

1                   A bill to be entitled  
2           An act relating to administrative procedures; providing a  
3           short title; amending s. 120.52, F.S.; redefining the term  
4           "invalid exercise of delegated legislative authority" to  
5           remove a limitation on the construction of statutory  
6           language granting rulemaking authority; defining the terms  
7           "law implemented," "rulemaking authority," and "unadopted  
8           rule"; amending s. 120.536, F.S.; revising guidelines for  
9           the construction of statutory language granting rulemaking  
10          authority; amending s. 120.54, F.S.; prescribing limits  
11          and guidelines with respect to the incorporation of  
12          material by reference; prescribing requirements for  
13          material being incorporated by reference; prohibiting an  
14          agency head from delegating or transferring certain  
15          specified rulemaking responsibilities; revising the  
16          information required in notices of proposed actions;  
17          providing additional procedures for rule-adoption  
18          hearings; revising requirements for filing rules;  
19          requiring that material incorporated by reference be  
20          published by the agency when adopting emergency rules;  
21          revising provisions with respect to petitions to initiate  
22          rulemaking; amending s. 120.545, F.S.; revising duties and  
23          procedures of the Administrative Procedures Committee and  
24          agencies with respect to review of agency rules; deleting  
25          procedures for agency election to modify, withdraw, amend,  
26          or repeal a proposed rule; providing for the effect of the  
27          failure of an agency to respond to a committee objection  
28          to a statement of estimated regulatory costs within the

29 | time prescribed; deleting a requirement that the  
 30 | Department of State publish final legislative action;  
 31 | amending s. 120.55, F.S.; requiring the department to  
 32 | prescribe by rule the content requirements for rules,  
 33 | notices, and other materials; revising for a specified  
 34 | period the limit for the unencumbered balance in the  
 35 | Records Management Trust Fund at the beginning of the  
 36 | fiscal year for fees collected under ch. 120, F.S.;  
 37 | providing for the transfer of excess funds; requiring  
 38 | electronic publication of the Florida Administrative Code;  
 39 | prescribing requirements with respect to the content of  
 40 | such electronic publication; providing for filing  
 41 | information incorporated by reference in electronic form;  
 42 | providing requirements for the Florida Administrative  
 43 | Weekly Internet website; amending s. 120.56, F.S.,  
 44 | relating to challenges to rules; conforming a cross-  
 45 | reference; revising procedures for administrative  
 46 | determinations of the invalidity of rules; requiring an  
 47 | agency to discontinue reliance on a statement under  
 48 | certain circumstances; providing an exception; deleting  
 49 | certain provisions relating to actions before a final  
 50 | hearing is held; amending s. 120.57, F.S.; revising  
 51 | procedures applicable to hearings involving disputed  
 52 | issues of material fact; prohibiting enforcement of  
 53 | unadopted agency rules under certain circumstances;  
 54 | amending s. 120.595, F.S.; increasing the limitation on  
 55 | attorney's fees in challenges to proposed agency rules or  
 56 | existing agency rules; providing for an award of

57 reasonable costs and attorney's fees accrued by a  
 58 petitioner under certain circumstances; providing for an  
 59 award of fees and costs if the agency prevails and a party  
 60 participated for an improper purpose; amending s. 120.569,  
 61 F.S.; requiring that certain administrative proceedings be  
 62 terminated and subsequently reinstated under different  
 63 provisions of law if a disputed issue of material fact  
 64 arises during the proceeding; conforming a cross-  
 65 reference; amending s. 120.74, F.S.; revising reporting  
 66 requirement for agency heads; amending ss. 120.80, 120.81,  
 67 409.175, 420.9072, and 420.9075, F.S.; conforming cross-  
 68 references; providing an appropriation; providing  
 69 effective dates.

70

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

72

73 Section 1. This act may be cited as the "Open Government  
 74 Act."

75 Section 2. Subsection (8) of section 120.52, Florida  
 76 Statutes, is amended, present subsections (9) through (15) of  
 77 that section are renumbered as subsections (10) through (16),  
 78 respectively, present subsections (16), (17), (18), and (19) of  
 79 that section are redesignated as subsections (18), (19), (21),  
 80 and (22), respectively, and new subsections (9), (17), and (20)  
 81 are added to that section, to read:

82 120.52 Definitions.--As used in this act:

83 (8) "Invalid exercise of delegated legislative authority"  
 84 means action that ~~which~~ goes beyond the powers, functions, and

85 | duties delegated by the Legislature. A proposed or existing rule  
86 | is an invalid exercise of delegated legislative authority if any  
87 | one of the following applies:

88 |       (a) The agency has materially failed to follow the  
89 | applicable rulemaking procedures or requirements set forth in  
90 | this chapter;

91 |       (b) The agency has exceeded its grant of rulemaking  
92 | authority, citation to which is required by s. 120.54(3)(a)1.;

93 |       (c) The rule enlarges, modifies, or contravenes the  
94 | specific provisions of law implemented, citation to which is  
95 | required by s. 120.54(3)(a)1.;

96 |       (d) The rule is vague, fails to establish adequate  
97 | standards for agency decisions, or vests unbridled discretion in  
98 | the agency;

99 |       (e) The rule is arbitrary or capricious. A rule is  
100 | arbitrary if it is not supported by logic or the necessary  
101 | facts; a rule is capricious if it is adopted without thought or  
102 | reason or is irrational; or

103 |       (f) The rule imposes regulatory costs on the regulated  
104 | person, county, or city which could be reduced by the adoption  
105 | of less costly alternatives that substantially accomplish the  
106 | statutory objectives.

107 |

108 | A grant of rulemaking authority is necessary but not sufficient  
109 | to allow an agency to adopt a rule; a specific law to be  
110 | implemented is also required. An agency may adopt only rules  
111 | that implement or interpret the specific powers and duties  
112 | granted by the enabling statute. No agency shall have authority

113 to adopt a rule only because it is reasonably related to the  
 114 purpose of the enabling legislation and is not arbitrary and  
 115 capricious or is within the agency's class of powers and duties,  
 116 nor shall an agency have the authority to implement statutory  
 117 provisions setting forth general legislative intent or policy.  
 118 Statutory language granting rulemaking authority or generally  
 119 describing the powers and functions of an agency shall be  
 120 construed to extend no further than implementing or interpreting  
 121 the specific powers and duties conferred by the enabling statute  
 122 ~~by the same statute.~~

123 (9) "Law implemented" means the language of the enabling  
 124 statute being carried out or interpreted by an agency through  
 125 rulemaking.

126 (17) "Rulemaking authority" means statutory language that  
 127 explicitly authorizes or requires an agency to adopt, develop,  
 128 establish, or otherwise create any statement coming within the  
 129 definition of the term "rule."

130 (20) "Unadopted rule" means an agency statement that meets  
 131 the definition of the term "rule," but that has not been adopted  
 132 pursuant to the requirements of s. 120.54.

133 Section 3. Paragraph (a) of subsection (2) of section  
 134 120.53, Florida Statutes, is amended to read:

135 120.53 Maintenance of orders; indexing; listing;  
 136 organizational information.--

137 (2) (a) An agency may comply with subparagraphs (1) (a) 1.  
 138 and 2. by designating an official reporter to publish and index  
 139 by subject matter each agency order that must be indexed and  
 140 made available to the public, or by electronically transmitting

141 to the division a copy of such orders for posting on the  
 142 division's website. An agency is in compliance with  
 143 subparagraph (1)(a)3. if it publishes in its designated reporter  
 144 a list of each agency final order that must be listed and  
 145 preserves each listed order and makes it available for public  
 146 inspection and copying.

147 Section 4. Subsection (1) of section 120.536, Florida  
 148 Statutes, is amended to read:

149 120.536 Rulemaking authority; repeal; challenge.--

150 (1) A grant of rulemaking authority is necessary but not  
 151 sufficient to allow an agency to adopt a rule; a specific law to  
 152 be implemented is also required. An agency may adopt only rules  
 153 that implement or interpret the specific powers and duties  
 154 granted by the enabling statute. No agency shall have authority  
 155 to adopt a rule only because it is reasonably related to the  
 156 purpose of the enabling legislation and is not arbitrary and  
 157 capricious or is within the agency's class of powers and duties,  
 158 nor shall an agency have the authority to implement statutory  
 159 provisions setting forth general legislative intent or policy.  
 160 Statutory language granting rulemaking authority or generally  
 161 describing the powers and functions of an agency shall be  
 162 construed to extend no further than implementing or interpreting  
 163 the specific powers and duties conferred by the enabling statute  
 164 ~~by the same statute.~~

165 Section 5. Paragraph (i) of subsection (1), paragraphs  
 166 (a), (c), and (e) of subsection (3), paragraph (a) of subsection  
 167 (4), subsection (7) of section 120.54, Florida Statutes, are

168 amended, and paragraph (k) is added to subsection (1) of that  
 169 section, to read:

170 120.54 Rulemaking.--

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

173 (i)1. A rule may incorporate material by reference but  
 174 only as the material exists on the date the rule is adopted. For  
 175 purposes of the rule, changes in the material are not effective  
 176 unless the rule is amended to incorporate the changes.

