

Amendment No.

CHAMBER ACTION

Senate

House

.

1 Representative Adkins offered the following:

2
3 **Amendment (with title amendment)**

4 Remove everything after the enacting clause and insert:

5 Section 1. Paragraph (c) of subsection (7) of section
6 120.54, Florida Statutes, is amended, and paragraph (d) is added
7 to that subsection, to read:

8 120.54 Rulemaking.—

9 (7) PETITION TO INITIATE RULEMAKING.—

10 (c) If the agency does not initiate rulemaking or
11 otherwise comply with the requested action within 30 days after
12 following the public hearing provided for in by paragraph (b),
13 ~~if the agency does not initiate rulemaking or otherwise comply~~
14 ~~with the requested action,~~ the agency shall publish in the

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15 Florida Administrative Register a statement of its reasons for
16 not initiating rulemaking or otherwise complying with the
17 requested action, and of any changes it will make in the scope
18 or application of the unadopted rule. The agency shall file the
19 statement with the committee. The committee shall forward a copy
20 of the statement to the substantive committee with primary
21 oversight jurisdiction of the agency in each house of the
22 Legislature. The committee or the committee with primary
23 oversight jurisdiction may hold a hearing directed to the
24 statement of the agency. The committee holding the hearing may
25 recommend to the Legislature the introduction of legislation
26 making the rule a statutory standard or limiting or otherwise
27 modifying the authority of the agency.

28 (d) If the agency initiates rulemaking after a public
29 hearing provided for in paragraph (b), the agency shall publish
30 a notice of rule development within 30 days after the hearing
31 and file a notice of proposed rule within 180 days after the
32 notice of rule development unless, before the 180th day, the
33 agency publishes in the Florida Administrative Register a
34 statement explaining its reasons for not having filed the
35 notice. If rulemaking is initiated under this paragraph, the
36 agency may not rely on the unadopted rule unless the agency
37 publishes in the Florida Administrative Register a statement
38 explaining why rulemaking under paragraph (1)(a) is not feasible
39 or practicable until conclusion of the rulemaking proceeding.

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40 Section 2. Section 120.55, Florida Statutes, is amended to
41 read:

42 120.55 Publication.—

43 (1) The Department of State shall:

44 (a)1. Through a continuous revision and publication
45 system, compile and publish electronically, on an Internet
46 website managed by the department, the "Florida Administrative
47 Code." The Florida Administrative Code shall contain all rules
48 adopted by each agency, citing the grant of rulemaking authority
49 and the specific law implemented pursuant to which each rule was
50 adopted, all history notes as authorized in s. 120.545(7),
51 complete indexes to all rules contained in the code, and any
52 other material required or authorized by law or deemed useful by
53 the department. The electronic code shall display each rule
54 chapter currently in effect in browse mode and allow full text
55 search of the code and each rule chapter. The department may
56 contract with a publishing firm for a printed publication;
57 however, the department shall retain responsibility for the code
58 as provided in this section. The electronic publication shall be
59 the official compilation of the administrative rules of this
60 state. The Department of State shall retain the copyright over
61 the Florida Administrative Code.

62 2. Rules general in form but applicable to only one school
63 district, community college district, or county, or a part
64 thereof, or state university rules relating to internal
65 personnel or business and finance shall not be published in the

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66 Florida Administrative Code. Exclusion from publication in the
67 Florida Administrative Code shall not affect the validity or
68 effectiveness of such rules.

69 3. At the beginning of the section of the code dealing
70 with an agency that files copies of its rules with the
71 department, the department shall publish the address and
72 telephone number of the executive offices of each agency, the
73 manner by which the agency indexes its rules, a listing of all
74 rules of that agency excluded from publication in the code, and
75 a statement as to where those rules may be inspected.

