

By Representatives Wallace and Burroughs

1 A bill to be entitled
2 An act relating to administrative procedures;
3 amending s. 120.52, F.S.; adding educational
4 units to the definition of the term "agency";
5 amending s. 120.54, F.S.; deleting the
6 requirement for rule development for rule
7 repeal; authorizing an alternative method by
8 which a person may receive a copy of a
9 preliminary draft of a rule; clarifying that an
10 agency's decision to use negotiated rulemaking
11 is not final agency action; deleting references
12 to the Department of Commerce; clarifying the
13 time by which the small business ombudsman must
14 provide regulatory alternatives to an agency;
15 extending the period for filing a rule upon
16 provision of regulatory alternatives to a rule;
17 clarifying times for filing when a notice of
18 change to a rule must be filed; extending the
19 period for filing a rule; amending s. 120.541,
20 F.S.; extending the period for filing a rule if
21 a written alternative for a lower cost
22 regulatory alternative to a rule is provided;
23 amending s. 120.542, F.S.; providing that
24 public employees are not persons subject to
25 regulation for the purposes of waiver and
26 variance; authorizing an agency to limit grants
27 of variance or waiver only to the extent
28 necessary to achieve the purpose of the
29 underlying statute; clarifying that agencies
30 may not grant a variance or waiver to rules
31 required by the Federal Government; requiring

1 uniform rules of procedures to contain certain
2 procedures related to waiver and variance;
3 clarifying the procedure by which an agency may
4 request additional necessary information during
5 the review of a petition for waiver or
6 variance; amending s. 120.56, F.S.; providing
7 that a proceeding to determine a violation of
8 s. 120.54(1), F.S., may be consolidated with
9 other proceedings; eliminating authority to
10 bring such an action in conjunction with
11 certain other proceedings; amending s. 120.569,
12 F.S.; conforming references; amending s.
13 120.57, F.S.; clarifying provisions governing
14 expedited hearings; adding a decision, opinion,
15 order or report of the presiding officer to the
16 record of hearings not involving disputed
17 facts; requiring agencies to use uniform bid
18 protest procedural rules; amending s. 120.573,
19 F.S.; clarifying the time when mediation is
20 authorized; amending s. 120.574, F.S.;
21 providing that intervenors are governed by the
22 decision of the original parties regarding the
23 summary-hearing process; amending s. 120.595,
24 F.S.; providing an exception to the award of
25 attorney's fees when an agency demonstrates
26 that a statement is required by the Federal
27 Government to implement or retain a delegated
28 or approved program or to meet a condition to
29 receipt of federal funds; amending s. 120.60,
30 F.S.; requiring a notice of intent to deny a
31 license to specify the grounds or basis;

1 providing an exception; specifying criteria for
2 procedures for agencies to take emergency
3 action with respect to licenses; amending s.
4 120.65, F.S.; providing requirements for the
5 director of the Division of Administrative
6 Hearings; amending s. 120.66, F.S.; clarifying
7 that a presiding officer may be an agency head
8 or designee; amending s. 120.68, F.S.;
9 providing for judicial review; amending s.
10 120.74, F.S.; specifying the frequency of rule
11 reviews; amending s. 120.81, F.S.; providing
12 that educational units and local units of
13 government need not publish notices or the text
14 of proposed rules in the Florida Administrative
15 Weekly; providing an effective date.

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

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19 Section 1. Subsection (1) of section 120.52, Florida
20 Statutes, 1996 Supplement, is amended to read:

21 120.52 Definitions.--As used in this act:

22 (1) "Agency" means:

23 (a) The Governor in the exercise of all executive
24 powers other than those derived from the constitution.

25 (b) Each state officer and state department,
26 departmental unit described in s. 20.04, commission, regional
27 planning agency, board, multicounty special district with a
28 majority of its governing board comprised of nonelected
29 persons, and authority, including, but not limited to, the
30 Commission on Ethics and the Game and Fresh Water Fish
31 Commission when acting pursuant to statutory authority derived

1 from the Legislature, educational units, and those entities
2 described in chapters 163, 298, 373, 380, and 582 and s.
3 186.504, except any legal entity or agency created in whole or
4 in part pursuant to chapter 361, part II, an expressway
5 authority pursuant to chapter 348, or any legal or
6 administrative entity created by an interlocal agreement
7 pursuant to s. 163.01(7), unless any party to such agreement
8 is otherwise an agency as defined in this subsection.

9 (c) Each other unit of government in the state,
10 including counties and municipalities, to the extent they are
11 expressly made subject to this act by general or special law
12 or existing judicial decisions.

13 Section 2. Section 120.53, Florida Statutes, 1996
14 Supplement, as amended by section 5 of chapter 96-159, Laws of
15 Florida, and section 2 of chapter 96-423, Laws of Florida, is
16 reenacted to read:

17 120.53 Maintenance of orders; indexing; listing;
18 organizational information.--

19 (1)(a) Each agency shall maintain:

20 1. All agency final orders.

21 2.a. A current hierarchical subject-matter index,
22 identifying for the public any rule or order as specified in
23 this subparagraph.

24 b. In lieu of the requirement for making available for
25 public inspection and copying a hierarchical subject-matter
26 index of its orders, an agency may maintain and make available
27 for public use an electronic database of its orders that
28 allows users to research and retrieve the full texts of agency
29 orders by devising an ad hoc indexing system employing any
30 logical search terms in common usage which are composed by the
31 user and which are contained in the orders of the agency or by

1 descriptive information about the order which may not be
2 specifically contained in the order.

3 c. The agency orders that must be indexed, unless
4 excluded under paragraph (c) or paragraph (d), include:

5 (I) Each final agency order resulting from a
6 proceeding under s. 120.57 or s. 120.573.

7 (II) Each final agency order rendered pursuant to s.
8 120.57(4) which contains a statement of agency policy that may
9 be the basis of future agency decisions or that may otherwise
10 contain a statement of precedential value.

11 (III) Each declaratory statement issued by an agency.

12 (IV) Each final order resulting from a proceeding
13 under s. 120.56 or s. 120.574.

14 3. A list of all final orders rendered pursuant to s.
15 120.57(4) which have been excluded from the indexing
16 requirement of this section, with the approval of the
17 Department of State, because they do not contain statements of
18 agency policy or statements of precedential value. The list
19 must include the name of the parties to the proceeding and the
20 number assigned to the final order.

21 4. All final orders listed pursuant to subparagraph 3.

22 (b) An agency final order that must be indexed or
23 listed pursuant to paragraph (a) must be indexed or listed
24 within 120 days after the order is rendered. Each final order
25 that must be indexed or listed pursuant to paragraph (a) must
26 have attached a copy of the complete text of any materials
27 incorporated by reference; however, if the quantity of the
28 materials incorporated makes attachment of the complete text
29 of the materials impractical, the order may contain a
30 statement of the location of such materials and the manner in
31 which the public may inspect or obtain copies of the materials

1 incorporated by reference. The Department of State shall
2 establish by rule procedures for indexing final orders, and
3 procedures of agencies for indexing orders must be approved by
4 the department.

5 (c) Each agency must receive approval in writing from
6 the Department of State for:

7 1. The specific types and categories of agency final
8 orders that may be excluded from the indexing and public
9 inspection requirements, as determined by the department
10 pursuant to paragraph (d).

11 2. The method for maintaining indexes, lists, and
12 final orders that must be indexed or listed and made available
13 to the public.

14 3. The method by which the public may inspect or
15 obtain copies of indexes, lists, and final orders.

16 4. A sequential numbering system which numbers all
17 final orders required to be indexed or listed pursuant to
18 paragraph (a), in the order rendered.

19 5. Proposed rules for implementing the requirements of
20 this section for indexing and making final orders available
21 for public inspection.

22 (d) In determining which final orders may be excluded
23 from the indexing and public inspection requirements, the
24 Department of State may consider all factors specified by an
25 agency, including precedential value, legal significance, and
26 purpose. Only agency final orders that are of limited or no
27 precedential value, that are of limited or no legal
28 significance, or that are ministerial in nature may be
29 excluded.

