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Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on General Government)

A bill to be entitled

An act relating to administrative procedures; amending s. 120.54, F.S.; providing procedures for agencies to follow when initiating rulemaking after certain public hearings; limiting reliance upon an unadopted rule in certain circumstances; amending s. 120.55, F.S.; providing for publication of notices of rule development and of rules filed for adoption; providing for additional notice of rule development, proposals, and adoptions in the Florida Administrative Register; requiring certain agencies to provide additional e-mail notifications concerning specified rulemaking and rule development activities; providing that failure to follow certain provisions does not constitute grounds to challenge validity of a rule; amending s. 120.56, F.S.; clarifying language regarding challenges to rules; specifying the petitioner's burden of proof in proposed rule challenges; amending s. 120.57, F.S.; conforming proceedings that oppose agency action based on an invalid or unadopted rule to proceedings used for challenging rules; authorizing the administrative law judge to make certain findings on the validity of certain alleged unadopted rules; authorizing a petitioner to file certain collateral challenges regarding the validity of a rule; authorizing the administrative law judge to consolidate proceedings in such rule challenges; providing that agency action may



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28 not be based on an invalid or unadopted rule; amending
29 s. 120.68, F.S.; specifying legal authority to file a
30 petition challenging an agency rule as an invalid
31 exercise of delegated legislative authority; amending
32 s. 120.695, F.S.; removing obsolete provisions with
33 respect to required agency review and designation of
34 minor violations; requiring agency review and
35 certification of minor violation rules by a specified
36 date; requiring minor violation certification for all
37 rules adopted after a specified date; requiring public
38 notice; providing applicability; amending s. 120.595,
39 F.S.; conforming a cross-reference; providing an
40 effective date.

41

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

43

44 Section 1. Paragraph (c) of subsection (7) of section
45 120.54, Florida Statutes, is amended, and paragraph (d) is added
46 to that subsection, to read:

47 120.54 Rulemaking.—

48 (7) PETITION TO INITIATE RULEMAKING.—

49 (c) If the agency does not initiate rulemaking or otherwise
50 comply with the requested action within 30 days after following
51 the public hearing provided for in by paragraph (b), if the
52 agency does not initiate rulemaking or otherwise comply with the
53 requested action, the agency shall publish in the Florida
54 Administrative Register a statement of its reasons for not
55 initiating rulemaking or otherwise complying with the requested
56 action, and of any changes it will make in the scope or



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57 application of the unadopted rule. The agency shall file the
58 statement with the committee. The committee shall forward a copy
59 of the statement to the substantive committee with primary
60 oversight jurisdiction of the agency in each house of the
61 Legislature. The committee or the committee with primary
62 oversight jurisdiction may hold a hearing directed to the
63 statement of the agency. The committee holding the hearing may
64 recommend to the Legislature the introduction of legislation
65 making the rule a statutory standard or limiting or otherwise
66 modifying the authority of the agency.

67 (d) If the agency initiates rulemaking after the public
68 hearing provided for in paragraph (b), the agency shall publish
69 a notice of rule development within 30 days after the hearing
70 and file a notice of proposed rule within 180 days after the
71 notice of rule development unless, before the 180th day, the
72 agency publishes in the Florida Administrative Register a
73 statement explaining its reasons for not having filed the
74 notice. If rulemaking is initiated under this paragraph, the
75 agency may not rely on the unadopted rule unless the agency
76 publishes in the Florida Administrative Register a statement
77 explaining why rulemaking under paragraph (1)(a) is not feasible
78 or practicable until the conclusion of the rulemaking
79 proceeding.

