

CHAMBER ACTION

1 The State Administration Council recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to administrative procedures; amending s.
7 11.60, F.S.; revising duties of the Administrative
8 Procedures Committee with respect to its review of
9 statutes; amending s. 57.111, F.S.; redefining the term
10 "small business" to include certain specified individuals
11 whose net worth does not exceed a specified amount;
12 amending s. 120.54, F.S.; requiring an agency to file a
13 notice of change with the Administrative Procedures
14 Committee; revising times for filing rules for adoption;
15 providing for the form and provisions of bonds; revising
16 applicability of certain uniform rules; amending s.
17 120.55, F.S.; requiring that certain information be
18 included in forms incorporated by reference in rules;
19 requiring information to be published electronically on an
20 Internet website; providing that such publication does not
21 preclude other publications; providing additional duties
22 of the Department of State with respect to publications;
23 providing requirements for the Internet website; amending

24 | s. 120.551, F.S.; postponing the repeal of this section,
 25 | relating to Internet publication; amending s. 120.56,
 26 | F.S.; revising provisions relating to withdrawal of
 27 | challenged rules; amending s. 120.569, F.S.; prescribing
 28 | circumstances under which the time for filing a petition
 29 | for hearing must be extended; amending s. 120.57, F.S.;
 30 | requiring a final order to include an explicit ruling on
 31 | each exception to the recommended order; providing when
 32 | certain orders become effective; requiring that additional
 33 | information be included in notices relating to protests of
 34 | contract solicitations or awards; amending s. 120.65,
 35 | F.S.; requiring the Division of Administrative Hearings to
 36 | include certain recommendations in its annual report to
 37 | the Administrative Procedures Committee; amending s.
 38 | 120.74, F.S.; requiring agency reports to be filed with
 39 | the Administrative Procedures Committee; requiring that
 40 | the annual report filed by an agency identify the types of
 41 | cases or disputes in which it is involved which should be
 42 | conducted under the summary hearing process; amending s.
 43 | 120.80, F.S.; requiring that the commission refer certain
 44 | matters affecting the substantial interest of a utility to
 45 | the Division of Administrative Hearings so that an
 46 | administrative judge may be assigned to conduct a hearing
 47 | and enter a recommended order; requiring the Department of
 48 | State to provide certain assistance to agencies in their
 49 | transition to publishing on the Florida Administrative
 50 | Weekly Internet website; providing effective dates.
 51 |

HB 1747 CS

2005
CS

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

53

54 Section 1. Subsection (4) of section 11.60, Florida
55 Statutes, is amended to read:

56 11.60 Administrative Procedures Committee; creation;
57 membership; powers; duties.--

58 (4) The committee shall ~~undertake and~~ maintain a
59 ~~systematic and~~ continuous review of statutes that authorize
60 agencies to adopt rules and shall make recommendations to the
61 appropriate standing committees of the Senate and the House of
62 Representatives as to the advisability of considering changes to
63 the delegated legislative authority to adopt rules in specific
64 circumstances. The annual report submitted pursuant to paragraph
65 (2)(f) shall include ~~a schedule for the required systematic~~
66 ~~review of existing statutes, a summary of the status of this~~
67 ~~review, and~~ any recommendations provided to the standing
68 committees during the preceding year.

69 Section 2. Paragraph (d) of subsection (3) of section
70 57.111, Florida Statutes, is amended to read:

71 57.111 Civil actions and administrative proceedings
72 initiated by state agencies; attorneys' fees and costs.--

73 (3) As used in this section:

74 (d) The term "small business party" means:

75 1.a. A sole proprietor of an unincorporated business,
76 including a professional practice, whose principal office is in
77 this state, who is domiciled in this state, and whose business
78 or professional practice has, at the time the action is
79 initiated by a state agency, not more than 25 full-time

HB 1747 CS

2005
CS

80 employees or a net worth of not more than \$2 million, including
81 both personal and business investments; ~~or~~

82 b. A partnership or corporation, including a professional
83 practice, which has its principal office in this state and has
84 at the time the action is initiated by a state agency not more
85 than 25 full-time employees or a net worth of not more than \$2
86 million; ~~or~~

