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CHAMBER ACTION

The Committee on State Administration recommends the following:

Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to administrative procedures; amending s. 120.52, F.S.; revising the definition of "invalid exercise of delegated legislative authority"; 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. 120.56, F.S.; providing that hearings on rule challenges shall be de novo in nature; providing for burden and standard of proof; changing the timeframe for publishing proposed rules where agency statements are challenged to moot such challenge; providing that challenges to agency statements may be abated pending rulemaking; providing that a determination that such rule is an invalid exercise of delegated legislative authority shall prohibit the agency from enforcing its statement or certain similar statements; amending s. 120.569, F.S.; revising language with respect to decisions which affect substantial interests; providing for initial scheduling orders by the



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29 administrative law judge; providing for a discovery
30 period; amending s. 120.57, F.S.; revising language with
31 respect to additional procedures applicable to hearings
32 involving disputed issues of material fact; providing that
33 an order relinquishing jurisdiction shall be rendered
34 under certain circumstances; providing circumstances which
35 excuse an agency from ruling on an exception to a
36 recommended order; limiting the authority of agencies to
37 reject or modify conclusions of law and interpretations of
38 administrative rules in recommended orders; amending s.
39 120.595, F.S.; redefining the term "improper purpose" and
40 conforming a cross reference; providing for the award of
41 reasonable attorney's fees and costs under certain
42 circumstances; providing for nonexclusivity; amending s.
43 120.60, F.S.; revising language with respect to licensing;
44 providing that licenses considered approved as a condition
45 of time may still be subject to satisfactory completion of
46 an examination; requiring written notice of intent to rely
47 on a default license; amending s. 120.68, F.S.; revising
48 language with respect to judicial review; providing
49 additional grounds for certain petitions challenging an
50 agency rule as an invalid exercise of delegated
51 legislative authority; amending s. 57.105, F.S.; providing
52 administrative law judges authority to award attorney's
53 fees and damages in certain administrative proceedings;
54 providing for appeal; amending s. 57.111, F.S.; increasing
55 the cap on attorney's fees in civil actions and



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56 administrative proceedings initiated by state agencies;
57 providing an effective date.

58

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

60

61 Section 1. Paragraphs (e), (f), and (g) of subsection (8)
62 of section 120.52, Florida Statutes, are amended to read:

63 120.52 Definitions.--As used in this act:

64 (8) "Invalid exercise of delegated legislative authority"
65 means action which goes beyond the powers, functions, and duties
66 delegated by the Legislature. A proposed or existing rule is an
67 invalid exercise of delegated legislative authority if any one
68 of the following applies:

69 (e) The rule is arbitrary or capricious. A rule is
70 arbitrary if it is not supported by logic or the necessary
71 facts; a rule is capricious if it is adopted without thought or
72 reason or is irrational; or

73 ~~(f) The rule is not supported by competent substantial~~
74 ~~evidence; or~~

75 (f)(g) The rule imposes regulatory costs on the regulated
76 person, county, or city which could be reduced by the adoption
77 of less costly alternatives that substantially accomplish the
78 statutory objectives.

79

80 A grant of rulemaking authority is necessary but not sufficient
81 to allow an agency to adopt a rule; a specific law to be
82 implemented is also required. An agency may adopt only rules
83 that implement or interpret the specific powers and duties



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84 granted by the enabling statute. No agency shall have authority
85 to adopt a rule only because it is reasonably related to the
86 purpose of the enabling legislation and is not arbitrary and
87 capricious or is within the agency's class of powers and duties,
88 nor shall an agency have the authority to implement statutory
89 provisions setting forth general legislative intent or policy.
90 Statutory language granting rulemaking authority or generally
91 describing the powers and functions of an agency shall be
92 construed to extend no further than implementing or interpreting
93 the specific powers and duties conferred by the same statute.

94 Section 2. Paragraph (b) of subsection (5) of section
95 120.54, Florida Statutes, is amended to read:

96 120.54 Rulemaking.--

97 (5) UNIFORM RULES.--

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

101 1. Uniform rules for the scheduling of public meetings,
102 hearings, and workshops.

