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A bill to be entitled

An act relating to administrative procedures; amending s. 120.54, F.S.; revising language with respect to uniform rules; providing requirements with respect to the application of alleged facts to specific rules or statutes; amending s. 120.569, F.S.; revising language with respect to decisions which affect substantial interest; providing for initial scheduling orders by the administrative law judge; providing for a discovery period; amending s. 120.57, F.S.; revising language with respect to additional procedures applicable to hearings involving disputed issues of material fact; providing that an order relinquishing jurisdiction shall be rendered under certain circumstances; amending s. 120.595, F.S.; redefining the term "improper purpose" and conforming a cross reference; providing for the award of reasonable attorney's fees and costs under certain circumstances; amending s. 120.60, F.S.; revising language with respect to licensing; amending s. 120.68, F.S.; revising language with respect to judicial review; providing additional grounds for certain petitions challenging an agency rule as an invalid exercise of delegated legislative authority; providing an effective date.

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

Section 1. Paragraph (b) of subsection (5) of section 120.54, Florida Statutes, is amended to read:

120.54 Rulemaking.--

(5) UNIFORM RULES.--



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31 (b) The uniform rules of procedure adopted by the
32 commission pursuant to this subsection shall include, but are
33 not ~~be~~ limited to:

34 1. Uniform rules for the scheduling of public meetings,
35 hearings, and workshops.

36 2. Uniform rules for use by each state agency that provide
37 procedures for conducting public meetings, hearings, and
38 workshops, and for taking evidence, testimony, and argument at
39 such public meetings, hearings, and workshops, in person and by
40 means of communications media technology. The rules shall
41 provide that all evidence, testimony, and argument presented
42 shall be afforded equal consideration, regardless of the method
43 of communication. If a public meeting, hearing, or workshop is
44 to be conducted by means of communications media technology, or
45 if attendance may be provided by such means, the notice shall so
46 state. The notice for public meetings, hearings, and workshops
47 utilizing communications media technology shall state how
48 persons interested in attending may do so and shall name
49 locations, if any, where communications media technology
50 facilities will be available. Nothing in this paragraph shall be
51 construed to diminish the right to inspect public records under
52 chapter 119. Limiting points of access to public meetings,
53 hearings, and workshops subject to the provisions of s. 286.011
54 to places not normally open to the public shall be presumed to
55 violate the right of access of the public, and any official
56 action taken under such circumstances is void and of no effect.
57 Other laws relating to public meetings, hearings, and workshops,
58 including penal and remedial provisions, shall apply to public
59 meetings, hearings, and workshops conducted by means of
60 communications media technology, and shall be liberally



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61 construed in their application to such public meetings,
 62 hearings, and workshops. As used in this subparagraph,
 63 "communications media technology" means the electronic
 64 transmission of printed matter, audio, full-motion video,
 65 freeze-frame video, compressed video, and digital video by any
 66 method available.

67 3. Uniform rules of procedure for the filing of notice of
 68 protests and formal written protests.

69 4. Uniform rules of procedure for the filing of petitions
 70 for administrative hearings pursuant to s. 120.569 or s. 120.57.
 71 Such rules shall require the petition to state ~~include~~:

72 a. The identification of the petitioner.

73 b. ~~A statement of~~ When and how the petitioner received
 74 notice of the agency's action or proposed action.

75 c. ~~An explanation of~~ How the petitioner's substantial
 76 interests are or will be affected by the action or proposed
 77 action.

78 d. ~~A statement of~~ All material facts disputed by the
 79 petitioner or a statement that there are no disputed facts.

80 e. ~~A statement of~~ The ultimate facts alleged, including a
 81 statement of the specific facts the petitioner contends warrant
 82 reversal or modification of the agency's proposed action.

83 f. ~~A statement of~~ The specific rules or statutes that the
 84 petitioner contends require reversal or modification of the
 85 agency's proposed action and to explain how the alleged facts
 86 relate to the specific rules or statutes.