80 Section 2. Section 120.55, Florida Statutes, is amended to
81 read:

82 120.55 Publication.—

83 (1) The Department of State shall:

84 (a)1. Through a continuous revision and publication system,
85 compile and publish electronically, on a ~~an Internet~~ website



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86 managed by the department, the "Florida Administrative Code."
87 The Florida Administrative Code shall contain all rules adopted
88 by each agency, citing the grant of rulemaking authority and the
89 specific law implemented pursuant to which each rule was
90 adopted, all history notes as authorized in s. 120.545(7),
91 complete indexes to all rules contained in the code, and any
92 other material required or authorized by law or deemed useful by
93 the department. The electronic code shall display each rule
94 chapter currently in effect in browse mode and allow full text
95 search of the code and each rule chapter. The department may
96 contract with a publishing firm for a printed publication;
97 however, the department shall retain responsibility for the code
98 as provided in this section. The electronic publication shall be
99 the official compilation of the administrative rules of this
100 state. The Department of State shall retain the copyright over
101 the Florida Administrative Code.

102 2. Rules general in form but applicable to only one school
103 district, community college district, or county, or a part
104 thereof, or state university rules relating to internal
105 personnel or business and finance shall not be published in the
106 Florida Administrative Code. Exclusion from publication in the
107 Florida Administrative Code shall not affect the validity or
108 effectiveness of such rules.

109 3. At the beginning of the section of the code dealing with
110 an agency that files copies of its rules with the department,
111 the department shall publish the address and telephone number of
112 the executive offices of each agency, the manner by which the
113 agency indexes its rules, a listing of all rules of that agency
114 excluded from publication in the code, and a statement as to



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115 where those rules may be inspected.

116 4. Forms shall not be published in the Florida
117 Administrative Code; but any form which an agency uses in its
118 dealings with the public, along with any accompanying
119 instructions, shall be filed with the committee before it is
120 used. Any form or instruction which meets the definition of
121 "rule" provided in s. 120.52 shall be incorporated by reference
122 into the appropriate rule. The reference shall specifically
123 state that the form is being incorporated by reference and shall
124 include the number, title, and effective date of the form and an
125 explanation of how the form may be obtained. Each form created
126 by an agency which is incorporated by reference in a rule notice
127 of which is given under s. 120.54(3)(a) after December 31, 2007,
128 must clearly display the number, title, and effective date of
129 the form and the number of the rule in which the form is
130 incorporated.

131 5. The department shall allow adopted rules and material
132 incorporated by reference to be filed in electronic form as
133 prescribed by department rule. When a rule is filed for adoption
134 with incorporated material in electronic form, the department's
135 publication of the Florida Administrative Code on its ~~Internet~~
136 website must contain a hyperlink from the incorporating
137 reference in the rule directly to that material. The department
138 may not allow hyperlinks from rules in the Florida
139 Administrative Code to any material other than that filed with
140 and maintained by the department, but may allow hyperlinks to
141 incorporated material maintained by the department from the
142 adopting agency's website or other sites.

143 (b) Electronically publish on a a ~~an-Internet~~ website managed



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144 by the department a continuous revision and publication entitled
145 the "Florida Administrative Register," which shall serve as the
146 official publication and must contain:

147 1. All notices required by s. 120.54(2) and (3)(a)
148 ~~120.54(3)(a)~~, showing the text of all rules proposed for
149 consideration.

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

153 3. A notice of each request for authorization to amend or
154 repeal an existing uniform rule or for the adoption of new
155 uniform rules.

156 4. Notice of petitions for declaratory statements or
157 administrative determinations.

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

160 6. A list of rules filed for adoption in the previous 7
161 days.

162 7. A list of all rules filed for adoption pending
163 legislative ratification under s. 120.541(3). A rule shall be
164 removed from the list once notice of ratification or withdrawal
165 of the rule is received.

166 ~~8.6~~ Any other material required or authorized by law or
167 deemed useful by the department.

168
169 The department may contract with a publishing firm for a printed
170 publication of the Florida Administrative Register and make
171 copies available on an annual subscription basis.

172 (c) Prescribe by rule the style and form required for



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173 rules, notices, and other materials submitted for filing.

174 (d) Charge each agency using the Florida Administrative
175 Register a space rate to cover the costs related to the Florida
176 Administrative Register and the Florida Administrative Code.