103 2. Uniform rules for use by each state agency that provide
104 procedures for conducting public meetings, hearings, and
105 workshops, and for taking evidence, testimony, and argument at
106 such public meetings, hearings, and workshops, in person and by
107 means of communications media technology. The rules shall
108 provide that all evidence, testimony, and argument presented
109 shall be afforded equal consideration, regardless of the method
110 of communication. If a public meeting, hearing, or workshop is
111 to be conducted by means of communications media technology, or



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112 if attendance may be provided by such means, the notice shall so
113 state. The notice for public meetings, hearings, and workshops
114 utilizing communications media technology shall state how
115 persons interested in attending may do so and shall name
116 locations, if any, where communications media technology
117 facilities will be available. Nothing in this paragraph shall be
118 construed to diminish the right to inspect public records under
119 chapter 119. Limiting points of access to public meetings,
120 hearings, and workshops subject to the provisions of s. 286.011
121 to places not normally open to the public shall be presumed to
122 violate the right of access of the public, and any official
123 action taken under such circumstances is void and of no effect.
124 Other laws relating to public meetings, hearings, and workshops,
125 including penal and remedial provisions, shall apply to public
126 meetings, hearings, and workshops conducted by means of
127 communications media technology, and shall be liberally
128 construed in their application to such public meetings,
129 hearings, and workshops. As used in this subparagraph,
130 "communications media technology" means the electronic
131 transmission of printed matter, audio, full-motion video,
132 freeze-frame video, compressed video, and digital video by any
133 method available.

134 3. Uniform rules of procedure for the filing of notice of
135 protests and formal written protests.

136 4. Uniform rules of procedure for the filing of petitions
137 for administrative hearings pursuant to s. 120.569 or s. 120.57.
138 Such rules shall require the petition to include:

139 a. The identification of the petitioner.



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140 b. A statement of when and how the petitioner received
141 notice of the agency's action or proposed action.

142 c. An explanation of how the petitioner's substantial
143 interests are or will be affected by the action or proposed
144 action.

145 d. A statement of all material facts disputed by the
146 petitioner or a statement that there are no disputed facts.

147 e. A statement of the ultimate facts alleged, including a
148 statement of the specific facts the petitioner contends warrant
149 reversal or modification of the agency's proposed action.

150 f. A statement of the specific rules or statutes that the
151 petitioner contends require reversal or modification of the
152 agency's proposed action and an explanation of how the alleged
153 facts relate to the specific rules or statutes.

154 g. A statement of the relief sought by the petitioner,
155 stating precisely the action petitioner wishes the agency to
156 take with respect to the proposed action.

157 5. Uniform rules of procedure for the filing and prompt
158 disposition of petitions for declaratory statements.

159 6. Provision of a method by which each agency head shall
160 provide a description of the agency's organization and general
161 course of its operations.

162 7. Uniform rules establishing procedures for granting or
163 denying petitions for variances and waivers pursuant to s.
164 120.542.

165 Section 3. Paragraph (e) of subsection (1), paragraph (a)
166 of subsection (3), and paragraph (e) of subsection (4) of
167 section 120.56, Florida Statutes, are amended to read:



168 120.56 Challenges to rules.--

169 (1) GENERAL PROCEDURES FOR CHALLENGING THE VALIDITY OF A
170 RULE OR A PROPOSED RULE.--

171 (e) Hearings held under this section shall be de novo in
172 nature. The standard of proof shall be the preponderance of the
173 evidence. Hearings shall be conducted in the same manner as
174 provided by ss. 120.569 and 120.57, except that the
175 administrative law judge's order shall be final agency action.
176 The petitioner and the agency whose rule is challenged shall be
177 adverse parties. Other substantially affected persons may join
178 the proceedings as intervenors on appropriate terms which shall
179 not unduly delay the proceedings. Failure to proceed under this
180 section shall not constitute failure to exhaust administrative
181 remedies.

182 (3) CHALLENGING EXISTING RULES; SPECIAL PROVISIONS.--

183 (a) A substantially affected person may seek an
184 administrative determination of the invalidity of an existing
185 rule at any time during the existence of the rule. The
186 petitioner has a burden of proving by a preponderance of the
187 evidence that the existing rule is an invalid exercise of
188 delegated legislative authority as to the objections raised.

