

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 attorney fees and costs; amending s. 120.54, F.S.;
6 requiring agencies to set a time for workshops for
7 certain unadopted rules; amending s. 120.55, F.S.;
8 providing additional items that must be noticed by an
9 agency in the Florida Administrative Register;
10 requiring agencies to provide such notice to
11 registered recipients under certain circumstances;
12 amending s. 120.56, F.S.; clarifying that petitions
13 for administrative determinations apply to rules and
14 proposed rules; identifying which entities have the
15 burden in hearings in which a rule, proposed rule, or
16 agency statement is at issue; prohibiting an
17 administrative law judge from bifurcating certain
18 petitions; amending s. 120.565, F.S.; authorizing
19 certain parties to state to an agency their
20 understanding of how certain rules apply to specific
21 facts; specifying the timeframe for an agency to
22 provide a declaratory statement; authorizing the award
23 of attorney fees under certain circumstances; amending
24 s. 120.569, F.S.; granting agencies additional time to
25 render final orders under certain circumstances;
26 amending s. 120.57, F.S.; conforming proceedings based
27 on invalid or unadopted rules to proceedings used for
28 challenging existing rules; requiring an agency to
29 issue a notice regarding its reliance on the

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30 challenged rule or alleged unadopted rule; authorizing
31 the administrative law judge to make certain findings
32 on the validity of certain alleged unadopted rules;
33 requiring the administrative law judge to issue a
34 separate final order on certain rules and alleged
35 unadopted rules; prohibiting agencies from rejecting
36 specific conclusions of law; limiting situations under
37 which an agency may reject or modify conclusions of
38 law; providing for stay of proceedings not involving
39 disputed issues of fact upon timely filing of a rule
40 challenge; providing that the final order terminates
41 the stay; amending s. 120.573, F.S.; providing
42 additional situations in which a party may request
43 mediation; amending s. 120.595, F.S.; providing
44 criteria for establishing whether a nonprevailing
45 party participated in a proceeding for an improper
46 purpose; revising provisions providing for the award
47 of attorney fees and costs by the appellate court or
48 administrative law judge; providing exceptions;
49 removing a provision authorizing an agency to
50 demonstrate its actions were substantially justified;
51 requiring notice of a proposed challenge by the
52 petitioner as a condition precedent to filing a
53 challenge and being eligible for the reimbursement of
54 attorney fees and costs; authorizing the recovery of
55 attorney fees and costs incurred in litigating rights
56 to attorney fees and costs in certain actions;
57 providing such attorney fees and costs are not limited
58 in amount; amending s. 120.68, F.S.; requiring

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59 specified agencies to provide notice of appeal to the
60 Administrative Procedures Committee under certain
61 circumstances; amending s. 120.695, F.S.; removing
62 obsolete provisions; requiring agency review and
63 certification of minor rule violations by a specified
64 date; requiring the reporting of agency failure to
65 complete such review and certification; requiring
66 certification of minor violations for all rules
67 adopted after a specified date; requiring public
68 notice; providing for nonapplicability; providing an
69 effective date.

70

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

72

73 Section 1. Paragraph (e) of subsection (3) of section
74 57.111, Florida Statutes, is amended to read:

75 57.111 Civil actions and administrative proceedings
76 initiated by state agencies; attorney ~~attorneys'~~ fees and
77 costs.—

78 (3) As used in this section:

79 (e) A proceeding is "substantially justified" if it had a
80 reasonable basis in law and fact at the time it was initiated by
81 a state agency. A proceeding is not "substantially justified" if
82 the law, rule, or order at issue in the current agency action is
83 the subject upon which the prevailing party previously
84 petitioned the agency for a declaratory statement under s.
85 120.565; the current agency action involves identical or
86 substantially similar facts and circumstances as those raised in
87 the previous petition; and:

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

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

93 Section 2. Paragraph (c) of subsection (7) of section
94 120.54, Florida Statutes, is amended to read:

95 120.54 Rulemaking.—

96 (7) PETITION TO INITIATE RULEMAKING.—

97 (c) Within 30 days following the public hearing provided
98 for ~~in~~ by paragraph (b), if the petition's requested action
99 requires rulemaking and the agency initiates rulemaking, the
100 agency shall establish a time certain for rulemaking workshops
101 and shall discontinue reliance upon the agency statement or
102 unadopted rule until it adopts rules pursuant to subsection (3).

103 If the agency does not initiate rulemaking or otherwise comply
104 with the requested action, the agency shall publish in the
105 Florida Administrative Register a statement of its reasons for
106 not initiating rulemaking or otherwise complying with the
107 requested action, and of any changes it will make in the scope
108 or application of the unadopted rule. The agency shall file the
109 statement with the committee. The committee shall forward a copy
110 of the statement to the substantive committee with primary
111 oversight jurisdiction of the agency in each house of the
112 Legislature. The committee or the committee with primary
113 oversight jurisdiction may hold a hearing directed to the
114 statement of the agency. The committee holding the hearing may
115 recommend to the Legislature the introduction of legislation
116 making the rule a statutory standard or limiting or otherwise

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117 modifying the authority of the agency.

