

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

29 | effective dates.

30 |

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

32 |

33 | Section 1. Subsection (4) of section 11.60, Florida  
 34 | Statutes, is amended to read:

35 | 11.60 Administrative Procedures Committee; creation;  
 36 | membership; powers; duties.--

37 | (4) The committee shall ~~undertake and~~ maintain a  
 38 | ~~systematic and~~ continuous review of statutes that authorize  
 39 | agencies to adopt rules and shall make recommendations to the  
 40 | appropriate standing committees of the Senate and the House of  
 41 | Representatives as to the advisability of considering changes to  
 42 | the delegated legislative authority to adopt rules in specific  
 43 | circumstances. The annual report submitted pursuant to paragraph  
 44 | (2)(f) shall include ~~a schedule for the required systematic~~  
 45 | ~~review of existing statutes, a summary of the status of this~~  
 46 | ~~review, and~~ any recommendations provided to the standing  
 47 | committees during the preceding year.

48 | Section 2. Paragraph (e) of subsection (3) and paragraph  
 49 | (b) of subsection (5) of section 120.54, Florida Statutes, are  
 50 | amended to read:

51 | 120.54 Rulemaking.--

52 | (3) ADOPTION PROCEDURES.--

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

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

57 | proposes to adopt, a summary of the rule, a summary of any  
 58 | hearings held on the rule, and a detailed written statement of  
 59 | the facts and circumstances justifying the rule. Agencies not  
 60 | required to publish their rules in the Florida Administrative  
 61 | Code shall file one certified copy of the proposed rule, and the  
 62 | other material required by this subparagraph, in the office of  
 63 | the agency head, and such rules shall be open to the public.

64 |       2. A rule may not be filed for adoption less than 28 days  
 65 | or more than 90 days after the notice required by paragraph (a),  
 66 | until 21 days after the notice required by paragraph (d), until  
 67 | 14 days after the final public hearing, until 21 days after  
 68 | preparation of a statement of estimated regulatory costs  
 69 | required under s. 120.541, or until the administrative law judge  
 70 | has rendered a decision under s. 120.56(2), whichever applies.  
 71 | ~~Filings shall be made no less than 28 days nor more than 90 days~~  
 72 | ~~after the notice required by paragraph (a).~~ When a required  
 73 | notice of change is published prior to the expiration of the  
 74 | time to file the rule for adoption, the period during which a  
 75 | rule must be filed for adoption is extended to 45 days after the  
 76 | date of publication. If notice of a public hearing is published  
 77 | prior to the expiration of the time to file the rule for  
 78 | adoption, the period during which a rule must be filed for  
 79 | adoption is extended to 45 days after adjournment of the final  
 80 | hearing on the rule, 21 days after receipt of all material  
 81 | authorized to be submitted at the hearing, or 21 days after  
 82 | receipt of the transcript, if one is made, whichever is latest.  
 83 | The term "public hearing" includes any public meeting held by  
 84 | any agency at which the rule is considered. The filing of a

85 petition for an administrative determination under the  
 86 provisions of s. 120.56(2) shall toll the 90-day period during  
 87 which a rule must be filed for adoption until 30 days after  
 88 rendition of the final order or until judicial review of the  
 89 final order is complete ~~the administrative law judge has filed~~  
 90 ~~the final order with the clerk.~~

91 3. At the time a rule is filed, the agency shall certify  
 92 that the time limitations prescribed by this paragraph have been  
 93 complied with, that all statutory rulemaking requirements have  
 94 been met, and that there is no administrative determination  
 95 pending on the rule. For the purposes of this paragraph, the  
 96 term "administrative determination" does not include subsequent  
 97 judicial review.

98 4. At the time a rule is filed, the committee shall  
 99 certify whether the agency has responded in writing to all  
 100 material and timely written comments or written inquiries made  
 101 on behalf of the committee. The department shall reject any rule  
 102 not filed within the prescribed time limits; that does not  
 103 satisfy all statutory rulemaking requirements; upon which an  
 104 agency has not responded in writing to all material and timely  
 105 written inquiries or written comments; upon which an  
 106 administrative determination is pending; or which does not  
 107 include a statement of estimated regulatory costs, if required.

