

By Senator Lee

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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;
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

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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

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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 to changes
 78 made by the act; providing an effective date.

79

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

81

82 Section 1. Paragraph (e) of subsection (3) of section
 83 57.111, Florida Statutes, is amended to read:

84 57.111 Civil actions and administrative proceedings
 85 initiated by state agencies; attorney ~~attorneys'~~ fees and
 86 costs.—

87 (3) As used in this section:

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

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

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

102 Section 2. Paragraph (c) of subsection (7) of section
103 120.54, Florida Statutes, is amended to read:

104 120.54 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

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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 system,
132 compile and publish electronically, on an Internet website
133 managed by the department, the "Florida Administrative Code."
134 The Florida Administrative Code shall contain all rules adopted
135 by each agency, citing the grant of rulemaking authority and the
136 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

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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 with
157 an agency that files copies of its rules with the department,
158 the department shall publish the address and telephone number of
159 the executive offices of each agency, the manner by which the
160 agency indexes its rules, a listing of all rules of that agency
161 excluded from publication in the code, and a statement as to
162 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,

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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

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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 in
224 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

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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) on
241 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 Department 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 an
257 agency, whether published in the Florida Administrative Register
258 or elsewhere, shall include, along with the rule, the name of
259 the person or persons originating such rule, the name of the
260 agency head who approved the rule, and the date upon which the
261 rule was approved.

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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 120.56,
274 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 of
283 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

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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

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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 of
339 a rule invalid. The rule or part thereof declared invalid shall
340 become void when the time for filing an appeal expires. The
341 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; SPECIAL
346 PROVISIONS.—

347 (a) Any person substantially affected by an agency
348 statement may seek an administrative determination that the

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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.

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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
393 separate cases, but shall consider the challenge to the proposed
394 agency action and the allegation that such agency action was
395 based upon the presence of or reliance upon agency statements or
396 unadopted 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:

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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 person 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

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436 agency;

437 2. After a recommended order is submitted to the agency and
438 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 base
453 agency action that determines the substantial interests of a
454 party on an unadopted rule or a rule that is an invalid exercise
455 of delegated legislative authority. ~~The administrative law judge~~
456 ~~shall determine whether an agency statement constitutes an~~
457 ~~unadopted rule.~~ This subparagraph does not preclude application
458 of valid adopted rules and applicable provisions of law to the
459 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

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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 may 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 of
484 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

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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 by
500 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 party
512 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 reliance
516 upon a challenged rule or an alleged unadopted rule under sub-
517 subparagraph 2.d., the administrative law judge shall determine
518 whether the challenged rule is an invalid exercise of delegated
519 legislative authority or whether the challenged agency statement
520 constitutes an unadopted rule and if that unadopted rule meets
521 the requirements of subparagraph 3. The determination shall be
522 rendered as a separate final order no earlier than the date on

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523 which the administrative law judge serves the recommended order.

524 ~~5.3.~~ The recommended and final orders in any proceeding
525 shall be governed by the provisions of paragraphs (k) and (l),
526 except that the administrative law judge's determination
527 ~~regarding an unadopted rule~~ under subparagraph 4. 1. ~~or~~
528 ~~subparagraph 2.~~ shall be included as a conclusion of law that
529 the agency may not reject ~~not be rejected by the agency unless~~
530 ~~the agency first determines from a review of the complete~~
531 ~~record, and states with particularity in the order, that such~~
532 ~~determination is clearly erroneous or does not comply with~~
533 ~~essential requirements of law. In any proceeding for review~~
534 ~~under s. 120.68, if the court finds that the agency's rejection~~
535 ~~of the determination regarding the unadopted rule does not~~
536 ~~comport with the provisions of this subparagraph, the agency~~
537 ~~action shall be set aside and the court shall award to the~~
538 ~~prevailing party the reasonable costs and a reasonable~~
539 ~~attorney's fee for the initial proceeding and the proceeding for~~
540 ~~review.~~