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

179 (2) The Florida Administrative Register ~~Internet~~ website
180 must allow users to:

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

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

185 (c) Subscribe to an automated e-mail notification of
186 selected notices to be sent out before or concurrently with
187 publication of the electronic Florida Administrative Register.
188 Such notification must include in the text of the e-mail a
189 summary of the content of each notice.

190 (d) View agency forms and other materials submitted to the
191 department in electronic form and incorporated by reference in
192 proposed rules.

193 (e) Comment on proposed rules.

194 (3) Publication of material required by paragraph (1)(b) on
195 the Florida Administrative Register ~~Internet~~ website does not
196 preclude publication of such material on an agency's website or
197 by other means.

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

201 (5) Each agency that provides an e-mail notification



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202 service to inform licensees or other registered recipients of
203 notices shall use that service to notify recipients of each
204 notice required under s. 120.54(2) and (3) and provide Internet
205 links to the appropriate rule page on the Secretary of State's
206 website or Internet links to an agency website that contains the
207 proposed rule or final rule.

208 (6)-(5) Any publication of a proposed rule promulgated by an
209 agency, whether published in the Florida Administrative Register
210 or elsewhere, shall include, along with the rule, the name of
211 the person or persons originating such rule, the name of the
212 agency head who approved the rule, and the date upon which the
213 rule was approved.

214 (7)-(6) Access to the Florida Administrative Register
215 ~~Internet~~ website and its contents, including the e-mail
216 notification service, shall be free for the public.

217 (8)-(7)(a) All fees and moneys collected by the Department
218 of State under this chapter shall be deposited in the Records
219 Management Trust Fund for the purpose of paying for costs
220 incurred by the department in carrying out this chapter.

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

225 (9) The failure to comply with this section may not be
226 raised in a proceeding challenging the validity of a rule
227 pursuant to s. 120.52(8) (a).

228 Section 3. Subsection (1), paragraph (a) of subsection (2),
229 paragraph (a) of subsection (3), and subsection (4) of section
230 120.56, Florida Statutes, are amended to read:



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231 120.56 Challenges to rules.-

232 (1) GENERAL PROCEDURES ~~FOR CHALLENGING THE VALIDITY OF A~~
233 ~~RULE OR A PROPOSED RULE.-~~

234 (a) Any person substantially affected by a rule or a
235 proposed rule may seek an administrative determination of the
236 invalidity of the rule on the ground that the rule is an invalid
237 exercise of delegated legislative authority.

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

241 1. The particular provisions alleged to be invalid and a
242 statement ~~with sufficient explanation~~ of the facts or grounds
243 for the alleged invalidity. ~~and~~

244 2. Facts sufficient to show that the petitioner person
245 ~~challenging a rule~~ is substantially affected by the challenged
246 adopted rule ~~it~~, or ~~that the person challenging a proposed rule~~
247 would be substantially affected by the proposed rule ~~it~~.

248 (c) The petition shall be filed by electronic means with
249 the division which shall, immediately upon filing, forward by
250 electronic means copies to the agency whose rule is challenged,
251 the Department of State, and the committee. Within 10 days after
252 receiving the petition, the division director shall, if the
253 petition complies with ~~the requirements of~~ paragraph (b), assign
254 an administrative law judge who shall conduct a hearing within
255 30 days thereafter, unless the petition is withdrawn or a
256 continuance is granted by agreement of the parties or for good
257 cause shown. Evidence of good cause includes, but is not limited
258 to, written notice of an agency's decision to modify or withdraw
259 the proposed rule or a written notice from the chair of the



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260 committee stating that the committee will consider an objection
261 to the rule at its next scheduled meeting. The failure of an
262 agency to follow the applicable rulemaking procedures or
263 requirements set forth in this chapter shall be presumed to be
264 material; however, the agency may rebut this presumption by
265 showing that the substantial interests of the petitioner and the
266 fairness of the proceedings have not been impaired.

