

1                   A bill to be entitled  
2           An act relating to administrative procedures; amending  
3           s. 120.54, F.S.; providing procedures for agencies to  
4           follow when initiating rulemaking after certain public  
5           hearings; limiting reliance upon an unadopted rule in  
6           certain circumstances; amending s. 120.55, F.S.;  
7           providing for publication of notices of rule  
8           development and of rules filed for adoption; providing  
9           for additional notice of rule development, proposals,  
10          and adoptions in the Florida Administrative Register;  
11          requiring certain agencies to provide additional e-  
12          mail notifications concerning specified rulemaking and  
13          rule development activities; providing that failure to  
14          follow certain provisions does not constitute grounds  
15          to challenge validity of a rule; amending s. 120.56,  
16          F.S.; clarifying language; amending s. 120.57, F.S.;  
17          conforming proceedings that oppose agency action based  
18          on an invalid or unadopted rule to proceedings used  
19          for challenging rules; authorizing the administrative  
20          law judge to make certain findings on the validity of  
21          certain alleged unadopted rules; authorizing a  
22          petitioner to file certain collateral challenges  
23          regarding the validity of a rule; authorizing the  
24          administrative law judge to consolidate proceedings in  
25          such rule challenges; providing that agency action may  
26          not be based on an invalid or unadopted rule; amending

27 s. 120.68, F.S.; specifying legal authority to file a  
 28 petition challenging an agency rule as an invalid  
 29 exercise of delegated legislative authority; amending  
 30 s. 120.695, F.S.; removing obsolete provisions with  
 31 respect to required agency review and designation of  
 32 minor violations; requiring agency review and  
 33 certification of minor violation rules by a specified  
 34 date; requiring minor violation certification for all  
 35 rules adopted after a specified date; requiring public  
 36 notice; providing applicability; amending s. 403.8141,  
 37 F.S.; requiring administrative challenges to proposed  
 38 regulatory permits related to special events to follow  
 39 certain summary hearing provisions; providing an  
 40 effective date.

41

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

43

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

47 120.54 Rulemaking.—

48 (7) PETITION TO INITIATE RULEMAKING.—

49 (c) If the agency does not initiate rulemaking or  
 50 otherwise comply with the requested action within 30 days after  
 51 ~~following~~ the public hearing provided for in ~~by~~ paragraph (b),  
 52 ~~if the agency does not initiate rulemaking or otherwise comply~~

53 ~~with the requested action,~~ the agency shall publish in the  
54 Florida Administrative Register a statement of its reasons for  
55 not initiating rulemaking or otherwise complying with the  
56 requested action, and of any changes it will make in the scope  
57 or application of the unadopted rule. The agency shall file the  
58 statement with the committee. The committee shall forward a copy  
59 of the statement to the substantive committee with primary  
60 oversight jurisdiction of the agency in each house of the  
61 Legislature. The committee or the committee with primary  
62 oversight jurisdiction may hold a hearing directed to the  
63 statement of the agency. The committee holding the hearing may  
64 recommend to the Legislature the introduction of legislation  
65 making the rule a statutory standard or limiting or otherwise  
66 modifying the authority of the agency.

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

79 proceeding.

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

82 120.55 Publication.—

83 (1) The Department of State shall:

84 (a)1. Through a continuous revision and publication  
85 system, compile and publish electronically, on a ~~an Internet~~  
86 website managed by the department, the "Florida Administrative  
87 Code." The Florida Administrative Code shall contain all rules  
88 adopted by each agency, citing the grant of rulemaking authority  
89 and the specific law implemented pursuant to which each rule was  
90 adopted, all history notes as authorized in s. 120.545(7),  
91 complete indexes to all rules contained in the code, and any  
92 other material required or authorized by law or deemed useful by  
93 the department. The electronic code shall display each rule  
94 chapter currently in effect in browse mode and allow full text  
95 search of the code and each rule chapter. The department may  
96 contract with a publishing firm for a printed publication;  
97 however, the department shall retain responsibility for the code  
98 as provided in this section. The electronic publication shall be  
99 the official compilation of the administrative rules of this  
100 state. The Department of State shall retain the copyright over  
101 the Florida Administrative Code.