87 c. An individual whose net worth did not exceed \$2 million
88 at the time the action is initiated by a state agency, including
89 a sole shareholder of a subchapter S corporation, an individual
90 working for a corporation when the individual and the
91 corporation are one and the same entity, an employee of a
92 private or governmental entity who is forced to litigate against
93 agency action, or an individual when an action is brought
94 against that individual's license to operate; or

95 d. Any other person whose net worth did not exceed \$2
96 million at the time the action is initiated by a state agency;
97 or

98 2. Any ~~Either~~ small business party as defined in
99 subparagraph 1., without regard to the number of its employees
100 or its net worth, in any action under s. 72.011 or in any
101 administrative proceeding under that section to contest the
102 legality of any assessment of tax imposed for the sale or use of
103 services as provided in chapter 212, or interest thereon, or
104 penalty therefor.

105 Section 3. Paragraphs (d) and (e) of subsection (3) and
106 paragraph (b) of subsection (5) of section 120.54, Florida
107 Statutes, are amended to read:

108 | 120.54 Rulemaking.--

109 | (3) ADOPTION PROCEDURES.--

110 | (d) Modification or withdrawal of proposed rules.--

111 | 1. After the final public hearing on the proposed rule, or

112 | after the time for requesting a hearing has expired, if the rule

113 | has not been changed from the rule as previously filed with the

114 | committee, or contains only technical changes, the adopting

115 | agency shall file a notice to that effect with the committee at

116 | least 7 days prior to filing the rule for adoption. Any change,

117 | other than a technical change that does not affect the substance

118 | of the rule, must be supported by the record of public hearings

119 | held on the rule, must be in response to written material

120 | received on or before the date of the final public hearing, or

121 | must be in response to a proposed objection by the committee. In

122 | addition, when any change is made in a proposed rule, other than

123 | a technical change, the adopting agency shall provide a copy of

124 | a notice of change by certified mail or actual delivery to any

125 | person who requests it in writing no later than 21 days after

126 | the notice required in paragraph (a). The agency shall file the

127 | notice of change with the committee, along with the reasons for

128 | the ~~such~~ change, and provide the notice of change to persons

129 | requesting it, at least 21 days prior to filing the rule for

130 | adoption. The notice of change shall be published in the Florida

131 | Administrative Weekly at least 21 days prior to filing the rule

132 | for adoption. This subparagraph does not apply to emergency

133 | rules adopted pursuant to subsection (4).

134 | 2. After the notice required by paragraph (a) and prior to

135 | adoption, the agency may withdraw the rule in whole or in part.

136 3. After adoption and before the effective date, a rule
137 may be modified or withdrawn only in response to an objection by
138 the committee or may be modified to extend the effective date by
139 not more than 60 days when the committee has notified the agency
140 that an objection to the rule is being considered.

141 4. The agency shall give notice of its decision to
142 withdraw or modify a rule in the first available issue of the
143 publication in which the original notice of rulemaking was
144 published, shall notify those persons described in subparagraph
145 (a)3. in accordance with the requirements of that subparagraph,
146 and shall notify the Department of State if the rule is required
147 to be filed with the Department of State.

148 5. After a rule has become effective, it may be repealed
149 or amended only through the rulemaking procedures specified in
150 this chapter.

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

152 1. If the adopting agency is required to publish its rules
153 in the Florida Administrative Code, it shall file with the
154 Department of State three certified copies of the rule it
155 proposes to adopt, a summary of the rule, a summary of any
156 hearings held on the rule, and a detailed written statement of
157 the facts and circumstances justifying the rule. Agencies not
158 required to publish their rules in the Florida Administrative
159 Code shall file one certified copy of the proposed rule, and the
160 other material required by this subparagraph, in the office of
161 the agency head, and such rules shall be open to the public.

