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A bill to be entitled

An act relating to administrative procedures; creating the Open Government Act; amending s. 120.52, F.S.; defining the term "unadopted rule"; amending s. 120.54, F.S.; revising standards for determining when rulemaking is presumed feasible; revising provisions with respect to petitions to initiate rulemaking; amending s. 120.545, F.S.; revising duties of the Administrative Procedures Committee and agencies with respect to review of agency rules; providing for a legislative committee to request agency information for examination of an unadopted rule; prescribing responses that may be made by an agency to a committee objection to a rule or statement of estimated regulatory costs; prescribing presumptions resulting from an agency's refusal to respond to committee objections; amending s. 120.56, F.S.; requiring an agency to discontinue reliance on a statement when an administrative determination is sought with respect to the statement; allowing continued reliance on a statement when an administrative law judge determines that the inability to rely on it would constitute an immediate danger; deleting certain provisions relating to actions before a final hearing is held; amending s. 120.57, F.S.; prescribing procedures with respect to challenges to unadopted rules; amending s. 120.595, F.S.; revising guidelines for award of attorney's fees in challenges to agency action; amending s. 120.55, F.S.; conforming a cross-reference; providing effective dates.

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

Section 1. This act may be cited as "The Open Government Act."

Section 2. Present subsections (18) and (19) of section 120.52, Florida Statutes, are renumbered as subsections (19) and (20), respectively, and a new subsection (18) is added to that section to read:

120.52 Definitions.--As used in this act:

(18) "Unadopted rule" means an agency statement that meets the definition of "rule" but has not been adopted pursuant to the requirements of s. 120.54.

Section 3. Paragraph (a) of subsection (1), paragraphs (c) and (e) of subsection (3), and subsection (7) of section 120.54, Florida Statutes, are amended to read:

120.54 Rulemaking.--

(1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER THAN EMERGENCY RULES.--

(a) Rulemaking is not a matter of agency discretion. Each agency statement defined as a rule by s. 120.52 shall be adopted by the rulemaking procedure provided by this section as soon as feasible and practicable.

1. Rulemaking shall be presumed feasible unless the agency proves that:

a. The agency has not had sufficient time to acquire the knowledge and experience reasonably necessary to address a statement by rulemaking;

b. Related matters are not sufficiently resolved to enable the agency to address a statement by rulemaking; or

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59 c. The agency is currently using the rulemaking procedure  
 60 expeditiously and in good faith to adopt rules which address the  
 61 statement.

62 2. Rulemaking shall be presumed practicable to the extent  
 63 necessary to provide fair notice to affected persons of relevant  
 64 agency procedures and applicable principles, criteria, or  
 65 standards for agency decisions unless the agency proves that:

66 a. Detail or precision in the establishment of principles,  
 67 criteria, or standards for agency decisions is not reasonable  
 68 under the circumstances; or

69 b. The particular questions addressed are of such a narrow  
 70 scope that more specific resolution of the matter is impractical  
 71 outside of an adjudication to determine the substantial interests  
 72 of a party based on individual circumstances.

73 (3) ADOPTION PROCEDURES

74 (c) Hearings.--

75 1. If the intended action concerns any rule other than one  
 76 relating exclusively to procedure or practice, the agency shall,  
 77 on the request of any affected person received within 21 days  
 78 after the date of publication of the notice of intended agency  
 79 action, give affected persons an opportunity to present evidence  
 80 and argument on all issues under consideration. The agency may  
 81 schedule a public hearing on the rule and, if requested by any  
 82 affected person, shall schedule a public hearing on the rule. If  
 83 the agency head is a board or other collegial body, other than  
 84 one comprised of the Governor and Cabinet, then the board or  
 85 other collegial body shall conduct the requested public hearing  
 86 itself and may not delegate this responsibility without the  
 87 consent of those persons requesting the public hearing. Any

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88 material pertinent to the issues under consideration submitted to  
 89 the agency within 21 days after the date of publication of the  
 90 notice or submitted at a public hearing shall be considered by  
 91 the agency and made a part of the record of the rulemaking  
 92 proceeding.

93 2. Rulemaking proceedings shall be governed solely by the  
 94 provisions of this section unless a person timely asserts that  
 95 the person's substantial interests will be affected in the  
 96 proceeding and affirmatively demonstrates to the agency that the  
 97 proceeding does not provide adequate opportunity to protect those  
 98 interests. If the agency determines that the rulemaking  
 99 proceeding is not adequate to protect the person's interests, it  
 100 shall suspend the rulemaking proceeding and convene a separate  
 101 proceeding under the provisions of ss. 120.569 and 120.57.  
 102 Similarly situated persons may be requested to join and  
 103 participate in the separate proceeding. Upon conclusion of the  
 104 separate proceeding, the rulemaking proceeding shall be resumed.

105 (e) Filing for final adoption; effective date.--

106 1. If the adopting agency is required to publish its rules  
 107 in the Florida Administrative Code, it shall file with the  
 108 Department of State three certified copies of the rule it  
 109 proposes to adopt, a summary of the rule, a summary of any  
 110 hearings held on the rule, and a detailed written statement of  
 111 the facts and circumstances justifying the rule. Agencies not  
 112 required to publish their rules in the Florida Administrative  
 113 Code shall file one certified copy of the proposed rule, and the  
 114 other material required by this subparagraph, in the office of  
 115 the agency head, and such rules shall be open to the public.