102 2. Rules general in form but applicable to only one school  
103 district, community college district, or county, or a part  
104 thereof, or state university rules relating to internal

105 personnel or business and finance shall not be published in the  
106 Florida Administrative Code. Exclusion from publication in the  
107 Florida Administrative Code shall not affect the validity or  
108 effectiveness of such rules.

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

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

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

143           (b) Electronically publish on a ~~an Internet~~ website  
144 managed by the department a continuous revision and publication  
145 entitled the "Florida Administrative Register," which shall  
146 serve as the official publication and must contain:

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

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

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

156           4. Notice of petitions for declaratory statements or

157 administrative determinations.

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

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

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

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

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

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

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

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

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

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

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

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

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

193 (e) Comment on proposed rules.

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

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

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

208 (6)~~(5)~~ Any publication of a proposed rule promulgated by



209 an agency, whether published in the Florida Administrative  
 210 Register or elsewhere, shall include, along with the rule, the  
 211 name of the person or persons originating such rule, the name of  
 212 the agency head who approved the rule, and the date upon which  
 213 the rule was approved.

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

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

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

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

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

231 120.56 Challenges to rules.—

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

234 (a) Any person substantially affected by a rule or a

235 proposed rule may seek an administrative determination of the  
236 invalidity of the rule on the ground that the rule is an invalid  
237 exercise of delegated legislative authority.

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

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

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

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

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

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

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

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

285 (a) A ~~substantially affected person may seek an~~  
286 ~~administrative determination of the invalidity of a proposed~~

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

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

315 (a) A petition alleging ~~substantially affected person may~~  
 316 ~~seek an administrative determination of the invalidity of an~~  
 317 ~~existing rule~~ may be filed at any time during which the  
 318 ~~existence of the rule~~ is in effect. The petitioner has the a  
 319 burden of proving by a preponderance of the evidence that the  
 320 existing rule is an invalid exercise of delegated legislative  
 321 authority as to the objections raised.

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

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

333 (b) The administrative law judge may extend the hearing  
 334 date beyond 30 days after assignment of the case for good cause.  
 335 Upon notification to the administrative law judge provided  
 336 before the final hearing that the agency has published a notice  
 337 of rulemaking under s. 120.54(3), such notice shall  
 338 automatically operate as a stay of proceedings pending adoption

339 of the statement as a rule. The administrative law judge may  
340 vacate the stay for good cause shown. A stay of proceedings  
341 pending rulemaking shall remain in effect so long as the agency  
342 is proceeding expeditiously and in good faith to adopt the  
343 statement as a rule.

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

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

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

361 (f)~~(e)~~ If proposed rules addressing the challenged  
362 unadopted rule ~~statement~~ are determined to be an invalid  
363 exercise of delegated legislative authority as defined in s.  
364 120.52(8)(b)-(f), the agency must immediately discontinue

365 reliance upon ~~on~~ the unadopted rule ~~statement~~ and any  
366 substantially similar statement until rules addressing the  
367 subject are properly adopted, and the administrative law judge  
368 shall enter a final order to that effect.

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

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

379 120.57 Additional procedures for particular cases.—

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

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

390 2. In a matter initiated as a result of agency action

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

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

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

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

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

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



417 unadopted rule ~~The agency action~~ shall not be presumed valid ~~or~~  
418 ~~invalid~~. The agency must demonstrate that the unadopted rule:

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

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

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

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

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

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

435 ~~4.3.~~ The recommended and final orders in any proceeding  
436 shall be governed by ~~the provisions of~~ paragraphs (k) and (l),  
437 except that the administrative law judge's determination  
438 regarding an unadopted rule under subparagraph 1. or  
439 subparagraph 2. shall not be rejected by the agency unless the  
440 agency first determines from a review of the complete record,  
441 and states with particularity in the order, that such  
442 determination is clearly erroneous or does not comply with

443 essential requirements of law. In any proceeding for review  
444 under s. 120.68, if the court finds that the agency's rejection  
445 of the determination regarding the unadopted rule does not  
446 comport with ~~the provisions of~~ this subparagraph, the agency  
447 action shall be set aside and the court shall award to the  
448 prevailing party the reasonable costs and a reasonable attorney  
449 ~~attorney's~~ fee for the initial proceeding and the proceeding for  
450 review.