177 2. An agency rule that incorporates by specific reference  
 178 another rule of that agency automatically incorporates  
 179 subsequent amendments to the referenced rule unless a contrary  
 180 intent is clearly indicated in the referencing rule. A notice of  
 181 amendments to a rule that has been incorporated by specific  
 182 reference in other rules of that agency must explain the effect  
 183 of those amendments on the referencing rules.

184 3. In rules adopted after December 31, 2010, material may  
 185 not be incorporated by reference unless:

186 a. The material has been submitted in the prescribed  
 187 electronic format to the Department of State and the full text  
 188 of the material can be made available for free public access  
 189 through an electronic hyperlink from the rule making the  
 190 reference in the Florida Administrative Code; or

191 b. The agency has determined that posting the material on  
 192 the Internet for purposes of public examination and inspection  
 193 would constitute a violation of federal copyright law, in which  
 194 case a statement to that effect, along with the address of  
 195 locations at the Department of State and the agency at which the

196 material is available for public inspection and examination,  
 197 must be included in the notice required by subparagraph (3)(a)1.

198 4. A rule may not be amended by reference only. Amendments  
 199 must set out the amended rule in full in the same manner as  
 200 required by the State Constitution for laws. ~~The Department of~~  
 201 ~~State may prescribe by rule requirements for incorporating~~  
 202 ~~materials by reference pursuant to this paragraph.~~

203 ~~5.2.~~ Notwithstanding any contrary provision in this  
 204 section, when an adopted rule of the Department of Environmental  
 205 Protection or a water management district is incorporated by  
 206 reference in the other agency's rule to implement a provision of  
 207 part IV of chapter 373, subsequent amendments to the rule are  
 208 not effective as to the incorporating rule unless the agency  
 209 incorporating by reference notifies the committee and the  
 210 Department of State of its intent to adopt the subsequent  
 211 amendment, publishes notice of such intent in the Florida  
 212 Administrative Weekly, and files with the Department of State a  
 213 copy of the amended rule incorporated by reference. Changes in  
 214 the rule incorporated by reference are effective as to the other  
 215 agency 20 days after the date of the published notice and filing  
 216 with the Department of State. The Department of State shall  
 217 amend the history note of the incorporating rule to show the  
 218 effective date of such change. Any substantially affected person  
 219 may, within 14 days after the date of publication of the notice  
 220 of intent in the Florida Administrative Weekly, file an  
 221 objection to rulemaking with the agency. The objection shall  
 222 specify the portions of the rule incorporated by reference to  
 223 which the person objects and the reasons for the objection. The



224 agency shall not have the authority under this subparagraph to  
 225 adopt those portions of the rule specified in such objection.  
 226 The agency shall publish notice of the objection and of its  
 227 action in response in the next available issue of the Florida  
 228 Administrative Weekly.

229 6. The Department of State may adopt by rule requirements  
 230 for incorporating materials pursuant to this paragraph.

231 (k) An agency head may delegate the authority to initiate  
 232 rule development under subsection (2); however, rulemaking  
 233 responsibilities of an agency head under subparagraph (3)(a)1.,  
 234 subparagraph (3)(e)1., or subparagraph (3)(e)6. may not be  
 235 delegated or transferred.

236 (3) ADOPTION PROCEDURES.--

237 (a) Notices.--

238 1. Prior to the adoption, amendment, or repeal of any rule  
 239 other than an emergency rule, an agency, upon approval of the  
 240 agency head, shall give notice of its intended action, setting  
 241 forth a short, plain explanation of the purpose and effect of  
 242 the proposed action; the full text of the proposed rule or  
 243 amendment and a summary thereof; a reference to the grant of  
 244 ~~specific~~ rulemaking authority pursuant to which the rule is  
 245 adopted; and a reference to the section or subsection of the  
 246 Florida Statutes or the Laws of Florida being implemented or,  
 247 ~~interpreted, or made specific~~. The notice must ~~shall~~ include a  
 248 summary of the agency's statement of the estimated regulatory  
 249 costs, if one has been prepared, based on the factors set forth  
 250 in s. 120.541(2), and a statement that any person who wishes to  
 251 provide the agency with information regarding the statement of

252 estimated regulatory costs, or to provide a proposal for a lower  
253 cost regulatory alternative as provided by s. 120.541(1), must  
254 do so in writing within 21 days after publication of the notice.  
255 The notice must state the procedure for requesting a public  
256 hearing on the proposed rule. Except when the intended action is  
257 the repeal of a rule, the notice shall include a reference both  
258 to the date on which and to the place where the notice of rule  
259 development that is required by subsection (2) appeared.

260 2. The notice shall be published in the Florida  
261 Administrative Weekly not less than 28 days prior to the  
262 intended action. The proposed rule shall be available for  
263 inspection and copying by the public at the time of the  
264 publication of notice.

265 3. The notice shall be mailed to all persons named in the  
266 proposed rule and to all persons who, at least 14 days prior to  
267 such mailing, have made requests of the agency for advance  
268 notice of its proceedings. The agency shall also give such  
269 notice as is prescribed by rule to those particular classes of  
270 persons to whom the intended action is directed.

271 4. The adopting agency shall file with the committee, at  
272 least 21 days prior to the proposed adoption date, a copy of  
273 each rule it proposes to adopt; a copy of any material  
274 incorporated by reference in the rule; a detailed written  
275 statement of the facts and circumstances justifying the proposed  
276 rule; a copy of any statement of estimated regulatory costs that  
277 has been prepared pursuant to s. 120.541; a statement of the  
278 extent to which the proposed rule relates to federal standards

279 or rules on the same subject; and the notice required by  
 280 subparagraph 1.

281 (c) Hearings.--

282 1. If the intended action concerns any rule other than one  
 283 relating exclusively to procedure or practice, the agency shall,  
 284 on the request of any affected person received within 21 days  
 285 after the date of publication of the notice of intended agency  
 286 action, give affected persons an opportunity to present evidence  
 287 and argument on all issues under consideration. The agency may  
 288 schedule a public hearing on the rule and, if requested by any  
 289 affected person, shall schedule a public hearing on the rule. If  
 290 the agency head is a board or other collegial body created under  
 291 s. 20.165(4) or s. 20.43(3)(g), and one or more requested public  
 292 hearings is scheduled, the board or other collegial body shall  
 293 conduct at least one of the public hearings itself and may not  
 294 delegate this responsibility without the consent of those  
 295 persons requesting the public hearing. Any material pertinent to  
 296 the issues under consideration submitted to the agency within 21  
 297 days after the date of publication of the notice or submitted at  
 298 a public hearing shall be considered by the agency and made a  
 299 part of the record of the rulemaking proceeding.

300 2. Rulemaking proceedings shall be governed solely by the  
 301 provisions of this section unless a person timely asserts that  
 302 the person's substantial interests will be affected in the  
 303 proceeding and affirmatively demonstrates to the agency that the  
 304 proceeding does not provide adequate opportunity to protect  
 305 those interests. If the agency determines that the rulemaking  
 306 proceeding is not adequate to protect the person's interests, it

307 shall suspend the rulemaking proceeding and convene a separate  
308 proceeding under the provisions of ss. 120.569 and 120.57.  
309 Similarly situated persons may be requested to join and  
310 participate in the separate proceeding. Upon conclusion of the  
311 separate proceeding, the rulemaking proceeding shall be resumed.

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

313 1. If the adopting agency is required to publish its rules  
314 in the Florida Administrative Code, the agency, upon approval of  
315 the agency head, it shall file with the Department of State  
316 three certified copies of the rule it proposes to adopt; one  
317 copy of any material incorporated by reference in the rule,  
318 certified by the agency; a summary of the rule; a summary of  
319 any hearings held on the rule; and a detailed written statement  
320 of the facts and circumstances justifying the rule. Agencies not  
321 required to publish their rules in the Florida Administrative  
322 Code shall file one certified copy of the proposed rule, and the  
323 other material required by this subparagraph, in the office of  
324 the agency head, and such rules shall be open to the public.