116 2. A rule may not be filed for adoption less than 28 days

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117 or more than 90 days after the notice required by paragraph (a),  
 118 until 21 days after the notice of change required by paragraph  
 119 (d), until 14 days after the final public hearing, until 21 days  
 120 after ~~preparation of~~ a statement of estimated regulatory costs  
 121 required under s. 120.541 has been provided to all persons who  
 122 submitted a lower cost regulatory alternative and made available  
 123 to the public, or until the administrative law judge has rendered  
 124 a decision under s. 120.56(2), whichever applies. When a required  
 125 notice of change is published prior to the expiration of the time  
 126 to file the rule for adoption, the period during which a rule  
 127 must be filed for adoption is extended to 45 days after the date  
 128 of publication. If notice of a public hearing is published prior  
 129 to the expiration of the time to file the rule for adoption, the  
 130 period during which a rule must be filed for adoption is extended  
 131 to 45 days after adjournment of the final hearing on the rule, 21  
 132 days after receipt of all material authorized to be submitted at  
 133 the hearing, or 21 days after receipt of the transcript, if one  
 134 is made, whichever is latest. The term "public hearing" includes  
 135 any public meeting held by any agency at which the rule is  
 136 considered. If a petition for an administrative determination  
 137 under s. 120.56(2) is filed, the period during which a rule must  
 138 be filed for adoption is extended to 60 days after the  
 139 administrative law judge files the final order with the clerk or  
 140 until 60 days after subsequent judicial review is complete.

141 3. At the time a rule is filed, the agency shall certify  
 142 that the time limitations prescribed by this paragraph have been  
 143 complied with, that all statutory rulemaking requirements have  
 144 been met, and that there is no administrative determination  
 145 pending on the rule.

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146           4. At the time a rule is filed, the committee shall certify  
147 whether the agency has responded in writing to all material and  
148 timely written comments or written inquiries made on behalf of  
149 the committee. The department shall reject any rule not filed  
150 within the prescribed time limits; that does not satisfy all  
151 statutory rulemaking requirements; upon which an agency has not  
152 responded in writing to all material and timely written inquiries  
153 or written comments; upon which an administrative determination  
154 is pending; or which does not include a statement of estimated  
155 regulatory costs, if required.

156           5. If a rule has not been adopted within the time limits  
157 imposed by this paragraph or has not been adopted in compliance  
158 with all statutory rulemaking requirements, the agency proposing  
159 the rule shall withdraw the rule and give notice of its action in  
160 the next available issue of the Florida Administrative Weekly.

161           6. The proposed rule shall be adopted on being filed with  
162 the Department of State and become effective 20 days after being  
163 filed, on a later date specified in the rule, or on a date  
164 required by statute. Rules not required to be filed with the  
165 Department of State shall become effective when adopted by the  
166 agency head or on a later date specified by rule or statute. If  
167 the committee notifies an agency that an objection to a rule is  
168 being considered, the agency may postpone the adoption of the  
169 rule to accommodate review of the rule by the committee. When an  
170 agency postpones adoption of a rule to accommodate review by the  
171 committee, the 90-day period for filing the rule is tolled until  
172 the committee notifies the agency that it has completed its  
173 review of the rule.

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175 For the purposes of this paragraph, the term "administrative  
176 determination" does not include subsequent judicial review.

177 (7) PETITION TO INITIATE RULEMAKING.--

178 ~~(a)~~ Any person regulated by an agency or having substantial  
179 interest in an agency rule may petition an agency to adopt,  
180 amend, or repeal a rule or to provide the minimum public  
181 information required by this chapter. The petition shall specify  
182 the proposed rule and action requested. Not later than 30  
183 calendar days following the date of filing a petition, the agency  
184 shall initiate rulemaking proceedings under this chapter,  
185 otherwise comply with the requested action, or deny the petition  
186 with a written statement of its reasons for the denial.

187 ~~(b) If the petition filed under this subsection is directed~~  
188 ~~to an existing rule which the agency has not adopted by the~~  
189 ~~rulemaking procedures or requirements set forth in this chapter,~~  
190 ~~the agency shall, not later than 30 days following the date of~~  
191 ~~filing a petition, initiate rulemaking, or provide notice in the~~  
192 ~~Florida Administrative Weekly that the agency will hold a public~~  
193 ~~hearing on the petition within 30 days after publication of the~~  
194 ~~notice. The purpose of the public hearing is to consider the~~  
195 ~~comments of the public directed to the agency rule which has not~~  
196 ~~been adopted by the rulemaking procedures or requirements of this~~  
197 ~~chapter, its scope and application, and to consider whether the~~  
198 ~~public interest is served adequately by the application of the~~  
199 ~~rule on a case by case basis, as contrasted with its adoption by~~  
200 ~~the rulemaking procedures or requirements set forth in this~~  
201 ~~chapter.~~

202 ~~(c) Within 30 days following the public hearing provided~~  
203 ~~for by paragraph (b), if the agency does not initiate rulemaking~~

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204 ~~or otherwise comply with the requested action, the agency shall~~  
 205 ~~publish in the Florida Administrative Weekly a statement of its~~  
 206 ~~reasons for not initiating rulemaking or otherwise complying with~~  
 207 ~~the requested action, and of any changes it will make in the~~  
 208 ~~scope or application of the unadopted rule. The agency shall~~  
 209 ~~file the statement with the committee. The committee shall~~  
 210 ~~forward a copy of the statement to the substantive committee with~~  
 211 ~~primary oversight jurisdiction of the agency in each house of the~~  
 212 ~~Legislature. The committee or the committee with primary~~  
 213 ~~oversight jurisdiction may hold a hearing directed to the~~  
 214 ~~statement of the agency. The committee holding the hearing may~~  
 215 ~~recommend to the Legislature the introduction of legislation~~  
 216 ~~making the rule a statutory standard or limiting or otherwise~~  
 217 ~~modifying the authority of the agency.~~

218 Section 4. Section 120.545, Florida Statutes, is amended to  
 219 read:

220 120.545 Committee review of agency rules.--

221 (1) As a legislative check on legislatively created  
 222 authority, the committee shall examine each proposed rule, except  
 223 for those proposed rules exempted by s. 120.81(1)(e) and (2), and  
 224 its accompanying material, and each emergency rule, and may  
 225 examine any existing rule, for the purpose of determining  
 226 whether:

227 (a) The rule is an invalid exercise of delegated  
 228 legislative authority.