162 2. A rule may not be filed for adoption less than 28 days
163 or more than 90 days after the notice required by paragraph (a),

HB 1747 CS

2005
CS

164 until 21 days after the notice required by paragraph (d), until
165 14 days after the final public hearing, until 21 days after
166 preparation of a statement of estimated regulatory costs
167 required under s. 120.541, or until the administrative law judge
168 has rendered a decision under s. 120.56(2), whichever applies.
169 ~~Filings shall be made no less than 28 days nor more than 90 days~~
170 ~~after the notice required by paragraph (a).~~ When a required
171 notice of change is published prior to the expiration of the
172 time to file the rule for adoption, the period during which a
173 rule must be filed for adoption is extended to 45 days after the
174 date of publication. If notice of a public hearing is published
175 prior to the expiration of the time to file the rule for
176 adoption, the period during which a rule must be filed for
177 adoption is extended to 45 days after adjournment of the final
178 hearing on the rule, 21 days after receipt of all material
179 authorized to be submitted at the hearing, or 21 days after
180 receipt of the transcript, if one is made, whichever is latest.
181 The term "public hearing" includes any public meeting held by
182 any agency at which the rule is considered. The filing of a
183 petition for an administrative determination under the
184 provisions of s. 120.56(2) shall toll the applicable 90-day
185 period during which a rule must be filed for adoption until 30
186 days after rendition of the final order or until judicial review
187 of the final order is complete ~~the administrative law judge has~~
188 ~~filed the final order with the clerk.~~

189 3. At the time a rule is filed, the agency shall certify
190 that the time limitations prescribed by this paragraph have been
191 complied with, that all statutory rulemaking requirements have

192 | been met, and that there is no administrative determination
 193 | pending on the rule. For the purposes of this paragraph, the
 194 | term "administrative determination" does not include subsequent
 195 | judicial review.

196 | 4. At the time a rule is filed, the committee shall
 197 | certify whether the agency has responded in writing to all
 198 | material and timely written comments or written inquiries made
 199 | on behalf of the committee. The department shall reject any rule
 200 | not filed within the prescribed time limits; that does not
 201 | satisfy all statutory rulemaking requirements; upon which an
 202 | agency has not responded in writing to all material and timely
 203 | written inquiries or written comments; upon which an
 204 | administrative determination is pending; or which does not
 205 | include a statement of estimated regulatory costs, if required.

206 | 5. If a rule has not been adopted within the time limits
 207 | imposed by this paragraph or has not been adopted in compliance
 208 | with all statutory rulemaking requirements, the agency proposing
 209 | the rule shall withdraw the rule and give notice of its action
 210 | in the next available issue of the Florida Administrative
 211 | Weekly.

212 | 6. The proposed rule shall be adopted on being filed with
 213 | the Department of State and become effective 20 days after being
 214 | filed, on a later date specified in the rule, or on a date
 215 | required by statute. Rules not required to be filed with the
 216 | Department of State shall become effective when adopted by the
 217 | agency head or on a later date specified by rule or statute. If
 218 | the committee notifies an agency that an objection to a rule is
 219 | being considered, the agency may postpone the adoption of the

HB 1747 CS

2005
CS

220 rule to accommodate review of the rule by the committee. When
 221 an agency postpones adoption of a rule to accommodate review by
 222 the committee, the 90-day period for filing the rule is tolled
 223 until the committee notifies the agency that it has completed
 224 its review of the rule.

225 (5) UNIFORM RULES.--

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

229 1. Uniform rules for the scheduling of public meetings,
 230 hearings, and workshops.

231 2. Uniform rules for use by each state agency that provide
 232 procedures for conducting public meetings, hearings, and
 233 workshops, and for taking evidence, testimony, and argument at
 234 such public meetings, hearings, and workshops, in person and by
 235 means of communications media technology. The rules shall
 236 provide that all evidence, testimony, and argument presented
 237 shall be afforded equal consideration, regardless of the method
 238 of communication. If a public meeting, hearing, or workshop is
 239 to be conducted by means of communications media technology, or
 240 if attendance may be provided by such means, the notice shall so
 241 state. The notice for public meetings, hearings, and workshops
 242 utilizing communications media technology shall state how
 243 persons interested in attending may do so and shall name
 244 locations, if any, where communications media technology
 245 facilities will be available. Nothing in this paragraph shall be
 246 construed to diminish the right to inspect public records under
 247 chapter 119. Limiting points of access to public meetings,

HB 1747 CS

2005
CS

248 | hearings, and workshops subject to the provisions of s. 286.011
 249 | to places not normally open to the public shall be presumed to
 250 | violate the right of access of the public, and any official
 251 | action taken under such circumstances is void and of no effect.
 252 | Other laws relating to public meetings, hearings, and workshops,
 253 | including penal and remedial provisions, shall apply to public
 254 | meetings, hearings, and workshops conducted by means of
 255 | communications media technology, and shall be liberally
 256 | construed in their application to such public meetings,
 257 | hearings, and workshops. As used in this subparagraph,
 258 | "communications media technology" means the electronic
 259 | transmission of printed matter, audio, full-motion video,
 260 | freeze-frame video, compressed video, and digital video by any
 261 | method available.