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1 (e) Each agency shall specify the specific types or
2 categories of agency final orders that are excluded from the
3 indexing and public inspection requirements.

4 (f) Each agency shall specify the location or
5 locations where agency indexes, lists, and final orders that
6 are required to be indexed or listed are maintained and shall
7 specify the method or procedure by which the public may
8 inspect or obtain copies of indexes, lists, and final orders.

9 (g) Each agency shall specify all systems in use by
10 the agency to search and locate agency final orders that are
11 required to be indexed or listed, including, but not limited
12 to, any automated system. An agency shall make the search
13 capabilities employed by the agency available to the public
14 subject to reasonable terms and conditions, including a
15 reasonable charge, as provided by s. 119.07. The agency shall
16 specify how assistance and information pertaining to final
17 orders may be obtained.

18 (h) Each agency shall specify the numbering system
19 used to identify agency final orders.

20 (2)(a) An agency may comply with subparagraphs
21 (1)(a)1. and 2. by designating an official reporter to publish
22 and index by subject matter each agency order that must be
23 indexed and made available to the public. An agency is in
24 compliance with subparagraph (1)(a)3. if it publishes in its
25 designated reporter a list of each agency final order that
26 must be listed and preserves each listed order and makes it
27 available for public inspection and copying.

28 (b) An agency may publish its official reporter or may
29 contract with a publishing firm to publish its official
30 reporter; however, if an agency contracts with a publishing
31 firm to publish its reporter, the agency is responsible for

1 the quality, timeliness, and usefulness of the reporter. The
2 Department of State may publish an official reporter for an
3 agency or may contract with a publishing firm to publish the
4 reporter for the agency; however, if the department contracts
5 for publication of the reporter, the department is responsible
6 for the quality, timeliness, and usefulness of the reporter. A
7 reporter that is designated by an agency as its official
8 reporter and approved by the Department of State constitutes
9 the official compilation of the administrative final orders
10 for that agency.

11 (c) A reporter that is published by the Department of
12 State may be made available by annual subscription, and each
13 agency that designates an official reporter published by the
14 department may be charged a space rate payable to the
15 department. The subscription rate and the space rate must be
16 equitably apportioned to cover the costs of publishing the
17 reporter.

18 (d) An agency that designates an official reporter
19 need not publish the full text of an agency final order that
20 is rendered pursuant to s. 120.57(4) and that must be indexed
21 pursuant to paragraph (1)(a), if the final order is preserved
22 by the agency and made available for public inspection and
23 copying and the official reporter indexes the final order and
24 includes a synopsis of the order. A synopsis must include the
25 names of the parties to the order; any rule, statute, or
26 constitutional provision pertinent to the order; a summary of
27 the facts, if included in the order, which are pertinent to
28 the final disposition; and a summary of the final disposition.

29 (3) Agency orders that must be indexed or listed are
30 documents of continuing legal value and must be permanently
31 preserved and made available to the public. Each agency to

1 which this chapter applies shall provide, under the direction
2 of the Department of State, for the preservation of orders as
3 required by this chapter and for maintaining an index to those
4 orders.

5 (4) Each agency must provide any person who makes a
6 request with a written description of its organization and the
7 general course of its operations.

8 Section 3. Paragraphs (a), (c), and (d) of subsection
9 (2), paragraphs (a), (b), (d), and (e) of subsection (3),
10 paragraph (a) of subsection (4), and paragraph (b) of
11 subsection (7) of section 120.54, Florida Statutes, 1996
12 Supplement, as amended by section 10 of chapter 96-159, Laws
13 of Florida, section 6 of chapter 96-320, Laws of Florida, and
14 section 9 of chapter 96-370, Laws of Florida, are amended to
15 read:

16 120.54 Rulemaking.--

17 (2) RULE DEVELOPMENT; WORKSHOPS; NEGOTIATED
18 RULEMAKING.--

19 (a) Except when the intended action is the repeal of a
20 rule, agencies shall provide notice of the development of
21 proposed rules by publication of a notice of rule development
22 in the Florida Administrative Weekly before providing notice
23 of a proposed rule as required by paragraph (3)(a). The
24 notice of rule development shall indicate the subject area to
25 be addressed by rule development, provide a short, plain
26 explanation of the purpose and effect of the proposed rule
27 ~~development~~, cite the specific legal authority for the
28 proposed rule ~~development~~, and include the preliminary text of
29 the proposed rules, if available, or a statement of how a
30 person may promptly obtain, without cost, a copy of any
31 preliminary draft, if available.

1 (c) An agency may hold public workshops for purposes
2 of rule development. An agency must hold public workshops,
3 including workshops in various regions of the state or the
4 agency's service area, for purposes of rule development if
5 requested in writing by any affected person, unless the agency
6 head explains in writing why a workshop is unnecessary. The
7 explanation is not final agency action subject to review
8 pursuant to ss. 120.569 and 120.57. The failure to provide
9 the explanation when required may be a material error in
10 procedure pursuant to s. 120.56(1)(c). When a workshop or
11 public hearing is held, the agency must ensure that the
12 persons responsible for preparing the proposed rule are
13 available to explain the agency's proposal and to respond to
14 questions or comments regarding the rule being developed. The
15 workshop may be facilitated or mediated by a neutral third
16 person, or the agency may employ other types of dispute
17 resolution alternatives for the workshop that are appropriate
18 for rule development. Notice of a rule development workshop
19 shall be by publication in the Florida Administrative Weekly
20 not less than 14 days prior to the date on which the workshop
21 is scheduled to be held and shall indicate the subject area
22 which will be addressed; the agency contact person; and the
23 place, date, and time of the workshop.

24 (d)1. An agency may use negotiated rulemaking in
25 developing and adopting rules. The agency should consider the
26 use of negotiated rulemaking when complex rules are being
27 drafted or strong opposition to the rules is anticipated. The
28 agency should consider, but is not limited to considering,
29 whether a balanced committee of interested persons who will
30 negotiate in good faith can be assembled, whether the agency
31 is willing to support the work of the negotiating committee,

1 and whether the agency can use the group consensus as the
2 basis for its proposed rule. Negotiated rulemaking uses a
3 committee of designated representatives to draft a mutually
4 acceptable proposed rule.

5 2. An agency that chooses to use the negotiated
6 rulemaking process described in this paragraph shall publish
7 in the Florida Administrative Weekly a notice of negotiated
8 rulemaking that includes a listing of the representative
9 groups that will be invited to participate in the negotiated
10 rulemaking process. Any person who believes that his or her
11 interest is not adequately represented may apply to
12 participate within 30 days after publication of the notice.
13 All meetings of the negotiating committee shall be noticed and
14 open to the public pursuant to the provisions of this chapter.
15 The negotiating committee shall be chaired by a neutral
16 facilitator or mediator.

17 3. The agency's decision to use negotiated rulemaking,
18 its selection of the representative groups, and approval or
19 denial of an application to participate in the negotiated
20 rulemaking process are not agency action. Nothing in this
21 subparagraph is intended to affect the rights of an affected
22 person to challenge a proposed rule developed under this
23 paragraph in accordance with s. 120.56(2).

24 (3) ADOPTION PROCEDURES.--

25 (a) Notices.--

26 1. Prior to the adoption, amendment, or repeal of any
27 rule other than an emergency rule, an agency, upon approval of
28 the agency head, shall give notice of its intended action,
29 setting forth a short, plain explanation of the purpose and
30 effect of the proposed action; the full text of the proposed
31 rule or amendment and a summary thereof; a reference to the

1 specific rulemaking authority pursuant to which the rule is
2 adopted; and a reference to the section or subsection of the
3 Florida Statutes or the Laws of Florida being implemented,
4 interpreted, or made specific. The notice shall include a
5 summary of the agency's statement of the estimated regulatory
6 costs, if one has been prepared, based on the factors set
7 forth in s. 120.541(2), and a statement that any person who
8 wishes to provide the agency with information regarding the
9 statement of estimated regulatory costs, or to provide a
10 proposal for a lower cost regulatory alternative as provided
11 by s. 120.541(1), must do so in writing within 21 days after
12 publication of the notice. The notice must state the
13 procedure for requesting a public hearing on the proposed
14 rule. Except when the intended action is the repeal of a rule,
15 the notice shall include a reference both to the date on which
16 and to the place where the notice of rule development that is
17 required by subsection (2) appeared.