229 (b) The statutory authority for the rule has been repealed.

230 (c) The rule reiterates or paraphrases statutory material.

231 (d) The rule is in proper form.

232 (e) The notice given prior to its adoption was sufficient



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233 to give adequate notice of the purpose and effect of the rule.

234 (f) The rule is consistent with expressed legislative  
 235 intent pertaining to the specific provisions of law which the  
 236 rule implements.

237 (g) The rule is necessary to accomplish the apparent or  
 238 expressed objectives of the specific provision of law which the  
 239 rule implements.

240 (h) The rule is a reasonable implementation of the law as  
 241 it affects the convenience of the general public or persons  
 242 particularly affected by the rule.

243 (i) The rule could be made less complex or more easily  
 244 comprehensible to the general public.

245 (j) The rule's statement of estimated regulatory costs  
 246 complies with the requirements of s. 120.541; and the rule does  
 247 not impose regulatory costs on the regulated person, county, or  
 248 city which could be reduced by the adoption of less costly  
 249 alternatives that substantially accomplish the statutory  
 250 objectives.

251 (k) The rule will require additional appropriations.

252 (l) If the rule is an emergency rule, there exists an  
 253 emergency justifying the adoption ~~promulgation~~ of such rule, the  
 254 agency is within ~~has exceeded the scope of~~ its statutory  
 255 authority, and the rule was adopted ~~promulgated~~ in compliance  
 256 with the requirements and limitations of s. 120.54(4).

257 (2) The committee may request from an agency such  
 258 information as is reasonably necessary for examination of a rule  
 259 as required by subsection (1) or for examination of an unadopted  
 260 agency statement. The committee shall consult with legislative  
 261 standing committees having ~~with~~ jurisdiction over the subject

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262 areas. If the committee objects to ~~an emergency rule or a~~  
 263 ~~proposed or existing~~ rule, it shall, within 5 days after ~~of~~ the  
 264 objection, certify that fact to the agency whose rule has been  
 265 examined and include with the certification a statement detailing  
 266 its objections with particularity. The committee shall notify the  
 267 Speaker of the House of Representatives and the President of the  
 268 Senate of any objection to an agency rule concurrent with  
 269 certification of that fact to the agency. Such notice shall  
 270 include a copy of the rule and the statement detailing the  
 271 committee's objections to the rule.

272 (3) Within 30 days after ~~of~~ receipt of the objection, if  
 273 the agency is headed by an individual, or within 45 days after ~~of~~  
 274 receipt of the objection, if the agency is headed by a collegial  
 275 body, the agency shall:

276 (a) If the rule is not yet in effect ~~a proposed rule~~:

277 1. File notice pursuant to s. 120.54(3)(d) of only such  
 278 modifications as are necessary to address ~~Modify the rule to meet~~  
 279 the committee's objection;

280 2. File notice pursuant to s. 120.54(3)(d) of withdrawal of  
 281 ~~Withdraw~~ the rule ~~in its entirety~~; or

282 3. Notify the committee in writing that it refuses ~~Refuse~~  
 283 to modify or withdraw the rule.

284 (b) If the rule is in effect ~~an existing rule~~:

285 1. File notice pursuant to s. 120.54(3)(a), without prior  
 286 notice of rule development, ~~Notify the committee that it has~~  
 287 ~~elected~~ to amend the rule to address ~~meet~~ the committee's  
 288 objection ~~and initiate the amendment procedure~~;

289 2. File notice pursuant to s. 120.54(3)(a) ~~Notify the~~  
 290 ~~committee that it has elected~~ to repeal the rule ~~and initiate the~~

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291 ~~repeal procedure; or~~  
 292 3. Notify the committee in writing that it refuses to amend  
 293 or repeal the rule.

294 (c) ~~If the rule is either an existing or a proposed rule~~  
 295 ~~and the~~ objection is to the statement of estimated regulatory  
 296 costs:

297 1. Prepare a corrected statement of estimated regulatory  
 298 costs, give notice of the availability of the corrected statement  
 299 in the first available issue of the Florida Administrative  
 300 Weekly, and file a copy of the corrected statement with the  
 301 committee; or

302 2. Notify the committee that it refuses to prepare a  
 303 corrected statement of estimated regulatory costs.

304 (d) If the rule is unadopted:

305 1. File notice pursuant to s. 120.54(3)(a) of intent to  
 306 adopt the rule;

307 2. File notice for publication in the Florida  
 308 Administrative Weekly that the agency has abandoned all reliance  
 309 upon the statement or any substantially similar statement as a  
 310 basis for agency action; or

311 3. Notify the committee in writing that it refuses to adopt  
 312 the rule or to abandon all reliance upon the statement or any  
 313 substantially similar statement as a basis for agency action.