262 | 3. Uniform rules of procedure for the filing of notice of
 263 | protests and formal written protests. The Administration
 264 | Commission may prescribe the form and substantive provisions of
 265 | a required bond.

266 | 4. Uniform rules of procedure for the filing of petitions
 267 | for administrative hearings pursuant to s. 120.569 or s. 120.57.
 268 | For all actions other than agency enforcement and disciplinary
 269 | actions against a licensee or other person, such rules shall
 270 | require the petition to include:

- 271 | a. The identification of the petitioner.
- 272 | b. A statement of when and how the petitioner received
- 273 | notice of the agency's action or proposed action.

274 c. An explanation of how the petitioner's substantial
275 interests are or will be affected by the action or proposed
276 action.

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

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

282 f. A statement of the specific rules or statutes that the
283 petitioner contends require reversal or modification of the
284 agency's proposed action, including an explanation of how the
285 alleged facts relate to the specific rules or statutes.

286 g. A statement of the relief sought by the petitioner,
287 stating precisely the action petitioner wishes the agency to
288 take with respect to the proposed action.

289 5. Uniform rules of procedure for the filing and prompt
290 disposition of petitions for declaratory statements. The rules
291 shall also describe the contents of the notices that must be
292 published in the Florida Administrative Weekly under s. 120.565,
293 including any applicable time limit for the filing of petitions
294 to intervene or petitions for administrative hearing by persons
295 whose substantial interests may be affected.

296 6. Provision of a method by which each agency head shall
297 provide a description of the agency's organization and general
298 course of its operations.

299 7. Uniform rules establishing procedures for granting or
300 denying petitions for variances and waivers pursuant to s.
301 120.542.

HB 1747 CS

2005
CS

302 Section 4. Effective December 31, 2006, section 120.55,
303 Florida Statutes, is amended to read:

304 120.55 Publication.--

305 (1) The Department of State shall:

306 (a)1. Through a continuous revision system, compile and
307 publish the "Florida Administrative Code." The Florida
308 Administrative Code shall contain all rules adopted by each
309 agency, citing the specific rulemaking authority pursuant to
310 which each rule was adopted, all history notes as authorized in
311 s. 120.545(9), and complete indexes to all rules contained in
312 the code. Supplementation shall be made as often as practicable,
313 but at least monthly. The department may contract with a
314 publishing firm for the publication, in a timely and useful
315 form, of the Florida Administrative Code; however, the
316 department shall retain responsibility for the code as provided
317 in this section. This publication shall be the official
318 compilation of the administrative rules of this state. The
319 Department of State shall retain the copyright over the Florida
320 Administrative Code.

321 2. Rules general in form but applicable to only one school
322 district, community college district, or county, or a part
323 thereof, or state university rules relating to internal
324 personnel or business and finance shall not be published in the
325 Florida Administrative Code. Exclusion from publication in the
326 Florida Administrative Code shall not affect the validity or
327 effectiveness of such rules.

328 3. At the beginning of the section of the code dealing
329 with an agency that files copies of its rules with the

330 department, the department shall publish the address and
 331 telephone number of the executive offices of each agency, the
 332 manner by which the agency indexes its rules, a listing of all
 333 rules of that agency excluded from publication in the code, and
 334 a statement as to where those rules may be inspected.