118 Section 3. Section 120.55, Florida Statutes, is amended to
119 read:

120 120.55 Publication.—

121 (1) The Department of State shall:

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

140 2. Rules general in form but applicable to only one school
141 district, community college district, or county, or a part
142 thereof, or state university rules relating to internal
143 personnel or business and finance shall not be published in the
144 Florida Administrative Code. Exclusion from publication in the
145 Florida Administrative Code shall not affect the validity or

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146 effectiveness of such rules.

147 3. At the beginning of the section of the code dealing with
148 an agency that files copies of its rules with the department,
149 the department shall publish the address and telephone number of
150 the executive offices of each agency, the manner by which the
151 agency indexes its rules, a listing of all rules of that agency
152 excluded from publication in the code, and a statement as to
153 where those rules may be inspected.

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

169 5. The department shall allow adopted rules and material
170 incorporated by reference to be filed in electronic form as
171 prescribed by department rule. When a rule is filed for adoption
172 with incorporated material in electronic form, the department's
173 publication of the Florida Administrative Code on its Internet
174 website must contain a hyperlink from the incorporating

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175 reference in the rule directly to that material. The department
176 may not allow hyperlinks from rules in the Florida
177 Administrative Code to any material other than that filed with
178 and maintained by the department, but may allow hyperlinks to
179 incorporated material maintained by the department from the
180 adopting agency's website or other sites.

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

185 1. All notices required by s. 120.54(2) and (3)(a)
186 ~~120.54(3)(a)~~, showing the text of all rules proposed for
187 consideration.

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

191 3. A notice of each request for authorization to amend or
192 repeal an existing uniform rule or for the adoption of new
193 uniform rules.

194 4. Notice of petitions for declaratory statements or
195 administrative determinations.

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

198 6. A listing of rules filed for adoption in the previous 7
199 days.

200 7. A listing of all rules filed for adoption pending
201 legislative ratification under s. 120.541(3). Each rule on the
202 list shall be taken off the list once it is ratified or
203 withdrawn.

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204 ~~8.6.~~ Any other material required or authorized by law or
205 deemed useful by the department.

206
207 The department may contract with a publishing firm for a printed
208 publication of the Florida Administrative Register and make
209 copies available on an annual subscription basis.

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

212 (d) Charge each agency using the Florida Administrative
213 Register a space rate to cover the costs related to the Florida
214 Administrative Register and the Florida Administrative Code.

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

217 (2) The Florida Administrative Register Internet website
218 must allow users to:

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

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

223 (c) Subscribe to an automated e-mail notification of
224 selected notices to be sent out before or concurrently with
225 publication of the electronic Florida Administrative Register.
226 Such notification must include in the text of the e-mail a
227 summary of the content of each notice.

228 (d) View agency forms and other materials submitted to the
229 department in electronic form and incorporated by reference in
230 proposed rules.

231 (e) Comment on proposed rules.

232 (3) Publication of material required by paragraph (1)(b) on

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233 the Florida Administrative Register Internet website does not
234 preclude publication of such material on an agency's website or
235 by other means.

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

239 (5) Each agency that provides an e-mail notification
240 service to inform registered recipients of notices shall use
241 that service to notify recipients of each notice required under
242 s. 120.54(2) and (3) (a) and provide Internet links to the
243 appropriate rule page on the Secretary of State's website or
244 Internet links to an agency website that contains the proposed
245 rule or final rule.

246 (6)~~(5)~~ Any publication of a proposed rule promulgated by an
247 agency, whether published in the Florida Administrative Register
248 or elsewhere, shall include, along with the rule, the name of
249 the person or persons originating such rule, the name of the
250 agency head who approved the rule, and the date upon which the
251 rule was approved.

252 (7)~~(6)~~ Access to the Florida Administrative Register
253 Internet website and its contents, including the e-mail
254 notification service, shall be free for the public.

255 (8)~~(7)~~ (a) All fees and moneys collected by the Department
256 of State under this chapter shall be deposited in the Records
257 Management Trust Fund for the purpose of paying for costs
258 incurred by the department in carrying out this chapter.

259 (b) The unencumbered balance in the Records Management
260 Trust Fund for fees collected pursuant to this chapter may not
261 exceed \$300,000 at the beginning of each fiscal year, and any

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262 excess shall be transferred to the General Revenue Fund.

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

265 120.56 Challenges to rules.—

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

268 (a) Any person substantially affected by a rule or a
269 proposed rule may seek an administrative determination of the
270 invalidity of the rule on the ground that the rule is an invalid
271 exercise of delegated legislative authority.

272 (b) The petition seeking an administrative determination of
273 the invalidity of a rule or proposed rule must state the facts
274 and ~~with particularity~~ the provisions alleged to be invalid with
275 sufficient explanation of the ~~facts~~ or grounds for the alleged
276 invalidity and facts sufficient to show that the petitioner
277 ~~person~~ challenging a rule is substantially affected by it, or
278 that the petitioner ~~person~~ challenging a proposed rule would be
279 substantially affected by it.