541 (h) Any party to a proceeding in which an administrative
542 law judge of the Division of Administrative Hearings has final
543 order authority may move for a summary final order when there is
544 no genuine issue as to any material fact. A summary final order
545 shall be rendered if the administrative law judge determines
546 from the pleadings, depositions, answers to interrogatories, and
547 admissions on file, together with affidavits, if any, that no
548 genuine issue as to any material fact exists and that the moving
549 party is entitled as a matter of law to the entry of a final
550 order. A summary final order shall consist of findings of fact,
551 if any, conclusions of law, a disposition or penalty, if

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552 applicable, and any other information required by law to be
553 contained in the final order. This paragraph does not apply to
554 proceedings authorized by paragraph (e).

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

558 (a) The agency shall:

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

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

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

571 (b) An agency may not base agency action that determines
572 the substantial interests of a party on an unadopted rule or a
573 rule that is an invalid exercise of delegated legislative
574 authority. No later than the date provided by the agency under
575 subparagraph (a)2. for presenting material in opposition to the
576 agency's proposed action or refusal to act, the party may file a
577 petition under s. 120.56 challenging the rule, portion of rule,
578 or unadopted rule upon which the agency bases its proposed
579 action or refusal to act. The filing of a challenge under s.
580 120.56 pursuant to this paragraph shall stay all proceedings on

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581 the agency's proposed action or refusal to act until entry of
582 the final order by the administrative law judge, which shall
583 provide additional notice that the stay of the pending agency
584 action is terminated and any further stay pending appeal of the
585 final order must be sought from the appellate court.

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

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

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

598 120.573 Mediation of disputes.—

599 (1) Each announcement of an agency action that affects
600 substantial interests shall advise whether mediation of the
601 administrative dispute for the type of agency action announced
602 is available and that choosing mediation does not affect the
603 right to an administrative hearing. If the agency and all
604 parties to the administrative action agree to mediation, in
605 writing, within 10 days after the time period stated in the
606 announcement for election of an administrative remedy under ss.
607 120.569 and 120.57, the time limitations imposed by ss. 120.569
608 and 120.57 shall be tolled to allow the agency and parties to
609 mediate the administrative dispute. The mediation shall be

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610 concluded within 60 days after ~~of~~ such agreement unless
611 otherwise agreed by the parties. The mediation agreement shall
612 include provisions for mediator selection, the allocation of
613 costs and fees associated with mediation, and the mediating
614 parties' understanding regarding the confidentiality of
615 discussions and documents introduced during mediation. If
616 mediation results in settlement of the administrative dispute,
617 the agency shall enter a final order incorporating the agreement
618 of the parties. If mediation terminates without settlement of
619 the dispute, the agency shall notify the parties in writing that
620 the administrative hearing processes under ss. 120.569 and
621 120.57 are resumed.

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

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

630 120.595 Attorney ~~Attorney's~~ fees.—

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

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

636 (b) The final order in a proceeding pursuant to s.
637 120.57(1) shall award reasonable costs and ~~a~~ reasonable attorney
638 fees ~~attorney's fee~~ to the prevailing party if the

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639 administrative law judge determines ~~only where~~ the nonprevailing
640 adverse party ~~has been determined by the administrative law~~
641 ~~judge to have~~ participated in the proceeding for an improper
642 purpose.

643 1.(e) Other than as provided in paragraph (d), in
644 proceedings pursuant to s. 120.57(1), and upon motion, the
645 administrative law judge shall determine whether any party
646 participated in the proceeding for an improper purpose as
647 defined by this subsection. ~~In making such determination, the~~
648 ~~administrative law judge shall consider whether~~ The
649 nonprevailing adverse party shall be presumed to have
650 participated in the pending proceeding for an improper purpose
651 if:

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

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

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

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

667 2.(d) If ~~In any proceeding in which the administrative law~~

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

673 (c) ~~(e)~~ For the purpose of this subsection:

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

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

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

693 (d) For challenges brought under s. 120.57(1) (e), when the
694 agency relies on a challenged rule or an alleged unadopted rule
695 pursuant to s. 120.57(1) (e)2.d., if the appellate court or the
696 administrative law judge declares the rule or portion of the

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697 rule to be invalid or that the agency statement is an unadopted
698 rule which does not meet the requirements of s. 120.57(1)(e)4.,
699 a judgment or order shall be rendered against the agency for
700 reasonable costs and reasonable attorney fees. An award of
701 attorney fees as provided by this paragraph may not exceed
702 \$50,000.