325 2. A rule may not be filed for adoption less than 28 days  
326 or more than 90 days after the notice required by paragraph (a),  
327 until 21 days after the notice of change required by paragraph  
328 (d), until 14 days after the final public hearing, until 21 days  
329 after ~~preparation of~~ a statement of estimated regulatory costs  
330 required under s. 120.541 has been provided to all persons who  
331 submitted a lower cost regulatory alternative and made available  
332 to the public, or until the administrative law judge has  
333 rendered a decision under s. 120.56(2), whichever applies. When  
334 a required notice of change is published prior to the expiration

335 of the time to file the rule for adoption, the period during  
 336 which a rule must be filed for adoption is extended to 45 days  
 337 after the date of publication. If notice of a public hearing is  
 338 published prior to the expiration of the time to file the rule  
 339 for adoption, the period during which a rule must be filed for  
 340 adoption is extended to 45 days after adjournment of the final  
 341 hearing on the rule, 21 days after receipt of all material  
 342 authorized to be submitted at the hearing, or 21 days after  
 343 receipt of the transcript, if one is made, whichever is latest.  
 344 The term "public hearing" includes any public meeting held by  
 345 any agency at which the rule is considered. If a petition for an  
 346 administrative determination under s. 120.56(2) is filed, the  
 347 period during which a rule must be filed for adoption is  
 348 extended to 60 days after the administrative law judge files the  
 349 final order with the clerk or until 60 days after subsequent  
 350 judicial review is complete.

351 3. At the time a rule is filed, the agency shall certify  
 352 that the time limitations prescribed by this paragraph have been  
 353 complied with, that all statutory rulemaking requirements have  
 354 been met, and that there is no administrative determination  
 355 pending on the rule.

356 4. At the time a rule is filed, the committee shall  
 357 certify whether the agency has responded in writing to all  
 358 material and timely written comments or written inquiries made  
 359 on behalf of the committee. The department shall reject any rule  
 360 that is not filed within the prescribed time limits; that does  
 361 not ~~comply with~~ satisfy all statutory rulemaking requirements  
 362 and rules of the department; upon which an agency has not

363 responded in writing to all material and timely written  
 364 inquiries or written comments; upon which an administrative  
 365 determination is pending; or which does not include a statement  
 366 of estimated regulatory costs, if required.

367 5. If a rule has not been adopted within the time limits  
 368 imposed by this paragraph or has not been adopted in compliance  
 369 with all statutory rulemaking requirements, the agency proposing  
 370 the rule shall withdraw the rule and give notice of its action  
 371 in the next available issue of the Florida Administrative  
 372 Weekly.

373 6. The proposed rule shall be adopted on being filed with  
 374 the Department of State and become effective 20 days after being  
 375 filed, on a later date specified in the rule, or on a date  
 376 required by statute. Rules not required to be filed with the  
 377 Department of State shall become effective when adopted by the  
 378 agency head or on a later date specified by rule or statute. If  
 379 the committee notifies an agency that an objection to a rule is  
 380 being considered, the agency may postpone the adoption of the  
 381 rule to accommodate review of the rule by the committee. When an  
 382 agency postpones adoption of a rule to accommodate review by the  
 383 committee, the 90-day period for filing the rule is tolled until  
 384 the committee notifies the agency that it has completed its  
 385 review of the rule.

386  
 387 For the purposes of this paragraph, the term "administrative  
 388 determination" does not include subsequent judicial review.

389 (4) EMERGENCY RULES.--

390 (a) If an agency finds that an immediate danger to the  
 391 public health, safety, or welfare requires emergency action, the  
 392 agency may adopt any rule necessitated by the immediate danger.  
 393 The agency may adopt a rule by any procedure which is fair under  
 394 the circumstances if:

395 1. The procedure provides at least the procedural  
 396 protection given by other statutes, the State Constitution, or  
 397 the United States Constitution.

398 2. The agency takes only that action necessary to protect  
 399 the public interest under the emergency procedure.

400 3. The agency publishes in writing at the time of, or  
 401 prior to, its action the specific facts and reasons for finding  
 402 an immediate danger to the public health, safety, or welfare and  
 403 its reasons for concluding that the procedure used is fair under  
 404 the circumstances. In any event, notice of emergency rules,  
 405 other than those of educational units or units of government  
 406 with jurisdiction in only one or a part of one county, including  
 407 the full text of the rules, shall be published in the first  
 408 available issue of the Florida Administrative Weekly and  
 409 provided to the committee along with any material incorporated  
 410 by reference in the rules. The agency's findings of immediate  
 411 danger, necessity, and procedural fairness shall be judicially  
 412 reviewable.

413 (7) PETITION TO INITIATE RULEMAKING.--

414 (a) Any person regulated by an agency or having  
 415 substantial interest in an agency rule may petition an agency to  
 416 adopt, amend, or repeal a rule or to provide the minimum public  
 417 information required by this chapter. The petition shall specify

418 the proposed rule and action requested. Not later than 30  
419 calendar days following the date of filing a petition, the  
420 agency shall initiate rulemaking proceedings under this chapter,  
421 otherwise comply with the requested action, or deny the petition  
422 with a written statement of its reasons for the denial.

423 (b) If the petition filed under this subsection is  
424 directed to an unadopted existing rule, ~~which the agency has not~~  
425 ~~adopted by the rulemaking procedures or requirements set forth~~  
426 ~~in this chapter~~, the agency shall, not later than 30 days  
427 following the date of filing a petition, initiate rulemaking, or  
428 provide notice in the Florida Administrative Weekly that the  
429 agency will hold a public hearing on the petition within 30 days  
430 after publication of the notice. The purpose of the public  
431 hearing is to consider the comments of the public directed to  
432 the agency rule which has not been adopted by the rulemaking  
433 procedures or requirements of this chapter, its scope and  
434 application, and to consider whether the public interest is  
435 served adequately by the application of the rule on a case-by-  
436 case basis, as contrasted with its adoption by the rulemaking  
437 procedures or requirements set forth in this chapter.

438 (c) Within 30 days following the public hearing provided  
439 for by paragraph (b), if the agency does not initiate rulemaking  
440 or otherwise comply with the requested action, the agency shall  
441 publish in the Florida Administrative Weekly a statement of its  
442 reasons for not initiating rulemaking or otherwise complying  
443 with the requested action, and of any changes it will make in  
444 the scope or application of the unadopted rule. The agency shall  
445 file the statement with the committee. The committee shall



446 forward a copy of the statement to the substantive committee  
 447 with primary oversight jurisdiction of the agency in each house  
 448 of the Legislature. The committee or the committee with primary  
 449 oversight jurisdiction may hold a hearing directed to the  
 450 statement of the agency. The committee holding the hearing may  
 451 recommend to the Legislature the introduction of legislation  
 452 making the rule a statutory standard or limiting or otherwise  
 453 modifying the authority of the agency.

454 Section 6. Effective January 1, 2009, paragraph (a) of  
 455 subsection (1) of s. 120.54, Florida Statutes, is amended to  
 456 read:

457 120.54 Rulemaking.—

458 (1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER THAN  
 459 EMERGENCY RULES.—

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

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

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

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

471 ~~c. The agency is currently using the rulemaking procedure~~  
 472 ~~expeditiously and in good faith to adopt rules which address the~~  
 473 ~~statement.~~

474 Section 7. Section 120.545, Florida Statutes, is amended  
 475 to read:

476 120.545 Committee review of agency rules.--

477 (1) As a legislative check on legislatively created  
 478 authority, the committee shall examine each proposed rule,  
 479 except for those proposed rules exempted by s. 120.81(1)(e) and  
 480 (2), and its accompanying material, and each emergency rule, and  
 481 may examine any existing rule, for the purpose of determining  
 482 whether:

483 (a) The rule is an invalid exercise of delegated  
 484 legislative authority.

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

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

488 (d) The rule is in proper form.

489 (e) The notice given prior to its adoption was sufficient  
 490 to give adequate notice of the purpose and effect of the rule.

491 (f) The rule is consistent with expressed legislative  
 492 intent pertaining to the specific provisions of law which the  
 493 rule implements.

494 (g) The rule is necessary to accomplish the apparent or  
 495 expressed objectives of the specific provision of law which the  
 496 rule implements.

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

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

502           (j) The rule's statement of estimated regulatory costs  
 503 complies with the requirements of s. 120.541 and whether the  
 504 rule does not impose regulatory costs on the regulated person,  
 505 county, or city which could be reduced by the adoption of less  
 506 costly alternatives that substantially accomplish the statutory  
 507 objectives.

508           (k) The rule will require additional appropriations.

509           (1) If the rule is an emergency rule, there exists an  
 510 emergency justifying the adoption ~~promulgation~~ of such rule, the  
 511 agency is within ~~has exceeded the scope of~~ its statutory  
 512 authority, and the rule was adopted ~~promulgated~~ in compliance  
 513 with the requirements and limitations of s. 120.54(4).