314 ~~(4) If the agency elects to modify a proposed rule to meet~~  
 315 ~~the committee's objection, it shall make only such modifications~~  
 316 ~~as are necessary to meet the objection and shall resubmit the~~  
 317 ~~rule to the committee. The agency shall give notice of its~~  
 318 ~~election to modify a proposed rule to meet the committee's~~  
 319 ~~objection by publishing a notice of change in the first available~~

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320 ~~issue of the Florida Administrative Weekly, but shall not be~~  
 321 ~~required to conduct a public hearing. If the agency elects to~~  
 322 ~~amend an existing rule to meet the committee's objection, it~~  
 323 ~~shall notify the committee in writing and shall initiate the~~  
 324 ~~amendment procedure by giving notice in the next available issue~~  
 325 ~~of the Florida Administrative Weekly. The committee shall give~~  
 326 ~~priority to rules so modified or amended when setting its agenda.~~

327 ~~(5) If the agency elects to withdraw a proposed rule as a~~  
 328 ~~result of a committee objection, it shall notify the committee,~~  
 329 ~~in writing, of its election and shall give notice of the~~  
 330 ~~withdrawal in the next available issue of the Florida~~  
 331 ~~Administrative Weekly. The rule shall be withdrawn without a~~  
 332 ~~public hearing, effective upon publication of the notice in the~~  
 333 ~~Florida Administrative Weekly. If the agency elects to repeal an~~  
 334 ~~existing rule as a result of a committee objection, it shall~~  
 335 ~~notify the committee, in writing, of its election and shall~~  
 336 ~~initiate rulemaking procedures for that purpose by giving notice~~  
 337 ~~in the next available issue of the Florida Administrative Weekly.~~

338 ~~(6) If an agency elects to amend or repeal an existing rule~~  
 339 ~~as a result of a committee objection, it shall complete the~~  
 340 ~~process within 90 days after giving notice in the Florida~~  
 341 ~~Administrative Weekly.~~

342 ~~(4)-(7)~~ Failure of the agency to respond to a committee  
 343 objection to a ~~proposed~~ rule that is not yet in effect within the  
 344 time prescribed in subsection (3) constitutes ~~shall constitute~~  
 345 withdrawal of the rule in its entirety. In this event, the  
 346 committee shall notify the Department of State that the agency,  
 347 by its failure to respond to a committee objection, has elected  
 348 to withdraw the ~~proposed~~ rule. Upon receipt of the committee's

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349 notice, the Department of State shall publish a notice to that  
350 effect in the next available issue of the Florida Administrative  
351 Weekly. Upon publication of the notice, the ~~proposed~~ rule shall  
352 be stricken from the files of the Department of State and the  
353 files of the agency.

354 ~~(5)-(8)~~ Failure of the agency to respond to a committee  
355 objection to a an-existing rule that is in effect within the time  
356 prescribed in subsection (3) constitutes ~~shall constitute~~ a  
357 refusal to amend or repeal the rule.

358 (6) Failure of the agency to respond to a committee  
359 objection to a statement of estimated regulatory costs within the  
360 time prescribed in subsection (3) constitutes a refusal to  
361 prepare a corrected statement of estimated regulatory costs.

362 (7) Failure of the agency to respond to a committee  
363 objection to an unadopted rule within the time prescribed in  
364 subsection (3) constitutes a refusal to adopt the rule and a  
365 refusal to abandon all reliance upon the statement or any  
366 substantially similar statement as a basis for agency action.

367 ~~(8)-(9)~~ If the committee objects to a ~~proposed or existing~~  
368 rule and the agency refuses to adopt, abandon, modify, amend,  
369 withdraw, or repeal it the rule, the committee shall file with  
370 the Department of State a notice of the objection, detailing with  
371 particularity its objection to the rule. The Department of State  
372 shall publish this notice in the Florida Administrative Weekly.  
373 If the rule is published and shall publish, as a history note to  
374 the rule in the Florida Administrative Code, a reference to the  
375 committee's objection and to the issue of the Weekly in which the  
376 full text thereof appears shall be recorded in a history note.

377 ~~(9)-(10)~~(a) If the committee objects to a ~~proposed or~~

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378 ~~existing~~ rule, or portion thereof, and the agency fails to  
 379 initiate administrative action to adopt, abandon, modify, amend,  
 380 withdraw, or repeal the rule consistent with the objection within  
 381 60 days after the objection, or thereafter fails to proceed in  
 382 good faith to complete such action, the committee may submit to  
 383 the President of the Senate and the Speaker of the House of  
 384 Representatives a recommendation that legislation be introduced  
 385 to address the committee objection ~~modify or suspend the adoption~~  
 386 ~~of the proposed rule, or amend or repeal the rule, or portion~~  
 387 ~~thereof.~~

388 (b)1. If the committee votes to recommend the introduction  
 389 of legislation to address the committee objection ~~modify or~~  
 390 ~~suspend the adoption of a proposed rule, or amend or repeal a~~  
 391 ~~rule,~~ the committee shall, within 5 days after this  
 392 determination, certify that fact to the agency whose rule or  
 393 proposed rule has been examined. The committee may request that  
 394 the agency temporarily suspend the rule, ~~or~~ suspend the adoption  
 395 of the proposed rule, or suspend all reliance upon the statement  
 396 or any substantially similar statement as a basis for agency  
 397 action, pending consideration of proposed legislation during the  
 398 next regular session of the Legislature.

399 2. Within 30 days after receipt of the certification, if  
 400 the agency is headed by an individual, or within 45 days after  
 401 receipt of the certification, if the agency is headed by a  
 402 collegial body, the agency shall ~~either:~~

403 a. Temporarily suspend the rule, ~~or~~ suspend the adoption of  
 404 the proposed rule, or suspend all reliance upon the statement or  
 405 any substantially similar statement as a basis for agency action;  
 406 or

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407           b. Notify the committee in writing that it refuses to  
 408 temporarily suspend the rule, ~~or~~ suspend the adoption of the  
 409 proposed rule, or suspend all reliance upon the statement or any  
 410 substantially similar statement as a basis for agency action.