335 4. Forms shall not be published in the Florida
 336 Administrative Code; but any form which an agency uses in its
 337 dealings with the public, along with any accompanying
 338 instructions, shall be filed with the committee before it is
 339 used. Any form or instruction which meets the definition of
 340 "rule" provided in s. 120.52 shall be incorporated by reference
 341 into the appropriate rule. The reference shall specifically
 342 state that the form is being incorporated by reference and shall
 343 include the number, title, and effective date of the form and an
 344 explanation of how the form may be obtained. Each form created
 345 by an agency which is incorporated by reference in a rule notice
 346 of which is given under s. 120.54(3)(a) after December 31, 2006,
 347 must clearly display the number, title, and effective date of
 348 the form and the number of the rule in which the form is
 349 incorporated.

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

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

356 2. All notices required by s. 120.54(3)(a), showing the
 357 text of all rules proposed for consideration ~~or a reference to~~

HB 1747 CS

2005
CS

358 ~~the location in the Florida Administrative Weekly where the text~~
359 ~~of the proposed rules is published.~~

360 3. All notices of public meetings, hearings, and workshops
361 conducted in accordance with the provisions of s. 120.525,
362 including a statement of the manner in which a copy of the
363 agenda may be obtained.

364 4. A notice of each request for authorization to amend or
365 repeal an existing uniform rule or for the adoption of new
366 uniform rules.

367 5. Notice of petitions for declaratory statements or
368 administrative determinations.

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

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

373 ~~8.7.~~ Any other material required or authorized by law or
374 deemed useful by the department.

375
376 The department shall publish a printed version of the Florida
377 Administrative Weekly and make copies available on an annual
378 subscription basis. The department may contract with a
379 publishing firm for printed publication of the Florida
380 Administrative Weekly.

381 (c) Review notices for compliance with format and
382 numbering requirements before publishing them on the Florida
383 Administrative Weekly Internet website.

384 (d)~~(e)~~ Prescribe by rule the style and form required for
 385 rules submitted for filing and establish the form for their
 386 certification.

387 (e)~~(d)~~ Correct grammatical, typographical, and like errors
 388 not affecting the construction or meaning of the rules, after
 389 having obtained the advice and consent of the appropriate
 390 agency, and insert history notes.

391 ~~(e) Make copies of the Florida Administrative Weekly
 392 available on an annual subscription basis computed to cover a
 393 pro rata share of 50 percent of the costs related to the
 394 publication of the Florida Administrative Weekly.~~

395 (f) Charge each agency using the Florida Administrative
 396 Weekly a space rate ~~computed~~ to cover a ~~pro rata share of 50~~
 397 ~~percent~~ of the costs related to the Florida Administrative
 398 Weekly and the Florida Administrative Code.

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

401 (2) The Florida Administrative Weekly Internet website
 402 must allow users to:

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

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

407 (c) Subscribe to an automated e-mail notification of
 408 selected notices;

409 (d) View agency forms incorporated by reference in
 410 proposed rules; and

411 (e) Comment on proposed rules.

HB 1747 CS

2005
CS

412 (3) Publication of material required by paragraph (1)(b)
 413 on the Florida Administrative Weekly Internet website does not
 414 preclude publication of such material on an agency's website or
 415 by other means.

416 (4)(2) Each agency shall provide copies of its rules upon
 417 request, with citations to the grant of rulemaking authority and
 418 the specific law implemented for each rule ~~print or distribute~~
 419 ~~copies of its rules, citing the specific rulemaking authority~~
 420 ~~pursuant to which each rule was adopted.~~

421 (5)(3) Any publication of a proposed rule promulgated by
 422 an agency, whether published in the Florida Administrative Code
 423 or elsewhere, shall include, along with the rule, the name of
 424 the person or persons originating such rule, the name of the
 425 supervisor or person who approved the rule, and the date upon
 426 which the rule was approved.

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

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

433 1. One subscription to each federal and state court having
 434 jurisdiction over the residents of the state; the Legislative
 435 Library; each state university library; the State Library; each
 436 depository library designated pursuant to s. 257.05; and each
 437 standing committee of the Senate and House of Representatives
 438 and each state legislator.

439 2. Two subscriptions to each state department.

HB 1747 CS

2005
CS

440 3. Three subscriptions to the library of the Supreme Court
441 of Florida, the library of each state district court of appeal,
442 the division, the library of the Attorney General, each law
443 school library in Florida, the Secretary of the Senate, and the
444 Clerk of the House of Representatives.

