

By Senator Bennett

21-580A-05

1 A bill to be entitled
2 An act relating to administrative procedures;
3 amending s. 11.60, F.S.; revising duties of the
4 Administrative Procedures Committee with
5 respect to its review of statutes; amending s.
6 120.54, F.S.; revising times for filing rules
7 for adoption; providing for the form and
8 provisions of bonds; revising applicability of
9 certain uniform rules; amending s. 120.55,
10 F.S.; requiring that certain information be
11 included in forms incorporated by reference in
12 rules; requiring information to be published
13 electronically on an Internet website;
14 providing that such publication does not
15 preclude other publications; providing
16 additional duties of the Department of State
17 with respect to publications; providing
18 requirements for the Internet website; amending
19 s. 120.551, F.S.; postponing the repeal of this
20 section, relating to Internet publication;
21 amending s. 120.56, F.S.; revising provisions
22 relating to withdrawal of challenged rules;
23 amending s. 120.569, F.S.; prescribing
24 circumstances under which the time for filing a
25 petition for hearing must be extended; amending
26 s. 120.57, F.S.; requiring that additional
27 information be included in notices relating to
28 protests of contract solicitations or awards;
29 amending s. 120.74, F.S.; requiring agency
30 reports to be filed with the Administrative
31 Procedures Committee; requiring the Department

1 of State to provide certain assistance to
2 agencies in their transition to publishing on
3 the Florida Administrative Weekly Internet
4 website; providing effective dates.
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6 Be It Enacted by the Legislature of the State of Florida:
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8 Section 1. Subsection (4) of section 11.60, Florida
9 Statutes, is amended to read:

10 11.60 Administrative Procedures Committee; creation;
11 membership; powers; duties.--

12 (4) The committee shall ~~undertake and~~ maintain a
13 ~~systematic and~~ continuous review of statutes that authorize
14 agencies to adopt rules and shall make recommendations to the
15 appropriate standing committees of the Senate and the House of
16 Representatives as to the advisability of considering changes
17 to the delegated legislative authority to adopt rules in
18 specific circumstances. The annual report submitted pursuant
19 to paragraph (2)(f) shall include ~~a schedule for the required~~
20 ~~systematic review of existing statutes, a summary of the~~
21 ~~status of this review, and~~ any recommendations provided to the
22 standing committees during the preceding year.

23 Section 2. Paragraph (e) of subsection (3) and
24 paragraph (b) of subsection (5) of section 120.54, Florida
25 Statutes, are amended to read:

26 120.54 Rulemaking.--

27 (3) ADOPTION PROCEDURES.--

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

29 1. If the adopting agency is required to publish its
30 rules in the Florida Administrative Code, it shall file with
31 the Department of State three certified copies of the rule it

1 | proposes to adopt, a summary of the rule, a summary of any
2 | hearings held on the rule, and a detailed written statement of
3 | the facts and circumstances justifying the rule. Agencies not
4 | required to publish their rules in the Florida Administrative
5 | Code shall file one certified copy of the proposed rule, and
6 | the other material required by this subparagraph, in the
7 | office of the agency head, and such rules shall be open to the
8 | public.

9 | 2. A rule may not be filed for adoption less than 28
10 | days or more than 90 days after the notice required by
11 | paragraph (a), until 21 days after the notice required by
12 | paragraph (d), until 14 days after the final public hearing,
13 | until 21 days after preparation of a statement of estimated
14 | regulatory costs required under s. 120.541, or until the
15 | administrative law judge has rendered a decision under s.
16 | 120.56(2), whichever applies. Filings shall be made no less
17 | than 28 days nor more than 90 days after the notice required
18 | by paragraph (a). When a required notice of change is
19 | published prior to the expiration of the time to file the rule
20 | for adoption, the period during which a rule must be filed for
21 | adoption is extended to 45 days after the date of publication.
22 | If notice of a public hearing is published prior to the
23 | expiration of the time to file the rule for adoption, the
24 | period during which a rule must be filed for adoption is
25 | extended to 45 days after adjournment of the final hearing on
26 | the rule, 21 days after receipt of all material authorized to
27 | be submitted at the hearing, or 21 days after receipt of the
28 | transcript, if one is made, whichever is latest. The term
29 | "public hearing" includes any public meeting held by any
30 | agency at which the rule is considered. The filing of a
31 | petition for an administrative determination under the

1 provisions of s. 120.56(2) shall toll the 90-day period during
2 which a rule must be filed for adoption until 30 days after
3 rendition of the final order or until judicial review of the
4 final order is complete. ~~the administrative law judge has~~
5 ~~filed the final order with the clerk.~~

6 3. At the time a rule is filed, the agency shall
7 certify that the time limitations prescribed by this paragraph
8 have been complied with, that all statutory rulemaking
9 requirements have been met, and that there is no
10 administrative determination pending on the rule. For the
11 purposes of this paragraph, the term "administrative
12 determination" does not include subsequent judicial review.