280 (c) The petition shall be filed by electronic means with
281 the division which shall, immediately upon filing, forward by
282 electronic means copies to the agency whose rule is challenged,
283 the Department of State, and the committee. Within 10 days after
284 receiving the petition, the division director shall, if the
285 petition complies with ~~the requirements of~~ paragraph (b), assign
286 an administrative law judge who shall conduct a hearing within
287 30 days thereafter, unless the petition is withdrawn or a
288 continuance is granted by agreement of the parties or for good
289 cause shown. Evidence of good cause includes, but is not limited
290 to, written notice of an agency's decision to modify or withdraw

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291 the proposed rule or a written notice from the chair of the
292 committee stating that the committee will consider an objection
293 to the rule at its next scheduled meeting. The failure of an
294 agency to follow the applicable rulemaking procedures or
295 requirements set forth in this chapter shall be presumed to be
296 material; however, the agency may rebut this presumption by
297 showing that the substantial interests of the petitioner and the
298 fairness of the proceedings have not been impaired.

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

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

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

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320 (a) A substantially affected person may seek an
321 administrative determination of the invalidity of an existing
322 rule at any time during the existence of the rule. The
323 petitioner has the a burden of going forward with the evidence
324 as set forth in paragraph (1)(b), and the agency has the burden
325 of proving by a preponderance of the evidence that the existing
326 rule is not an invalid exercise of delegated legislative
327 authority as to the objections raised.

328 (b) The administrative law judge may declare all or part of
329 a rule invalid. The rule or part thereof declared invalid shall
330 become void when the time for filing an appeal expires. The
331 agency whose rule has been declared invalid in whole or part
332 shall give notice of the decision in the Florida Administrative
333 Register in the first available issue after the rule has become
334 void.

335 (c) If an existing agency rule is declared invalid, the
336 agency may no longer rely on the rule for final agency action,
337 including any final action on cases pending under s. 120.57.

338 (4) CHALLENGING AGENCY STATEMENTS DEFINED AS RULES; SPECIAL
339 PROVISIONS.—

340 (a) Any person substantially affected by an agency
341 statement may seek an administrative determination that the
342 statement violates s. 120.54(1)(a). The petition shall include
343 the text of the statement or a description of the statement and
344 shall state ~~with particularity~~ facts sufficient to show that the
345 statement constitutes a rule under s. 120.52 and that the agency
346 has not adopted the statement by the rulemaking procedure
347 provided by s. 120.54.

348 (b) The administrative law judge may extend the hearing

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349 date beyond 30 days after assignment of the case for good cause.
350 Upon notification to the administrative law judge provided
351 before the final hearing that the agency has published a notice
352 of rulemaking under s. 120.54(3), such notice shall
353 automatically operate as a stay of proceedings pending adoption
354 of the statement as a rule. The administrative law judge may
355 vacate the stay for good cause shown. A stay of proceedings
356 pending rulemaking shall remain in effect so long as the agency
357 is proceeding expeditiously and in good faith to adopt the
358 statement as a rule. If a hearing is held and the petitioner
359 proves the allegations of the petition, the agency shall have
360 the burden of proving that rulemaking is not feasible or not
361 practicable under s. 120.54(1)(a).

362 (c) The administrative law judge may determine whether all
363 or part of a statement violates s. 120.54(1)(a). The decision of
364 the administrative law judge shall constitute a final order. The
365 division shall transmit a copy of the final order to the
366 Department of State and the committee. The Department of State
367 shall publish notice of the final order in the first available
368 issue of the Florida Administrative Register.

369 (d) If an administrative law judge enters a final order
370 that all or part of an agency statement violates s.
371 120.54(1)(a), the agency must immediately discontinue all
372 reliance upon the statement or any substantially similar
373 statement as a basis for agency action.

374 (e) If proposed rules addressing the challenged statement
375 are determined to be an invalid exercise of delegated
376 legislative authority as defined in s. 120.52(8)(b)-(f), the
377 agency must immediately discontinue reliance on the statement

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378 and any substantially similar statement until rules addressing
379 the subject are properly adopted, and the administrative law
380 judge shall enter a final order to that effect.

381 (f) If a petitioner files a petition challenging agency
382 action and a part of that petition alleges the presence of or
383 reliance upon agency statements or unadopted rules, the
384 administrative law judge may not bifurcate the petition into two
385 cases but shall consider the challenge to the proposed agency
386 action and the allegation that such agency action was based upon
387 the presence of or reliance upon agency statements or unadopted
388 rules.

389 (g)~~(f)~~ All proceedings to determine a violation of s.
390 120.54(1) (a) shall be brought pursuant to this subsection. A
391 proceeding pursuant to this subsection may be consolidated with
392 a proceeding under subsection (3) or under any other section of
393 this chapter. This paragraph does not prevent a party whose
394 substantial interests have been determined by an agency action
395 from bringing a proceeding pursuant to s. 120.57(1) (e).