703 (2) CHALLENGES TO PROPOSED AGENCY RULES PURSUANT TO SECTION
704 120.56(2).—If the appellate court or administrative law judge
705 declares a proposed rule or portion of a proposed rule invalid
706 pursuant to s. 120.56(2), a judgment or order shall be rendered
707 against the agency for reasonable costs and reasonable attorney
708 attorney's fees, unless the agency demonstrates that ~~its actions~~
709 ~~were substantially justified or~~ special circumstances exist
710 which would make the award unjust. ~~An agency's actions are~~
711 ~~"substantially justified" if there was a reasonable basis in law~~
712 ~~and fact at the time the actions were taken by the agency.~~ If
713 the agency prevails in the proceedings, the appellate court or
714 administrative law judge shall award reasonable costs and
715 reasonable attorney ~~attorney's~~ fees against a party if the
716 appellate court or administrative law judge determines that a
717 party participated in the proceedings for an improper purpose as
718 defined by paragraph (1)(c) ~~(1)(e)~~. An ~~No~~ award of attorney
719 attorney's fees as provided by this subsection may not ~~shall~~
720 exceed \$50,000.

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

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

739 (4) CHALLENGES TO UNADOPTED RULES ~~AGENCY ACTION~~ PURSUANT TO
 740 SECTION 120.56(4).—

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

752 (b) Upon notification to the administrative law judge
 753 provided before the final hearing that the agency has published
 754 a notice of rulemaking under s. 120.54(3) (a), such notice shall

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

777 (c) Notwithstanding the provisions of chapter 284, an award
778 shall be paid from the budget entity of the secretary, executive
779 director, or equivalent administrative officer of the agency,
780 and the agency is ~~shall~~ not be entitled to payment of an award
781 or reimbursement for payment of an award under any provision of
782 law.

783 (d) If the agency prevails in the proceedings, the

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

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

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

809 (a) Before filing a petition challenging the validity of a
810 proposed rule under s. 120.56(2), an adopted rule under s.
811 120.56(3), or an agency statement defined as an unadopted rule
812 under s. 120.56(4), a substantially affected person shall serve

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813 the agency head with notice of the proposed challenge. The
814 notice shall identify the proposed or adopted rule or the
815 unadopted rule that the person proposes to challenge and a brief
816 explanation of the basis for that challenge. The notice must be
817 received by the agency head at least 5 days before the filing of
818 a petition under s. 120.56(2), and at least 30 days before the
819 filing of a petition under s. 120.56(3) or s. 120.56(4).

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

822 (7) DETERMINATION OF RECOVERABLE FEES AND COSTS.—For
823 purposes of this chapter, s. 57.105(5), and s. 57.111, in
824 addition to an award of reasonable attorney fees and reasonable
825 costs, the prevailing party shall also recover reasonable
826 attorney fees and reasonable costs incurred in litigating
827 entitlement to, and the determination or quantification of,
828 reasonable attorney fees and reasonable costs for the underlying
829 matter. Reasonable attorney fees and reasonable costs awarded
830 for litigating entitlement to, and the determination or
831 quantification of, reasonable attorney fees and reasonable costs
832 for the underlying matter are not subject to the limitations on
833 amounts provided in this chapter or s. 57.111.