13 4. At the time a rule is filed, the committee shall
14 certify whether the agency has responded in writing to all
15 material and timely written comments or written inquiries made
16 on behalf of the committee. The department shall reject any
17 rule not filed within the prescribed time limits; that does
18 not satisfy all statutory rulemaking requirements; upon which
19 an agency has not responded in writing to all material and
20 timely written inquiries or written comments; upon which an
21 administrative determination is pending; or which does not
22 include a statement of estimated regulatory costs, if
23 required.

24 5. If a rule has not been adopted within the time
25 limits imposed by this paragraph or has not been adopted in
26 compliance with all statutory rulemaking requirements, the
27 agency proposing the rule shall withdraw the rule and give
28 notice of its action in the next available issue of the
29 Florida Administrative Weekly.

30 6. The proposed rule shall be adopted on being filed
31 with the Department of State and become effective 20 days

1 after being filed, on a later date specified in the rule, or
2 on a date required by statute. Rules not required to be filed
3 with the Department of State shall become effective when
4 adopted by the agency head or on a later date specified by
5 rule or statute. If the committee notifies an agency that an
6 objection to a rule is being considered, the agency may
7 postpone the adoption of the rule to accommodate review of the
8 rule by the committee. When an agency postpones adoption of a
9 rule to accommodate review by the committee, the 90-day period
10 for filing the rule is tolled until the committee notifies the
11 agency that it has completed its review of the rule.

12 (5) UNIFORM RULES.--

13 (b) The uniform rules of procedure adopted by the
14 commission pursuant to this subsection shall include, but are
15 not limited to:

16 1. Uniform rules for the scheduling of public
17 meetings, hearings, and workshops.

18 2. Uniform rules for use by each state agency that
19 provide procedures for conducting public meetings, hearings,
20 and workshops, and for taking evidence, testimony, and
21 argument at such public meetings, hearings, and workshops, in
22 person and by means of communications media technology. The
23 rules shall provide that all evidence, testimony, and argument
24 presented shall be afforded equal consideration, regardless of
25 the method of communication. If a public meeting, hearing, or
26 workshop is to be conducted by means of communications media
27 technology, or if attendance may be provided by such means,
28 the notice shall so state. The notice for public meetings,
29 hearings, and workshops utilizing communications media
30 technology shall state how persons interested in attending may
31 do so and shall name locations, if any, where communications

1 media technology facilities will be available. Nothing in this
2 paragraph shall be construed to diminish the right to inspect
3 public records under chapter 119. Limiting points of access to
4 public meetings, hearings, and workshops subject to the
5 provisions of s. 286.011 to places not normally open to the
6 public shall be presumed to violate the right of access of the
7 public, and any official action taken under such circumstances
8 is void and of no effect. Other laws relating to public
9 meetings, hearings, and workshops, including penal and
10 remedial provisions, shall apply to public meetings, hearings,
11 and workshops conducted by means of communications media
12 technology, and shall be liberally construed in their
13 application to such public meetings, hearings, and workshops.
14 As used in this subparagraph, "communications media
15 technology" means the electronic transmission of printed
16 matter, audio, full-motion video, freeze-frame video,
17 compressed video, and digital video by any method available.

18 3. Uniform rules of procedure for the filing of notice
19 of protests and formal written protests. The Administration
20 Commission may prescribe the form and substantive provisions
21 of a required bond.

22 4. Uniform rules of procedure for the filing of
23 petitions for administrative hearings pursuant to s. 120.569
24 or s. 120.57. For all actions other than agency enforcement
25 and disciplinary actions against a licensee or other person,

26 such rules shall require the petition to include:

- 27 a. The identification of the petitioner.
28 b. A statement of when and how the petitioner received
29 notice of the agency's action or proposed action.
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1 c. An explanation of how the petitioner's substantial
2 interests are or will be affected by the action or proposed
3 action.