267 (d) Within 30 days after the hearing, the administrative
268 law judge shall render a decision and state the reasons for his
269 or her decision ~~therefor~~ in writing. The division shall
270 forthwith transmit by electronic means copies of the
271 administrative law judge's decision to the agency, the
272 Department of State, and the committee.

273 (e) Hearings held under this section shall be de novo in
274 nature. The standard of proof shall be the preponderance of the
275 evidence. Hearings shall be conducted in the same manner as
276 provided by ss. 120.569 and 120.57, except that the
277 administrative law judge's order shall be final agency action.
278 The petitioner and the agency whose rule is challenged shall be
279 adverse parties. Other substantially affected persons may join
280 the proceedings as intervenors on appropriate terms which shall
281 not unduly delay the proceedings. Failure to proceed under this
282 section does ~~shall~~ not constitute failure to exhaust
283 administrative remedies.

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

285 (a) A ~~substantially affected person may seek an~~
286 ~~administrative determination of the invalidity of a proposed~~
287 ~~rule by filing a petition~~ alleging the invalidity of a proposed
288 rule shall be filed seeking such a determination with the



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289 ~~division~~ within 21 days after the date of publication of the
290 notice required by s. 120.54(3)(a); within 10 days after the
291 final public hearing is held on the proposed rule as provided by
292 s. 120.54(3)(e)2.; within 20 days after the statement of
293 estimated regulatory costs or revised statement of estimated
294 regulatory costs, if applicable, has been prepared and made
295 available as provided in s. 120.541(1)(d); or within 20 days
296 after the date of publication of the notice required by s.
297 120.54(3)(d). ~~The petition must state with particularity the~~
298 ~~objections to the proposed rule and the reasons that the~~
299 ~~proposed rule is an invalid exercise of delegated legislative~~
300 ~~authority.~~ The petitioner has the burden to prove by a
301 preponderance of the evidence that it would be substantially
302 affected by the proposed rule ~~of going forward~~. The agency then
303 has the burden to prove by a preponderance of the evidence that
304 the proposed rule is not an invalid exercise of delegated
305 legislative authority as to the objections raised. ~~A person who~~
306 ~~is substantially affected by a change in the proposed rule may~~
307 ~~seek a determination of the validity of such change.~~ A person
308 who is not substantially affected by the proposed rule as
309 initially noticed, but who is substantially affected by the rule
310 as a result of a change, may challenge any provision of the
311 resulting proposed rule ~~and is not limited to challenging the~~
312 ~~change to the proposed rule.~~

313 (3) CHALLENGING ~~EXISTING~~ RULES IN EFFECT; SPECIAL
314 PROVISIONS.—

315 (a) A petition alleging substantially affected person may
316 ~~seek an administrative determination of the invalidity of an~~
317 existing rule may be filed at any time during which the



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318 ~~existence of the~~ rule is in effect. The petitioner has the a
319 burden of proving by a preponderance of the evidence that the
320 existing rule is an invalid exercise of delegated legislative
321 authority as to the objections raised.

322 (4) CHALLENGING AGENCY STATEMENTS DEFINED AS UNADOPTED
323 RULES; SPECIAL PROVISIONS.—

324 (a) Any person substantially affected by an agency
325 statement that is an unadopted rule may seek an administrative
326 determination that the statement violates s. 120.54(1)(a). The
327 petition shall include the text of the statement or a
328 description of the statement and shall state ~~with particularity~~
329 facts sufficient to show that the statement constitutes an
330 unadopted a rule ~~under s. 120.52 and that the agency has not~~
331 ~~adopted the statement by the rulemaking procedure provided by s.~~
332 120.54.

333 (b) The administrative law judge may extend the hearing
334 date beyond 30 days after assignment of the case for good cause.
335 Upon notification to the administrative law judge provided
336 before the final hearing that the agency has published a notice
337 of rulemaking under s. 120.54(3), such notice shall
338 automatically operate as a stay of proceedings pending adoption
339 of the statement as a rule. The administrative law judge may
340 vacate the stay for good cause shown. A stay of proceedings
341 pending rulemaking shall remain in effect so long as the agency
342 is proceeding expeditiously and in good faith to adopt the
343 statement as a rule.