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

399 120.565 Declaratory statement by agencies.—

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

404 (4) The petitioner may submit to the agency clerk a
405 statement that describes or asserts the petitioner's
406 understanding of how the statutory provision, rule, or order

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407 applies to the set of circumstances. The agency has 60 days to
408 review the petitioner's statement and to either accept the
409 statement or offer changes and other clarifications to establish
410 the plain meaning of how the statutory provision, rule, or order
411 applies to the set of circumstances described in the
412 petitioner's statement.

413 (5) If the agency denies a request for a declaratory
414 statement and the petitioner appeals the denial and it is
415 determined that the agency improperly denied the request, the
416 petitioner is entitled to an award of reasonable attorney fees
417 and costs.

418 Section 6. Paragraph (1) of subsection (2) of section
419 120.569, Florida Statutes, is amended to read:

420 120.569 Decisions which affect substantial interests.-

421 (2)

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

427 1. After the hearing is concluded, if conducted by the
428 agency;

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

435 3. After the agency has received the written and oral

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436 material it has authorized to be submitted, if there has been no
437 hearing.

438 Section 7. Paragraphs (e), (h), and (l) of subsection (1)
439 and subsection (2) of section 120.57, Florida Statutes, are
440 amended to read:

441 120.57 Additional procedures for particular cases.—

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

444 (e)1. An agency or an administrative law judge may not base
445 agency action that determines the substantial interests of a
446 party on an unadopted rule or a rule that is an invalid exercise
447 of delegated legislative authority. ~~The administrative law judge~~
448 ~~shall determine whether an agency statement constitutes an~~
449 ~~unadopted rule.~~ This subparagraph does not preclude application
450 of valid adopted rules and applicable provisions of law to the
451 facts.

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

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

460 b. Section 120.56(3)(a) applies to a challenge alleging
461 that a rule is an invalid exercise of delegated legislative
462 authority.

463 c. Section 120.56(4)(c) applies to a challenge alleging an
464 unadopted rule.

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465 d. The agency has 15 days from the date of receipt of a
466 challenge under this subparagraph to serve the challenging party
467 with a notice as to whether the agency will continue to rely
468 upon the rule or the alleged unadopted rule as a basis for the
469 action determining the party's substantive interests. Failure to
470 serve or to timely serve the notice constitutes a binding
471 determination that the agency may not rely upon the rule or
472 unadopted rule further in the proceeding. The agency shall
473 include a copy of the notice, if one was served, when it refers
474 the matter to the division under s. 120.569(2) (a).

475 e. This subparagraph does not preclude the consolidation of
476 any proceeding under s. 120.56 with any proceeding under this
477 paragraph.

478 3.2. Notwithstanding subparagraph 1., if an agency
479 demonstrates that the statute being implemented directs it to
480 adopt rules, that the agency has not had time to adopt those
481 rules because the requirement was so recently enacted, and that
482 the agency has initiated rulemaking and is proceeding
483 expeditiously and in good faith to adopt the required rules,
484 then the agency's action may be based upon those unadopted rules
485 if, subject to de novo review by the administrative law judge
486 determines that the unadopted rules would not constitute an
487 invalid exercise of delegated legislative authority if adopted
488 as rules. An unadopted rule is ~~The agency action shall not be~~
489 presumed to be valid or invalid. The agency must demonstrate
490 that the unadopted rule:

491 a. Is within the powers, functions, and duties delegated by
492 the Legislature or, if the agency is operating pursuant to
493 authority vested in the agency by ~~derived from~~ the State

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494 Constitution, is within that authority;

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

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

499 d. Is not arbitrary or capricious. A rule is arbitrary if
500 it is not supported by logic or the necessary facts; a rule is
501 capricious if it is adopted without thought or reason or is
502 irrational;

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

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

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

516 ~~5.3.~~ The recommended and final orders in any proceeding
517 shall be governed by ~~the provisions of~~ paragraphs (k) and (l),
518 except that the administrative law judge's determination
519 ~~regarding an unadopted rule under subparagraph 4. 1. or~~
520 ~~subparagraph 2.~~ shall be included as a conclusion of law that
521 the agency may not reject ~~not be rejected by the agency unless~~
522 ~~the agency first determines from a review of the complete~~

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523 ~~record, and states with particularity in the order, that such~~
524 ~~determination is clearly erroneous or does not comply with~~
525 ~~essential requirements of law. In any proceeding for review~~
526 ~~under s. 120.68, if the court finds that the agency's rejection~~
527 ~~of the determination regarding the unadopted rule does not~~
528 ~~comport with the provisions of this subparagraph, the agency~~
529 ~~action shall be set aside and the court shall award to the~~
530 ~~prevailing party the reasonable costs and a reasonable~~
531 ~~attorney's fee for the initial proceeding and the proceeding for~~
532 ~~review.~~

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

547 (l) The agency may adopt the recommended order as the final
548 order of the agency. The agency in its final order may only
549 reject or modify the conclusions of law over which it has
550 substantive jurisdiction and interpretation of administrative
551 rules over which it has substantive jurisdiction if the agency