445 4. Ten subscriptions to the committee.

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

450 (8)~~(5)~~(a) All fees and moneys collected by the Department
451 of State under this chapter shall be deposited in the Records
452 Management Trust Fund for the purpose of paying for ~~the~~
453 ~~publication and distribution of the Florida Administrative Code~~
454 ~~and the Florida Administrative Weekly and for associated costs~~
455 incurred by the department in carrying out this chapter.

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

460 ~~(c) It is the intent of the Legislature that the Florida~~
461 ~~Administrative Weekly be supported entirely from funds collected~~
462 ~~for subscriptions to and advertisements in the Florida~~
463 ~~Administrative Weekly.~~

464 Section 5. Subsection (3) of section 120.551, Florida
465 Statutes, is amended to read:

466 120.551 Internet publication.--

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

470 Section 6. Paragraph (b) of subsection (2) of section
 471 120.56, Florida Statutes, is amended to read:

472 120.56 Challenges to rules.--

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

474 (b) The administrative law judge may declare the proposed
 475 rule wholly or partly invalid. Unless the decision of the
 476 administrative law judge is reversed on appeal, the proposed
 477 rule or provision of a proposed rule declared invalid shall ~~be~~
 478 ~~withdrawn by the adopting agency and shall not be adopted. No~~
 479 ~~rule shall be filed for adoption until 28 days after the notice~~
 480 ~~required by s. 120.54(3)(a), until 21 days after the notice~~
 481 ~~required by s. 120.54(3)(d), until 14 days after the public~~
 482 ~~hearing, until 21 days after preparation of a statement of~~
 483 ~~estimated regulatory costs required pursuant to s. 120.541, or~~
 484 ~~until the administrative law judge has rendered a decision,~~
 485 ~~whichever applies.~~ However, the agency may proceed with all
 486 other steps in the rulemaking process, including the holding of
 487 a factfinding hearing. In the event part of a proposed rule is
 488 declared invalid, the adopting agency may, in its sole
 489 discretion, withdraw the proposed rule in its entirety. The
 490 agency whose proposed rule has been declared invalid in whole or
 491 part shall give notice of the decision in the first available
 492 issue of the Florida Administrative Weekly.

493 Section 7. Paragraph (c) of subsection (2) of section
 494 120.569, Florida Statutes, is amended to read:

HB 1747 CS

2005
CS

495 | 120.569 Decisions which affect substantial interests.--
 496 | (2)
 497 | (c) Unless otherwise provided by law, a petition or
 498 | request for hearing shall include those items required by the
 499 | uniform rules adopted pursuant to s. 120.54(5)(b)4. Upon the
 500 | receipt of a petition or request for hearing, the agency shall
 501 | carefully review the petition to determine if it contains all of
 502 | the required information. A petition shall be dismissed if it
 503 | is not in substantial compliance with these requirements or it
 504 | has been untimely filed. Dismissal of a petition shall, at
 505 | least once, be without prejudice to petitioner's filing a timely
 506 | amended petition curing the defect, unless it conclusively
 507 | appears from the face of the petition that the defect cannot be
 508 | cured. The agency shall promptly give written notice to all
 509 | parties of the action taken on the petition, shall state with
 510 | particularity its reasons if the petition is not granted, and
 511 | shall state the deadline for filing an amended petition if
 512 | applicable. The time for filing a petition shall be extended if
 513 | the petitioner has been misled or lulled into inaction, has in
 514 | some extraordinary way been prevented from asserting his or her
 515 | rights, or has timely asserted his or her rights mistakenly in
 516 | the wrong forum.

517 | Section 8. Paragraphs (k) and (m) of subsection (1) and
 518 | paragraph (a) of subsection (3) of section 120.57, Florida
 519 | Statutes, are amended to read:

520 | 120.57 Additional procedures for particular cases.--
 521 | (1) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS INVOLVING
 522 | DISPUTED ISSUES OF MATERIAL FACT.--

HB 1747 CS

2005
CS

523 (k) The presiding officer shall complete and submit to the
 524 agency and all parties a recommended order consisting of
 525 findings of fact, conclusions of law, and recommended
 526 disposition or penalty, if applicable, and any other information
 527 required by law to be contained in the final order. All
 528 proceedings conducted under ~~pursuant to~~ this subsection shall be
 529 de novo. The agency shall allow each party 15 days in which to
 530 submit written exceptions to the recommended order. The final
 531 order shall include an explicit ruling on each exception, but an
 532 agency need not rule on an exception that does not clearly
 533 identify the disputed portion of the recommended order by page
 534 number or paragraph, that does not identify the legal basis for
 535 the exception, or that does not include appropriate and specific
 536 citations to the record.