344 (c) If a hearing is held and the petitioner proves the
345 allegations of the petition, the agency shall have the burden of
346 proving that rulemaking is not feasible or not practicable under



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347 s. 120.54(1) (a) .

348 (d)~~(e)~~ The administrative law judge may determine whether
349 all or part of a statement violates s. 120.54(1) (a). The
350 decision of the administrative law judge shall constitute a
351 final order. The division shall transmit a copy of the final
352 order to the Department of State and the committee. The
353 Department of State shall publish notice of the final order in
354 the first available issue of the Florida Administrative
355 Register.

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

361 (f)~~(e)~~ If proposed rules addressing the challenged
362 unadopted rule ~~statement~~ are determined to be an invalid
363 exercise of delegated legislative authority as defined in s.
364 120.52(8) (b)-(f), the agency must immediately discontinue
365 reliance upon ~~on~~ the unadopted rule ~~statement~~ and any
366 substantially similar statement until rules addressing the
367 subject are properly adopted, and the administrative law judge
368 shall enter a final order to that effect.

369 (g)~~(f)~~ All proceedings to determine a violation of s.
370 120.54(1) (a) shall be brought pursuant to this subsection. A
371 proceeding pursuant to this subsection may be consolidated with
372 a proceeding under subsection (3) or under any other section of
373 this chapter. This paragraph does not prevent a party whose
374 substantial interests have been determined by an agency action
375 from bringing a proceeding pursuant to s. 120.57(1) (e) .



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376 Section 4. Paragraphs (e) and (h) of subsection (1) and
377 subsection (2) of section 120.57, Florida Statutes, are amended
378 to read:

379 120.57 Additional procedures for particular cases.—

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

382 (e)1. An agency or an administrative law judge may not base
383 agency action that determines the substantial interests of a
384 party on an unadopted rule or a rule that is an invalid exercise
385 of delegated legislative authority. ~~The administrative law judge~~
386 ~~shall determine whether an agency statement constitutes an~~
387 ~~unadopted rule.~~ This subparagraph does not preclude application
388 of valid adopted rules and applicable provisions of law to the
389 facts.

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

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

398 b. Section 120.56(3)(a) applies to a challenge alleging
399 that a rule is an invalid exercise of delegated legislative
400 authority.

401 c. Section 120.56(4)(c) applies to a challenge alleging an
402 unadopted rule.

403 d. This subparagraph does not preclude the consolidation of
404 any proceeding under s. 120.56 with any proceeding under this



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405 paragraph.

406 ~~3.2.~~ Notwithstanding subparagraph 1., if an agency
407 demonstrates that the statute being implemented directs it to
408 adopt rules, that the agency has not had time to adopt those
409 rules because the requirement was so recently enacted, and that
410 the agency has initiated rulemaking and is proceeding
411 expeditiously and in good faith to adopt the required rules,
412 then the agency's action may be based upon those unadopted rules
413 if, subject to de novo review by the administrative law judge
414 determines that rulemaking is neither feasible nor practicable
415 and the unadopted rules would not constitute an invalid exercise
416 of delegated legislative authority if adopted as rules. An
417 unadopted rule ~~The agency action~~ shall not be presumed valid ~~or~~
418 ~~invalid~~. The agency must demonstrate that the unadopted rule:

419 a. Is within the powers, functions, and duties delegated by
420 the Legislature or, if the agency is operating pursuant to
421 authority vested in the agency by ~~derived from~~ the State
422 Constitution, is within that authority;

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

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

427 d. Is not arbitrary or capricious. A rule is arbitrary if
428 it is not supported by logic or the necessary facts; a rule is
429 capricious if it is adopted without thought or reason or is
430 irrational;

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

433 f. Does not impose excessive regulatory costs on the



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434 regulated person, county, or city.