411           3. If the agency elects to temporarily suspend the rule, ~~or~~  
 412 suspend the adoption of the proposed rule, or suspend all  
 413 reliance upon the statement or any substantially similar  
 414 statement as a basis for agency action, it shall give notice of  
 415 the suspension in the Florida Administrative Weekly. The rule or  
 416 the rule adoption process shall be suspended upon publication of  
 417 the notice. An agency may ~~shall~~ not base any agency action on a  
 418 suspended rule, ~~or~~ suspended proposed rule, or suspended  
 419 statement or any substantially similar statement, or portion  
 420 thereof, prior to expiration of the suspension. A suspended  
 421 rule, ~~or~~ suspended proposed rule, or suspended statement or any  
 422 substantially similar statement, or portion thereof, continues to  
 423 be subject to administrative determination and judicial review as  
 424 provided by law.

425           4. Failure of an agency to respond to committee  
 426 certification within the time prescribed by subparagraph 2.  
 427 constitutes a refusal to suspend the rule, ~~or to~~ suspend the  
 428 adoption of the proposed rule, or suspend all reliance upon the  
 429 statement or any substantially similar statement as a basis for  
 430 agency action.

431           (c) The committee shall prepare bills to address the  
 432 committee objection ~~modify or suspend the adoption of the~~  
 433 ~~proposed rule or amend or repeal the rule, or portion thereof,~~ in  
 434 accordance with the rules of the Senate and the House of  
 435 Representatives for prefiling and introduction in the next

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436 regular session of the Legislature. The proposed bill shall be  
 437 presented to the President of the Senate and the Speaker of the  
 438 House of Representatives with the committee recommendation.

439 (d) If a bill to address the committee objection suspend  
 440 ~~the adoption of a proposed rule is enacted into law, the proposed~~  
 441 ~~rule is suspended until specific delegated legislative authority~~  
 442 ~~for the proposed rule has been enacted. If a bill to suspend the~~  
 443 ~~adoption of a proposed rule fails to become law, any temporary~~  
 444 ~~agency suspension of the rule shall expire. If a bill to modify~~  
 445 ~~a proposed rule or amend a rule is enacted into law, the~~  
 446 ~~suspension shall expire upon publication of notice of~~  
 447 ~~modification or amendment in the Florida Administrative Weekly.~~  
 448 ~~If a bill to repeal a rule is enacted into law, the suspension~~  
 449 ~~shall remain in effect until notification of repeal of the rule~~  
 450 ~~is published in the Florida Administrative Weekly.~~

451 (e) ~~The Department of State shall publish in the next~~  
 452 ~~available issue of the Florida Administrative Weekly the final~~  
 453 ~~legislative action taken. If a bill to modify or suspend the~~  
 454 ~~adoption of the proposed rule or amend or repeal the rule, or~~  
 455 ~~portion thereof, is enacted into law, the Department of State~~  
 456 ~~shall conform the rule or portion of the rule to the provisions~~  
 457 ~~of the law in the Florida Administrative Code and publish a~~  
 458 ~~reference to the law as a history note to the rule.~~

459 Section 5. Paragraph (a) of subsection (2) and, effective  
 460 January 1, 2008, subsection (4) of section 120.56, Florida  
 461 Statutes, are amended to read:

462 120.56 Challenges to rules.—

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

464 (a) Any substantially affected person may seek an



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465 administrative determination of the invalidity of any proposed  
 466 rule by filing a petition seeking such a determination with the  
 467 division within 21 days after the date of publication of the  
 468 notice required by s. 120.54(3)(a), within 10 days after the  
 469 final public hearing is held on the proposed rule as provided by  
 470 s. 120.54(3) ~~(e)~~ (e)2, within 20 days after the ~~preparation of a~~  
 471 statement of estimated regulatory costs required pursuant to s.  
 472 120.541, if applicable, has been provided to all persons who  
 473 submitted a lower cost regulatory alternative and made available  
 474 to the public, or within 20 days after the date of publication of  
 475 the notice required by s. 120.54(3)(d). The petition shall state  
 476 with particularity the objections to the proposed rule and the  
 477 reasons that the proposed rule is an invalid exercise of  
 478 delegated legislative authority. The petitioner has the burden of  
 479 going forward. The agency then has the burden to prove by a  
 480 preponderance of the evidence that the proposed rule is not an  
 481 invalid exercise of delegated legislative authority as to the  
 482 objections raised. Any person who is substantially affected by a  
 483 change in the proposed rule may seek a determination of the  
 484 validity of such change. Any person not substantially affected by  
 485 the proposed rule as initially noticed, but who is substantially  
 486 affected by the rule as a result of a change, may challenge any  
 487 provision of the rule and is not limited to challenging the  
 488 change to the proposed rule.

489 (4) CHALLENGING AGENCY STATEMENTS DEFINED AS RULES; SPECIAL  
 490 PROVISIONS.--

491 (a) Any person substantially affected by an agency  
 492 statement may seek an administrative determination that the  
 493 statement violates s. 120.54(1)(a). The petition shall include

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494 the text of the statement or a description of the statement and  
 495 shall state with particularity facts sufficient to show that the  
 496 statement constitutes a rule under s. 120.52 and that the agency  
 497 has not adopted the statement by the rulemaking procedure  
 498 provided by s. 120.54. Upon the filing of a petition for an  
 499 administrative determination under this subsection, the agency  
 500 shall immediately discontinue all reliance upon the statement or  
 501 any substantially similar statement as a basis for agency action  
 502 until:

503 1. The proceeding is dismissed for any reason other than  
 504 initiation of rulemaking under s. 120.54;

505 2. The statement is adopted and becomes effective as a  
 506 rule;

507 3. A final order is issued which contains a determination  
 508 that the petitioner failed to prove that the statement  
 509 constitutes a rule under s. 120.52; or

510 4. A final order is issued which contains a determination  
 511 that rulemaking is not feasible under s. 120.54(1)(a)1.a. or b.  
 512 or not practicable under s. 120.54(1)(a)2..