189 (4) CHALLENGING AGENCY STATEMENTS DEFINED AS RULES;
190 SPECIAL PROVISIONS.--

191 (e)1. If, prior to a final hearing to determine whether
192 all or part of any agency statement violates s. 120.54(1)(a), an
193 agency publishes, pursuant to s. 120.54(3)(a), proposed rules
194 that address the statement, then, for purposes of this section,
195 a presumption is created that the agency is acting expeditiously



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196 and in good faith to adopt rules that address the statement, and
197 the agency shall be permitted to rely upon the statement or a
198 substantially similar statement as a basis for agency action if
199 the statement meets the requirements of s. 120.57(1)(e).

200 2. If, prior to the final hearing to determine whether all
201 or part of an agency statement violates s. 120.54(1)(a), an
202 agency publishes a notice of rule development, pursuant to s.
203 120.54(2), or certifies that such a notice has been transmitted
204 to the Florida Administrative Weekly for publication, then such
205 publication shall constitute good cause for the granting of a
206 stay of the proceedings and a continuance of the final hearing
207 for 30 days. If the agency publishes proposed rules within this
208 30-day period or any extension of that period granted by an
209 administrative law judge upon showing of good cause, then the
210 administrative law judge shall place the case in abeyance
211 pending the outcome of rulemaking and any proceedings involving
212 challenges to proposed rules pursuant to subsection (2).

213 3. If, following the commencement of the final hearing and
214 prior to entry of a final order that all or part of an agency
215 statement violates s. 120.54(1)(a), ~~if~~ an agency publishes,
216 pursuant to s. 120.54(3)(a), proposed rules that ~~which~~ address
217 the statement and proceeds expeditiously and in good faith to
218 adopt rules that ~~which~~ address the statement, the agency shall
219 be permitted to rely upon the statement or a substantially
220 similar statement as a basis for agency action if the statement
221 meets the requirements of s. 120.57(1)(e).

222 4. If an agency fails to adopt rules that ~~which~~ address
223 the statement within 180 days after publishing proposed rules,



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224 for purposes of this subsection, a presumption is created that
225 the agency is not acting expeditiously and in good faith to
226 adopt rules. If the agency's proposed rules are challenged
227 pursuant to subsection (2), the 180-day period for adoption of
228 rules is tolled until a final order is entered in that
229 proceeding.

230 5. If the proposed rules addressing the challenged
231 statement are determined to be an invalid exercise of delegated
232 legislative authority as defined in s. 120.52(8)(b)-(g), the
233 agency must immediately discontinue reliance on the statement
234 and any substantially similar statement until the rules
235 addressing the subject are properly adopted.

236 Section 4. Paragraph (o) is added to subsection (2) of
237 section 120.569, Florida Statutes, to read:

238 120.569 Decisions which affect substantial interests.--
239 (2)

240 (o) On the request of any party, the administrative law
241 judge shall enter an initial scheduling order to facilitate the
242 just, speedy, and inexpensive determination of the proceeding.
243 The initial scheduling order shall establish a discovery period,
244 including a deadline by which all discovery shall be completed,
245 and the date by which the parties shall identify expert
246 witnesses and their opinions. The initial scheduling order also
247 may require the parties to meet and file a joint report by a
248 date certain.

249 Section 5. Paragraphs (e), (i), and (k) of subsection (1)
250 of section 120.57, Florida Statutes, are amended to read:

251 120.57 Additional procedures for particular cases.--



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

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

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

259 a. Is within the powers, functions, and duties delegated
260 by the Legislature or, if the agency is operating pursuant to
261 authority derived from the State Constitution, is within that
262 authority;

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

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

267 d. Is not arbitrary or capricious. A rule is arbitrary if
268 it is not supported by logic or the necessary facts; a rule is
269 capricious if it is adopted without thought or reason or is
270 irrational;

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

273 ~~f. Is supported by competent and substantial evidence; and~~

274 ~~f.g.~~ Does not impose excessive regulatory costs on the
275 regulated person, county, or city.

276 3. The recommended and final orders in any proceeding
277 shall be governed by the provisions of paragraphs (k) and (l),
278 except that the administrative law judge's determination
279 regarding the unadopted rule shall not be rejected by the agency



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280 unless the agency first determines from a review of the complete
281 record, and states with particularity in the order, that such
282 determination is clearly erroneous or does not comply with
283 essential requirements of law. In any proceeding for review
284 under s. 120.68, if the court finds that the agency's rejection
285 of the determination regarding the unadopted rule does not
286 comport with the provisions of this subparagraph, the agency
287 action shall be set aside and the court shall award to the
288 prevailing party the reasonable costs and a reasonable
289 attorney's fee for the initial proceeding and the proceeding for
290 review.