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

6 e. A statement of the ultimate facts alleged,
7 including a statement of the specific facts the petitioner
8 contends warrant reversal or modification of the agency's
9 proposed action.

10 f. A statement of the specific rules or statutes that
11 the petitioner contends require reversal or modification of
12 the agency's proposed action, including an explanation of how
13 the alleged facts relate to the specific rules or statutes.

14 g. A statement of the relief sought by the petitioner,
15 stating precisely the action petitioner wishes the agency to
16 take with respect to the proposed action.

17 5. Uniform rules of procedure for the filing and
18 prompt disposition of petitions for declaratory statements.

19 6. Provision of a method by which each agency head
20 shall provide a description of the agency's organization and
21 general course of its operations.

22 7. Uniform rules establishing procedures for granting
23 or denying petitions for variances and waivers pursuant to s.
24 120.542.

25 Section 3. Effective December 31, 2006, section
26 120.55, Florida Statutes, is amended to read:

27 120.55 Publication.--

28 (1) The Department of State shall:

29 (a)1. Through a continuous revision system, compile
30 and publish the "Florida Administrative Code." The Florida
31 Administrative Code shall contain all rules adopted by each

1 agency, citing the specific rulemaking authority pursuant to
2 which each rule was adopted, all history notes as authorized
3 in s. 120.545(9), and complete indexes to all rules contained
4 in the code. Supplementation shall be made as often as
5 practicable, but at least monthly. The department may
6 contract with a publishing firm for the publication, in a
7 timely and useful form, of the Florida Administrative Code;
8 however, the department shall retain responsibility for the
9 code as provided in this section. This publication shall be
10 the official compilation of the administrative rules of this
11 state. The Department of State shall retain the copyright over
12 the Florida Administrative Code.

13 2. Rules general in form but applicable to only one
14 school district, community college district, or county, or a
15 part thereof, or state university rules relating to internal
16 personnel or business and finance shall not be published in
17 the Florida Administrative Code. Exclusion from publication in
18 the Florida Administrative Code shall not affect the validity
19 or effectiveness of such rules.

20 3. At the beginning of the section of the code dealing
21 with an agency that files copies of its rules with the
22 department, the department shall publish the address and
23 telephone number of the executive offices of each agency, the
24 manner by which the agency indexes its rules, a listing of all
25 rules of that agency excluded from publication in the code,
26 and a statement as to where those rules may be inspected.

27 4. Forms shall not be published in the Florida
28 Administrative Code; but any form which an agency uses in its
29 dealings with the public, along with any accompanying
30 instructions, shall be filed with the committee before it is
31 used. Any form or instruction which meets the definition of

1 "rule" provided in s. 120.52 shall be incorporated by
2 reference into the appropriate rule. The reference shall
3 specifically state that the form is being incorporated by
4 reference and shall include the number, title, and effective
5 date of the form and an explanation of how the form may be
6 obtained. Each form created by an agency which is incorporated
7 by reference in a rule notice of which is given under s.
8 120.54(3)(a) after December 31, 2006, must clearly display the
9 number, title, and effective date of the form and the number
10 of the rule in which the form is incorporated.

11 (b) Electronically publish on an Internet website
12 managed by the department a weekly publication entitled the
13 "Florida Administrative Weekly," which shall serve as the
14 official Internet website for such publication and must
15 contain:

16 1. Notice of adoption of, and an index to, all rules
17 filed during the preceding week.

18 2. All notices required by s. 120.54(3)(a), showing
19 the text of all rules proposed for consideration ~~or a~~
20 ~~reference to the location in the Florida Administrative Weekly~~
21 ~~where the text of the proposed rules is published.~~

22 3. All notices of public meetings, hearings, and
23 workshops conducted in accordance with the provisions of s.
24 120.525, including a statement of the manner in which a copy
25 of the agenda may be obtained.

26 4. A notice of each request for authorization to amend
27 or repeal an existing uniform rule or for the adoption of new
28 uniform rules.

29 5. Notice of petitions for declaratory statements or
30 administrative determinations.

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1 6. A summary of each objection to any rule filed by
2 the Administrative Procedures Committee during the preceding
3 week.

4 7. A cumulative list of all rules that have been
5 proposed but not filed for adoption.