87 g. ~~A statement of~~ The relief sought by the petitioner,
 88 stating precisely the action petitioner wishes the agency to
 89 take with respect to the proposed action.



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90 5. Uniform rules of procedure for the filing and prompt
91 disposition of petitions for declaratory statements.

92 6. Provision of a method by which each agency head shall
93 provide a description of the agency's organization and general
94 course of its operations.

95 7. Uniform rules establishing procedures for granting or
96 denying petitions for variances and waivers pursuant to s.
97 120.542.

98 Section 2. Paragraph (o) is added to subsection (2) of
99 section 120.569, Florida Statutes, to read:

100 120.569 Decisions which affect substantial interests.--

101 (2)(o) On the request of any party, the administrative law
102 judge shall enter an initial scheduling order to facilitate the
103 just, speedy, and inexpensive determination of the proceeding.
104 The initial scheduling order shall establish a discovery period,
105 including a deadline by which all discovery shall be completed,
106 and the date by which the parties shall identify expert
107 witnesses and their opinions. The initial scheduling order also
108 may require the parties to meet and file a joint report by a
109 date certain.

110 Section 3. Paragraph (i) of subsection (1) of section
111 120.57, Florida Statutes, is amended to read:

112 120.57 Additional procedures for particular cases.--

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

115 (i) When, in any proceeding conducted pursuant to this
116 subsection, a dispute of material fact no longer exists, any
117 party may move the administrative law judge to relinquish
118 jurisdiction to the agency. An order relinquishing jurisdiction
119 shall be rendered if the administrative law judge determines



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120 ~~from~~ ~~In ruling on such a motion, the administrative law judge~~
 121 ~~may consider~~ the pleadings, depositions, answers to
 122 interrogatories, and admissions on file, together with
 123 supporting and opposing affidavits, if any, that no genuine
 124 issue as to any material fact exists. If the administrative law
 125 judge enters an order relinquishing jurisdiction, the agency may
 126 promptly conduct a proceeding pursuant to subsection (2), if
 127 appropriate, but the parties may not raise any issues of
 128 disputed fact that could have been raised before the
 129 administrative law judge. An order entered by an administrative
 130 law judge relinquishing jurisdiction to the agency based upon a
 131 determination that no genuine dispute of material fact exists,
 132 need not contain findings of fact, conclusions of law, or a
 133 recommended disposition or penalty.

134 Section 4. Paragraphs (c) and (e) of subsection (1) and
 135 subsection (5) of section 120.595, Florida Statutes, are amended
 136 to read:

137 120.595 Attorney's fees.--

138 (1) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION
 139 120.57(1).--

140 (c) In proceedings pursuant to s. 120.57(1), and upon
 141 motion, the administrative law judge shall determine whether any
 142 party participated in the proceeding for an improper purpose as
 143 defined by this subsection ~~and s. 120.569(2)(e)~~. In making such
 144 determination, the administrative law judge shall consider
 145 whether the nonprevailing adverse party has participated in two
 146 or more other such proceedings involving the same prevailing
 147 party and the same project as an adverse party and in which such
 148 two or more proceedings the nonprevailing adverse party did not
 149 establish either the factual or legal merits of its position,



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150 and shall consider whether the factual or legal position
151 asserted in the instant proceeding would have been cognizable in
152 the previous proceedings. In such event, it shall be rebuttably
153 presumed that the nonprevailing adverse party participated in
154 the pending proceeding for an improper purpose.

155 (e) For the purpose of this subsection:

156 1. "Improper purpose" means participation in a proceeding
157 pursuant to s. 120.57(1) primarily to harass or to cause
158 unnecessary delay or for frivolous purpose or to needlessly
159 increase the cost of litigation, licensing, or securing the
160 approval of an activity.

161 2. "Costs" has the same meaning as the costs allowed in
162 civil actions in this state as provided in chapter 57.