514           (2) The committee may request from an agency such  
 515 information as is reasonably necessary for examination of a rule  
 516 as required by subsection (1). The committee shall consult with  
 517 legislative standing committees having ~~with~~ jurisdiction over  
 518 the subject areas. If the committee objects to ~~an emergency rule~~  
 519 ~~or a proposed or existing rule~~, the committee ~~it~~ shall, within 5  
 520 days after ~~of~~ the objection, certify that fact to the agency  
 521 whose rule has been examined and include with the certification  
 522 a statement detailing its objections with particularity. The  
 523 committee shall notify the Speaker of the House of  
 524 Representatives and the President of the Senate of any objection  
 525 to an agency rule concurrent with certification of that fact to  
 526 the agency. Such notice shall include a copy of the rule and the  
 527 statement detailing the committee's objections to the rule.

528           (3) Within 30 days after ~~of~~ receipt of the objection, if  
 529 the agency is headed by an individual, or within 45 days after

530 ~~ef~~ receipt of the objection, if the agency is headed by a  
 531 collegial body, the agency shall:

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

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

536 2. File notice pursuant to s. 120.54(3)(d) of withdrawal  
 537 of ~~withdraw~~ the rule ~~in its entirety~~; or

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

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

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

545 2. File notice pursuant to s. 120.54(3)(a) ~~Notify the~~  
 546 ~~committee that it has elected~~ to repeal the rule ~~and initiate~~  
 547 ~~the repeal procedure~~; or

548 3. Notify the committee in writing that the agency ~~it~~  
 549 refuses to amend or repeal the rule.

550 (c) If ~~the rule is either an existing or a proposed rule~~  
 551 ~~and~~ the objection is to the statement of estimated regulatory  
 552 costs:

553 1. Prepare a corrected statement of estimated regulatory  
 554 costs, give notice of the availability of the corrected  
 555 statement in the first available issue of the Florida  
 556 Administrative Weekly, and file a copy of the corrected  
 557 statement with the committee; or

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

560           ~~(4) If the agency elects to modify a proposed rule to meet~~  
561 ~~the committee's objection, it shall make only such modifications~~  
562 ~~as are necessary to meet the objection and shall resubmit the~~  
563 ~~rule to the committee. The agency shall give notice of its~~  
564 ~~election to modify a proposed rule to meet the committee's~~  
565 ~~objection by publishing a notice of change in the first~~  
566 ~~available issue of the Florida Administrative Weekly, but shall~~  
567 ~~not be required to conduct a public hearing. If the agency~~  
568 ~~elects to amend an existing rule to meet the committee's~~  
569 ~~objection, it shall notify the committee in writing and shall~~  
570 ~~initiate the amendment procedure by giving notice in the next~~  
571 ~~available issue of the Florida Administrative Weekly. The~~  
572 ~~committee shall give priority to rules so modified or amended~~  
573 ~~when setting its agenda.~~

574           ~~(5) If the agency elects to withdraw a proposed rule as a~~  
575 ~~result of a committee objection, it shall notify the committee,~~  
576 ~~in writing, of its election and shall give notice of the~~  
577 ~~withdrawal in the next available issue of the Florida~~  
578 ~~Administrative Weekly. The rule shall be withdrawn without a~~  
579 ~~public hearing, effective upon publication of the notice in the~~  
580 ~~Florida Administrative Weekly. If the agency elects to repeal an~~  
581 ~~existing rule as a result of a committee objection, it shall~~  
582 ~~notify the committee, in writing, of its election and shall~~  
583 ~~initiate rulemaking procedures for that purpose by giving notice~~  
584 ~~in the next available issue of the Florida Administrative~~  
585 ~~Weekly.~~

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

590 (4)~~(7)~~ Failure of the agency to respond to a committee  
 591 objection to a ~~proposed~~ rule that is not yet in effect within  
 592 the time prescribed in subsection (3) constitutes ~~shall~~  
 593 ~~constitute~~ withdrawal of the rule in its entirety. In this  
 594 event, the committee shall notify the Department of State that  
 595 the agency, by its failure to respond to a committee objection,  
 596 has elected to withdraw the ~~proposed~~ rule. Upon receipt of the  
 597 committee's notice, the Department of State shall publish a  
 598 notice to that effect in the next available issue of the Florida  
 599 Administrative Weekly. Upon publication of the notice, the  
 600 ~~proposed~~ rule shall be stricken from the files of the Department  
 601 of State and the files of the agency.

602 (5)~~(8)~~ Failure of the agency to respond to a committee  
 603 objection to a ~~an existing~~ rule that is in effect within the  
 604 time prescribed in subsection (3) constitutes ~~shall constitute~~ a  
 605 refusal to amend or repeal the rule.

606 (6) Failure of the agency to respond to a committee  
 607 objection to a statement of estimated regulatory costs within  
 608 the time prescribed in subsection (3) constitutes a refusal to  
 609 prepare a corrected statement of estimated regulatory costs.

610 (7)~~(9)~~ If the committee objects to a ~~proposed or existing~~  
 611 rule and the agency refuses to modify, amend, withdraw, or  
 612 repeal the rule, the committee shall file with the Department of  
 613 State a notice of the objection, detailing with particularity

614 the committee's ~~its~~ objection to the rule. The Department of  
 615 State shall publish this notice in the Florida Administrative  
 616 Weekly. If the rule is published ~~and shall publish, as a history~~  
 617 ~~note to the rule~~ in the Florida Administrative Code, a reference  
 618 to the committee's objection and to the issue of the Florida  
 619 Administrative Weekly in which the full text thereof appears  
 620 shall be recorded in a history note.

621 (8) ~~(10)~~ (a) If the committee objects to a ~~proposed or~~  
 622 ~~existing~~ rule, or portion of a rule ~~thereof~~, and the agency  
 623 fails to initiate administrative action to modify, amend,  
 624 withdraw, or repeal the rule consistent with the objection  
 625 within 60 days after the objection, or thereafter fails to  
 626 proceed in good faith to complete such action, the committee may  
 627 submit to the President of the Senate and the Speaker of the  
 628 House of Representatives a recommendation that legislation be  
 629 introduced to address the committee's objection ~~modify or~~  
 630 ~~suspend the adoption of the proposed rule, or amend or repeal~~  
 631 ~~the rule, or portion thereof.~~

632 (b)1. If the committee votes to recommend the introduction  
 633 of legislation to address the committee's objection ~~modify or~~  
 634 ~~suspend the adoption of a proposed rule, or amend or repeal a~~  
 635 ~~rule~~, the committee shall, within 5 days after this  
 636 determination, certify that fact to the agency whose rule or  
 637 proposed rule has been examined. The committee may request that  
 638 the agency temporarily suspend the rule or suspend the adoption  
 639 of the proposed rule, pending consideration of proposed  
 640 legislation during the next regular session of the Legislature.

641           2. Within 30 days after receipt of the certification, if  
 642 the agency is headed by an individual, or within 45 days after  
 643 receipt of the certification, if the agency is headed by a  
 644 collegial body, the agency shall ~~either~~:

645           a. Temporarily suspend the rule or suspend the adoption of  
 646 the proposed rule; or

647           b. Notify the committee in writing that the agency ~~it~~  
 648 refuses to temporarily suspend the rule or suspend the adoption  
 649 of the proposed rule.

650           3. If the agency elects to temporarily suspend the rule or  
 651 suspend the adoption of the proposed rule, the agency ~~it~~ shall  
 652 give notice of the suspension in the Florida Administrative  
 653 Weekly. The rule or the rule adoption process shall be suspended  
 654 upon publication of the notice. An agency may ~~shall~~ not base any  
 655 agency action on a suspended rule or suspended proposed rule, or  
 656 portion of such rule ~~thereof~~, prior to expiration of the  
 657 suspension. A suspended rule or suspended proposed rule, or  
 658 portion of such rule ~~thereof~~, continues to be subject to  
 659 administrative determination and judicial review as provided by  
 660 law.

661           4. Failure of an agency to respond to committee  
 662 certification within the time prescribed by subparagraph 2.  
 663 constitutes a refusal to suspend the rule or to suspend the  
 664 adoption of the proposed rule.

665           (c) The committee shall prepare proposed legislation ~~bills~~  
 666 to address the committee's objection ~~modify or suspend the~~  
 667 ~~adoption of the proposed rule or amend or repeal the rule, or~~  
 668 ~~portion thereof~~, in accordance with the rules of the Senate and



669 the House of Representatives for pre-filing and introduction in  
 670 the next regular session of the Legislature. The proposed  
 671 legislation ~~bill~~ shall be presented to the President of the  
 672 Senate and the Speaker of the House of Representatives with the  
 673 committee recommendation.