513 (b) If the administrative law judge determines that the  
 514 agency's inability to rely upon the statement during the  
 515 proceeding under this subsection would constitute an immediate  
 516 danger to the public health, safety, or welfare, the  
 517 administrative law judge shall grant an agency petition to allow  
 518 application of the statement until the proceeding is concluded.

519 (c) ~~(b)~~ The administrative law judge may extend the hearing  
 520 date beyond 30 days after assignment of the case for good cause.  
 521 If a hearing is held and the petitioner proves the allegations of  
 522 the petition, the agency shall have the burden of proving that

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523 rulemaking is not feasible or not ~~and~~ practicable under s.  
 524 120.54(1)(a).

525 (d)~~(e)~~ The administrative law judge may determine whether  
 526 all or part of a statement violates s. 120.54(1)(a). The decision  
 527 of the administrative law judge shall constitute a final order.  
 528 The division shall transmit a copy of the final order to the  
 529 Department of State and the committee. The Department of State  
 530 shall publish notice of the final order in the first available  
 531 issue of the Florida Administrative Weekly.

532 ~~(d) When an administrative law judge enters a final order  
 533 that all or part of an agency statement violates s. 120.54(1)(a),  
 534 the agency shall immediately discontinue all reliance upon the  
 535 statement or any substantially similar statement as a basis for  
 536 agency action.~~

537 ~~(e)1. If, prior to a final hearing to determine whether all  
 538 or part of any agency statement violates s. 120.54(1)(a), an  
 539 agency publishes, pursuant to s. 120.54(3)(a), proposed rules  
 540 that address the statement, then for purposes of this section, a  
 541 presumption is created that the agency is acting expeditiously  
 542 and in good faith to adopt rules that address the statement, and  
 543 the agency shall be permitted to rely upon the statement or a  
 544 substantially similar statement as a basis for agency action if  
 545 the statement meets the requirements of s. 120.57(1)(e).~~

546 ~~2. If, prior to the final hearing to determine whether all  
 547 or part of an agency statement violates s. 120.54(1)(a), an  
 548 agency publishes a notice of rule development which addresses the  
 549 statement pursuant to s. 120.54(2), or certifies that such a  
 550 notice has been transmitted to the Florida Administrative Weekly  
 551 for publication, then such publication shall constitute good~~

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552 ~~cause for the granting of a stay of the proceedings and a~~  
 553 ~~continuance of the final hearing for 30 days. If the agency~~  
 554 ~~publishes proposed rules within this 30 day period or any~~  
 555 ~~extension of that period granted by an administrative law judge~~  
 556 ~~upon showing of good cause, then the administrative law judge~~  
 557 ~~shall place the case in abeyance pending the outcome of~~  
 558 ~~rulemaking and any proceedings involving challenges to proposed~~  
 559 ~~rules pursuant to subsection (2).~~

560 ~~3. If, following the commencement of the final hearing and~~  
 561 ~~prior to entry of a final order that all or part of an agency~~  
 562 ~~statement violates s. 120.54(1)(a), an agency publishes, pursuant~~  
 563 ~~to s. 120.54(3)(a), proposed rules that address the statement and~~  
 564 ~~proceeds expeditiously and in good faith to adopt rules that~~  
 565 ~~address the statement, the agency shall be permitted to rely upon~~  
 566 ~~the statement or a substantially similar statement as a basis for~~  
 567 ~~agency action if the statement meets the requirements of s.~~  
 568 ~~120.57(1)(e).~~

569 ~~4. If an agency fails to adopt rules that address the~~  
 570 ~~statement within 180 days after publishing proposed rules, for~~  
 571 ~~purposes of this subsection, a presumption is created that the~~  
 572 ~~agency is not acting expeditiously and in good faith to adopt~~  
 573 ~~rules. If the agency's proposed rules are challenged pursuant to~~  
 574 ~~subsection (2), the 180 day period for adoption of rules is~~  
 575 ~~tolled until a final order is entered in that proceeding.~~

576 ~~5. If the proposed rules addressing the challenged~~  
 577 ~~statement are determined to be an invalid exercise of delegated~~  
 578 ~~legislative authority as defined in s. 120.52(8)(b)(f), the~~  
 579 ~~agency must immediately discontinue reliance on the statement and~~  
 580 ~~any substantially similar statement until the rules addressing~~

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581 ~~the subject are properly adopted.~~

582 (e) ~~(f)~~ All proceedings to determine a violation of s.  
 583 120.54(1) (a) shall be brought pursuant to this subsection. A  
 584 proceeding pursuant to this subsection may be consolidated with a  
 585 proceeding under subsection (3) or under any other section of  
 586 this chapter. Nothing in this paragraph shall be construed to  
 587 prevent a party whose substantial interests have been determined  
 588 by an agency action from bringing a proceeding pursuant to s.  
 589 120.57(1) (e) .

590 Section 6. Effective January 1, 2008, paragraph (e) of  
 591 subsection (1) of section 120.57, Florida Statutes, is amended to  
 592 read:

593 120.57 Additional procedures for particular cases.--

594 (1) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS INVOLVING  
 595 DISPUTED ISSUES OF MATERIAL FACT.--

596 (e)1. ~~Any~~ Agency action that determines the substantial  
 597 interests of a party may not be and that is based on an agency  
 598 statement that violates s. 120.54(1) (a) . Neither an agency nor an  
 599 administrative law judge has authority to enforce agency policy  
 600 that constitutes an unadopted rule when the agency fails to prove  
 601 that rulemaking is not feasible or not practicable. This  
 602 subparagraph does not preclude application of adopted rules and  
 603 applicable statutes to the facts unadopted rule is subject to de  
 604 novo review by an administrative law judge.