163 3. "Nonprevailing adverse party" means a party that has
164 failed to have substantially changed the outcome of the proposed
165 or final agency action which is the subject of a proceeding. In
166 the event that a proceeding results in any substantial
167 modification or condition intended to resolve the matters raised
168 in a party's petition, it shall be determined that the party
169 having raised the issue addressed is not a nonprevailing adverse
170 party. The recommended order shall state whether the change is
171 substantial for purposes of this subsection. In no event shall
172 the term "nonprevailing party" or "prevailing party" be deemed
173 to include any party that has intervened in a previously
174 existing proceeding to support the position of an agency.

175 (5) APPEALS.--When there is an appeal, the court in its
176 discretion may award reasonable attorney's fees and reasonable
177 costs to the prevailing party if the court finds that the appeal
178 was frivolous, meritless, or an abuse of the appellate process,
179 or that the agency action which precipitated the appeal was a



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180 gross abuse of the agency's discretion. Upon review of agency
181 action that precipitates an appeal, if the court finds that the
182 agency improperly rejected or modified findings of fact in a
183 recommended order, the court shall award reasonable attorney's
184 fees and reasonable costs to a prevailing appellant for the
185 administrative proceeding and the appellate proceeding. If the
186 court finds that the agency improperly rejected or modified a
187 conclusion of law or an interpretation of an administrative rule
188 over which it does not have substantive jurisdiction, the court
189 may award reasonable attorney's fees and reasonable costs of the
190 appeal to the prevailing appellant.

191 Section 5. Subsection (1) of section 120.60, Florida
192 Statutes, is amended to read:

193 120.60 Licensing.--

194 (1) Upon receipt of an application for a license, an
195 agency shall examine the application and, within 30 days after
196 such receipt, notify the applicant of any apparent errors or
197 omissions and request any additional information the agency is
198 permitted by law to require. An agency shall not deny a license
199 for failure to correct an error or omission or to supply
200 additional information unless the agency timely notified the
201 applicant within this 30-day period. An application shall be
202 considered complete upon receipt of all requested information
203 and correction of any error or omission for which the applicant
204 was timely notified or when the time for such notification has
205 expired. Every application for a license shall be approved or
206 denied within 90 days after receipt of a completed application
207 unless a shorter period of time for agency action is provided by
208 law. The 90-day time period shall be tolled by the initiation of
209 a proceeding under ss. 120.569 and 120.57. Any ~~An~~ application



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210 for a license that is not ~~must be~~ approved or denied within the
 211 90-day or shorter time period, within 15 days after ~~the~~
 212 conclusion of a public hearing held on the application, or
 213 within 45 days after a recommended order is submitted to the
 214 agency and the parties, whichever action and timeframe is latest
 215 and applicable, is considered approved unless the recommended
 216 order recommends that the agency deny the license. Subject to
 217 the satisfactory completion of an examination if required as a
 218 prerequisite to licensure, any license that is considered
 219 approved shall be issued and may include such reasonable
 220 conditions as are authorized by law ~~later. The agency must~~
 221 ~~approve any application for a license or for an examination~~
 222 ~~required for licensure if the agency has not approved or denied~~
 223 ~~the application within the time periods prescribed by this~~
 224 ~~subsection.~~

225 Section 6. Subsection (9) of section 120.68, Florida
 226 Statutes, is amended to read:

227 120.68 Judicial review.--

228 (9) No petition challenging an agency rule as an invalid
 229 exercise of delegated legislative authority shall be instituted
 230 pursuant to this section, except to review an order entered
 231 pursuant to a proceeding under s. 120.56 or an agency's findings
 232 of immediate danger, necessity, and procedural fairness
 233 prerequisite to the adoption of an emergency rule pursuant to s.
 234 120.54(4), unless the sole issue presented by the petition is
 235 the constitutionality of a rule and there are no disputed issues
 236 of fact.

237 Section 7. This act shall take effect upon becoming a law.