674 (d) If proposed legislation addressing the committee's  
 675 objection ~~a bill to suspend the adoption of a proposed rule is~~  
 676 ~~enacted into law, the proposed rule is suspended until specific~~  
 677 ~~delegated legislative authority for the proposed rule has been~~  
 678 ~~enacted. If a bill to suspend the adoption of a proposed rule~~  
 679 ~~fails to become law, any temporary agency suspension of the rule~~  
 680 ~~shall expire. If a bill to modify a proposed rule or amend a~~  
 681 ~~rule is enacted into law, the suspension shall expire upon~~  
 682 ~~publication of notice of modification or amendment in the~~  
 683 ~~Florida Administrative Weekly. If a bill to repeal a rule is~~  
 684 ~~enacted into law, the suspension shall remain in effect until~~  
 685 ~~notification of repeal of the rule is published in the Florida~~  
 686 ~~Administrative Weekly.~~

687 ~~(e) The Department of State shall publish in the next~~  
 688 ~~available issue of the Florida Administrative Weekly the final~~  
 689 ~~legislative action taken. If a bill to modify or suspend the~~  
 690 ~~adoption of the proposed rule or amend or repeal the rule, or~~  
 691 ~~portion thereof, is enacted into law, the Department of State~~  
 692 ~~shall conform the rule or portion of the rule to the provisions~~  
 693 ~~of the law in the Florida Administrative Code and publish a~~  
 694 ~~reference to the law as a history note to the rule.~~

695 Section 8. Paragraphs (a) and (d) of subsection (1) and  
 696 subsection (5) of section 120.55, Florida Statutes, are amended  
 697 to read:

698 120.55 Publication.--

699 (1) The Department of State shall:

700 (a)1. Through a continuous revision system, compile and  
 701 publish the "Florida Administrative Code." The Florida  
 702 Administrative Code shall contain all rules adopted by each  
 703 agency, citing the grant of specific rulemaking authority and  
 704 the specific law implemented pursuant to which each rule was  
 705 adopted, all history notes as authorized in s. 120.545(8) ~~s.~~  
 706 ~~120.545(9)~~, and complete indexes to all rules contained in the  
 707 code. Supplementation shall be made as often as practicable, but  
 708 at least monthly. The department may contract with a publishing  
 709 firm for the publication, in a timely and useful form, of the  
 710 Florida Administrative Code; however, the department shall  
 711 retain responsibility for the code as provided in this section.  
 712 This publication shall be the official compilation of the  
 713 administrative rules of this state. The Department of State  
 714 shall retain the copyright over the Florida Administrative Code.

715 2. Rules general in form but applicable to only one school  
 716 district, community college district, or county, or a part  
 717 thereof, or state university rules relating to internal  
 718 personnel or business and finance shall not be published in the  
 719 Florida Administrative Code. Exclusion from publication in the  
 720 Florida Administrative Code shall not affect the validity or  
 721 effectiveness of such rules.

722           3. At the beginning of the section of the code dealing  
 723 with an agency that files copies of its rules with the  
 724 department, the department shall publish the address and  
 725 telephone number of the executive offices of each agency, the  
 726 manner by which the agency indexes its rules, a listing of all  
 727 rules of that agency excluded from publication in the code, and  
 728 a statement as to where those rules may be inspected.

729           4. Forms shall not be published in the Florida  
 730 Administrative Code; but any form which an agency uses in its  
 731 dealings with the public, along with any accompanying  
 732 instructions, shall be filed with the committee before it is  
 733 used. Any form or instruction which meets the definition of  
 734 "rule" provided in s. 120.52 shall be incorporated by reference  
 735 into the appropriate rule. The reference shall specifically  
 736 state that the form is being incorporated by reference and shall  
 737 include the number, title, and effective date of the form and an  
 738 explanation of how the form may be obtained. Each form created  
 739 by an agency which is incorporated by reference in a rule notice  
 740 of which is given under s. 120.54(3)(a) after December 31, 2007,  
 741 must clearly display the number, title, and effective date of  
 742 the form and the number of the rule in which the form is  
 743 incorporated.

744           (d) Prescribe by rule the style and form required for  
 745 rules, notices, and other materials submitted for filing ~~and~~  
 746 ~~establish the form for their certification.~~

747           (5) Any publication of a proposed rule promulgated by an  
 748 agency, whether published in the Florida Administrative Code or  
 749 elsewhere, shall include, along with the rule, the name of the

750 person or persons originating such rule, the name of the agency  
 751 head supervisor or person who approved the rule, and the date  
 752 upon which the rule was approved.

753 Section 9 For the 2009-2010 fiscal year only and  
 754 notwithstanding s. 120.55(8)(b), Florida Statutes, the  
 755 unencumbered balance in the Records Management Trust Fund for  
 756 fees collected pursuant to chapter 120, Florida Statutes, may  
 757 not exceed \$500,000 at the beginning of the fiscal year, and any  
 758 excess shall be transferred to the General Revenue Fund.

759 Section 10. Effective July 1, 2010, paragraph (a) of  
 760 subsection (1) and subsection (2) of section 120.55, Florida  
 761 Statutes, are amended to read:

762 120.55 Publication.—

763 (1) The Department of State shall:

764 (a)1. Through a continuous revision system, compile and  
 765 publish electronically the "Florida Administrative Code—" on an  
 766 Internet website managed by the department. The Florida  
 767 Administrative Code shall contain all rules adopted by each  
 768 agency, citing the grant of rulemaking authority and the  
 769 specific law implemented pursuant to which each rule was  
 770 adopted, all history notes as authorized in s. 120.545(8) ~~s.~~  
 771 ~~120.545(9), and~~ complete indexes to all rules contained in the  
 772 code, and any other material required or authorized by law or  
 773 deemed useful by the department. The electronic code shall  
 774 display each rule chapter currently in effect in browse mode and  
 775 allow full text search of the code and each rule chapter.  
 776 ~~Supplementation shall be made as often as practicable, but at~~  
 777 ~~least monthly.~~ The department shall publish a printed version of

778 | the Florida Administrative Code and may contract with a  
 779 | publishing firm for such printed ~~the publication, in a timely~~  
 780 | ~~and useful form, of the Florida Administrative Code;~~ however,  
 781 | the department shall retain responsibility for the code as  
 782 | provided in this section. Supplementation of the printed code  
 783 | shall be made as often as practicable, but at least monthly. The  
 784 | printed ~~This~~ publication shall be the official compilation of  
 785 | the administrative rules of this state. The Department of State  
 786 | shall retain the copyright over the Florida Administrative Code.

787 |         2. Rules general in form but applicable to only one school  
 788 | district, community college district, or county, or a part  
 789 | thereof, or state university rules relating to internal  
 790 | personnel or business and finance shall not be published in the  
 791 | Florida Administrative Code. Exclusion from publication in the  
 792 | Florida Administrative Code shall not affect the validity or  
 793 | effectiveness of such rules.

794 |         3. At the beginning of the section of the code dealing  
 795 | with an agency that files copies of its rules with the  
 796 | department, the department shall publish the address and  
 797 | telephone number of the executive offices of each agency, the  
 798 | manner by which the agency indexes its rules, a listing of all  
 799 | rules of that agency excluded from publication in the code, and  
 800 | a statement as to where those rules may be inspected.

801 |         4. Forms shall not be published in the Florida  
 802 | Administrative Code; but any form which an agency uses in its  
 803 | dealings with the public, along with any accompanying  
 804 | instructions, shall be filed with the committee before it is  
 805 | used. Any form or instruction which meets the definition of

806 "rule" provided in s. 120.52 shall be incorporated by reference  
 807 into the appropriate rule. The reference shall specifically  
 808 state that the form is being incorporated by reference and shall  
 809 include the number, title, and effective date of the form and an  
 810 explanation of how the form may be obtained. Each form created  
 811 by an agency which is incorporated by reference in a rule notice  
 812 of which is given under s. 120.54(3)(a) after December 31, 2007,  
 813 must clearly display the number, title, and effective date of  
 814 the form and the number of the rule in which the form is  
 815 incorporated.

816 5. The department shall allow material incorporated by  
 817 reference to be filed in electronic form as prescribed by  
 818 department rule. When a rule is filed for adoption with  
 819 incorporated material in electronic form, the department's  
 820 publication of the Florida Administrative Code on its Internet  
 821 website must contain a hyperlink from the incorporating  
 822 reference in the rule directly to that material. The department  
 823 may not allow hyperlinks from rules in the Florida  
 824 Administrative Code to any material other than that filed with  
 825 and maintained by the department, but it may allow hyperlinks to  
 826 incorporated material maintained by the department from the  
 827 adopting agency's website or other sites.

828 (2) The Florida Administrative Weekly Internet website  
 829 must allow users to:

830 (a) Search for notices by type, publication date, rule  
 831 number, word, subject, and agency;

832 (b) Search a database that makes available all notices  
 833 published on the website for a period of at least 5 years;

834 (c) Subscribe to an automated e-mail notification of  
 835 selected notices to be sent out before or concurrently with  
 836 weekly publication of the printed and electronic Florida  
 837 Administrative Weekly. Such notification must include in the  
 838 text of the e-mail a summary of the content of each notice;

839 (d) View agency forms and other materials that have been  
 840 submitted to the department in electronic form and that are  
 841 being incorporated by reference in proposed rules; and

842 (e) Comment on proposed rules.