18 2. The notice shall be published in the Florida
19 Administrative Weekly not less than 28 days prior to the
20 intended action. The proposed rule shall be available for
21 inspection and copying by the public at the time of the
22 publication of notice.

23 3. The notice shall be mailed to all persons named in
24 the proposed rule and to all persons who, at least 14 days
25 prior to such mailing, have made requests of the agency for
26 advance notice of its proceedings. The agency shall also give
27 such notice as is prescribed by rule to those particular
28 classes of persons to whom the intended action is directed.

29 4. The adopting agency shall file with the committee,
30 at least 21 days prior to the proposed adoption date, a copy
31 of each rule it proposes to adopt; a detailed written

1 statement of the facts and circumstances justifying the
2 proposed rule; a copy of any statement of estimated regulatory
3 costs that has been prepared pursuant to s. 120.541; a
4 statement of the extent to which the proposed rule relates to
5 federal standards or rules on the same subject; and the notice
6 required by subparagraph 1.

7 (b) Special matters to be considered in rule
8 adoption.--

9 1. Statement of estimated regulatory costs.--Prior to
10 the adoption, amendment, or repeal of any rule other than an
11 emergency rule, an agency is encouraged to prepare a statement
12 of estimated regulatory costs of the proposed rule, as
13 provided by s. 120.541.

14 2. Small businesses, small counties, and small
15 cities.--

16 a. Each agency, before the adoption, amendment, or
17 repeal of a rule, shall consider the impact of the rule on
18 small businesses as defined by s. 288.703 and the impact of
19 the rule on small counties or small cities as defined by s.
20 120.52. Whenever practicable, an agency shall tier its rules
21 to reduce disproportionate impacts on small businesses, small
22 counties, or small cities to avoid regulating small
23 businesses, small counties, or small cities that do not
24 contribute significantly to the problem the rule is designed
25 to address. An agency may define "small business" to include
26 businesses employing more than 100 persons, may define "small
27 county" to include those with populations of more than 75,000,
28 and may define "small city" to include those with populations
29 of more than 10,000, if it finds that such a definition is
30 necessary to adapt a rule to the needs and problems of small
31 businesses, small counties, or small cities. The agency shall

1 consider each of the following methods for reducing the impact
2 of the proposed rule on small businesses, small counties, and
3 small cities, or any combination of these entities:

4 (I) Establishing less stringent compliance or
5 reporting requirements in the rule.

6 (II) Establishing less stringent schedules or
7 deadlines in the rule for compliance or reporting
8 requirements.

9 (III) Consolidating or simplifying the rule's
10 compliance or reporting requirements.

11 (IV) Establishing performance standards or
12 best-management practices to replace design or operational
13 standards in the rule.

14 (V) Exempting small businesses, small counties, or
15 small cities from any or all requirements of the rule.

16 b.(I) If the agency determines that the proposed
17 action will affect small businesses as defined by the agency
18 as provided in sub-subparagraph a., the agency shall send
19 written notice of the rule to the small business ombudsman of
20 the Office of Tourism, Trade, and Economic Development
21 ~~Department of Commerce~~ not less than 28 ~~21~~ days prior to the
22 intended action.

23 (II) Each agency shall adopt those regulatory
24 alternatives offered by the small business ombudsman and
25 provided to the agency no later than 21 days after the
26 ombudsman's receipt of the written notice of the rule which it
27 finds are feasible and consistent with the stated objectives
28 of the proposed rule and which would reduce the impact on
29 small businesses. When regulatory alternatives are offered by
30 the small business ombudsman, the 90-day period for filing the
31 rule is extended for a period of 21 days.

1 (III) If an agency does not adopt all alternatives
2 offered pursuant to this sub-subparagraph, it shall, prior to
3 rule adoption or amendment and pursuant to subparagraph (d)1.,
4 file a detailed written statement with the committee
5 explaining the reasons for failure to adopt such alternatives.
6 Within 3 working days of the filing of such notice, the agency
7 shall send a copy of such notice to the small business
8 ombudsman.

9 (d) Modification or withdrawal of proposed rules.--

10 1. After the final public hearing on the proposed
11 rule, or after the time for requesting a hearing has expired,
12 if the rule has not been changed from the rule as previously
13 filed with the committee, or contains only technical changes,
14 the adopting agency shall file a notice to that effect with
15 the committee at least 7 days prior to filing the rule for
16 adoption. Any change, other than a technical change that does
17 not affect the substance of the rule, must be supported by the
18 record of public hearings held on the rule, must be in
19 response to written material received on or before the date of
20 the final public hearing, or must be in response to a proposed
21 objection by the committee. In addition, when any change is
22 made in a proposed rule, other than a technical change, the
23 adopting agency shall provide a copy of a notice of change by
24 certified mail or actual delivery to any person who requests
25 it in writing no later than 21 days after the notice required
26 in paragraph (a). The agency shall file the notice with the
27 committee, along with the reasons for such change, and provide
28 the notice to persons requesting it, at least 21 days prior to
29 filing the rule for adoption. The notice shall be published in
30 the Florida Administrative Weekly at least 21 days prior to
31

1 filing the rule for adoption. This subparagraph does not
2 apply to emergency rules adopted pursuant to subsection (4).

3 2. After the notice required by paragraph (a) and
4 prior to adoption, the agency may withdraw the rule in whole
5 or in part.

6 3. After adoption and before the effective date, a
7 rule may be modified or withdrawn only in response to an
8 objection by the committee or may be modified to extend the
9 effective date by not more than 60 days when the committee has
10 notified the agency that an objection to the rule is being
11 considered.

12 4. The agency shall give notice of its decision to
13 withdraw or modify a rule in the first available issue of the
14 publication in which the original notice of rulemaking was
15 published, shall notify those persons described in
16 subparagraph (a)3. in accordance with the requirements of that
17 subparagraph, and shall notify the Department of State if the
18 rule is required to be filed with the Department of State.

19 5. After a rule has become effective, it may be
20 repealed or amended only through the rulemaking procedures
21 specified in this chapter.

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

23 1. If the adopting agency is required to publish its
24 rules in the Florida Administrative Code, it shall file with
25 the Department of State three certified copies of the rule it
26 proposes to adopt, a summary of the rule, a summary of any
27 hearings held on the rule, and a detailed written statement of
28 the facts and circumstances justifying the rule. Agencies not
29 required to publish their rules in the Florida Administrative
30 Code shall file one certified copy of the proposed rule, and
31 the other material required by this subparagraph, in the

1 office of the agency head, and such rules shall be open to the
2 public.

3 2. Filings shall be made no less than 28 days nor more
4 than 90 days after the notice required by paragraph (a). When
5 ~~if a required notice of change is required to be published~~
6 prior to the expiration of the time to file the rule for
7 adoption, the 90-day period during which a rule must be filed
8 for adoption is extended to 45 21 days after the date of
9 publication. If notice of a public hearing is published prior
10 to the expiration of the time to file the rule for adoption
11 ~~held, the period during which a rule must be filed for~~
12 adoption 90-day limit is extended to 45 21 days after
13 adjournment of the final hearing on the rule, 21 days after
14 receipt of all material authorized to be submitted at the
15 hearing, or 21 days after receipt of the transcript, if one is
16 made, whichever is latest. The term ~~For purposes of this~~
17 ~~subparagraph,"public hearing" includes any public meeting~~
18 held by any agency at which the rule is considered. The
19 filing of a petition for an administrative determination under
20 the provisions of s. 120.56(2) shall toll the 90-day period
21 during which a rule must be filed for adoption until the
22 administrative law judge has filed the final order with the
23 clerk.