108 5. If a rule has not been adopted within the time limits  
 109 imposed by this paragraph or has not been adopted in compliance  
 110 with all statutory rulemaking requirements, the agency proposing  
 111 the rule shall withdraw the rule and give notice of its action  
 112 in the next available issue of the Florida Administrative

113 Weekly.

114         6. The proposed rule shall be adopted on being filed with  
 115 the Department of State and become effective 20 days after being  
 116 filed, on a later date specified in the rule, or on a date  
 117 required by statute. Rules not required to be filed with the  
 118 Department of State shall become effective when adopted by the  
 119 agency head or on a later date specified by rule or statute. If  
 120 the committee notifies an agency that an objection to a rule is  
 121 being considered, the agency may postpone the adoption of the  
 122 rule to accommodate review of the rule by the committee. When an  
 123 agency postpones adoption of a rule to accommodate review by the  
 124 committee, the 90-day period for filing the rule is tolled until  
 125 the committee notifies the agency that it has completed its  
 126 review of the rule.

127         (5) UNIFORM RULES.--

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

131             1. Uniform rules for the scheduling of public meetings,  
 132 hearings, and workshops.

133             2. Uniform rules for use by each state agency that provide  
 134 procedures for conducting public meetings, hearings, and  
 135 workshops, and for taking evidence, testimony, and argument at  
 136 such public meetings, hearings, and workshops, in person and by  
 137 means of communications media technology. The rules shall  
 138 provide that all evidence, testimony, and argument presented  
 139 shall be afforded equal consideration, regardless of the method  
 140 of communication. If a public meeting, hearing, or workshop is

141 to be conducted by means of communications media technology, or  
 142 if attendance may be provided by such means, the notice shall so  
 143 state. The notice for public meetings, hearings, and workshops  
 144 utilizing communications media technology shall state how  
 145 persons interested in attending may do so and shall name  
 146 locations, if any, where communications media technology  
 147 facilities will be available. Nothing in this paragraph shall be  
 148 construed to diminish the right to inspect public records under  
 149 chapter 119. Limiting points of access to public meetings,  
 150 hearings, and workshops subject to the provisions of s. 286.011  
 151 to places not normally open to the public shall be presumed to  
 152 violate the right of access of the public, and any official  
 153 action taken under such circumstances is void and of no effect.  
 154 Other laws relating to public meetings, hearings, and workshops,  
 155 including penal and remedial provisions, shall apply to public  
 156 meetings, hearings, and workshops conducted by means of  
 157 communications media technology, and shall be liberally  
 158 construed in their application to such public meetings,  
 159 hearings, and workshops. As used in this subparagraph,  
 160 "communications media technology" means the electronic  
 161 transmission of printed matter, audio, full-motion video,  
 162 freeze-frame video, compressed video, and digital video by any  
 163 method available.

164 3. Uniform rules of procedure for the filing of notice of  
 165 protests and formal written protests. The Administration  
 166 Commission may prescribe the form and substantive provisions of  
 167 a required bond.

168 4. Uniform rules of procedure for the filing of petitions

169 for administrative hearings pursuant to s. 120.569 or s. 120.57.

170 For all actions other than agency enforcement and disciplinary  
171 actions against a licensee or other person, such rules shall  
172 require the petition to include:

173 a. The identification of the petitioner.

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

176 c. An explanation of how the petitioner's substantial  
177 interests are or will be affected by the action or proposed  
178 action.

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

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

184 f. A statement of the specific rules or statutes that the  
185 petitioner contends require reversal or modification of the  
186 agency's proposed action, including an explanation of how the  
187 alleged facts relate to the specific rules or statutes.

188 g. A statement of the relief sought by the petitioner,  
189 stating precisely the action petitioner wishes the agency to  
190 take with respect to the proposed action.

191 5. Uniform rules of procedure for the filing and prompt  
192 disposition of petitions for declaratory statements.

193 6. Provision of a method by which each agency head shall  
194 provide a description of the agency's organization and general  
195 course of its operations.