843 Section 11. Paragraphs (a) and (b) of subsection (2) of  
 844 section 120.56, Florida Statutes, are amended to read:

845 120.56 Challenges to rules.--

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

847 (a) Any substantially affected person may seek an  
 848 administrative determination of the invalidity of any proposed  
 849 rule by filing a petition seeking such a determination with the  
 850 division within 21 days after the date of publication of the  
 851 notice required by s. 120.54(3)(a), within 10 days after the  
 852 final public hearing is held on the proposed rule as provided by  
 853 s. 120.54(3)(e)2. ~~s. 120.54(3)(e)~~, within 20 days after the  
 854 ~~preparation of a~~ statement of estimated regulatory costs  
 855 required pursuant to s. 120.541, if applicable, has been  
 856 provided to all persons who submitted a lower cost regulatory  
 857 alternative and made available to the public, or within 20 days  
 858 after the date of publication of the notice required by s.  
 859 120.54(3)(d). The petition shall state with particularity the  
 860 objections to the proposed rule and the reasons that the  
 861 proposed rule is an invalid exercise of delegated legislative

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862 authority. The petitioner has the burden of going forward. The  
863 agency then has the burden to prove by a preponderance of the  
864 evidence that the proposed rule is not an invalid exercise of  
865 delegated legislative authority as to the objections raised. Any  
866 person who is substantially affected by a change in the proposed  
867 rule may seek a determination of the validity of such change.  
868 Any person not substantially affected by the proposed rule as  
869 initially noticed, but who is substantially affected by the rule  
870 as a result of a change, may challenge any provision of the rule  
871 and is not limited to challenging the change to the proposed  
872 rule.

873 (b) The administrative law judge may declare the proposed  
874 rule wholly or partly invalid. Unless the decision of the  
875 administrative law judge is reversed on appeal, the proposed  
876 rule or provision of a proposed rule declared invalid shall not  
877 be adopted. After a petition for administrative determination  
878 has been filed ~~However~~, the agency may proceed with all other  
879 steps in the rulemaking process, including the holding of a  
880 factfinding hearing. In the event part of a proposed rule is  
881 declared invalid, the adopting agency may, in its sole  
882 discretion, withdraw the proposed rule in its entirety. The  
883 agency whose proposed rule has been declared invalid in whole or  
884 part shall give notice of the decision in the first available  
885 issue of the Florida Administrative Weekly.

886 Section 12. Effective January 1, 2009, subsection (4) of  
887 section 120.56, Florida Statutes, is amended to read:

888 120.56 Challenges to rules.--



889 (4) CHALLENGING AGENCY STATEMENTS DEFINED AS RULES;  
 890 SPECIAL PROVISIONS.--

891 (a) Any person substantially affected by an agency  
 892 statement may seek an administrative determination that the  
 893 statement violates s. 120.54(1)(a). The petition shall include  
 894 the text of the statement or a description of the statement and  
 895 shall state with particularity facts sufficient to show that the  
 896 statement constitutes a rule under s. 120.52 and that the agency  
 897 has not adopted the statement by the rulemaking procedure  
 898 provided by s. 120.54.

899 (b) The administrative law judge may extend the hearing  
 900 date beyond 30 days after assignment of the case for good cause.  
 901 Upon notification to the administrative law judge provided prior  
 902 to the final hearing that the agency has published a notice of  
 903 rulemaking under s. 120.54(3), such notice shall automatically  
 904 operate as a stay of proceedings pending adoption of the  
 905 statement as a rule. The administrative law judge may vacate  
 906 the stay for good cause shown. A stay of proceedings pending  
 907 rulemaking shall remain in effect so long as the agency is  
 908 proceeding expeditiously and in good faith to adopt the  
 909 statement as a rule. If a hearing is held and the petitioner  
 910 proves the allegations of the petition, the agency shall have  
 911 the burden of proving that rulemaking is not feasible or not ~~and~~  
 912 practicable under s. 120.54(1)(a).

913 (c) The administrative law judge may determine whether all  
 914 or part of a statement violates s. 120.54(1)(a). The decision of  
 915 the administrative law judge shall constitute a final order. The  
 916 division shall transmit a copy of the final order to the

917 Department of State and the committee. The Department of State  
 918 shall publish notice of the final order in the first available  
 919 issue of the Florida Administrative Weekly.

920 (d) If ~~When~~ an administrative law judge enters a final  
 921 order that all or part of an agency statement violates s.  
 922 120.54(1)(a), the agency shall immediately discontinue all  
 923 reliance upon the statement or any substantially similar  
 924 statement as a basis for agency action. This paragraph shall  
 925 not be construed to impair the obligation of contracts existing  
 926 at the time the final order is entered.

927 ~~(e)1. If, prior to a final hearing to determine whether~~  
 928 ~~all or part of any agency statement violates s. 120.54(1)(a), an~~  
 929 ~~agency publishes, pursuant to s. 120.54(3)(a), proposed rules~~  
 930 ~~that address the statement, then for purposes of this section, a~~  
 931 ~~presumption is created that the agency is acting expeditiously~~  
 932 ~~and in good faith to adopt rules that address the statement, and~~  
 933 ~~the agency shall be permitted to rely upon the statement or a~~  
 934 ~~substantially similar statement as a basis for agency action if~~  
 935 ~~the statement meets the requirements of s. 120.57(1)(e).~~

936 ~~2. If, prior to the final hearing to determine whether all~~  
 937 ~~or part of an agency statement violates s. 120.54(1)(a), an~~  
 938 ~~agency publishes a notice of rule development which addresses~~  
 939 ~~the statement pursuant to s. 120.54(2), or certifies that such a~~  
 940 ~~notice has been transmitted to the Florida Administrative Weekly~~  
 941 ~~for publication, then such publication shall constitute good~~  
 942 ~~cause for the granting of a stay of the proceedings and a~~  
 943 ~~continuance of the final hearing for 30 days. If the agency~~  
 944 ~~publishes proposed rules within this 30 day period or any~~

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945 ~~extension of that period granted by an administrative law judge~~  
946 ~~upon showing of good cause, then the administrative law judge~~  
947 ~~shall place the case in abeyance pending the outcome of~~  
948 ~~rulemaking and any proceedings involving challenges to proposed~~  
949 ~~rules pursuant to subsection (2).~~

950 ~~3. If, following the commencement of the final hearing and~~  
951 ~~prior to entry of a final order that all or part of an agency~~  
952 ~~statement violates s. 120.54(1)(a), an agency publishes,~~  
953 ~~pursuant to s. 120.54(3)(a), proposed rules that address the~~  
954 ~~statement and proceeds expeditiously and in good faith to adopt~~  
955 ~~rules that address the statement, the agency shall be permitted~~  
956 ~~to rely upon the statement or a substantially similar statement~~  
957 ~~as a basis for agency action if the statement meets the~~  
958 ~~requirements of s. 120.57(1)(e).~~

959 ~~4. If an agency fails to adopt rules that address the~~  
960 ~~statement within 180 days after publishing proposed rules, for~~  
961 ~~purposes of this subsection, a presumption is created that the~~  
962 ~~agency is not acting expeditiously and in good faith to adopt~~  
963 ~~rules. If the agency's proposed rules are challenged pursuant to~~  
964 ~~subsection (2), the 180 day period for adoption of rules is~~  
965 ~~tolled until a final order is entered in that proceeding.~~

966 ~~(e)5. If the proposed rules addressing the challenged~~  
967 ~~statement are determined to be an invalid exercise of delegated~~  
968 ~~legislative authority as defined in s. 120.52(8)(b)-(f), the~~  
969 ~~agency must immediately discontinue reliance on the statement~~  
970 ~~and any substantially similar statement until ~~the~~ rules~~  
971 ~~addressing the subject are properly adopted, and the~~

972 administrative law judge shall enter a final order to that  
 973 effect.