24 3. At the time a rule is filed, the agency shall
25 certify that the time limitations prescribed by this paragraph
26 have been complied with, that all statutory rulemaking
27 requirements have been met, and that there is no
28 administrative determination pending on the rule.

29 4. At the time a rule is filed, the committee shall
30 certify whether the agency has responded in writing to all
31 material and timely written comments or written inquiries made

1 on behalf of the committee. The department shall reject any
2 rule not filed within the prescribed time limits; that does
3 not satisfy all statutory rulemaking requirements; upon which
4 an agency has not responded in writing to all material and
5 timely written inquiries or written comments; upon which an
6 administrative determination is pending; or which does not
7 include a statement of estimated regulatory costs, if
8 required.

9 5. If a rule has not been adopted within the time
10 limits imposed by this paragraph or has not been adopted in
11 compliance with all statutory rulemaking requirements, the
12 agency proposing the rule shall withdraw the rule and give
13 notice of its action in the next available issue of the
14 Florida Administrative Weekly.

15 6. The proposed rule shall be adopted on being filed
16 with the Department of State and become effective 20 days
17 after being filed, on a later date specified in the rule, or
18 on a date required by statute. Rules not required to be filed
19 with the Department of State shall become effective when
20 adopted by the agency head or on a later date specified by
21 rule or statute. If the committee notifies an agency that an
22 objection to a rule is being considered, the agency may
23 postpone the adoption of the rule to accommodate review of the
24 rule by the committee. When an agency postpones adoption of a
25 rule to accommodate review by the committee, the 90-day period
26 for filing the rule is tolled until the committee notifies the
27 agency that it has completed its review of the rule.

28 (4) EMERGENCY RULES.--

29 (a) If an agency finds that an immediate danger to the
30 public health, safety, or welfare requires emergency action,
31 the agency may adopt any rule necessitated by the immediate

1 danger. The agency may adopt a rule by any procedure which is
2 fair under the circumstances if:

3 1. The procedure provides at least the procedural
4 protection given by other statutes, the State Constitution, or
5 the United States Constitution.

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

8 3. The agency publishes in writing at the time of, or
9 prior to, its action the specific facts and reasons for
10 finding an immediate danger to the public health, safety, or
11 welfare and its reasons for concluding that the procedure used
12 is fair under the circumstances. In any event, notice of
13 emergency rules, other than those of educational units or
14 units of government with jurisdiction in only one or a part of
15 one county, including the full text of the rules, shall be
16 published in the first available issue of the Florida
17 Administrative Weekly and provided to the committee. The
18 agency's findings of immediate danger, necessity, and
19 procedural fairness shall be judicially reviewable.

20 (7) PETITION TO INITIATE RULEMAKING.--

21 (b) If the petition filed under this subsection is
22 directed to an existing rule which the agency has not adopted
23 by the rulemaking procedures or requirements set forth in this
24 chapter, the agency shall, not later than 30 days following
25 the date of filing a petition, initiate rulemaking, ~~otherwise~~
26 ~~comply with the requested action,~~ or provide notice in the
27 Florida Administrative Weekly that the agency will hold a
28 public hearing on the petition within 30 days after
29 publication of the notice. The purpose of the public hearing
30 is to consider the comments of the public directed to the
31 agency rule which has not been adopted by the rulemaking

1 procedures or requirements of this chapter, its scope and
2 application, and to consider whether the public interest is
3 served adequately by the application of the rule on a
4 case-by-case basis, as contrasted with its adoption by the
5 rulemaking procedures or requirements set forth in this
6 chapter.

7 Section 4. Paragraph (a) of subsection (1) of section
8 120.541, Florida Statutes, 1996 Supplement, is amended to
9 read:

10 120.541 Statement of estimated regulatory costs.--

11 (1)(a) A substantially affected person, within 21 days
12 after publication of the notice provided under s.
13 120.54(3)(a), may submit to an agency a good faith written
14 proposal for a lower cost regulatory alternative to a proposed
15 rule which substantially accomplishes the objectives of the
16 law being implemented. The proposal may include the
17 alternative of not adopting any rule, so long as the proposal
18 explains how the lower costs and objectives of the law will be
19 achieved by not adopting any rule. If such a proposal is
20 submitted, the 90-day period for filing the rule is extended
21 21 days.

22 Section 5. Subsections (1), (3), (5), and (6) of
23 section 120.542, Florida Statutes, 1996 Supplement, are
24 amended, present subsection (7) of that section is renumbered
25 as subsection (8) and amended, present subsection (8) of that
26 section is renumbered as subsection (9), and a new subsection
27 (7) is added to that section, to read:

28 120.542 Variances and waivers.--

29 (1) Strict application of uniformly applicable rule
30 requirements can lead to unreasonable, unfair, and unintended
31 results in particular instances. The Legislature finds that it

1 is appropriate in such cases to adopt a procedure for agencies
2 to provide relief to persons subject to regulation. A public
3 employee is not a person subject to regulation under this
4 section for the purpose of petitioning for a variance or
5 waiver to a rule that affects that public employee in his or
6 her capacity as a public employee. Agencies are authorized to
7 grant variances and waivers to requirements of their rules
8 consistent with this section and with rules adopted under the
9 authority of this section. An agency may limit the duration of
10 any grant of a variance or waiver or otherwise impose
11 conditions on the grant only to the extent necessary for the
12 purpose of the underlying statute to be achieved. This section
13 does not authorize agencies to grant variances or waivers to
14 statutes or to rules required by the Federal Government for
15 the agency's implementation or retention of any federally
16 approved or delegated program, except as allowed by the
17 program or when the variance or waiver is also approved by the
18 appropriate agency of the Federal Government. This section is
19 supplemental to, and does not abrogate, the variance and
20 waiver provisions in any other statute.

21 (3) The Governor and Cabinet, sitting as the
22 Administration Commission, shall adopt uniform rules of
23 procedure pursuant to the requirements of s. 120.54(5)
24 establishing procedures for granting or denying petitions for
25 variances and waivers. The uniform rules shall ~~may~~ include
26 procedures for the granting, denying, or revoking ~~or denial~~ of
27 emergency and temporary variances and waivers. Such provisions
28 may provide for expedited timeframes, waiver of or limited
29 public notice, and limitations on comments on the petition in
30 the case of such temporary or emergency variances and waivers.
31

1 (5) A person who is subject to regulation by an agency
2 rule may file a petition with that agency, with a copy to the
3 committee, requesting a variance or waiver from the agency's
4 rule. In addition to any requirements mandated by the uniform
5 rules, each petition shall specify:

6 (a) The rule from which a variance or waiver is
7 requested.

8 (b) The type of action requested.

9 (c) The specific facts that would justify a waiver or
10 variance for the petitioner.

11 (d) The reason why the variance or the waiver
12 requested would serve the purposes of the underlying statute.

13 (6) Within 15 days after receipt of a petition for
14 variance or waiver, an agency shall provide notice of the
15 petition to the Department of State, which shall publish
16 notice of the petition in the first available issue of the
17 Florida Administrative Weekly. The notice shall contain the
18 name of the petitioner, the date the petition was filed, the
19 rule number and nature of the rule from which variance or
20 waiver is sought, and an explanation of how a copy of the
21 petition can be obtained. The uniform rules shall provide a
22 means for interested persons to provide comments on the
23 petition.

