

CHAMBER ACTION

1 The Transportation & Economic Development Appropriations
2 Committee recommends the following:

3
4 **Council/Committee Substitute**

5 Remove the entire bill and insert:

6 A bill to be entitled

7 An act relating to administrative procedures; amending s.
8 11.60, F.S.; revising duties of the Administrative
9 Procedures Committee with respect to its review of
10 statutes; amending s. 120.54, F.S.; revising times for
11 filing rules for adoption; providing for the form and
12 provisions of bonds; revising applicability of certain
13 uniform rules; amending s. 120.55, F.S.; requiring that
14 certain information be included in forms incorporated by
15 reference in rules; requiring information to be published
16 electronically on an Internet website; providing that such
17 publication does not preclude other publications;
18 providing additional duties of the Department of State
19 with respect to publications; providing requirements for
20 the Internet website; amending s. 120.551, F.S.;
21 postponing the repeal of this section, relating to
22 Internet publication; amending s. 120.56, F.S.; revising
23 provisions relating to withdrawal of challenged rules;

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24 | amending s. 120.569, F.S.; prescribing circumstances under
 25 | which the time for filing a petition for hearing must be
 26 | extended; amending s. 120.57, F.S.; requiring that
 27 | additional information be included in notices relating to
 28 | protests of contract solicitations or awards; amending s.
 29 | 120.74, F.S.; requiring agency reports to be filed with
 30 | the Administrative Procedures Committee; requiring the
 31 | Department of State to provide certain assistance to
 32 | agencies in their transition to publishing on the Florida
 33 | Administrative Weekly Internet website; amending s.
 34 | 120.80, F.S.; providing for the referral of certain
 35 | matters affecting certain utilities to the Division of
 36 | Administrative Hearings; providing effective dates.

37 |

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

39 |

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

42 | 11.60 Administrative Procedures Committee; creation;
 43 | membership; powers; duties.--

44 | (4) The committee shall ~~undertake and~~ maintain a
 45 | ~~systematic and~~ continuous review of statutes that authorize
 46 | agencies to adopt rules and shall make recommendations to the
 47 | appropriate standing committees of the Senate and the House of
 48 | Representatives as to the advisability of considering changes to
 49 | the delegated legislative authority to adopt rules in specific
 50 | circumstances. The annual report submitted pursuant to paragraph
 51 | (2)(f) shall include a ~~schedule for the required systematic~~

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52 ~~review of existing statutes, a summary of the status of this~~
 53 ~~review, and any recommendations provided to the standing~~
 54 committees during the preceding year.

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

58 120.54 Rulemaking.--

59 (3) ADOPTION PROCEDURES.--

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

61 1. If the adopting agency is required to publish its rules
 62 in the Florida Administrative Code, it shall file with the
 63 Department of State three certified copies of the rule it
 64 proposes to adopt, a summary of the rule, a summary of any
 65 hearings held on the rule, and a detailed written statement of
 66 the facts and circumstances justifying the rule. Agencies not
 67 required to publish their rules in the Florida Administrative
 68 Code shall file one certified copy of the proposed rule, and the
 69 other material required by this subparagraph, in the office of
 70 the agency head, and such rules shall be open to the public.

71 2. A rule may not be filed for adoption less than 28 days
 72 or more than 90 days after the notice required by paragraph (a),
 73 until 21 days after the notice required by paragraph (d), until
 74 14 days after the final public hearing, until 21 days after
 75 preparation of a statement of estimated regulatory costs
 76 required under s. 120.541, or until the administrative law judge
 77 has rendered a decision under s. 120.56(2), whichever applies.