605 2. ~~The agency action shall not be presumed valid or~~  
 606 ~~invalid. The agency must demonstrate that the unadopted rule:~~

607 a. ~~Is within the powers, functions, and duties delegated by~~  
 608 ~~the Legislature or, if the agency is operating pursuant to~~  
 609 ~~authority derived from the State Constitution, is within that~~

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- 610 ~~authority;~~
- 611 ~~b. Does not enlarge, modify, or contravene the specific~~
- 612 ~~provisions of law implemented;~~
- 613 ~~e. Is not vague, establishes adequate standards for agency~~
- 614 ~~decisions, or does not vest unbridled discretion in the agency;~~
- 615 ~~d. Is not arbitrary or capricious. A rule is arbitrary if~~
- 616 ~~it is not supported by logic or the necessary facts; a rule is~~
- 617 ~~capricious if it is adopted without thought or reason or is~~
- 618 ~~irrational;~~
- 619 ~~e. Is not being applied to the substantially affected party~~
- 620 ~~without due notice; and~~
- 621 ~~f. Does not impose excessive regulatory costs on the~~
- 622 ~~regulated person, county, or city.~~

623 2.3. The recommended and final orders in any proceeding  
 624 shall be governed by the provisions of paragraphs (k) and (l),  
 625 except that the administrative law judge's determination  
 626 regarding the unadopted rule shall not be rejected by the agency  
 627 unless the agency first determines from a review of the complete  
 628 record, and states with particularity in the order, that such  
 629 determination is clearly erroneous or does not comply with  
 630 essential requirements of law. In any proceeding for review  
 631 under s. 120.68, if the court finds that the agency's rejection  
 632 of the determination regarding the unadopted rule does not  
 633 comport with the provisions of this subparagraph, the agency  
 634 action shall be set aside and the court shall award to the  
 635 prevailing party the reasonable costs and a reasonable attorney's  
 636 fee for the initial proceeding and the proceeding for review.

637 Section 7. Effective January 1, 2008, subsections (2) and  
 638 (3) and paragraph (a) of subsection (4) of section 120.595,

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639 Florida Statutes, are amended to read:

640 120.595 Attorney's fees.--

641 (2) CHALLENGES TO PROPOSED AGENCY RULES PURSUANT TO SECTION

642 120.56(2).--If the court or administrative law judge declares a

643 proposed rule or portion of a proposed rule invalid pursuant to

644 s. 120.56(2), a judgment or order shall be rendered against the

645 agency for reasonable costs and reasonable attorney's fees,

646 unless the agency demonstrates that its actions were

647 substantially justified or special circumstances exist which

648 would make the award unjust. An agency's actions are

649 "substantially justified" if there was a reasonable basis in law

650 and fact at the time the actions were taken by the agency. If

651 the agency prevails in the proceedings, the court or

652 administrative law judge shall award reasonable costs and

653 reasonable attorney's fees against a party if the court or

654 administrative law judge determines that a party participated in

655 the proceedings for an improper purpose as defined by paragraph

656 (1) (e). No award of attorney's fees as provided by this

657 subsection shall exceed ~~\$15,000~~ \$50,000.

658 (3) CHALLENGES TO EXISTING AGENCY RULES PURSUANT TO SECTION

659 120.56(3) AND (5).--If the court or administrative law judge

660 declares a rule or portion of a rule invalid pursuant to s.

661 120.56(3) or (5), a judgment or order shall be rendered against

662 the agency for reasonable costs and reasonable attorney's fees,

663 unless the agency demonstrates that its actions were

664 substantially justified or special circumstances exist which

665 would make the award unjust. An agency's actions are

666 "substantially justified" if there was a reasonable basis in law

667 and fact at the time the actions were taken by the agency. If

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668 | the agency prevails in the proceedings, the court or  
 669 | administrative law judge shall award reasonable costs and  
 670 | reasonable attorney's fees against a party if the court or  
 671 | administrative law judge determines that a party participated in  
 672 | the proceedings for an improper purpose as defined by paragraph  
 673 | (1) (e). No award of attorney's fees as provided by this  
 674 | subsection shall exceed ~~\$15,000~~ \$50,000.

675 | (4) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION  
 676 | 120.56(4).--(a) Upon entry of a final order that all or part of  
 677 | an agency statement violates s. 120.54(1)a), the administrative  
 678 | law judge shall award reasonable costs and reasonable attorney's  
 679 | fees to the petitioner, unless the agency demonstrates that the  
 680 | statement is required by the Federal Government to implement or  
 681 | retain a delegated or approved program or to meet a condition to  
 682 | receipt of federal funds.

683 | (b) If the agency initiates rulemaking under s.120.54 during  
 684 | a rule challenge under s.120.56(4) and the statement is adopted  
 685 | and becomes effective as a rule, the ALJ shall award reasonable  
 686 | costs and attorney's fees accrued to the date the agency  
 687 | initiated rulemaking, upon a finding that the agency knew or  
 688 | should have known that the agency statement was an unadopted  
 689 | rule. The administrative law judge may consider, among other  
 690 | factors, whether or not the petitioner or other person had  
 691 | requested or formally petitioned the agency to adopt the  
 692 | statement as a rule prior to the filing of the 120.56(4).