24 (7) Except for requests for emergency variances or
25 waivers, within 30 days after receipt of a petition for a
26 variance or waiver, an agency shall review the petition and
27 request submittal of all additional information that the
28 agency is permitted by this section to require. Within 30 days
29 after receipt of such additional information, the agency shall
30 review it and may request only that information needed to
31 clarify the additional information or to answer new questions

1 raised by or directly related to the additional information.
2 If the petitioner asserts that any request for additional
3 information is not authorized by law or by rule of the
4 affected agency, the agency shall proceed, at the petitioner's
5 written request, to process the petition.
6 (8)(7) An agency shall grant or deny a petition for
7 variance or waiver within 90 days after ~~of its~~ receipt of the
8 original petition, the last item of timely requested
9 additional material, or the petitioner's written request to
10 finish processing the petition. A. ~~If such petition is~~ not
11 granted or denied within 90 days after ~~of~~ receipt of a
12 completed, the petition is ~~shall be~~ deemed approved. A copy
13 of the ~~An~~ order granting or denying the petition shall be
14 filed with the committee ~~in writing~~ and shall contain a
15 statement of the relevant facts and reasons supporting the
16 agency's action. The agency shall provide notice of the
17 disposition of the petition to the Department of State, which
18 shall publish the notice in the next available issue of the
19 Florida Administrative Weekly. The notice shall contain a
20 reference to the place and date of publication of the notice
21 of the petition, the date of the order denying or approving
22 the variance or waiver, the general basis for the agency
23 decision, and an explanation of how a copy of the order can be
24 obtained.The agency's decision to grant or deny the petition
25 shall be supported by competent substantial evidence and is
26 subject to ss. 120.569 and 120.57. Any proceeding pursuant to
27 ss. 120.569 and 120.57 in regard to a variance or waiver shall
28 be limited to the agency action on the request for the
29 variance or waiver, except that a proceeding in regard to a
30 variance or waiver may be consolidated with any other
31 proceeding authorized by this chapter.

1 (9)~~(8)~~ Each agency shall maintain a record of the type
2 and disposition of each petition, including temporary or
3 emergency variances and waivers, filed pursuant to this
4 section. On October 1 of each year, each agency shall file a
5 report with the Governor, the President of the Senate, and the
6 Speaker of the House of Representatives listing the number of
7 petitions filed requesting variances to each agency rule, the
8 number of petitions filed requesting waivers to each agency
9 rule, and the disposition of all petitions. Temporary or
10 emergency variances and waivers, and the reasons for granting
11 or denying temporary or emergency variances and waivers, shall
12 be identified separately from other waivers and variances.

13 Section 6. Paragraph (f) of subsection (4) of section
14 120.56, Florida Statutes, 1996 Supplement, is amended to read:

15 120.56 Challenges to rules.--

16 (4) CHALLENGING AGENCY STATEMENTS DEFINED AS RULES;
17 SPECIAL PROVISIONS.--

18 (f) All proceedings to determine a violation of s.
19 120.54(1)(a) shall be brought pursuant to this subsection. A
20 proceeding pursuant to this subsection may be consolidated
21 ~~brought in conjunction~~ with a proceeding under any other
22 section of this chapter ~~or consolidated with such a~~
23 ~~proceeding~~. Nothing in this paragraph shall be construed to
24 prevent a party whose substantial interests have been
25 determined by an agency action from bringing a proceeding
26 pursuant to s. 120.57(1)(e).

27 Section 7. Subsection (1) and paragraph (a) of
28 subsection (2) of section 120.569, Florida Statutes, 1996
29 Supplement, are amended to read:

30 120.569 Decisions which affect substantial
31 interests.--

1 (1) The provisions of this section apply in all
2 proceedings in which the substantial interests of a party are
3 determined by an agency, unless the parties are proceeding
4 under s. 120.573 or s. 120.574. Unless waived by all parties,
5 s. 120.57(1) applies whenever the proceeding involves a
6 disputed issue of material fact. Unless otherwise agreed, s.
7 120.57(2) applies in all other cases. Parties shall be
8 notified of any order, including a final order. Unless waived,
9 a copy of the order shall be delivered or mailed to each party
10 or the party's attorney of record at the address of record.
11 Each notice shall inform the recipient of any administrative
12 hearing or judicial review that is available under this
13 section, s. 120.57, or s. 120.68; shall indicate the procedure
14 which must be followed to obtain the hearing or judicial
15 review; and shall state the time limits which apply.

16 (2)(a) Except for any proceeding conducted as
17 prescribed in s. 120.56, a petition or request for a hearing
18 under this section shall be filed with the agency. If the
19 agency requests an administrative law judge from the division,
20 it shall so notify the division within 15 days after receipt
21 of the petition or request. A request for a hearing shall be
22 granted or denied within 15 days after receipt. On the request
23 of any agency, the division shall assign an administrative law
24 judge with due regard to the expertise required for the
25 particular matter. The referring agency shall take no further
26 action with respect to a ~~the formal~~ proceeding under s.
27 120.57(1), except as a party litigant, as long as the division
28 has jurisdiction over the ~~formal~~ proceeding under s.
29 120.57(1). Any party may request the disqualification of the
30 administrative law judge by filing an affidavit with the
31

1 division prior to the taking of evidence at a hearing, stating
2 the grounds with particularity.

3 Section 8. Section 120.57, Florida Statutes, 1996
4 Supplement, as amended by section 19 of chapter 96-159, Laws
5 of Florida, and section 1 of chapter 96-423, Laws of Florida,
6 is amended to read:

7 120.57 Additional procedures for particular cases.--

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

10 (a) Except as provided in ss. 120.80 and 120.81, an
11 administrative law judge assigned by the division shall
12 conduct all hearings under this subsection, except for
13 hearings before agency heads or a member thereof. If the
14 administrative law judge assigned to a hearing becomes
15 unavailable, the division shall assign another administrative
16 law judge who shall use any existing record and receive any
17 additional evidence or argument, if any, which the new
18 administrative law judge finds necessary.

19 (b) All parties shall have an opportunity to respond,
20 to present evidence and argument on all issues involved, to
21 conduct cross-examination and submit rebuttal evidence, to
22 submit proposed findings of facts and orders, to file
23 exceptions to the presiding officer's recommended order, and
24 to be represented by counsel or other qualified
25 representative. When appropriate, the general public may be
26 given an opportunity to present oral or written
27 communications. If the agency proposes to consider such
28 material, then all parties shall be given an opportunity to
29 cross-examine or challenge or rebut the material.

30 (c) Hearsay evidence may be used for the purpose of
31 supplementing or explaining other evidence, but it shall not

1 be sufficient in itself to support a finding unless it would
2 be admissible over objection in civil actions.

3 (d) Notwithstanding s. 120.569(2)(e), similar fact
4 evidence of other violations, wrongs, or acts is admissible
5 when relevant to prove a material fact in issue, such as proof
6 of motive, opportunity, intent, preparation, plan, knowledge,
7 identity, or absence of mistake or accident, but it is
8 inadmissible when the evidence is relevant solely to prove bad
9 character or propensity. When the state in an administrative
10 proceeding intends to offer evidence of other acts or offenses
11 under this paragraph, the state shall furnish to the party
12 whose substantial interests are being determined and whose
13 other acts or offenses will be the subject of such evidence,
14 no fewer than 10 days before commencement of the proceeding, a
15 written statement of the acts or offenses it intends to offer,
16 describing them and the evidence the state intends to offer
17 with particularity. Notice is not required for evidence of
18 acts or offenses which is used for impeachment or on rebuttal.

19 (e)1. Any agency action that determines the
20 substantial interests of a party and that is based on an
21 unadopted rule is subject to de novo review by an
22 administrative law judge.

23 2. The agency action shall not be presumed valid or
24 invalid. The agency must demonstrate that the unadopted rule:

25 a. Is within the powers, functions, and duties
26 delegated by the Legislature or, if the agency is operating
27 pursuant to authority derived from the State Constitution, is
28 within that authority;

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

31

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

4 d. Is not arbitrary or capricious;

5 e. Is not being applied to the substantially affected
6 party without due notice;

7 f. Is supported by competent and substantial evidence;
8 and

9 g. Does not impose excessive regulatory costs on the
10 regulated person, county, or city.