78 ~~Filings shall be made no less than 28 days nor more than 90 days~~
 79 ~~after the notice required by paragraph (a).~~ When a required

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80 notice of change is published prior to the expiration of the
81 time to file the rule for adoption, the period during which a
82 rule must be filed for adoption is extended to 45 days after the
83 date of publication. If notice of a public hearing is published
84 prior to the expiration of the time to file the rule for
85 adoption, the period during which a rule must be filed for
86 adoption is extended to 45 days after adjournment of the final
87 hearing on the rule, 21 days after receipt of all material
88 authorized to be submitted at the hearing, or 21 days after
89 receipt of the transcript, if one is made, whichever is latest.
90 The term "public hearing" includes any public meeting held by
91 any agency at which the rule is considered. The filing of a
92 petition for an administrative determination under the
93 provisions of s. 120.56(2) shall toll the 90-day period during
94 which a rule must be filed for adoption until 30 days after
95 rendition of the final order or until judicial review of the
96 final order is complete ~~the administrative law judge has filed~~
97 ~~the final order with the clerk.~~

98 3. At the time a rule is filed, the agency shall certify
99 that the time limitations prescribed by this paragraph have been
100 complied with, that all statutory rulemaking requirements have
101 been met, and that there is no administrative determination
102 pending on the rule. For the purposes of this paragraph, the
103 term "administrative determination" does not include subsequent
104 judicial review.

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

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108 on behalf of the committee. The department shall reject any rule
 109 not filed within the prescribed time limits; that does not
 110 satisfy all statutory rulemaking requirements; upon which an
 111 agency has not responded in writing to all material and timely
 112 written inquiries or written comments; upon which an
 113 administrative determination is pending; or which does not
 114 include a statement of estimated regulatory costs, if required.

115 5. If a rule has not been adopted within the time limits
 116 imposed by this paragraph or has not been adopted in compliance
 117 with all statutory rulemaking requirements, the agency proposing
 118 the rule shall withdraw the rule and give notice of its action
 119 in the next available issue of the Florida Administrative
 120 Weekly.

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

134 (5) UNIFORM RULES.--

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

138 1. Uniform rules for the scheduling of public meetings,
139 hearings, and workshops.

140 2. Uniform rules for use by each state agency that provide
141 procedures for conducting public meetings, hearings, and
142 workshops, and for taking evidence, testimony, and argument at
143 such public meetings, hearings, and workshops, in person and by
144 means of communications media technology. The rules shall
145 provide that all evidence, testimony, and argument presented
146 shall be afforded equal consideration, regardless of the method
147 of communication. If a public meeting, hearing, or workshop is
148 to be conducted by means of communications media technology, or
149 if attendance may be provided by such means, the notice shall so
150 state. The notice for public meetings, hearings, and workshops
151 utilizing communications media technology shall state how
152 persons interested in attending may do so and shall name
153 locations, if any, where communications media technology
154 facilities will be available. Nothing in this paragraph shall be
155 construed to diminish the right to inspect public records under
156 chapter 119. Limiting points of access to public meetings,
157 hearings, and workshops subject to the provisions of s. 286.011
158 to places not normally open to the public shall be presumed to
159 violate the right of access of the public, and any official
160 action taken under such circumstances is void and of no effect.
161 Other laws relating to public meetings, hearings, and workshops,
162 including penal and remedial provisions, shall apply to public

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163 meetings, hearings, and workshops conducted by means of
164 communications media technology, and shall be liberally
165 construed in their application to such public meetings,
166 hearings, and workshops. As used in this subparagraph,
167 "communications media technology" means the electronic
168 transmission of printed matter, audio, full-motion video,
169 freeze-frame video, compressed video, and digital video by any
170 method available.

171 3. Uniform rules of procedure for the filing of notice of
172 protests and formal written protests. The Administration
173 Commission may prescribe the form and substantive provisions of
174 a required bond.

175 4. Uniform rules of procedure for the filing of petitions
176 for administrative hearings pursuant to s. 120.569 or s. 120.57.
177 For all actions other than agency enforcement and disciplinary
178 actions against a licensee or other person, such rules shall
179 require the petition to include:

180 a. The identification of the petitioner.

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

183 c. An explanation of how the petitioner's substantial
184 interests are or will be affected by the action or proposed
185 action.