291 (i) When, in any proceeding conducted pursuant to this
292 subsection, a dispute of material fact no longer exists, any
293 party may move the administrative law judge to relinquish
294 jurisdiction to the agency. An order relinquishing jurisdiction
295 shall be rendered if the administrative law judge determines
296 from ~~In ruling on such a motion, the administrative law judge~~
297 ~~may consider~~ the pleadings, depositions, answers to
298 interrogatories, and admissions on file, together with
299 supporting and opposing affidavits, if any, that no genuine
300 issue as to any material fact exists. If the administrative law
301 judge enters an order relinquishing jurisdiction, the agency may
302 promptly conduct a proceeding pursuant to subsection (2), if
303 appropriate, but the parties may not raise any issues of
304 disputed fact that could have been raised before the
305 administrative law judge. An order entered by an administrative
306 law judge relinquishing jurisdiction to the agency based upon a
307 determination that no genuine dispute of material fact exists,



308 | need not contain findings of fact, conclusions of law, or a
309 | recommended disposition or penalty.

310 | (k) The presiding officer shall complete and submit to the
311 | agency and all parties a recommended order consisting of
312 | findings of fact, conclusions of law, and recommended
313 | disposition or penalty, if applicable, and any other information
314 | required by law to be contained in the final order. All
315 | proceedings conducted pursuant to this subsection shall be de
316 | novo. The agency shall allow each party 15 days in which to
317 | submit written exceptions to the recommended order. An agency
318 | need not rule on an exception that does not clearly identify the
319 | disputed portion of the recommended order by page number or
320 | paragraph, that does not identify the legal basis for the
321 | exception, or that does not include appropriate and specific
322 | citations to the record.

323 | Section 6. Paragraphs (c) and (e) of subsection (1) of
324 | section 120.595, Florida Statutes, are amended, and subsection
325 | (6) is added to said section, to read:

326 | 120.595 Attorney's fees.--

327 | (1) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION
328 | 120.57(1).--

329 | (c) In proceedings pursuant to s. 120.57(1), and upon
330 | motion, the administrative law judge shall determine whether any
331 | party participated in the proceeding for an improper purpose as
332 | defined by this subsection ~~and s. 120.569(2)(e)~~. In making such
333 | determination, the administrative law judge shall consider
334 | whether the nonprevailing adverse party has participated in two
335 | or more other such proceedings involving the same prevailing



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336 party and the same project as an adverse party and in which such
337 two or more proceedings the nonprevailing adverse party did not
338 establish either the factual or legal merits of its position,
339 and shall consider whether the factual or legal position
340 asserted in the instant proceeding would have been cognizable in
341 the previous proceedings. In such event, it shall be rebuttably
342 presumed that the nonprevailing adverse party participated in
343 the pending proceeding for an improper purpose.

344 (e) For the purpose of this subsection:

345 1. "Improper purpose" means participation in a proceeding
346 pursuant to s. 120.57(1) primarily to harass or to cause
347 unnecessary delay or for frivolous purpose or to needlessly
348 increase the cost of litigation, licensing, or securing the
349 approval of an activity.

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

352 3. "Nonprevailing adverse party" means a party that has
353 failed to have substantially changed the outcome of the proposed
354 or final agency action which is the subject of a proceeding. In
355 the event that a proceeding results in any substantial
356 modification or condition intended to resolve the matters raised
357 in a party's petition, it shall be determined that the party
358 having raised the issue addressed is not a nonprevailing adverse
359 party. The recommended order shall state whether the change is
360 substantial for purposes of this subsection. In no event shall
361 the term "nonprevailing party" or "prevailing party" be deemed
362 to include any party that has intervened in a previously
363 existing proceeding to support the position of an agency.



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364 (6) OTHER SECTIONS NOT AFFECTED.--Other provisions,
365 including ss. 57.105 and 57.111, authorize the award of
366 attorney's fees and costs in administrative proceedings. Nothing
367 in this section shall affect the availability of attorney's fees
368 and costs as provided in those sections.