11 3. The recommended and final orders in any proceeding
12 shall be governed by the provisions of paragraphs (i) and (j),
13 except that the administrative law judge's determination
14 regarding the unadopted rule shall not be rejected by the
15 agency unless the agency first determines from a review of the
16 complete record, and states with particularity in the order,
17 that such determination is clearly erroneous or does not
18 comply with essential requirements of law. In any proceeding
19 for review under s. 120.68, if the court finds that the
20 agency's rejection of the determination regarding the
21 unadopted rule does not comport with the provisions of this
22 subparagraph, the agency action shall be set aside and the
23 court shall award to the prevailing party the reasonable costs
24 and a reasonable attorney's fee for the initial proceeding and
25 the proceeding for review.

26 (f) The record in a case governed by this subsection
27 shall consist only of:

28 1. All notices, pleadings, motions, and intermediate
29 rulings.

30 2. Evidence admitted.

31 3. Those matters officially recognized.

1 4. Proffers of proof and objections and rulings
2 thereon.
3 5. Proposed findings and exceptions.
4 6. Any decision, opinion, order, or report by the
5 presiding officer.
6 7. All staff memoranda or data submitted to the
7 presiding officer during the hearing or prior to its
8 disposition, after notice of the submission to all parties,
9 except communications by advisory staff as permitted under s.
10 120.66(1), if such communications are public records.
11 8. All matters placed on the record after an ex parte
12 communication.
13 9. The official transcript.
14 (g) The agency shall accurately and completely
15 preserve all testimony in the proceeding, and, on the request
16 of any party, it shall make a full or partial transcript
17 available at no more than actual cost.
18 (h) Findings of fact shall be based upon a
19 preponderance of the evidence, except in penal or licensure
20 disciplinary proceedings or except as otherwise provided by
21 statute, and shall be based exclusively on the evidence of
22 record and on matters officially recognized.
23 (i) The presiding officer shall complete and submit to
24 the agency and all parties a recommended order consisting of
25 findings of fact, conclusions of law, and recommended
26 disposition or penalty, if applicable, and any other
27 information required by law to be contained in the final
28 order. All proceedings conducted pursuant to this subsection
29 shall be de novo. The agency shall allow each party 15 days in
30 which to submit written exceptions to the recommended order.
31

1 (j) The agency may adopt the recommended order as the
2 final order of the agency. The agency in its final order may
3 reject or modify the conclusions of law and interpretation of
4 administrative rules over which it has substantive
5 jurisdiction. Rejection or modification of conclusions of law
6 may not form the basis for rejection or modification of
7 findings of fact. The agency may not reject or modify the
8 findings of fact unless the agency first determines from a
9 review of the entire record, and states with particularity in
10 the order, that the findings of fact were not based upon
11 competent substantial evidence or that the proceedings on
12 which the findings were based did not comply with essential
13 requirements of law. The agency may accept the recommended
14 penalty in a recommended order, but may not reduce or increase
15 it without a review of the complete record and without stating
16 with particularity its reasons therefor in the order, by
17 citing to the record in justifying the action.

18 (k) If a recommended order is submitted to an agency,
19 the agency shall provide a copy of its final order to the
20 division within 15 days after the order is filed with the
21 agency clerk.

22 (1) Notwithstanding any law to the contrary, when
23 statutes or rules impose conflicting time requirements for the
24 scheduling ~~issuance~~ of expedited hearings or issuance of
25 recommended or final orders, the director of the division
26 shall have the authority to set the proceedings for the
27 orderly operation of this chapter.

28 (2) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS NOT
29 INVOLVING DISPUTED ISSUES OF MATERIAL FACT.--In any case to
30 which subsection (1) does not apply:

31 (a) The agency shall:

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

5 2. Give parties or their counsel an opportunity, at a
6 convenient time and place, to present to the agency or hearing
7 officer written or oral evidence in opposition to the action
8 of the agency or to its refusal to act, or a written statement
9 challenging the grounds upon which the agency has chosen to
10 justify its action or inaction.

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

13 (b) The record shall only consist of:

14 1. The notice and summary of grounds.

15 2. Evidence received.

16 3. All written statements submitted.

17 4. Any decision overruling objections.

18 5. All matters placed on the record after an ex parte
19 communication.

20 6. The official transcript.

21 7. Any decision, opinion, order, or report by the
22 presiding officer.

23 (3) ADDITIONAL PROCEDURES APPLICABLE TO PROTESTS TO
24 CONTRACT BIDDING OR AWARD.--Agencies subject to this chapter
25 shall utilize the uniform rules of procedure, which provide An
26 agency which enters into a contract pursuant to the provisions
27 of ss. 282.303-282.313, chapter 255, chapter 287, or chapters
28 334-349 shall adopt rules specifying procedures for the
29 resolution of protests arising from the contract bidding
30 process. Such rules shall at least provide that:

31

1 (a) The agency shall provide notice of its decision or
2 intended decision concerning a bid solicitation or a contract
3 award as follows:

4 1. For a bid solicitation, notice of a decision or
5 intended decision shall be given by United States mail or by
6 hand delivery.

7 2. For any decision of the Division of Purchasing of
8 the Department of Management Services concerning a request by
9 an agency for approval of an exceptional purchase under part I
10 of chapter 287 and the rules of the Division of Purchasing,
11 notice of a decision or intended decision shall be given by
12 posting such notice in the office of the Division of
13 Purchasing.

14 3. For any other agency decision, notice of a decision
15 or intended decision shall be given either by posting the bid
16 tabulation at the location where the bids were opened or by
17 certified United States mail or other express delivery
18 service, return receipt requested.

19
20 The notice required by this paragraph shall contain the
21 following statement: "Failure to file a protest within the
22 time prescribed in s. 120.57(3), Florida Statutes, shall
23 constitute a waiver of proceedings under chapter 120, Florida
24 Statutes."

25 (b) Any person who is adversely affected by the agency
26 decision or intended decision shall file with the agency a
27 notice of protest in writing within 72 hours after the posting
28 of the bid tabulation or after receipt of the notice of the
29 agency decision or intended decision and shall file a formal
30 written protest within 10 days after filing the notice of
31 protest. With respect to a protest of the specifications

1 contained in an invitation to bid or in a request for
2 proposals, the notice of protest shall be filed in writing
3 within 72 hours after the receipt of notice of the project
4 plans and specifications or intended project plans and
5 specifications in an invitation to bid or request for
6 proposals, and the formal written protest shall be filed
7 within 10 days after the date the notice of protest is filed.
8 Failure to file a notice of protest or failure to file a
9 formal written protest shall constitute a waiver of
10 proceedings under this chapter. The formal written protest
11 shall state with particularity the facts and law upon which
12 the protest is based. Saturdays, Sundays, and legal holidays
13 shall be excluded in the computation of the 72-hour time
14 periods provided by this paragraph.

15 (c) Upon receipt of the formal written protest which
16 has been timely filed, the agency shall stop the bid
17 solicitation process or the contract award process until the
18 subject of the protest is resolved by final agency action,
19 unless the agency head sets forth in writing particular facts
20 and circumstances which require the continuance of the bid
21 solicitation process or the contract award process without
22 delay in order to avoid an immediate and serious danger to the
23 public health, safety, or welfare.

24 (d)1. The agency shall provide an opportunity to
25 resolve the protest by mutual agreement between the parties
26 within 7 days, excluding Saturdays, Sundays, and legal
27 holidays, after receipt of a formal written protest.

28 2. If the subject of a protest is not resolved by
29 mutual agreement within 7 days, excluding Saturdays, Sundays,
30 and legal holidays, after receipt of the formal written
31 protest, and if there is no disputed issue of material fact,

1 an informal proceeding shall be conducted pursuant to
2 subsection (2) and applicable agency rules before a person
3 whose qualifications have been prescribed by rules of the
4 agency.