76 4. Forms shall not be published in the Florida
77 Administrative Code; but any form which an agency uses in its
78 dealings with the public, along with any accompanying
79 instructions, shall be filed with the committee before it is
80 used. Any form or instruction which meets the definition of
81 "rule" provided in s. 120.52 shall be incorporated by reference
82 into the appropriate rule. The reference shall specifically
83 state that the form is being incorporated by reference and shall
84 include the number, title, and effective date of the form and an
85 explanation of how the form may be obtained. Each form created
86 by an agency which is incorporated by reference in a rule notice
87 of which is given under s. 120.54(3)(a) after December 31, 2007,
88 must clearly display the number, title, and effective date of
89 the form and the number of the rule in which the form is
90 incorporated.

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91 5. The department shall allow adopted rules and material
92 incorporated by reference to be filed in electronic form as
93 prescribed by department rule. When a rule is filed for adoption
94 with incorporated material in electronic form, the department's
95 publication of the Florida Administrative Code on its Internet
96 website must contain a hyperlink from the incorporating
97 reference in the rule directly to that material. The department
98 may not allow hyperlinks from rules in the Florida
99 Administrative Code to any material other than that filed with
100 and maintained by the department, but may allow hyperlinks to
101 incorporated material maintained by the department from the
102 adopting agency's website or other sites.

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

107 1. All notices required by s. 120.54(2) and (3)(a)
108 ~~120.54(3)(a)~~, showing the text of all rules proposed for
109 consideration.

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

113 3. A notice of each request for authorization to amend or
114 repeal an existing uniform rule or for the adoption of new
115 uniform rules.

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116 4. Notice of petitions for declaratory statements or
117 administrative determinations.

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

120 6. A list of rules filed for adoption in the previous 7
121 days.

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

126 ~~8.6.~~ Any other material required or authorized by law or
127 deemed useful by the department.

128

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

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

134 (d) Charge each agency using the Florida Administrative
135 Register a space rate to cover the costs related to the Florida
136 Administrative Register and the Florida Administrative Code.

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

139 (2) The Florida Administrative Register Internet website
140 must allow users to:

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

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

145 (c) Subscribe to an automated e-mail notification of
146 selected notices to be sent out before or concurrently with
147 publication of the electronic Florida Administrative Register.
148 Such notification must include in the text of the e-mail a
149 summary of the content of each notice.

150 (d) View agency forms and other materials submitted to the
151 department in electronic form and incorporated by reference in
152 proposed rules.

153 (e) Comment on proposed rules.

154 (3) Publication of material required by paragraph (1) (b)
155 on the Florida Administrative Register Internet website does not
156 preclude publication of such material on an agency's website or
157 by other means.

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

161 (5) Each agency that provides an e-mail notification
162 service to inform licensees or other registered recipients of
163 notices shall use that service to notify recipients of each
164 notice required under s. 120.54(2) and (3) and provide Internet
165 links to the appropriate rule page on the Secretary of State's

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166 website or Internet links to an agency website that contains the
167 proposed rule or final rule.

168 ~~(6)-(5)~~ Any publication of a proposed rule promulgated by
169 an agency, whether published in the Florida Administrative
170 Register or elsewhere, shall include, along with the rule, the
171 name of the person or persons originating such rule, the name of
172 the agency head who approved the rule, and the date upon which
173 the rule was approved.

174 ~~(7)-(6)~~ Access to the Florida Administrative Register
175 Internet website and its contents, including the e-mail
176 notification service, shall be free for the public.

177 ~~(8)-(7)~~(a) All fees and moneys collected by the Department
178 of State under this chapter shall be deposited in the Records
179 Management Trust Fund for the purpose of paying for costs
180 incurred by the department in carrying out this chapter.

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

185 (9) The failure to follow the provisions of this section
186 may not be raised in a proceeding challenging the validity of a
187 rule pursuant to s. 120.52(8)(a).