537 (m) If a recommended order is submitted to an agency, the
 538 agency shall provide a copy of its final order and any
 539 exceptions to the division within 15 days after the order is
 540 filed with the agency clerk. In these cases, the final order
 541 does not become effective until it is provided to the division.

542 (3) ADDITIONAL PROCEDURES APPLICABLE TO PROTESTS TO
 543 CONTRACT SOLICITATION OR AWARD.--Agencies subject to this
 544 chapter shall use the uniform rules of procedure, which provide
 545 procedures for the resolution of protests arising from the
 546 contract solicitation or award process. Such rules shall at
 547 least provide that:

548 (a) The agency shall provide notice of a decision or
 549 intended decision concerning a solicitation, contract award, or
 550 exceptional purchase by electronic posting. This notice shall

HB 1747 CS

2005
CS

551 contain the following statement: "Failure to file a protest
552 within the time prescribed in section 120.57(3), Florida
553 Statutes, or failure to post the bond or other security required
554 by law within the time allowed for filing a bond shall
555 constitute a waiver of proceedings under chapter 120, Florida
556 Statutes."

557 Section 9. Paragraph (c) is added to subsection (10) of
558 section 120.65, Florida Statutes, to read:

559 120.65 Administrative law judges.--

560 (10) Not later than February 1 of each year, the division
561 shall issue a written report to the Administrative Procedures
562 Committee and the Administration Commission, including at least
563 the following information:

564 (c) Recommendations as to those types of cases or disputes
565 which should be conducted under the summary hearing process
566 described in s. 120.574.

567 Section 10. Subsection (2) of section 120.74, Florida
568 Statutes, is amended to read:

569 120.74 Agency review, revision, and report.--

570 (2) Beginning October 1, 1997, and by October 1 of every
571 other year thereafter, the head of each agency shall file a
572 report with the President of the Senate, ~~and~~ the Speaker of the
573 House of Representatives, and the committee, with a copy to each
574 appropriate standing committee of the Legislature, which
575 certifies that the agency has complied with the requirements of
576 this subsection. The report must specify any changes made to its
577 rules as a result of the review and, when appropriate, recommend
578 statutory changes that will promote efficiency, reduce

HB 1747 CS

2005
CS

579 | paperwork, or decrease costs to government and the private
 580 | sector. The report must identify the types of cases or disputes
 581 | in which the agency is involved which should be conducted under
 582 | the summary hearing process described in s. 120.574.

583 | Section 11. Paragraph (g) is added to subsection (13) of
 584 | section 120.80, Florida Statutes, to read:

585 | 120.80 Exceptions and special requirements; agencies.--

586 | (13) FLORIDA PUBLIC SERVICE COMMISSION.--

587 | (g) When the Public Service Commission initiates an agency
 588 | action affecting the substantial interest of a utility regulated
 589 | under chapter 367 concerning any matter pertaining to s.
 590 | 120.60(5) and a formal administrative hearing is requested under
 591 | s. 120.57, the commission shall refer the matter to the division
 592 | for the assignment of an administrative law judge to conduct the
 593 | hearing and enter a recommended order.

594 | Section 12. The Department of State shall, before December
 595 | 31, 2006, make available, to all agencies required on the
 596 | effective date of this act to publish materials in the Florida
 597 | Administrative Weekly, training courses for the purpose of
 598 | assisting the agencies with their transition to publishing on
 599 | the Florida Administrative Weekly Internet website. The training
 600 | courses may be provided in the form of workshops or software
 601 | packages that allow self-training by agency personnel.

602 | Section 13. Except as otherwise expressly provided in this
 603 | act, this act shall take effect July 1, 2005.