5 3. If the subject of a protest is not resolved by
6 mutual agreement within 7 days, excluding Saturdays, Sundays,
7 and legal holidays, after receipt of the formal written
8 protest, and if there is a disputed issue of material fact,
9 the agency shall refer the protest to the division for
10 proceedings under subsection (1).

11 (e) Upon receipt of a formal written protest referred
12 pursuant to this subsection, the director of the division
13 shall expedite the hearing and assign an administrative law
14 judge who shall commence a hearing within 30 days after the
15 receipt of the formal written protest by the division and
16 enter a recommended order within 30 days after the hearing or
17 within 30 days after receipt of the hearing transcript by the
18 administrative law judge, whichever is later. Each party shall
19 be allowed 10 days in which to submit written exceptions to
20 the recommended order. A final order shall be entered by the
21 agency within 30 days of the entry of a recommended order. The
22 provisions of this paragraph may be waived upon stipulation by
23 all parties.

24 (f) In a competitive-procurement protest, no
25 submissions made after the bid or proposal opening amending or
26 supplementing the bid or proposal shall be considered. Unless
27 otherwise provided by statute, the burden of proof shall rest
28 with the party protesting the proposed agency action. In a
29 competitive-procurement protest, other than a rejection of all
30 bids, the administrative law judge shall conduct a de novo
31 proceeding to determine whether the agency's proposed action

1 is contrary to the agency's governing statutes, the agency's
2 rules or policies, or the bid or proposal specifications. The
3 standard of proof for such proceedings shall be whether the
4 proposed agency action was clearly erroneous, contrary to
5 competition, arbitrary, or capricious. In any bid-protest
6 proceeding contesting an intended agency action to reject all
7 bids, the standard of review by an administrative law judge
8 shall be whether the agency's intended action is illegal,
9 arbitrary, dishonest, or fraudulent.

10 (4) INFORMAL DISPOSITION.--Unless precluded by law,
11 informal disposition may be made of any proceeding by
12 stipulation, agreed settlement, or consent order.

13 (5) APPLICABILITY.--This section does not apply to
14 agency investigations preliminary to agency action.

15 Section 9. Section 120.573, Florida Statutes, 1996
16 Supplement, is amended to read:

17 120.573 Mediation of disputes.--Each announcement of
18 an agency action that affects substantial interests shall
19 advise whether mediation of the administrative dispute for the
20 type of agency action announced is available and that choosing
21 mediation does not affect the right to an administrative
22 hearing. If the agency and all parties to the administrative
23 action agree to mediation, in writing, within 10 days after
24 the time period stated in the announcement for election of an
25 administrative remedy under ss. 120.569 and 120.57, the time
26 limitations imposed by ss. 120.569 and 120.57 shall be tolled
27 to allow the agency and parties to mediate the administrative
28 dispute. The mediation shall be concluded within 60 days of
29 such agreement unless otherwise agreed by the parties. The
30 mediation agreement shall include provisions for mediator
31 selection, the allocation of costs and fees associated with

1 mediation, and the mediating parties' understanding regarding
2 the confidentiality of discussions and documents introduced
3 during mediation. If mediation results in settlement of the
4 administrative dispute, the agency shall enter a final order
5 incorporating the agreement of the parties. If mediation
6 terminates without settlement of the dispute, the agency shall
7 notify the parties in writing that the administrative hearing
8 processes under ss. 120.569 and 120.57 are resumed ~~remain~~
9 ~~available for disposition of the dispute and the notice shall~~
10 ~~state with particularity the deadlines for challenging the~~
11 ~~agency action and electing remedies under ss. 120.569 and~~
12 ~~120.57.~~

13 Section 10. Paragraph (c) of subsection (1) of section
14 120.574, Florida Statutes, 1996 Supplement, is amended to
15 read:

16 120.574 Summary hearing.--

17 (1)

18 (c) Intervenors in the proceeding shall be governed by
19 the decision of the original parties ~~administrative law judge~~
20 regarding whether the case will proceed in accordance with the
21 summary hearing process and shall not have standing to
22 challenge that decision.

23 Section 11. Paragraph (a) of subsection (4) of section
24 120.595, Florida Statutes, 1996 Supplement, is amended to
25 read:

26 120.595 Attorney's fees.--

27 (4) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION
28 120.56(4).--

29 (a) Upon entry of a final order that all or part of an
30 agency statement violates s. 120.54(1)(a), the administrative
31 law judge shall award reasonable costs and reasonable

1 attorney's fees to the petitioner, unless the agency
2 demonstrates that the statement is required by the Federal
3 Government to implement or retain a delegated or approved
4 program or to meet a condition to receipt of federal funds.

5 Section 12. Subsections (3) and (6) of section 120.60,
6 Florida Statutes, 1996 Supplement, are amended to read:

7 120.60 Licensing.--

8 (3) Each applicant shall be given written notice
9 either personally or by mail that the agency intends to grant
10 or deny, or has granted or denied, the application for
11 license. The notice must state with particularity the grounds
12 or basis for the issuance or denial of the license, except
13 when issuance is a ministerial act. Unless waived, a copy of
14 the notice shall be delivered or mailed to each party's
15 attorney of record and to each person who has requested notice
16 of agency action. Each notice shall inform the recipient of
17 the basis for the agency decision, shall inform the recipient
18 of any administrative hearing pursuant to ss. 120.569 and
19 120.57 or judicial review pursuant to s. 120.68 which may be
20 available, shall indicate the procedure which must be
21 followed, and shall state the applicable time limits. The
22 issuing agency shall certify the date the notice was mailed or
23 delivered, and the notice and the certification shall be filed
24 with the agency clerk.

25 (6) If the agency finds that immediate serious danger
26 to the public health, safety, or welfare requires emergency
27 suspension, restriction, or limitation of a license, the
28 agency may take such action by any procedure that is fair
29 under the circumstances if:

30
31

1 (a) The procedure provides at least the same
2 procedural protection as is given by other statutes, the State
3 Constitution, or the United States Constitution;

4 (b) The agency takes only that action necessary to
5 protect the public interest under the emergency procedure; and

6 (c) The agency states in writing at the time of, or
7 prior to, its action the specific facts and reasons for
8 finding an immediate danger to the public health, safety, or
9 welfare and its reasons for concluding that the procedure used
10 is fair under the circumstances. The agency's findings of
11 immediate danger, necessity, and procedural fairness are
12 judicially reviewable. ~~it shall show compliance in its order~~
13 ~~with the requirements imposed by s. 120.54(4) on agencies~~
14 ~~making emergency rules.~~ Summary suspension, restriction, or
15 limitation may be ordered, but a suspension or revocation
16 proceeding pursuant to ss. 120.569 and 120.57 shall also be
17 promptly instituted and acted upon.

18 Section 13. Subsection (1) of section 120.65, Florida
19 Statutes, 1996 Supplement, is amended to read:

20 120.65 Administrative law judges.--

21 (1) The Division of Administrative Hearings within the
22 Department of Management Services shall be headed by a
23 director who shall be appointed by the Administration
24 Commission and confirmed by the Senate. The director, who
25 shall also serve as the chief administrative law judge, and
26 any deputy chief administrative law judge must possess the
27 same minimum qualifications as the administrative law judges
28 employed by the division. The division shall be a separate
29 budget entity, and the director shall be its agency head for
30 all purposes. The Department of Management Services shall
31 provide administrative support and service to the division to

1 the extent requested by the director. The division shall not
2 be subject to control, supervision, or direction by the
3 Department of Management Services in any manner, including,
4 but not limited to, personnel, purchasing, transactions
5 involving real or personal property, and budgetary matters.