974 (f) ~~(e)~~ All proceedings to determine a violation of s.  
 975 120.54(1)(a) shall be brought pursuant to this subsection. A  
 976 proceeding pursuant to this subsection may be consolidated with  
 977 a proceeding under subsection (3) or under any other section of  
 978 this chapter. ~~Nothing in This paragraph does not shall be~~  
 979 ~~construed to prevent a party whose substantial interests have~~  
 980 ~~been determined by an agency action from bringing a proceeding~~  
 981 ~~pursuant to s. 120.57(1)(e).~~

982 Section 13. Effective January 1, 2009, paragraph (e) of  
 983 subsection (1) of section 120.57, Florida Statutes, is amended  
 984 to read:

985 120.57 Additional procedures for particular cases.--

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

988 (e)1. An agency or an administrative law judge may not  
 989 base ~~Any~~ agency action that determines the substantial interests  
 990 of a party ~~and that is~~ on an unadopted rule. The administrative  
 991 law judge shall determine whether an agency statement  
 992 constitutes an unadopted rule. This subparagraph does not  
 993 preclude application of adopted rules and applicable provisions  
 994 of law to the facts. ~~unadopted rule is subject to de novo review~~  
 995 ~~by an administrative law judge.~~

996 2. Notwithstanding subparagraph 1., if an agency  
 997 demonstrates that the statute being implemented directs it to  
 998 adopt rules, that the agency has not had time to adopt those  
 999 rules because the requirement was so recently enacted, and that

1000 the agency has initiated rulemaking and is proceeding  
 1001 expeditiously and in good faith to adopt the required rules,  
 1002 then the agency's action may be based upon those unadopted  
 1003 rules, subject to de novo review by the administrative law  
 1004 judge. The agency action shall not be presumed valid or  
 1005 invalid. The agency must demonstrate that the unadopted rule:  
 1006       a. Is within the powers, functions, and duties delegated  
 1007 by the Legislature or, if the agency is operating pursuant to  
 1008 authority derived from the State Constitution, is within that  
 1009 authority;  
 1010       b. Does not enlarge, modify, or contravene the specific  
 1011 provisions of law implemented;  
 1012       c. Is not vague, establishes adequate standards for agency  
 1013 decisions, or does not vest unbridled discretion in the agency;  
 1014       d. Is not arbitrary or capricious. A rule is arbitrary if  
 1015 it is not supported by logic or the necessary facts; a rule is  
 1016 capricious if it is adopted without thought or reason or is  
 1017 irrational;  
 1018       e. Is not being applied to the substantially affected  
 1019 party without due notice; and  
 1020       f. Does not impose excessive regulatory costs on the  
 1021 regulated person, county, or city.  
 1022       2-3. The recommended and final orders in any proceeding  
 1023 shall be governed by the provisions of paragraphs (k) and (l),  
 1024 except that the administrative law judge's determination  
 1025 regarding an ~~the~~ unadopted rule under subparagraph 1. or 2.  
 1026 shall not be rejected by the agency unless the agency first  
 1027 determines from a review of the complete record, and states with

1028 particularity in the order, that such determination is clearly  
 1029 erroneous or does not comply with essential requirements of law.  
 1030 In any proceeding for review under s. 120.68, if the court finds  
 1031 that the agency's rejection of the determination regarding the  
 1032 unadopted rule does not comport with the provisions of this  
 1033 subparagraph, the agency action shall be set aside and the court  
 1034 shall award to the prevailing party the reasonable costs and a  
 1035 reasonable attorney's fee for the initial proceeding and the  
 1036 proceeding for review.

1037 Section 14. Effective January 1, 2009, subsections (2),  
 1038 (3), and (4) of section 120.595, Florida Statutes, are amended  
 1039 to read:

1040 120.595 Attorney's fees.--

1041 (2) CHALLENGES TO PROPOSED AGENCY RULES PURSUANT TO  
 1042 SECTION 120.56(2).--If the appellate court or administrative law  
 1043 judge declares a proposed rule or portion of a proposed rule  
 1044 invalid pursuant to s. 120.56(2), a judgment or order shall be  
 1045 rendered against the agency for reasonable costs and reasonable  
 1046 attorney's fees, unless the agency demonstrates that its actions  
 1047 were substantially justified or special circumstances exist  
 1048 which would make the award unjust. An agency's actions are  
 1049 "substantially justified" if there was a reasonable basis in law  
 1050 and fact at the time the actions were taken by the agency. If  
 1051 the agency prevails in the proceedings, the appellate court or  
 1052 administrative law judge shall award reasonable costs and  
 1053 reasonable attorney's fees against a party if the appellate  
 1054 court or administrative law judge determines that a party  
 1055 participated in the proceedings for an improper purpose as

1056 defined by paragraph (1)(e). No award of attorney's fees as  
 1057 provided by this subsection shall exceed \$50,000 ~~\$15,000~~.

1058 (3) CHALLENGES TO EXISTING AGENCY RULES PURSUANT TO  
 1059 SECTION 120.56(3) AND (5).--If the appellate court or  
 1060 administrative law judge declares a rule or portion of a rule  
 1061 invalid pursuant to s. 120.56(3) or s. 120.56(5), a judgment or  
 1062 order shall be rendered against the agency for reasonable costs  
 1063 and reasonable attorney's fees, unless the agency demonstrates  
 1064 that its actions were substantially justified or special  
 1065 circumstances exist which would make the award unjust. An  
 1066 agency's actions are "substantially justified" if there was a  
 1067 reasonable basis in law and fact at the time the actions were  
 1068 taken by the agency. If the agency prevails in the proceedings,  
 1069 the appellate court or administrative law judge shall award  
 1070 reasonable costs and reasonable attorney's fees against a party  
 1071 if the appellate court or administrative law judge determines  
 1072 that a party participated in the proceedings for an improper  
 1073 purpose as defined by paragraph (1)(e). No award of attorney's  
 1074 fees as provided by this subsection shall exceed \$50,000  
 1075 ~~\$15,000~~.

1076 (4) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION  
 1077 120.56(4).--

1078 (a) If the appellate court or administrative law judge  
 1079 determines ~~Upon entry of a final order~~ that all or part of an  
 1080 agency statement violates s. 120.54(1)(a), or that the agency  
 1081 must immediately discontinue reliance on the statement and any  
 1082 substantially similar statement pursuant to s. 120.56(4)(e), a  
 1083 judgment or order shall be entered against the agency for the

1084 ~~administrative law judge shall award~~ reasonable costs and  
 1085 reasonable attorney's fees ~~to the petitioner~~, unless the agency  
 1086 demonstrates that the statement is required by the Federal  
 1087 Government to implement or retain a delegated or approved  
 1088 program or to meet a condition to receipt of federal funds.

1089 (b) Upon notification to the administrative law judge  
 1090 provided prior to the final hearing that the agency has  
 1091 published a notice of rulemaking under s. 120.54(3)(a), such  
 1092 notice shall automatically operate as a stay of proceedings  
 1093 pending rulemaking. The administrative law judge shall award  
 1094 reasonable costs and reasonable attorney's fees accrued by the  
 1095 petitioner prior to the date the notice was published, provided  
 1096 the agency adopts the statement as a rule. The administrative  
 1097 law judge may vacate the stay for good cause shown. A stay of  
 1098 proceedings under this paragraph remains in effect so long as  
 1099 the agency is proceeding expeditiously and in good faith to  
 1100 adopt the statement as a rule. Attorney's fees and costs under  
 1101 this paragraph shall be awarded only upon a finding that the  
 1102 agency received notice that the statement may constitute an  
 1103 unadopted rule at least 30 days before a petition under s.  
 1104 120.56(4) was filed and that the agency failed to publish the  
 1105 required notice of rulemaking pursuant to s. 120.54(3) that  
 1106 addresses the statement within that 30-day period. Notice to  
 1107 the agency may be satisfied by its receipt of a copy of the s.  
 1108 120.56(4) petition, a notice or other paper containing  
 1109 substantially the same information, or a petition filed pursuant  
 1110 to s. 120.54(7). No award of attorney's fees as provided by  
 1111 this paragraph shall exceed \$50,000.



1112        ~~(c)-(b)~~ Notwithstanding the provisions of chapter 284, an  
 1113 award shall be paid from the budget entity of the secretary,  
 1114 executive director, or equivalent administrative officer of the  
 1115 agency, and the agency shall not be entitled to payment of an  
 1116 award or reimbursement for payment of an award under any  
 1117 provision of law.

1118        (d) If the agency prevails in the proceedings, the  
 1119 appellate court or administrative law judge shall award  
 1120 reasonable costs and attorney's fees against a party if the  
 1121 appellate court or administrative law judge determines that the  
 1122 party participated in the proceedings for an improper purpose as  
 1123 defined in paragraph (1) (e) or that the party or the party's  
 1124 attorney knew or should have known that a claim was not  
 1125 supported by the material facts necessary to establish the claim  
 1126 or would not be supported by the application of then-existing  
 1127 law to those material facts.

1128        Section 15. Subsection (1) and paragraph (c) of subsection  
 1129 (2) of section 120.569, Florida Statutes, are amended to read:

1130        120.569 Decisions which affect substantial interests.--

1131        (1) The provisions of this section apply in all  
 1132 proceedings in which the substantial interests of a party are  
 1133 determined by an agency, unless the parties are proceeding under  
 1134 s. 120.573 or s. 120.574. Unless waived by all parties, s.  
 1135 120.57(1) applies whenever the proceeding involves a disputed  
 1136 issue of material fact. Unless otherwise agreed, s. 120.57(2)  
 1137 applies in all other cases. If a disputed issue of material fact  
 1138 arises during a proceeding under s. 120.57(2), then, unless  
 1139 waived by all parties, the proceeding under s. 120.57(2) shall

1140 be terminated and a proceeding under s. 120.57(1) shall be  
 1141 conducted. Parties shall be notified of any order, including a  
 1142 final order. Unless waived, a copy of the order shall be  
 1143 delivered or mailed to each party or the party's attorney of  
 1144 record at the address of record. Each notice shall inform the  
 1145 recipient of any administrative hearing or judicial review that  
 1146 is available under this section, s. 120.57, or s. 120.68; shall  
 1147 indicate the procedure which must be followed to obtain the  
 1148 hearing or judicial review; and shall state the time limits  
 1149 which apply.