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

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

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191 f. A statement of the specific rules or statutes that the
192 petitioner contends require reversal or modification of the
193 agency's proposed action, including an explanation of how the
194 alleged facts relate to the specific rules or statutes.

195 g. A statement of the relief sought by the petitioner,
196 stating precisely the action petitioner wishes the agency to
197 take with respect to the proposed action.

198 5. Uniform rules of procedure for the filing and prompt
199 disposition of petitions for declaratory statements.

200 6. Provision of a method by which each agency head shall
201 provide a description of the agency's organization and general
202 course of its operations.

203 7. Uniform rules establishing procedures for granting or
204 denying petitions for variances and waivers pursuant to s.
205 120.542.

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

208 120.55 Publication.--

209 (1) The Department of State shall:

210 (a)1. Through a continuous revision system, compile and
211 publish the "Florida Administrative Code." The Florida
212 Administrative Code shall contain all rules adopted by each
213 agency, citing the specific rulemaking authority pursuant to
214 which each rule was adopted, all history notes as authorized in
215 s. 120.545(9), and complete indexes to all rules contained in
216 the code. Supplementation shall be made as often as practicable,
217 but at least monthly. The department may contract with a
218 publishing firm for the publication, in a timely and useful

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219 form, of the Florida Administrative Code; however, the
 220 department shall retain responsibility for the code as provided
 221 in this section. This publication shall be the official
 222 compilation of the administrative rules of this state. The
 223 Department of State shall retain the copyright over the Florida
 224 Administrative Code.

225 2. Rules general in form but applicable to only one school
 226 district, community college district, or county, or a part
 227 thereof, or state university rules relating to internal
 228 personnel or business and finance shall not be published in the
 229 Florida Administrative Code. Exclusion from publication in the
 230 Florida Administrative Code shall not affect the validity or
 231 effectiveness of such rules.

232 3. At the beginning of the section of the code dealing
 233 with an agency that files copies of its rules with the
 234 department, the department shall publish the address and
 235 telephone number of the executive offices of each agency, the
 236 manner by which the agency indexes its rules, a listing of all
 237 rules of that agency excluded from publication in the code, and
 238 a statement as to where those rules may be inspected.

239 4. Forms shall not be published in the Florida
 240 Administrative Code; but any form which an agency uses in its
 241 dealings with the public, along with any accompanying
 242 instructions, shall be filed with the committee before it is
 243 used. Any form or instruction which meets the definition of
 244 "rule" provided in s. 120.52 shall be incorporated by reference
 245 into the appropriate rule. The reference shall specifically
 246 state that the form is being incorporated by reference and shall

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247 include the number, title, and effective date of the form and an
248 explanation of how the form may be obtained. Each form created
249 by an agency which is incorporated by reference in a rule notice
250 of which is given under s. 120.54(3)(a) after December 31, 2006,
251 must clearly display the number, title, and effective date of
252 the form and the number of the rule in which the form is
253 incorporated.

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

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

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

264 3. All notices of public meetings, hearings, and workshops
265 conducted in accordance with the provisions of s. 120.525,
266 including a statement of the manner in which a copy of the
267 agenda may be obtained.

268 4. A notice of each request for authorization to amend or
269 repeal an existing uniform rule or for the adoption of new
270 uniform rules.

271 5. Notice of petitions for declaratory statements or
272 administrative determinations.

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

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

277 ~~8.7.~~ Any other material required or authorized by law or
278 deemed useful by the department.

279
280 The department shall publish a printed version of the Florida
281 Administrative Weekly and make copies available on an annual
282 subscription basis. The department may contract with a
283 publishing firm for printed publication of the Florida
284 Administrative Weekly.

285 (c) Review notices for compliance with format and
286 numbering requirements before publishing them on the Florida
287 Administrative Weekly Internet website.

288 ~~(d)(e)~~ Prescribe by rule the style and form required for
289 rules submitted for filing and establish the form for their
290 certification.