834 (8) ~~(6)~~ OTHER SECTIONS NOT AFFECTED.—Other provisions,
835 including ss. 57.105 and 57.111, authorize the award of attorney
836 attorney's fees and costs in administrative proceedings. Nothing
837 in this section shall affect the availability of attorney
838 attorney's fees and costs as provided in those sections.

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

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

852 (9) No petition challenging an agency rule as an invalid
853 exercise of delegated legislative authority shall be instituted
854 pursuant to this section, except to review an order entered
855 pursuant to a proceeding under s. 120.56, under s.
856 120.57(1)(e)5., or under s. 120.57(2)(b), or an agency's
857 findings of immediate danger, necessity, and procedural fairness
858 prerequisite to the adoption of an emergency rule pursuant to s.
859 120.54(4), unless the sole issue presented by the petition is
860 the constitutionality of a rule and there are no disputed issues
861 of fact.

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

864 120.695 Notice of noncompliance; designation of minor
865 violation rules.—

866 (1) It is the policy of the state that the purpose of
867 regulation is to protect the public by attaining compliance with
868 the policies established by the Legislature. Fines and other
869 penalties may be provided in order to assure compliance;
870 however, the collection of fines and the imposition of penalties

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871 are intended to be secondary to the primary goal of attaining
872 compliance with an agency's rules. It is the intent of the
873 Legislature that an agency charged with enforcing rules shall
874 issue a notice of noncompliance as its first response to a minor
875 violation of a rule in any instance in which it is reasonable to
876 assume that the violator was unaware of the rule or unclear as
877 to how to comply with it.

878 (2) (a) Each agency shall issue a notice of noncompliance as
879 a first response to a minor violation of a rule. A "notice of
880 noncompliance" is a notification by the agency charged with
881 enforcing the rule issued to the person or business subject to
882 the rule. A notice of noncompliance may not be accompanied with
883 a fine or other disciplinary penalty. It must identify the
884 specific rule that is being violated, provide information on how
885 to comply with the rule, and specify a reasonable time for the
886 violator to comply with the rule. A rule is agency action that
887 regulates a business, occupation, or profession, or regulates a
888 person operating a business, occupation, or profession, and
889 that, if not complied with, may result in a disciplinary
890 penalty.

891 (b) Each agency shall review all of its rules and designate
892 those for which a violation would be a minor violation and for
893 which a notice of noncompliance must be the first enforcement
894 action taken against a person or business subject to regulation.
895 A violation of a rule is a minor violation if it does not result
896 in economic or physical harm to a person or adversely affect the
897 public health, safety, or welfare or create a significant threat
898 of such harm. ~~If an agency under the direction of a cabinet~~
899 ~~officer mails to each licensee a notice of the designated rules~~

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900 ~~at the time of licensure and at least annually thereafter, the~~
901 ~~provisions of paragraph (a) may be exercised at the discretion~~
902 ~~of the agency. Such notice shall include a subject-matter index~~
903 ~~of the rules and information on how the rules may be obtained.~~

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

906 1. No later than June 30, 2015, and after such date within
907 3 months after any request of the rules ombudsman in the
908 Executive Office of the Governor, each agency shall review under
909 ~~the direction of the Governor shall make a report to the~~
910 ~~Governor, and each agency under the joint direction of the~~
911 ~~Governor and Cabinet shall report to the Governor and Cabinet by~~
912 January 1, 1996, on which of its rules and certify to the
913 President of the Senate, the Speaker of the House of
914 Representatives, the Administrative Procedures Committee, and
915 the rules ombudsman those rules that have been designated as
916 rules the violation of which would be a minor violation under
917 paragraph (b), consistent with the legislative intent stated in
918 subsection (1). For each agency failing to timely complete the
919 review and file the certification as required by this section,
920 the rules ombudsman shall promptly report such failure to the
921 Governor, the President of the Senate, the Speaker of the House
922 of Representatives, and the Administrative Procedures Committee.

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

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

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

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

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

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

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

947 (f) Designation pursuant to this section is not subject to
948 challenge under this chapter.

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