693 | ~~(b)~~ (c) Notwithstanding the provisions of chapter 284, an  
 694 | award shall be paid from the budget entity of the secretary,  
 695 | executive director, or equivalent administrative officer of the  
 696 | agency, and the agency shall not be entitled to payment of an



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697 | award or reimbursement for payment of an award under any  
 698 | provision of law.

699 | (d) If the agency prevails in the proceedings, the court or  
 700 | administrative law judge shall award reasonable costs and  
 701 | reasonable attorney's fees against a party if the court or  
 702 | administrative law judge determines that the party participated  
 703 | in the proceedings for an improper purpose as defined in  
 704 | paragraph (1)(e).

705 | Section 8. Paragraph (a) of subsection (1) of section  
 706 | 120.55, Florida Statutes, is amended to read:

707 | 120.55 Publication.--

708 | (1) The Department of State shall:

709 | (a)1. Through a continuous revision system, compile and  
 710 | publish the "Florida Administrative Code." The Florida  
 711 | Administrative Code shall contain all rules adopted by each  
 712 | agency, citing the specific rulemaking authority pursuant to  
 713 | which each rule was adopted, all history notes as authorized in  
 714 | s. 120.545(8) ~~s. 120.545(9)~~, and complete indexes to all rules  
 715 | contained in the code. Supplementation shall be made as often as  
 716 | practicable, but at least monthly. The department may contract  
 717 | with a publishing firm for the publication, in a timely and  
 718 | useful form, of the Florida Administrative Code; however, the  
 719 | department shall retain responsibility for the code as provided  
 720 | in this section. This publication shall be the official  
 721 | compilation of the administrative rules of this state. The  
 722 | Department of State shall retain the copyright over the Florida  
 723 | Administrative Code.

724 | 2. Rules general in form but applicable to only one school  
 725 | district, community college district, or county, or a part

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726 | thereof, or state university rules relating to internal personnel  
 727 | or business and finance shall not be published in the Florida  
 728 | Administrative Code. Exclusion from publication in the Florida  
 729 | Administrative Code shall not affect the validity or  
 730 | effectiveness of such rules.

731 |         3. At the beginning of the section of the code dealing with  
 732 | an agency that files copies of its rules with the department, the  
 733 | department shall publish the address and telephone number of the  
 734 | executive offices of each agency, the manner by which the agency  
 735 | indexes its rules, a listing of all rules of that agency excluded  
 736 | from publication in the code, and a statement as to where those  
 737 | rules may be inspected.

738 |         4. Forms shall not be published in the Florida  
 739 | Administrative Code; but any form which an agency uses in its  
 740 | dealings with the public, along with any accompanying  
 741 | instructions, shall be filed with the committee before it is  
 742 | used. Any form or instruction which meets the definition of  
 743 | "rule" provided in s. 120.52 shall be incorporated by reference  
 744 | into the appropriate rule. The reference shall specifically  
 745 | state that the form is being incorporated by reference and shall  
 746 | include the number, title, and effective date of the form and an  
 747 | explanation of how the form may be obtained.

748 |         Section 9. Effective December 31, 2007, paragraph (a) of  
 749 | subsection (1) of section 120.55, Florida Statutes, as amended by  
 750 | section 4 of chapter 2006-82, Laws of Florida, is amended to  
 751 | read:

752 |         120.55 Publication.--

753 |         (1) The Department of State shall:

754 |             (a)1. Through a continuous revision system, compile and

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755 | publish the "Florida Administrative Code." The Florida  
 756 | Administrative Code shall contain all rules adopted by each  
 757 | agency, citing the specific rulemaking authority pursuant to  
 758 | which each rule was adopted, all history notes as authorized in  
 759 | s. 120.545(8) ~~s. 120.545(9)~~, and complete indexes to all rules  
 760 | contained in the code. Supplementation shall be made as often as  
 761 | practicable, but at least monthly. The department may contract  
 762 | with a publishing firm for the publication, in a timely and  
 763 | useful form, of the Florida Administrative Code; however, the  
 764 | department shall retain responsibility for the code as provided  
 765 | in this section. This publication shall be the official  
 766 | compilation of the administrative rules of this state. The  
 767 | Department of State shall retain the copyright over the Florida  
 768 | Administrative Code.

769 |         2. Rules general in form but applicable to only one school  
 770 | district, community college district, or county, or a part  
 771 | thereof, or state university rules relating to internal personnel  
 772 | or business and finance shall not be published in the Florida  
 773 | Administrative Code. Exclusion from publication in the Florida  
 774 | Administrative Code shall not affect the validity or  
 775 | effectiveness of such rules.

776 |         3. At the beginning of the section of the code dealing with  
 777 | an agency that files copies of its rules with the department, the  
 778 | department shall publish the address and telephone number of the  
 779 | executive offices of each agency, the manner by which the agency  
 780 | indexes its rules, a listing of all rules of that agency excluded  
 781 | from publication in the code, and a statement as to where those  
 782 | rules may be inspected.

783 |         4. Forms shall not be published in the Florida

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784 Administrative Code; but any form which an agency uses in its  
785 dealings with the public, along with any accompanying  
786 instructions, shall be filed with the committee before it is  
787 used. Any form or instruction which meets the definition of  
788 "rule" provided in s. 120.52 shall be incorporated by reference  
789 into the appropriate rule. The reference shall specifically  
790 state that the form is being incorporated by reference and shall  
791 include the number, title, and effective date of the form and an  
792 explanation of how the form may be obtained. Each form created by  
793 an agency which is incorporated by reference in a rule notice of  
794 which is given under s. 120.54(3)(a) after December 31, 2007,  
795 must clearly display the number, title, and effective date of the  
796 form and the number of the rule in which the form is  
797 incorporated.

798 Section 10. Except as otherwise expressly provided in this  
799 act, this act shall take effect July 1, 2007.