291 ~~(e)(d)~~ Correct grammatical, typographical, and like errors
292 not affecting the construction or meaning of the rules, after
293 having obtained the advice and consent of the appropriate
294 agency, and insert history notes.

295 ~~(e) Make copies of the Florida Administrative Weekly~~
296 ~~available on an annual subscription basis computed to cover a~~
297 ~~pro rata share of 50 percent of the costs related to the~~
298 ~~publication of the Florida Administrative Weekly.~~

299 (f) Charge each agency using the Florida Administrative
300 Weekly a space rate ~~computed~~ to cover a ~~pro rata share of 50~~
301 ~~percent~~ of the costs related to the Florida Administrative
302 Weekly and the Florida Administrative Code.

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

305 (2) The Florida Administrative Weekly Internet website
 306 must allow users to:

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

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

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

313 (d) View agency forms incorporated by reference in
 314 proposed rules.

315 (3) Publication of material required by paragraph (1)(b)
 316 on the Florida Administrative Weekly Internet website does not
 317 preclude publication of such material on an agency's website or
 318 by other means.

319 (4)(2) Each agency shall provide copies of its rules upon
 320 request, with citations to the grant of rulemaking authority and
 321 the specific law implemented for each rule ~~print or distribute~~
 322 ~~copies of its rules, citing the specific rulemaking authority~~
 323 ~~pursuant to which each rule was adopted.~~

324 (5)(3) Any publication of a proposed rule promulgated by
 325 an agency, whether published in the Florida Administrative Code
 326 or elsewhere, shall include, along with the rule, the name of
 327 the person or persons originating such rule, the name of the
 328 supervisor or person who approved the rule, and the date upon
 329 which the rule was approved.

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

333 (7)(4)(a) Each year the Department of State shall furnish
 334 the Florida Administrative Weekly, without charge and upon
 335 request, as follows:

336 1. One subscription to each federal and state court having
 337 jurisdiction over the residents of the state; the Legislative
 338 Library; each state university library; the State Library; each
 339 depository library designated pursuant to s. 257.05; and each
 340 standing committee of the Senate and House of Representatives
 341 and each state legislator.

342 2. Two subscriptions to each state department.

343 3. Three subscriptions to the library of the Supreme Court
 344 of Florida, the library of each state district court of appeal,
 345 the division, the library of the Attorney General, each law
 346 school library in Florida, the Secretary of the Senate, and the
 347 Clerk of the House of Representatives.

348 4. Ten subscriptions to the committee.

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

353 (8)(5)(a) All fees and moneys collected by the Department
 354 of State under this chapter shall be deposited in the Records
 355 Management Trust Fund for the purpose of paying for ~~the~~
 356 ~~publication and distribution of the Florida Administrative Code~~

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357 ~~and the Florida Administrative Weekly and for associated costs~~
 358 ~~incurred by the department in carrying out this chapter.~~

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

363 ~~(c) It is the intent of the Legislature that the Florida~~
 364 ~~Administrative Weekly be supported entirely from funds collected~~
 365 ~~for subscriptions to and advertisements in the Florida~~
 366 ~~Administrative Weekly.~~

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

369 120.551 Internet publication.--

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

373 Section 5. Paragraph (b) of subsection (2) of section
 374 120.56, Florida Statutes, is amended to read:

375 120.56 Challenges to rules.--

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

377 (b) The administrative law judge may declare the proposed
 378 rule wholly or partly invalid. Unless the decision of the
 379 administrative law judge is reversed on appeal, the proposed
 380 rule or provision of a proposed rule declared invalid shall ~~be~~
 381 ~~withdrawn by the adopting agency and shall not be adopted. No~~
 382 ~~rule shall be filed for adoption until 28 days after the notice~~
 383 ~~required by s. 120.54(3)(a), until 21 days after the notice~~
 384 ~~required by s. 120.54(3)(d), until 14 days after the public~~