369 Section 7. Subsection (1) of section 120.60, Florida
370 Statutes, is amended to read:

371 120.60 Licensing.--

372 (1) Upon receipt of an application for a license, an
373 agency shall examine the application and, within 30 days after
374 such receipt, notify the applicant of any apparent errors or
375 omissions and request any additional information the agency is
376 permitted by law to require. An agency shall not deny a license
377 for failure to correct an error or omission or to supply
378 additional information unless the agency timely notified the
379 applicant within this 30-day period. An application shall be
380 considered complete upon receipt of all requested information
381 and correction of any error or omission for which the applicant
382 was timely notified or when the time for such notification has
383 expired. Every application for a license shall be approved or
384 denied within 90 days after receipt of a completed application
385 unless a shorter period of time for agency action is provided by
386 law. The 90-day time period shall be tolled by the initiation of
387 a proceeding under ss. 120.569 and 120.57. Any ~~An~~ application
388 for a license that is not ~~must be~~ approved or denied within the
389 90-day or shorter time period, within 15 days after ~~the~~
390 conclusion of a public hearing held on the application, or
391 within 45 days after a recommended order is submitted to the



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392 agency and the parties, whichever action or timeframe is latest
393 and applicable, is considered approved unless the recommended
394 order recommends that the agency deny the license. Subject to
395 the satisfactory completion of an examination if required as a
396 prerequisite to licensure, any license that is considered
397 approved shall be issued and may include such reasonable
398 conditions as are authorized by law. Any applicant for licensure
399 seeking to claim licensure by default under this subsection
400 shall notify the agency clerk of the licensing agency, in
401 writing, of the intent to rely upon the default license
402 provision of this subsection, and shall not take any action
403 based upon the default license until after receipt of such
404 notice by the agency clerk later. The agency must approve any
405 application for a license or for an examination required for
406 licensure if the agency has not approved or denied the
407 application within the time periods prescribed by this
408 subsection.

409 Section 8. Subsection (9) of section 120.68, Florida
410 Statutes, is amended to read:

411 120.68 Judicial review.--

412 (9) No petition challenging an agency rule as an invalid
413 exercise of delegated legislative authority shall be instituted
414 pursuant to this section, except to review an order entered
415 pursuant to a proceeding under s. 120.56 or an agency's findings
416 of immediate danger, necessity, and procedural fairness
417 prerequisite to the adoption of an emergency rule pursuant to s.
418 120.54(4), unless the sole issue presented by the petition is



419 the constitutionality of a rule and there are no disputed issues
420 of fact.

421 Section 9. Subsections (5) and (6) of section 57.105,
422 Florida Statutes, are renumbered as subsections (6) and (7),
423 respectively, and a new subsection (5) is added to said section
424 to read:

425 57.105 Attorney's fee; sanctions for raising unsupported
426 claims or defenses; service of motions; damages for delay of
427 litigation.--

428 (5) In administrative proceedings under chapter 120, an
429 administrative law judge shall award a reasonable attorney's fee
430 and damages to the prevailing party to be paid to the prevailing
431 party in equal amounts by the losing party and the losing
432 party's attorney or qualified representative in the same manner
433 and upon the same basis as provided in subsections (1)-(4). Such
434 award shall be a final order subject to judicial review pursuant
435 to s. 120.68. If the losing party is an agency as defined in s.
436 120.52(1), the award to the prevailing party shall be against
437 and paid by the agency.

438 Section 10. Paragraph (d) of subsection (4) of section
439 57.111, Florida Statutes, is amended to read:

440 57.111 Civil actions and administrative proceedings
441 initiated by state agencies; attorneys' fees and costs.--

442 (4)

443 (d) The court, or the administrative law judge in the case
444 of a proceeding under chapter 120, shall promptly conduct an
445 evidentiary hearing on the application for an award of
446 attorney's fees and shall issue a judgment, or a final order in



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447 the case of an administrative law judge. The final order of an
448 administrative law judge is reviewable in accordance with the
449 provisions of s. 120.68. If the court affirms the award of
450 attorney's fees and costs in whole or in part, it may, in its
451 discretion, award additional attorney's fees and costs for the
452 appeal.

453 1. No award of attorney's fees and costs shall be made in
454 any case in which the state agency was a nominal party.

455 2. No award of attorney's fees and costs for an action
456 initiated by a state agency shall exceed \$50,000 ~~\$15,000~~.

457 Section 11. This act shall take effect upon becoming a
458 law.