188 Section 3. Subsection (1), paragraph (a) of subsection
189 (2), and subsection (4) of section 120.56, Florida Statutes, are
190 amended to read:

191 120.56 Challenges to rules.—

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

194 (a) Any person substantially affected by a rule or a
195 proposed rule may seek an administrative determination of the
196 invalidity of the rule on the ground that the rule is an invalid
197 exercise of delegated legislative authority.

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

201 1. The particular provisions alleged to be invalid and a
202 statement ~~with sufficient explanation~~ of the facts or grounds
203 for the alleged invalidity. ~~and~~

204 2. Facts sufficient to show that the petitioner ~~person~~
205 ~~challenging a rule~~ is substantially affected by the challenged
206 adopted rule ~~it~~, or ~~that the person challenging a proposed rule~~
207 would be substantially affected by the proposed rule ~~it~~.

208 (c) The petition shall be filed by electronic means with
209 the division which shall, immediately upon filing, forward by
210 electronic means copies to the agency whose rule is challenged,
211 the Department of State, and the committee. Within 10 days after
212 receiving the petition, the division director shall, if the
213 petition complies with ~~the requirements of~~ paragraph (b), assign
214 an administrative law judge who shall conduct a hearing within
215 30 days thereafter, unless the petition is withdrawn or a
216 continuance is granted by agreement of the parties or for good
217 cause shown. Evidence of good cause includes, but is not limited

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218 to, written notice of an agency's decision to modify or withdraw
219 the proposed rule or a written notice from the chair of the
220 committee stating that the committee will consider an objection
221 to the rule at its next scheduled meeting. The failure of an
222 agency to follow the applicable rulemaking procedures or
223 requirements set forth in this chapter shall be presumed to be
224 material; however, the agency may rebut this presumption by
225 showing that the substantial interests of the petitioner and the
226 fairness of the proceedings have not been impaired.

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

232 (e) Hearings held under this section shall be de novo in
233 nature. The standard of proof shall be the preponderance of the
234 evidence. Hearings shall be conducted in the same manner as
235 provided by ss. 120.569 and 120.57, except that the
236 administrative law judge's order shall be final agency action.
237 The petitioner and the agency whose rule is challenged shall be
238 adverse parties. Other substantially affected persons may join
239 the proceedings as intervenors on appropriate terms which shall
240 not unduly delay the proceedings. Failure to proceed under this
241 section does ~~shall~~ not constitute failure to exhaust
242 administrative remedies.

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

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244 (a) A substantially affected person may seek an
245 administrative determination of the invalidity of a proposed
246 rule by filing a petition seeking such a determination with the
247 division within 21 days after the date of publication of the
248 notice required by s. 120.54(3) (a); within 10 days after the
249 final public hearing is held on the proposed rule as provided by
250 s. 120.54(3) (e)2.; within 20 days after the statement of
251 estimated regulatory costs or revised statement of estimated
252 regulatory costs, if applicable, has been prepared and made
253 available as provided in s. 120.541(1) (d); or within 20 days
254 after the date of publication of the notice required by s.
255 120.54(3) (d). The petition must state with particularity the
256 objections to the proposed rule and the reasons that the
257 proposed rule is an invalid exercise of delegated legislative
258 authority. The petitioner has the burden of going forward with
259 evidence sufficient to support the petition. The agency then has
260 the burden to prove by a preponderance of the evidence that the
261 proposed rule is not an invalid exercise of delegated
262 legislative authority as to the objections raised. ~~A person who~~
263 ~~is substantially affected by a change in the proposed rule may~~
264 ~~seek a determination of the validity of such change.~~ A person
265 who is not substantially affected by the proposed rule as
266 initially noticed, but who is substantially affected by the rule
267 as a result of a change, may challenge any provision of the
268 resulting proposed rule and ~~is not limited to challenging the~~
269 ~~change to the proposed rule.~~

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270 (4) CHALLENGING AGENCY STATEMENTS DEFINED AS UNADOPTED
271 RULES; SPECIAL PROVISIONS.—