435 ~~4.3.~~ The recommended and final orders in any proceeding
436 shall be governed by ~~the provisions of~~ paragraphs (k) and (l),
437 except that the administrative law judge's determination
438 regarding an unadopted rule under subparagraph 1. or
439 subparagraph 2. shall not be rejected by the agency unless the
440 agency first determines from a review of the complete record,
441 and states with particularity in the order, that such
442 determination is clearly erroneous or does not comply with
443 essential requirements of law. In any proceeding for review
444 under s. 120.68, if the court finds that the agency's rejection
445 of the determination regarding the unadopted rule does not
446 comport with ~~the provisions of~~ this subparagraph, the agency
447 action shall be set aside and the court shall award to the
448 prevailing party the reasonable costs and a reasonable attorney
449 ~~attorney's~~ fee for the initial proceeding and the proceeding for
450 review.

451 5. A petitioner may pursue a separate, collateral challenge
452 under s. 120.56 even if an adequate remedy exists through a
453 proceeding under this section. The administrative law judge may
454 consolidate the proceedings.

455 (h) Any party to a proceeding in which an administrative
456 law judge ~~of the Division of Administrative Hearings~~ has final
457 order authority may move for a summary final order when there is
458 no genuine issue as to any material fact. A summary final order
459 shall be rendered if the administrative law judge determines
460 from the pleadings, depositions, answers to interrogatories, and
461 admissions on file, together with affidavits, if any, that no
462 genuine issue as to any material fact exists and that the moving



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463 party is entitled as a matter of law to the entry of a final
464 order. A summary final order shall consist of findings of fact,
465 if any, conclusions of law, a disposition or penalty, if
466 applicable, and any other information required by law to be
467 contained in the final order.

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

471 (a) The agency shall:

472 1. Give reasonable notice to affected persons of the action
473 of the agency, whether proposed or already taken, or of its
474 decision to refuse action, together with a summary of the
475 factual, legal, and policy grounds therefor.

476 2. Give parties or their counsel the option, at a
477 convenient time and place, to present to the agency or hearing
478 officer written or oral evidence in opposition to the action of
479 the agency or to its refusal to act, or a written statement
480 challenging the grounds upon which the agency has chosen to
481 justify its action or inaction.

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

484 (b) An agency may not base agency action that determines
485 the substantial interests of a party on an unadopted rule or a
486 rule that is an invalid exercise of delegated legislative
487 authority.

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

- 489 1. The notice and summary of grounds.
490 2. Evidence received.
491 3. All written statements submitted.



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- 492 4. Any decision overruling objections.
493 5. All matters placed on the record after an ex parte
494 communication.
495 6. The official transcript.
496 7. Any decision, opinion, order, or report by the presiding
497 officer.

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

500 120.68 Judicial review.—

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

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

507 (9) A ~~Ne~~ petition challenging an agency rule as an invalid
508 exercise of delegated legislative authority shall not be
509 instituted pursuant to this section, except to review an order
510 entered pursuant to a proceeding under s. 120.56, s.
511 120.57(1)(e)1., or s. 120.57(2)(b) or an agency's findings of
512 immediate danger, necessity, and procedural fairness
513 prerequisite to the adoption of an emergency rule pursuant to s.
514 120.54(4), unless the sole issue presented by the petition is
515 the constitutionality of a rule and there are no disputed issues
516 of fact.

517 Section 6. Section 120.695, Florida Statutes, is amended to
518 read:

519 120.695 Notice of noncompliance; designation of minor
520 violation of rules.—



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521 (1) It is the policy of the state that the purpose of
522 regulation is to protect the public by attaining compliance with
523 the policies established by the Legislature. Fines and other
524 penalties may be provided in order to assure compliance;
525 however, the collection of fines and the imposition of penalties
526 are intended to be secondary to the primary goal of attaining
527 compliance with an agency's rules. It is the intent of the
528 Legislature that an agency charged with enforcing rules shall
529 issue a notice of noncompliance as its first response to a minor
530 violation of a rule in any instance in which it is reasonable to
531 assume that the violator was unaware of the rule or unclear as
532 to how to comply with it.