196 7. Uniform rules establishing procedures for granting or

197 denying petitions for variances and waivers pursuant to s.  
 198 120.542.

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

201 120.55 Publication.--

202 (1) The Department of State shall:

203 (a)1. Through a continuous revision system, compile and  
 204 publish the "Florida Administrative Code." The Florida  
 205 Administrative Code shall contain all rules adopted by each  
 206 agency, citing the specific rulemaking authority pursuant to  
 207 which each rule was adopted, all history notes as authorized in  
 208 s. 120.545(9), and complete indexes to all rules contained in  
 209 the code. Supplementation shall be made as often as practicable,  
 210 but at least monthly. The department may contract with a  
 211 publishing firm for the publication, in a timely and useful  
 212 form, of the Florida Administrative Code; however, the  
 213 department shall retain responsibility for the code as provided  
 214 in this section. This publication shall be the official  
 215 compilation of the administrative rules of this state. The  
 216 Department of State shall retain the copyright over the Florida  
 217 Administrative Code.

218 2. Rules general in form but applicable to only one school  
 219 district, community college district, or county, or a part  
 220 thereof, or state university rules relating to internal  
 221 personnel or business and finance shall not be published in the  
 222 Florida Administrative Code. Exclusion from publication in the  
 223 Florida Administrative Code shall not affect the validity or  
 224 effectiveness of such rules.



225           3. At the beginning of the section of the code dealing  
 226 with an agency that files copies of its rules with the  
 227 department, the department shall publish the address and  
 228 telephone number of the executive offices of each agency, the  
 229 manner by which the agency indexes its rules, a listing of all  
 230 rules of that agency excluded from publication in the code, and  
 231 a statement as to where those rules may be inspected.

232           4. Forms shall not be published in the Florida  
 233 Administrative Code; but any form which an agency uses in its  
 234 dealings with the public, along with any accompanying  
 235 instructions, shall be filed with the committee before it is  
 236 used. Any form or instruction which meets the definition of  
 237 "rule" provided in s. 120.52 shall be incorporated by reference  
 238 into the appropriate rule. The reference shall specifically  
 239 state that the form is being incorporated by reference and shall  
 240 include the number, title, and effective date of the form and an  
 241 explanation of how the form may be obtained. Each form created  
 242 by an agency which is incorporated by reference in a rule notice  
 243 of which is given under s. 120.54(3)(a) after December 31, 2006,  
 244 must clearly display the number, title, and effective date of  
 245 the form and the number of the rule in which the form is  
 246 incorporated.

247           (b) Electronically publish on an Internet website managed  
 248 by the department a weekly publication entitled the "Florida  
 249 Administrative Weekly," which shall serve as the official  
 250 Internet website for such publication and must contain:

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

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

257           3. All notices of public meetings, hearings, and workshops  
 258 conducted in accordance with the provisions of s. 120.525,  
 259 including a statement of the manner in which a copy of the  
 260 agenda may be obtained.

261           4. A notice of each request for authorization to amend or  
 262 repeal an existing uniform rule or for the adoption of new  
 263 uniform rules.

264           5. Notice of petitions for declaratory statements or  
 265 administrative determinations.

266           6. A summary of each objection to any rule filed by the  
 267 Administrative Procedures Committee during the preceding week.

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

270           ~~8.7.~~ Any other material required or authorized by law or  
 271 deemed useful by the department.

272  
 273 The department shall publish a printed version of the Florida  
 274 Administrative Weekly and make copies available on an annual  
 275 subscription basis. The department may contract with a  
 276 publishing firm for printed publication of the Florida  
 277 Administrative Weekly.

278           (c) Review notices for compliance with format and  
 279 numbering requirements before publishing them on the Florida  
 280 Administrative Weekly Internet website.

281        (d)~~(e)~~ Prescribe by rule the style and form required for  
 282 rules submitted for filing and establish the form for their  
 283 certification.

284        (e)~~(d)~~ Correct grammatical, typographical, and like errors  
 285 not affecting the construction or meaning of the rules, after  
 286 having obtained the advice and consent of the appropriate  
 287 agency, and insert history notes.