272 (a) Any person substantially affected by an agency
273 statement that is an unadopted rule may seek an administrative
274 determination that the statement violates s. 120.54(1)(a). The
275 petition shall include the text of the statement or a
276 description of the statement and shall state ~~with particularity~~
277 facts sufficient to show that the statement constitutes an
278 unadopted a rule ~~under s. 120.52 and that the agency has not~~
279 ~~adopted the statement by the rulemaking procedure provided by s.~~
280 ~~120.54.~~

281 (b) The administrative law judge may extend the hearing
282 date beyond 30 days after assignment of the case for good cause.
283 Upon notification to the administrative law judge provided
284 before the final hearing that the agency has published a notice
285 of rulemaking under s. 120.54(3), such notice shall
286 automatically operate as a stay of proceedings pending adoption
287 of the statement as a rule. The administrative law judge may
288 vacate the stay for good cause shown. A stay of proceedings
289 pending rulemaking shall remain in effect so long as the agency
290 is proceeding expeditiously and in good faith to adopt the
291 statement as a rule.

292 (c) If a hearing is held and the petitioner proves the
293 allegations of the petition, the agency shall have the burden of
294 proving that rulemaking is not feasible or not practicable under
295 s. 120.54(1)(a).

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296 (d)~~(e)~~ The administrative law judge may determine whether
297 all or part of a statement violates s. 120.54(1)(a). The
298 decision of the administrative law judge shall constitute a
299 final order. The division shall transmit a copy of the final
300 order to the Department of State and the committee. The
301 Department of State shall publish notice of the final order in
302 the first available issue of the Florida Administrative
303 Register.

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

309 (f)~~(e)~~ If proposed rules addressing the challenged
310 unadopted rule ~~statement~~ are determined to be an invalid
311 exercise of delegated legislative authority as defined in s.
312 120.52(8)(b)-(f), the agency must immediately discontinue
313 reliance upon ~~on~~ the unadopted rule ~~statement~~ and any
314 substantially similar statement until rules addressing the
315 subject are properly adopted, and the administrative law judge
316 shall enter a final order to that effect.

317 (g)~~(f)~~ All proceedings to determine a violation of s.
318 120.54(1)(a) shall be brought pursuant to this subsection. A
319 proceeding pursuant to this subsection may be consolidated with
320 a proceeding under subsection (3) or under any other section of
321 this chapter. This paragraph does not prevent a party whose

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322 substantial interests have been determined by an agency action
323 from bringing a proceeding pursuant to s. 120.57(1)(e).

324 Section 4. Paragraphs (e) and (h) of subsection (1) and
325 subsection (2) of section 120.57, Florida Statutes, are amended
326 to read:

327 120.57 Additional procedures for particular cases.—

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

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

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

344 a. The challenge may be pled as a defense using the
345 procedures set forth in s. 120.56(1)(b).

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346 b. Section 120.56(3)(a) applies to a challenge alleging
347 that a rule is an invalid exercise of delegated legislative
348 authority.

349 c. Section 120.56(4)(c) applies to a challenge alleging an
350 unadopted rule.

351 d. This subparagraph does not preclude the consolidation
352 of any proceeding under s. 120.56 with any proceeding under this
353 paragraph.

354 3.2. Notwithstanding subparagraph 1., if an agency
355 demonstrates that the statute being implemented directs it to
356 adopt rules, that the agency has not had time to adopt those
357 rules because the requirement was so recently enacted, and that
358 the agency has initiated rulemaking and is proceeding
359 expeditiously and in good faith to adopt the required rules,
360 then the agency's action may be based upon those unadopted rules
361 if, subject to de novo review by the administrative law judge
362 determines that rulemaking is neither feasible nor practicable
363 and the unadopted rules would not constitute an invalid exercise
364 of delegated legislative authority if adopted as rules. An
365 unadopted rule ~~The agency action~~ shall not be presumed valid ~~or~~
366 ~~invalid~~. The agency must demonstrate that the unadopted rule:

367 a. Is within the powers, functions, and duties delegated
368 by the Legislature or, if the agency is operating pursuant to
369 authority vested in the agency by ~~derived from~~ the State
370 Constitution, is within that authority;

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

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

375 d. Is not arbitrary or capricious. A rule is arbitrary if
376 it is not supported by logic or the necessary facts; a rule is
377 capricious if it is adopted without thought or reason or is
378 irrational;

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

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

383 ~~4.3.~~ The recommended and final orders in any proceeding
384 shall be governed by ~~the provisions of~~ paragraphs (k) and (l),
385 except that the administrative law judge's determination
386 regarding an unadopted rule or a rule challenged as an invalid
387 exercise of delegated legislative authority under subparagraph
388 1. ~~or subparagraph 2.~~ shall be included as a conclusion of law
389 that the agency may not reject ~~not be rejected by the agency~~
390 ~~unless the agency first determines from a review of the complete~~
391 ~~record, and states with particularity in the order, that such~~
392 ~~determination is clearly erroneous or does not comply with~~
393 ~~essential requirements of law. In any proceeding for review~~
394 ~~under s. 120.68, if the court finds that the agency's rejection~~
395 ~~of the determination regarding the unadopted rule does not~~
396 ~~comport with the provisions of this subparagraph, the agency~~

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397 ~~action shall be set aside and the court shall award to the~~
398 ~~prevailing party the reasonable costs and a reasonable~~
399 ~~attorney's fee for the initial proceeding and the proceeding for~~
400 ~~review.~~

401 5. A petitioner may pursue a separate, collateral
402 challenge under s. 120.56 even if an adequate remedy exists
403 through a proceeding under this section. The administrative law
404 judge may consolidate the proceedings.

405 (h) Any party to a proceeding in which an administrative
406 law judge ~~of the Division of Administrative Hearings~~ has final
407 order authority may move for a summary final order when there is
408 no genuine issue as to any material fact. A summary final order
409 shall be rendered if the administrative law judge determines
410 from the pleadings, depositions, answers to interrogatories, and
411 admissions on file, together with affidavits, if any, that no
412 genuine issue as to any material fact exists and that the moving
413 party is entitled as a matter of law to the entry of a final
414 order. A summary final order shall consist of findings of fact,
415 if any, conclusions of law, a disposition or penalty, if
416 applicable, and any other information required by law to be
417 contained in the final order.

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

421 (a) The agency shall:

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422 1. Give reasonable notice to affected persons of the
423 action of the agency, whether proposed or already taken, or of
424 its decision to refuse action, together with a summary of the
425 factual, legal, and policy grounds therefor.

426 2. Give parties or their counsel the option, at a
427 convenient time and place, to present to the agency or hearing
428 officer written or oral evidence in opposition to the action of
429 the agency or to its refusal to act, or a written statement
430 challenging the grounds upon which the agency has chosen to
431 justify its action or inaction.

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

434 (b) An agency may not base agency action that determines
435 the substantial interests of a party on an unadopted rule or a
436 rule that is an invalid exercise of delegated legislative
437 authority.

438 (c)-(b) The record shall only consist of:

- 439 1. The notice and summary of grounds.
440 2. Evidence received.
441 3. All written statements submitted.
442 4. Any decision overruling objections.
443 5. All matters placed on the record after an ex parte
444 communication.
445 6. The official transcript.
446 7. Any decision, opinion, order, or report by the
447 presiding officer.

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448 Section 5. Subsections (1), (2), and (9) of section
449 120.68, Florida Statutes, are amended to read:

450 120.68 Judicial review.—

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

453 (b) A preliminary, procedural, or intermediate order of
454 the agency or of an administrative law judge of the Division of
455 Administrative Hearings is immediately reviewable if review of
456 the final agency decision would not provide an adequate remedy.