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

455 (h) Any party to a proceeding in which an administrative  
456 law judge ~~of the Division of Administrative Hearings~~ has final  
457 order authority may move for a summary final order when there is  
458 no genuine issue as to any material fact. A summary final order  
459 shall be rendered if the administrative law judge determines  
460 from the pleadings, depositions, answers to interrogatories, and  
461 admissions on file, together with affidavits, if any, that no  
462 genuine issue as to any material fact exists and that the moving  
463 party is entitled as a matter of law to the entry of a final  
464 order. A summary final order shall consist of findings of fact,  
465 if any, conclusions of law, a disposition or penalty, if  
466 applicable, and any other information required by law to be  
467 contained in the final order.

468 (2) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS NOT

469 INVOLVING DISPUTED ISSUES OF MATERIAL FACT.—In any case to which  
 470 subsection (1) does not apply:

471 (a) The agency shall:

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

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

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

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

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

- 489 1. The notice and summary of grounds.  
 490 2. Evidence received.  
 491 3. All written statements submitted.  
 492 4. Any decision overruling objections.  
 493 5. All matters placed on the record after an ex parte  
 494 communication.

495 6. The official transcript.

496 7. Any decision, opinion, order, or report by the  
497 presiding officer.

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

500 120.68 Judicial review.—

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

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

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

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

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

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

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

546 (b) Each agency shall review all of its rules and

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

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

- 573        2. Beginning July 1, 2017, each agency shall:
- 574        a. Publish all rules that the agency has designated as  
575 rules the violation of which would be a minor violation, either  
576 as a complete list on the agency's website or by incorporation  
577 of the designations in the agency's disciplinary guidelines  
578 adopted as a rule.
- 579        b. Ensure that all investigative and enforcement personnel  
580 are knowledgeable about the agency's designations under this  
581 section.
- 582        3. For each rule filed for adoption, the agency head shall  
583 certify whether any part of the rule is designated as a rule the  
584 violation of which would be a minor violation and shall update  
585 the listing required by sub-subparagraph 2.a.
- 586        (d) The Governor or the Governor and Cabinet, as  
587 appropriate ~~pursuant to paragraph (c)~~, may evaluate the review  
588 and designation effects of each agency subject to the direction  
589 and supervision of such authority and may direct ~~apply~~ a  
590 different designation than that applied by such ~~the~~ agency.
- 591        (e) Notwithstanding s. 120.52(1)(a), this section does not  
592 apply to:
- 593        1. The Department of Corrections;  
594        2. Educational units;  
595        3. The regulation of law enforcement personnel; or  
596        4. The regulation of teachers.
- 597        (f) Designation pursuant to this section is not subject to  
598 challenge under this chapter.

599 Section 7. Section 403.8141, Florida Statutes, is amended  
600 to read:

601 403.8141 Special event permits.—

602 (1) The department shall issue permits for special events  
603 under s. 253.0345. The permits must be for a period that runs  
604 concurrently with the lease or letter of consent issued pursuant  
605 to s. 253.0345 and must allow for the movement of temporary  
606 structures within the footprint of the lease area.

607 (2) An administrative challenge to any proposed regulatory  
608 permit related to a special event is subject to the summary  
609 hearing provisions of s. 120.574, except that the summary  
610 proceeding must be conducted within 30 days after a party files  
611 a motion for a summary hearing regardless of whether the parties  
612 agree to the summary proceeding.

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