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552 determines that the conclusions of law are clearly erroneous.
553 When rejecting or modifying such conclusion of law or
554 interpretation of administrative rule, the agency must state
555 with particularity its reasons for rejecting or modifying such
556 conclusion of law or interpretation of administrative rule and
557 must make a finding that its substituted conclusion of law or
558 interpretation of administrative rule is as reasonable as, or
559 more reasonable than, that which was rejected or modified.
560 Rejection or modification of conclusions of law may not form the
561 basis for rejection or modification of findings of fact. The
562 agency may not reject or modify the findings of fact unless the
563 agency first determines from a review of the entire record, and
564 states with particularity in the order, that the findings of
565 fact were not based upon competent substantial evidence or that
566 the proceedings on which the findings were based did not comply
567 with essential requirements of law. The agency may accept the
568 recommended penalty in a recommended order, but may not reduce
569 or increase it without a review of the complete record and
570 without stating with particularity its reasons therefor in the
571 order, by citing to the record in justifying the action.

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

575 (a) The agency shall:

576 1. Give reasonable notice to affected persons of the action
577 of the agency, whether proposed or already taken, or of its
578 decision to refuse action, together with a summary of the
579 factual, legal, and policy grounds therefor.

580 2. Give parties or their counsel the option, at a

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581 convenient time and place, to present to the agency or
582 administrative law judge ~~hearing officer~~ written or oral
583 evidence in opposition to the action of the agency or to its
584 refusal to act, or a written statement challenging the grounds
585 upon which the agency has chosen to justify its action or
586 inaction.

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

589 (b) An agency may not base agency action that determines
590 the substantial interests of a party on an unadopted rule or a
591 rule that is an invalid exercise of delegated legislative
592 authority. No later than the date provided by the agency under
593 subparagraph (a)2., the party may file a petition under s.
594 120.56 challenging the rule, portion of rule, or unadopted rule
595 upon which the agency bases its proposed action or refusal to
596 act. The filing of a challenge under s. 120.56 pursuant to this
597 paragraph shall stay all proceedings on the agency's proposed
598 action or refusal to act until entry of the final order by the
599 administrative law judge. The final order shall provide notice
600 that the stay of the pending agency action is terminated and any
601 further stay pending appeal of the final order must be sought
602 from the appellate court.

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

- 604 1. The notice and summary of grounds.
- 605 2. Evidence received.
- 606 3. All written statements submitted.
- 607 4. Any decision overruling objections.
- 608 5. All matters placed on the record after an ex parte
609 communication.

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610 6. The official transcript.

611 7. Any decision, opinion, order, or report by the presiding
612 officer.

613 Section 8. Section 120.573, Florida Statutes, is amended to
614 read:

615 120.573 Mediation of disputes.—

616 (1) Each announcement of an agency action that affects
617 substantial interests shall advise whether mediation of the
618 administrative dispute for the type of agency action announced
619 is available and that choosing mediation does not affect the
620 right to an administrative hearing. If the agency and all
621 parties to the administrative action agree to mediation, in
622 writing, within 10 days after the time period stated in the
623 announcement for election of an administrative remedy under ss.
624 120.569 and 120.57, the time limitations imposed by ss. 120.569
625 and 120.57 shall be tolled to allow the agency and parties to
626 mediate the administrative dispute. The mediation shall be
627 concluded within 60 days after ~~of~~ such agreement unless
628 otherwise agreed by the parties. The mediation agreement shall
629 include provisions for mediator selection, the allocation of
630 costs and fees associated with mediation, and the mediating
631 parties' understanding regarding the confidentiality of
632 discussions and documents introduced during mediation. If
633 mediation results in settlement of the administrative dispute,
634 the agency shall enter a final order incorporating the agreement
635 of the parties. If mediation terminates without settlement of
636 the dispute, the agency shall notify the parties in writing that
637 the administrative hearing processes under ss. 120.569 and
638 120.57 are resumed.

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639 (2) A party in a proceeding conducted pursuant to a
640 petition seeking an administrative determination of the
641 invalidity of an existing rule, proposed rule, or agency
642 statement under s. 120.56 or a proceeding conducted pursuant to
643 a petition seeking a declaratory statement under s. 120.565 may
644 request mediation of the dispute under this section.

645 Section 9. Section 120.595, Florida Statutes, is amended to
646 read:

647 120.595 Attorney ~~Attorney's~~ fees.—

648 (1) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION
649 120.57(1).—

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

653 (b) The final order in a proceeding pursuant to s.
654 120.57(1) shall award reasonable costs and ~~a~~ reasonable attorney
655 fees ~~attorney's fee~~ to the prevailing party if the
656 administrative law judge determines only where the nonprevailing
657 adverse party ~~has been determined by the administrative law~~
658 ~~judge to have~~ participated in the proceeding for an improper
659 purpose.