533 (2) (a) Each agency shall issue a notice of noncompliance as
534 a first response to a minor violation of a rule. A "notice of
535 noncompliance" is a notification by the agency charged with
536 enforcing the rule issued to the person or business subject to
537 the rule. A notice of noncompliance may not be accompanied with
538 a fine or other disciplinary penalty. It must identify the
539 specific rule that is being violated, provide information on how
540 to comply with the rule, and specify a reasonable time for the
541 violator to comply with the rule. A rule is agency action that
542 regulates a business, occupation, or profession, or regulates a
543 person operating a business, occupation, or profession, and
544 that, if not complied with, may result in a disciplinary
545 penalty.

546 (b) Each agency shall review all of its rules and designate
547 those for which a violation would be a minor violation and for
548 which a notice of noncompliance must be the first enforcement
549 action taken against a person or business subject to regulation.



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550 A violation of a rule is a minor violation if it does not result
551 in economic or physical harm to a person or adversely affect the
552 public health, safety, or welfare or create a significant threat
553 of such harm. ~~If an agency under the direction of a cabinet
554 officer mails to each licensee a notice of the designated rules
555 at the time of licensure and at least annually thereafter, the
556 provisions of paragraph (a) may be exercised at the discretion
557 of the agency. Such notice shall include a subject-matter index
558 of the rules and information on how the rules may be obtained.~~

559 (c)1. No later than June 30, 2017, and after such date
560 within 3 months after any request of the rules ombudsman in the
561 Executive Office of the Governor, The agency's review and
562 designation must be completed by December 1, 1995; each agency
563 shall review under the direction of the Governor shall make a
564 report to the Governor, and each agency under the joint
565 direction of the Governor and Cabinet shall report to the
566 Governor and Cabinet by January 1, 1996, on which of its rules
567 and certify to the President of the Senate, the Speaker of the
568 House of Representatives, the committee, and the rules ombudsman
569 those rules that have been designated as rules the violation of
570 which would be a minor violation under paragraph (b), consistent
571 with the legislative intent stated in subsection (1).

572 2. Beginning July 1, 2017, each agency shall:

573 a. Publish all rules that the agency has designated as
574 rules the violation of which would be a minor violation, either
575 as a complete list on the agency's website or by incorporation
576 of the designations in the agency's disciplinary guidelines
577 adopted as a rule.

578 b. Ensure that all investigative and enforcement personnel



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579 are knowledgeable about the agency's designations under this
580 section.

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

585 (d) The Governor or the Governor and Cabinet, as
586 appropriate ~~pursuant to paragraph (c)~~, may evaluate the review
587 and designation effects of each agency subject to the direction
588 and supervision of such authority and may direct ~~apply~~ a
589 different designation than that applied by such ~~the~~ agency.

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

592 1. The Department of Corrections;

593 2. Educational units;

594 3. The regulation of law enforcement personnel; or

595 4. The regulation of teachers.

596 (f) Designation pursuant to this section is not subject to
597 challenge under this chapter.

598 Section 7. Paragraph (a) of subsection (4) of section
599 120.595, Florida Statutes, is amended to read:

600 120.595 Attorney's fees.—

601 (4) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION
602 120.56(4).—

603 (a) If the appellate court or administrative law judge
604 determines that all or part of an agency statement violates s.
605 120.54(1)(a), or that the agency must immediately discontinue
606 reliance on the statement and any substantially similar
607 statement pursuant to s. 120.56(4)(f) ~~s. 120.56(4)(e)~~, a



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608 judgment or order shall be entered against the agency for
609 reasonable costs and reasonable attorney's fees, unless the
610 agency demonstrates that the statement is required by the
611 Federal Government to implement or retain a delegated or
612 approved program or to meet a condition to receipt of federal
613 funds.

614 Section 8. This act shall take effect July 1, 2016.