6 ~~8.7.~~ Any other material required or authorized by law
7 or deemed useful by the department.

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9 The department may contract with a publishing firm for printed
10 publication of the Florida Administrative Weekly and make
11 copies available on an annual-subscription basis. All costs
12 related to the printed publication of the Florida
13 Administrative Weekly shall be funded solely by annual
14 subscription revenue.

15 (c) Review notices for compliance with format and
16 numbering requirements before publishing them on the Florida
17 Administrative Weekly Internet website.

18 ~~(d)(e)~~ Prescribe by rule the style and form required
19 for rules submitted for filing and establish the form for
20 their certification.

21 ~~(e)(d)~~ Correct grammatical, typographical, and like
22 errors not affecting the construction or meaning of the rules,
23 after having obtained the advice and consent of the
24 appropriate agency, and insert history notes.

25 ~~(e) Make copies of the Florida Administrative Weekly~~
26 ~~available on an annual subscription basis computed to cover a~~
27 ~~pro rata share of 50 percent of the costs related to the~~
28 ~~publication of the Florida Administrative Weekly.~~

29 (f) Charge each agency using the Florida
30 Administrative Weekly a space rate ~~computed~~ to cover a ~~pro~~

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1 ~~rata share of 50 percent of the costs related to the Florida~~
2 ~~Administrative Weekly and the Florida Administrative Code.~~

3 (g) Maintain a permanent record of all notices
4 published in the Florida Administrative Weekly.

5 (2) The Florida Administrative Weekly Internet website
6 must allow users to:

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

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

11 (c) Subscribe to an automated e-mail notification of
12 selected notices; and

13 (d) View agency forms incorporated by reference in
14 proposed rules.

15 (3) Publication of material required by paragraph
16 (1)(b) on the Florida Administrative Weekly Internet website
17 does not preclude publication of such material on an agency's
18 website or by other means.

19 ~~(4)(2)~~ Each agency shall provide copies of its rules
20 upon request, with citations to the grant of rulemaking
21 authority and the specific law implemented for each rule print
22 ~~or distribute copies of its rules, citing the specific~~
23 ~~rulemaking authority pursuant to which each rule was adopted.~~

24 ~~(5)(3)~~ Any publication of a proposed rule promulgated
25 by an agency, whether published in the Florida Administrative
26 Code or elsewhere, shall include, along with the rule, the
27 name of the person or persons originating such rule, the name
28 of the supervisor or person who approved the rule, and the
29 date upon which the rule was approved.

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1 (6) Access to the Florida Administrative Weekly
2 Internet website and its contents, including the e-mail
3 notification service, shall be free for the public.

4 ~~(7)(4)(a)~~ If the Florida Administrative Weekly is made
5 available by the Department of State as a printed publication,
6 the department shall furnish:

7 ~~(a) Copies of Each year the Department of State shall~~
8 ~~furnish~~ the Florida Administrative Weekly, without charge and
9 upon request, as follows:

10 1. One subscription to each federal and state court
11 having jurisdiction over the residents of the state; the
12 Legislative Library; each state university library; the State
13 Library; each depository library designated pursuant to s.
14 257.05; and each standing committee of the Senate and House of
15 Representatives and each state legislator.

16 2. Two subscriptions to each state department.

17 3. Three subscriptions to the library of the Supreme
18 Court of Florida, the library of each state district court of
19 appeal, the division, the library of the Attorney General,
20 each law school library in Florida, the Secretary of the
21 Senate, and the Clerk of the House of Representatives.

22 4. Ten subscriptions to the committee.

23 ~~(b) The Department of State shall furnish~~ One copy of
24 the Florida Administrative Weekly, at no cost, to each clerk
25 of the circuit court and each state department, for posting
26 for public inspection.

27 ~~(8)(5)(a)~~ All fees and moneys collected by the
28 Department of State under this chapter shall be deposited in
29 the Records Management Trust Fund for the purpose of paying
30 for ~~the publication and distribution of the Florida~~
31 ~~Administrative Code and the Florida Administrative Weekly and~~

1 ~~for associated~~ costs incurred by the department in carrying
2 out this chapter.