288        ~~(e) Make copies of the Florida Administrative Weekly~~  
 289 ~~available on an annual subscription basis computed to cover a~~  
 290 ~~pro rata share of 50 percent of the costs related to the~~  
 291 ~~publication of the Florida Administrative Weekly.~~

292        (f) Charge each agency using the Florida Administrative  
 293 Weekly a space rate ~~computed to cover a pro rata share of 50~~  
 294 ~~percent of the costs related to the Florida Administrative~~  
 295 Weekly and the Florida Administrative Code.

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

298        (2) The Florida Administrative Weekly Internet website  
 299 must allow users to:

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

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

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

306        (d) View agency forms incorporated by reference in  
 307 proposed rules.

308        (3) Publication of material required by paragraph (1)(b)

309 on the Florida Administrative Weekly Internet website does not  
 310 preclude publication of such material on an agency's website or  
 311 by other means.

312 (4)(2) Each agency shall provide copies of its rules upon  
 313 request, with citations to the grant of rulemaking authority and  
 314 the specific law implemented for each rule ~~print or distribute~~  
 315 ~~copies of its rules, citing the specific rulemaking authority~~  
 316 ~~pursuant to which each rule was adopted.~~

317 (5)(3) Any publication of a proposed rule promulgated by  
 318 an agency, whether published in the Florida Administrative Code  
 319 or elsewhere, shall include, along with the rule, the name of  
 320 the person or persons originating such rule, the name of the  
 321 supervisor or person who approved the rule, and the date upon  
 322 which the rule was approved.

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

326 (7)(4)(a) Each year the Department of State shall furnish  
 327 the Florida Administrative Weekly, without charge and upon  
 328 request, as follows:

329 1. One subscription to each federal and state court having  
 330 jurisdiction over the residents of the state; the Legislative  
 331 Library; each state university library; the State Library; each  
 332 depository library designated pursuant to s. 257.05; and each  
 333 standing committee of the Senate and House of Representatives  
 334 and each state legislator.

335 2. Two subscriptions to each state department.

336 3. Three subscriptions to the library of the Supreme Court

337 of Florida, the library of each state district court of appeal,  
 338 the division, the library of the Attorney General, each law  
 339 school library in Florida, the Secretary of the Senate, and the  
 340 Clerk of the House of Representatives.

341 4. Ten subscriptions to the committee.

342 (b) The Department of State shall furnish one copy of the  
 343 Florida Administrative Weekly, at no cost, to each clerk of the  
 344 circuit court and each state department, for posting for public  
 345 inspection.

346 ~~(8)(5)~~(a) All fees and moneys collected by the Department  
 347 of State under this chapter shall be deposited in the Records  
 348 Management Trust Fund for the purpose of paying for ~~the~~  
 349 ~~publication and distribution of the Florida Administrative Code~~  
 350 ~~and the Florida Administrative Weekly and for associated costs~~  
 351 incurred by the department in carrying out this chapter.

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

356 ~~(c) It is the intent of the Legislature that the Florida~~  
 357 ~~Administrative Weekly be supported entirely from funds collected~~  
 358 ~~for subscriptions to and advertisements in the Florida~~  
 359 ~~Administrative Weekly.~~

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

362 120.551 Internet publication.--

363 (3) This section is repealed effective December 31, 2006  
 364 ~~July 1, 2005, unless reviewed and reenacted by the Legislature~~