6 Section 14. Subsections (2) and (3) of section 120.66,
7 Florida Statutes, 1996 Supplement, are amended to read:

8 120.66 Ex parte communications.--

9 (2) A presiding officer, including an agency head or
10 designee, who is involved in the decisional process and who
11 receives an ex parte communication in violation of subsection
12 (1) shall place on the record of the pending matter all
13 written communications received, all written responses to such
14 communications, and a memorandum stating the substance of all
15 oral communications received and all oral responses made, and
16 shall also advise all parties that such matters have been
17 placed on the record. Any party desiring to rebut the ex
18 parte communication shall be allowed to do so, if such party
19 requests the opportunity for rebuttal within 10 days after
20 notice of such communication. The presiding officer may, if
21 necessary to eliminate the effect of an ex parte
22 communication, withdraw from the proceeding, in which case the
23 entity that appointed the presiding officer ~~division~~ shall
24 assign a successor.

25 (3) Any person who makes an ex parte communication
26 prohibited by subsection (1), and any presiding officer,
27 including an agency head or designee, who fails to place in
28 the record any such communication, is in violation of this act
29 and may be assessed a civil penalty not to exceed \$500 or be
30 subjected to other disciplinary action.

31

1 Section 15. Subsection (3) of section 120.68, Florida
2 Statutes, 1996 Supplement, is amended to read:

3 120.68 Judicial review.--

4 (3) The filing of the petition does not itself stay
5 enforcement of the agency decision, but if the agency decision
6 has the effect of suspending or revoking a license,
7 supersedeas shall be granted as a matter of right upon such
8 conditions as are reasonable, unless the court, upon petition
9 of the agency, determines that a supersedeas would constitute
10 a probable danger to the health, safety, or welfare of the
11 state. The agency also may grant a stay upon appropriate
12 terms, but, whether or not the action has the effect of
13 suspending or revoking a license, a petition to the agency for
14 a stay is not a prerequisite to a petition to the court for
15 supersedeas. In any event the court shall specify the
16 conditions, if any, upon which the stay or supersedeas is
17 ~~a notice or petition does not stay enforcement of the~~
18 ~~agency decision. The agency may grant a stay upon appropriate~~
19 ~~terms, but a petition to the agency for a stay is not a~~
20 ~~prerequisite to a petition to the court for supersedeas.~~
21 ~~Subject to the Florida Rules of Appellate Procedure, no stay~~
22 ~~or supersedeas shall be in effect until the party seeking~~
23 ~~relief files a petition for stay and the agency or court~~
24 ~~enters an order granting such relief. The order shall specify~~
25 ~~the conditions, if any, upon which the stay or supersedeas is~~
26 ~~granted. Where the agency decision has the effect of~~
27 ~~suspending or revoking a license, a stay shall be granted as a~~
28 ~~matter of right upon such conditions as are reasonable, unless~~
29 ~~the agency demonstrates that a stay would constitute a~~
30 ~~probable danger to the public health, safety, or welfare.~~

31

1 Section 16. Subsection (1) of section 120.74, Florida
2 Statutes, 1996 Supplement, is amended to read:

3 120.74 Agency review, revision, and report.--

4 (1) Each agency shall review and revise its rules as
5 often as necessary to ensure that its rules are correct and
6 comply with statutory requirements. Additionally, each agency
7 shall perform a formal review of its rules every 2 years. In
8 the ~~annual~~ review, each agency must:

9 (a) Identify and correct deficiencies in its rules;

10 (b) Clarify and simplify its rules;

11 (c) Delete obsolete or unnecessary rules;

12 (d) Delete rules that are redundant of statutes;

13 (e) Seek to improve efficiency, reduce paperwork, or
14 decrease costs to government and the private sector; and

15 (f) Contact agencies that have concurrent or
16 overlapping jurisdiction to determine whether their rules can
17 be coordinated to promote efficiency, reduce paperwork, or
18 decrease costs to government and the private sector.

19 Section 17. Subsections (1) and (2) of section 120.81,
20 Florida Statutes, 1996 Supplement, are amended to read:

21 120.81 Exceptions and special requirements; general
22 areas.--

23 (1) EDUCATIONAL UNITS.--

24 (a) The preparation or modification of curricula by an
25 educational unit is not a rule as defined by this chapter.

26 (b) Notwithstanding s. 120.52(15), any tests, test
27 scoring criteria, or testing procedures relating to student
28 assessment which are developed or administered by the
29 Department of Education pursuant to s. 229.57, s. 232.245, s.
30 232.246, or s. 232.247, or any other statewide educational
31 tests required by law, are not rules.

1 (c) Notwithstanding any other provision of this
2 chapter, educational units shall not be required to include
3 the full text of the rule or rule amendment in notices
4 relating to rules and need not publish these or other notices
5 in the Florida Administrative Weekly, but notice shall be made
6 ~~s. 120.54(3)(a), notice of intent by an educational unit to~~
7 ~~adopt, amend, or repeal a rule or notice by an educational~~
8 ~~unit of a petition for a declaratory statement need not be~~
9 ~~published in the Florida Administrative Weekly or transmitted~~
10 ~~to the committee; however, the notice, for other than an~~
11 ~~emergency rule, shall be made at least 21 days prior to the~~
12 ~~intended action:~~

13 1. By publication in a newspaper of general
14 circulation in the affected area;

15 2. By mail to all persons who have made requests of
16 the educational unit for advance notice of its proceedings and
17 to organizations representing persons affected by the proposed
18 rule; and

19 3. By posting in appropriate places so that those
20 particular classes of persons to whom the intended action is
21 directed may be duly notified.

22 (d) ~~Notwithstanding s. 120.54(3)(a)4.,~~ Educational
23 units, other than units of the State University System and the
24 Florida School for the Deaf and the Blind, shall not be
25 required to make filings with the committee of the documents
26 required to be filed by s. 120.54 or s. 120.55(1)(a)4. ~~that~~
27 ~~subparagraph.~~

28 (e) Notwithstanding s. 120.57(1)(a), hearings which
29 involve student disciplinary suspensions or expulsions may be
30 conducted by educational units.

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1 (f) Sections 120.569 and 120.57 do not apply to any
2 proceeding in which the substantial interests of a student are
3 determined by the State University System or a community
4 college district. The Board of Regents shall establish a
5 committee, at least half of whom shall be appointed by the
6 Council of Student Body Presidents, which shall establish
7 rules and guidelines ensuring fairness and due process in
8 judicial proceedings involving students in the State
9 University System.

10 (g) Notwithstanding ss. 120.569 and 120.57, in a
11 hearing involving a student disciplinary suspension or
12 expulsion conducted by an educational unit, the 14-day notice
13 of hearing requirement may be waived by the agency head or the
14 hearing officer without the consent of parties.

15 (h) For purposes of s. 120.68, a district school board
16 whose decision is reviewed under the provisions of s. 231.36
17 and whose final action is modified by a superior
18 administrative decision shall be a party entitled to judicial
19 review of the final action.

20 (i) Notwithstanding s. 120.525(2), the agenda for a
21 special meeting of a district school board under authority of
22 s. 230.16 shall be prepared upon the calling of the meeting,
23 but not less than 48 hours prior to the meeting.

24 (j) Students are not persons subject to regulation for
25 the purposes of petitioning for a variance or waiver to rules
26 of educational units under s. 120.542.

27 (2) LOCAL UNITS OF GOVERNMENT.--

28 (a) ~~Notwithstanding s. 120.54(3)(a)4.,~~ Local units of
29 government with jurisdiction in only one county or part
30 thereof shall not be required to make filings with the
31

1 committee of the documents required to be filed by s. 120.54
2 ~~that subparagraph.~~
3 (b) Notwithstanding any other provision of this
4 chapter, units of government with jurisdiction in only one
5 county or part thereof shall not publish required notices in
6 the Florida Administrative Weekly, but shall publish these
7 notices in the manner required by their enabling acts for
8 notice of rulemaking or notice of meeting. Notices relating to
9 rules are not required to include the full text of the rule or
10 rule amendment s. 120.54(3)(a), notice of intent by a unit of
11 government with jurisdiction in only one county to adopt,
12 amend, or repeal a rule need not be published in the Florida
13 Administrative Weekly or transmitted to the committee.
14 Section 18. This act shall take effect upon becoming a
15 law.
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