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385 | ~~hearing, until 21 days after preparation of a statement of~~
 386 | ~~estimated regulatory costs required pursuant to s. 120.541, or~~
 387 | ~~until the administrative law judge has rendered a decision,~~
 388 | ~~whichever applies.~~ However, the agency may proceed with all
 389 | other steps in the rulemaking process, including the holding of
 390 | a factfinding hearing. In the event part of a proposed rule is
 391 | declared invalid, the adopting agency may, in its sole
 392 | discretion, withdraw the proposed rule in its entirety. The
 393 | agency whose proposed rule has been declared invalid in whole or
 394 | part shall give notice of the decision in the first available
 395 | issue of the Florida Administrative Weekly.

396 | Section 6. Paragraph (c) of subsection (2) of section
 397 | 120.569, Florida Statutes, is amended to read:

398 | 120.569 Decisions which affect substantial interests.--

399 | (2)

400 | (c) Unless otherwise provided by law, a petition or
 401 | request for hearing shall include those items required by the
 402 | uniform rules adopted pursuant to s. 120.54(5)(b)4. Upon the
 403 | receipt of a petition or request for hearing, the agency shall
 404 | carefully review the petition to determine if it contains all of
 405 | the required information. A petition shall be dismissed if it
 406 | is not in substantial compliance with these requirements or it
 407 | has been untimely filed. Dismissal of a petition shall, at
 408 | least once, be without prejudice to petitioner's filing a timely
 409 | amended petition curing the defect, unless it conclusively
 410 | appears from the face of the petition that the defect cannot be
 411 | cured. The agency shall promptly give written notice to all
 412 | parties of the action taken on the petition, shall state with

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413 | particularity its reasons if the petition is not granted, and
 414 | shall state the deadline for filing an amended petition if
 415 | applicable. The time for filing a petition shall be extended if
 416 | the petitioner has been misled or lulled into inaction, has in
 417 | some extraordinary way been prevented from asserting his or her
 418 | rights, or has timely asserted his or her rights mistakenly in
 419 | the wrong forum.

420 | Section 7. Paragraph (a) of subsection (3) of section
 421 | 120.57, Florida Statutes, is amended to read:

422 | 120.57 Additional procedures for particular cases.--

423 | (3) ADDITIONAL PROCEDURES APPLICABLE TO PROTESTS TO
 424 | CONTRACT SOLICITATION OR AWARD.--Agencies subject to this
 425 | chapter shall use the uniform rules of procedure, which provide
 426 | procedures for the resolution of protests arising from the
 427 | contract solicitation or award process. Such rules shall at
 428 | least provide that:

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

438 | Section 8. Subsection (2) of section 120.74, Florida
 439 | Statutes, is amended to read:

440 | 120.74 Agency review, revision, and report.--

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

452 Section 9. The Department of State shall, before December
 453 31, 2006, make available, to all agencies required on the
 454 effective date of this act to publish materials in the Florida
 455 Administrative Weekly, training courses for the purpose of
 456 assisting the agencies with their transition to publishing on
 457 the Florida Administrative Weekly Internet website. The training
 458 courses may be provided in the form of workshops or software
 459 packages that allow self-training by agency personnel.

460 Section 10. Paragraph (g) is added to subsection (13) of
 461 section 120.80, Florida Statutes, to read:

462 120.80 Exceptions and special requirements; agencies.--

463 (13) FLORIDA PUBLIC SERVICE COMMISSION.--

464 (g) When the Florida Public Service Commission initiates
 465 any agency action affecting the substantial interest of a
 466 utility regulated pursuant to chapter 367 on any matter
 467 pertaining to s. 120.60(5) and a formal administrative hearing
 468 is requested pursuant to s. 120.57, the commission shall refer

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469 | the matter to the division for the assignment of an
470 | administrative law judge to conduct the hearing and enter a
471 | recommended order.

472 | Section 11. Except as otherwise expressly provided in this
473 | act, this act shall take effect July 1, 2005.