660 1.(e) Other than as provided in paragraph (d), in
661 proceedings pursuant to s. 120.57(1), and upon motion, the
662 administrative law judge shall determine whether any party
663 participated in the proceeding for an improper purpose as
664 defined by this subsection. In making such determination, the
665 administrative law judge shall consider whether The
666 nonprevailing adverse party shall be presumed to have
667 participated in the pending proceeding for an improper purpose

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668 if:

669 a. Such party was an adverse party ~~has participated in~~
670 ~~three two~~ or more ~~other such~~ proceedings involving the same
671 prevailing party and the same subject;

672 b. In those project as an adverse party and in which such
673 ~~two or more~~ proceedings, the nonprevailing adverse party did not
674 establish either the factual or legal merits of its position;7
675 ~~and shall consider whether~~

676 c. The factual or legal position asserted in the pending
677 ~~instant~~ proceeding would have been cognizable in the previous
678 proceedings; and

679 d. The nonprevailing adverse party has not rebutted the
680 presumption of participating. ~~In such event, it shall be~~
681 ~~rebuttably presumed that the nonprevailing adverse party~~
682 ~~participated in the pending proceeding for an improper purpose.~~

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

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

690 1. "Improper purpose" means participation in a proceeding
691 pursuant to s. 120.57(1) primarily to harass or to cause
692 unnecessary delay or for frivolous purpose or to needlessly
693 increase the cost of litigation, licensing, or securing the
694 approval of an activity.

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

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697 3. "Nonprevailing adverse party" means a party that has
698 failed to have substantially changed the outcome of the proposed
699 or final agency action which is the subject of a proceeding. In
700 the event that a proceeding results in any substantial
701 modification or condition intended to resolve the matters raised
702 in a party's petition, it shall be determined that the party
703 having raised the issue addressed is not a nonprevailing adverse
704 party. The recommended order shall state whether the change is
705 substantial for purposes of this subsection. In no event shall
706 the term "nonprevailing party" or "prevailing party" be deemed
707 to include any party that has intervened in a previously
708 existing proceeding to support the position of an agency.

709 (d) For challenges brought under s. 120.57(1)(e), when the
710 agency relies on a challenged rule or an alleged unadopted rule
711 pursuant to s. 120.57(1)(e)2.d., if the appellate court or the
712 administrative law judge declares the rule or portion of the
713 rule to be invalid or that the agency statement is an unadopted
714 rule that does not meet the requirements of s. 120.57(1)(e)4., a
715 judgment or order shall be rendered against the agency for
716 reasonable costs and reasonable attorney fees. An award of
717 attorney fees as provided by this paragraph may not exceed
718 \$50,000.

719 (2) CHALLENGES TO PROPOSED AGENCY RULES PURSUANT TO SECTION
720 120.56(2).—If the appellate court or administrative law judge
721 declares a proposed rule or portion of a proposed rule invalid
722 pursuant to s. 120.56(2), a judgment or order shall be rendered
723 against the agency for reasonable costs and reasonable attorney
724 ~~attorney's~~ fees, unless the agency demonstrates that ~~its actions~~
725 ~~were substantially justified or~~ special circumstances exist

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

737 (3) CHALLENGES TO EXISTING AGENCY RULES PURSUANT TO SECTION
738 120.56(3) AND (5).—If the appellate court or administrative law
739 judge declares a rule or portion of a rule invalid pursuant to
740 s. 120.56(3) or (5), a judgment or order shall be rendered
741 against the agency for reasonable costs and reasonable attorney
742 ~~attorney's~~ fees, unless the agency demonstrates that ~~its actions~~
743 ~~were substantially justified or~~ special circumstances exist
744 which would make the award unjust. ~~An agency's actions are~~
745 ~~"substantially justified" if there was a reasonable basis in law~~
746 ~~and fact at the time the actions were taken by the agency.~~ If
747 the agency prevails in the proceedings, the appellate court or
748 administrative law judge shall award reasonable costs and
749 reasonable attorney ~~attorney's~~ fees against a party if the
750 appellate court or administrative law judge determines that a
751 party participated in the proceedings for an improper purpose as
752 defined by paragraph (1)(c) ~~(1)(e)~~. An ~~No~~ award of attorney
753 ~~attorney's~~ fees as provided by this subsection may not ~~shall~~
754 exceed \$50,000.

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755 (4) CHALLENGES TO UNADOPTED RULES ~~AGENCY ACTION~~ PURSUANT TO
756 SECTION 120.56(4).-

757 (a) If the appellate court or administrative law judge
758 determines that all or part of an unadopted rule ~~agency~~
759 ~~statement~~ violates s. 120.54(1)(a), or that the agency must
760 immediately discontinue reliance upon ~~on~~ the unadopted rule
761 ~~statement~~ and any substantially similar statement pursuant to s.
762 120.56(4)(e), a judgment or order shall be entered against the
763 agency for reasonable costs and reasonable attorney ~~attorney's~~
764 fees, unless the agency demonstrates that the statement is
765 required by the Federal Government to implement or retain a
766 delegated or approved program or to meet a condition to receipt
767 of federal funds.