1150 (2)

1151 (c) Unless otherwise provided by law, a petition or  
 1152 request for hearing shall include those items required by the  
 1153 uniform rules adopted pursuant to s. 120.54(5)(b) ~~s.~~  
 1154 ~~120.54(5)(b)~~4. Upon the receipt of a petition or request for  
 1155 hearing, the agency shall carefully review the petition to  
 1156 determine if it contains all of the required information. A  
 1157 petition shall be dismissed if it is not in substantial  
 1158 compliance with these requirements or it has been untimely  
 1159 filed. Dismissal of a petition shall, at least once, be without  
 1160 prejudice to petitioner's filing a timely amended petition  
 1161 curing the defect, unless it conclusively appears from the face  
 1162 of the petition that the defect cannot be cured. The agency  
 1163 shall promptly give written notice to all parties of the action  
 1164 taken on the petition, shall state with particularity its  
 1165 reasons if the petition is not granted, and shall state the  
 1166 deadline for filing an amended petition if applicable. This

1167 paragraph does not eliminate the availability of equitable  
 1168 tolling as a defense to the untimely filing of a petition.

1169 Section 16. Subsection (2) of section 120.74, Florida  
 1170 Statutes, is amended to read:

1171 120.74 Agency review, revision, and report.--

1172 (2) Beginning October 1, 1997, and by October 1 of every  
 1173 other year thereafter, the head of each agency shall file a  
 1174 report with the President of the Senate, the Speaker of the  
 1175 House of Representatives, and the committee, with a copy to each  
 1176 appropriate standing committee of the Legislature, which  
 1177 certifies that the agency has complied with the requirements of  
 1178 this section ~~subsection~~. The report must specify any changes  
 1179 made to its rules as a result of the review and, when  
 1180 appropriate, recommend statutory changes that will promote  
 1181 efficiency, reduce paperwork, or decrease costs to government  
 1182 and the private sector. The report must identify the types of  
 1183 cases or disputes in which the agency is involved which should  
 1184 be conducted under the summary hearing process described in s.  
 1185 120.574.

1186 Section 17. Subsection (11) of section 120.80, Florida  
 1187 Statutes, is amended to read:

1188 120.80 Exceptions and special requirements; agencies.--

1189 (11) NATIONAL GUARD.--Notwithstanding s. 120.52(16) ~~s.~~  
 1190 ~~120.52(15)~~, the enlistment, organization, administration,  
 1191 equipment, maintenance, training, and discipline of the militia,  
 1192 National Guard, organized militia, and unorganized militia, as  
 1193 provided by s. 2, Art. X of the State Constitution, are not  
 1194 rules as defined by this chapter.

1195 Section 18. Paragraph (c) of subsection (1) and paragraph  
 1196 (a) of subsection (3) of section 120.81, Florida Statutes, are  
 1197 amended to read:

1198 120.81 Exceptions and special requirements; general  
 1199 areas.--

1200 (1) EDUCATIONAL UNITS.--

1201 (c) Notwithstanding s. 120.52(16) ~~s. 120.52(15)~~, any  
 1202 tests, test scoring criteria, or testing procedures relating to  
 1203 student assessment which are developed or administered by the  
 1204 Department of Education pursuant to s. 1003.43, s. 1003.438, s.  
 1205 1008.22, or s. 1008.25, or any other statewide educational tests  
 1206 required by law, are not rules.

1207 (3) PRISONERS AND PAROLEES.--

1208 (a) Notwithstanding s. 120.52(13) ~~s. 120.52(12)~~,  
 1209 prisoners, as defined by s. 944.02, shall not be considered  
 1210 parties in any proceedings other than those under s.  
 1211 120.54(3)(c) or (7), and may not seek judicial review under s.  
 1212 120.68 of any other agency action. Prisoners are not eligible to  
 1213 seek an administrative determination of an agency statement  
 1214 under s. 120.56(4). Parolees shall not be considered parties for  
 1215 purposes of agency action or judicial review when the  
 1216 proceedings relate to the rescission or revocation of parole.

1217 Section 19. Paragraph (f) of subsection (2) of section  
 1218 409.175, Florida Statutes, is amended to read:

1219 409.175 Licensure of family foster homes, residential  
 1220 child-caring agencies, and child-placing agencies; public  
 1221 records exemption.--

1222 (2) As used in this section, the term:

1223 (f) "License" means "license" as defined in s. 120.52(10)  
 1224 ~~s. 120.52(9)~~. A license under this section is issued to a family  
 1225 foster home or other facility and is not a professional license  
 1226 of any individual. Receipt of a license under this section shall  
 1227 not create a property right in the recipient. A license under  
 1228 this act is a public trust and a privilege, and is not an  
 1229 entitlement. This privilege must guide the finder of fact or  
 1230 trier of law at any administrative proceeding or court action  
 1231 initiated by the department.

1232 Section 20. Paragraph (a) of subsection (1) of section  
 1233 420.9072, Florida Statutes, is amended to read:

1234 420.9072 State Housing Initiatives Partnership  
 1235 Program.--The State Housing Initiatives Partnership Program is  
 1236 created for the purpose of providing funds to counties and  
 1237 eligible municipalities as an incentive for the creation of  
 1238 local housing partnerships, to expand production of and preserve  
 1239 affordable housing, to further the housing element of the local  
 1240 government comprehensive plan specific to affordable housing,  
 1241 and to increase housing-related employment.

1242 (1) (a) In addition to the legislative findings set forth  
 1243 in s. 420.6015, the Legislature finds that affordable housing is  
 1244 most effectively provided by combining available public and  
 1245 private resources to conserve and improve existing housing and  
 1246 provide new housing for very-low-income households, low-income  
 1247 households, and moderate-income households. The Legislature  
 1248 intends to encourage partnerships in order to secure the  
 1249 benefits of cooperation by the public and private sectors and to  
 1250 reduce the cost of housing for the target group by effectively

1251 combining all available resources and cost-saving measures. The  
 1252 Legislature further intends that local governments achieve this  
 1253 combination of resources by encouraging active partnerships  
 1254 between government, lenders, builders and developers, real  
 1255 estate professionals, advocates for low-income persons, and  
 1256 community groups to produce affordable housing and provide  
 1257 related services. Extending the partnership concept to encompass  
 1258 cooperative efforts among small counties as defined in s.  
 1259 120.52(19) ~~s. 120.52(17)~~, and among counties and municipalities  
 1260 is specifically encouraged. Local governments are also intended  
 1261 to establish an affordable housing advisory committee to  
 1262 recommend monetary and nonmonetary incentives for affordable  
 1263 housing as provided in s. 420.9076.

1264 Section 21. Subsection (7) of section 420.9075, Florida  
 1265 Statutes, is amended to read:

1266 420.9075 Local housing assistance plans; partnerships.--

1267 (7) The moneys deposited in the local housing assistance  
 1268 trust fund shall be used to administer and implement the local  
 1269 housing assistance plan. The cost of administering the plan may  
 1270 not exceed 5 percent of the local housing distribution moneys  
 1271 and program income deposited into the trust fund. A county or an  
 1272 eligible municipality may not exceed the 5-percent limitation on  
 1273 administrative costs, unless its governing body finds, by  
 1274 resolution, that 5 percent of the local housing distribution  
 1275 plus 5 percent of program income is insufficient to adequately  
 1276 pay the necessary costs of administering the local housing  
 1277 assistance plan. The cost of administering the program may not  
 1278 exceed 10 percent of the local housing distribution plus 5

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1279 | percent of program income deposited into the trust fund, except  
1280 | that small counties, as defined in s. 120.52(19) ~~s. 120.52(17)~~,  
1281 | and eligible municipalities receiving a local housing  
1282 | distribution of up to \$350,000 may use up to 10 percent of  
1283 | program income for administrative costs.

1284 |       Section 22. For the 2009-2010 fiscal year, the  
1285 | nonrecurring sum of \$451,000 is appropriated from the Records  
1286 | Management Trust Fund to the Department of State for the  
1287 | purposes of carrying out the provisions of this act.

1288 |       Section 23. Except as otherwise expressly provided in this  
1289 | act, this act shall take effect July 1, 2008.