365 ~~before that date.~~

366 Section 5. Paragraph (b) of subsection (2) of section  
367 120.56, Florida Statutes, is amended to read:

368 120.56 Challenges to rules.--

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

370 (b) The administrative law judge may declare the proposed  
371 rule wholly or partly invalid. Unless the decision of the  
372 administrative law judge is reversed on appeal, the proposed  
373 rule or provision of a proposed rule declared invalid shall ~~be~~  
374 ~~withdrawn by the adopting agency and shall not be adopted. No~~  
375 ~~rule shall be filed for adoption until 28 days after the notice~~  
376 ~~required by s. 120.54(3)(a), until 21 days after the notice~~  
377 ~~required by s. 120.54(3)(d), until 14 days after the public~~  
378 ~~hearing, until 21 days after preparation of a statement of~~  
379 ~~estimated regulatory costs required pursuant to s. 120.541, or~~  
380 ~~until the administrative law judge has rendered a decision,~~  
381 ~~whichever applies.~~ However, the agency may proceed with all  
382 other steps in the rulemaking process, including the holding of  
383 a factfinding hearing. In the event part of a proposed rule is  
384 declared invalid, the adopting agency may, in its sole  
385 discretion, withdraw the proposed rule in its entirety. The  
386 agency whose proposed rule has been declared invalid in whole or  
387 part shall give notice of the decision in the first available  
388 issue of the Florida Administrative Weekly.

389 Section 6. Paragraph (c) of subsection (2) of section  
390 120.569, Florida Statutes, is amended to read:

391 120.569 Decisions which affect substantial interests.--

392 (2)

393 (c) Unless otherwise provided by law, a petition or  
 394 request for hearing shall include those items required by the  
 395 uniform rules adopted pursuant to s. 120.54(5)(b)4. Upon the  
 396 receipt of a petition or request for hearing, the agency shall  
 397 carefully review the petition to determine if it contains all of  
 398 the required information. A petition shall be dismissed if it  
 399 is not in substantial compliance with these requirements or it  
 400 has been untimely filed. Dismissal of a petition shall, at  
 401 least once, be without prejudice to petitioner's filing a timely  
 402 amended petition curing the defect, unless it conclusively  
 403 appears from the face of the petition that the defect cannot be  
 404 cured. The agency shall promptly give written notice to all  
 405 parties of the action taken on the petition, shall state with  
 406 particularity its reasons if the petition is not granted, and  
 407 shall state the deadline for filing an amended petition if  
 408 applicable. The time for filing a petition shall be extended if  
 409 the petitioner has been misled or lulled into inaction, has in  
 410 some extraordinary way been prevented from asserting his or her  
 411 rights, or has timely asserted his or her rights mistakenly in  
 412 the wrong forum.

413 Section 7. Paragraph (a) of subsection (3) of section  
 414 120.57, Florida Statutes, is amended to read:

415 120.57 Additional procedures for particular cases.--

416 (3) ADDITIONAL PROCEDURES APPLICABLE TO PROTESTS TO  
 417 CONTRACT SOLICITATION OR AWARD.--Agencies subject to this  
 418 chapter shall use the uniform rules of procedure, which provide  
 419 procedures for the resolution of protests arising from the  
 420 contract solicitation or award process. Such rules shall at

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421 least provide that:

422 (a) The agency shall provide notice of a decision or  
423 intended decision concerning a solicitation, contract award, or  
424 exceptional purchase by electronic posting. This notice shall  
425 contain the following statement: "Failure to file a protest  
426 within the time prescribed in section 120.57(3), Florida  
427 Statutes, or failure to post the bond or other security required  
428 by law within the time allowed for filing a bond shall  
429 constitute a waiver of proceedings under chapter 120, Florida  
430 Statutes."

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

433 120.74 Agency review, revision, and report.--

434 (2) Beginning October 1, 1997, and by October 1 of every  
435 other year thereafter, the head of each agency shall file a  
436 report with the President of the Senate, ~~and~~ the Speaker of the  
437 House of Representatives, and the committee, with a copy to each  
438 appropriate standing committee of the Legislature, which  
439 certifies that the agency has complied with the requirements of  
440 this subsection. The report must specify any changes made to its  
441 rules as a result of the review and, when appropriate, recommend  
442 statutory changes that will promote efficiency, reduce  
443 paperwork, or decrease costs to government and the private  
444 sector.

445 Section 9. The Department of State shall, before December  
446 31, 2006, make available, to all agencies required on the  
447 effective date of this act to publish materials in the Florida  
448 Administrative Weekly, training courses for the purpose of



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449 assisting the agencies with their transition to publishing on  
450 the Florida Administrative Weekly Internet website. The training  
451 courses may be provided in the form of workshops or software  
452 packages that allow self-training by agency personnel.

453 Section 10. Except as otherwise expressly provided in this  
454 act, this act shall take effect July 1, 2005.