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

460 (b) All proceedings shall be instituted by filing a notice
461 of appeal or petition for review in accordance with the Florida
462 Rules of Appellate Procedure within 30 days after the date that
463 rendition of the order being appealed is filed with the agency
464 clerk. If a party receives notice of the filing of the order
465 later than the 25th day after the filing of the order with the
466 agency clerk, the time by which the party must file a notice of
467 appeal or petition for review is extended for 10 days after the
468 date that the party received the notice of the filing of the
469 order. If the appeal is of an order rendered in a proceeding
470 initiated under s. 120.56, the agency whose rule is being
471 challenged shall transmit a copy of the notice of appeal to the
472 committee.

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473 (c) ~~(b)~~ When proceedings under this chapter are
474 consolidated for final hearing and the parties to the
475 consolidated proceeding seek review of final or interlocutory
476 orders in more than one district court of appeal, the courts of
477 appeal are authorized to transfer and consolidate the review
478 proceedings. The court may transfer such appellate proceedings
479 on its own motion, upon motion of a party to one of the
480 appellate proceedings, or by stipulation of the parties to the
481 appellate proceedings. In determining whether to transfer a
482 proceeding, the court may consider such factors as the
483 interrelationship of the parties and the proceedings, the
484 desirability of avoiding inconsistent results in related
485 matters, judicial economy, and the burden on the parties of
486 reproducing the record for use in multiple appellate courts.

487 (9) A ~~No~~ petition challenging an agency rule as an invalid
488 exercise of delegated legislative authority shall not be
489 instituted pursuant to this section, except to review an order
490 entered pursuant to a proceeding under s. 120.56, s.
491 120.57(1)(e)1., or s. 120.57(2)(b) or an agency's findings of
492 immediate danger, necessity, and procedural fairness
493 prerequisite to the adoption of an emergency rule pursuant to s.
494 120.54(4), unless the sole issue presented by the petition is
495 the constitutionality of a rule and there are no disputed issues
496 of fact.

497 Section 6. Section 120.695, Florida Statutes, is amended
498 to read:

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499 120.695 Notice of noncompliance; designation of minor
500 violation of rules.—

501 (1) It is the policy of the state that the purpose of
502 regulation is to protect the public by attaining compliance with
503 the policies established by the Legislature. Fines and other
504 penalties may be provided in order to assure compliance;
505 however, the collection of fines and the imposition of penalties
506 are intended to be secondary to the primary goal of attaining
507 compliance with an agency's rules. It is the intent of the
508 Legislature that an agency charged with enforcing rules shall
509 issue a notice of noncompliance as its first response to a minor
510 violation of a rule in any instance in which it is reasonable to
511 assume that the violator was unaware of the rule or unclear as
512 to how to comply with it.

513 (2) (a) Each agency shall issue a notice of noncompliance
514 as a first response to a minor violation of a rule. A "notice of
515 noncompliance" is a notification by the agency charged with
516 enforcing the rule issued to the person or business subject to
517 the rule. A notice of noncompliance may not be accompanied with
518 a fine or other disciplinary penalty. It must identify the
519 specific rule that is being violated, provide information on how
520 to comply with the rule, and specify a reasonable time for the
521 violator to comply with the rule. A rule is agency action that
522 regulates a business, occupation, or profession, or regulates a
523 person operating a business, occupation, or profession, and

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524 that, if not complied with, may result in a disciplinary
525 penalty.