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

8 ~~(c) It is the intent of the Legislature that the~~
9 ~~Florida Administrative Weekly be supported entirely from funds~~
10 ~~collected for subscriptions to and advertisements in the~~
11 ~~Florida Administrative Weekly.~~

12 Section 4. Subsection (3) of section 120.551, Florida
13 Statutes, is amended to read:

14 120.551 Internet publication.--

15 (3) This section is repealed effective December 31,
16 ~~2006 July 1, 2005, unless reviewed and reenacted by the~~
17 ~~Legislature before that date.~~

18 Section 5. Paragraph (b) of subsection (2) of section
19 120.56, Florida Statutes, is amended to read:

20 120.56 Challenges to rules.--

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

22 (b) The administrative law judge may declare the
23 proposed rule wholly or partly invalid. Unless the decision of
24 the administrative law judge is reversed on appeal, the
25 proposed rule or provision of a proposed rule declared invalid
26 shall ~~be withdrawn by the adopting agency and shall not be~~
27 ~~adopted. No rule shall be filed for adoption until 28 days~~
28 ~~after the notice required by s. 120.54(3)(a), until 21 days~~
29 ~~after the notice required by s. 120.54(3)(d), until 14 days~~
30 ~~after the public hearing, until 21 days after preparation of a~~
31 ~~statement of estimated regulatory costs required pursuant to~~

1 ~~s. 120.541, or until the administrative law judge has rendered~~
2 ~~a decision, whichever applies.~~ However, the agency may proceed
3 with all other steps in the rulemaking process, including the
4 holding of a factfinding hearing. In the event part of a
5 proposed rule is declared invalid, the adopting agency may, in
6 its sole discretion, withdraw the proposed rule in its
7 entirety. The agency whose proposed rule has been declared
8 invalid in whole or part shall give notice of the decision in
9 the first available issue of the Florida Administrative
10 Weekly.

11 Section 6. Paragraph (c) of subsection (2) of section
12 120.569, Florida Statutes, is amended to read:

13 120.569 Decisions which affect substantial
14 interests.--

15 (2)

16 (c) Unless otherwise provided by law, a petition or
17 request for hearing shall include those items required by the
18 uniform rules adopted pursuant to s. 120.54(5)(b)4. Upon the
19 receipt of a petition or request for hearing, the agency shall
20 carefully review the petition to determine if it contains all
21 of the required information. A petition shall be dismissed if
22 it is not in substantial compliance with these requirements or
23 it has been untimely filed. Dismissal of a petition shall, at
24 least once, be without prejudice to petitioner's filing a
25 timely amended petition curing the defect, unless it
26 conclusively appears from the face of the petition that the
27 defect cannot be cured. The agency shall promptly give
28 written notice to all parties of the action taken on the
29 petition, shall state with particularity its reasons if the
30 petition is not granted, and shall state the deadline for
31 filing an amended petition if applicable. The time for filing

1 a petition shall be extended if the petitioner has been misled
2 or lulled into inaction, has in some extraordinary way been
3 prevented from asserting his or her rights, or has timely
4 asserted his or her rights mistakenly in the wrong forum.

5 Section 7. Paragraph (a) of subsection (3) of section
6 120.57, Florida Statutes, is amended to read:

7 120.57 Additional procedures for particular cases.--

8 (3) ADDITIONAL PROCEDURES APPLICABLE TO PROTESTS TO
9 CONTRACT SOLICITATION OR AWARD.--Agencies subject to this
10 chapter shall use the uniform rules of procedure, which
11 provide procedures for the resolution of protests arising from
12 the contract solicitation or award process. Such rules shall
13 at least provide that:

14 (a) The agency shall provide notice of a decision or
15 intended decision concerning a solicitation, contract award,
16 or exceptional purchase by electronic posting. This notice
17 shall contain the following statement: "Failure to file a
18 protest within the time prescribed in section 120.57(3),
19 Florida Statutes, or failure to post the bond or other
20 security required by law within the time allowed for filing a
21 bond shall constitute a waiver of proceedings under chapter
22 120, Florida Statutes."

23 Section 8. Subsection (2) of section 120.74, Florida
24 Statutes, is amended to read:

25 120.74 Agency review, revision, and report.--

26 (2) Beginning October 1, 1997, and by October 1 of
27 every other year thereafter, the head of each agency shall
28 file a report with the President of the Senate, ~~and~~ the
29 Speaker of the House of Representatives, and the committee,
30 with a copy to each appropriate standing committee of the
31 Legislature, which certifies that the agency has complied with