768 (b) Upon notification to the administrative law judge
769 provided before the final hearing that the agency has published
770 a notice of rulemaking under s. 120.54(3)(a), such notice shall
771 automatically operate as a stay of proceedings pending
772 rulemaking. The administrative law judge may vacate the stay for
773 good cause shown. A stay of proceedings under this paragraph
774 remains in effect so long as the agency is proceeding
775 expeditiously and in good faith to adopt the statement as a
776 rule. The administrative law judge shall award reasonable costs
777 and reasonable attorney ~~attorney's~~ fees incurred ~~accrued~~ by the
778 petitioner before ~~prior to~~ the date the notice was published,
779 ~~unless the agency proves to the administrative law judge that it~~
780 ~~did not know and should not have known that the statement was an~~
781 ~~unadopted rule. Attorneys' fees and costs under this paragraph~~
782 ~~and paragraph (a) shall be awarded only upon a finding that the~~
783 ~~agency received notice that the statement may constitute an~~

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784 ~~unadopted rule at least 30 days before a petition under s.~~
785 ~~120.56(4) was filed and that the agency failed to publish the~~
786 ~~required notice of rulemaking pursuant to s. 120.54(3) that~~
787 ~~addresses the statement within that 30-day period. Notice to the~~
788 ~~agency may be satisfied by its receipt of a copy of the s.~~
789 ~~120.56(4) petition, a notice or other paper containing~~
790 ~~substantially the same information, or a petition filed pursuant~~
791 ~~to s. 120.54(7). An award of attorney ~~attorney's~~ fees as~~
792 ~~provided by this paragraph may not exceed \$50,000.~~

793 (c) Notwithstanding ~~the provisions of~~ chapter 284, an award
794 shall be paid from the budget entity of the secretary, executive
795 director, or equivalent administrative officer of the agency,
796 and the agency is ~~shall~~ not be entitled to payment of an award
797 or reimbursement for payment of an award under any provision of
798 law.

799 (d) If the agency prevails in the proceedings, the
800 appellate court or administrative law judge shall award
801 reasonable costs and attorney ~~attorney's~~ fees against a party if
802 the appellate court or administrative law judge determines that
803 the party participated in the proceedings for an improper
804 purpose as defined in paragraph (1)(c) ~~(1)(e)~~ or that the party
805 or the party's attorney knew or should have known that a claim
806 was not supported by the material facts necessary to establish
807 the claim or would not be supported by the application of then-
808 existing law to those material facts.

809 (5) APPEALS.—When there is an appeal, the court in its
810 discretion may award reasonable attorney ~~attorney's~~ fees and
811 reasonable costs to the prevailing party if the court finds that
812 the appeal was frivolous, meritless, or an abuse of the

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813 appellate process, or that the agency action that ~~which~~
814 precipitated the appeal was a gross abuse of the agency's
815 discretion. Upon review of agency action that precipitates an
816 appeal, if the court finds that the agency improperly rejected
817 or modified findings of fact in a recommended order, the court
818 shall award reasonable attorney ~~attorney's~~ fees and reasonable
819 costs to a prevailing appellant for the administrative
820 proceeding and the appellate proceeding.

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

825 (a) Before filing a petition challenging the validity of a
826 proposed rule under s. 120.56(2), an adopted rule under s.
827 120.56(3), or an agency statement defined as an unadopted rule
828 under s. 120.56(4), a substantially affected person shall serve
829 the agency head with notice of the proposed challenge. The
830 notice shall identify the proposed or adopted rule or the
831 unadopted rule that the person proposes to challenge and a brief
832 explanation of the basis for that challenge. The notice must be
833 received by the agency head at least 5 days before the filing of
834 a petition under s. 120.56(2) and at least 30 days before the
835 filing of a petition under s. 120.56(3) or s. 120.56(4).

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

838 (7) DETERMINATION OF RECOVERABLE FEES AND COSTS.—For
839 purposes of this chapter, s. 57.105(5), and s. 57.111, in
840 addition to an award of reasonable attorney fees and reasonable
841 costs, the prevailing party shall also recover reasonable

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842 attorney fees and reasonable costs incurred in litigating
 843 entitlement to, and the determination or quantification of,
 844 reasonable attorney fees and reasonable costs for the underlying
 845 matter. Reasonable attorney fees and reasonable costs awarded
 846 for litigating entitlement to, and the determination or
 847 quantification of, reasonable attorney fees and reasonable costs
 848 for the underlying matter are not subject to the limitations on
 849 amounts provided in this chapter or s. 57.111.

850 (8)~~(6)~~ OTHER SECTIONS NOT AFFECTED.—Other provisions,
 851 including ss. 57.105 and 57.111, authorize the award of attorney
 852 ~~attorney's~~ fees and costs in administrative proceedings. ~~Nothing~~
 853 ~~in~~ This section does not shall affect the availability of
 854 attorney ~~attorney's~~ fees and costs as provided in those
 855 sections.

856 Section 10. Paragraph (a) of subsection (2) and subsection
 857 (9) of section 120.68, Florida Statutes, are amended to read:
 858 120.68 Judicial review.—

859 (2) (a) Judicial review shall be sought in the appellate
 860 district where the agency maintains its headquarters or where a
 861 party resides or as otherwise provided by law. All proceedings
 862 shall be instituted by filing a notice of appeal or petition for
 863 review in accordance with the Florida Rules of Appellate
 864 Procedure within 30 days after the rendition of the order being
 865 appealed. If the appeal is of an order rendered in a proceeding
 866 initiated under s. 120.56 or a final order under s.
 867 120.57(1)(e)4., the agency whose rule is being challenged shall
 868 transmit a copy of the notice of appeal to the committee.