526 (b) Each agency shall review all of its rules and
527 designate those for which a violation would be a minor violation
528 and for which a notice of noncompliance must be the first
529 enforcement action taken against a person or business subject to
530 regulation. A violation of a rule is a minor violation if it
531 does not result in economic or physical harm to a person or
532 adversely affect the public health, safety, or welfare or create
533 a significant threat of such harm. ~~If an agency under the~~
534 ~~direction of a cabinet officer mails to each licensee a notice~~
535 ~~of the designated rules at the time of licensure and at least~~
536 ~~annually thereafter, the provisions of paragraph (a) may be~~
537 ~~exercised at the discretion of the agency. Such notice shall~~
538 ~~include a subject-matter index of the rules and information on~~
539 ~~how the rules may be obtained.~~

540 (c) 1. No later than June 30, 2016, and after such date
541 within 3 months after any request of the rules ombudsman in the
542 Executive Office of the Governor, The agency's review and
543 designation must be completed by December 1, 1995; each agency
544 shall review under the direction of the Governor shall make a
545 report to the Governor, and each agency under the joint
546 direction of the Governor and Cabinet shall report to the
547 Governor and Cabinet by January 1, 1996, on which of its rules
548 and certify to the President of the Senate, the Speaker of the
549 House of Representatives, the committee, and the rules ombudsman

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550 those rules that have been designated as rules the violation of
551 which would be a minor violation under paragraph (b), consistent
552 with the legislative intent stated in subsection (1).

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

554 a. Publish all rules that the agency has designated as
555 rules the violation of which would be a minor violation, either
556 as a complete list on the agency's website or by incorporation
557 of the designations in the agency's disciplinary guidelines
558 adopted as a rule.

559 b. Ensure that all investigative and enforcement personnel
560 are knowledgeable about the agency's designations under this
561 section.

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

566 (d) The Governor or the Governor and Cabinet, as
567 appropriate ~~pursuant to paragraph (c)~~, may evaluate the review
568 and designation effects of each agency subject to the direction
569 and supervision of such authority and may direct ~~apply~~ a
570 different designation than that applied by such ~~the~~ agency.

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

573 1. The Department of Corrections;

574 2. Educational units;

575 3. The regulation of law enforcement personnel; or

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576 4. The regulation of teachers.

577 (f) Designation pursuant to this section is not subject to
578 challenge under this chapter.

579 Section 7. This act shall take effect July 1, 2015.

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582 -----

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

584 Remove everything before the enacting clause and insert:

585 A bill to be entitled

586 An act relating to administrative procedures; amending
587 s. 120.54, F.S.; providing procedures for agencies to
588 follow when initiating rulemaking after certain public
589 hearings; limiting reliance upon an unadopted rule in
590 certain circumstances; amending s. 120.55, F.S.;
591 providing for publication of notices of rule
592 development and of rules filed for adoption; providing
593 for additional notice of rule development, proposals,
594 and adoptions in the Florida Administrative Register;
595 requiring certain agencies to provide additional e-
596 mail notifications concerning specified rulemaking and
597 rule development activities; providing that failure to
598 follow certain provisions does not constitute grounds
599 to challenge validity of a rule; amending s. 120.56,
600 F.S.; clarifying language; amending s. 120.57, F.S.;
601 conforming proceedings that oppose agency action based

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602 on an invalid or unadopted rule to proceedings used
603 for challenging rules; authorizing the administrative
604 law judge to make certain findings on the validity of
605 certain alleged unadopted rules; prohibiting agencies
606 from rejecting specific conclusions of law in certain
607 recommended orders rendered by an administrative law
608 judge; authorizing a petitioner to file certain
609 collateral challenges regarding the validity of a
610 rule; authorizing the administrative law judge to
611 consolidate proceedings in such rule challenges;
612 providing that agency action may not be based on an
613 invalid or unadopted rule; amending s. 120.68, F.S.;
614 revising mechanism for determining when appeals or
615 petitions for review must be instituted; authorizing
616 extensions for filing certain appeals or petitions for
617 review under certain circumstances; amending s.
618 120.695, F.S.; removing obsolete provisions with
619 respect to required agency review and designation of
620 minor violations; requiring agency review and
621 certification of minor violation rules by a specified
622 date; requiring minor violation certification for all
623 rules adopted after a specified date; requiring public
624 notice; providing applicability; conforming provisions
625 to changes made by the act; providing an effective
626 date.

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