  
 950 challenge under this chapter.

951 Section 12. This act shall take effect July 1, 2014.