869 (9) A ~~No~~ petition challenging an agency rule as an invalid
 870 exercise of delegated legislative authority may not shall be

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871 instituted pursuant to this section, except to review an order
872 entered pursuant to a proceeding under s. 120.56, s.
873 120.57(1)(e)5., or s. 120.57(2)(b) or an agency's findings of
874 immediate danger, necessity, and procedural fairness
875 prerequisite to the adoption of an emergency rule pursuant to s.
876 120.54(4), unless the sole issue presented by the petition is
877 the constitutionality of a rule and there are no disputed issues
878 of fact.

879 Section 11. Section 120.695, Florida Statutes, is amended
880 to read:

881 120.695 Notice of noncompliance; designation of minor
882 violation of rules.—

883 (1) It is the policy of the state that the purpose of
884 regulation is to protect the public by attaining compliance with
885 the policies established by the Legislature. Fines and other
886 penalties may be provided in order to assure compliance;
887 however, the collection of fines and the imposition of penalties
888 are intended to be secondary to the primary goal of attaining
889 compliance with an agency's rules. It is the intent of the
890 Legislature that an agency charged with enforcing rules shall
891 issue a notice of noncompliance as its first response to a minor
892 violation of a rule in any instance in which it is reasonable to
893 assume that the violator was unaware of the rule or unclear as
894 to how to comply with it.

895 (2) (a) Each agency shall issue a notice of noncompliance as
896 a first response to a minor violation of a rule. A "notice of
897 noncompliance" is a notification by the agency charged with
898 enforcing the rule issued to the person or business subject to
899 the rule. A notice of noncompliance may not be accompanied with

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900 a fine or other disciplinary penalty. It must identify the
901 specific rule that is being violated, provide information on how
902 to comply with the rule, and specify a reasonable time for the
903 violator to comply with the rule. A rule is agency action that
904 regulates a business, occupation, or profession, or regulates a
905 person operating a business, occupation, or profession, and
906 that, if not complied with, may result in a disciplinary
907 penalty.

908 (b) Each agency shall review all of its rules and designate
909 those for which a violation would be a minor violation and for
910 which a notice of noncompliance must be the first enforcement
911 action taken against a person or business subject to regulation.
912 A violation of a rule is a minor violation if it does not result
913 in economic or physical harm to a person or adversely affect the
914 public health, safety, or welfare or create a significant threat
915 of such harm. ~~If an agency under the direction of a cabinet~~
916 ~~officer mails to each licensee a notice of the designated rules~~
917 ~~at the time of licensure and at least annually thereafter, the~~
918 ~~provisions of paragraph (a) may be exercised at the discretion~~
919 ~~of the agency. Such notice shall include a subject-matter index~~
920 ~~of the rules and information on how the rules may be obtained.~~

921 (c) 1. Within 3 months after any request of the rules
922 ombudsman in the Executive Office of the Governor, The agency's
923 review and designation must be completed by December 1, 1995;
924 each agency shall review under the direction of the Governor
925 shall make a report to the Governor, and each agency under the
926 joint direction of the Governor and Cabinet shall report to the
927 Governor and Cabinet by January 1, 1996, on which of its rules
928 and certify to the President of the Senate, the Speaker of the

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929 House of Representatives, the Administrative Procedures
930 Committee, and the rules ombudsman any designated rules, have
931 ~~been designated as rules~~ the violation of which would be a minor
932 violation under paragraph (b), consistent with the legislative
933 intent stated in subsection (1). The rules ombudsman shall
934 promptly report to the Governor, the President of the Senate,
935 the Speaker of the House of Representatives, and the
936 Administrative Procedures Committee each failure of an agency to
937 timely complete the review and file the certification as
938 required by this section.

939 2. Beginning July 1, 2015, each agency shall:

940 a. Publish all rules that the agency has designated as
941 rules that the violation of which would be a minor violation,
942 either as a complete list on the agency's Internet web page or
943 by incorporation of the designations in the agency's
944 disciplinary guidelines adopted as a rule.

945 b. Ensure that all investigative and enforcement personnel
946 are knowledgeable about the agency's designations under this
947 section.

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

952 (d) The Governor or the Governor and Cabinet, as
953 appropriate ~~pursuant to paragraph (c)~~, may evaluate the review
954 and designation effects of each agency subject to the direction
955 and supervision of such authority and may direct ~~apply~~ a
956 different designation than that applied by such ~~the~~ agency.

957 (e) Notwithstanding s. 120.52(1)(a), this section does not

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958 apply to:

959 1. The Department of Corrections;960 2. Educational units;961 3. The regulation of law enforcement personnel; or962 4. The regulation of teachers.963 (f) Designation pursuant to this section is not subject to
964 challenge under this chapter.

965 Section 12. This act shall take effect July 1, 2015.